

ZANZIBAR YEARBOOK OF LAW



ZANZIBAR YEARBOOK OF LAW

VOLUME 2 - 2012

TRANSFORM JUSTICE



INTO PASSION

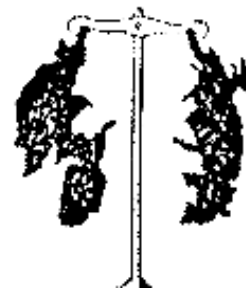
VOLUME 2 2012

**ZANZIBAR YEARBOOK OF LAW
(ZYBL)**

VOLUME 2

2012

Transform Justice



Zanzibar Legal Services Centre (ZLSC)

Into Passion

ZANZIBAR YEARBOOK OF LAW (ZYBL)

Published by:

ZANZIBAR LEGAL SERVICES CENTRE (ZLSC)

House No. 37 Migombani (Opposite Migoz Supermarket)

P.O Box 3360 Zanzibar, Tanzania

Tel.: +255 24 2233784 Fax: +255 24 2234495

E-Mail: E-Mail: info@zlsc.or.tz

Website: www.zlsc.or.tz

Sub-Office: Chake Chake, Pemba

P.O. Box 18 Chake Chake, Pemba

Tel.: +255 24 2452936 Fax: +255 24 2452916

© Zanzibar Legal Services Centre (ZLSC)

ISBN 9987-697-12-7

Published with the kind support from the Embassy of Sweden, Dar es Salaam, Tanzania; the Embassy of Finland, Dar es Salaam, Tanzania; Norwegian Embassy, Dar es Salaam, Tanzania; Open Society Initiative for Eastern Africa; and Ford Foundation, Office for Eastern Africa, Nairobi, Kenya.

ZANZIBAR YEARBOOK OF LAW (ZYBL)

Advisory Editorial Board

Hon. Omar Othman Makungu	Chief Justice of Zanzibar - Chairperson
Hon. Othman Masoud Othman	Attorney General of Zanzibar - Member
Hon. Awadh Ali Said	President, Zanzibar Law Society - Member
Ms. Fatma Iddi Ali	Chairperson, ZAFELA - Member
Ms. Khadija Shante	Member, Zanzibar Law Society - Member

EDITORIAL COMMITTEE

Prof. Chris Maina Peter	Chair of the Board, ZLSC - Chairperson
Ms. Safia Masoud Khamis	Board Member, ZLSC – Member
Ms. Josefrieda Pereira	Board Member, ZLSC - Member
Ms. Salma Haji Saadat	Board Member, ZLSC – Member
Ms. Harusi Miraji Mpatani	Executive Director, ZLSC – Secretary

EDITORIAL MANAGEMENT

Managing Editor

Prof. Chris Maina Peter	Chair of the Board of Trustees, Zanzibar Legal Services Centre (ZLSC); and Professor of Law, School of Law, University of Dar es Salaam, Tanzania.
-------------------------	--

Editorial Advisor

Prof. Saida Yahya-Othman	Final Draft Ltd, Dar es Salaam, Tanzania.
--------------------------	---

Editorial Assistant

Dr. Juliana Masabo	School of Law, University of Dar es Salaam.
--------------------	---

INTERNATIONAL EDITORIAL ADVISORY BOARD

Prof. Gudmundur Alfredsson,
Raoul Wallenberg Institute of Human
Rights and Humanitarian Law, Lund,
SWEDEN.

Ms. Evelyn A. Ankumah,
Executive Director,
Africa Legal Aid,
The Hague,
THE NETHERLANDS.

Prof. Thomas F. Geraghty,
Northwestern School of Law,
Northwestern University,
Chicago,
UNITED STATES OF AMERICA.

Prof. Ameze Guobadia,
The Nigerian Institute of Advanced
Legal Studies,
Lagos,
NIGERIA.

Hon. Mr. Justice Ben Kioko,
African Court of Human and Peoples'
Rights
Arusha,
TANZANIA.

Ms. Alice Mogwe,
Executive Director,
Ditshwanelo,
Gaborone,
BOTSWANA.

Dr. Maria Nassali,
Executive Director,
International Governance Alliance,
Kampala,
UGANDA.

Prof. Joseph Oloka-Onyango,
Faculty of Law,
Makerere University,
Kampala,
UGANDA.

Prof. Abdul Paliwala,
School of Law,
University of Warwick,
Coventry,
UNITED KINGDOM.

Hon. Prof. Sam Rugege,
The Chief Justice of Rwanda,
The Supreme Court,
Kigali,
RWANDA.

Prof. Abdallah Jumbe Saffari,
Advocate,
Dar es Salaam,
TANZANIA.

Prof. Eduard Somers,
Ghent School of Law,
University of Ghent,
Ghent,
BELGIUM.

Prof. Dr. Ulrike Wanitzek,
Faculty of Law,
University of Bayreuth,
Bayreuth,
GERMANY.

Judge Abdulqawi A. Yusuf,
International Court of Justice,
The Hague,
THE NETHERLANDS.

PREFACE

One, two ... the journey has began and it is picking the tempo. Zanzibar Yearbook of Law (ZYBL) is in its second year. A lot of effort and support from friends have made this possible. We are eternally grateful to all for trusting in Zanzibar Legal Services Centre (ZLSC) that it will not only produce a world-class Yearbook but it will maintain the tradition.

The President of Zanzibar, H.E. Dr. Ali Mohamed Shein graced our maiden publication with a foreword in which he proudly noted that:

I understand that Zanzibar is only the second country in Africa, after the Republic of South Africa, to publish a *Yearbook* of this nature. This is an important feat for which Zanzibar should be legitimately proud.

He went on to challenge the Editorial Advisory Board:

I have no doubt in my mind that under the Advisory Board led by the Chief Justice of Zanzibar, the quality of the *Yearbook* will improve in the years to come.

We have taken the challenge by the President seriously as indicated in the contents of Volume Two of the Yearbook. We have articles on global, African, East African, Tanzanian and Zanzibari issues.

The topics covered include climate change from an African perspective; international disaster relief; attempts to define terrorism; use of force in international law; an introduction to the African Commission on International Law; the international criminal court and the various challenges facing in the connection with Africa including prosecuting African rulers; and colonial boundaries in Africa and the problems they occasion.

Other areas examined are the killing of the constitutional culture in East Africa; genocide in Rwanda; rights of women in Tanzania and South Africa; immunity of heads of State while in office and thereafter; promotion and protection of human rights particularly through alternative dispute resolution; justice versus technical rules in the courts of law; the functions of the Zanzibar House of Representatives; the rights of the child; prosecuting pirates operating in the Indian Ocean; political and institutional challenges facing the East African Community; judicial reforms being implemented in Rwanda today; improving access to justice in Tanzania using paralegals; and the

phenomenon of witchcraft and its contribution to the violation of human rights in Tanzania.

Reviewed this time around is a book on post 1964 revolution in Zanzibar. This book which is in Kiswahili and German languages focuses on those who served under the last Sultan of Zanzibar – the majority of whom are living abroad either in the Gulf or in Europe. They were interviewed by researchers from the University of Hamburg in Germany.

Lastly, the *Yearbook* lists all the new laws passed by the Zanzibar House of Representatives in the course of the year 2012. Thus, Volume Two of the *Yearbook* has kept the tradition of being diverse in terms of contributions and sources of materials and informative and relevant at the same time.

Chris Maina Peter
Managing Editor
ZANZIBAR

TABLE OF CONTENTS

Preface	v
Contents	vii
List of Contributors	x
Abbreviations	xii
Lead Article	
Climate Change, Natural Disasters and Human Security: International Law and Diplomacy Responses from an African Perspective <i>Oliver C. Ruppel</i>	3-25
General Articles	
A Comprehensive and Multilateral Convention on International Disaster Relief: Is It Feasible? <i>Ki-Gab Park</i>	29-70
The Use of Force in Self-Defence against Non-State Actors in International Law: Recalling the Foundational Principles of International Law <i>Dire Tladi</i>	71-87
The African Union Commission on International Law Four Years after Its Establishment: Prospects and Challenges <i>Adelardus Kilangi</i>	87-113
Africa and the ICC: Legitimacy and Credibility Challenges <i>Abdul Tejan-Cole</i>	115-135
Is There An African <i>Uti Possidetis Juris</i> ? <i>Abdulqawi A. Yusuf</i>	137-152
Justice Versus Democracy: The Implications of ICC Charges for the Kenyatta Presidency <i>George Kegoro</i>	153-176
Women and the New Constitution Making Process in Tanzania: Some Lessons from South Africa <i>Magdalena K. Rwebangira</i>	177-199
Freedom of Expression and Limitations in Tanzania: Lessons from International Experience <i>James Jesse</i>	201-242

The Nature and Scope of Immunity of the Head and Ex – Head of State of the United Republic of Tanzania <i>Ganga Ben Mlipano</i>	243-267
Human Rights and Alternative Dispute Resolution in Tanzania: Practice and Challenges of the Commission for Human Rights and Good Governance <i>Hamisa Omari and Fahamu H. Mtulya</i>	269-286
Justice and Technicalities: A Plea for Legislative and Precedential Changes <i>Fauz Twaib</i>	287-314
Articles on Zanzibar	
The Working of the Legislature in Zanzibar <i>Mussa Kombo Bakari</i>	317-329
The Policy, Legal and Institutional Framework for the Protection of Children's Rights in Zanzibar <i>Robert V. Makaramba</i>	331-351
Shorter Articles	
The Prosecution of Alleged Pirates: Is Outsourcing the Solution? <i>Eddy Somers</i>	355-371
East African Community: Challenges of Politics and Institutional Weaknesses <i>Juma V. Mwapachu</i>	373-385
Judicial Reform and Public Confidence in Rwanda <i>Sam Rugege</i>	387-399
Improving Access to Justice in Tanzania: The Role of Paralegals <i>Felista Mauya</i>	401-411
Witchcraft Phenomena and the Violation of Human Rights in Tanzania <i>Simeon Mesaki</i>	413-424

Book Reviews	427-430
<i>Kurt Hirschler</i>	
Recent Developments in the Law in Zanzibar	
Laws Enacted by the Zanzibar House of Representatives in 2012	433-434
Glossary	437-441
Table of Cases	445-450
Selected Publications on or About Zanzibar	453-454

LIST OF CONTRIBUTORS

BAKARI, Mussa Kombo: Chief House Counsel and Head of Department of House Business, Zanzibar House of Representatives, Zanzibar, Tanzania.

HIRSCHLER, Kurt: Political Scientist, Hamburg, Germany.

JESSE, James: Lecturer in Law, University of Dar es Salaam, Dar es Salaam, Tanzania.

KEGORO, George: Executive Director, International Commission of Jurists (ICJ), Kenya Chapter, Nairobi, Kenya.

KILANGI, Adelardus: Lecturer and Dean, School of Law, St. Augustine University of Tanzania, Mwanza, Tanzania; and Commissioner and President of the African Union Commission on International Law, Addis Ababa, Ethiopia.

MAKARAMBA, Robert V.: Puisne Judge of the High Court of Tanzania, Dar es Salaam, Tanzania.

MAUYA, Felista: Programme Officer, Legal and Human Rights Centre, Dar es Salaam Tanzania.

MESAKI, Simeon: Retired Senior Lecturer of the Department of Sociology and Anthropology, University of Dar es Salaam, Tanzania.

MLIPANO, Ganga Ben: Assistant Manager (Litigation and Investigation), Bank of Tanzania, Dar es Salaam, Tanzania.

MTULYA, Fahamu H.: Lecturer in Law, Institute of Judicial Administration, Lushoto, Tanzania; Advocate of the High Court of Tanzania; and Assistant Commissioner, Tanzania Commission for Human Rights and Good Governance, Mwanza, Tanzania.

MWAPACHU, Juma V.: Immediate Past Secretary General, East African Community, Arusha, Tanzania; and Chair, University of Dodoma Council.

OMARI, Hamisa: Advocate of the High Court of Tanzania, Mwanza, Tanzania.

PARK, Ki-Gab: Professor of Law, School of Law, Korea University, Seoul, Korea; Member of the UN International Law Commission (ILC).

RUGEGE, Sam: The Chief Justice of Rwanda, Kigali, Rwanda.

RUPPEL, Oliver C.: Professor of Law, Faculty of Law, University of Stellenbosch, Republic of South Africa and Director of the Development and Rule of Law Programme (DROP) at the same University.

RWEBANGIRA, Magdalena K.: Advocate of the High Court of Tanzania, and Legal and Gender Consultant, Dar es Salaam, Tanzania.

SOMERS, Eddy: Professor of Law, Department of Public International Law, Ghent Law School, Ghent University, Ghent, Belgium.

TEJAN-COLE, Abdul: Executive Director, Open Society Initiative for West Africa (OSIWA), Dakar, Senegal.

TLADI, Dire: Professor of International Law, University of Pretoria, Pretoria, Republic of South Africa; and Member of the UN International Law Commission (ILC).

TWAIB, Fauz: Puisne Judge of the High Court of Tanzania, Dar es Salaam, Tanzania.

YUSUF, Abdulqawi A.: Judge, International Court of Justice (ICJ), The Hague, Netherlands.

ZANZIBAR LEGAL SERVICES CENTRE (ZLSC)
House No. 37 Migombani (Opposite Migoz Supermarket)
P.O Box 3360 Zanzibar, Tanzania
Tel.: +255 24 2233784 Fax: +255 24 2234495
E-Mail: info@zlsc.or.tz
Website: www.zlsc.or.tz

Sub-Office: Chake Chake, Pemba
P.O. Box 18 Chake Chake, Pemba
Tel.: +255 24 2452936 Fax: +255 24 2452916

TRANSFORM JUSTICE



INTO PASSION

ISBN 9987-697-12-7