

Land Tenure in Zanzibar

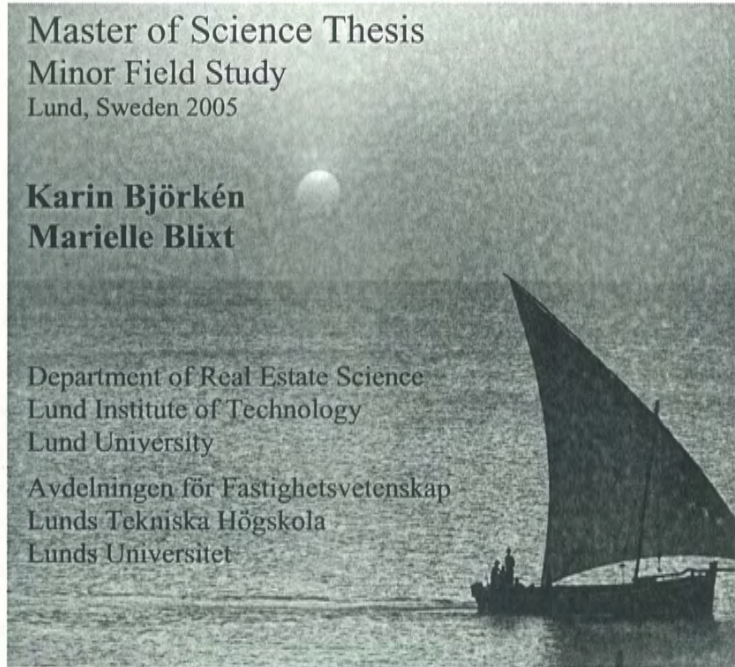
- How it relates to Small Scale Businesses

Master of Science Thesis
Minor Field Study
Lund, Sweden 2005

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Bruksrätt till mark i Zanzibar

- Dess betydelse för småföretag

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Sökord: Zanzibar, Markhistoria, Markadministration, Marklagstiftning, Bruksrätt,
Småföretagare, Finansieringsmöjligheter.

Preface



**ROYAL INSTITUTE
OF TECHNOLOGY**

This study has been carried out within the framework of the Minor Field Studies Scholarship Programme, MFS, which is funded by the Swedish International Development Cooperation Agency, Sida.

The MFS Scholarship Programme offers Swedish university students an opportunity to carry out two months' field work, usually the student's final degree project, in a Third World country. The results of the work are presented in an MFS report, which is also the student's Master of Science Thesis. Minor Field Studies are primarily conducted within a subject area that is important from a development perspective and in countries where Swedish international cooperation is ongoing.

The main purpose of the MFS Programme is to enhance Swedish university students' knowledge and understanding of these countries and their problems and opportunities. MFS should provide the student with initial experience of conditions in such a country. Overall goals are to widen the Swedish human resources cadre for engagement in international development cooperation and to promote scientific exchange between universities, research institutes and similar authorities in developing countries and in Sweden.

The International Office at the Royal Institute of Technology, KTH, Stockholm, administers the MFS Programme for the faculties of engineering and natural sciences in Sweden.

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Lund, 22 december 2004

Karin Björkén

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Abstract

This Master of Science Thesis investigates how the land tenure system in Zanzibar functions today and how it relates to small scale businesses in Zanzibar Town, Zanzibar.

Zanzibar is a separate state within the United Republic of Tanzania and consists of an archipelago of islands and islets. Land administration and legislation is not a Union matter in Tanzania though Zanzibar has full control of these matters. The majority of the existing land laws in Zanzibar were created by the House of Representatives between 1990 and 1994. The Ministry in charge of all land administration is the Ministry of Water, Construction, Energy and Lands. The Ministry relies on the existing land laws needed to create secure tenure, necessary for a functioning economical system.

Zanzibar has a large number of different land tenure types. None of the tenure types that historically have existed in Zanzibar have ever been based on freehold. Today all land is vested in the President. Apart from land tenure types found in the legislation, religious and customary land tenure coexists with codified tenure. The forms of land tenure stated in the legislation are not legal or secure until registered. Zanzibar has a Title register system but no Land Register exists today due to the absence of a Registrar of Land. A Temporary Register exists but it holds no legal value, only an administrative status.

The possibilities for small scale businesses to set up and operate often hold key positions in a country's development. The development of a town economically and socially often depends on the possibilities of small scale investments. The investments done by small scale businesses can be supported or impeded by different factors such as informality or inefficient rules and unnecessary bureaucracy. Important factors can be security in ownership and tenure, possibilities to raise capital by mortgaging and a well functioning administration for building permission.

Sammanfattning

Syftet med detta examensarbete är att undersöka hur bruksrätten till mark på Zanzibar fungerar idag samt dess relation och betydelse för småföretagare i Zanzibar stad.

Zanzibar är en separat stat inom unionen Tanzania och består av ett flertal småöar. Markadministration och lagstiftning är inte unionsfrågor utan Zanzibar har full beslutanderätt över Zanzibars territorium. Flertalet av de existerande land lagar som finns idag skapade mellan 1990 och 1994 av Zanzibars Parlament. "Ministry of Water, Construction, Energy and Lands" ansvarar för alla markfrågor. Ministeriet förlitar sig på de landlagar som finns för att kunna skapa säkra bruksrätter, nödvändiga för ett väl fungerande ekonomiskt system.

Zanzibar har en stor andel olika bruksrätter. Inga av alla de bruksrätter som har existerat på Zanzibar har någonsin möjliggjort full äganderätt för privatpersoner. Idag tillhör all mark Zanzibars president. Förutom de bruksrätter som finns reglerade i lagstiftningen så finns även religiösa och sedvanerättsliga bruksrätter. De former av bruksrätter som finns i lagstiftningen är inte juridiskt gällande innan de registrerats. Zanzibar har ett "title system" men det finns inget fungerande register idag på grund av avsaknaden av en registrator. Ett temporärt register finns men det har enbart en administrativ status, ingen juridisk.

De möjligheter som finns för småföretagare att kunna starta och driva företag är grundläggande för ett lands utveckling. En stads ekonomiska och sociala utveckling beror ofta på vilka möjligheter som finns för småföretagare. De investeringar som småföretagare är beroende av, kan understödjas eller motverkas av faktorer såsom ineffektiva regler eller onödig byråkrati. Viktiga faktorer för småföretagare är deras möjlighet till säker ägande- och bruksrätt, möjligheter att skaffa kapital genom pantsättning och förekomsten av en väl fungerande bygglovsadministration.

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Abbreviations

In this report the abbreviations used are stated below.

ASP	Afro-Shirazi Party
CCM	Chama Cha Mapinduzi
CCW	Chama Cha Wananchi
COLE	Commission for Lands and Environment in Zanzibar
CUF	Civic United Front
PRIDE	Promotion of Rural Initiatives and Development Enterprises
RTO	Right to Occupancy
Sida	Swedish International Development Cooperation Agency
SMOLE	Sustainable Management of Land and Environment
TANU	Tanganyika African National Union
TRA	Tax Revenue Authority
Tsh	Tanzanian Shilling
UDCA	Urban Development Control Administration
USD	US Dollars
ZILEM	Zanzibar Integrated Land and Environment Management Project
ZIPA	Zanzibar Investment Promotion Agency
ZNP	Zanzibar Nationalist Party
ZRB	Zanzibar Revenue Board

Acts

LAA	Land Adjudication Act of 1990
RLA	Registered Land Act of 1990
LSA	Land Survey Act of 1990
LTA	Land Tenure Act of 1992
LTriA	Land Tribunal Act of 1994
LTrA	Land Transfer Act of 1994

Ministries and Departments

MoANRCE	Ministry of Agriculture, Natural Resources, Cooperatives and Environment
MoFEA	Ministry of Finance and Economic Affairs
MoWCEL	Ministry of Water, Construction, Energy and Lands
DoC	Department of Construction
DoEM	Department of Energy and Minerals
DoE	Department of Environment
DoFPA	Department of Finance and Public Affairs
DoHHSD	Department of Housing and Human Settlements Development
DoLR	Department of Land and Registration
DoPA	Department of Planning and Administration
DoSFPC	Department of State Fuel and Power Corporation
DoSUP	Department of Surveys and Urban Planning
DoW	Department of Water
STCDA	Stone Town Conservation and Development Authority

Glossary

Acre	1 Acre = 4,047 square metres.
COLE	Commission for Lands and Environment in Zanzibar, the former head of all departments concerned with land matters. COLE received support from the ZILEM project and ceased to exist in 2000.
Communal land	Land owned by a community such as a village.
Customary law	Unwritten law established by long usage.
Customary tenure	Land held under customary law.
Easement	A right attached to a parcel of land, which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent.
Freehold tenure	Tenure with absolute ownership where the owner has the maximum rights permissible within the tenure system.
Land	According to Zanzibar's legislation: The surface of the earth, the materials beneath, the air above and all things fixed to the soil except trees when specifically classified and owned separately. All land in Zanzibar is vested in the President of Zanzibar.
Land Administration	The process of determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies.
Land policy	A governmental instrument that states the strategy and objectives for the social, economic and environmental use of the land and natural resources of a country.
Land Register	A public inventory used to record deeds or title documents.
Land Registration	The recording of rights in land as deeds or titles.
Leasehold	According to Zanzibar's legislation: A contract by which the right to the exclusive possession of land is granted by the Government of Zanzibar or a private holder of land in exchange of a charge.

Mainland	Tanganyika is referred to as mainland by the citizens of Zanzibar.
PRIDE	Promotion of Rural Initiatives and Development Enterprises, an organisation that provides small scale loans through group guarantee to people who wish to set up small scale businesses.
RTO	A Right to Occupancy that gives the holder an exclusive right to the use and occupation of land.
Right to Trees	According to Zanzibar's legislation: A right where trees can be owned and held separately from a RTO and transacted as separate assets. Trees includes according to the legislation palms, bamboos, shrubs, bushes, stumps, seedlings, salings and reshoots of all ages.
Sheha	Appointed leader of Shehia.
Shehia	Swahili term for a local administrative unit in Zanzibar, consisting of one or few villages. Central governmental administration at the local level.
Shirazi	Indigenous Zanzibaris, descendent from Persian kings.
Shirazi tenure	Native customary land tenure that existed before the coming of the Arabs that primarily prevailed on the coral rag areas.
Small scale business	A business in Zanzibar with an actual size less than 30 square meters, businesses with less than two persons at work at the same time and businesses with a yearly turnover less than 3 000 000 Tsh, 2,800 USD.
SMOLE	Sustainable Management of Land and Environment, an independent governmental program of land and environment in Zanzibar supported by Finland. It is a continuum of the ZILEM project.
Squatter	A person who occupies land without the permission of the true owner. Squatters in Zanzibar are traditionally former slaves that squatted in the plantation areas after the abolishment of the slavery.
Statutory law	Written and codified law.

Stone Town	The old part of Zanzibar Town characterized by multi-storey stone houses and narrow streets. Stone Town was in 2000 listed on UNESCO World Heritage List.
Swahili	Historically the mercantile population that governed the east African coast under Arabic influence in the 11 th century onwards. Also the language Kiswahili.
Tanganyika	Part of the United Republic of Tanzania.
TANU	Tanganyika African National Union, a political party in mainland Tanzania that emerged with the ASP forming the CCM in 1977.
Tanzania	The United Republic of Tanzania, which is a Union of Tanganyika and Zanzibar.
Tenure	The manner of holding rights in and occupying land.
Three Acre Plot	A land tenure type created after the 1964 revolution in Zanzibar where land was distributed among the poor peasants in three acre pieces.
Upatu	Self financing loan among small scale investors in Zanzibar.
Waqf	A religious endowment specific to Islamic society and laws where one can dedicate either property or income from a property for religious purposes.
Zanzibar	Part of United Republic of Tanzania.
Zanzibari	According to Zanzibar's legislation: A citizen of Zanzibar is any person that was born or has been residing in Zanzibar before and up to the 12 th of January 1964 or who, as from the 26 th of April, 1964 is a citizen of Tanzania and was born in Zanzibar with both parents being Zanzibari or either his father or mother being Zanzibari in accordance with the Zanzibari Act, 1985 or who is a citizen of Tanzania and was born or has been residing in Zanzibar before the 26 th of April, 1964 or who is a citizen of Tanzania with both of his parents being Zanzibari or either his father or mother being Zanzibari in accordance with what has been said above.
Zanzibar Town	The largest town on Zanzibar situated on the west coast of Unguja consisting of Stone Town and the periphery.

- ZNP** Zanzibar Nationalist Party, the Arabic aristocratic party that ruled Zanzibar after the independence up to the revolution.
- ZILEM** Zanzibar Integrated Land and Environment Management Project, a cooperation between the Government of Zanzibar and Finland, between 1989 and 1996 where land management and environment management issues were dominating.
- ZIPA** Zanzibar Investment Promotion Agency, an agency to serve and coordinate foreign as well as local private investments.

1 Introduction

The majority of Africans live in poverty and the population in Zanzibar is not an exception. Africa is the world's most donor dependent continent. The gap between the rich and poor population is large. There are problems with increasing poor economic performances, increase of HIV/AIDS, malaria and political conflicts. All these factors are obstacles that impede development in many African developing countries.¹

In developing countries there are often a variety of different ways to relate to and look upon land, which usually results in various forms of tenure. Land is in one way or another, the basic source of most material wealth.² A conflict between customary tenure and new statutory land tenure is often common. Zanzibar is a good example where the native customary tenure has been exposed to different tenure types.

Land tenure is important for societies to create a secure living situation as well as a stable economy, where land is used as a resource. Tenure depends on custom, legislation and administration among some. These are all affected by the country's present land policy and possibility to create secure land tenure. If the land policy is weak it affects the whole land market and its actors.

Possibilities for small scale businesses to set up and operate often hold key positions in a country's development. The investment climate can be supported by different conscious factors or impeded by inefficient rules and unnecessary bureaucracy. Important factors can be security in ownership and tenure, possibilities to raise capital by mortgaging and a well functioning administration for building permission.

Businessmen face several different problems at their initial stage of trying to establish a business. The primary problem is how to raise capital in order to get started, acquire space and any needed permissions. Other typical obstacles for small scale businessmen are non-conducive, non-transparent and often very complicated legal and regulatory framework. If bureaucracy also exists, these factors can cause big difficulties for small scale businessmen. Another factor that can be a problem that can overturn or inhibit small scale businesses to grow is large tax burdens that can be imposed on them.

¹ Internet 1

² Larsson, 1991, page 1

1.1 Aim

The aim of this MSc Thesis is to present a study of Zanzibar's present land tenure system and investigate how it relates to small scale businesses in Zanzibar Town, Zanzibar.

The introductory study investigates

- The historical development of land tenure in Zanzibar
- The present land management in Zanzibar
- The existing land legislation in Zanzibar
- The different forms of land tenure in Zanzibar
- The land market in Zanzibar

The study of small scale businesses investigates

- Composition, localisation and general problems for small scale businesses
- The existing securities in tenure for small scale businesses
- How building permissions are acquired
- How small scale businessmen finance their businesses
- What kind of taxes that are imposed on small scale businesses

The results and analysis of this MSc Thesis will be essential in discussions concerning how to develop Zanzibar Town as well as other smaller towns emerging in Zanzibar from the perspective of small scale businesses.

1.2 Method

The selection of method is essential in the initial phase of a thesis study. The transition of a theory from a hypothesis into an empirical level is necessary for the achievement of a study. The chosen method in this MSc Thesis has been a multi-methodological approach, where in-depth interviews, observations, literature researches and questionnaires have been combined. The study is divided into three parts where the first part constitutes the pre-research, the second part the field trip and the third part the compilation, analysis and writing.

The pre-research of the existing land tenure system, that is present in Zanzibar today, was essential in the early stage of the study. This was done through a literature research of Zanzibar's land history, legislation, economy and politics. The study's aim was used as a base in the preparation of planned interviews.

Important variables to apply in the field study were stipulated. They were used in the in-depth interviews as well as in the questionnaire research. Variables used were:

- Small scale businesses
- Land tenure
- Building permissions
- Credit possibilities
- Taxation

A general time plan for the field study was prepared. The time plan functioned as a guideline during the field study.

Time plan	January 2004	February 2004
Qualitative research	In-depth interviews	
	Observations	Observations
Quantitative research		Questionnaires

Table 1: Time plan for field study

The field study was performed in January and February 2004. Centre for the study was Zanzibar Town from where most of the performed work was done. It was appropriate to use Zanzibar Town as centre as it is the largest town where all governmental departments of interest are situated.

Semistructured in depth interviews were done with eligible people at different ministries, departments and non-governmental organisations of significance. This was an important part in order to establish a clear picture of how land is conveyed, what type of land tenure that exist, how small scale businesses are looked upon in land administrative matters, how administration procedures are performed and how well existing land laws are complied with.

A literature research was performed during the whole stay. Secondary data in the form of written papers and reports, concerning the scope of the study was collected and used. The existing land laws were gathered and studied.

Observations have been used as a method but not in a structured way. These observations have been done indirectly and concealed during the whole study as an additional tool. The observations were done at the different governmental departments, banks and at the small scale businesses visited. These observations have been crucial in the understanding of how certain procedures often work in contradiction to the legislation. The observations have been recorded as field notes and are qualitative observations considered important enough to be part of the analysis.

The questionnaire was short and concise in structure, in order to be efficient and easy to work with. This was essential as there was a time plan to consider and as an interpreter was used. The questions were based on the determined variables to get the most important information concerning conditions that small scale businesses handle in their daily work. The majority of the questions were constructed with the results of the in-depth interviews as guidelines. The small scale businessmen interviewed were picked randomly. The only limitations were that the business should lie within the field study area and be a business of small scale. The questionnaire used can be seen in Appendix 1. A complete list of the interviewed businesses that comprise the study can be seen in Appendix 2.

The compilation, analysis and writing of the report were done with the information gathered from the interviews, literature study, observations and questionnaire. The different sources of information are prearranged in primary and secondary data.

The primary data used in this study are qualitative in depth-interviews with directors at different departments, experts in the property market and at non-governmental organisations. Quantitative questionnaires with 50 respondents were done. Observations were done during the whole field study. Existing land laws are primary data.

The secondary data used in this study are written books, articles, licentiates, yearly department statistics and significant Internet websites. The most frequent used secondary sources of importance for the literature study are presented in Appendix 8.

1.3 Bibliography

The model used for reference as well as bibliography in this report is the Oxford model, a simple and rational model well suitable for this MSc Thesis report. The intentions of the references in the report are to support statements and assumptions as well as strengthen them. The references will alleviate for the reader to find any additional information of interest that is not dealt with in this report.

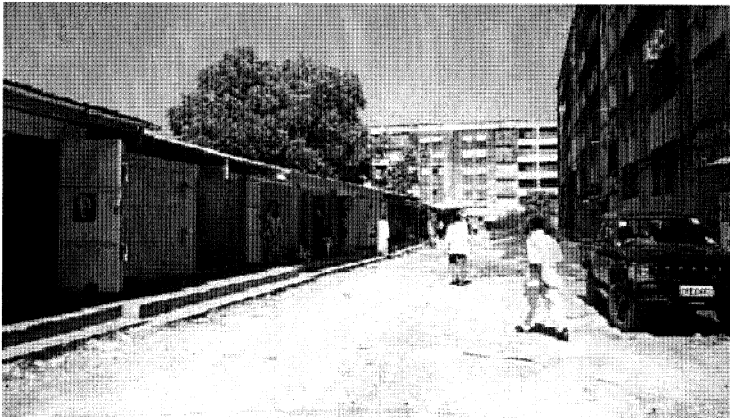
The Oxford model comprises two parts, footnotes in the text on every page and a complete bibliography reference at the end of the report. Footnotes are used in running text and are numbered sequentially throughout the report. The footnote is placed directly after a quote or an account of any kind. If a source has been used for a whole section or a chapter the footnote is placed at the end of that section or chapter. When an Internet source or an interview is used, the source is named Internet 1, Internet 2 or Interview 1, Interview 2 and so on. The full address and date of visit to the website or the date of performed interview can be found in the bibliography. Names and references of Sources to maps, diagrams and tables are made and presented in the bibliography in a likewise manner.

1.4 Limitations

The limitations in this report have been done according to content, time and resources. The two limitations are Zanzibar Town and our definition of small scale businesses.

Zanzibar Town is a geographical limitation. Zanzibar town is situated on the west coast on Unguja and consists of the old part, Stone Town and the periphery.

Small scale business is a theoretical limitation. Small scale businesses are limited to businesses of an actual size less than 30 square meters, businesses with less than two persons at work at the same time and businesses with a yearly turnover less than 3,000,000 Tsh (2,800 USD). This limitation was done in Zanzibar with consideration to prevailing conditions.



Picture 3: Small scale businesses in Zanzibar Town

1.5 Sources of Errors

In an MSc Thesis of this extension there are bound to arise sources of errors that are difficult to control. Some errors are obvious while some are obscure. In this report there are possible translation misunderstandings considering the questionnaires as an interpreter was used. It is also hard to control the openness of the interviewed persons as they possibly could have been inhibited by us as foreigners and women. Literature assembled from authorities is likely to be biased and there was a limitation in the extent and access of up to date material. Secondary data have been used with the awareness of its possible sources of errors due to its compilation by authors or researcher for other purposes than ours. It is likely that secondary data is based on tertiary data, which can distort the data used and become a subsequent source of error.

1.6 Target Group

This MSc Thesis is primarily directed to people who work with development in Zanzibar and people at Sida. A secondary target group are Students at the programme of Land and Surveying in Lund as well as any other students, with an interest in developing countries and small scale businesses.

1.7 Disposition

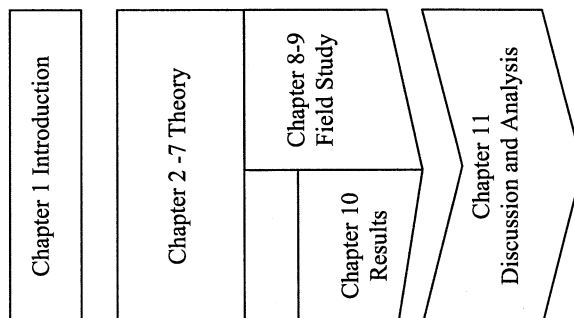
The report is divided into four sections to alleviate for the reader.

Introduction is the first section that defines the framework for this MSc Thesis. It is an introductory part where the study's background, aim, method, bibliography, limitation, sources of errors and target group are presented.

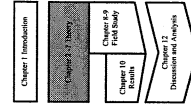
Theory is the second section that consists of the country profile on Zanzibar, land history, land management, land legislation, land tenure and land market.

Field study and results is the third section that presents the field study, small scale businesses and the final results and statistics.

Discussion and analysis is the fourth section that ties together the presented results with the reports initial aim.

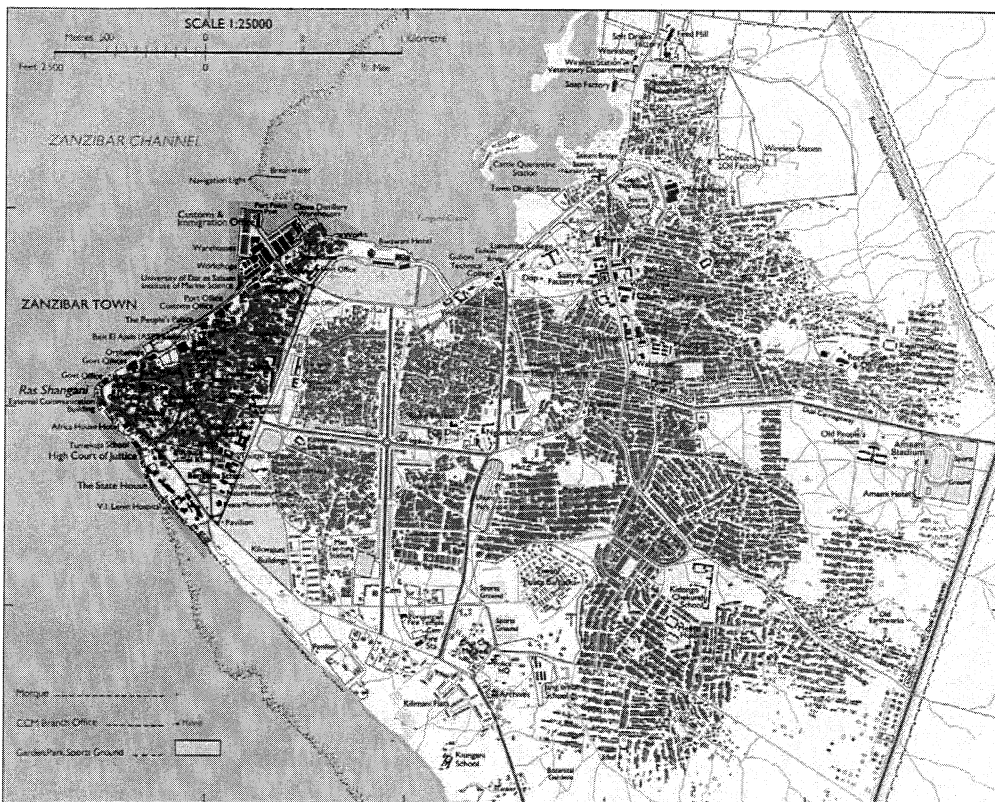


2 Country Profile on Zanzibar



The name Zanzibar translates "Land of the Blacks". The name derives from a combination of the two Arabic words "Zinj" meaning black and "barr" meaning land.³ Due to Zanzibar's geographical location it has been the most important trading place in eastern Africa. It has served as a passageway of all sorts of goods such as ivory, slaves, cloves and coconuts.

Zanzibar is a separate state within the United Republic of Tanzania, which is a Union between Tanganyika and Zanzibar since 1964.⁴ Zanzibar consists of an archipelago of islands and islets where the two largest islands are Unguja and Pemba. Unguja is often referred to as Zanzibar. The largest city, Zanzibar Town, is situated on the west coast of Unguja and function as a capital for Zanzibar. Zanzibar Town is made up of two parts, the "old city" known as Stone Town and newer dwelling places outside Stone Town.⁵ Stone Town dates back to the Omani rule and is famous for its old stone houses and narrow picturesque streets.



Map 1: Stone Town and the periphery

³ Internet 2

⁴ Sävborg, 2003, p 14

⁵ Internet 3

2.1 History

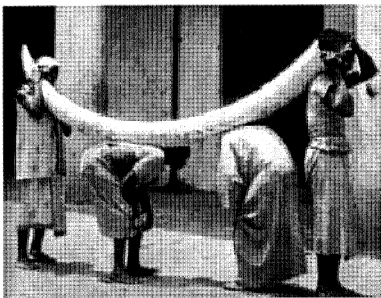
Zanzibar is an island with a rich and fascinating history. It has been a popular and frequently visited island due to its geographical position and the monsoon system of the Indian Ocean that has brought it within reach of sailing ships from far away.

The early period in Zanzibar started with the supposed first inhabitants of Zanzibar, Bantu-speaking fishermen from Africa. These fishermen arrived approximately 6,000 years ago.⁶

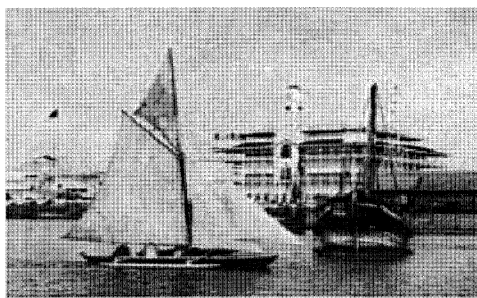
The Swahili civilization started with the arrival of the Persians approximately in the 11th century. Due to intermarriage between the Persians and the indigenous inhabitants the Swahili civilization emerged. The Swahili people are today more commonly referred to as Shirazi and are a blend of African, Persian and Muslim origin with some Arab influence.⁷

The Portuguese period came to dominate the island in the 16th century. The Portuguese shattered the Swahili control of not only Zanzibar but the entire western Indian Ocean when they established their trading stations throughout the African East coasts.⁸ They were driven off Zanzibar in 1729 by a fleet sent by the Omani sultanate.⁹

The Omani period and the slave trade started after the repulsion of the Portuguese from Zanzibar. As the Portuguese were driven off the western Indian Ocean, the Oman Empire took control over the entire East Africa. An increase in trade with mainly slaves and ivory flourished at this time and made Zanzibar, rich and powerful. The Sultan Seyyid bin Said moved the entire Omani capital from Muscat to Zanzibar in the beginning of the 19th century, which even more increased Zanzibar's already prosperous trading and status.¹⁰ The Sultan Seyyid bin Said also introduced Zanzibar to its most common and well-known trading stock today, cloves.



Picture 4: Ivory and slave trade



Picture 5: Dhow in front of "House of Wonders"

⁶ Finke, 2002, p 253

⁷ Internet 4

⁸ Sävborg, 2003, p 12

⁹ Middleton, 1961, p 5

¹⁰ Sävborg, 2003, p 12

The British protectorate period started slowly in 1873 when the British forced the then Sultan Barghash to abolish the slave trade between the African mainland and Zanzibar.¹¹ The Omani empire had at this time little power while the colonization of Africa by the Europeans was vast and increasing. Germany had received Tanganyika as a colony in 1884 when the great colonial powers in Europe met in Berlin to divide Africa between them. Zanzibar was very interesting to the British due to its strategic position and was declared a British protectorate in 1890.¹² The sultanate was allowed to stay but only with a ceremonial power. In 1913 Zanzibar became a British colony.¹³ Britain strengthened her position further after World War I when Germany had to hand Tanganyika over to them.

Many of the great expeditions that took place in Africa during the 19th century by the colonial countries used Zanzibar as a starting point. Famous explorers such as Livingstone, Speke and Stanley used Zanzibar as a base camp for their expeditions.¹⁴

The independence from Britain came in 1963.¹⁵ After World War II discontent, from the African soldiers that had fought for Britain in the war, brought on talks about independence. Parties were formed where the Africans were represented by the Afro Shirazi Party, ASP and the Arabs by the Zanzibar Nationalist Party, ZNP. Zanzibar received their independence from Britain but the African population were dissatisfied by being ruled by the Arabs who only made up 20 per cent of the population.

The revolution that was initiated by the African population took place on January 12 in 1964. The revolution drove almost all of Zanzibar's Arab and Indian inhabitants off the island. On April 26 1964, a Union treaty with Tanganyika was signed forming the present United Republic of Tanzania.¹⁶

2.2 The Zanzibari People

Due to Zanzibar's many different conquerors and long history of trading the inhabitants have become a mix of different origins. The African Shirazi considers themselves as the indigenous people of Zanzibar. Another group of indigenous Africans are the mainland Africans that immigrated to Zanzibar in the beginning of the 18th century. These two groups together constitute the African population in Zanzibar.¹⁷ The Arabic families connected with the Oman sultanate formed a wealthy aristocracy in the old days. Some Arabs were poor workers that immigrated to Zanzibar to work as merchants.¹⁸ The Arabs were distinguished by the Africans as Zanzibari Arabs. Today, Zanzibaris are a blend of native African, Arabic and Indian.

¹¹ Pakenham, 1992, p 282

¹² Pakenham, 1992, p 357

¹³ Sävborg, 2003, p 13

¹⁴ Pakenham, 1992, p 282

¹⁵ Sävborg, 2003, p 13

¹⁶ Sävborg, 2003, p 14 and Internet 4

¹⁷ Middleton, 1961, p 7

¹⁸ Middleton, 1961, p 7

The slave trade and slavery has been very synonymous with Zanzibar. The slave trade and the slavery have also had a large impact on the Zanzibari people. Slavery was originally a custom between the tribes used to resolve crimes. It was common that prisoners of war were to serve as slaves for a certain period. The East-African Arabs learned about the habit of keeping prisoners of war as slaves and started buying slaves for their own interests. Later they started kidnapping people to be slaves and this was the beginning of the slave trade.¹⁹ The Arabs ended up creating a flourishing slave trade with Zanzibar as a connection point, which gave Zanzibar its wealth under the Omani rule.

The official language in Zanzibar is Kiswahili, a Bantu language with several Arabic words. Kiswahili is predominantly spoken. Other languages commonly spoken due to former influences are Arabic and English. English is the most frequent used language within cities, tourism areas and governmental administration.

In 2004 the population in Zanzibar was estimated to 1,042,000 persons.²⁰ In 1988 the population of Zanzibar had an average annual growth of three per cent and a population density of roughly 380 persons per square kilometre.²¹ Today the population density is roughly 450 persons per square kilometre, which grants Zanzibar one of the highest rural densities in the world. The population is divided with 60 per cent living on Unguja and 40 per cent living on Pemba. The population in Zanzibar Town was in 2004 estimated to 372,400 people. About 50 per cent of the population falls below the age of 15 years and six per cent reflects people above 60 years of age. The population and division of men and women are comparatively evenly distributed throughout the two islands.²² The official minimum wage is 40,000 Tsh (37 USD) a month and the unemployment rate is 24 per cent.²³



Picture 6-7: Zanzibari women and men

¹⁹ Törhörnen, 1998, p 29

²⁰ Internet 5

²¹ Zanzibar Investment Policy, 2002, p 5

²² Internet 6

²³ Mirza & Sulaiman, 1988, p 2

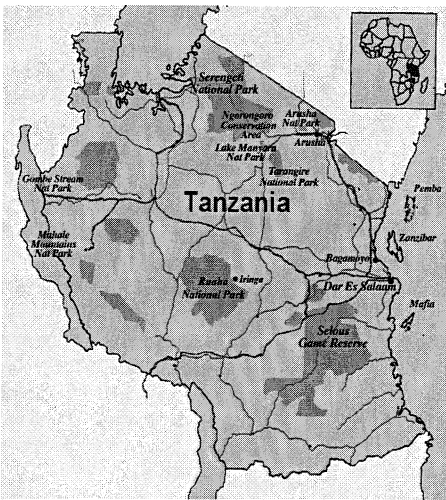
The dominant religion in Zanzibar is Islam with 97 per cent Muslims. The remaining population is a mix of Christians and Hindus.²⁴ The migration from Pemba to Unguja is great as many leaves Pemba for the more prospering Unguja. The migration from rural areas to urban areas and from coral rag areas to deep soil areas are also great and create problems as it disrupts the balance.

Zanzibar has no organized identification system throughout the islands. Commonly within the villages people know each other well and the identity can be confirmed by family or by the local village leader called Sheha.²⁵

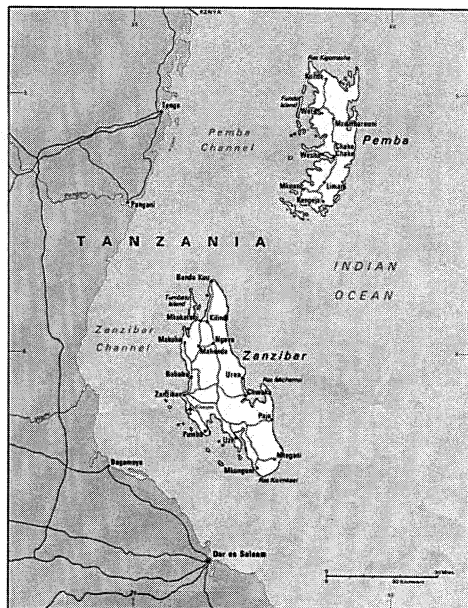
2.3 Geography

Zanzibar is situated a few degrees south of the equator, 40 km off the east coast of Africa in the Indian Ocean.²⁶ Zanzibar consists of the two main islands, Unguja and Pemba, and some 50 smaller off shore islets surrounding the archipelago.

Unguja is the main and most developed island where Zanzibar town, the largest city is situated. Unguja is approximately 90 kilometres in length and 15 kilometres in width. The surface area of Unguja is 1,464 square kilometres. Apart from Zanzibar town, which is the only large urban centre, several small villages are spread evenly across the island. The smaller northern island Pemba has a surface of 868 square kilometres. The Pemba channel separates the two main islands and is 50 km wide and 700 meters deep.²⁷



Map 2: Africa, Tanzania



Map 3: Tanzania coast, Zanzibar

²⁴ Internet 7

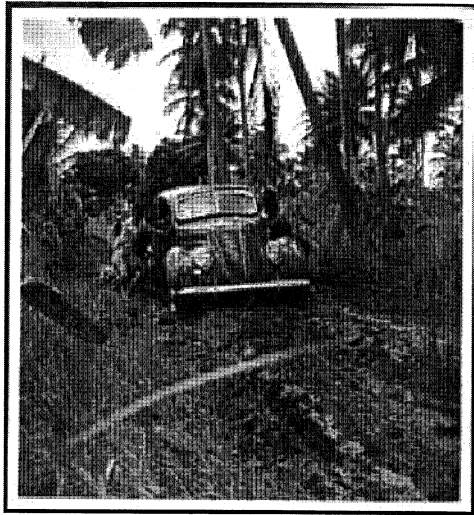
²⁵ Interview 5

²⁶ Internet 3

²⁷ Zanzibar Investment Policy, 2002, p 4

2.4 Infrastructure

Zanzibar has a road network of totally 1,600 kilometres of which 85 percent are tarmaced or semitarmaced. The remaining roads are plain earth roads that are rehabilitated annually to be passable throughout the year. The sea transport network is well developed. Public owned ships and private speedboats constitute the network that connects the ports on Unguja and Pemba with ports in Dar es Salaam and Tanga in Tanzania as well as Mombasa in Kenya. Zanzibar has two airports, one on each island. The main airport that is situated on Unguja is the only airport that can handle International flights and larger cargo transports.³⁰



Picture 8: Old car stuck in earth road

Electric power, petroleum and petroleum products supplemented by firewood and firewood products supply the energy sector in Zanzibar.³¹ On Unguja, the electricity derives from the Mtera Dam in Tanzania through a submarine cable. Since the channel between Pemba and Unguja is too deep to lay a cable, Pemba utilizes generator-powered electricity. The current on both islands is 220 watt but there is a power deficit and the electric supply is unreliable.³²

Water is adequate in quantity and quality for industrial and household use but is not evenly located around the islands. The water supply is mainly ground water such as natural springs, caves and local wells. Hotels use up to ten times more water than rural villages.³³ There is no charge on domestic water whereas industries and commercial pay per cubic meters.³⁴ Urban water and sewage supply systems exist in Zanzibar Town as well as in the larger towns on Pemba. These systems are in very poor conditions and Zanzibar has no national policy on the development of the water sector today.³⁵

³⁰ Internet 8

³¹ Internet 8

³² A Guide to Investing in Zanzibar by ZIPA

³³ Zanzibar Investment Policy, 2002, p 26

³⁴ A Guide to Investing in Zanzibar by ZIPA

³⁵ Zanzibar Investment Policy, 2002, p 34

2.5 Politics

Zanzibar is a part of the constitution of the United Republic of Tanzania, which is a Union between Tanganyika and Zanzibar since 1964.³⁶ Zanzibar is semi-autonomous and maintains its own Government under its own constitution since 1985. The Government of Zanzibar has its own President, Cabinet, Legislature and Judicial system. The Government consists of the House of Representatives and the Revolutionary Government of Zanzibar whom have full power over non-Union matters.

Zanzibar is administratively divided into five regions with three regions on Unguja and two regions on Pemba. The five regions are divided in ten districts with six districts on Unguja and four districts on Pemba. The ten districts are furthermore divided into 50 constituencies and 248 Shehias. The constituencies are administrative political units. A Shehia is the smallest demarcated administrative and geographical unit in the urban and rural areas under the responsibility of a leader, Sheha.³⁷

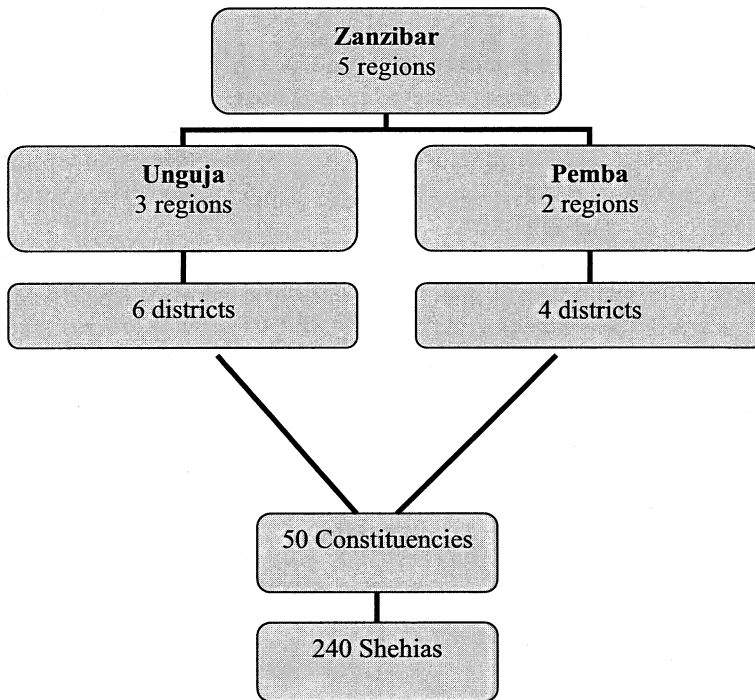


Figure 1: The political division on Zanzibar

³⁶ Sävborg, 2003, p 14

³⁷ Zanzibar Investment Policy, 2002, p 4 and Interview 6

Common Union matters, which the United Republic of Tanzania is in charge of, are defence, foreign affairs, monetary policy and home affairs i.e. custom and migration.³⁸ According to its constitution from 1977, the United Republic of Tanzania has a one party system but an amendment in 1992 changed the system to a multi party system.

The Unicameral National Assembly in Tanzania enacts laws that apply to the entire United Republic of Tanzania as well as laws that apply only to the mainland. In Zanzibar the House of Representatives creates laws specifically for Zanzibar. The land legislation is one example of laws that Zanzibar constitutes independently. The Unicameral National Assembly has at present 274 seats, of which 232 are elected by popular vote and 37 allocated by the President. The mandate is given for a five year period.³⁹

In 1961 Tanganyika received its independence from the British after several years of resistance. Zanzibar's independence came in 1964 as a subsequent step. In Tanganyika the Tanganyika African National Union, TANU, won the first election. In Zanzibar the Afro Shirazi Party, won the first election after the independence. Despite the verdict of the election, a party called the Zanzibar's Nationalist Party, ZNP, took power on ASP's behalf and ruled Zanzibar.⁴⁰ The Zanzibar Nationalist party consisted primarily of the Arabic aristocratic class and the sultanate.

The ASP followers were disappointed with the Zanzibar Nationalist party, which resulted in the revolution only a few months after the election and the independence. The revolution took place on January 12 in 1964. In the revolution leaders of the Zanzibar's Nationalist party and many wealthy landowners were either killed or fled the country. At this time the Oman sultanate left Zanzibar too.

Abeid Karume, a follower of the ASP, became the first President of Zanzibar. On April 12 in 1964 he signed a declaration of unity with Tanganyika's President Julius Nyerere that formed the United Republic of Tanzania.⁴¹ Nyerere became President of the Union and Karume vice President. After the revolution the ASP adopted a socialistic ideology and all relations with the British were terminated. New relations with socialist countries such as USSR, China and East Germany were made instead. The current party in power in Zanzibar is the Chama Cha Mapinduzi, CCM, also called the Revolutionary Government of Zanzibar. CCM was formed in 1977 through a Union with TANU from mainland and ASP from Zanzibar.

Between 1964 and 1974 Zanzibar was ruled without a clear constitution and with no democratic regulations. Several constitutional drafts were made from 1974 onwards and in 1979 the current constitution received legal status. The constitution has been amended several times subsequent to this.⁴²

³⁸ Sulaiman, 1996, p33

³⁹ Sävborg, 2003, p 9-10

⁴⁰ Sävborg, 2003, p 13

⁴¹ Internet 4

⁴² Zanzibar Investment Policy, 2002, p 5

International pressure forced Zanzibar to hold open elections for the first time in 1995. The CCM party came to power in these elections but accusations of serious irregularities concerning the election process and the vote counting indicated ballot rigging. Several arrests and unlawful detentions of people voting for the opposition party followed the election supporting the accusations.⁴³ The opposition party Chama Cha Wananchi, CCW, also called the Civic United Front, CUF, is the only opposition party in Zanzibar. CUF is a liberal party most well known for their strong Muslim supporters. They have their origin in Zanzibar but have some followers in mainland Tanzania.

The last election was held in 2000 where much disturbances and accusations of ballot rigging once again occurred. On January 27 in 2001 on Pemba three months after the election Tanzanian army and police opened fire on thousands of supporters of CUF who were protesting against the alleged fraud in the election. Many Zanzibaris fled to Kenya, though most have now returned after an agreement between the Government and the CUF.⁴⁴

The sitting President for CCM since 2001 is Amani Karume. As President of Zanzibar he possesses executive power and can assemble as President for a maximum of two five year periods. The legal system has developed into a more independent system since the introduction of a multi party system but is unfortunately inefficient and corrupt.⁴⁵

2.6 Economy

The monetary policy in Zanzibar is a Union matter and the United Republic of Tanzania has a common currency, the Tanzanian Shilling, Tsh. The exchange rate, in November 2004 was 1,070 Tsh to one US dollar.⁴⁶ The inflation rate has declined from almost 28 per cent in the early 1980's to approximately five per cent by the year 2003.⁴⁷ The economical conditions for mainland Tanzania and Zanzibar are typical for a third world country with a low economy and high poverty. The base for the economy is plain agriculture, which is vastly influenced by climate changes and dependence by donor aid as well as considerable foreign loans.⁴⁸

The main occupations in Zanzibar are based on agriculture and fishing that dominates the economy. The fertile soil in Zanzibar is limited to the western part of the island and the main merchandises produced are cassava, sweet potatoes, rice, corn, citrus fruit, cloves, coconuts and cacao. The clove and coconut plantations traditionally accounts for more than 90 per cent of the domestic export.⁴⁹

⁴³ Internet 9

⁴⁴ Internet 10

⁴⁵ Sävborg, 2003, p 10

⁴⁶ Internet 11

⁴⁷ Zanzibar Investment Policy, 2002, p 7 and Internet 12

⁴⁸ Sävborg, 2003, p 26

⁴⁹ Törhörn, 1998, p 26

For many years Zanzibar was practically dominating the clove production but in recent years several Asian countries have entered the market. Malaysia is a country that has increased their clove production to such an extent that they can compete with Zanzibar today.

The agricultural section's contribution to the economy has declined in recent years though, partly due to the decrease of clove prices on the world market. Factors such as trade, tourism and other service sectors, has in the last decade become a large supplier to the economic growth in Zanzibar. Zanzibar develops tourism mainly as a source of foreign exchange earnings, employment and diversification of the economy.⁵⁰

The export from Zanzibar is limited and the volume of exported goods is fluctuating annually due to the fluctuation in cloves production. The price of cloves on the world market also fluctuates. Apart from cloves, other export products are seaweed, copra and a few non-traditional crops like fruits, vegetables, sea products, spices and rubber. Zanzibar is not self-sufficient and need to import the most of its necessities from mainland Tanzania and the Gulf States. Zanzibar imports almost 80 per cent of the basic requirements and the main imports are food-products and fuel. The level of imported goods has for many years exceeded the level of exported goods by far more than three times.⁵¹

The manufacturing sector in Zanzibar is small. It accounts for an average of six per cent of the GDP and grows with less than one per cent per year.⁵² The manufacturing products are chemical products and consumer goods such as food, beverages, tobacco and textile. The export of processed goods is insignificant and contributes to less than five per cent of the total export earnings. Constrains the manufacturing sector struggles with are small domestic capital base for investment, lack of trade finance and working capital, low level of skills in the work force and limited knowledge of regional markets.⁵³

Tanzania is one of the most donor aid dependent countries in the world. In the years 2002 to 2003 they received aid to almost 90 per cent of all their development projects. At the same time almost half of their governmental budget was sponsored with donor aid. Zanzibar does not have the same urgent poverty problems as mainland Tanzania. The aid to Zanzibar comes from the United Nations as well as other significant donors such as the European Union, and some Nordic Countries.⁵⁴

⁵⁰ Zanzibar Investment Policy, 2002, p 20

⁵¹ Internet 8

⁵² Internet 8

⁵³ Zanzibar Investment Policy, 2002, p 16

⁵⁴ Törhörnén, 1998, p 26

2.7 Small Scale Businesses

The economy in Tanzania that greatly affects and includes Zanzibar has since the late 1980s gone through a period of intense change. The private sector has grown rapidly, especially small scale businesses. This sector is considerable in urban as well as rural areas although an imminent amount of the businesses are located in towns and cities. The average number of employees per business is roughly 1.5 person.⁵⁵ A large number of people in the rural areas in Zanzibar run small scale businesses with the consequence that the supply of business services tend to exceed the demand.

Small scale businesses that try to establish a business are faced with more problems than the most obvious one which is raising finance capital. The maybe most important obstacle for small scale businessmen is the non-conductive, non-transparent and often very complicated legal framework. Together with bureaucracy that is common in many African countries this can be a big obstacle for many small scale businessmen. An important factor that can overturn or inhibit small scale businesses to grow is the tax burden that often is imposed on them. Other problems small scale businessmen have to struggle with are; low purchasing power, poor transport and infrastructure, lack of knowledge of markets beyond their own immediate premises, low productivity, lack of access to capital, low level of capital savings and a low level of business and entrepreneurial skills.⁵⁶

Commercial banks are not interested in small scale businesses as clients. In most countries in Africa only the commercial banks are licensed to register clients with saving accounts and money lending to the public. These banks do not have small scale businesses as an interesting group of clients and do not offer reasonable requirements to clients for small scale lending.⁵⁷



Picture 9: Small scale businesses in Zanzibar Town

⁵⁵ Internet 13

⁵⁶ Internet 13

⁵⁷ Internet 14

2.8 Discussion

Zanzibar's dependence on its clove export affects the country's economy in a negative manner. Since cloves are fragile articles to trade and the price fluctuates on the world market, it is a difficult market to control and foresee. The recent competition from Asia also affects the world prices. The prices that they are so dependent on are impossible to influence and improve.

Zanzibar's dense and increasing population probably affects its low economy and inhibits a potential growth in the economy. The population has a big increase due to the extensive migration of poor people, from mainland Tanzania to Zanzibar, with hopes of prospering on the tourism.

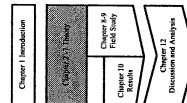
As many small scale business services exceeds the demand this leads to problems for them to prosper as they barely survive when the incomes and expenses equalizes. With no profit there are no possibilities for further investments which counteract the ability of development for small scale businesses.

The political system should have developed into a more democratic system since the introduction of a multi party system in 1992. Due to problems of ballot rigging in the two only elections, held in 1995 and 2000, this has clearly not happened. The opposition party is repressed and cannot practise their politics freely. This verifies the existing problems of inefficiency and palpable corruption. The political climate in Zanzibar is clearly not stable and democratic with respect for fundamental democratic values and human rights. This is not a good foundation when trying to develop a good land market and a functioning economy.



Picture 10: Typical House in Stone Town

3 Land History



Zanzibar has repeatedly been exposed to eager conquerors, that all have put their traces in Zanzibar's land history. The main influence on land that initially was held by native customary law has been influences from Muslim law, British law and the socialistic ideologies that came after the revolution.

The existing land legislation has emerged after the revolution in 1964 and it is therefore justified to present Zanzibar's land history in two steps. Land tenure history in pre-revolutionary Zanzibar where the Muslim and British laws have been the largest influences and land tenure history in post-revolutionary Zanzibar where the socialistic influence is predominant.

3.1 Pre-revolutionary Land Tenure History

The land tenure system in Zanzibar originated with native customary law that up until the revolution in 1964 has been affected and influenced primarily by Muslim and British Colonial laws.

3.1.1 Native Customary Law

African people customarily do not have a conception of private ownership of land. They consider land as something given by God and a source of the human sustenance.⁵⁸ In the early days land had no exchange value and was not treated as an article of trade. Under native customary law land was neither bought nor sold. The forms of ownership that existed were group ownership or family ownership where the land was communally held.⁵⁹ This form of land tenure is called Shirazi land tenure.⁶⁰

Within the group ownership, the concept was that the user right to the soil belonged to the community, while whatever crops planted or buildings built on the land belonged to the individual. Within the family ownership, one or several families together had the user right to the land around them.⁶¹ The Shirazi tenure was not a freehold tenure, since it was based on user rights and it was never recorded in writing. It primarily existed in remote areas where the native people of Zanzibar mainly lived.⁶²

Trees are of big importance to the Zanzibari people. Trees are customarily a source of food and shelter. In Africa this is a common way of perceiving land and what can be found on the land. It is customary in Zanzibar that the tree that serves food has a value, while the land that the tree stands upon is of less importance.⁶³ In Shirazi custom the land tenure system and the land rights were defined according to the trees.⁶⁴

⁵⁸ Krain, 1994, p 8

⁵⁹ Shao, 1992, p 2-3

⁶⁰ Törhörnén, 1998, p 31

⁶¹ Shao, 1992, p 3

⁶² Törhörnén, 1998, p 32

⁶³ Krain, 1994, p 9

⁶⁴ Törhörnén, 1998, page 32

3.1.2 Muslim Law

The Muslim land law was introduced in Zanzibar with the coming of the Arabs in the 18th century. The drastic changes in land tenure came in the 19th century, when the sultan Seyyid bin Said started growing cloves in Zanzibar due to the great demand of cloves in the world at this time. Clove trees were introduced in Zanzibar from Mauritius.⁶⁵ The sultan altered the native customary tenure that existed through giving wealthy Arabs permission to occupy as much land they needed for their clove plantations.

The land that was occupied for clove plantations was primarily land in the inlands where the land was fertile. The indigenous Zanzibari mainly used the land closer to the coasts. The Muslim land law was very different compared to the native customary law, but since the Arabs rarely integrated with the Shirazi they did not affect one another very much.⁶⁶ This lack of integration was probably one of the reasons why the native customary law could survive through the Oman period, as they never or rarely came into conflict with one another.⁶⁷ It is generally accepted by the Shirazi and Arabs that in some cases the Arabs took the land they wanted by superior force and in others cases they acquired them by some form of purchase.⁶⁸

The Muslim land law allowed private ownership of land, including both the usage and the soil itself. Land therefore acquired an exchange value and could be treated as an article of trade. This was new and brought with it an important change in how land was looked upon.⁶⁹ In Islam the right to property is not absolute and mans role on earth is simply to function as a trustee for the earth's resources in accordance with God's purpose. In Islamic law the buildings and crops are not regarded as a part of the land.⁷⁰

The plantation tenure that the Arabs introduced was a freehold system, where the inheritance of the plantations was done according to Islamic law.⁷¹ Claims to land by the Muslim land laws were simply done by either being the first to cultivate the area or by inheritance. Legal titles and specific boundaries did not exist at this time, but that was of no concern by the Oman Sultanate as long as Zanzibar's economy was prospering. The land could be sold, rented, loaned or mortgaged although no proper register of owners was ever initiated.⁷²

⁶⁵ Middleton, 1961, p 12

⁶⁶ Shao, 1992, p 7

⁶⁷ Törhörnén, 1998, p 38

⁶⁸ Middleton, 1961, p 42

⁶⁹ Shao, 1992, p 6

⁷⁰ Krain, 1994, p 10

⁷¹ Törhörnén, 1998, p 38

⁷² Middleton, 1961, p 69-70

3.1.3 British Colonialism

The largest influence the British had on Zanzibar's land tenure history was their involvement in the abolishment of the slave trade and the slavery. This influence on land tenure is probably the most palpable by the British that still can be perceived today.

During the big colonization of Africa the British were very interested in Zanzibar due to the islands strategic position. They fought hard to gain control over Zanzibar at the end of the 19th century. A British council was established in Zanzibar in 1841 and in 1890 the islands were declared a British protectorate. In 1913 Zanzibar became a British colony.⁷³ The British introduced the same colonial land laws in Zanzibar, based on the British legal system, as they had introduced in all other colonies they held in eastern Africa. The British legal system is part of European law, which has its origin in Roman law. Roman law perceives land as something that a person has absolute and exclusive power over and land is defined as "all soil and the area and everything above and beneath it".⁷⁴ The colonial laws were discarded and totally replaced after the revolution in 1964.

The British influence on the islands and on the sultanate, before Zanzibar became a colony, was immense. The British pushed for a long time to abolish both the slave trade and the slavery. The slave trade in Zanzibar was abolished in 1873 and the slavery in 1897.⁷⁵

During the slavery, slaves could not own land or trees but they were allocated pieces of land under the trees to cultivate for food. This gave them a sort of customary right in the plantation areas. The abolishment of the slavery resulted in a big change in Zanzibar's economical and social structure. With the abolition, many slaves left Zanzibar but numerous became squatters on their former masters land. Squatters were people who settled in the plantation areas and lived on and used the land beneath the trees in exchange for labour. The squatters worked for the plantation owners and did not have to ask for permission to settle in a plantation area. The squatters were allowed to settle and build a house anywhere there was a place. The relationship between the plantation owners and the squatters was a symbiotic relationship, were they both thrived. The squatter's received free land for cultivation and the plantation owners received cheap labour for clove harvesting. The squatters also kept the plantation areas clean.⁷⁶ The practice of Squatting developed after the abolition of slavery and proceeded until the revolution in 1964.⁷⁷ Today there is still a double cropping system utilized in some places, which probably is a residue from the slavery and the Shirazi land tenure.⁷⁸

⁷³ Middleton, 1961, p 6

⁷⁴ Krain, 1994, p 10-11

⁷⁵ Shao, 1992, p 10

⁷⁶ Krain, 1994, p 2

⁷⁷ Middleton, 1961, p 42

⁷⁸ Törhörnén, 1998, p 39-42

The abolition of the slavery resulted in hard times for many plantation owners as they lost their free labour. Due to this, they were forced to borrow large amounts of money from the wealthier merchants. The merchants in Zanzibar consisted mainly of Indians and some Arabs and Europeans. The plantation owners predominantly consisted of Omani Arabs and Shirazi Africans.⁷⁹ Many Arabic plantation owners became largely indebted to Indian financiers. In 1890, when Zanzibar became a British protectorate, almost half of the Arab plantations had passed over to the hands of creditors.⁸⁰

The British started issuing titles for landowners of the big plantations while areas outside the plantation areas were left out. Outside the plantation areas, native customary rules had continued to dominate. In these areas land was not sold as in Muslim law or English common law. It was freely given to a cultivator whenever he made use of it. It was communally owned. The British also started to register land sales and mortgages of the big plantations. The titles issued were freehold titles to land that did not separate the soil from the trees. The problem with the register was that it only registered sales between different races. This made the register incomplete.⁸¹



Picture 11: Small House on the Countryside

⁷⁹ Shao, 1992, p 10

⁸⁰ Törhörnen, 1998, p 46

⁸¹ Törhörnen, 1998, p 46

3.2 Post-revolutionary Land Tenure History

Before 1964 private and governmental land holding rights existed. The Government allowed people to exercise their customary right though, which resulted in customary land holdings to continue to exist.⁸² The existing land legislation that emerged after the revolution in 1964 has predominant influences from socialism.

The Zanzibar's Nationalist party that took power and ruled Zanzibar after the independence in 1964, consisted mainly of the Arabic aristocratic class and the sultanate.⁸³ They were supported by the British but were not interested in solving any of the land problems that had been one of the main issues that led to the independence. The discontent among many Zanzibari Africans therefore grew. Many Africans wanted more permanent land holding rights and the land reforms that the ASP supported. The revolution was therefore to a great extent a land property revolution since it partly was a result of the discontent with the land property politics.⁸⁴

During the revolution many wealthy landowners were killed or left the country. After the revolution the ASP adopted a socialist ideology and most educated people in Zanzibar left the country. The large plantations, numerous buildings and several businesses were confiscated and nationalised. The development of land tenure politics after the Revolution has imposed the biggest influences on the current land tenure.⁸⁵

With the Marxist ideology that Zanzibar adopted after the revolution big social, political and economic change came. The biggest and maybe most important change in the history of land tenure was the issuing of the Presidential Decree No 13/1965 that proclaimed that all land was to be public land vested in and at the disposition of the President.⁸⁶

There were big changes in the land tenure that came about with the change in politics that aimed at putting the individual peasant producer as a base in a new land order. The main aim was to give the poor population of Zanzibar access to land. To be able to distribute land among the poor, the Government issued the Confiscation of Immovable Property Decree No 8/1964 and the Land Distribution Decree No 5/1966. These two decrees made it possible for the Government to obtain the land they needed for their politics and then distribute it among the people. All existing rights and interests in land were excluded and all plantations were confiscated from the big Arabic and Indian landowners. A total number of 745 large plantations were confiscated and distributed with the help of these decrees. 181 farms were situated on Unguja and 564 on Pemba.⁸⁷

⁸² Sulaiman et al, 1997, p 1

⁸³ Sävborg, 2003, p 13

⁸⁴ Törhören, 1998, p 49

⁸⁵ Mirza & Sulaiman, 1988, p 1

⁸⁶ LTA, PART II

⁸⁷ Mirza & Sulaiman, 1988, p 2-3

The Land Distribution Decree No 5/1966 is more known as the “Three Acre Plots”. This decree gave the Government right to distribute land parcels that had been confiscated according to the Confiscation Degree. The land was divided in three acre pieces and distributed among the landless in rural areas in Zanzibar. People who received land were old governmental workers, former farm tenants such as squatters as well as families with six or more children. In 1969 the Government amended the Decree to apply in the urban areas as well. Between 1965 and 1972 approximately 22,200 peasant families were given land according to this decree. A problem with the tree acre plots was that many people who received land were not officially recorded and therefore never received an official grant for their land.⁸⁸ The distribution of the three acre plots was based on certain regulations. The plot could not be inherited, sold, leased, mortgaged, sub divided or used to any other purpose intended.⁸⁹

3.3 Discussion

Security in tenure becomes especially important in societies where land is scarce and has a value. In customary tenure there are rarely written rules for how land is treated and problems are solved within the community. As a consequence, the need for structured laws is not obvious. The early customary tenure is the basis to all land tenure in Zanzibar, despite later powerful influences. Zanzibar has due to its history three important eras, the period of slavery, the colonial period and the socialistic era.

As Zanzibar has been ruled by different conquerors with different ways to perceive and deal with land, this has influenced the land tenure different. The development of Zanzibar’s land tenure system has gone through and been altered by these different political ambitions. All the different phases that the land tenure system has passed through have probably formed the land tenure system into what it is today. The entire island was not part of this change within the land tenure though. Only in the areas where the Arabs and the British had interests did they introduce their ideas but in the more remote areas the original customary tenure prevailed.

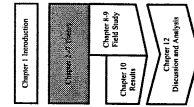
The Arabs introduced the system of using the land as an economical asset but they also introduced Zanzibar to slavery. Such a system does not evolve as a market economy, as there are no expenses to take into consideration for labour. The British introduced a free economy and played a big part in the abolishment of slavery. As the British abolished the slavery the prerequisites for the political economy once again changed and the increases in expenses for labour put hard strains on the islands economy. After the revolution during the socialistic period, land was not freely marketable anymore.

In native customary law the plants on the land that are of importance and they are considered separate from the land. This is the same way that the Islamic law consider land, which makes these two very similar. Both the native customary law and the Islamic law consider buildings and trees as things separated from the land while for example European law often consider these as one object.

⁸⁸ Mirza & Sulaiman, 1988, p 3

⁸⁹ Sulaiman et al, 1997, p 3

4 Land Administration



In Tanzania land administration and land management is not a Union matter, Zanzibar has full control of land issues concerning Zanzibar. The governmental land administrative organisations have the main responsibilities in land control and management. The organisations are responsible for the process of determining and recording information concerning land tenure, as well as value and use of land when implementing land management policies.⁹⁰

Land administration and land management are the most significant land policy instruments. Land administration is the implementer that follows the law and enhances it.⁹¹

4.1 Existing Land Administrative Organisations

The Ministry in charge of all land administration in Zanzibar is the Ministry of Water, Construction, Energy and Lands, MoWCEL. The departments of interest that work directly with land administrative and management issues are presented below.

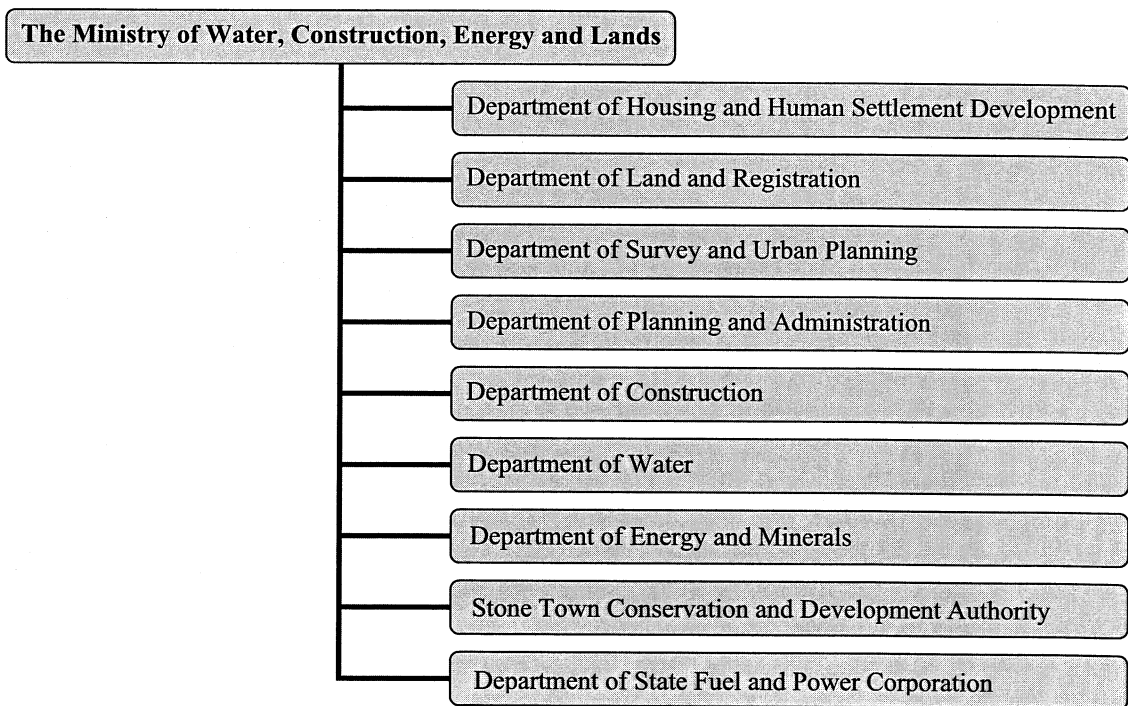


Figure 2: The land administration structure

⁹⁰ Interview 8

⁹¹ Törhönen, 2003, p 2

The Ministry of Water, Construction, Energy and Lands supervise the provision of land, planning and organisation of proper land use, preparation of human settlements as well as the management of Stone Town.⁹² MoWCEL consists of nine departments, each one with different responsibility areas that provide basic services to the community.

MoWCEL has a total of 2,325 permanent employees of whom 1,575 work in Unguja and 750 in Pemba.⁹³ For a complete organisation chart of MoWCEL, see Appendix 3. MoWCEL has an office in Stone Town on Unguja, while the main offices of the departments are situated on Unguja with sub-offices on Pemba. STCDA only resides in Stone Town.⁹⁴

The Department of Housing and Human Settlements Development, DoHHSD, supervises governmental owned houses throughout all islands, including the houses in the Stone Town area. DoHHSD promote, develop and monitor all houses under their management. They also work with the preparation of the housing and urban development policy and its implementation. For a complete organisation chart of DoHHSD, see Appendix 4.



Picture 12: Typical house in Stone Town

⁹² Statistical abstract 2002

⁹³ Statistical abstract 2002

⁹⁴ Interview 7

The Department of Land and Registration, DoLR, is in charge of the management and distribution of land. DoLR control and allocate land for purposes such as land for building new houses, hotels, industries, dispensaries, agriculture and other investments. They conduct all land and property valuations as well as all land acquisitions. They are supposed to be in charge of the registration of land rights but no Land Registrar exists today. Due to lack of economical resources the Land Tribunal and the Land Registrar has not been appointed.⁹⁵ For a complete organisation chart of DoLR, see Appendix 5

The Department of Surveying and Urban Planning, DoSUP, is in charge of all surveying and mapping. DoSUP prepare, supervise and advise the Government on issues related to cadastral survey, geodetic survey, integrated planning, development control and urban design as well as research for both public and private affairs. DoSUP is the coordinating institution for all land surveying issues in the country. In the head office on Unguja there are 130 people employed while only 30 people work in the sub office in Pemba.⁹⁶ For a complete organisation chart of DoSUP, see Appendix 6

The Stone Town Conservation and Development Authority, STCDA, is responsible for managing and maintaining places, buildings and objects in Stone Town. Stone Town was in 2000 listed on UNESCO World Heritage List. STCDA was created in a small scale in 1985 but was legally established under MoWCEL in 1994. STCDA is in charge of preservation, restoration, reconstruction and adaptation of the old stone houses. STCDA manages the preservation and care for the historical, cultural and significant qualities the houses possess. STCDA employs 112 people.⁹⁷ For a complete organisation chart of STCDA, see Appendix 7.

Sustainable Management of Land and Environment, SMOLE is a new cooperation between the Government of Zanzibar and Finland that started in September 2003.⁹⁸ It is a continuation of a cooperation that started already in 1989 as a project called the Zanzibar Integrated Land and Environmental Management Project, ZILEM.⁹⁹

The aim of the SMOLE project is to find solutions to different problems of land tenure, uncontrolled land-use, coastal development and environmental management, sustainable use of natural resources and other land and environmental issues. The involved departments in the SMOLE project are DOSUP and DoLR from MoWCEL as well as the Department of Environment, DoE, from MoANRCE.¹⁰⁰

⁹⁵ Interview 8

⁹⁶ Interview 2

⁹⁷ Statistical abstract 2002 and Interview 2

⁹⁸ SMOLE, p 2

⁹⁹ SMOLE, 2004, p 8

¹⁰⁰ SMOLE, p 2

4.2 Former Land Administrative Organisations

Former land management organisations that no longer exist, but should be mentioned due to the important role they have played, are COLE and ZILEM.

The Commission for Lands and Environment, COLE, was a governmental institution established by Act. No 6 of 1989. The organisation no longer exists but was a key organisation and a very important actor within land management in Zanzibar.

COLE was an autonomous body within MoWCEL and had as a major objective to advice and execute all matters related to Land Management and Environment conservation in Zanzibar. COLE enabled all matters concerning land management and environmental issues to be dealt with within one organisation. Three departments, the Department of Lands, the Department of Survey and Physical planning and the Department of Environment, were positioned directly under COLE.¹⁰¹

In 2000 COLE physically disappeared and its responsibilities were divided between two ministries instead of only MoWCEL. Many of COLE's responsibilities were discarded to the departments that had been liable under COLE. The organisation was abolished before changes in the legislation were made. Not until two years after the abolishment in 2003 was COLE legally abolished with changes in the legislation. All land issues stayed with DoSUP and DoLR that lies under MoWCEL. DoE and all environmental issues were transferred from MoWCEL to MoANRCE without changes in the legislation.¹⁰²

Zanzibar Integrated Land and Environment Management Project, ZILEM, was a project that started in 1989 as a Land Use Planning Project. ZILEM was a cooperation between the Government of Zanzibar and Finland, where land management and environment management issues were dominating. The project was financed by the Finnish International Development Agency, FINNIDA.¹⁰³

The ZILEM project ended in July 1996, shortly after the first free election in Zanzibar, when FINNIDA abruptly withdrew its support from the country.¹⁰⁴ The withdrawal was an objection against the accusations of ballot rigging by the sitting party. At this time much of the survey work as well as several other parts of the project were not completed.¹⁰⁵

¹⁰¹ Internet 15

¹⁰² Interview 5

¹⁰³ Internet 15

¹⁰⁴ SMOLE, 2004, p 8

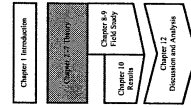
¹⁰⁵ Interview 9

4.3 Discussion

There are serious problems within the land administration and management of land related issues in Zanzibar. The organisation COLE, which was abolished in 2000, is a legible example of this. COLE was an organisation so important that it was anchored through legislation and it had a very far-reaching authorisation. None of the people interviewed within the land administration section in Zanzibar have had an explanation of its abolishment. This indicates that there has been a problem within the land administration that possibly was resolved through the abolishment of the organisation. That such an important organisation could disappear without an official reason indicates that Zanzibar has a poorly functioning land administration. A poor land administration is often the result of an unsuccessful land policy. If the land policy is not clear it scatters the land administration without a common goal. There is a risk that if the land administration is insufficient it may face competition from informal actors such as illegal lending institutions.

COLE gathered three key departments for land issues namely the Department of Lands, the Department of Surveys and Town Planning and the Department of Environment. To have these departments gathered below one organisation in cooperation is an ideal situation considering planning, development and improvement of land related issues. To have DoE as an integrated department with the other main land related departments was innovative. Environmental issues are such current and globally important issues needed in land planning. It is an advantage to integrate the environmental aspect from the beginning in land matters.

Another big problem with the land management in Zanzibar is the alleged poor economical foundation. A typical example of this is the Registrar of Land, which is not yet appointed. This contradicts the number of employees at the different departments. The total number of employees within the MoWCEL was 2,325 people in 2002. Such a large staff force is questionable if it is needed today considering the current workload. The large number of employees indicates an imbalance of economical and personnel resources.



5 Land Legislation

The land legislation in Zanzibar primarily developed after the revolution in 1964.¹⁰⁶ Before the revolution English common law ruled. The English common law system was replaced after the revolution.¹⁰⁷

The legislation in Zanzibar is not a Union matter, thus all land laws are constructed especially for Zanzibar. The importance of the land laws are to supply good land legislation that creates secure tenure that is necessary to get a functioning economical system in Zanzibar.

5.1 Problems before the Present Land Legislation

After the revolution in 1964, Zanzibar introduced a new land tenure policy and new land laws were created. The land legislation did not function in a satisfying way. There were problems with:

- The lack of security in tenure.
- The lack of a proper system for land registration.
- The ambiguity in the legislation after revolution.
- The lack of sufficient control mechanisms to ensure a proper land use.
- The high disintegration of land due to Islamic land laws.
- The high level of squatting in town areas.¹⁰⁸

To solve these problems the Government of Zanzibar initiated a new project of creating new land laws. In 1989 a collaboration between the Government of Zanzibar and FINNIDA initiated the ZILEM project.¹⁰⁹ Within the ZILEM project new land laws were developed. The aim of the land laws was to solve the existing land tenure problems.

5.2 Present Land Legislation

The present land legislation in Zanzibar consists of:

- The Land Adjudication Act of 1990, LAA
- The Registered Land Act of 1990, RLA
- The Land Survey Act of 1990, LSA
- The Land Tenure Act of 1992, LTA
- The Land Transfer Act of 1994, LTrA
- The Land Tribunal Act of 1994, LTriA

¹⁰⁶ Mirza & Sulaiman, 1988, p 1

¹⁰⁷ Törhörnén, 1998, p 44

¹⁰⁸ Krain, 1994, p 17

¹⁰⁹ SMOLE, 2004, p 8

The first three acts, LAA, RLA and LSA, received a legal status as they passed the House of Representatives in 1989. The ZILEM project was in charge of preparation and writing of the three latter acts, LTA, LTrA and LTriA. These three acts passed the House of Representatives between 1992 to 1994.¹¹⁰

The Land Adjudication Act governs the administrative process of determining rights and interests in land. The procedure to ascertain land rights includes; the declaration of certain areas as adjudication areas, the appointment and definition of powers of special offices and committees, the collection and processing of claims and evidence, preparation and presentation of adjudication records and the hearing of disputes and appeals. An appointed Adjudication Officer shall have the juridical power in determining disputes and objections.¹¹¹ This Adjudication Officer has not yet been appointed.¹¹²

The Registered Land Act creates a legal frame for registering land rights and interests as well as regulations of dealings in land throughout the islands of Zanzibar. This act theoretically enables people to mortgage their land. Morgaging can only be done by people, authorities or institutions prescribed by the government.¹¹³

According to RLA the President of Zanzibar shall appoint a Registrar of Land. The Minister of Legal Affairs may also appoint a deputy Registrar of Land and as many assistant Land Registrars that may be needed for the registration process. The deputy Land Registrar can temporarily replace the Land Registrar in his absence.¹¹⁴ Neither a Land Registrar nor a deputy Land Registrar has yet been appointed.¹¹⁵ These are needed in order to legalise land transactions.¹¹⁶

The Land Survey Act provides a legal framework for the licensing and professional conduct of land surveyors in Zanzibar. This Act was one of the first land acts to pass the House of Representatives in 1989. The Act was needed to manage the need of a modern land registration system.¹¹⁷

A Land Surveyors Board is supposed to exist according to the LSA. The Land Surveyors Board shall grant licences to people who wish to practise land surveying in Zanzibar, provide for examinations to applicants for land surveying licenses, keep a register of all licensed surveyors, take disciplinary measures against licensed surveyors and hear and determine any disputes between licensed surveyors and his/her clients. The Land Surveyors Board shall consist of a Director and four to seven other members.

¹¹⁰ Törhönen, 1998, p 83

¹¹¹ LAA

¹¹² Interview 6

¹¹³ RLA 65, LTA 12-13

¹¹⁴ RLA

¹¹⁵ Interview 8

¹¹⁶ Interview 5

¹¹⁷ Sulaiman et al, 1997, p 6

The Director of the Land Surveyors Board also functions as Chairman of the Board and shall be appointed by the President. The Director has sole authority for the preparation and publication of official maps in Zanzibar. Land is not considered surveyed until the signature of the Director has authenticated the plan.¹¹⁸ A Land Surveyors Board has not yet been formed.¹¹⁹

The Land Tenure Act is the main land act in Zanzibar. It was drafted in 1991 and has two amendments, the Land Transfer Act of 1994 and the Land Tribunal Act of 1994. The LTA passed the House of Representatives in 1992. The President of Zanzibar signed it at a later occasion but the assented version contained changes compared to the one that had passed the House of Representatives. This has caused some contradictions in the legislation, as two different legally appointed versions exist.¹²⁰

According to the LTA, all natural land within the islands of Zanzibar, occupied or unoccupied, is declared as public land vested in and at the disposition of the President. All land confiscated by the Government after the Revolution in 1964 is officially declared as confiscated land and any irregularities are supposed to be resolved through the not yet appointed land adjudication officer.¹²¹

The LTA was designed to establish control of the land market. It was a politically oriented action by the Government to prevent the three acre plot from being further divided and sold in smaller non economical plots. With the LTA the Government wanted to strengthen the security in tenure, activate the land market and unify as well as regularise the system of land holding in Zanzibar.¹²²

The LTA is administered by MoWCEL, which controls and distributes public land on behalf of the President. The main forms of tenure that the LTA regulates are Right to Occupancy, RTO, and leases. These rights should be able to be mortgaged to specified persons, authorities or institutions.¹²³ The MoWCEL is responsible for preparing and providing the land market with a list of specified approved lending institutions.¹²⁴ This list has not yet been drafted which makes it impossible for anyone of using RTO's and leases as collateral today.

New necessary amendments to the LTA were prepared in 2003 due to the abolishment of COLE and lack of detailed regulations needed for the implementation of the law/legislation. SMOLE aided in these preparations.¹²⁵ These amendments passed the House of Representatives in October 2003.¹²⁶

¹¹⁸ LSA

¹¹⁹ Interview 6

¹²⁰ Törhönen, 1998, p 84

¹²¹ LTA

¹²² Törhönen, 1998, p 83-84

¹²³ Krain, 1994,

¹²⁴ Zanzibar Investment Policy, 2002, p 72

¹²⁵ Tolvanen, 2003, p 1

¹²⁶ Interview 8

The Land Transfer Act is a supplement to the LTA and provides a way to examine permanent transfers of long term leases or land from private holders.¹²⁷ This Act was created to establish control of the land market.

Each potential transferee of land or a lessor of land for three years or more, need to present an application for permission to transfer or lease. This application includes the name of the transferee and other specified information. The District Commissioner, in the district where the land to be transferred or leased is located, handle the application with special regards to the recommendations from the Shehia Council.

The LTrA provides for a Land Transfer Committee to exist. The committee shall control transfers and long-term leases of land, in particular transfers of three acre plots. The committee shall consist of a Chairman appointed by the President, the Executive Secretary of the Commission for Lands and Environment and the Registrar of Land among some.¹²⁸ The Land Transfer Committee has not yet been formed.¹²⁹

The Land Tribunal Act is a supplement to the LTA but is a very important part of the land legislation. The LTriA provides for a Land Tribunal to exist. The Land Tribunal is a special court that deals with land disputes. The Tribunal shall be independent but administrated by MoWECL and has primary jurisdiction over proceedings instituted where parties have conflicting claims to land.¹³⁰ The Tribunal shall solve issues such as: disputes concerning claims to a RTO or problems concerning possession of land, registration of land, disputes of use and development of land, disputes concerning land valuation and issues involving compensation for land.

The panel shall consist of a Chairman, appointed by the President, and two Assessors, which shall hear the dispute over which the Land Tribunal has jurisdiction. The Tribunal shall maintain official records of all proceedings.¹³¹ The Tribunal shall be independent but administrated by MoWECL.¹³² A Land Tribunal has not yet been formed although the Chairman for the Tribunal has been appointed. Today people who encounter any problems concerning land are referred to DoLR or the Municipality. If severe disputes occur they are referred to the common court.¹³³

¹²⁷ Sulaiman et al, 1997, p 8

¹²⁸ LTrA

¹²⁹ Interview 5

¹³⁰ Interview 6

¹³¹ LTriA

¹³² Intervju 6

¹³³ Intervju 5

5.3 Discussion

The existing land legislation in Zanzibar today is not lacking any vital content that would prevent the existing land administration to function. The legislation provides all prerequisites for a sound land administration but unfortunately have problems in implementation. This is unfortunate as Zanzibar is a country where land is becoming scarce due to the fast growing population. The need for land legislation and land administration to function is extremely important.

Signs of why the present land legislation is not well functioning today are

- The lack of authorities codified by the legislation needed in the land administration process.
- The lack of usage of the legislation by governmental civil servants.
- The abolishment of COLE, without any proper preparations of removing authorities held by COLE from the legislation.
-

The lack of authorities codified by the legislation presents severe problems today. These authorities are needed for a well functioning administration process why their absence diminishes the value of the land legislation. Since The Adjudication Officer does not exist there is no ability of resolving land adjudication related disputes. The same problems exist with the lack of a Land Tribunal. Today there is no possibility for people to complain about land related disputes except to the common court. This could grant the civil servants at DoLR a large and uncontrolled power as their decisions theoretically hardly ever can be questioned or taken to trial. This undermines the possibility for the land administration system in Zanzibar to be a transparent and well functioning system that could prevent poor administration and corruption. The lack of the Land Surveyors Board does not result in any severe problems, apart from the lack of control of practising land surveyors in Zanzibar. There is no legal authority that today examines, take disciplinary measures and determine disputes concerning the performances by licensed surveyors. This provides a very uncertain situation, as there is no control of neither the skills or performances of practising land surveyors. This grants the land surveyors an unconventional power, as their actions theoretically never can be questioned. As there is no Land Transfer Committee there is no control of land transfers and long term lease of land. Since one of the most important reasons for the construction of the LTA was to control the three-acre plots a lack of the controlling authority contradicts the cause of the law. This should be one of the most important authorities. The missing Registrar of Land is another big problem since all issued RTO's or leases lack legal value according to the law when they are not registered.

The lack of usage of the legislation by governmental civil servants is another big problem. No signs were found that the legislation is publicly distributed or used in an everyday administrative activity. Apart from the lack of legislation in the offices it was observed that some legislations were not available from the governmental printing office. This questions the civil servants knowledge of what the laws states and indicates that the implementation is poor. Due to the lack of so many important authorities the legislation becomes hollow in content, which prevents the legislation from being implemented. This probably gives the existing land legislation in Zanzibar today a merely theoretical role and undermines all good intentions it has.

The abolishment of COLE constitutes a very good example of the poor land administration system in Zanzibar and the neglect of the importance of the legislation. Leading members such as the Executive Secretary of COLE were codified but when COLE was abolished there were no amendments made in the legislation considering this. In a well functioning land administrative system the legislation would have been revised and amended before the abolishment of such an important authority. As this was not done in Zanzibar it indicates that there is little respect for the legislation and the implementation of it. The responsibilities of COLE, codified in LTA, were given to other ministries and departments without amendments. This questions if the legislation is written in a good manner. It is not wise to codify authorities and members of authorities when they can be abolished so easily.

The signs of why the present land legislation is not well functioning results in two options for the ruling authorities. Either the encumbrances in the existing land administration should be revised and improved so the land legislation has the possibility to be implemented. The legislation should be completely discarded and rewritten according to the prerequisites in Zanzibar today.

If the legislation is rewritten and simplified into a less economical demanding system there is a possibility that Zanzibar could have functioning land laws that can be completely implemented. If the legislation is simplified it probably would be harder to control and easier to manipulate for own interests but there would be less problems with the present non-existing authorities.

6 Land Tenure

Land Tenure defines the relationship between people and land. The definition of land according to Zanzibar’s legislation is that land includes the land by itself, all land covered with water, all things growing on land and buildings and other things permanently affixed to land except trees when specifically classified and owned separately.¹³⁴

In developing countries there can be many different ways to relate and look upon land resulting in various forms of tenure. A conflict between customary tenure and new statutory land tenure is common. Customary land tenure is based on custom and is exercised by a community while statutory land tenure is written, codified and exercised by the state.

Zanzibar has a large number of different land tenure types. Custom is that none of the land tenure types that have existed in Zanzibar have ever been based on freehold. The British colonial influence is the only tenure that can be considered close to freehold in structure. All natural land in Zanzibar today, occupied or unoccupied is public land and the final ownership is vested in the President. Individuals can own a variety of occupational rights that all differ in strength.¹³⁵

6.1 Land Rights

Land rights that exist in Zanzibar today are based on legislation and religious laws.

Interests in land according to the present legislation are:

- Right to Occupancy, RTO
- Provisional RTO
- Leasehold
- Easement
- Right to trees

An interest in land according to Islamic religious laws is:

- Waqf

A Right to Occupancy is defined by the Land Tenure Act as “the exclusive right to the use and occupation of land in accordance with the provisions of this act.” This gives the holder of a RTO an exclusive right to occupy and use the land. The RTO does not include the right to water, mineral or foreshore.¹³⁶

Any Zanzibari over the age of eighteen can hold a RTO, individually, jointly or communally. A RTO is almost as strong as a freehold and can be gained either as a grant, adjudication as a rightful interest, inheritance, purchase or as a gift.

¹³⁴ LTA, PART I

¹³⁵ Krain, 1994, p 64

¹³⁶ LTA 8

A RTO is held in perpetuity but can be given away, leased or used as collateral for loans and there are no restrictions on its future sale.¹³⁷ For a RTO to be valid it has to be registered in the Register of Titles, within sixty days from the date of transaction. When the RTO is registered it receives a guarantee from the Government of its validity.¹³⁸

A registered RTO is supposed to be possible to mortgage. Mortgage can only be done to prescribed people, authorities or institutions approved by the Government but not to private moneylenders. Default on loan repayments may entitle a lender the right to use the land in question until repayment is completed. Default in repayment is not a reason for acquisition. This is to prevent lending institutions from acquiring property on a large scale. If the borrower is not willing or able to repossess the RTO upon repayment the RTO will be sold on the open market. Lending institutions can not acquire the ownership of a RTO, only sell it when default in repayments.¹³⁹

The Government may terminate any RTO on grounds of national interest, provided that they pay market value compensation for the land. The Government has to prove before the Land Tribunal that credible motives exist for the termination of a RTO.¹⁴⁰

Today, the DoLR prepare applications of RTO's and send them to MoWCEL to be signed and officially issued by the Minister. The process has recently started although it was supposed to start already in 1992 when the LTA was assented. A total number of 300 RTO's have been issued until today.

Before the LTA and the introduction of RTO's, the legal documents granting land tenure were so called letters of offers. The letters of offer are similar to RTO's but they are only administrative offers while the RTO's are official documents. These offers still exist and are legally accepted but are to be changed into RTO's. Roughly 15,000 issued letters of offers are today waiting to be officially transformed into RTO's. The obstacle is economy and DoLR is waiting for an extra post in the budget to be able to perform this.¹⁴¹

A provisional RTO is created for a two years period during which time no legal rights exist. No transfer is permitted during this period and all conditions of the grant must be acquired before a permanent RTO is issued.¹⁴² A provisional RTO is registered as any other interest, but it shall also be registered in a special register maintained by the Director of DoLR. Upon the expiry of the two year period, the Director shall cancel the notation in the Special register and record whether it has been replaced by a permanent RTO or has been cancelled.¹⁴³

¹³⁷ LTA 7- 8

¹³⁸ LTA 8

¹³⁹ LTA 12-13

¹⁴⁰ LTA 56

¹⁴¹ Interview 8

¹⁴² LTA 33

¹⁴³ LTA 11

Lease is defined by the LTA as “a grant, with or without consideration, by the Government or interest holder of land, of the right to exclusive possession of the land in question, and includes the right so granted and the instrument granting it, and also includes a sublease by the proprietor of a lease.” Two types of occupational leases can be created according to LTA. A lease can be either a lease on land administered by the Government or a lease on land held private as a RTO.

A lease on public land, such as state owned buildings, shall be registered and not exceed a maximum of 49 years. The lease is inheritable but can not be sold, assigned, sub-leased or subdivided. The land rent of the lease shall be determined by the market land rents, taking into consideration the value of land in immediate areas but without consideration of increase in value due to improvements. The land rent for leases on public land shall be reviewed yearly with the exception for leases with a duration of more than ten years, where the land rent only need to be reviewed every third year.¹⁴⁴

A lease on land held private as a RTO shall be registered and not exceed 15 years. The lease is inheritable but can not be sold, assigned or subdivided. There are no rights to sublease a RTO without the prior approval of the lessor, and the sublease can not exceed five years. The land rent of the lease shall be determined by the market charges. The land rent for leases on public land shall be reviewed yearly with the exception for leases with a duration of more than five years, where the land rent should be reviewed every second year. When the RTO is jointly or communally held all the joint interest holders must approve. If all interest holders fail to reach an agreement the Land Tribunal shall resolve it.

Easement signifies a right attached to a parcel of land that allows the proprietor of the parcel to either use the land of another in a particular manner or to restrict its use to a particular extent. There are three types of easements according to the LTA.

- Easement for a right of passage over a strip 10 m wide on each riverbank
- Easement for right of way, installation, maintenance and operation of telegraph and telephone lines, electric transmission lines and water mains. It shall be classified in the public interest and may be imposed on any parcel of land and building by order from the appropriate Minister.
- Easements that limit the height of buildings, for obligations to clear trees and like manner in areas of protection of airports and military installations or for the safety of air navigation.

As compensation for the above easements, indemnities are paid to the persons or communities affected by the easement. The compensation shall be equal to the fair market value and any improvements on the land.¹⁴⁵

¹⁴⁴ LTA 47

¹⁴⁵ LTA 5

Right to Trees signify a right where trees can be held and transacted as separate assets. The definition of a tree is formulated in the LTA. Trees can be owned and held separately from a RTO. The person holding the RTO on the land the trees stand upon has a prior right to purchase the trees if the owner wishes to sell though. Trees are inherited as any other piece of immovable property.¹⁴⁶

The ownership interest in the trees shall be registered in the name of the owner of the interest and included as part of the registration of the land on which the trees area located. If a RTO is held jointly and the trees on the land are to be sold, the joint interest holders shall determine among themselves who shall purchase the ownership Rights to Trees. Upon failure to agree, the ownership interest shall become part of the joint ownership interest and the cost shall be divided in proportion to his interest in the RTO. Where the joint interest holder, or any individual among them, does not wish to purchase the ownership interest in the trees, they shall be sold on the open market. Unless the right to Trees is included in a registered RTO all trees in urban areas shall belong to the Municipality if the trees are ornamental or to the Ministry of Agriculture if they are economically profitable.¹⁴⁷



Picture 13: Mangrove Forest

¹⁴⁶ LTA 19-22

¹⁴⁷ LTA 19-22

Waqf is not a land right according to the present legislation in Zanzibar today. It is however an interest in land according to Islamic religious law.¹⁴⁸ A Waqf is a religious endowment and only has meaning in countries where Muslim law can be applied. In Arabic language Waqf means hold, confinement or prohibition.¹⁴⁹ The ownership of a Waqf remains with the donor, while the right to use the Waqf is assigned in perpetuity to the object of the endowment.¹⁵⁰ A Waqf can normally never be taken back as it is an endowment for perpetuity.¹⁵¹

Today Waqf is a common way of financing the administration of mosques and religious schools. There must be unrestricted ownership of the property in order to dedicate a Waqf and not the whole property but only a designated part can be dedicated. A beneficiary has no right to assign, encumber or lease the property. All land in Zanzibar is vested in the state though and no private unrestricted ownership exists. Yet, Waqfs are acknowledged in Zanzibar and remain an important institution parallel to the administrative laws. Most Waqfs in Zanzibar today are houses. Both registered and unregistered Waqfs exist. The Waqf and Trust Commission, established by the Commission for the Administration of Waqf and Trust Property Decree, 1980, administer the Registered Waqfs.¹⁵²

6.2 Registration of Land Rights

Land rights can be legally registered as deeds or titles. In deed registration the documents in the register is the evidence of title. In title registration the register itself serves as the primary evidence. The actual permissions and procedures of registration of land rights are of great importance for all parties in order to have secure land tenure.¹⁵³

Zanzibar has a title register system where the President is supposed to appoint a qualified person to be the Registrar of Land. The Minister responsible for legal affairs may also appoint a deputy Registrar of Land and as many assistant Registrars of Land as he deems necessary. The Land Registrar and any possible deputy and assistant Land Registrars constitute the authority in charge of the Land Registry. No Registrar of Land is yet appointed.¹⁵⁴

The RLA states that each registration district in Zanzibar shall maintain a Land Registry. This authority will keep a Land Register, a Registry Map, parcel files, an application book and an index in alphabetical order of the names of proprietors of land and lease showing the numbers of the parcels. No Land Registry exists today.

¹⁴⁸ Krain, 1994, p 12

¹⁴⁹ Internet 16

¹⁵⁰ Krain, 1994, p 39

¹⁵¹ Internet 17

¹⁵² Krain, 1994, p 39-40

¹⁵³ Törhönen, 2003, p 4

¹⁵⁴ Interview 5

The Land Register shall be divided into three sections:

- The property section, containing a brief description of the land or lease, together with information of its appurtenances and a reference to the Registry Map and filed plan.
- The proprietorship section, containing informations of the proprietor of the land or lease, and any inhibition or restriction affecting his right of disposition.
- The encumbrances section, containing information of every encumbrance and every right adversely affecting the land or lease.

Today no legal Land Register exists in Zanzibar due to the not yet appointed Land Registrar. The RTO or lease is not secured until after registration and the right can not be sold, given away or inherited until it has been registered. A temporary register exists where the rights are recorded but it holds no legal value according to the legislation, only an administrative status. The courts rely on the temporary register and consider RTO's and leases to have a legal status despite not being registered.¹⁵⁵

6.3 Discussion

There seem to be no theoretical problems with the different forms of tenure that exist in Zanzibar today. The problem is rather the implementation of the codified forms of tenures. It can be argued that there is always an uncertainty in land tenure when there is no absolute ownership and all land is vested in the state. This is a socialistic thinking where a free and open market of land is not desirable. As all land in Zanzibar is vested in the President with a strong socialistic past it is possible that this legacy and way of thinking still prevails. Maybe there is a slight opposition to leave the socialistic political ideology with a large control of land. This might be one reason to why the implementation of the legislation is so poor.

Traditional user rights to land still exist through Waqfs and customary tenure. How the existing tenure that exists according to the legislation coincides with the religious form of Waqf is uncertain. Nowhere in the legislation can Waqfs be identified or acknowledged as tenure, apart from rules of how they can be changed into RTO's. Waqfs are probably the strongest form of tenure in Zanzibar today as the general law of application has been and still is Islamic law. It is evident that religious laws should be accepted and have a part in the present legislation since they have such a strong influence in and on the society.

As customary tenure still prevails in some areas it is not surprising that there seem to be little knowledge about the existing land legislation. Since the native customary law and religious laws has been such a strong influence on Zanzibar for so long it is possible that another new tenure system is of no interest to the Zanzibarians.

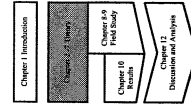
¹⁵⁵ Interview 5

The actual permissions and procedures of registration of land rights are of great importance for all parties in order to have secure land tenure. The land rights in Zanzibar are theoretically well functioning based on what the legislation states about them. The problem with land rights in Zanzibar today is the poor implementation of the codified rules. Since there is no Registrar of Land in Zanzibar and no proper Register exists there are problems with the security of granted land rights. The RTO's or leases need to be registered in order to have legal value according to the legislation. If they have no legal value in a court they can not be sold, inherited or used as collateral. They can not be transferred into capital and sold outside smaller circles of people where trust and friendship rules. It is also a problem that Letters of offers still exist today despite not being a codified tenure. It can not be a well functioning system if non-codified forms of tenures are allowed to prevail.

The temporary Register offers no legal security either as it merely exists as a momentary Register until the proper Register is set up. The temporary Register has no support in the legislation. The Government has no legal possibility to terminate a RTO either since the Lands Tribunal not yet exist. Due to all these problems with land rights today they can not be considered as well functioning. If the Register is initiated and the Land Tribunal is assembled the RTO's could probably become such a secure land tenure form that the legislator intended.

A title registration system is ideal if there is a certainty of implementation. Although to guarantee this, a strong land administration system is required. This is not the case in Zanzibar. While registration is mandatory, no Land Registrar is yet appointed and there is no practicable way of registration available. Only registered rights have legal status with the consequence that most rights are illegal today. This can lead to informal tenures and an informal land market. This has not happened in Zanzibar but may if the Registrar is not appointed. The question whether the goals concerning land tenure in Zanzibar have been too ambitious is entitled. A deeds system could be a desirable option. A deeds system is cheaper and do not create the problems a non-functioning title system does. Deeds registration is hardly ever the most ideal solution, but it may be better than failed title registration and can be changed into a title system when ready.

Zanzibar probably has the possibilities to develop its land tenure into a secure system. All necessary land administrative organisations exist. The only need is to clearly state and divide the responsibilities for each department and organisation. The islands are fairly small in area, which eases control, and the islands have a prospering tourism that should be able to be an important part in stabilising the economy. The land laws are not poor in content but poor in implementation. If the land laws were fully implemented there would not be such a high level of insecurity with the land tenure types. This would give the lending market new collateral and the economy a boost. The biggest problem with the implementation is probably Zanzibar's land tenure history that has exposed the population to so many different land tenure types. With no history of security and stability it is not likely that simply a change in implementation of the laws can create a trust within the community for them.



7 Land Market

The existing land market in Zanzibar will be presented in this chapter. The land market will be discussed on the basis of a RICS presentation made by Dale, Mahoney and McLaren, “Land markets and the modern economy”. The presentation will be used to investigate and look at advantages as well as disadvantages with the land market in Zanzibar today.

The existing land market in Zanzibar is regulated by the Governments land policy and controlled by land administrative organisations set by the Government. Since land issues not are Union matters, the Government of Zanzibar has full control over the land market in Zanzibar.

A land market arises when and wherever the possibility to exchange rights in land for an agreed amount of money occurs.¹⁵⁶ With the coming of the Arabs in the 19th century a land market in Zanzibar was initiated as the Arabs started treating the land as a commodity.¹⁵⁷ To be able to develop a land market into a modern economy secure land rights need to be created. When land rights exist the land can be used as collateral and people are stimulated to invest using their land. Likewise are lending institutions able to make a profit through lending. The possibility for banks and other financial organisations to lend money to landowners who wish to invest is what underpins an efficient land market.¹⁵⁸

7.1 Essential elements for a land market

For a land market to have a sound land administration system, a well functioning legal framework and good land policy there are important elements that the land market should provide.¹⁵⁹ The most important elements are:

- Guaranteed security of land rights
- Low transaction costs for all users
- Access to credit
- Transparency, openness and ease of access to all
- Opportunities to raise revenues through land and property taxes
- Support for environmental sustainability

The guaranteed security of land rights in Zanzibar is not sufficient enough in the current situation. The main problem is the requirement of a functioning register system. A Land Registrar is supposed to exist but have not yet been appointed. Due to the lack of a Land Registrar there is no legal security in existing land rights. According to the law, land rights such as RTO’s, and leases are to be registered to have legal status. Many believe these problems will disappear with the economical aid from

¹⁵⁶ Dale, Mahoney & McLaren, 2002, p 2

¹⁵⁷ Shao, 1992, p 7

¹⁵⁸ Dale, Mahoney & McLaren, 2002, p 2

¹⁵⁹ Dale, Mahoney & McLaren, 2002, p 17

FINNIDA in the new SMOLE project. There must be a land registration system that provides value for money for the users, guarantees title and is open to public scrutiny. The fact that land according to the LTA is vested in the state this creates certain uncertainty. The land administration system in Zanzibar has the prerequisites to make the system function but the problem is lack of finance.¹⁶⁰ In order to benefit from the land market there must be clear policies and enforceable laws.

Low transaction costs for all users are needed but no evidence of either too high or too low transaction costs for land was found.

Access to credit exists in Zanzibar but it is not a well functioning credit situation. Most banks have too high interest rates to be a possible creditor for private money borrowers. Other lending institutions and private group financing are a possibility though. An efficient land market shall underpin the capacity of banks and other financial organisations to lend money and for landowners to invest. This is not happening in Zanzibar today. The Government has not approved of any lending institutions to practise mortgaging so the majority of money lending in Zanzibar is based on private initiatives.

Transparency, openness and ease of access to all are far from the reality in Zanzibar. No official Register exists and since the Land Tribunal has not yet been formed disagreements and conflicts can not be public displayed. The government should work toward a land administrative system that is transparent, open and easily accessible to all as these are important elements for an effective land market.

Opportunities to raise revenues through land and property taxes do not exist in Zanzibar today, as there is no proper Land Register where data can be stored. No taxes related to land exist in Zanzibar today only capital gain taxes when a building is sold.¹⁶¹

Support for environmental sustainability is the responsibility of DoE. Before the year 2000 DoE was situated under MoWCEL together with DoLR and DoSUP. Today it is separated from MoWCEL and the cooperation between the departments has vanished. This is a serious set back for Zanzibar when discussing the support for environmental sustainability. Before the split Zanzibar had a golden opportunity to deal with these issues in a manner that would have been naturally involved in the land management process.

¹⁶⁰ Interview 8

¹⁶¹ Interview 6

7.2 The efficiency of a land market

The efficiency in a land market depends on a number of aspects. A sound land administration system, a well functioning legal framework and a good land policy are all factors of great importance that underpin an efficient land market.¹⁶² Developing countries have, for various political and cultural reasons, tended to fail to create efficient land markets due to shortcomings in the above aspects. The result is that many countries, such as Zanzibar, have become undercapitalised.

The Land administration system in Zanzibar is governed by MoWCEL and its subordinate departments. The land administration system is structured in a satisfying way but there is a problem with the implementation of the existing land laws. Authorities such as the Land Registrar, The Land Tribunal and the Land Transfer Board do not exist. Especially a land registration system that guarantees a secure title and is open to public inspection is important for a land market to function well.¹⁶³ The lack of these authorities in the land administrative system debilitates its possibilities to function in spite of its well structure.

The legal framework in Zanzibar is not lacking anything in content but rather in implementation. The Government of Zanzibar has with support from FINNIDA in the 1980-90's developed complete and well structured land laws. The problems with the land laws are that they are not fully used by the civil servants. Many civil servants do not have the laws in their offices and not all laws are even possible to attain from the governmental printing office.¹⁶⁴ Many authorities that according to the legislation are to exist do not currently exist due to economical shortcomings.¹⁶⁵ It is important to have a clear policy where the existing land laws are enforceable.¹⁶⁶

The land policy in Zanzibar is probably not sufficient enough. The land policy should create opportunities for landowners as well as lending institutes to invest with land as collateral. It is particularly important that the land policy is clear and creates a possibility for the existing land laws to be enforceable.¹⁶⁷ This is not happening in Zanzibar today. The policy is successful in creating good land laws and generates a well structured land administrative system but fails in implementation. The failure in implementation of the land laws undermines the possibility for the land administration to function.

¹⁶² Dale, Mahoney & McLaren, 2002, p 17

¹⁶³ Dale, Mahoney & McLaren, 2002, p 3

¹⁶⁴ Observation

¹⁶⁵ Interview 8

¹⁶⁶ Dale, Mahoney & McLaren, 2002, p 2

¹⁶⁷ Dale, Mahoney & McLaren, 2002, p 2

7.3 External influences

External influences on and from the land market are important as a land market operates in symbiosis with several factors in the society. These factors can be seen in figure 4 below.

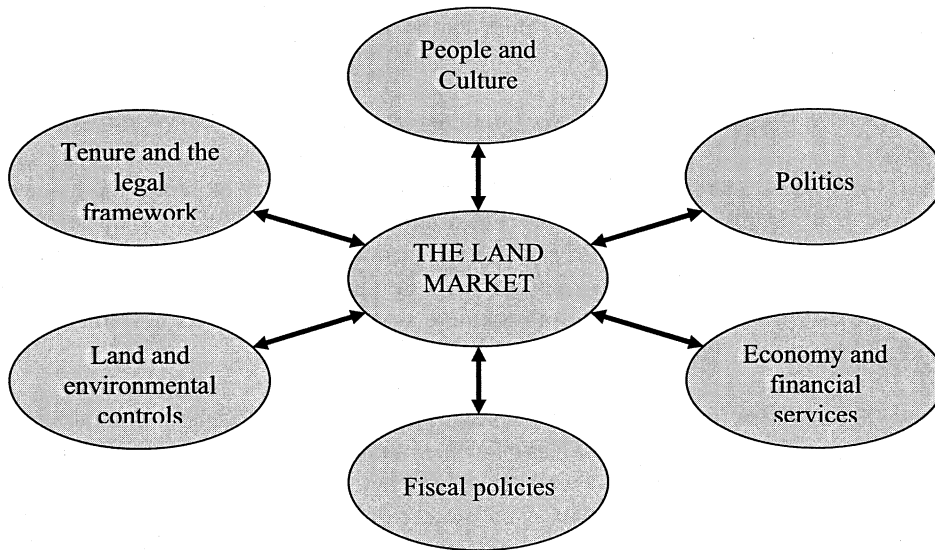


Figure 3: External influences on the land market

7.4 Discussion

No official land market exists in Zanzibar today. The essential elements needed for a functioning land market do not exist in a satisfactory way. There is no efficiency in the land administration system, the legal framework or the land policy. As these vital elements are not sufficient a thorough review of them is needed, before any more attempts to improve the land market is done.

The land market has a very important part to play in the economical development of Zanzibar. This stresses the importance of it to function well. The land market needs to provide secure land rights and a good financial infrastructure that can provide mortgaging facilities. With secure land rights people have confidence in their ownership and the land can be used as collateral. This would stimulate people to invest and banks and other financial organisations to lend money. If all these possibilities can be created a land market can take form. This would lead to more investments, greater productivity and subsequently a stronger economy where higher land prices and higher income will follow. This is needed in Zanzibar today especially among small scale businesses that have no possibility to expand in the current situation.

8 Field Study

The field study was performed in Zanzibar Town on Unguja in January and February 2004. In-depth interviews, literature research, observations and questionnaires were used to complete the study.

8.1 The Study Area

The study area of this MSc Thesis has been restricted to Zanzibar Town, which is situated on the east coast on Unguja. Zanzibar Town consists of Stone Town and the periphery, where the town has expanded in order to manage the increasing population. Stone Town is the old part of Zanzibar town and was in 2000 inscribed on UNESCO World Heritage List.

All main governmental ministries and departments are situated in Zanzibar town, which is the largest city on Zanzibar. It functions as a capital and the population was in 2004 estimated to 372,400 people.¹⁶⁸ This is an uncertain figure though as the migration to the Town is very large and uncontrolled. The migration to Zanzibar Town is primarily from the rural areas of Unguja, Pemba and mainland Tanzania.

Today there are not any existing public maps of the exact extent of Zanzibar Town. The only maps from the area are from 1970 based on aerial photographs from the 1960's, not showing all the development that has happened in the last decades.¹⁶⁹ With the SMOLE project new maps are at time of writing this report being produced based on new aerial photography of Zanzibar town as well as of Unguja and Pemba.



Picture 14: Street in Zanzibar Town

¹⁶⁸ Internet 6

¹⁶⁹ Interview 9

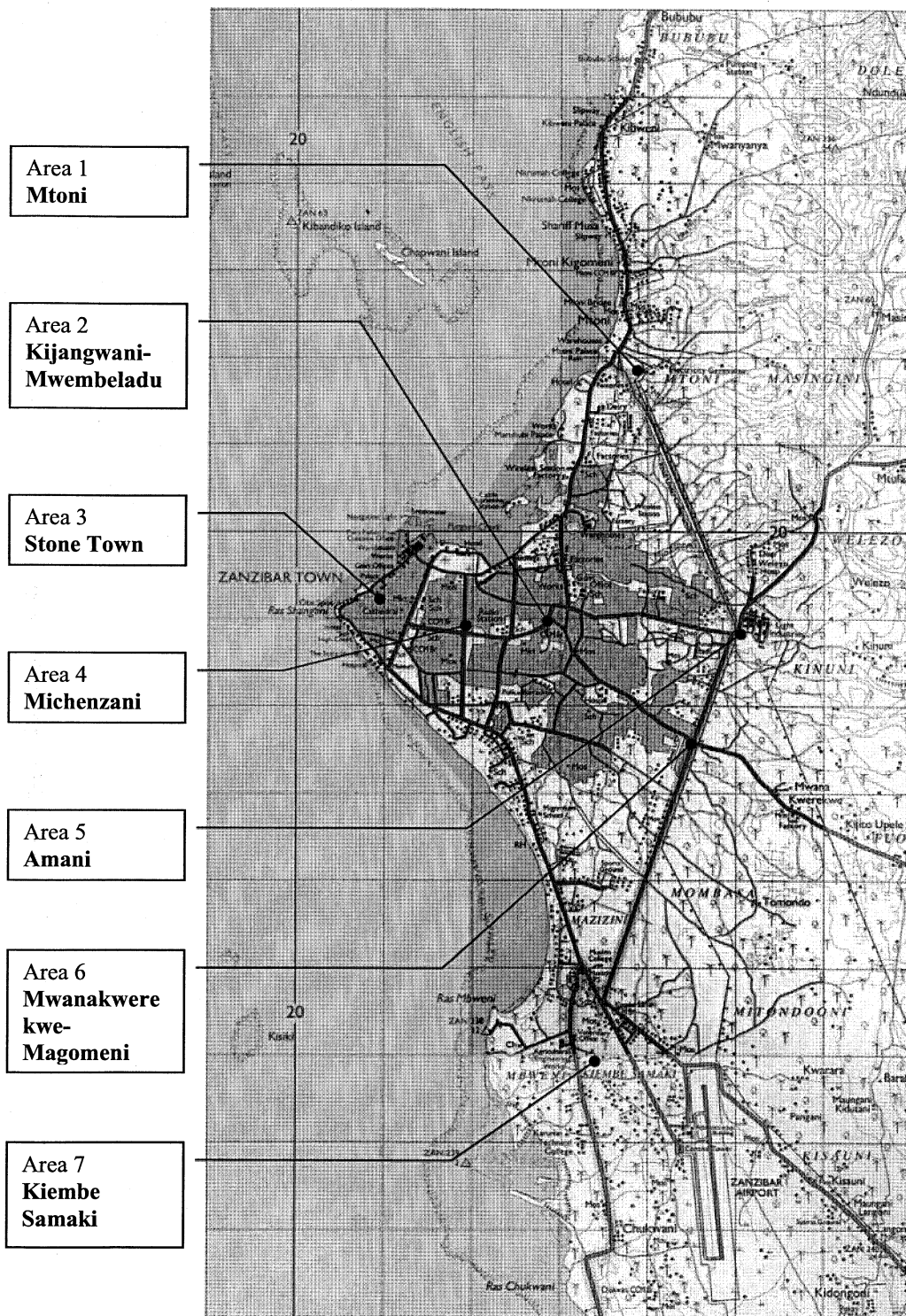
8.2 Physical, Social and Economical Description of Case Study Areas

The selected areas were randomly picked. The case study areas are marked as Areas 1-7 on Map 6.

Case study areas were only chosen in Zanzibar Town in order to have easily accessible study areas, that could be representative of Zanzibar Town and the rest of Zanzibar as well. Small scale businessmen within the town and in the outskirts of the town were interviewed. The study can be applicable to some extent to all small scale businesses in the whole of Zanzibar.



Picture 15-16: Alleys in Stone Town



Map 4: Study areas

Mtoni is area number one, where five interviews were performed. The Mtoni area is located in the northern part of Zanzibar Town and has a high business activity along the highly trafficated main road. The buildings are mainly small houses combined as shop and residences. Mtoni is an unplanned area with a hilly topography. There are many streams and slopes in the area. There is a large industrial area situated in Mtoni and it is a densely populated area. The living standard is poor.¹⁷⁰

Kijangwani-Mwembeladu is area number two, where five interviews were performed. The Kijangwani-Mwembeladu area is mainly a residential area with some corner shops. The area is very open where small houses, combined as shops and residences, are situated along the bigger roads. The area is accessible from the main town road where the highest concentration of shops can be found. Secondary roads scattered in the area produce heavy traffic. The living standard is poor.

Stone Town is area number three, where ten interviews were performed. Stone Town has a total area of 12 ha and the estimated population is 12,955 residents, of which 6,568 are male and 6,387 female.¹⁷¹ It is the centre of administration, business and tourism on the island. Significant for Stone Town are the big stone houses of one to three floors and the narrow streets crowded with people. There are many shops within Stone Town along the narrow streets, accustomed for locals as well as tourists. The living standard in Stone Town is fairly good but varies within the town.

Michenzani is area number four where ten interviews were performed. The Michenzani area consists of building complexes mixed with single story houses. Both primary and secondary roads in the area are tarmac roads. The traffic is heavy, especially around the big roundabout and in nearby areas. The Michenzani area is a partly business and partly residential area. The business area is commonly called "the container areas" due to the rebuilt containers used as small shops. The living standard is fairly good.

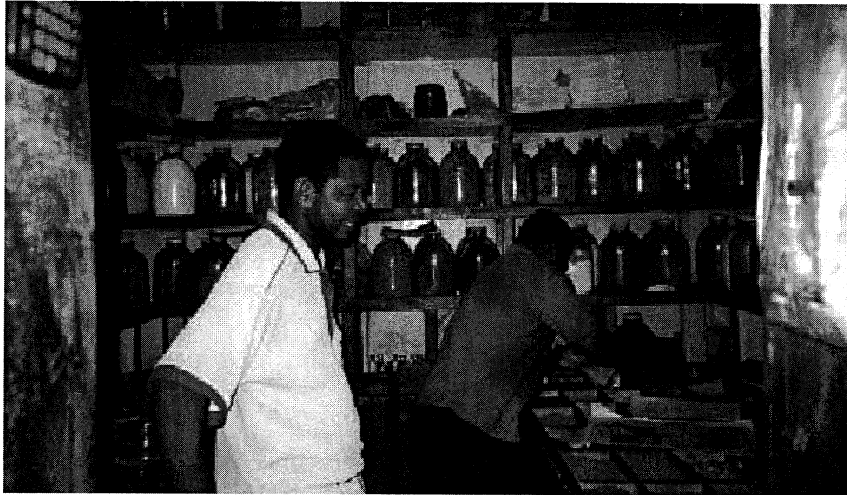
Amani is area number five, where five interviews were performed. The Amani area is located on the boarder of the Municipal boundary and is well visited due to the Amani Stadium. The stadium is a frequently used meeting point for numerous people. Most small businesses are located along the road and are combined shops and residences. The inner parts of Amani contain few small businesses situated in corners of residential blocks. The living standard is poor.

Mwanakwerekwe-Magomeni is area number six, where five interviews were performed. The Mwanakwerekwe-Magomeni area serves as a centre due to the existence of a new big wholesale market. The traffic in the area is heavy and the concentration of shops with small scale businesses along the roads is high. The area is open with small houses, combined as shops and residences, situated along the main road. The living standard is very poor.

¹⁷⁰ Interpreter

¹⁷¹ Interview 6

Kiembe Samaki is area number seven, where five interviews were performed. Kiembe Samaki is located along the Airport road and is less dense concerning residential areas but crowded with many shops along the road. The traffic in the area is heavy. The area is very open where small houses, combined as shops and residences, are situated along the road. The living standard is fairly ok.



Picture 17: Our interpreter Mr Ali Abeid in a small scale business in Mwanakwerekwe-Magomeni



Picture 18: Small scale business in Kijangwani-Mwembeladu

8.3 The Questionnaire

The main goal with the questionnaire was to receive the most important information concerning conditions that small scale businesses handle in their daily work. The questionnaire investigates questions such as: how small scale businessmen set up their businesses, where they set up the businesses, forms of tenure, the extent of utilized financial and legal help and what taxes they pay. In order to achieve this, the questionnaire was constructed short and concise to be efficient and easy to use.

To make the study scientifically correct 50 interviews were needed. This number of interviews was considered enough but manageable within the limited period of time. The respondents were picked randomly with two limitations; the business should lie within the field study area, Zanzibar Town, and be a business of small scale. The prerequisites of a small scale business in this study was defined as a business with an actual size of the business premises less than 30 square meters, a business where maximum two persons were not to work at the same time and the business was to have a yearly turnover of maximum 3,000,000 Tsh (2,800 USD).

The questionnaire is divided into nine sections:

The General section deals with fundamental information about the respondents such as age, origin and gender.

The Business section investigates type of ownership, type of business, average age of the interviewed businesses and questions concerning initial problems and procedures when setting up the business. The businesses profit is presented here.

The Land section investigates what type of tenure and expenses as well as questions concerning contracts that might exist.

The Building section deals with questions concerning what type of buildings that are used for small scale businesses and the ownership of the building. Questions concerning building permissions are included here.

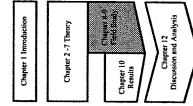
The Tax section deals with questions such as who pay taxes, where, how much and if there are any problems.

The finance section deals with questions concerning finance of the business. Financing needed in the beginning, how much and from where the capital was raised.

The planning section deals with questions concerning governmental plans. This was a standard question that was asked to everybody to investigate the awareness of the governmental plans.

The General Awareness section deals with questions concerning general issues such as awareness of existing land laws and problems concerning small scale businesses.

9 Small Scale Businesses

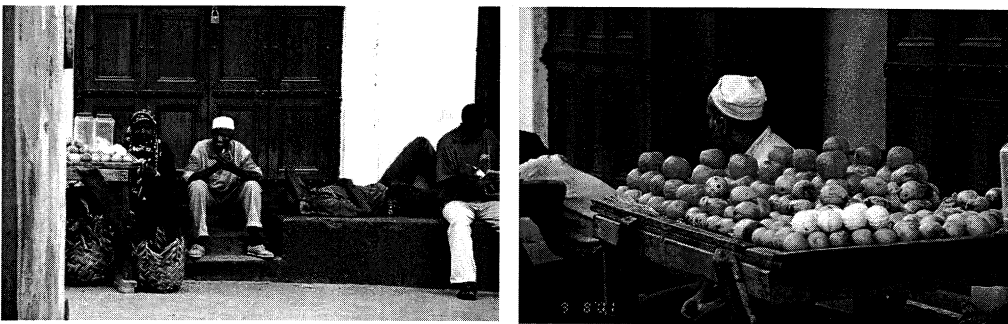


The majority of small scale businesses in Tanzania operate within the informal sector without being registered or licensed. Due to the informality there are no great possibilities for the businesses in a longer term to grow.¹⁷² The development of small scale businesses within the informal sector with group based savings and lending is a tradition that has existed across the African continent for centuries.¹⁷³ This contradicts the fact that the majority of small scale businesses in Zanzibar are registered.

One of the main reasons to look at small scale businesses is that the development of a town economically and socially often depends on the possibilities of small scale investments. Investments done by small scale businesses can be supported or impeded by different factors such as informality or inefficient rules and unnecessary bureaucracy. The prerequisites of a small business in this study was defined as a business of an actual size less than 30 square meters, businesses with less than two persons at work at the same time and businesses with a yearly turnover less than 3,000,000 Tsh (2,800 USD).

Despite the set prerequisites most of the small scale businesses interviewed did not have premises larger than 15 square meters and most did not have a yearly turnover more than 1,000,000 Tsh (935 USD). None of the businesses interviewed was informal businesses. All businesses were registered and possessed a license. This license was at the majority of the businesses clearly displayed.

The main questions in this study are what security in tenure small scale businesses has, how building permissions are acquired, how the small scale businesses are financed, what taxes that are imposed on small scale businesses and what kind of valuation that is available for small scale businesses. The small scale businesses interviewed where of different characters. The businesses were randomly picked to get a variation of different businesses. Examples of businesses interviewed are; Mini Markets, wood retailers, souvenir shops and clothes and shoes shops. For a complete list of the businesses interviewed see Appendix 2.



Picture 19-20: Business activity in Zanzibar Town

¹⁷² Internet 13

¹⁷³ Internet 14

9.1 Security in Tenure

The forms of tenure the small scale businesses interviewed have are mainly RTO or Waqfs. Most businessmen do not possess tenure but rents the place for their business. No one had a lease. All the interviewed small scale businessmen that had a RTO believed it to be registered. The register does not exist though, which grants RTO's today a very low security.

The form of security that the holder of a Waqf provides to a small scale businessman can be very small or very high. The security is from a legal point of very small as there nowhere in the legislation can be found that a holder of a Waqf has any form of security. Waqfs would not be a secure form of tenure if the legislation were interpreted strict. Religious rules and customs have such a prominent role in the Zanzibari society, which probably make it impossible to diminish the importance of Waqfs. Despite the lack of legal protection Waqfs are probably the most secure form of tenure in Zanzibar today.

The majority of businessmen who rents have written contracts. Written contracts always create a higher level of security than oral contracts. The lengths of the contracts are all less than five years and most less than two years.¹⁷⁴

9.2 Building Permissions

Building permissions are needed to build houses of any kind and can be acquired from STDCA, UDCA, the Municipality, the District office, the local Sheha, the DoSUP, the DoLR or ZIPA to mention some.¹⁷⁵ The large number of application places is due to the number of different types of building permissions. Different institutions hold different expertise and have a responsibility of different areas. The building permissions may create and retain a good standard but the lack of coordination must cause some confusion.¹⁷⁶

There seem to be no difficulties in receiving building permissions according to the interviews done with the small scale businessmen and civil servants at the different departments.¹⁷⁷ The fee for the permissions are low ranging between 5,000 to 15,000 Tsh (4.7 to 14 USD), and the time it takes to receive a building permission is merely a few days up to one month.¹⁷⁸

¹⁷⁴ Questionnaire

¹⁷⁵ Interview 8

¹⁷⁶ Interview 5

¹⁷⁷ Questionnaire and Interview 2

¹⁷⁸ Questionnaire

9.3 Finance

Zanzibar is a typical developing country with a low economy and high poverty. Persons who try to set up a business of small scale therefore have both these two obstacles to struggle with. Small scale businessmen in third world countries often represent the less well off people in already poor countries. They can have severe hardships in receiving financial aid. The different forms of finance for small scale businesses that exist in Zanzibar today and that throughout the field study have been identified are bank loans, loans from other loaning institutes and private financing.

9.3.1 Bank Loans

There are no international banks in Zanzibar, only local banks. Apart from the local currency Tsh, USD is widely accepted and can easily be exchanged.¹⁷⁹ Bank loans are possible to receive as private loans. Mortgages with RTO as security are according to LTA possible to receive. It is not a reality today due to the not yet existing list of approved lending institutions.¹⁸⁰

The interest rates for money lending at the banks are far too high for poor people. The high rates are probably one principal reason to why hardly any small scale businesses use bank loans when starting their businesses. None of the businessmen interviewed had a bank loan or had ever considered taking one due to the high interest or difficulties in attain a loan. A small number of the small scale businessmen interviewed did not know that bank loans existed.¹⁸¹

The existing banks in Zanzibar are

- The People's Bank of Zanzibar
- National Bank of Commerce, NBC
- Trust Bank Tanzania Ltd
- Tanzania Postal Bank¹⁸²

The People's Bank of Zanzibar and the National Bank of Commerce are the two banks interviewed and investigated in this study.

The People's Bank of Zanzibar is the only bank in Zanzibar that grants loans to small scale businesses. Only one officer at the bank is in charge of approving loans. The bank does not have a computerised filing system.

Private loans are possible to receive but not with land as collateral. In order to receive a loan the person has to have an account in the bank. To receive an account in the bank, the identity has to be controlled. Asking another customer or the local Shehia

¹⁷⁹ Internet 3

¹⁸⁰ Zanzibar Investment Policy, 2002, p 72

¹⁸¹ Questionnaire

¹⁸² Internet 18

checks the identity. The person has to have a certain amount saved in the account in order to be granted a loan. The money in the account is the bank's security for the loan and the saved amount steers the time it takes to receive a loan. If the applicant has an account with a lot of money it creates a good security. A loan can be accepted the same day if the security is good or it can take two weeks up to one month. Normally the family, such as the wife, also has to approve the loan application. The rates for loans can vary individually but lie between 17 to 20 per cent and is determined at the time of repayment.¹⁸³

National Bank of Commerce, NBC Ltd is one of the largest commercial banks in Tanzania, with a network of 34 branches. One branch is situated on Unguja, Zanzibar. NBC Ltd was formed 1st of April 2000 when the bank that originally was formed in 1967 was privatized and sold to the ABSA Group Ltd. of South Africa.¹⁸⁴ NBC provides a wide range of banking services such as deposits lending services and other services such as ATM's and Internet banking. Money transfer and advisory services are also other services they provide.

Private loans are possible to receive but not with land as collateral. In order to receive a loan the person has to have an account in the bank. The person has to have a certain amount saved in the account and an overdraft can be accepted of no more than 80 per cent of the amount on the account. The repayment shall be done within 12 months or according to a private arranged repayment plan. Only one overdraft per year is accepted. People who wish to take a loan for their small scale business are referred to the head office in mainland Tanzania.¹⁸⁵

9.3.2 Loaning Institutes

Loaning institutes that are available for businesses in Zanzibar and that have been investigated in this study are PRIDE and ZIPA. PRIDE is a private organisation that offers loans to small scale businesses. ZIPA is a governmental organisation, which grants loans to businesses of larger size. Neither PRIDE nor ZIPA grants loans with land as collateral.

Promotion of Rural Initiatives and Development Enterprises, PRIDE is the largest microfinance network in East and Southern Africa. They have over the past ten years disbursed over 400,000 loans with a repayment rate of 95 per cent.¹⁸⁶ PRIDE has existed almost seven years in Zanzibar and ten years in mainland Tanzania. It is an organisation that provides small scale loans through group guarantee. The majority of borrowers are people who wish to set up a small business. PRIDE has a portfolio on Unguja of 386 million Tsh and one on Pemba of 50 million Tsh. PRIDE in Zanzibar received funds from the Norwegian Government between 1994 and 2000 but have since the year 2000 been fully sustainable.¹⁸⁷

¹⁸³ Interview 11

¹⁸⁴ Internet 19

¹⁸⁵ Interview 10

¹⁸⁶ Internet 14

¹⁸⁷ Interview 4

PRIDE advice their clients to come as a close related group as they utilizes a group lending method. Most groups who come to PRIDE have to train financial accounting and learn how to separate their business economy from their own private economy before being granted a loan.

Each one in the group has to register at a cost of 10,000 Tsh. They all make a regular deposit of two and a half USD each week that only can be refunded upon repayment of the loan. The weekly mandatory saving deposits serve as a collateral substitute. After a predetermined period loans are given to an individual borrower who is part of the core group of five members. Every member carries responsibility collectively for the loan to provide security. The collateral is used in case of default by any borrower within the group. The interest rate for loans varies between 24 to 30 per cent depending on the amount. Smaller loans convey higher interest. For loans between 50,000 and 500,000 Tsh the interest rate is 30 per cent. For loans between 500,000 and one million Tsh the interest rate is 28 per cent and for loans between one to four million Tsh the interest rate is 24 per cent.¹⁸⁸

Zanzibar Investment Promotion Agency, ZIPA is an institution under the supervision of the Ministry of Finance and Economic Affairs. The Agency was established in 1991 to serve and coordinate foreign as well as local private investments.¹⁸⁹ Apart from acting as an agency for investors they also serve the Government as an advisor on investment policies and related matters. ZIPA only grant loans to businesses with a minimum investment of 400,000 Tsh. In 2003 ZIPA granted certificates for investments to ten companies of which five where domestic and five foreign.¹⁹⁰

9.3.3 Private Financing

The most commonly used financing system among small scale businesses in Zanzibar is private money lending such as lending from either family or friends. A private form of lending that is used instead of bank loans is Upatu.

Upatu is a form of self financing loan and is signified by the lack of an organisation in charge of its function and rules. It is a purely a private engagement. The engagement is often between friends or family. Upatu works according to the example: Three people get together and mutually put in 10,000 Tsh each into their own fund. The first month the first person receives the money and another 10,000 Tsh each is put into the fund. The second month the second receives the money and another 10,000 Tsh each is put into the fund. The third month the third person receives the money and so on.¹⁹¹

¹⁸⁸ Internet 14

¹⁸⁹ Zanzibar Investment Policy, 2002, p 80

¹⁹⁰ Interview 3

¹⁹¹ Interview 6

9.4 Taxes

The large number of taxes and the high rate of these taxations are regarded as obstacles for investments in Zanzibar. The people are poor and receive a low income but are charged high taxes. Many struggle due to this. The two main authorities for collecting revenues are the Tanzania Revenue Authority, TRA, and the Zanzibar Revenue Board, ZRB.

Corporation tax is imposed directly to the business profit earned that particular accounting year. It is paid by all businesses that undertake business activity. Currently, the corporate tax rate is 30 per cent of profit earned.

Capital Gain Tax is a tax charged on the surplus from the sale of an asset. The current rate is ten per cent of the gain on sold assets and it is paid by the business. There are no land taxes, but there is capital gain tax when a building is sold.¹⁹²

Value Added Tax, VAT, is based on the difference between the outputs over the value of the inputs used by the buyer. The final amount of tax is added to the price of the goods and is paid by the buyer.

Import Duty is a tax charged to imported goods. The tax rate varies between zero and 25 per cent depending on the type of goods.

Personal Income Tax is paid by business owners. The owner is responsible for collecting income tax from employees and deducts the income tax from the salary.¹⁹³

The Municipality tax is not a real tax but a fee. It is a monthly paid fee to the Municipality for cleaning the streets and other sundries.

The License fee is paid by all small scale businesses for their business license. This license was in most shops framed and clearly displayed. It is a yearly fee and varies depending on area.

The taxes differed among the small scale businesses despite the fixed rates. Not all taxes were paid in all areas. Small scale businesses in certain areas did not pay income tax and some did not pay the Municipality fee. There are several different places where taxes are being paid depending on what kind of tax it is. No land related taxes exist.

Taxes that the interviewed small scale businesses were imposed are:

- Corporation tax
- A monthly tax to the TRA
- Municipality fee
- License fee

¹⁹² Interview 6

¹⁹³ Zanzibar Investment Policy, 2002, p 10

9.5 Valuation

The Government in Zanzibar have ten valuers in service, responsible for valuation of mainly governmental buildings, hotels or other big buildings. Few private valuers practice in Zanzibar today. The governmental valuers can have their own private practice. The employed valuers are trained in Dar es Salaam. The fee private valuers charge is one half to one percent. All valuations are confidential but need to be approved by the Government's chief valuer. A building permission will increase a buildings value but is not requested. The National Bank of Commerce has their own valuers while the People's Bank of Zanzibar engages and relies on the governmental valuers.¹⁹⁴

The former COLE in Zanzibar has with support from FINNIDA in the ZILEM project developed guidelines for how valuations of land and buildings as well as trees are to be performed. These guidelines can be found in "Property valuation- a handbook for Valuers practising in Zanzibar".¹⁹⁵

Valuations in Zanzibar can be performed for a variety of purposes. Such as sale or purchase, rental situations, lease renewals and extensions, assessing controlled rents, mortgages, insurance purposes, compensation for compulsory purchase and taxes among some.¹⁹⁶ All these situations of valuation do not exist today due to the shortages in the legislation. As the list of approved lending institutions does not exist there is no possibility for anyone to perform mortgage valuations for example.¹⁹⁷

Business valuation is performed with three major objectives. The future profitability of the business, the business capitalisation in terms of assets and a control of the business possibility to command goodwill.¹⁹⁸ None of the small scale businesses interviewed was valued according to these objectives. The only valuations performed were individually estimated figures of how much the yearly turnover was.

9.6 Discussion

RTO's and Waqfs exist among some small scale businessmen, but the majority rent the building for their business. If this is a customary tradition is hard to say but it is likely. Both the native customary law and the Islamic law consider buildings and trees as objects separated from the land while for example European law often consider them as one asset. Traditionally there has been a usage of trees or buildings separate from the land, which could explain the large number of rented buildings. The native customary law and religion has a strong influence on Zanzibar. These influences create difficulties in accepting and understanding of a completely different system.

¹⁹⁴ Interview 1

¹⁹⁵ Yahya, 1996

¹⁹⁶ Yahya, 1996, p 2-3

¹⁹⁷ Interview 6

¹⁹⁸ Yahya, 1996, p 31-32

Rent does not provide the same level of security as an RTO or a Waqf but due to customary law that still prevails in many areas it probably has a high level of security.

The fact that no small scale businessmen had a lease does not necessarily indicate they do not exist but that they are rare. Leases on RTO's are almost none existing due to the lack of a Land Registrar and governmental leases are probably directed toward other groups than small scale businesses.

The large number of places where building permissions can be applied gives an indication of a disintegrated system with a low level of control. The administration for building permission does not provide the Government a high level of control, which should be desirable. It indicates a poorly functioning system.

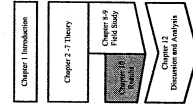
As the interest rates for money lending at the banks are high and it is impossible to use land as collateral this is a sign that the governmental supported finance is completely debilitated. This has forced the people to create own ways of finance or rely on non governmental donor aided organisations. This is a good example of where the Government has failed to create a well functioning land market. This neglect of responsibility is, affecting the whole country's economy. The high interest rates are probably one reason to why hardly any small scale businesses use bank loans when starting their businesses. None of the businessmen interviewed had a bank loan or had even considered taking one due to the high interest or difficulties to attain. At one bank small scale businessmen were referred to the head office in mainland Tanzania. This creates an impossible situation for a poor small scale businessman who probably cannot produce the money needed to go there. Some of the small scale businessmen interviewed did not even know that bank loans existed.

The problem is not just high rates but the inability to use land as collateral. The legislation authorizes mortgages to exist. The Government has failed to create a high security in tenure and neglected to authorize the obligatory list of approved lending institutions. As these two elements are not functioning banks can not, and do not, provide loans with land as collateral. The poor implementation of the legislation has created big difficulties for investors and small scale businesses.

No land related taxes exist, which indicates that the Government probably has no secure system to handle information concerning land related taxes. The Land Register would probably be the most evident source of information for such taxes but as does not exist that could explain why no such taxes exist either. The amounts of taxes that small scale business has to pay are many and large in sum considering the low income from small scale businesses. This high level of taxes is probably a large inhibiting factor for the small scale businesses possibility to grow.

If valuation could be fully practised and acknowledged in Zanzibar it probably could be an effective tool for raising revenues and regulating the land market. Today no fiscal taxes exist and a key factor to be able to collect land taxes is to have a functioning valuation of land.

10 Results and statistics



The results from the questionnaires have been collected and structured in a spreadsheet to facilitate the compilation and the management of the data. Some diagrams and graphs have been created to visualise important collected data.

General data

50 respondents of Zanzibari origin were used. Men are dominating the small scale business market, 84 per cent of the interviewed owners were men. The age spread of the respondents is fairly even although only one was above the age of 50. The literacy rate is high among the interviewed businessmen, 90 per cent claim that they can read or write well or fairly well.

Business

The most common form of ownership among the small scale businesses is self employment that dominates with 86 per cent, partnership only accounts for 14 per cent. The businesses are most often run as family businesses or with employees. The average number of employees is 1.8 and the average salary per month for the employees is 36,500 Tsh, 35 USD.

Most of the businesses, 80 per cent, are younger than five years. Only a few, 18 per cent, are between the ages of five to ten.

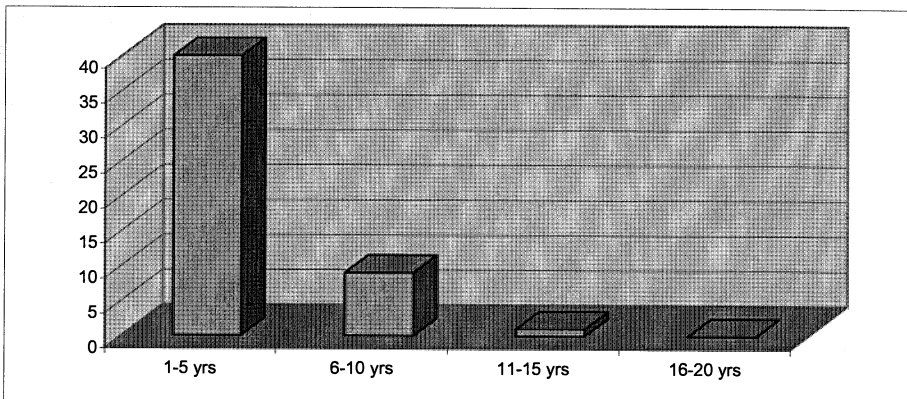


Table 2: Age of small scale businesses

Problems that the small scale businesses encounter in the initial stage are low rate of business and raising capital to set up the business.

Choice of location was primarily done through choice of what was believed to be the best location or closeness to home. Almost one fourth of the respondents did not choose the location but set up the business on the land they own themselves and live on.

Hardly any, 12 per cent, of the respondents had used legal help in the initial stage of setting up their business. The majority, two thirds, of the businesses that had utilized legal advice were situated in Stone Town.

The businesses are all with a few exceptions registered. The place to register differs in different areas. Most are registered in the Municipality and some in the TRA.

The profit per year differs in size but also in different areas. Most common, 40 per cent, is a low profit between 0 to 500,000 Tsh per year. In Michenzani the profit is general low while in Stone Town and Kiembe Samaki the profit is generally higher.

Land

The most common tenure among the small scale businesses was RTO while 30 per cent held a RTO. The majority of businessmen, 52 per cent, rented the place for their business. Some businessmen had Waqfs and some had a form of permission from their local Sheha. Thus religious as well as customary tenure are used and exist.

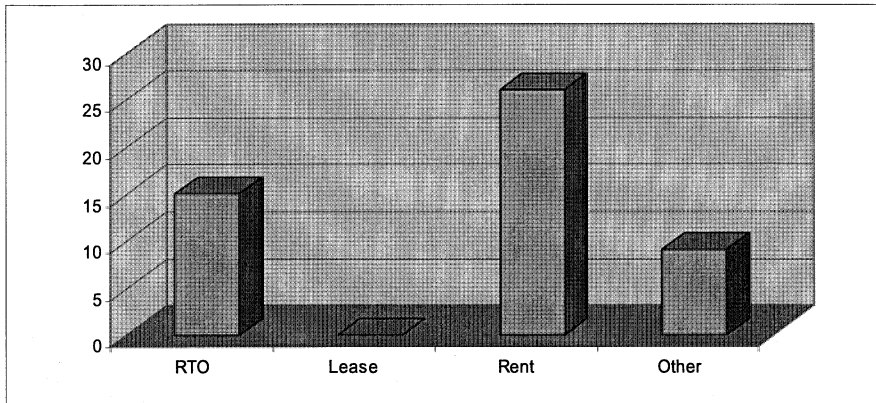


Table 3 : Different forms of access to land for business activity

Most businessmen who rent have a written contract, more than 70 per cent. The contracts are short in time though, none are longer than five years and of all written contracts 42 per cent are shorter than one year.

Building

The small scale businesses were set up in buildings, containers or sheds. In Stone Town buildings dominated while in the periphery container and sheds were more common. 58 per cent used the building for business only. The rest used the building as combined resident and business.

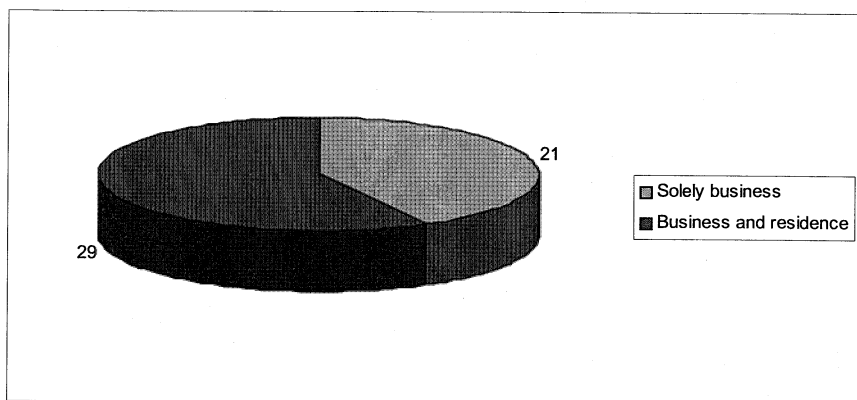


Table 4: Usage of building for small scale business

Less than 40 per cent of the businessmen owned the building themselves. The rest either rented or used a relative's building.

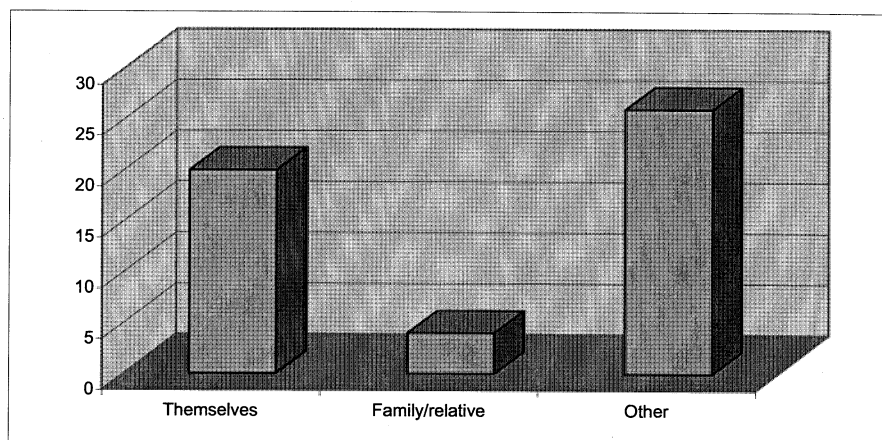


Table 5: Owners to the buildings used as small scale businesses

Out of the 40 per cent that owned the building themselves as many as 60 per cent had built the building themselves with a construction cost that ranges between 600,000 Tsh and 15,000,000 Tsh.

All small scale businessmen that had built the building for their business had applied for a building permission. The application can be done in many different places such as at the Municipality, at DoSUP, at the local Sheha or at the District office. The time to receive the building permission varied between a few days and four months but the most common was between a few days and one months.

Taxes were considered as a big problem. All of the interviewed businesses paid taxes of some sort except two newly started that just had received their licenses. The different forms of taxes that the small scale businesses paid were all related to the business. No taxes related to land were paid.

Finance of business differed among the small scale businessmen interviewed. Many different ways and forms of finance to receive a starting capital were used. Most businessmen started off with own saved capital, 74 per cent. 14 per cent took loans from friends or family. Some used a combination of own capital and loan from friends and family, eight per cent. None took loans from a bank and four per cent had used other forms of finance. The amount of starting capital among the 74 per cent that used own capital differed a lot.

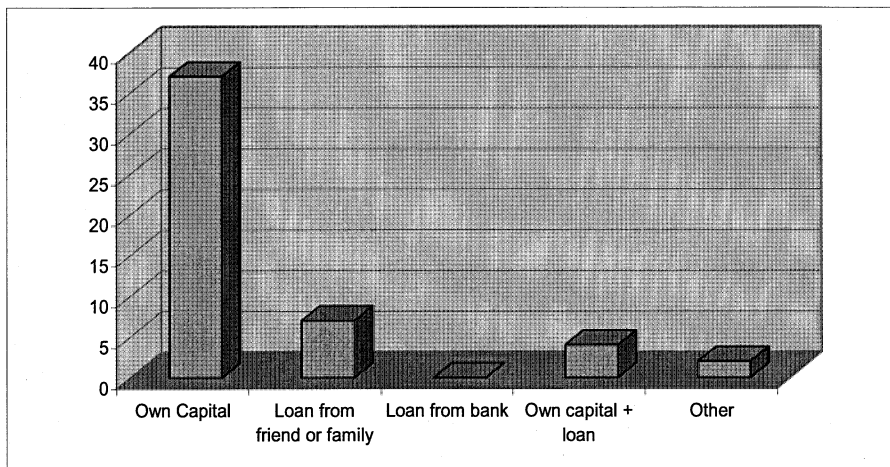


Table 6: Used finance when setting up the business

Other kinds of loans encountered were for example from hardware retailers. These loans did not require any kind of security, with the explanation that they trust each other.

Planning knowledge was small among the interviewed businessmen. Among the respondents 94 per cent were not aware of any governmental plans in their area. Many were not familiar with the concept of plans. No investigation was done to explore what plans actually exist in these areas. The question was merely an attempt to find out the awareness of the Governments plans for the areas. The six per cent that were aware of existing plans concerning the area where their businesses are situated had different conceptions.

General

Among the respondents 30 per cent lack any sort of identity papers. The majority, 66 per cent, only had a passport as identification paper while four per cent had an id card. Half of the respondents were aware of the existence of the land laws, one person knew them well while the other half were unaware of the existence of land laws.

Many small scale businesses encounter problems in the beginning when trying to set up their businesses. The main problems according to the respondents are low capital, low rate of business and finding a location.

Insurance did not exist within any of the small scale businesses interviewed. Not for the building or for the business. Most had never heard of insurance.

10.1 Discussion

It is clear that men are dominating the business market in Zanzibar which is not surprising in a community where women have an inferior role in areas such as business. Self employment is the most common entrepreneurship among the small scale businessmen. The business is often a family business, giving women a concealed role in the business.

Most of the businesses interviewed were exceptionally young businesses, which indicate a tendency of businesses easily appearing. This is a sign of an unstable business market where there are few old and long lasting businesses. If many small scale businesses appear many probably also disappear. This indicates that the businessmen struggle with more expenses than incomes. The short term written contracts that all businessmen who rented have indicate an insecure market.

The governmental minimum wage is 40,000 Tsh while the average salary per month for small scale business employees is 36,500 which is slightly lower. This indicates that the small scale businesses profit not can be so large since their wages fall slightly below the minimum wage.

The problems that many small scale businesses had encountered in the initial stage where typical problems such as low rate of business and ways of raising finance in the beginning. The low rate of business probably depends on the total number of small scale businesses which is extremely high. All these businesses compete with each other. With so many existing businesses it is more likely that the businesses practise exchange commerce with each other rather than proper business. The large amount of small scale businesses is probably too inhibiting for all businesses ability to grow and possibility to make a good profit. The problem with raising finance is also a typical third world country problem. The population is poor and so is often the Government. A good financial climate is then often hard to create as the land market often is not well steered and no existing land rights to use as collateral exist.

The lack and knowledge of legal help was large among the small scale businessmen. This is also often a problem in third world countries, which can lead to inhibition in the businesses ability to grow. It can even force the business to close if the lack of knowledge about taxes or other legal matters in the beginning is too poor. The general feeling among the small scale businessmen were that they are very helpful toward each other and assisted each other to a great extent. If a person starts a small scale business he receives a lot of help and aid from friends whom already have businesses. It is interesting that the area where most people had utilized legal help was in the Stone Town area where most shops primarily are directed towards tourists. Stone Town was one of the areas where the profit is high. In the more remote areas where the shops primarily where directed at the local population, legal help was not common at all. This indicates that the business activity in Stone Town is more structured, legally correct and more controlled than in the more remote parts in Zanzibar Town and the rest of the island.

Apart from not using legal help when setting up their business it was clear that most of the small scale businessmen where not aware of other issues that are of importance for them and their business. Hardly any were aware of the governmental plans in their areas and very few were aware of the existing land legislation. Among the majority of the small scale businessmen identity papers were not common. They did not experience a need for identification papers as they all "know" each other. The majority had a passport as identification paper.

The choice of location was primary done according to prerequisites such as where there were most customer and closeness to home. The closeness to home was an important factor for those who did not combine their business premises as residents. The combination of business and residences indicates that the businesses probably are struggling with high costs. Combining the premises in this way is probably an attempt to cut down on expenses. Another important factor in the choice of location was the closeness to the road. These are the most profitable areas where a large group of people circulate and socialize every day. The profit per year differs in the different areas. The profit is in general low while in Stone Town and Kiembe Samaki the profit is higher probably due to the larger number of people.

The kind of buildings that the small scale businesses were set up in where buildings, containers or sheds. In Stone Town they solely consisted of buildings while in the periphery they were of a mixed character. Less than 40 per cent of the businessmen owned the building themselves. The rest rented or used a relatives building.

It is hard to discuss the relationships of ownership as the conception sometimes probably is rather blurred. For example, people who have a Waqf may consider themselves to own the building while they do not as it is the benefactor that keeps the ownership. The same is probably the case when customary tenure is involved. In customary tenure the land and buildings and trees are separate which probably creates a possibility for some people to rent the land but own the building themselves.

In case that the businessmen had built the building themselves they all had applied for a building permission. There were no difficulties in receiving a building permission nor were high fees involved which indicates a well functioning system. The large number of places to where the application can be done, can be seen as an obstacle though. It undermines the possibility of a uniform system and diminishes a good control of entrepreneurs in a country where the growth is large.

The businesses are all with a few exceptions registered. The place to register differs in different areas. Most businesses are registered in the Municipality or at the TRA. This indicates that there are no problems with illegal business activities. The Government must have a supportive business policy as they allow so many small scale businesses to register but it is questionable if it is good. Does Zanzibar prosper from allowing so many small scale businesses to exist? Or is it on the contrary inhibiting for the country? Other sources of occupation maybe are desirable so some small scale business can have the possibility to grow with less competition. It is possible that Government due to economical hardships and lack of alternative occupations allows all these small scale business to exist. People would probably not survive otherwise.

There is a great need for business advice to many of these small scale businesses apart from improving conditions for lending and taxes. The weakness in business skills is something that could be improved by information and training and probably could help many small scale businessmen to survive and expand.

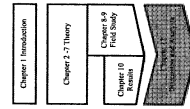


Picture 21: Wooden door in Stone Town



Picture 22: Small business in front of "House of Wonders"

11 Discussion and Analysis



Small scale businesses are a common entrepreneurship in Zanzibar. The businesses are many in numbers but small in size. Small scale businesses have no problems to establish which should be a productive factor for the economical and social development of Zanzibar Town. The main obstacles are the difficulties for investments that could allow the businesses to grow. This inhibits this positive and productive development that should create an effective land market. The political climate in Zanzibar today is not democratic and therefore not optimal which is reflected in its land policy. This is furthermore reflected in the economy and the non existing land market today. All problems that exist due to the weak land policy today affect the small scale businesses.

The largest influence that the weak land policy has on the land market is the poor implementation of the land legislation, which weakens the existing land administration. This creates problems with the security in tenure, which influence the land market negatively. When no securities in tenure exist there are no lending institutions that are willing to accept land as collateral and there are no possibilities for people to use their land as collateral. This affects the possibilities for small scale business to invest and inhibits the economy to grow. With a non functioning land market the economy is inhibited to grow and the whole country's economy is affected negative. With no possibilities for small scale businesses to acquire capital through using their land as collateral they have no possibility to grow. This is clearly conveyed in Zanzibar today where the majority of the small scale businesses tend to practise exchange commerce with each other rather than proper business. This indicates an incapability to create capital to grow.

The Government of Zanzibar is the only organisation that can settle all problems that exist with the land policy. The Government needs to insure that the implementation of the legislation is done and a functioning land market is established. This should be done in cooperation with banks and other lending institutions to insure all parties' involvement, interest and security. Apart from this it is important to regulate the valuation practices in Zanzibar today, to apply on land with secure tenure. If a well functioning valuation force exists land can be valued and used as safe collateral.

A large problem among small scale businessmen is the lack of knowledge of existing land legislation. This is clearly a set back for the Government. The land legislation is good but if the general public and businessmen are unaware of it, it can be an indication of a meagre application by the governmental authorities. This coincides with the poor implementation of the legislation. Better implementation and better information to the general public is needed to make the existing land legislation function in accordance to its intentions. This is a tough assignment for the Government. Many small scale businesses men today lack potential to grow due to general unawareness concerning existing legislation, possibilities to legal help as well as possibilities to raise money through institutions such as banks. Business advice and training in business skills for local businessmen is advisable in the current situation.

Due to Zanzibars land tenure history, lack of entrepreneur skills and poor land policy the confusion is big. Today most small scale businesses seem to use a combination of different tenures. Tenure according to the legislation, customary tenure and the religious form Waqf all coincide. This seems to be accepted by the Government, which contradicts the land legislation. The land legislation do not approve of any other forms of tenure apart from what is stated in the legislation. This is not a good foundation for a land market to develop from since it creates large confusions of the legal status of different forms of tenure. Religious land laws and native customary laws need to be mentioned and approved in the present land legislation since they have such a predominant role in land tenure in Zanzibar today.

An indication of the urgent need to revise the current land policy, land legislation and land administration is problems that arise due to the increase of seaweed farming in the coral rag areas. The seaweed farming is becoming a large income source that competes with space for hotels and fishermen. The farming is mainly done in the coral rag areas where customary tenure prevails and the occupation is not regulated in any way. There is a need for more structured regulations due to the economical interests. Otherwise there are bound to arise more severe problems in the future.

A large problem in the implementation of the land legislation is the diversity of land tenure types that Zanzibar throughout the years has been exposed to. All these different land tenure types have influenced and been constructive to Zanzibars present land tenure. Zanzibar has principally three significant eras that has imposed large traces on today's land tenure. These eras are the Arabic period with the slavetrade, the colonial period and the socialistic period. These eras are responsible for Zanzibars history of very low security and stability. Something needs to be done in order to create some sense of stability but it is not likely/probable that an improvement of the implementation of the legislation can attend to this. The native customary law as well as the religion has been such a strong influence on Zanzibar for so long that it must be difficult to accept and understand yet another new system that once again is completely different to old customary.

We hope that the results and conclusions of this MSc Thesis will be essential in discussions concerning how to develop Zanzibar Town as well as other smaller towns emerging in Zanzibar from the viewpoint of small scale businesses.

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Interpreter: Mr Ali Abeid

Interview 1: Mr Fakh Said Omar, Chief of Valuation at DoLR, (2004-02-02)

Interview 2: Mr Haji Adam Haji, Director at DoSUP, (2004-03-03)

Interview 3: Mr Hamed R.H.Hikmany Director General at ZIPA (2004-02-06)

Interview 4: Mr Levenico Mbilinyi, Branch manager, PRIDE, Zanzibar (04-03-03)

Interview 5: Mr Makame Juma Pandu, Lawyer at DoLR, (2004-02-12)

Interview 6: Mr Muhammad Salim Sulaiman, Advisor to the Minister

Interview 7: Mr Mwalim A. Mwalim, Director General at STCDA, (2004-02-06)

Interview 8: Mr Salim Othman Simba, Director at DoLR, (2004-02-11)

Interview 9: Mr Sören Lundqvist, Team Leader for the SMOLE project

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Appendix 1: Questionnaire for Small scale investors in Zanzibar

Location: _____ **Date:** _____ **Nr:** _____

Gender: Male Female

Origin: African Arabic Indian European Other _____

Age: 20-30 30-40 40-50 50-60 60+ : _____

Can you read and write yourself Yes (Very little Ok Very well)

No Who helps you: _____

One owner Partners _____

Is it a family business Yes No

Who owns the land where your business is situated _____

Business

What kind of business is it: _____

How old is your business : _____

How did the business start Start yourself Inherit it Buy it Other: _____

Did you have any problems in the beginning? (Financial /Other)

Do you have any employees Yes How many: _____

No Why not: _____

How much do you pay in salary _____

When you started your business, how did you acquire the land/find a location

Why did you choose this place for your business : _____

Was this your first choice Yes (No Where did you plan it first: _____)

Have you had your business somewhere else but has moved to this location Yes No

Why did you move _____

Did you try to set it up anywhere else before here. Why didn't it work.

When you started your business, did you get help with all the legal work

Yes By whom: _____

No Why not: _____

Is the business registered Yes When: _____ Where: _____

Do you have any papers of registration Yes No

No Why not: _____

Building

What kind of building is it Building Shed Container shop Other : _____

Is the whole building used for the business Yes No

What else is the building used for: _____

Who owns the building: _____

Did you build the building (for the business) yourself

Yes How much did it cost to build it: _____

Did you apply for a building permission Yes

Where did you apply: _____

How long time did it take: _____

How much did it cost: _____

No Why didn't you apply for a building permission: _____

Did you encounter any problems when you applied _____

Land

What kind of tenure is it?

Right to Occupancy How much did you pay for it: _____
When did you get the RTO: _____

Lease How much do you pay in lease: _____
How often: _____
To whom: _____
For how long is the lease signed: _____

Rent How much do you pay in rent: _____
How often: _____
To whom: _____
For how long is the contract? : _____

Other : _____

Do you have a written contract Yes No

Is the property registered Yes When: _____
Where: _____

No Why not: _____

Do you have any papers of registration Yes No

Valuation

Is the property where the business is set up valued

Yes

What kind of valuation: _____

How much is the value: _____

When was it valued: _____

Who valued it Self Private Government

Did you have a second opinion to the value Yes No (Private Government)

Is it possible to get a second opinion Yes No (Private Government)

No

Why not: _____

Taxes

Do you pay Taxes for the business No Why not: _____

Yes To whom: _____

How much: _____

How often: _____

Have you encountered any problems concerning taxes? : _____

Finance of business

How did you finance your business, in the beginning

Own capital How much: _____

Loan

What kind: _____

How much: _____

Which bank: _____

Did you encounter any problems when applying: _____

What kind of security did you give: The Land The Building

The Business Other _____

Other : _____

Planning

Do you know if the Government has any plans (such as National Land use plan or Detailed Local land use plans) covering this area where your business is situated?

No Yes

What kind: _____

How does it affect you: _____

Insurance

Is your property/business insured Yes No

What kind of insurance: _____

How much: _____

How is the insurance value decided: _____

General

Do you know of anyone who wants to set up his or her own business but hasn't been able to

No Yes What was the problem: _____

What kind of identity papers do you have: _____

Do you know what laws that deal with land issues Yes No

Which laws: _____

What problems do you encounter concerning your small scale business?

Appendix 2: List of the interviewed Small scale businesses

Amani

1. Mini Market
2. Mini Market
3. Mini Market
4. Wood retailer
5. Second hand shop for white goods

Mwanakwerekwe-Magomeni

6. Pharmacy
7. Ironmonger's shop
8. Ironmonger's shop
9. Ironmonger's shop
10. Traditional medicine shop

Mtoni

11. Work and repair shop for cars
12. Jeweler's shop
13. Mini Market
14. Watch, bag and cellular phone accessories
15. Pharmacy

Kiembe Samaki

16. Combined Ironmonger's shop and work and repair shop for bicycles
17. Mattress retailer
18. Ironmonger's shop
19. Ironmonger's shop
20. Mini Market

Kijangwani-Mwembeladu

21. Mini Market
22. Mini Market
23. Combined Ironmonger's shop and work and repair shop for bicycles
24. Mini Market
25. Ironmonger's shop
26. Mini Market
27. Mini Market
28. Household utensil's shop
29. Mini Market
30. Work and repair shop for bicycles

Michenzani

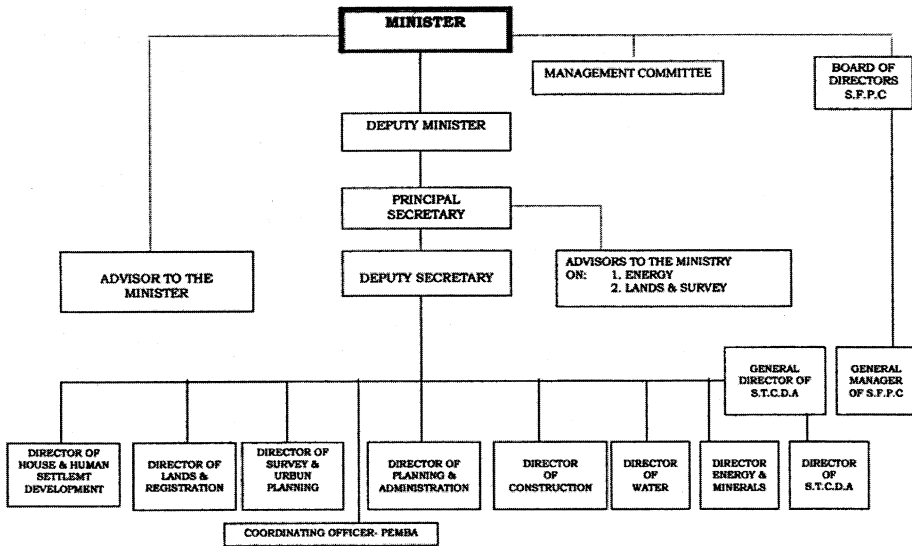
31. Mini Market
32. Combined perfumery and haberdasher's shop
33. Clothes shop
34. Work and repair shop for white goods
35. Clothes and accessories shop
36. Cosmetic and make-up shop
37. Bag, handbags and suitcase shop
38. Perfumery shop
39. Mini Market
40. Mini Market

Stone Town

41. Clothes and shoes shop
42. Textile shop
43. Jeweler's shop
44. Jeweler's shop
45. Fashion clothes shop
46. Baby accessories shop
47. Sport accessories shop
48. Souvenir shop
49. Clothes and kanga shop
50. Jeweler's shop

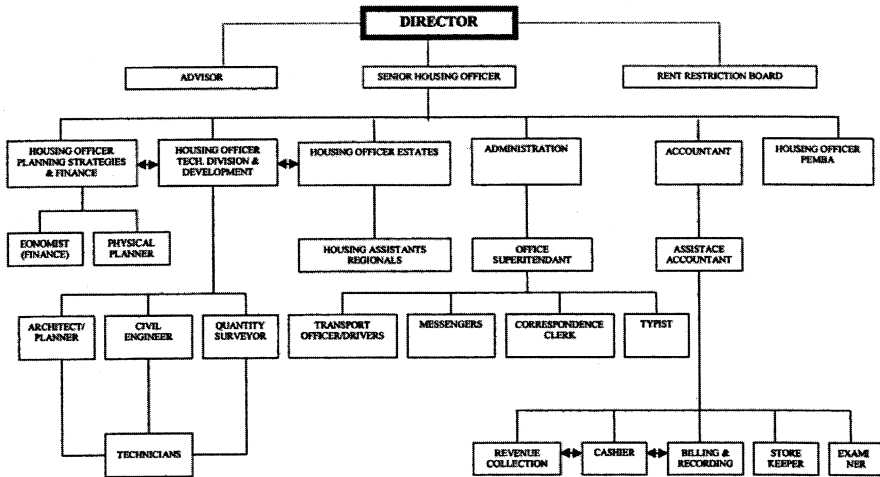
Appendix 3: Organisation chart of MoWCEL

ORGANISATION FOR MINISTRY OF WATER CONSTRUCTION ENERGY AND LANDS - ZANZIBAR.



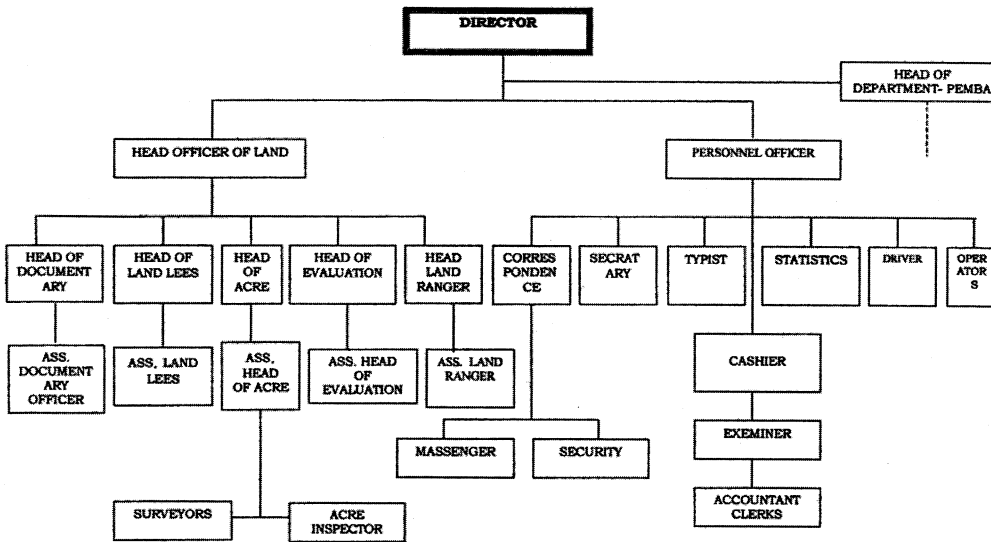
Appendix 4: Organisation chart of DoHHSD

ORGANISATION FOR DEPARTMENT OF HOUSING AND HUMAN SETTLEMENT DEVELOPMENT



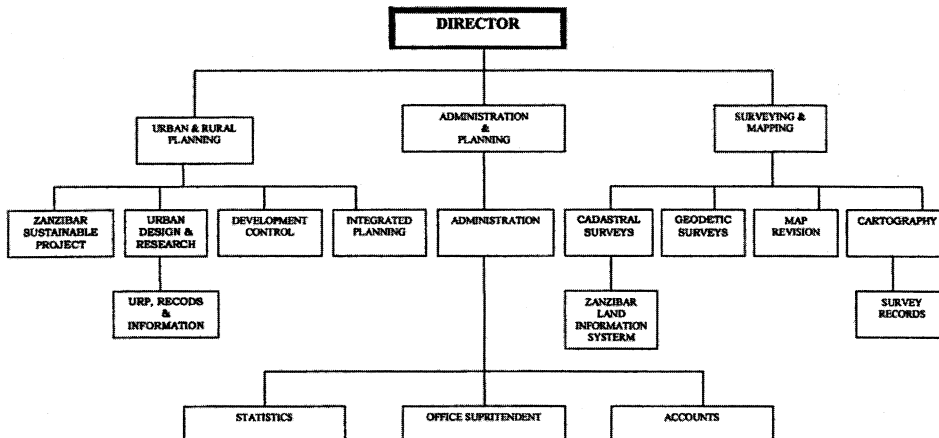
Appendix 5: Organisation chart of DoLR

ORGANISATION FOR DEPARTMENT OF LAND AND REGISTRATION

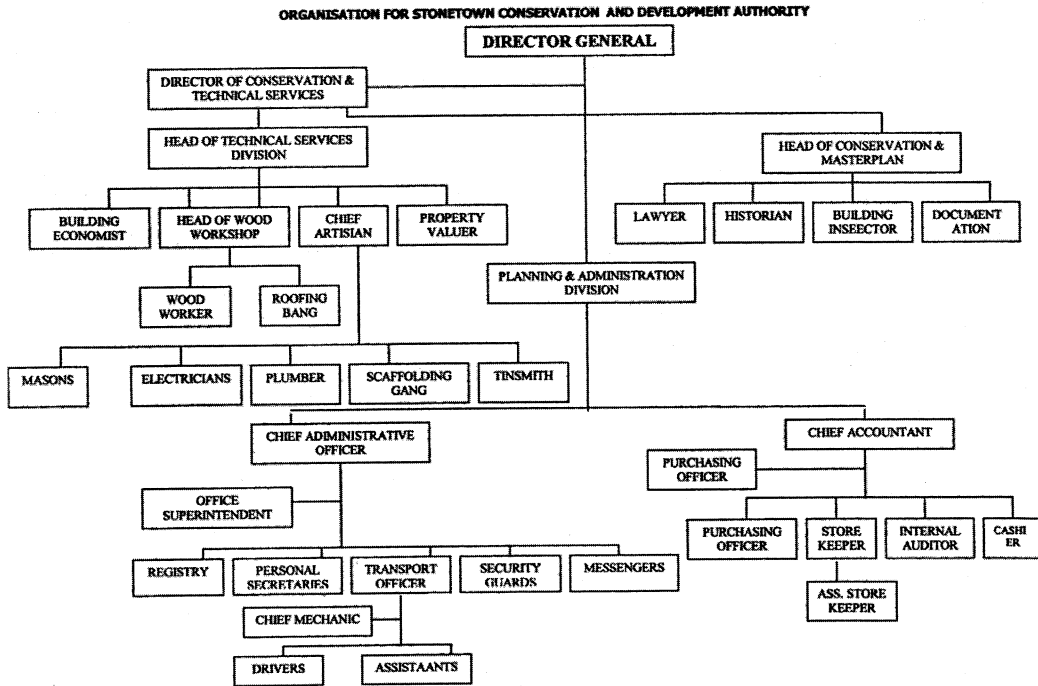


Appendix 6: Organisation chart of DoSUP

ORGANISATION FOR DEPARTMENT OF SURVEYING AND URBAN PLANNING



Appendix 7: Organisation chart of STCDA



Appendix 8: Authors

In this study some authors have been extensively used. As these authors are of such different origin there is a need to present them. These authors are:

- Dale, Mahoney and McLaren
- Middleton
- Shao
- Törhörnén

Peter Dale

Honorary President of the International Federation of Surveyors. Emeritus Professor of the University of London and has served as Professor in Land Information Management at University College London. Trained as a land surveyor and spent seven years serving in the Department of Lands and Surveys in Uganda before embarking on his academic career.

Robert Mahoney

Director of Business Information Management, a company he formed in 1988 to provide a wide range of independent GIS and land information consultancy services. The current Chairman of the RICS Geomatics Faculty.

Robin McLaren

Director of Know Edge Ltd a UK based, independent management consulting company formed in 1986 specialising in optimising the business benefits of land and property related information through the strategic design and implementation of information systems and services.

John Middleton

Professor of Anthropology and Religious Studies Emeritus at Yale University. He holds a Doctor of Philosophy degree from the University of Oxford, England, and has taught at London, Cape Town, Lagos, Northwestern, New York and Yale Universities. Important to mention about Middleton is that his book used in this report is written and published in 1961, which is before the revolution in Zanzibar that took place in 1964.

Ibrahim Folkas Shao is a Senior Lecturer in the Institute of Development Studies at the University of Dar es Salam. He earned his B.A and M.A from the University of Dar es Salaam.

Mika-Petteri Törhörnén

Researcher at the Helsinki University of Technology.

