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A Decade of Creating an Alternative Banking System in Tanzania: The Current State of Affairs of Islamic Banks

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***Abstract*—**The concept of financial inclusion has been tabled in the whole world where practitioners, academicians, policy makers and economists are working hard to look for the best possible opportunities in order to enable the whole society to be in the banking cycle. The Islamic banking system is considered to be one of the said opportunities. Countries like the United Kingdom, United States of America, Malaysia, Saudi Arabia, the whole of the United Arab Emirates and many African countries have accommodated the aspect of Islamic banking in the conventional banking system as one of the financial inclusion strategies. This paper tries to analyse the current state of affairs of the Islamic Banking system in Tanzania in order to understand the improvement of the provision of Islamic banking products and services in the said country. The paper discusses the historical background of the banking system in Tanzania, the level of penetration of banking products and services and the coming of the Islamic banking system in the country. Furthermore, the paper discusses banking regulatory bodies, legal instruments governing banking operations as well as number of legal challenges facing Islamic banking operations in the country. Following a critical literature review, the paper discovered that there is no legal instrument which talks about the introduction and provision of Islamic banking system in Tanzania. Furthermore, the Islamic banking system was considered as a banking product which is absolutely incorrect because Islamic banking is considered to be as a banking system of its own. In addition to that, it has been discovered that lack of a proper regulatory system and legal instruments to harmonize the conventional and Islamic banking systems has resulted in the closure of one Islamic window in the country, which in the end affects the credibility of the newly introduced banking system. In its conclusive remarks, the paper suggests that Tanzania should work on all legal challenges affecting the smooth operations of the Islamic banking system. This can be in a way of adopting various Islamic banking legal models which are used in countries like Malaysia and others, or a borrowing legal harmonization process which has been adopted by the UK, Uganda, Nigeria and Kenya.

***Keywords*—**Islamic banking, Islamic Windows, regulations, banks.

I. Introduction

TANZANIA like any other state has experienced the barter trade system as the only mode of payment where crops, animals and valuable items are used as medium of exchange. The method is said to be inefficient because it highly depended on the coincidence of two different items needed by two different individuals and that no single measurement was used to value available products. Later on, salt slabs were used as a mode of payment before the introduction of coins in the 16th century in the coastal area of the Indian Ocean known as Kilwa Island in the southern part of the United Republic of Tanzania [1].

The introduction of coins in Kilwa Island was not a coincidence but the island was the heart of the trade between Zimbabwe and all the way to China. The main business which was traded includes ivory, slaves and gold. Other modes of exchange used in Tanzania are such as the Cowry shells and the Maria Theresa Dollar which was mainly used by Arab traders in Eastern African coastal areas. The country also used Germany Heller, Germany Rupees, Germany Pesa, Florin, Pounds and Shillings [1].

A report shows that up to 2009, about 56% of Tanzanians were completely excluded in both formal and informal financial systems. The exclusion rate dropped dramatically to 26% in the year 2013 due to strategic financial inclusion programs conducted by the Central Bank of Tanzania. In the same line, by the end of the year 2015, more than 19.8 million Tanzanians were recorded as active users of mobile money transactions which are more than twice the figure recorded in 2012 [1].

It is very unfortunate to note that the official report of the Central Bank of Tanzania which was issued in 2016 for the commemoration of the 50th anniversary of the institution, there was no mention of the establishment of the Islamic banking system in Tanzania as an effort to provide more banking and financial means in order to keep on reducing the financial exclusion rate in the country.

II. The Coming of Islamic Banking in Tanzania

Islamic banking was introduced in Tanzania in the year 2008. Up to 2016, only four banks offer Islamic banking products and services, which is only 7% of all licensed financial institutions and commercial banks in the country. It should however be noted that there are 40 fully-fledged commercial banks, three development financial institutions and 11 community banks in Tanzania. Either, there are five microfinance banks, credit reference bureau and three financial leasing companies [1].

Research reveals that only 2.3% of the total banked population in the country has joined the Islamic banking industry. This means that the market penetration is less than

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2% of potential customers out of the 200,000 potential Islamic banking customers [2].

Talking on the NBC's performance, this is one of the four banks offering Islamic banking services with the presence of 51 physical branches around the country and more than 250 Automated Teller Machines (ATM's) across the country. The bank provides Islamic banking services through a window model. Currently, the bank offers the La Riba Savings Account, La Riba Current Account, La Riba Business Current Account La Riba Corporate Current Account, La Riba Affluent Account and La Riba Privilege Current Account. Again, the bank offers La Riba Group Personal Finance as well as La Riba Business Finance [2].

Commenting on the challenges to the provision of Islamic banking services in Tanzania, Mhina pointed at that lack of regulatory framework to administer Islamic banks operations in Tanzania, double taxation when dealing with *Muraabaha* facilities and insufficient knowledge and understanding of Islamic banking and finance in the country are some of the challenges. He also added that lack of proper infrastructure which supports the higher expansion of Islamic financial services in the country and the absence of money market instruments which are in total compliance with Shariah also disturbs the growth of the Islamic banking system in Tanzania [2]. On the other hand, Mhina pointed out that there is an opportunity for the fastest growth of Islamic banking activities in Tanzania by focusing on expanding the banking services through agency banking or investing heavily in agri-business. He further added that Islamic banking can grow further if banks can invest in micro lending as well as being highly innovative in digital products.

On his part, Mzee has noted that it was in the year 1991 where significant changes occurred in the banking industry in Tanzania. The said changes were a result of the enactment of the Banking and Financial Institutions Act No. 12 of 1991, where private banks were licensed to provide banking services in the country. Discussing the application of Islamic laws in Tanzania, Mzee mentioned a number of laws that talk about the usage of Islamic laws in the country. These are the Judicature and Application of Laws Act where the application of Islamic laws of personal status can be dealt with. He also mentioned about the Magistrate Court Act and the Probate and Administration of Estate Act, of which, the former empowers the Primary Courts to entertain Islamic disputes brought to them and the later allows the application of Islamic laws of inheritance and *Waqf* in the courts of law in Tanzania. Again, Mzee mentioned about the Marriage Act which put forward issues related to Islamic marriage and divorce [3].

On the challenges faced by Islamic banks in Tanzania, Mzee pointed that the Constitution of the United Republic of Tanzania bars state related organs to interfere religious matters although the same Constitution recognizes the presence of various faiths in the country. Part of Article 19 of the said Constitution reads as follows:

> "...the profession of religion, worship and propagation of religion shall be the free and private affair of an individual; and the affair and management of religious bodies shall not be part of the activities of the state authority" [4].

That being said, the Central Bank of Tanzania is constitutionally barred from regulating, supervising and monitoring any religious matter including that of Islamic financial activities carried out by the Islamic banks and Islamic financial institutions.

According to Mzee, he noticed other legal issues hindering the smooth running of Islamic banking in Tanzania such as:

A. Deposit Insurance Fund.

Mzee reports that Section 36 of the Banking and Financial Institutions Act requires all banks to deposit into an insurance fund which can then be invested by the special Deposit Insurance Board and that the money can be used to secure deposits of banking customers should their banks fail to continue with the banking business. The main concern on this point is on the fact that there is an element of giving and taking interest (an act which is strictly prohibited in Islamic financial transaction) which is generated in the investment and borrowing and or lending of the collected funds from different licensed banks. Either, it is not clear whether the collected fund is invested in the permissible financial deals as per the requirements of Shariah where investment should always be done in permissible items only. Mzee has added that collection of funds through the Insurance Fund which attracts taking and giving interest and investing the same in unacceptable trade is forbidden. Part of the said Section 36 of the Act reads as follows:

> "There shall be chargeable to the fund the administrative expenses of the DIB, repayment of money borrowed including interest and other charges thereon by the fund, and payments made in respect of protected deposits".

B. Tax burden in Stamp Duty Fee

As per the Stamp Duty Act, Cap 189 (Re 2002), all properties are to be charged with a stamp duty fee. Many Islamic banks use a mark up sales product where the bank buys the property and resells it to the client. Under the current legal framework, these two transactions will be subjected to Stamp Duty Fee, and hence, the issue of double taxation arises. Part of that section reads as follows:

> "...every instrument specified in the schedule to this Act and which a) is executed in Tanzania; or b) if executed outside Tanzania, relates to any property in Tanzania or to any matter or thing to be performed or done in Tanzania, shall be chargeable with duty of the amount specified or calculated in the manner specified in that schedule in relation to such instrument".

Omar et al. agree that the Islamic banking system in Tanzania is being pulled back due to the absence of a sound, proper and clear regulatory framework. They further agree that even in an international sphere of Islamic banking business, there are no global standards, no regulatory framework and there is no global supervisory framework in place. However, they have noted that efforts have been made to establish international organizations like that of ISFB and AAOIFI which do not have the mandate to instruct banks to follow exactly what they propose, but these organizations provide recommendations as to the smooth running of Islamic banking business in the world. In other words, Islamic banks and Islamic financial institutions are not duty bound to follow whatever comes from these international organizations. Furthermore, Omar et al. recommend that the Central Bank of Tanzania should incorporate some important items which will have a significant impact for the better growth of the Islamic banking industry in the country rather than regulating and supervising the industry in a conventional set up. They further proposed that towards having a comprehensive legal and supervisory framework for the Islamic banking industry in the country, the Central Bank of Tanzania should gradually address and insert crucial features of the Islamic banking industry legal framework. They specifically name three areas to be worked on that include having an appropriate legal framework for Islamic banks and Islamic financial institutions, establishment of Shariah Council/Committee, and introducing Shariah compliance audit framework [5].

Sulayman is also worried that the remarkable growth of the Islamic banking system in Tanzania will highly be jeopardized by the lack of a National Legal Framework to guide the industry under the Central Bank of Tanzania. He further warned that if the two main traditional Islamic modes of funding, Takaful (Islamic insurance) and *Zakat* (annual fee), are not carefully worked on properly. He also added another two problems facing the industry which include a "solid political will" and "Islamic finance literacy". On the other hand, Sulayman posed two major challenges facing the industry; firstly, the stereotyping and estranging of Islamic words where those opposing Islamic banking industry rejects the new financial system because they think that supporting the same would amount to support Islam as a religion. Secondly, "*bad policies*". While explaining this, Sulayman quoted Berthelemy and Varoudakis who said that "historical experience shows that starting from very poor conditions, take off can occur if the right policies are implemented". He said, there are an ongoing efforts between Islamic banks, Islamic financial institutions and conventional banks offering Islamic banking products and services, on one hand, and the Central Bank of Tanzania, on the other, debating on the possibility of coming up with a Financial Act that shall provide a proper regulatory and supervisory framework for Islamic banking and finance in Tanzania [6].

On his part, Kiwia has summarized the main challenges faced by Islamic banking in Tanzania into four: a) regulatory hurdles, b) human capital constraints and low labour productivity, c) financial literacy and d) weak inter-sectors coordination to easy operational activities of Islamic banking and finance in the country [7].

In the 2015 Annual Report issued by the Central Bank of Tanzania, the words Islamic Banking appeared twice in the 106 page document. In the first part, the report acknowledges that banking industry is dynamic in nature. That being the case, the Directorate of Banking and Supervision is improving the regulatory and supervisory frameworks in a bid to fall in line with the new developments in the banking sector. These efforts include the draft guidelines for the implementation of Basel II/III as well as revising Mortgage Finance Regulations, the Bureau de Change Regulations and Social Security Schemes Investment Guidelines. On the Islamic banking area, the report noted that the Bank of Tanzania is *"continuing with efforts of putting in place regulatory frameworks for Islamic banking and mergers and acquisitions"*. The second area where Islamic banking was featured in the report is when it was reported that the Directorate conducted capacity building program in different areas including the supervision of Islamic banking [8].

Chalu reports that although the Islamic banking system is growing up in Tanzania, one may not pretend to believe that there is no criticism as to the Islamicity of the banking services offered by both Islamic banks and conventional banks offered through a window model. In his study, he researched four aspects such as the Islamic principles of finance compliance, Islamic banking customers, structuring conventional banks to follow Islamic principles and the competence of the Shariah supervisory boards within banks. Based on the study he conducted, Chalu fairly concluded that "it is very difficult for these banks operating in Tanzania to be termed as really Islamic" [9].

C. Acts of Parliament, Regulations and Circulars Governing Financial and Banking Business to All Banks and Financial Institutions

1) The Banking and Financial Institutions Act, No. 5, of 2006

This Act was enacted in order to provide a comprehensive regulation and supervision of banks, financial institutions, savings, cooperative societies and schemes operating in Tanzania. Either, the Act performs those duties in a bid to maintain "stability, safety and soundness of the Tanzanian financial system". Again, this Act repealed the Banking and Financial Institutions Act, (Cap. 342) and introduced some other matters to better a Tanzanian financial system.

2) The Banking and Financial Institutions (Consolidated Supervision) Regulations, 2014

The objectives of these regulations among others is to provide the scope and manner on how banks and financial institutions can be supervised and provide rules, terms and procedures towards the smooth supervision of banks and financial institutions in the country. Again, these regulations provide methods used to calculate capital adequacy and formalities on how financial reports to the Central Bank of Tanzania can be submitted.

3) Risk Management Guidelines for Banks and Financial Institutions, 2010

The Central Bank of Tanzania issued "Risk Management Guidelines" for banks and financial institutions covering six main items such as compliance risk, strategic risk, operational risk, market risk and credit risk. These guidelines were formed for the purpose of maintaining the financial stability of the country.

4) Risk Based Supervision Framework, 2010

This framework has been issued in order to evaluate risk levels in banks and financial institutions and asses financial conditions in the same. As well, the framework aimed at assessing the management processes to identify, measure, monitor and control all possible risks within the financial industry.

5) The Banking and Financial Institutions (Licensing) Regulations, 2014

These regulations were published as the Government Notice No. 297 in the Government Gazette on 22/08/2014 for the purpose of laying down the proper guidelines of licensing for all banks and financial institutions in Tanzania.

6) Other Regulations

The bank of Tanzania issued other regulations from time to time such as the Outsourcing Guidelines for Banks and Financial Institutions, 2008, the Banking and Financial Institutions (Mortgage Finance) Regulations, 2015, the Guidelines for Boards of Directors of Banks and Financial Institutions, 2008, the Business Continuity Management Guidelines for Banks and Financial Institutions, 2009, the Banking and Financial Institutions (Financial Leasing) Guidelines, 2011, the Foreign Exchange Act, 1992, the Bank of Tanzania Act, the Banking and Financial Institutions (Capital Adequacy) Regulations, 2008, the Banking and Financial Institutions (Management of Risk Assets) Regulations, 2008 and the Banking and Financial Institutions (Liquidity Management) Regulations, 2008.

Other regulations are the Banking and Financial Institutions (Publication of Financial Statements) Regulations, 2008, the Banking and Financial Institutions (Independent Auditors) Regulations, 2008, the Banking and Financial Institutions (Credit Concentration and other Exposure Limits) Regulations, 2008, the Banking and Financial Institutions (Foreign Exchange Exposure Limits) Regulations, 2008, the Banking and Financial Institutions (Physical Security Measures) Regulations, 2008 and the Banking and Financial Institutions (Prompt Corrective Actions) Regulations, 2008.

Other regulations include the Banking and Financial Institutions (Internal Control and Internal Audit) Regulations, 2005, the Banking and Financial Institutions (Microfinance Companies and Micro Credit Activities) Regulations, 2005 and the Foreign Exchange (Bureaux de Change) Regulations, 1999. As well, the Bank of Tanzania issued various Circulars with regards to the smooth governance of the banking sector in Tanzania. Some of these Circulars are Circular No. 1 on Reserves Against Deposits and Borrowing and Circular No. 7 on Instructions for Filling Regulatory Returns.

In the joint letter of intent, Memorandum of Economic and Financial Policies and Technical Memorandum of Understanding which was submitted to the International Monetary Fund (IMF) on 24th June, 2014, the then Minister of Finance of the United Republic of Tanzania Hon. Madam Saada Mkuya Saalum informed the Fund that the country is working on revising various regulations and also developing new regulations in order to accommodate areas such as Mergers and Acquisitions, Bank Holding Companies and Islamic Banking [10].

Generally, there are still many hurdles facing Tanzania in as far as the growth of Islamic banking and finance is concerned. These challenges have been very well elaborated by Jabir, who summarized that people are unaware of what Islamic banking is all about, which creates misconceptions about the industry where the concept of an interest-free banking system is considered to be likened with the interest transactions as provided in the conventional banking system. He also added that there are major conflicts between Islamic bankers and Shariah financial scholars on what are the requirements for a product or service to be considered as Shariah compliant. He also pointed that there is no support from the government in terms of a legal platform which is favourable for the growth of Islamic banking system and that there is no regulatory body that works in accordance to Islamic precepts. In the same line, there is a great shortage of experts, scholars and experienced Islamic bankers who are conversant with Islamic financial transactions, as well as poor advertising methods which are in conformity with Shariah, a lack of uniformity in standards for credit analysis, poor secondary level of economy particularly at the microfinance level and the absence of an international regulatory body which can be tasked to control the Islamic banking system all over the world [11].

D.Amana Bank: The Only Full-Fledged Islamic Bank in Tanzania at Present

Amana Bank: is the only fully fledged Islamic bank in Tanzania, which its existence can be traced back in 2009 when the idea of establishing full-fledged Islamic banking in Tanzania begun. Following successful discussions, the bank started its operation in the year 2011 with only one branch. To date, the bank has seven branches and 180 agents across the country. The overall performance of the bank is considerably well as it is still registering new clients every day.

Amana Bank has a good number of accounts such as the Nuru Account which is for children only, the women's only An-Nisaa Account and the Hajj Account which is for those who would wish to perform pilgrimage at a future date. They also operate fixed accounts for those who keep money for a certain period of time. It should also be noted that all these accounts are operated under *Mudharaba* contract where the bank invests the money deposited by clients and share the profit as per agreed terms and conditions. On the other hand, Amana Bank uses a *Murabaha* contract to empower its customers financially by buying products from suppliers and selling them to clients with profit added on it. This contract is used to finance small businesses, buying constructional materials, plots as well as group loans for employees [12].

Again, Amana Bank works as an agent in order to facilitate some financial activities on behalf of its clients. Furthermore, the bank has established a *Zakat* collection service where the annual compulsory donations from members of Muslim

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communities are collected and distributed by the bank on behalf of its clients. The peculiar feature for this service is that it accommodates even non-Amana Banks clients and is open to every Muslim who is entitled to donate the compulsory contribution at the end of the year. The bank also an established online banking platform for its clients, and recently launched its Visa credit card services [12].

In another development, the Amana Bank CEO has noted that his bank is absolutely not for Muslims only but rather it is open for people of all faiths. As well, he insisted that although the bank is open for everyone, its operations continue to be under the guidance of Islamic financial laws which are the core value of the any Islamic bank. In discussing the challenges facing the bank, the CEO noted that the bank has been established in the absence of laws and regulations governing them, which disrupts the daily operations of the bank particularly with regard to short term investment and the issuance of short term loans. He requested that the government, through the bank of Tanzania, establish a stock market where Amana Bank can participate as well [13].

E. The Closure of One Islamic Window in Tanzania

This research has discovered that an Islamic window operated by one of the major conventional banks in Tanzania has been closed. Clients have admitted that they were officially informed about the closure of the window due to lack of expertise in the field and enough personnel to run it. Former staff of the bank reported that the bank is still maintaining a few Islamic Window accounts, a fact which symbolizes that the window is not completely closed because some accounts are still in operation; however few they are., It has also been confirmed that Shariah Board members of the bank refused to sign the resolution to close the window.

The closure of the bank's Islamic banking window might have negative consequences to the growth of the Islamic finance industry in Tanzania and in other parts of sub-Saharan Africa if it can be used as a case study in as far as failing Islamic windows are concerned. The negative consequence might be to influence policy makers who would think that the country is not ready to run the system efficiently, and therefore, will not prioritize the idea of incorporating the Islamic banking system in the banking and finance laws of the country. As well, no regulation will be prepared to guide the Islamic banking system in the country due to reasons the author have cited above.

Another negative consequence is to the clients who would lose any trust in Islamic banks, Islamic financial institutions and Islamic windows and the system in general, if it is considered the kind of banking system that can just be opened and closed anytime. Therefore, the integral part of the Islamic banking system in Tanzania might have been badly destroyed following the closure of that Islamic window.

Another possible bad negative consequence is for investors who would find out that it is commercially not viable to invest in the Islamic banking system in Tanzania due to the lack of a favourable business environment for the system to grow. This will result in the slow growth of the sector in the country. On the other hand, the closure of the window might be considered to be the act of sabotage of the system in Tanzania in order to demoralize clients from joining that banking system and remain in the conventional banking system. These are some of the possible negative consequences that the closure of the said window might cause to the smooth growth of the Islamic banking system in Tanzania.

TABLE I
COMPREHENSIVE LISTS OF BANKS, FINANCIAL INSTITUTIONS, ISLAMIC WINDOWS OPERATING IN TANZANIA

S/N	NAME	MODEL
1	Amana Bank	Full-Fledged Islamic Bank
2	KCB	Window
3	NBC	Window
4	PBZ	Subsidiary
5	Stanbic Bank	Opened Islamic window
6	Islamic Help	Saccos
7	Tunaweza	Saccos
8	Kutayba	Saccos
9	Tampro	Saccos
10	Tanzania Islamic Foundation (TIF) Education Fund	Providing interest-free student loans
11	Annahl Trust	Providing interest-free student loans
12	Kalam Education Foundation	Supporting education in rural areas
13	Centre for Islamic Finance Compliance & Advice (CIFCA)	Compliance and Advice on Islamic Banking and Finance
14	S A Consult	Consultant
15	Zanzibar University (ZU)	Education
16	Muslim University of Morogoro (MUM)	Education
17	Centre for Islamic Banking and Economics (CIBE)	Education

F. Conclusion

The Islamic banking industry in Tanzania needs a major legal restructuring in order to allow the same to survive in the market. As the author have noted above, for nearly a decade now only one Islamic bank has been established with only other four Islamic windows operated by conventional banks out of more than the 60 banks and financial institutions in Tanzania. As noted above, the Islamic banking system was allowed without any laws and regulations to govern the same. Only banking and financial laws are used to govern conventional banks are also used to govern Islamic banks, Islamic financial institutions and Islamic windows operated by conventional banks. This is an issue which needs to be rectified in order to allow for the smooth growth of Islamic banking system in Tanzania. On the same note, the Central Bank of Tanzania has been considered to be an important organ to initiate all necessary changes in the financial laws for them to suit Islamic banking system. Unfortunately, for nearly a decade, it has failed to come up with any amendment proposals in banking and financial laws in the country or preparation of regulations specifically for the Islamic banking system in Tanzania. This situation of the absence of suitable laws and proper regulations has made Islamic banks, Islamic financial institutions and Islamic windows highly vulnerable in terms of growth. Malaysia enacted its Islamic banking laws

20 years after the establishment of the first local Islamic fund which was regulated by Islamic financial laws. At that time, the Islamic banking system was not well known in many countries. On the other hand, Tanzania should position itself and adopt various frameworks, which are currently in place in different countries. Again, Tanzania should make a quick move and make necessary legal changes in order to improve the growth and sustainability of the Islamic banking system in the country.

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