

ADVOCACY EXPERT  
SERIES

Policy, Law and Governance in  
Tanzania

# ADVOCACY EXPERT SERIES

Policy, Law and Governance in Tanzania

Developed by  
Pact Tanzania

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# Table of Contents

<b>Acknowledgements</b>	<b>i</b>
<b>Introduction</b>	<b>ii</b>
<b>Law, Public Policy and Public Participation</b>	<b>6</b>
<b>The Basis and Sources of Law in Tanzania</b>	<b>8</b>
Sources of Law and their Importance	8
The Constitution	8
Precedent	10
The Common Law	10
Public International Law	11
Customary Laws	11
<b>Public Policy</b>	<b>13</b>
What is Public Policy	13
Types of Policies	13
Public Policy Making Process	14
The president	14
The Cabinet	15
The Ruling Party	15
The Parliament	15
The Judiciary	16
Steps of formulating a policy	16
Policy Formulation and Implementation Chart	17
Civil Society participation in Formulation of Public Policy	18
Policy Implementation	18
Strategic Entry Points for Civil Society in the Policy	19
<b>Governance: Legal and Institutional Structures</b>	<b>20</b>
The basics of the Constitution	20
The Three Main branches of the Government	21
The Central Government	21
Regional and District Administration	23
Independent Departments	24
Governance at the Grassroots Level	24
The Tanzania mainland Legislature	25
The Zanzibar House of Representatives	25
The Judiciary	26
The Court System in Tanzania Mainland	27
The Judiciary in Zanzibar	28
The Relationship between three branches of the Government	28
Role of Civil Society in Governance	29
Civil Society Participation in Governance Process at Central and Local Levels	30
<b>The Budget making Process</b>	<b>31</b>
Introduction	31
What is a Government Budget	31
The Budget Making Process	32
Responsibilities of Departments	33
Submission of the Government Budget Estimates	35

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The Series consists of 6 Manuals:

- Policy and Law Making in Tanzania
- Civil Society and Advocacy
- Media Guide
- Building and Maintaining Networks and Coalitions
- Community Mobilisation
- Gender Mainstreaming

These manuals can be used separately, but together, form a comprehensive resource on conducting advocacy in Tanzania.

The materials have been adapted from a variety of sources and these are referenced in the back of each manual. Many thanks goes to those staff members that spent many hours in the development and editing of the series - Josh Agukoh, Dan Craun-Selka, Jamillah Mwanjisi, Nora Pendaeli, Grace Muro, Lilian Badi, Theo Macha and Mbelwa Gabagambi. Pact Tanzania would like to recognize the assistance and contributions of Dan Spealman from Pact headquarters and the Tanzania Media Women Association to the Media Guide. We thank Dr. Konjit Fekade and Phyllis Craun-Selka for producing the first Gender Mainstreaming manual. We acknowledge the contributions of illustrator Nathan Mpangala and photographer Mwanzo Millanga for their art work.

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The manuals' production was funded by the United States Agency for International Development/Tanzania.

We dedicate these manuals to Tanzanian Civil Society Organizations, who play a crucial role in the development of this beautiful country.



## INTRODUCTION

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This guide to Policy, Law and Governance in Tanzania was adapted from Pact Tanzania's *Legislative Roadmap: A Guide for Civil Society Organizations in Tanzania*. The information and production of this material was a participatory process with representatives from civil society in Tanzania. These representatives were involved in the testing of the material which grew out of Pact's experience in implementing the Tanzania Advocacy Partnership Program (TAPP).

This guide explains the formation of laws and public policies in Tanzania. It outlines what laws are and their sources. It provides civil society actors information on the interrelationship between laws and policy and how advocates can effectively use this information to influence change. The guide provides pointers as to which are effective entry points for civil society in relation to the existing government structures. Included in this guide is also a chapter on the budget making process in Tanzania.

While non-governmental organizations are the primary target user of this manual, it is expected that the guide will be used by a wide range of organizations representing civil society to interact with government at all levels. This manual is designed to present the information in a simple and straightforward manner, but it does not have all the answers or steps regarding governance structures in Tanzania. We encourage the reader to seek a variety of sources to learn more about the political structures and processes here in Tanzania.

We thank USAID Tanzania for funding the production of this booklet and the entire Advocacy Expert Series.

We encourage you to copy all or part of this guide and to share it with others. This book may not be sold.

# 1

## LAW, PUBLIC POLICY AND PUBLIC PARTICIPATION

One of the most important powerful acts in any society is the ability to create and enforce laws. The people who hold this power have tremendous influence over the lives of citizens. The purpose of this book is to explore how advocates and civil society leaders can use the legal system to improve the lives of people and advance the goals of an advocacy campaign.

### What is Law and Its Role in Society?

A law is a rule of behaviour or conduct established and enforced by the government for the benefit of its citizens. Laws help people to interact with each other, set standards, resolve conflicts, and protect people from harm. Good laws must be:

**JUST**, they uphold basic principles of human rights enshrined in the constitution,

**FAIR**, they must apply to everyone equally

**UNIVERSAL**, they must apply to all situations of similar behaviour,

**PRECISE**, they must be clearly defined and not contradict other laws,

**ENFORCEABLE**, they must be easy to understand and follow so people can use them to protect and defend their rights.

A law is supposed to be observed-failure of which leads to punishment or sanctions. In contrast social norms are used to lead and regulate social conduct in certain communities. Breach of such norms do not necessarily attract punishment.

*There are two main branches of laws:*

- *Civil law*
- *Criminal law.*

There are several types of laws depending on the basis of categorization. We have, for example, civil law as opposed to criminal law, public law as opposed to private law, international law as opposed to domestic law, etc. But the two main branches of law are civil and criminal law.



# 2

## THE BASIS AND SOURCES OF LAW IN TANZANIA

### Sources of Law and their Importance

A statute is a written law that is passed by Parliament or other law-making body.

Precedent is made by cases decided by judges in courts of law. There are however, other sources of law such as government directives, custom, convention, morals and religion.

*There are two main Sources of Law:*

- *Written laws*
- *Precedent.*

### The Constitution

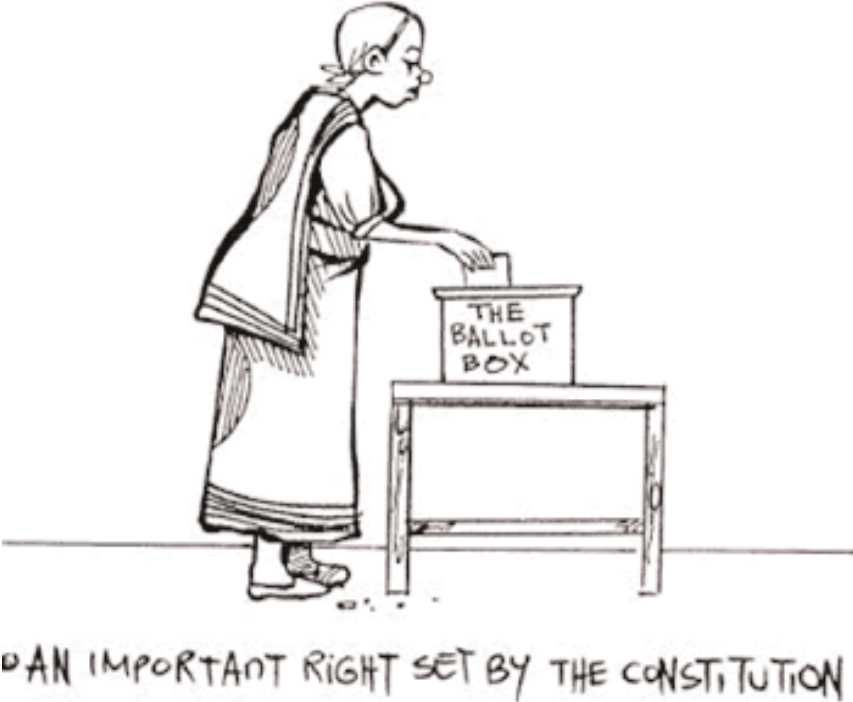
The Constitution is the supreme law of a country. It is the main source of law in which duties and rights of the people are defined. This means that all other laws draw their legitimacy from the Constitution. Any person who feels a certain law or person has violated the Constitution can go to court to seek redress. The Court of Appeal or the High Court will declare such law or action that is not in agreement with the Constitution as unacceptable. All laws must adhere to the Constitution.



*The Constitution provides Tanzanians the right to participate or contribute to affairs that affect their welfare.*

The Constitution states that every citizen has a freedom of SPEECH, and the right to participate in public affairs. Therefore, through sensitization, advocacy, and lobbying the government, representatives of civil societies must ensure that the public is involved in the process and the Constitution is adhered to.

Laws that are made by Parliament are known as Principal Legislation



### Statutes

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Statutes are also important sources of law. They are usually called legislation

There are different types of legislation;

#### (a) Principal Legislation

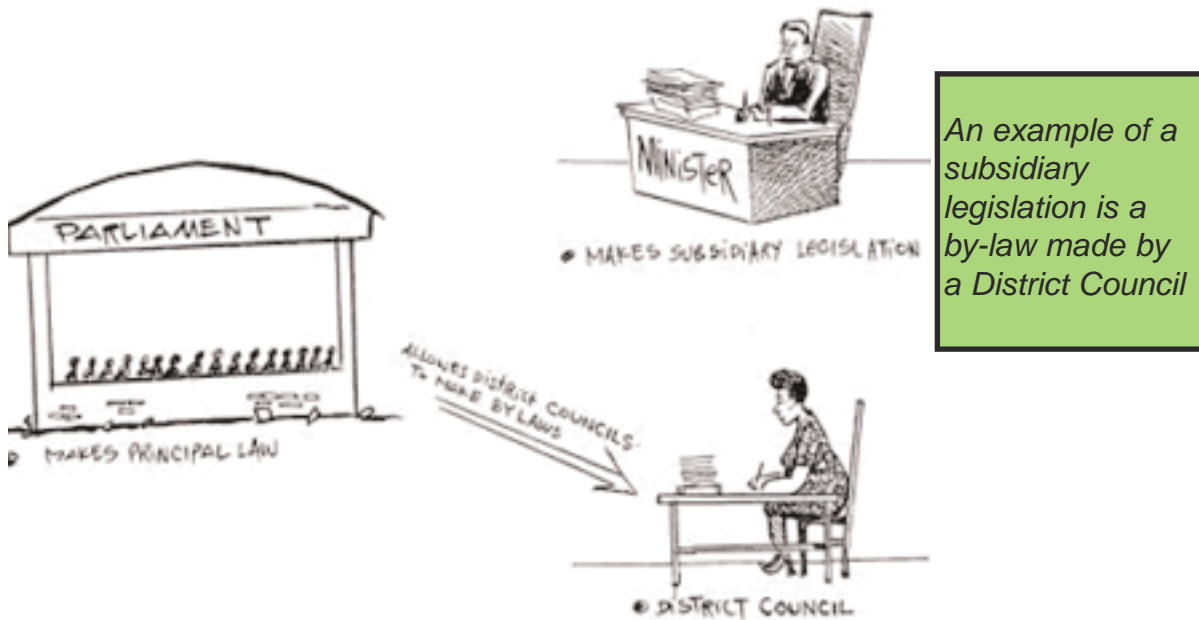
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These laws are made by Parliament. They are called principle legislation. An example of a principal legislation is the Villages Land Act of 1999. Parliament also makes laws that permit another body or person to make law.

#### (b) Subsidiary or Delegated Legislation

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A person, body or other authority acting on powers of a principal legislation made by Parliament enacts subsidiary or delegated legislation. The authorities can be District Councils or a Minister.



*An example of a subsidiary legislation is a by-law made by a District Council*

## Precedent

Precedent is the decision of a superior court such as the High Court or Court of Appeal, which the lower courts must follow when deciding cases of the same nature. The lower courts must follow the decisions of the Court of Appeal and the High Court. The High Court and Court of Appeal can, therefore, be said to “make law” for the lower courts because their decisions become a source of law for the lower courts. The High Court must also follow decisions of the Court of Appeal.

## The Common Law

*Common law was developed through court decisions and is not made by Parliament*

The common law is another source of law for Tanzanian courts also known as the “traditional law” of England. It has developed over time through decisions of the courts in England. The common law is not made by the British Parliament, but contains a set of principles developed through the courts. These principles were used to decide cases, and later became law.

The common law is similar to the “customary law” of Tanzania as it originates from the norms of the people of England. The principles of common law were introduced into Tanzania after being used in Indian colonial courts. Examples are the Indian Penal Code, the Indian Law of evidence, the Indian Civil Procedure Code, the Societies Ordinance, and the Indian Law of Contract. These laws, which were written during the colonial period, embody common law principles and constituted part of our laws. They are still in use to date.

At independence, the laws were changed but courts continued to apply common law principles. Some of the laws have been amended from time to time in order to reflect the real needs of the people. In the case of a gap in our law the courts apply common law principles. Cases decided by courts during the colonial period are still applied by our courts today.

## Public International Law

International law is a body of rules that bind nation-states as members of the international community. Every member state, which has ratified such rules, is bound by them. The main sources of international law are customary international law, treaties and decisions of international tribunals and writings of famous authors in international law. The primary subjects of international law are states, not individual citizens. International law governs the relationship between states. It creates rights and duties for states towards its citizens and it can also create rights for individuals. International law also sets norms and standards that need to be respected by the people.

*International Law governs the relationship between states.*

### Examples of International Laws

*International Human Rights laws,  
International Humanitarian Law,  
International Environmental law  
Law of the Sea*

International law is not automatically applicable in Tanzania. It needs to be ratified by Parliament and be incorporated in domestic law. However, some principles of international laws are applicable in our country irrespective of their incorporation in national law. An example of these are international human rights standards which become effective soon after being declared by the relevant United Nations organ.

## Customary Laws

Customary law may be defined as traditional norms or customs having common usage, recognized and accepted as such by any local community and given force of law by the state.



Customary laws also have to be in accordance with the Constitution. Tanzania codified the customary laws of the patrilineal tribes in 1963. As for the matrilineal tribes whose customary norms are not yet codified, they have to be proved as facts in courts of law when there is dispute requiring the application of such norms to resolve.



*Government has outlawed some customary laws that discriminate against members of society.*

# 3

## PUBLIC POLICY

### What is Public Policy?

A public policy is a statement of the Government guiding principles and goals in addressing a public issue. The policy provides for a means for citizens to hold their government to account for its actions concerning issues of public interest. A public policy is not a law and cannot be enforced in a court of law.



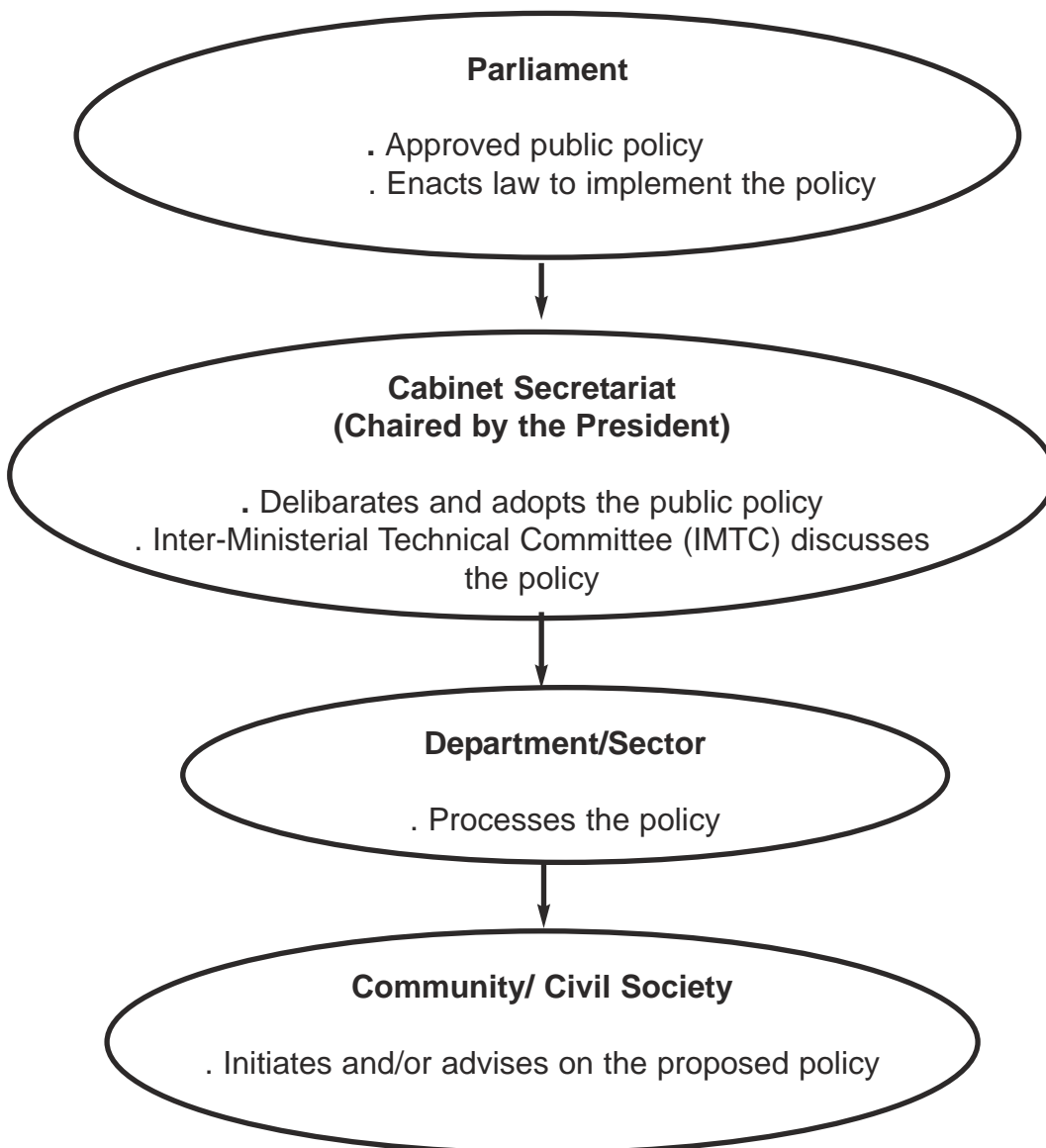
For a public policy to be enforceable, there must be a corresponding law to give it effect. Policies can, however, exist on their own and vice versa. Examples of public policies are the National NGO Policy, the National Environment Policy and sectoral policies, such as the Beekeeping Policy, Mining Policy, etc.

*Public policy can be either in the form of a document or Government action.*

### Types of Policies

There are two main types of policies:

- (i) Policies made by the government
- (ii) Policies made by social institutions, like political parties or organizations.



## The President

The President has powers to assent to public policy. The President normally consults with advisors from the department concerned. Furthermore, the President can be lobbied and influenced by civil society to make certain public policy for the we fare of the public.

*The President can also be lobbied and influenced by civil society to make public policy.*

## The Cabinet

The Cabinet secretariat is made up of all Ministers under the chairmanship of the President. It is the main body that advises the President on all matters of the Government, including public policy. The Minister responsible for particular sector policy normally puts the proposed policy before a Cabinet meeting for discussion. After discussion by the Cabinet, the proposed policy is taken to the Interministerial Technical Committee (IMTC), which brings together all Permanent Secretaries - the heads of operations in Ministries.

Normally the Government of the day implements the policy of the ruling party.

## The Ruling Party

Because of that the ruling party plays a big role in influencing public policy. In fact, most Government policies, which are public policies, are made out of the policies of the ruling party.

The Public and Civil Society Organizations (CSOs) should lobby for the inclusion of their interest in public policies. This can be done during party meetings, seminars and rallies.



## The Parliament

The role of Parliament is to approve public policies. Civil society organisations can use advocacy skills to lobby Members of Parliament to influence a Bill or a public policy.

*It is Parliament's role to approve public policies.*



## The Judiciary

The Judiciary influences public policy in the following three main ways:

- By interpreting the Constitution;
- By interpreting the law that is aimed at implementing public policy; and
- By deciding disputes relating to the implementation of public policies.

## Steps of formulating a policy

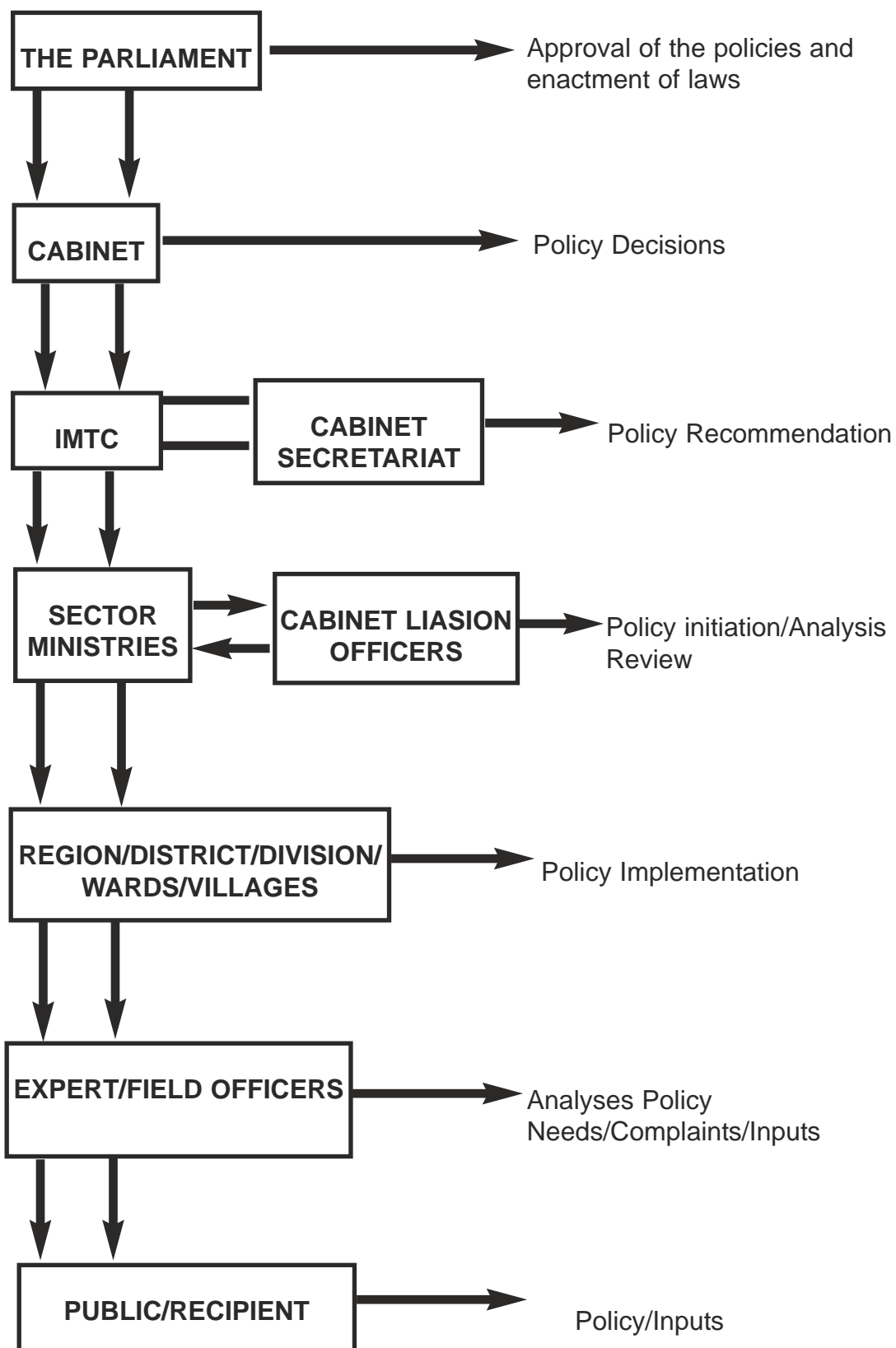
(a) The Government drafts a White Paper explaining the national public policy which is made available to the public for comments;

(b) The White Paper is then submitted to Cabinet for approval and then published;

(c) The White Paper is taken to Parliament for debate;

(d) Once Parliament has approved the policy, the government takes the necessary steps to implement it, including the drafting of laws and creation of relevant institutions for its management and administration.

# Policy Formulation and Implementation Chart



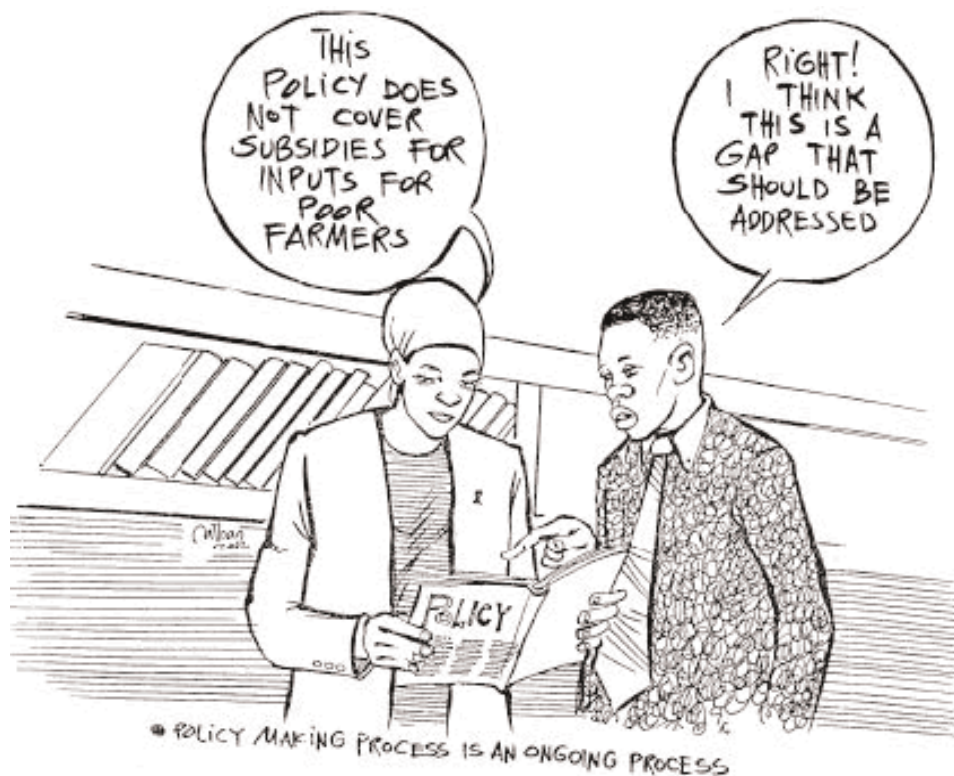
## Civil Society Participation in Formulation of Public Policy

Civil society can participate in the policy making process by:

- (a) Reviewing public policy;
- (b) Promoting formulation of new policy;
- (c) Conducting research which will inform decision-makers by giving them data required for strategic policy decisions;
- (d) Providing technical assistance in the drafting of policies;
- (e) Lobbying decision-makers to influence the formulation of crucial policies as well as securing their adoption;
- (f) Assisting in the implementation of public policies;
- (g) Creating awareness among the public on various public policies so as to garner support and influence positive change of behavioural patterns;
- (h) Networking with like-minded people to provide back - up for policies.

## Policy Implementation

After the cabinet has approved the policy document, it is released for public consumption. The Ministry responsible for the policy then commences a process of preparing the policy implementation strategies and tools, including the drafting of the relevant laws and the creation of relevant institutions.



## Strategic Entry Points for Civil Society in the Policy

The points of entry for Civil Society to influence the public policy making process include:

- (a) Identifying areas of concern;
- (b) Consult the relevant government authority about the problems;
- (c) Discuss proposed draft policies in stakeholder fora;
- (d) Submit views on proposed policy documents to relevant ministries;

### After Policies are approved by government:

- (e) Call meetings to discuss new policies for better understanding;
- (f) Dissemination and translation of new policies, The Government prepares a bill to operationalise the policy:
- (g) Translate and dissemination of the new Act of Parliament to the public;
- (h) Make the public understand the consequences and benefits of the law.

# 4

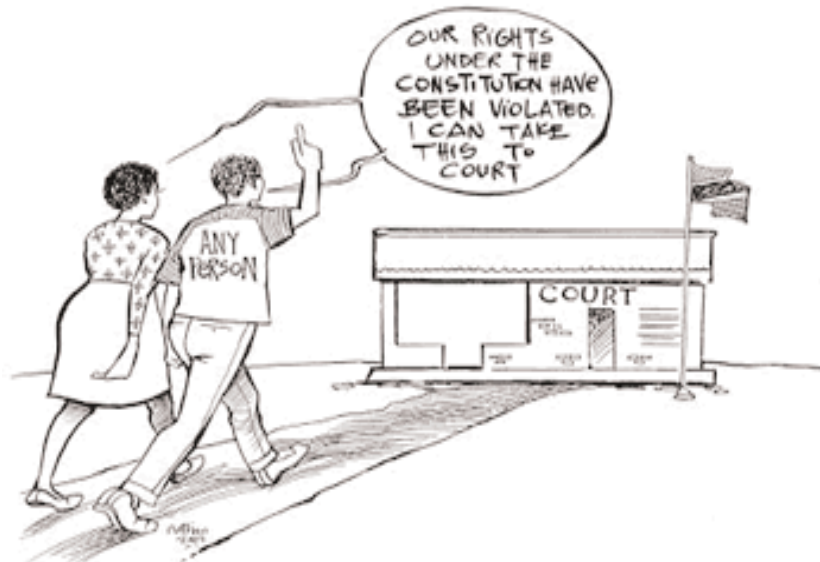
## GOVERNANCE: LEGAL AND INSTITUTIONAL STRUCTURES

### The Basis of the Constitution

The Constitution provides for the framework and the principle functions of the branches of the state. It also declares the principles governing the operation of those branches. In Tanzania, there are two Constitutions. These are the Constitution of the United Republic of Tanzania of 1977 and the Constitution of Zanzibar of 1984. Whenever citizens feel that the Constitution or some of its parts are no longer appropriate, they have the right to change it by initiating the process of review. This has to be done in accordance with the procedure provided for in the Constitution.

*The Constitution is enacted by a special Parliament called the "Constituent Assembly" on behalf of all citizens.*

The Constitution of the United Republic of Tanzania provides for public participation by all citizens in the affairs of their country. It provides that all people have the freedom of speech, freedom of association and freedom of participation in public activities. Therefore, through mobilization, advocacy and lobbying, civil society must ensure that the people take part in ensuring that the Constitution is safeguarded. This can be done through mobilization, awareness creation and public sensitization on government action or decisions and explains how the latter may impact public welfare.



*The Constitution of the United Republic of Tanzania gives an opportunity for the citizenry to participate in important matters of their country.*

## The Three Main Branches of Government

The Government is made up of three branches. These are the Executive, the Legislature and the Judiciary.

### The Executive

The Executive branch of the Government is an elected body that exercises powers and performs public duties according to the Constitution. In the Union of Tanzania, there are two executive branches of the government.

### The Executive for the United Republic of Tanzania

The President of the United Republic of Tanzania (URT) heads the Executive for the United Republic of Tanzania (URT). The URT president is elected by the people of mainland Tanzania and Zanzibar in accordance with the constitution.

### The Executive for Zanzibar

The Executive for Zanzibar is the Revolutionary Government of Zanzibar (RGZ). The head of RGZ is the President of Zanzibar who is also the Chairman of the Zanzibar Revolutionary Council. Among others, the Zanzibar Revolutionary Council is made up of the Chief Minister and all Ministers of the RGZ. The Zanzibar Revolutionary Council is the main advisor of the Head of Revolutionary Government of Zanzibar with respect to all matters concerning the functions of the Head of the RGZ and supervises the Executive of Zanzibar. According to the Zanzibar Constitution of 1984 and the election laws, the citizens of Zanzibar elect their President and other leaders. The Zanzibar Government has the mandate on all non-union matters on Zanzibar.

*The Zanzibar Government has mandate on all non-union matters in Zanzibar.*

## The Central Government

The Tanzanian Central Government functions through regions and districts. There are a total of twenty six (26) regions in URT. On the mainland there are 21 regions and 5 are found on Zanzibar.

The Central Government operates through Ministries and Departments. It makes decisions on development objectives and creates internal policies. The Central Government includes both the Mainland and Zanzibar governments.

**The main actors in the central government are the following:**

## The President

The President of the United Republic is the Head of State, the Head of Government and the Commander in Chief of the Armed Forces. The President has various mandates under the constitution and as the head of government of the URT he has the authority over all Union matters and all mainland matters.

## The Cabinet

Cabinet is the main body that advises the President on all matters relating to the exercise of presidential powers in accordance with the constitution. Any advice that is given by the Cabinet to the president cannot be examined by a court.

The Cabinet has powers to present a statement to the Chief Justice for official recognition where the President fails to carry out his official duties due to illness of the body or mind. The Cabinet must discuss matters relating to government ministries, agencies and departments before presentation to the President for approval

*The Cabinet is the main advisory body to the President*

## The Vice President

The Vice President of the URT is the President's assistant in all matters and can be assigned special duties by the President. The VP also performs the functions of the President when the President is out of office or out of the country. The VP is elected as the running mate of the President.

## The Prime Minister

The PM is nominated by the President. The PM is appointed from a political party with majority members in the National Assembly. The PM can also be appointed from the party with the most support in the Parliament. The Parliament confirms the PM by Majority. The PM is the head of government business in the Parliament.

Ministers, Deputy Ministers and the Attorney General are appointed by the President from among the elected or nominated parliamentarians. This is done in consultation with the Prime Minister. Deputy Ministers are not members of the Cabinet. The Attorney General is a non voting member of the Cabinet and the chief legal advisor to the President. The President chairs all Cabinet meetings.

*The Prime Minister is confirmed by a majority of the Members of Parliament*

## Regional and District Administration

In both Tanzania Mainland and Tanzania Zanzibar there is a system of Local Government Authorities, which operates at the urban and district levels. The law gives powers to the Authorities to make by-laws. It also provides for the procedure for the conduct of their business and roles. Local government authorities may run their own tribunals and even maintain an Auxiliary Police for enforcing local government by laws.

The President of the United Republic, in consultation with the President of Zanzibar, creates Tanzania Zanzibar regions. A Regional Commissioner is appointed by the President in consultation with the Prime Minister to lead a region. The President of Zanzibar appoints Regional Commissioners(RC) for Zanzibar after consultation with the President of the United Republic.

*The mandate and functions of Regional Commissioners are stipulated under the Regional Administration Act, 1997.*

Every RC is responsible in supervising the implementation of Government functions in his/her region. The mandate and functions of the RC's are found in the Regional Administration Act, 1997. Regions are sub-divided into Districts, District Commissioner (DC's) in charge at this level are appointed by the President to supervise the government functions at District level. Division Secretaries assist DC's in their work.

## Independent Departments

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The Independent departments are established in accordance with the constitution. They have their own sub-vote allotted by treasury and do not fall under their parent ministries sub-votes. They prepare their own annual budgets and are administratively independent from the Ministries. The Budgets they prepare however are presented in parliament by the Minister. Examples of such departments include; The National Electoral Commission, The Civil Service Commission, and the Commission for Human Rights and Good Governance.

## Governance at the Grassroots Level

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### The Ward Development Committee

At the local level there are a number of districts. Each district is divided into divisions and each division consists of wards. Wards are made up of villages and villages are divided into Vitongoji. Vitongoji consist of households. In the area of every district council there is established a Ward Development Committee.

### Members of the Committee

The Ward Development Committee is composed as follows:

- Ward councillor;
- Village chairperson;
- A woman member from a political party represented in the district council;
- One invited person from non-governmental organizations or other civic groups involved in the promotion of development in the ward. The NGO representative in the Ward Development Committee does not have voting rights.

The composition of the Ward Development Committee strengthens the Village Government as the most basic unit of the system of Local Government Authorities and guarantees participation of all the people. The Ward Development Committee is responsible for the implementation of the decisions and policies of the District Council, and of development schemes at the level of the ward.

### The Legislature

The Legislature, also referred to as Parliament, means a body of persons having authority to make laws. The authority has been vested in the Parliament of the United Republic of Tanzania or the National Assembly - (Bunge) and the House of Representatives - (Baraza la Wawakilishi).

Any Tanzanian citizen who is a member of a political party and has attained the age of 21 years can contest to become a Member of Parliament.

## The Tanzania Mainland Legislature

The Parliament of the United Republic consists of two parts, the President and the National Assembly. We have already seen the role of the President in Parliament. This section explains the structure of the second part of Parliament, that is the National Assembly. The National Assembly consists of elected and appointed Members of Parliament (MPs).

*The Constitution states that at least 20% of the National Assembly is made up of women*

It is the principal organ of the United Republic, which has authority, on behalf of the people, to oversee and advise the Government of the United Republic and all its organs in the discharge of their respective responsibilities. Special seats make up 20 percent of all elected Members of Parliament. Ten Members are appointed by the President. Five Members are from the House of Representatives in Zanzibar.

The Members of Parliament elect the Speaker and Deputy Speaker from amongst themselves. However, those in government positions i.e. Ministers or Deputy Ministers cannot hold these posts. Every Member of Parliament must take an oath of office and must declare that he/she will protect and/or defend the constitution. He will declare all his/her property and that of his/her spouse. The aim of this provision is to ensure non corrupt acts. The term of office for every Member of Parliament is five years. After every five years the National Assembly is dissolved and fresh elections are held.

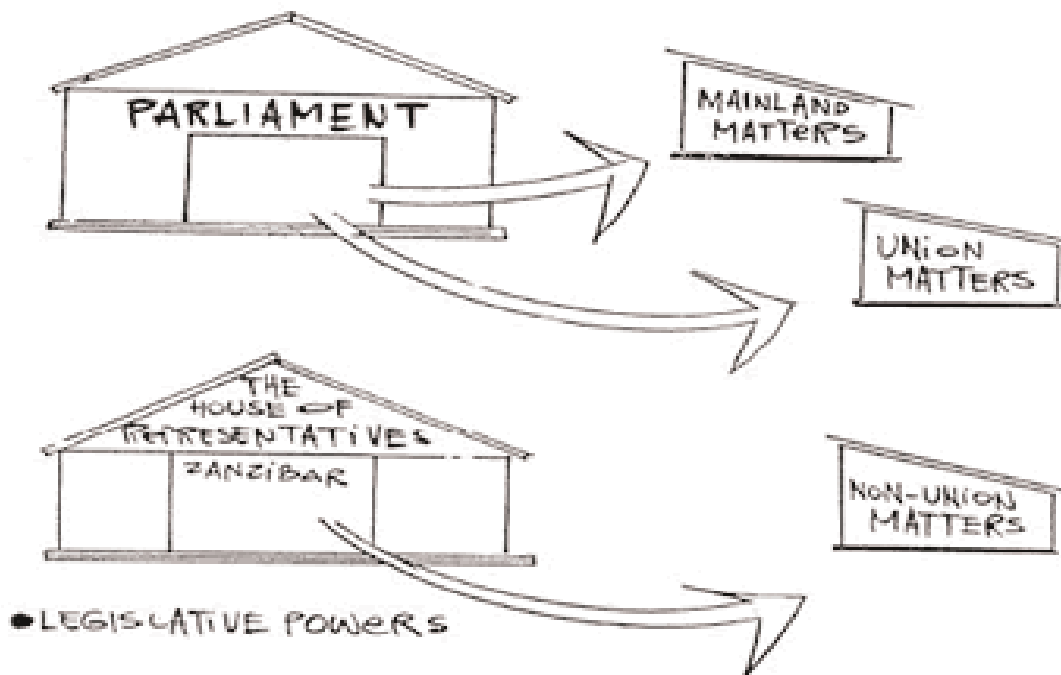
*A member of Parliament must give a special declaration of his/her property.*

## The Zanzibar House of Representatives

The House of Representatives comprises of two parts: one part consists of Members of the House elected or appointed in accordance with the provisions of the Constitution of Zanzibar of 1984. They are called Representatives. The other part of the House of Representatives is the Head of the Revolutionary Government of Zanzibar.

*The National Assembly has a term of 5 years.*

The House of Representatives has two main functions. First, it has legislative authority in Zanzibar over all non-union matters. Secondly, it is also the principal organ for Tanzania Zanzibar with the authority, on behalf of the people in Tanzania Zanzibar, to oversee and advise the Revolutionary Government of Zanzibar and all its organs in the discharge of their responsibilities in accordance with the Constitution of the United Republic of 1977 and the Constitution of Zanzibar of 1984.



## The Judiciary

The judiciary is the branch of the government that determines disputes between citizens, among themselves and citizens against the state. It consists of the Court of Appeal, the High Court and the lower courts. There are two systems of the judiciary in the United Republic of Tanzania. One is on the Mainland Tanzania and the other in Tanzania Zanzibar. Both have their own courts. However the Court of Appeal covers both the Mainland and Zanzibar.

The Court of Appeal of Tanzania is at the top of the judiciary in the United Republic of Tanzania. It hears appeals both from Tanzania Mainland and Tanzania Zanzibar except appeals in Islamic cases coming from Zanzibar. The President appoints the Chief Justice and, in consultation with the Chief Justice, appoints other judges.

*The Chief Justice designates a magistrates court by notice in the Gazette.*

The Chief Justice is the head of the Court of Appeal and of the Judiciary of the United Republic of Tanzania. The Chief Justice of the Court of Appeal may consult with the Chief Justice of Zanzibar on matters of the administration of the business of the Court of Appeal and the appointment of Justices of Appeal.

The High Court consists of the Principal Judge (Jaji Kiongozi) and not less than fifteen Judges who are appointed by the President on the advice of the Judicial Service Commission.

*Advocates are not permitted to represent their clients in primary courts.*

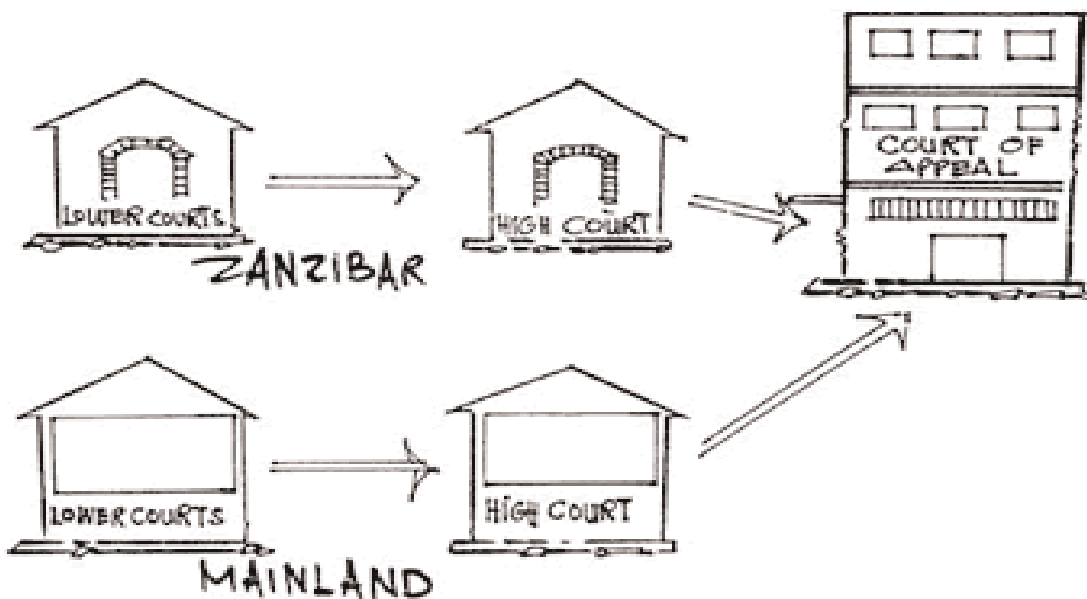
The High Court hears appeals from lower courts and cases filed in that court. Cases are presided by one judge except where the cases are with regard to basic rights under the constitution of which are presided over by three judges. The Chief Justice can also direct that a certain case be presided over by more than one judge.

*The Court of Appeal of Tanzania does not hear appeals on Islamic cases from Zanzibar Courts.*

District Magistrates' Courts are established in at least every District and at least one Resident Magistrates' Court in every region. They decide cases only within the Region or District where they have been established and given jurisdiction. The Chief Justice designates a magistrates' court by notice in the Government Gazette. At least one primary court is found in every division or district.

These decide cases within the District where they have been established. One Magistrate, who must sit with two assessors, runs a Primary Court. Advocates are not permitted to represent their clients in primary courts. Resident magistrates' courts and District courts may entertain appeals from primary courts.

### The Court System in Tanzania Mainland



## The Judiciary in Zanzibar

The Judiciary of Tanzania Zanzibar is made up of the High Court, Regional Courts, District Courts, Primary Courts, Kadhi's (Islamic) Courts and Juvenile Courts. The High Court of Zanzibar makes final decision in such cases.

According to the Constitution of Zanzibar of 1984, the Head of the Judiciary in Zanzibar is the Chief Justice of Zanzibar. The Chief Justice of the Court of Appeal has no say in the day to day running of the Judiciary in Zanzibar. The High Court of Zanzibar consists of not less than two judges. The President of Zanzibar appoints them after consultation with the Judicial Service Commission of Zanzibar.

District, Regional and Primary Courts in Zanzibar have the same authority as those on the Mainland. However, Kadhis' Courts in Zanzibar decide on Islamic Law cases. In Tanzania Mainland, any court can decide on such cases. When dealing with appeals from Kadhi's Courts, a High Court Judge would have to sit with one sheikh who understands Islamic Law.

## The relationship between three branches of government

Although all the three tiers of government work independently, each arm functions in a way that is interdependent on the other. The following are examples:

### The Executive and Parliament

The Parliament of the United Republic of Tanzania is divided into two main parts. The first part is the President who is the head of the Executive. The Second consists of Members of Parliament. Among the Members of Parliament there are Ministers who sit in the Cabinet to develop Public Policies. Later these Ministers participate in the Parliament to pass the bills into law. The President has to assent to (or sign) the bills passed by the Parliament before those bills operate as laws.



## The Parliament and Judiciary

The Judiciary implements and interprets the intention of the Parliament as embedded in the laws. Its independence however can not be interfered with by the Parliament.

The only way a decision of the court can be reversed is through an appeal against a decision of a lower Court or by way of revision by a higher court or by review of the decision by the same court. The Parliament can also enact a law based on an appellate courts decision.

## The Executive and Judiciary

Wherever a decision by a Court of Law is made against the Executive, the Executive must abide to it. Failure to obey it means dishonour to the court, a mistake that could lead into imprisonment of the officer concerned. Also, the Executive is the one to execute the decision or orders of the Judiciary through its departments e.g. Treasury, Ministry of Justice and Constitution Affairs, Police and Prisons.

*The Executive is the one supposed to ensure execution of court decisions.*

## Role of Civil Society in Governance

Civil society can suggest changes on laws and policies and can work together with Government institutions in strengthening relations and trust between public officials and citizens. Civil society can be involved in the governance process by undertaking the following:

- Mobilizing citizens to participate more fully in public affairs
- Enhancing transparency. This can be done through improving transparency and increasing the availability of information about the making and implementation of public policy
- Making and promoting action plans to fight corruption. This can be achieved by holding seminars, conferences and workshops in order to inform citizens on patterns and dangers of corruption and sensitise them to build groups to form anti-corruption strategies
- Providing ways to enable citizens to get access to justice by undertaking public interest litigation, providing legal aid, training paralegal personnel and raising awareness of citizens on laws and how they affect their day to day lives
- Research, advocacy and training.



## Civil Society Participation in Governance Process at Central and Local Levels

### Participation at the Central Level

At the central level, civil society plays an important role in the development process and can have influence over policy making and implementation. This can be done by: pointing out problems/concerns of grassroots communities; undertaking a study of the sector to identify the problems, priorities, available resources etc; discussing important documents with stakeholders to improving content.

*The objective of establishing local governments is to widen people's participation in governance.*

### Participation at Local Levels

The law encourages the participation of civil society at the local level. Section 20 of the Local Government Laws (amendments) Act 1999 recognize the need for Local Government to promote and ensure democratic participation in, and control of, decision-making by the people concerned. In performing their functions, local government authorities must therefore provide their services in a well-organized and profitable manner and promote cooperation with the participation of civil society organizations.

# 5

## THE BUDGET MAKING PROCESS

### Introduction

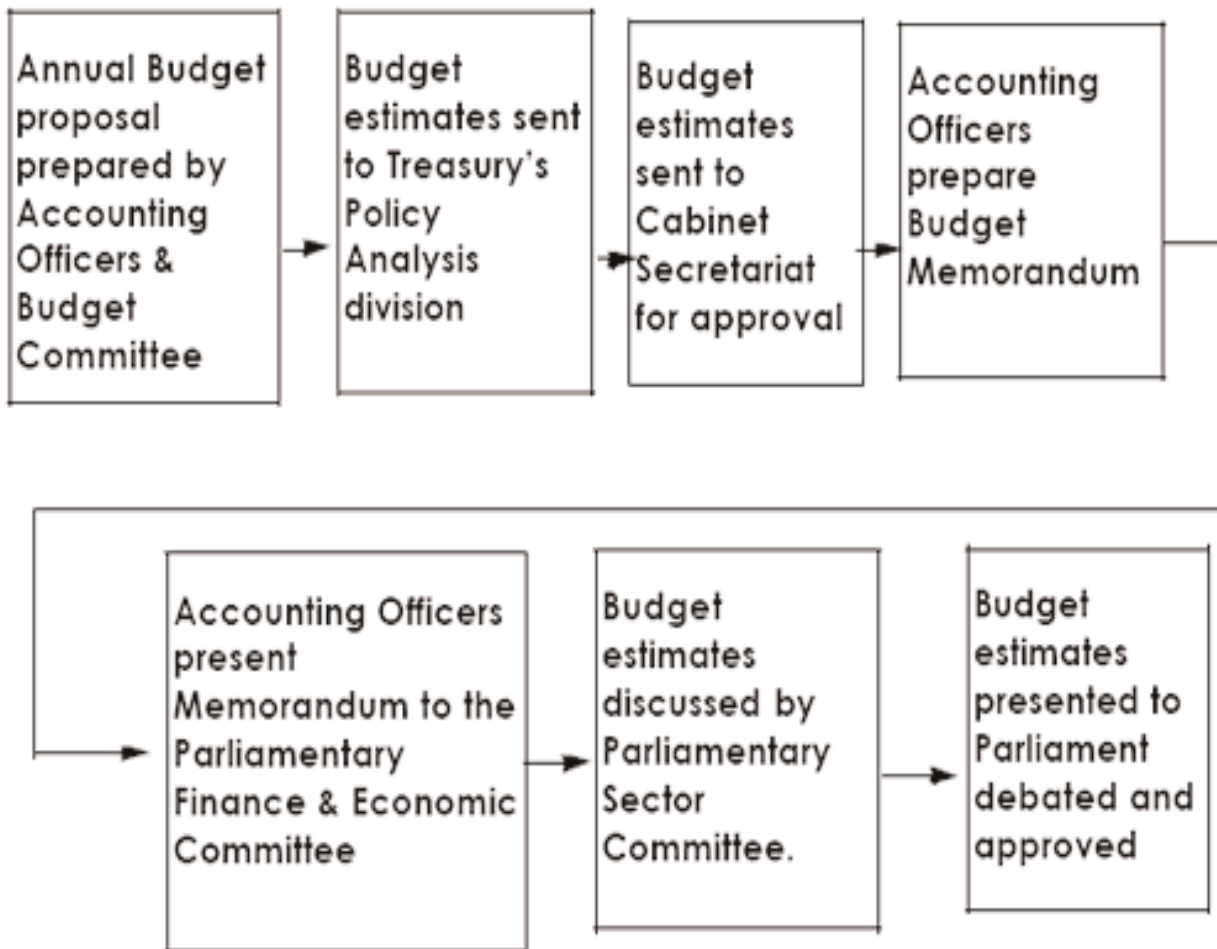
This section discusses the process of making the Government Budget and the role the Parliament plays in this process. Parliament approves the budget presented by the Central and Local Governments each year when presented for parliamentary debate and approval.



### What is a Government Budget?

A budget is a financial plan. A Government Budget is, therefore, the Government's financial plan. It includes the yearly predictions of the money that the Government has made and which it has spent or likely to spend in the next year. The Government Budget sets out the estimates of money needed by all the ministries, independent departments, agencies and Local Government Authorities for the coming financial year. The Government Budget has three components, namely; revenue, recurrent and development estimates. The recurrent and development estimates make up the total amount of money used by the Government for the financial year that is being considered.

## The Budget Making Process



### Budget Estimates of Revenue:

Estimates of a budget are the finances that the government expects to use for a period of time. The biggest part of this budget comes from collected revenue. It is used to improve public services, development activities and paying government salaries.

### Budget Estimates of Expenditures:

Estimates for expenditures include revenues collected at regional levels and at the local government level. This money is used to service occurring expenditures such as electricity and water bills, salaries and day to day government expenditures.

## **Budget Estimates for Development Activities:**

This budget is used for development activities and it includes the money earned for development activities. It is usually used by Ministries, government departments, government agents and local governments . An example of this kind of money is grants/credit from different donors.

## **Annual Budget Estimates:**

At the end of every fiscal year, each government Ministry, department, agency, independent institution and local government submits budget estimates for the following fiscal year to the policy and planning office in the Ministry of Finance.

## **Government Fiscal Year:**

The fiscal year is a period in which the government applies a fixed budget. This period starts from the 1st day of July every year and ends on the 30th of June, of the following year. That is why budget sessions are in mid-June every year.

## **Responsibilities of Departments**

Every Ministry and department has an accounting officer whose responsibility is to prepare budgets by taking into account the following:

- Ensuring that there is sufficient explanation of estimates from departments. Each budget item has to target specific activities e.g. salaries, development activities and ordinary expenditures.
- Ensuring that procedures are adhered to and in accordance with the Government budget guidelines. This helps in ensuring that budget preparation process is in time for budget discussions in Parliament.
- Ensuring that the estimates are correct and exact.
- Ensuring that any new projections/estimates have sufficient explanations on exact amounts needed.

## **Budget Committees:**

In every Ministry, department or agency there is a Budget committee. The accounting officers must ensure that the committees are working effectively and that they actively participate in preparing budget estimates.

(a) Members of the Budget Committee

- Accounting officer - Chairperson
- Director of Policy and Planning or the Regional Economist - Secretary.
- Member from a service Department or Director of Personnel and Administration.
- Heads of key departments.

(b) Responsibility of Budget Committees

- Planning for the budget estimates and ensuring that it meets departmental requirements
- Preparing policy briefs for every sector
- Preparing programmes (for budget planning)
- Translating national budget guidelines
- Advising directors of departments on matters of proper budget estimates that meet the objectives of the department.
- Conducting budget reviews for past and current budgets.

*The Government fiscal year usually starts in July 1st and ends in June 30th the following year.*

### **National Budget Guidelines:**

Normally, all budget estimates are prepared and submitted to the Parliament in accordance to the National Budget Guidelines. The Treasury is responsible for preparing and disseminating the guidelines for every fiscal year. Guidelines are distributed to Ministries, departments, agencies and local governments.

### **Local Government Authority:**

Every local government authority is required to submit a planning and implementation budget report for every quarter of the year. The report is submitted to the secretariat in the region. The secretariat receives reports and hands them to the local government office in the President's office. The reports are compiled and submitted to the Ministry of Finance. One copy is sent to the Privatization and Planning department in the President's office. The Treasury is responsible for scheduling the discussion of the budgets of various ministries, independent departments, agencies and local government authorities.

## Submission of Government Budget Estimates

All reports containing budgetary estimates ought to be submitted to the speaker. In turn the speaker is supposed to submit those reports to the Parliamentary Committee on Finance and the Economy. The Committee is usually given two weeks to discuss the estimates.

The Finance Minister and the Minister responsible for Economic Planning would then appear before the committee to present the government annual budget estimates and a report on the status of the country's economy.

*The Treasury issues National Budget Guidelines to guide Ministries, Departments, Regions and Local Government Authorities in budget preparations.*



## GLOSSARY OF TERMS

1. *Accountable* - to be answerable to the public on matters that one is assigned to do.
2. *Action plan* - a plan that shows what is to be done within a given time and ways of doing it.
3. *Anti-corruption strategies* - actions/decisions that will be applied by individuals/institutions in order to reduce corruption.
4. *Appeal case* - a case, which has been brought before a higher court for a decision on a matter from a lower court.
5. *Behavioral pattern* - the way in which human behavior develops and changes. The pattern may be determined by social, economic, environmental and political factors.
6. *Bilateral treaties* - treaties that are entered into between two countries.
7. *Cabinet* - A collection of government Ministers, the Prime Minister and the President.
8. *Case law* - a decision of the High Court or Court of Appeal.
9. *Civil service* - all government departments other than the armed forces and the private sector.
10. *Civil service commission* - the government organ that is responsible for hiring civil servants to work for the civil service.
11. *Civil Society* - An institution that is not linked to the executive branch of the Government. It consists of the private sector, religious institutions, NGOs, CBOs, political parties, and any other institution that is not a Government department/ministry.
12. *Circular* - a notice or advertisement sent to large number of people, usually announcing an important government development, including a new law.
13. *Citizens* - people who have full rights as members of a country either by birth or by being granted such rights by immigration office.
14. *Coalition plan* - a plan made under unity of individuals or groups.

15. *Common law* - the traditional rules of England law that were developed by courts of England a long time ago and later became part of the law of England.
16. *Constituent Assembly* - meeting of citizens of an area that is considered as an electoral district/zone.
17. *Court of Appeal* - the highest court of law in Tanzania.
18. *Covenant* - an agreement made by two or more people usually in writing.
19. *Criminal law* - the branch of law that provides for rules, procedures and punishment for crimes.
20. *Decentralize* - to give powers to lower structures in the Government. It is a process where the Local Government is made more powerful because the decision-making role of the central state is decentralized to the local levels.
21. *Decree* - an order of the court that states the rights of all the people in dispute in a case.
22. *Democratic participation* - A process where decisions regarding the development of a country are made by the public through representations.
23. *District* - geographical area of a region that is treated as an administrative unit of the Government.
24. *District Court* - a court in a certain district with powers to decided cases within its own district.
25. *Electoral commission* - a commission dealing in the election matters.
26. *Executive branch* - One of the three branches of Government, the others being Judiciary and Legislature. This is the branch that deals with all matters affecting the central government and local government. This branch manages and makes plans and policies for the public.
27. *Government Gazette* - document containing official communication of government.
28. *Guiding principle* - the leading/controlling principle in a matter that guides the conduct of an institution/people/individuals.

29. *High Court* - the court that is above primary, district and resident magistrates' courts and has power to decide all cases. All other courts have limited powers, but the High Court has powers to hear and determine any case.
30. *Interpreting law* - explaining by giving definitions of the law.
31. *Implementation* - to put into effect a certain plan/strategy.
32. *Judicial Service commission* - the body that deals with matters of the judiciary, including the hiring/promotion of judges and magistrates.
33. *Judiciary* - a branch of Government that decides disputes between citizens among themselves or citizens and Government or other institutions.
34. *Jurisdiction* - a term used to refer to the legally allowable powers of the courts in hearing a certain matter.
35. *Juvenile Court* - a court that has the power to try young people (usually below the age of 18) who are suspected to have committed crimes.
36. *Kadhi's Court* - a court in Zanzibar vested with jurisdiction to entertain cases relating to Islamic law.
37. *Legal aid* - Advice on issues of law including representation in court given free to members of the public who can not afford to pay court and lawyers' fees.
38. *Legislature* - the branch of Government with powers to make and change laws.
39. *Legitimacy* - this is a situation where the action that an official makes has the support of the law and that of members of the public.
40. *Mobilize* - through campaigns, it is a process where institutions/individuals influence others to follow their stance.
41. *Multilateral treaty* - a treaty signed by more than two countries.
42. *National Assembly* - a part of Parliament consisting of different constituent members.
43. *National forum* - a place where important public issues can be discussed.
44. *Networking* - a process where CBOs and NGOs as well as any other institution collaborate with another institution with similar interests in order to achieve set goals.

45. *Order of Court* - This is an order that is given by a court directing one of the parties to undertake a certain action.
46. *Paralegal* - a person with basic legal skills but who has not been professionally trained to be a lawyer. A paralegal usually has to work under the supervision of a lawyer in performing various tasks relating to the practice of law.
47. *Policy* - this is a document that outlines the government's development plans and strategies. The policy forms the basis of most laws and is usually used by the government as a guiding document.
48. *Precedent* - an earlier decision/case of the High Court or Court of Appeal that is regarded as an example or rule for guiding the court when it faced with a similar case.
49. *Principal legislation* - A law that is passed by Parliament and written in the law books.
50. *Public interest litigation* - Proceedings in a court of law involving the public or affected community members usually in large numbers, who have a stake in the case.
51. *Reform* - this is a process involving a change in the way things are being done or decisions being made.
52. *Regions* - Areas of a country that are divided on the basis of geographic location in order to provide administrative facilities to the people of the area.
53. *Resident Magistrate Court* - a court with power to decide cases within a given area as determined by the Chief Justice.
54. *Rights* - a claim by one person against another person/institution/government on the basis of a law.
55. *Social norm* - A practice or rule of community members that is known and generally accepted among the members.
56. *Statute* - a law that is written.
57. *Subsidiary legislation* - the law that is made by organs other than Parliament. For example, a by law or order of a minister.

58. *Sub-vote* - a budget line allotted by the Treasury for a particular Government Department.
59. *Technical assistance* - help that is given by an expert for the development of some project or plan.
60. *Transparency* - state of being clear and doing things in the open with honesty.
61. *Unconstitutional law* - a law is against what is provided for in the Constitution. For example, a law that discriminates against women in society is unconstitutional because the Constitution provides that no one shall be discriminated on the basis of one's sex.
62. *Validity* - state of being acceptable under the law or in accordance with established rules.
63. *Ward development committee* - a body that deals with the development at the level of the Ward.
64. *White paper* - report published by Government after taking views of citizens and before making a final decision on a matter.



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