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Understanding how the Tanzanian Legal System Works

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Introduction

The United Republic of Tanzania, nestled on Africa's eastern coastline, stands as a fascinating case study in the development and practice of law. Having been formed in 1964 through the merger of Tanganyika and Zanzibar, Tanzania's legal system is a dynamic amalgamation of its colonial history, indigenous customs, and the evolving values of its diverse society. Its dual heritage has fostered a unique legal structure where Union matters are centrally governed, yet both Mainland Tanzania and Zanzibar retain substantial autonomy over non-union legal affairs.

A core characteristic of the Tanzanian legal system is its foundation on the English Common Law, inherited from the country's time as a British protectorate. Far from being a simple replica, however, the system has evolved to integrate other sources of law—including customary and Islamic law—ensuring its relevance to Tanzania's multicultural populace. This legal pluralism is evident in both the sources of law recognized and in the way courts adjudicate on matters ranging from family and inheritance to land and criminal justice.

The Constitution of the United Republic of Tanzania stands as the bedrock of the legal system, serving not only as the supreme law but also as the blueprint for governance, the protection of fundamental rights, and the separation of powers. Yet, the lived experience of law in Tanzania is shaped just as much by statutes enacted in Parliament, decisions of the courts, customary norms and practices, as well as, where applicable, the principles of Islamic law. Together, these sources create a complex tapestry that governs the everyday lives of Tanzanians.

An integral part of the system is its judiciary, which operates independently to interpret and uphold the law. The distinct court hierarchies of Mainland Tanzania and Zanzibar, unified at the highest level by the Court of Appeal of the United Republic of Tanzania, reflect the unique political and historical arrangement of the Union. Specialized tribunals and lower courts ensure that justice is accessible not only in major cities, but also in rural and remote communities, forming a justice delivery framework that strives for both inclusivity and fairness.

While significant progress has been made towards modernizing the legal sector, challenges remain. Issues such as accessibility, effective enforcement, the harmonization of customary and statutory law, gender equity, and the complexity of navigating diverse legal traditions continue to inspire debate, advocacy, and reform. Initiatives aimed at strengthening the rule of law, increasing the efficiency of court systems, and expanding legal aid services are ongoing, reflecting the resilience and adaptability of Tanzanian legal institutions.

This book aims to provide readers with a comprehensive, accessible guide to understanding how the Tanzanian legal system works. By exploring its historical roots, institutional structure, key areas of law, and the current landscape of reform, the text seeks to demystify legal processes and empower both laypersons and practitioners with the practical knowledge needed to navigate, engage with, and appreciate the intricacies of Tanzania's legal landscape.

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CHAPTER ONE: The Historical Evolution of the Tanzanian Legal System

To truly grasp the intricacies of the Tanzanian legal system as it operates today, one must journey back through time, tracing its roots from pre-colonial societies through the transformative periods of German and British rule, and finally to the cusp of independence. It's a narrative woven from indigenous practices, external impositions, and gradual adaptation, resulting in the unique legal tapestry we see today. Before the arrival of European powers, the vast territories that now constitute Tanzania were home to numerous ethnic groups, each with its own set of customs, traditions, and mechanisms for resolving disputes.

These pre-colonial legal systems were predominantly based on customary law, unwritten rules passed down through generations, governing social behaviour, land tenure, family matters, and even forms of communal justice. Elders and traditional leaders often served as arbiters, applying established norms and seeking reconciliation rather than strict punishment in many cases. This was law deeply embedded within the social fabric of the communities, varying significantly from one group to another, reflecting the diverse cultural landscape.

In coastal areas and islands like Zanzibar, a different legal influence had taken hold centuries before European arrival – that of Islamic law. Driven by Arab trade routes and settlement, particularly under the Omani Sultanate's influence in Zanzibar and parts of the coast, Sharia principles became integral to personal status matters, inheritance, and commerce for Muslim communities. This created an early layer of legal pluralism, where Islamic norms existed alongside or were integrated with local customs.

The late 19th century marked a dramatic shift with the Scramble for Africa, bringing German colonial rule to what became German East Africa, encompassing present-day Mainland Tanzania (minus Zanzibar). The German approach to law was primarily focused on establishing administrative control and facilitating economic exploitation. They introduced German concepts of law and established formal courts, but their reach was limited, especially in rural areas.

While German criminal law was imposed to maintain order, the colonial administration often allowed existing customary laws to continue governing civil matters among the indigenous population, provided they were not deemed repugnant to "justice and morality" by the colonial standards. This pragmatic approach meant that indigenous dispute resolution mechanisms persisted, albeit often subordinated to the new colonial

courts and administrative authority.

The end of World War I saw a change of colonial masters. Under the Treaty of Versailles, German East Africa became a League of Nations Mandate Territory administered by Britain, renamed Tanganyika. This transition profoundly reshaped the legal landscape, as the British embarked on the task of establishing their own legal and administrative systems.

The bedrock of the new legal order in Tanganyika was the English Common Law. Through legislation like the Tanganyika Order in Council, 1920, English law, specifically the common law, doctrines of equity, and statutes of general application in force in England on July 22, 1920, was formally 'received' into the territory. This date became a pivotal point, effectively importing a substantial body of English legal principles wholesale.

The reception of English law was not absolute or immediate in its application across the board. It was subject to the crucial caveat that it would only apply where there was no local legislation dealing with the matter, and only to the extent that the local circumstances of Tanganyika and its inhabitants permitted. This provision acknowledged the reality of an existing society with its own norms and legal traditions, creating a necessary filter.

Accompanying the imported common law came the establishment of a formal court hierarchy mirroring the British system. A High Court was established, vested with broad jurisdiction. Below it were subordinate courts, initially structured along racial and administrative lines, which would evolve over time but laid the foundation for the tiered court system that exists today.

The British administration, employing a policy of "indirect rule," also had to contend with the pre-existing customary and Islamic laws. Rather than attempting complete abolition, they opted for a strategy of recognizing and incorporating these indigenous systems into the formal structure, albeit in a subordinate position. This was partly pragmatic, leveraging existing social structures for governance, and partly a reflection of the perceived limitations of imposing a completely foreign legal system.

Native Courts were established, later evolving into what became known as local or primary courts, specifically tasked with administering customary law among Africans in civil matters and minor criminal cases. These courts were presided over by local chiefs or appointed headmen, often advised by assessors familiar with the relevant customary law. This formalized the application of customary law within the colonial framework.

Similarly, Islamic law continued to be applied, primarily in matters of personal status for Muslims, such as marriage, divorce, and inheritance. While a separate, formal

system of Kadhi courts wasn't fully integrated into the government structure on the Mainland as it was in Zanzibar, colonial courts, particularly at the lower levels, often accommodated Islamic legal principles in relevant cases, sometimes with the assistance of Muslim assessors.

The development of statutory law also gathered pace under British rule. The Legislative Council enacted ordinances covering various aspects of administration, economy, and social regulation. These statutes were designed to address the specific needs and challenges of governing the territory, building upon or modifying the received English law where necessary.

Legal education and the legal profession also began to take shape, albeit slowly. Initially dominated by expatriate British lawyers and judges, opportunities for local Africans to enter the legal profession were limited but gradually increased in the decades leading up to independence. This period saw the nascent formation of a local legal community that would later play a crucial role in shaping the post-independence legal system.

Meanwhile, the history of Zanzibar, an island archipelago off the coast of Tanganyika, followed a distinct trajectory. For centuries, Zanzibar was a key hub of trade and Omani influence, developing a legal system strongly shaped by Islamic law, particularly the Ibadi school of thought, relevant to the ruling Omani Sultanate. Sultan Seyyid Said moved his capital from Oman to Zanzibar in 1840, solidifying its position as the region's dominant power.

In the late 19th century, Zanzibar became a British Protectorate. Unlike Tanganyika, which was a mandated territory after WWI, Zanzibar retained its nominal status as a Sultanate, with the British Resident acting as the effective power. This status influenced the nature of legal changes; British legal concepts and statutes were introduced, but the existing structure, including the Sultan's courts and the prominent role of Kadhi courts for Muslim personal law, largely remained intact, operating alongside the British-established courts.

Zanzibar's legal system under the Protectorate thus became a fascinating blend of Omani/Islamic tradition, British statutory law, and English common law principles introduced through legislation and the courts. This dual heritage within Zanzibar itself would later contribute to the complexity of the legal arrangement within the Union.

As the mid-20th century approached, the winds of change were blowing across Africa. Nationalist movements gained momentum in both Tanganyika and Zanzibar, pushing for self-governance and independence. This period saw increased legislative activity aimed at preparing the territories for independent statehood, including reforms to the judiciary and the legal framework.

In Tanganyika, led by the Tanganyika African National Union (TANU) under Julius Nyerere, the transition to independence was relatively smooth, culminating in independence on December 9, 1961. The legal system inherited was largely the British model: a constitution providing for parliamentary democracy and an independent judiciary, a body of received English law, local statutes, and recognized customary and Islamic laws.

Zanzibar's path to independence was more turbulent. It gained independence as a constitutional monarchy under the Sultan on December 10, 1963, but this was short-lived. A violent revolution on January 12, 1964, overthrew the Sultanate and established the People's Republic of Zanzibar. This dramatic political upheaval naturally had repercussions for the legal system, although the basic structure of courts and the application of Islamic and received law persisted in modified forms.

Thus, by early 1964, Tanganyika and Zanzibar stood as two independent nations, each with a legal system profoundly shaped by its unique history – Tanganyika primarily by British common law blended with customary and Islamic elements, and Zanzibar by a longer tradition of Islamic law, also overlaid with British legal influences. It was against this backdrop of distinct but interconnected legal heritages that the stage was set for a momentous event that would fundamentally redefine the legal landscape: the Union of Tanganyika and Zanzibar, which took place on April 26, 1964, creating the United Republic of Tanzania.

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