Legal Training for Diverse Roles in Zanzibar: Challenges and Prospects

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Introduction

This paper provides some highlights on the major institutions charged with the task of legal training of different cadres in Zanzibar. The underlying objective is to identify some of the challenges and tease out issues that would provoke thoughts that would in turn make a case for improved legal training in Zanzibar. The main proposals that are advanced are those that seek to put in place mechanisms in order to empower those dealing with law in their day to day duties so that they would be more effective in living to the expectations of society. The duty, obligation, role and capacity of the main stakeholders in the legal sector in the provision of legal training in Zanzibar are critically analyzed.[1]

Background to Legal Training in Tanzania Zanzibar

For a number of historical reasons there was adopted a general common trend in issues relating to higher education in the East African region.[2] This partly explains the establishment of the University of East Africa in 1962 under the University of East Africa Act[3] which had constituted branches in Uganda, Tanganyika and Kenya. In Tanganyika there was established a college to offer law for the whole of the region. When the University of East Africa ceased to exist in 1970, the Inter-University Council for East

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[1] The main stakeholders that have been focused on are the Faculty of Law and Sharia of the Zanzibar University, members of the Judiciary and the Bar, State Attorneys and Prosecutors.

[2] See Kanywanyi, J.L. *"An Outline of the History of the Faculty of Law of the University of Dar-es-Salaam,"* in Mvungi, (Ed.) Forty Years of the Faculty of Law University of Dar-es-Salaam 1961-2001, Faculty of Law, University of Dar-es-Salaam, 2002 pp. 1-4

[3] No. 16 of 1962

Africa was established. The Council sought to ensure continued coordination and cooperation among the established colleges. When Tanganyika and Zanzibar merged to form the United Republic of Tanzania in 1964, higher education, including legal training at this level became a Union matter.

For quite some time after the merger, undergraduate and postgraduate students from Zanzibar have studied law at the University of Dar-es-Salaam.[4] The history of training of lawyers in Zanzibar is therefore inevitably interlinked with the training offered by the Faculty of Law of the University of Dar-es-Salaam. There are comparatively fewer undergraduate law students from Zanzibar who study at the University of Dar-es-Salaam today. At the postgraduate level, however, students from Zanzibar still join the Faculty of Law for studies. The establishment of the University of Zanzibar partly explains the reduction in the number of students who now enroll at the University of Dar-es-Salaam. Another factor could be the mushrooming of law faculties which also offer LL.B. degrees on Tanzania Mainland. These also attract students from Zanzibar. However, most of the newly established faculties currently do not have a strong base for offering postgraduate studies at the level of Masters and Ph.D. The few that have established LL.M and Ph.D. programmes heavily rely on the already overstretched staff of the Faculty of Law of the University of Dar-es-Salaam. The Zanzibar University has not yet started offering such courses.

[4] Between 1988 and 1994 ten of all the law graduates at the University of Dar-es-Salaam were from Zanzibar. (See Fauz Twaib, The Legal Profession in Tanzania, Bayreuth African Studies Breitinger, 1997 p. 316). Since then an average of four students from the Isles graduate from the UDSM every year.

The need for training lawyers cannot be overemphasized in Zanzibar. There are a number of establishments in Zanzibar which require the services of well trained lawyers. These include the House of Representative, the Judiciary, the Attorney General's Chambers, Director of Public Prosecutions and the Law Reform Commission. Others include the Office of the Registrar General, the Police Force (Prosecutions) and the Local Government. There also exist numerous governmental and non-governmental institutions whose day to day activities require personnel who have some grounding in law. The lawyers already employed in such institutions can make great contributions in the training of up-coming lawyers with a view to strengthening the legal profession on the Island.

A highlight on the institutions charged with training legal professionals and those which undertake day to day activities that require some knowledge of law will set a basis for the areas where assistance from outside them could be provided.

Legal Training at Institutions of Higher Learning

The Faculty of Law of the Zanzibar University which was established in 1999 offers training of lawyers up to the level of LL.B.[5] There are other institutions such as the Open University (Branch) and the Institute of Adult Education which also offer legal training, but at the Certificate level. As observed above, some of the Zanzibaris get legal training from institutions of higher learning institutions on the Mainland, within the East Africa region, in Africa and abroad.

[5] The University is privately owned and is sponsored by an NGO – the *Daral Iman* Charitable Association based in Jeddah, Saudi Arabia.

In Zanzibar, like in most jurisdictions with a common law tradition, it is the acquisition of a Bachelor of Laws, (LL.B) degree from a recognized institution which is required for one to be considered as being adequately versed to practice law. The Faculty of Law and Sharia of the University of Zanzibar has made some contribution in producing lawyers who are absorbed by both the government and private sector on the Isles. With a student population of close to 1,000, the Faculty has, however, been facing an acute problem of full-time lecturers. It relies mainly on part time staff.[6] This situation is not peculiar to the Faculty of Law and Sharia of the University of Zanzibar. The staff-student ratio is a problem that Universities in Zanzibar have been grappling with. The government has shown its concern on the matter and directed the Universities to find a solution in order to be in tune with the standard required for academic development in institutions of higher learning on the Island.[7]

In view of the sad state of affairs with respect to the student-staff ratio at the Faculty of Law and Sharia, legal practitioners already in practice in various institutions need to devote some time to provide training to law students at this Faculty of Law. A number of practitioners have indeed heeded to this call. The training offered by the some of these practitioners could also be done in the form of providing assistance in moot courts organized by the Faculty. They could also offer their services in the provision of practical legal training to final year LL.B. students or graduates in their chambers to inculcate in

[6] The Faculty has 6 full-time and 3 part-time members of staff. (http://www/zanvarsity.ac.tz, visited on 6th March 2007). It would appear that the information on this website has not been updated as information obtained by the author indicates that the total number of full time staff as of February 2007 was 8.
[7] See The Guardian Newspaper of 4th April 2007 captioned: *"Few Lecturers in Z'bar Universities,"* by Issa Yussuf.

them the practical realities of legal practice. They may also deliver lecturers as invited speakers on topical legal issues at the national, regional and international levels.

Those in practice could also serve in the editorial board of journals established by the Faculty. They could also contribute articles in such journals or journals run by students. A good example is the Nyerere Law Journal which is run by students at the Faculty of Law of the University of Dar-es-Salaam, assisted in the editorial board by members of staff, under the patronage of the Dean of the Faculty. Also, the experienced members of staff from the Faculty of Law of the University of Dar-es-Salaam could provide useful insights to their counterparts in Zanzibar.[8] Members of the legal fraternity from outside the Faculty have also contributed articles to the journal. Judges and practicing advocates have written articles covering diverse disciplines of law. These articles have enabled most students to comprehend the practical application of the law, among others. All these initiatives require cooperation with the administration of the faculty of law and commitment and dedication of students.

One of the main concerns that the legal fraternity in most developing countries, including Zanzibar, has to address is whether the training accorded to lawyers is the kind that will adequately equip them to work in the world that is developing so fast in terms of globalization. International commercial transactions which have come along with information technology require a grasp of legal principles that have been progressively developed to carter for the paradigm shift. Integration of States at both the regional and

[8] Relations between the two Faculties have already been established, where the Faculty of Law of the University of Dar-es-Salaam provide External Examiners in some courses. See http://www.zanvarsity.ac.tz

global levels has also ushered in a wave of various legal doctrines which need to be underscored in legal training. The administration of the Zanzibar University seems have realized the need for taking into account the technological advancement in the provision of education across all disciplines.[9]

It has been observed, however, that the teaching curriculum of the Faculty of Law and Sharia of the Zanzibar University needs to be reviewed, ostensibly to capture some of the diverse developments noted above.[10] The inadequacy of the syllabus and some of the courses offered by the Faculty of Law and Sharia has been brought to the attention of the Tanzania Commission of Universities. Responding to a request by the Commission, (at that time the Higher Education Accreditation Council), the experts assigned to review a revised syllabus submitted to the Commission raised serious misgivings about the adequacy of the courses offered by the Faculty to the Zanzibar market. In their report, the experts noted the programme emphasizes on subjects that take the space of "*…more useful subjects in general legal practice.*"[11]

[9] The Mission of the University provides that students must be prepared to contribute effectively to the rapidly changing world dominated by technological advancement. (http://www/zanvarsity.ac.tz, visited on 6th March 2007). Indeed this is in line with the recommendation made by former President of the United Republic of Tanzania, Benjamin Mkapa, in a speech delivered to the community of the University of Dar-es-Salaam at Nkrumah Hall on 16th February, 1999. The President urged the community to review and up date curricula to reflect changing economic, technological and labour market needs of Tanzania. See page 17 of the Speech.

[10] The University has not been fully accredited by the TCU. See The Guardian Newspaper 4th April 2007.

[11] See page 9 of the Experts Report dated 12 March 2005, (responding to the request by the Commission, vide the Commission's letter bearing ref. No. HEAC/A.40/9/Vol. III/38 dated September 2003). (A copy of the Report is on file with the author.)

The experts concluded by observing that:

> *"…the intention and objectives of the programme (syllabus) are not easy to grasp but whatever they are, they are incapable of producing an all round lawyer for the Zanzibar market."*[12]

It is our submission that law students must be exposed to some of the matter-of-fact issues that they will be confronted with when they commence practice. When in practice they will be required to operate clients' accounts, adhere to ethical standards of the profession, draft legal documents and engage in arbitration. They are also required to be exposed to subjects such as computer and telecommunications law, intellectual property law, legal aspects of trade and finance law, to mention but a few. The Faculty of Law and Sharia of the University of Zanzibar does not presently have the requisite capacity to effectively offer such courses. It certainly needs external assistance to develop training material and in teaching some of the proposed new courses. The stakeholders of the legal profession in Zanzibar would have to provide assistance to enable the Faculty to meet the expectations of society in this regard. A trainer for trainers' courses for the staff of the Faculty would certainly be useful in order to ensure sustainability in the delivery of such courses.

Due to the amount of workload involved there may be need for the Faculty of Law and Sharia to solicit external aid to start the courses and offer training. Institutions involved in legal training within the region and on the mainland could be approached and work hand

[12] *Ibid*. At the time of writing, not an iota of the syllabus had not been changed.

in hand with those in Zanzibar to attain this objective. Individual legal practitioners on the Isles and the Mainland could be approached and requested to teach, while members of the teaching staff of the Faculty of Law and Sharia would be understudying them. This approach has been applied successfully by the Faculty of Law of the University of Dar-es-Salaam in teaching Commercial and Consumer Transaction Law, Investment Law, Computer Law, the Accounting Part in the fourth year compulsory course of Professional Ethics, Office Management and Accounting for Lawyers. Also, the expertise of members of the Bar Associations on the Island, the Mainland and the East African region could be sought in this regard.

Control of Legal Education

In most jurisdictions with a common law tradition the training of lawyers is usually regulated by a statutory organ. This is normally done at two levels. The first is at the level of higher learning institutions which offer the basic degree required for one to join the legal profession – the LL.B. degree. The second level of regulation is at the professional level, where a professional organization is established to monitor the conduct of the members the legal profession.

At the level of higher learning institutions in Tanzania, the training of law in the United Republic of Tanzania is offered by institutions of higher learning is a Union matter. The control of legal training at this level has been entrusted to the Tanzania Commission of Universities (TCU) (formerly the Higher Education Accreditation Council of Tanzania)

by the Universities Act, 2005.[13] The Commission has jurisdiction in Zanzibar since the Act is applicable in Zanzibar.[14]

At the level of University training, the Zanzibar University has made a relatively good start. The courses offered by the Faculty of Law and Sharia of this University are certainly not wholly detached from the needs of the legal profession in Zanzibar. Improvements could, however, be made in order to ensure that the course reflect the developments in different disciplines at the national, regional and global levels. The legal profession in Zanzibar, through the Zanzibar Lawyers Association and other stakeholders, should devise ways to ensure that the training of law graduates meets the expectations of society. This should be done in collaboration with the government institutions that have a stake in the production of law graduates. The Judiciary and the Attorney General's Chambers in Zanzibar should be at the forefront in achieving this objective.

Continuing Legal Education

The Bar

The absence of a professional legal organ to regulate the conduct of legal practitioners for quite sometime in Zanzibar made it difficult to effectively coordinate continuing legal education activities for the legal practitioners in Zanzibar. The Zanzibar Law Society has now been established. It has numerous challenges. One of these is bringing together members of the legal profession to form one strong bond to spearhead legal training.

[13] Act No. 7 of 2005. The Commission is established under section 4.
[14] See section 2 of the Act.

As noted earlier there have been a number of developments in law at the national, regional and international levels in response to dynamic changes in diverse areas. As the world keeps developing, a number of new concepts, ideas and principles have been evolved. All these have implications for the legal profession and lawyers have to keep abreast all these developments. This will necessarily require lawyers to re-orient themselves on the developments in law, both at the national and global levels. The Zanzibar Law Society, with the assistance of other stakeholders, such as the Judiciary and the Attorney General's Chambers must make every effort to provide a continuing legal education programme for legal practitioners.

It would be attempting to perform a Herculean task to require legal practitioners to return back to law school to study courses to enable them get a grasp of legal principles that are evolving as a result of advancements in the world order. All the same some effort must be made to encourage practitioners to update themselves with developments in the legal arena. A leaf could be drawn from the Mainland where the Tanganyika Law Society conducts continuing education seminars on different topical issues to its members a day before the Annual and Half Annual General Meetings. The seminars are not compulsory but the response of members is usually good. Most members who have attended the seminars have observed that they are very useful.

The Judiciary

Provision of training for members of the judiciary to keep them abreast with evolving legal principles and doctrines in Zanzibar would be comparatively more difficult for a number of reasons. First and foremost, given the workload judges and magistrates are confronted with, it would be difficult to get time off. It is, however, possible to conduct short term training courses, focusing on some of the current topical themes. Such courses could be run on a rotational basis, taking a few groups at a time.

Secondly, due to the nature of the judicial set up, some junior members of the bench may be uncomfortable to be mixed up with senior members in a course. Similarly some members of the Bar may feel uncomfortable to conduct seminars for members of the Bench. On the same vein, some members of the Bench may feel offended where a junior member of the Bar or worse still, the Bench plays a leading role in conducting seminars for them.

Despite the problems alluded to above, a number of judicial officers and court personnel periodically undergo training at the Institute of Judicial Administration at Lushoto on the Mainland.[15] Most of these are usually sponsored by the Judiciary of Zanzibar. Most of the judicial officers and court personnel who undergo training at this Institute take the certificate in law course or the Diploma in Law course. Others undergo training in short courses run by the Department of Short Courses, Research and Consultancy at the Institute.[16]

[15] The Institute is established under Cap. 405 of the Laws of Tanzania, R.E. 2002
[16] For a nature and list of the courses offered, see pp. 23-25 of the Institute's Prospectus (2006/2007)

Continuing legal education and training for personnel in the judiciary not only improves the delivery of justice but is also useful for personal development. There are a number of success stories of personnel in the judiciary who have climbed ladders, moving from very junior ranks to hold senior positions after undergoing various phases of continuing legal education and training. One case in point is that of a court messenger who, after undertaking law courses ended up with an LL.B. degree from the University of Dar-es-Salaam. He thereafter rose all the way to become a Senior Resident Magistrate. Also, a one time primary court magistrate rose to become a Judge of the High Court of Zanzibar.[17] These success stories strongly suggest that there is a need to devise ways to establish an institution to provide continuing legal training for judicial personnel in Zanzibar. This would be timely given the fact that the judiciary is not a Union matter. Reliance on the Institute of Judicial Administration Lushoto on the mainland may not be sustainable for Zanzibar's judiciary in the long run. The Institute may, for example, adopt policies and courses to reflect developments and changes on the Mainland which may not necessarily be appropriate or beneficial for judicial personnel in Zanzibar.

State Attorneys and Prosecutors

State Attorneys play an important and crucial role in training of legal professionals in Zanzibar. Once law students graduate from the law faculties, they need to undergo further training through the internship programme. Students who are placed under the tutelage of State Attorneys need to be trained and groomed on some of the day to day practical problems in litigation, drafting and court practice in various fields of the law. In this

[17] See Twaib, F; (1997) The Legal Profession in Tanzania: Law and Practice, Bayreuth African Studies, Breitinger, pp. 165-166

regard, the State Attorneys' capacity to effectively provide training to the interns needs to be enhanced. This may entail the need for providing the Attorneys with training in the form of short courses which are focused on legal developments in law related to their careers.

Similarly public prosecutors need to be kept abreast with developments in laws that have a bearing on their tasks. There are a number of developments on the law relating to evidence, for example, which some prosecutors may not be aware of. Therefore, this cadre should not be left at the periphery in initiatives aimed at strengthening the legal profession with a view to ameliorating justice delivery in Zanzibar.

Kadhis

One category of court personnel who should also not be lost sight of in continuing legal training is the Kadhi. Kadhis handle very many cases, involving the local people in Zanzibar.[18] Although the requirement for one to become a Kadhi does not specifically require formal training in Islamic law, Kadhis who have formal legal training in Islamic law are better placed to handle hard cases. Indeed, some of the Kadhis in Zanzibar have had formal training in Islamic law.[19] Understandably it may be expensive for the government to continue providing Kadhis with formal training in Islamic law abroad. In this regard, it would be prudent to consider establishing a training Institute for Kadhis as

[18] A study conducted in Mkokotoni village in indicated that the Kadhis Court served a jurisdiction of over an entirely rural area with a population of about 100,000, (see www.swahili.com/features/articles/islam.htm) (April 2007)

[19] Hon. Omar Saidi Omar, of the Kadhis Court at Mwanakwerekwe taught Islamic law for a number of years at an Islamic Primary school on the Isles before being appointed to become a Kadhi. After serving for four years as Kadhi, he, with four other Kadhis now stationed in various courts in Zanzibar, obtained a Diploma in Islamic law from the world's oldest and renowned *Al Azhar* Islamic University in Cairo, Egypt.

a long term measure. In the short term, the Faculty of Law and Sharia of the Zanzibar University may be approached and be requested to offer tailor made course for this cadre. Alternatively if the proposal to establish an institution for training judicial personnel is realized, Kadhis should also be considered for training at the institution.

Other Stakeholders

Legal training should also focus on empowering citizens with tools to enable them to at least have a grasp of the basic elements of the law to enable them make informed choices. An increasing number of citizens in Zanzibar have enrolled for the certificate in law programme of the Faculty of Law, University of Dar-es-Salaam. An institution that seeks to run the certificate in law programme has to get approval from the Faculty of Law, University of Dar-es-Salaam. The Faculty of Law of the University of Dar-es-Salaam has approved the Open University of Dar-es-Salaam and the Institute of Adult Education to run courses in Zanzibar.

The certificate in law course has attracted people from all works of life in Zanzibar. It is not only those who are working in institutions where some knowledge of law is required who have registered for the course. There are also people who want to have basic knowledge of the law with the objective of making sure that their rights are not trampled upon who have benefited from the certificate in law programme.

Unlike on the mainland, para-professionals are permitted to appear before some of the courts in Zanzibar. These officers are referred to as *Vakils* (Sometimes referred to as

"*Wakyls"*). In order to be admitted into this category one only needs to establish to the Chief Justice of Zanzibar that he/she is of good character and has sufficient ability. The decision to appoint the *vakils* has been left to the sole discretion of the Chief Justice. One does not have to have seen an inside of a lecture room where the training of law is provided.[20] Incidentally *vakils* may be allowed to appear and represent parties in Primary Courts. It is important to emphasize here that advocates and state attorneys do not have locus in primary courts. There may be no practicing *Vakils* in Zanzibar. However, the mere fact that it is possible to have this cadre of non-professionals suggests that it would be appropriate if these were encouraged to take the certificate in law courses to enhance their understanding of the law.

Police officers also take the certificate course in law at the Institute of Adult Education and Open University centers in Zanzibar. Effective enforcement of the law requires officers who are well versed with the law and developments thereof. In this regard the training of this cadre should also be encouraged.

A number of legal practitioners have been offering their service in the provision of legal training at the Faculty of Law and Sharia of the University of Zanzibar and at the two centers offering certificate in law courses. Most have done this in consideration of some form of payment. The services offered by such persons have been greatly appreciated by the recipients - the institutions and the students.

[20] See Rule 6 of the Legal Practitioner Rules

Although the efforts by the legal practitioners is commended, there are a number of issues that need to be looked into with respect to the capacity of the service providers to balance private practice and teaching and the commitment of some to offer their services at the various institutions in Zanzibar. Of course, the Tanzania Commission of Universities provides a general oversight of education at the higher learning institutions in the United Republic of Tanzania. The legal fraternity of Zanzibar, with other main stakeholders must assist the Tanzania Commission of Universities in ensuring that the quality of legal training offered is not compromised.

With respect to the certificate in law courses, the Faculty of Law of the University of Dar-es-Salaam has constantly been making follow-ups of the conduct of training offered by the two institutions permitted to offer the courses. The Faculty has in place an established mechanism to ensure that the certificate in law programme is conducted in a manner that will not compromise quality. The Faculty of Law would welcome advice and suggestions from the legal fraternity in Zanzibar aimed at improving the programme which will in turn help strengthen the delivery of justice among the legal professionals.

Conclusion

The aim of this paper was to provoke thoughts on the state of legal training in Zanzibar. The main challenges faced by the institutions that offer legal training have been analyzed. In some cases, recommendations have been hinted.

In our considered view, discussions of issues raised in the selected areas need some consideration with a view to sustaining the ability of the legal profession in Zanzibar to meet society's expectations and needs in legal training. One of the areas that need to be reflected upon is the role of practicing advocates and state attorneys as lecturers and trainers in the institutions of higher learning and the centers that offer certificate in law courses.

The other area that needs reflection is the need to devise a mechanism that would lead to an improved culture of continued legal education and a periodic follow-up of developments in emerging legal concepts, principles and doctrines of law amongst members of the bench, practicing lawyers, law students and those in government institutions.

The establishment of a law journal at the Faculty of Law and Sharia of the University of Zanzibar has been underscored. Contributions of papers to such a journal by members of the judiciary, state attorneys and members of the bar would be a good start. In the long run a journal for the Zanzibar Law Society could be established. The revival of the Zanzibar Law Reports would also re-kindle the reading culture and promote continued legal education objectives in Zanzibar.

One of the areas that we strongly feel needs some extra consideration is the training of personnel in the judiciary. The need to provide short term courses and the provision of continued legal education to judicial officers and personnel has been underscored. We

have noted that since the judiciary is not a Union matter, it would be prudent to consider a judicial training institute for judicial officers and personnel in Zanzibar. Reliance on the Mainland for training of this cadre may not be beneficial in the long run. It may be necessary to conduct a needs assessment in order to determine the training requirements for the various cadres of legal practitioners, judicial officers, state attorneys, prosecutors and court personnel before embarking on the training exercise.

In order to provide effective practical legal training of law graduates upon completion of their LL.B. degree courses, most countries in the East African region have established law schools for this purpose. Given some of the problems faced by the Zanzibar University in its endevour to effectively provide legal training it may be prudent to consider the establishment of a law school in Zanzibar. After almost twenty-three years since the teaching of law commenced on the Mainland, a Bill for the Establishment of a Law School is in the pipe line.[21] Mechanism could be put in place on how students from Zanzibar could access the School when it commences operation, at least as a short term measure. In the long run, however, the relevant stakeholders should focus on establishing a similar school in Zanzibar.

We conclude by noting that most of the recommendations that have been advanced in this paper require funding. This may be difficult to come by. All the same, efforts must be made to solicit the funding from the various sources within and outside those provided by government.

[21] The Bill was presented to Parliament for 1st Reading on 8th February 2007. See http://www.parliament.go.tz

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