



# Judicial Reform for Improving Governance in Anglophone Africa

A Distance Learning Program for  
Ethiopia, Ghana, Kenya,  
Nigeria, Tanzania and Uganda  
October - November, 2003

## TANZANIA NATIONAL ACTION PLANS DEVELOPED BY THE COUNTRY PARTICIPANTS

### STATEMENT FROM THE PARTICIPANTS:

The participants thank the WORLD BANK for organizing the Program for the Anglophone Africa, Tanzania inclusive. The Program was extensive and educative. We do acknowledge the importance of improving and designing reforms in our judicial system. Through the program, we have gained much through the exchange of experiences with other countries, which participated in the program.

To us, the program was useful and on time, for at this moment the Government is carrying out major reform in the judiciary and we have a project in place studying how to assist the anticipated reforms become real.

Participants enjoyed the program and we propose that a follow up session be organized.

### MODULE 1. THE IMPACT OF THE JUDICIARY IN GOVERNANCE.

Judiciary as one organ of the state has to be more efficient, financially independent and must have enough infrastructures. Tanzania lacks enough facilities such as court buildings, information technology, coupled with poor wages, which attract corruption.

### ACTION TO BE TAKEN:

- Improving the existing facilities.
- Renovation of court buildings
- Build few new court buildings
- Improving salary.
- Quick start project to give priority to the Judiciary in reviewing and develop strategic plans.
- Capacity building
- Improve the medium term expenditure framework budget structure.
- Training towards “good governance and the judiciary and its role to the Society”.
- Have in place a specific Judicial program on management, monitoring and evaluation.
- Review on management organization structure by defining roles and responsibilities of implementing agencies and redefining the coordination mechanism.
- Recruitment of additional staff
- Liase with development partners on the improvement of the judicial infrastructure.



**MODULE 2:  
JUDICIAL INDEPENDENCE AND ACCOUNTABILITY:**

“Judicial freedom from political and external interference is a precondition for the integrity of any judicial system. Judicial independence however, must be balanced by accountability” {introduction to module 2}.

Though our constitution provides for the Independence of the Judiciary, that independence is not seen operating. The term may only apply to certain extent in the decision making process and nothing else. Even in the decision making process in certain cases external forces are seen to interfere. There are very few judges who are bold enough to function without undue pressure and fear from within the judiciary and from outside it.

The concept of “judicial accountability” in Tanzania is partially realized.

**ACTION TO BE TAKEN:**

- Intensive judicial training to intensify public education on independence and accountability to bring awareness to the policy makers on extent of their powers on judges and judiciary.
- Have in place a clear indicator for the qualification of judges and magistrates, which is free from interference by the executive favouritism and nepotism.
- Security of tenure must be updated to suit the circumstances.
- To have the independence of the judiciary determinable from the bench.
- Establish judicial ethical board/committee to be governed by the Judicial authority.
- Judicial Authority to budget and manage their funds and expenditure and access to development partners without necessarily following the bureaucratic machinery within the executive.
- Intensify and upgrade the institute of judicial Administration so as to have a syllabus consonant to the judicial activities, ie. Judicial ethics, judicial accountability, judicial independence, finance management, management of court files, case management, scheduling orders, time management, Role of Judiciary to the Society, action plan on judicial policy etc.

**MODULE 3:  
APPOINTMENT, PROMOTION, DISCIPLINE AND REMOVAL OF JUDGES.**

“Transparent and rule – based appointment and promotion procedures can support the creation of a professional, highly competent judiciary. Alternatively, appointment and promotion systems that are dominated by political consideration and excessive discretion can serve to discredit the judiciary, discourage the recruitment of high – quality staff, and encourage poor performance.”

The appointment of judges in Tanzania is a gambling game. It is a matter of “who knows who” and religious believes and happily gender sensitive.

For a person to be appointed a judge he/she must have “special qualifications” prescribed in the Constitution of the United Republic of Tanzania. The President, according to the constitution, may dispense with the requirement and appoint a judge from persons who have other qualifications as per the Advocates Ordinance but lack experience of at least five years in practice as lawyers. The President appoints judges of the high court after consultation with the Judicial Service Commission which is comprised of the Chief Justice, the Attorney General, a justice of

the Court of Appeal, the Principle Judge and two members who shall be appointed by the President, The Judges of the Court of Appeal are appointed by the President after consultation with the Chief Justice from among persons who qualify to be appointed judges of the High Court. There is no machinery which provides for the promotion of judges, neither discipline or ethical adherence. Removal of judges is provided for under the Constitution but again the Constitution itself is not enough for a smooth procedure of removal. The present procedure is cumbersome and needs review.

#### **ACTION TO BE TAKEN:**

- The appointing process should be aimed to select men and women of the requisite calibre and integrity to the Bench and must be transparent i.e. open for challenge.
- Have a clear guidelines for the appointment and promotion
- Progressive judges should be promoted and be given other incentives.
- Have in place the Judges Ethical or Disciplinary committee whereby the process of which should weed out the bad and thus leave the character of the Judiciary as a whole unblemished and if wisely used would avoid the disgrace that attaches to removal.
- Have a clear procedure in place for removal process for serious offences which go beyond misconduct and inability to live by the code of Judges Ethics.

#### **MODULE 4:**

#### **CASE MANAGEMENT AND OTHER PROCEDURAL REFORM.**

“A common strategic for reducing delay and cost in civil litigation is to curtail the parties freedom to engage in procedural maneuvers by empowering the judge to set firm deadlines and otherwise manage the litigation process”.

The need for case management

- Empowers all stakeholders in litigation process to contribute to expeditious resolution.
- Enhances judge’s ability to manage the litigation process.
- Reduces cost of litigation.
- Promotes substantive justice vis a vis technical or procedural justice.
- Promotes conciliatory litigation over adversarial litigation.
- Enhances opportunities for amicable settlement.

Tanzania is common law country, which has adopted the above strategy but not fully comprehended and developed.

#### **ACTION TO BE TAKEN:**

- Training of Judges, Registrars, Magistrates, Court Clerks and Lawyers.
- Create awareness to the public through media and Publication.
- Purchase and installation of automated systems (filing, recording of proceedings, tracking progress etc.)
- Sustainability
- Enact clear rules of procedure, binding the litigants with the decisions reached in the process and brings the event to finality.
- Improve and expand the Kiswahili language which is understood by most of the litigants. It should become lingua franca and do away with the foreign language.

**MODULE 5:  
ACCESS TO JUSTICE (ADR, CUSTOMARY LAW).**

“Participation and access are usually key tools to guaranteeing transparency at the various levels and stages of public policy, and justice does not escape these principals. Nevertheless, even when other sectors or areas of the state have experienced very positive changes by incorporating these elements into their operations, judicial powers still hesitate to follow their lead.”

Currently, Alternative Dispute Resolution (ADR) is part of inherent component of our legal system. In the judicial context, ADR is aimed to

- Complement court procedure
- Circumvent ineffective or corrupt courts
- Improve access to justice for marginalised sectors (eg. low income, women, poorly education)
- Cut delays in getting to settlement
- Cut cost dramatically
- Enhance user satisfaction

Courts and other stakeholders, though they give priority to ADR the aims have not been realized due to a set of setbacks such as lack of seriousness on the part of the judiciary, lack of awareness of ADR, lack of effective dispute resolution techniques into the mainstream etc.

**ACTION TO BE TAKEN:**

- Judicial Activism in ADR. The court through Chief Justice should be made aware of its role towards a successful ADR.
- Raise awareness of ADR by publications and other means necessary to educate citizens as well as those employed in judicial offices, media, professions and commerce. Encourage use of mediation under citizens’ own initiatives or through court sponsored schemes.
- Develop effective dispute resolution techniques.
- Train mediators and all stakeholders
- Set standard of practice and codes of Ethics
- Introduce ADR as a subject in our local Universities
- Have in place pilot court – based mediation schemes.

**END STATEMENT:**

The above action plan do not bear the element of framework simply because we participants are not the key decision-makers in the Government. What we are going to do is present the action plan to the Minister of Justice and Constitutional Affairs together with the Chief Justice, recommend to them to form a Task Force Team which will see to it that our action plan is implemented.

We believe that if our action plan is put in force then we will see our judicial system being reformed to our expectations.