

TANZANIA

A VISION OF ACCESSIBLE AND TIMELY JUSTICE FOR ALL IN THE NEW MILLENNIUM

MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS



FOREWORD



It is a cardinal principle of the Constitution of the United Republic of Tanzania to unflinchingly uphold the rule of law. In a developing state like ours, this can be secured only if there is established and maintained in the country an efficient, fair and transparent system for the administration of law and justice. Such a system is crucial for securing and perpetuating an enabling environment for the peaceful and dynamic, social and political development and prosperity of the nation. This is the main reason why the Government is unequivocally committed to institute and expeditiously execute the reform and development of the legal and judicial services in the country, and to rapidly enhance access of these services to all the people without discrimination of any sorts.

Every citizen of Tanzania, without exception, whether corporate or individual, has an inalienable role to play and an invaluable contribution to make toward the transformation of the legal and judicial system of our country. It is the resolve of the Government that will leave no one and no contribution out of this process. For, we steadfastly believe that a legal and judicial system that enjoys public confidence is the bedrock for the maintenance of law, order and good government. Propelled by this spirit, the Government beckons, all who will, to share in the vision for our legal and judicial system in the coming century and beyond: Accessible and Timely Justice for All!

In the mission to reform the legal and judicial system of our country, the Government wishes to enlist the support and contribution of every stakeholder, and especially all the people of Tanzania. In this regard, many stakeholders have already demonstrated a strong commitment. Eminent among these are the Judiciary under the able and ever resourceful leadership of the Hon. Chief Justice Francis Nyalali, and some of the most illustrious civil societies and voluntary organisations including: the Tanganyika Law Society, the Tanzania Women Lawyers Association, The Women's Legal Aid Centre, the Tanzania Media Women Association and the Legal and Human Rights Centre. At the sharp point of the spear's head in the initiative to reform the legal sector stands audaciously the Attorney-General, Hon. Adrew John Chenge. We hope and look forward that many other people and institutions will come out to join in the efforts as we gear up to face this challenge and realise the opportunities it brings. I seize this opportunity to congratulate and commend them all, even in advance.

H. Bakari Mwapachu
MINISTER FOR JUSTICE AND CONSTITUTIONAL AFFAIRS

Introduction

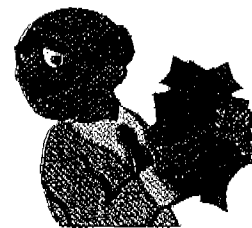
The Government of Tanzania recognises the importance of a stable and reliable legal and regulatory environment to the country's economic development. A legal and judicial system that enjoys public confidence is the bedrock for maintenance of law and order and a key factor in the emergence of economic growth. It is, therefore, a top Government policy objective to reform and modernise the Legal Sector as speedily as is practical so as to make it effective, efficient and free of corruption.

In April 1993 the Government pronounced the establishment of the Legal Task Force which was constituted of eminent Tanzanians. The Task Force carried out a comprehensive review of the legal sector and thereby identified the problems and issues within the sector. In its January 1996 report, the Task Force documented the various problems and issues in the Legal Sector and its recommendations for their resolution.

Subsequently, the Government endorsed virtually all the recommendations of the Task Force, and directed for their implementation.



Problems



In brief, the problems and issues in the legal and judicial system as reflected in the report of the Legal Task Force are many. To mention some of them, these include:

- Inordinate delays in resolving disputes and dispensing justice. In spite of recent efforts to address this problem, backlogs of both criminal and civil cases still abound. Major crimes take more than four years to resolve, and civil cases usually take even longer;
- Limited access to justice and legal services and justice for the majority of our people;
- Corruption and other unethical conduct of officials in the legal system;
- The system is in significant ways outdated and not responsive to emerging social, political, economic and technological developments;

- Limited public trust in the legal system;
- Low competence and morale of public sector legal personnel;
- Inadequate numbers of professionally trained personnel;
- Poor provision and maintenance of the work environment for most public institutions in the legal sector.

Clearly this is a totally unacceptable situation.

Recent Initiatives



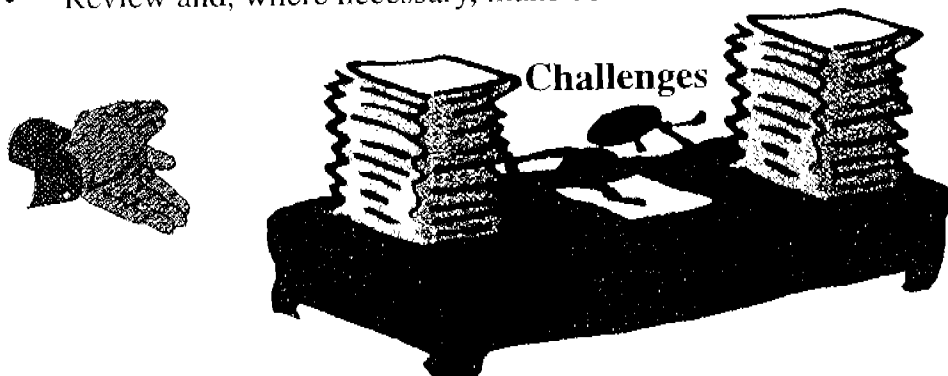
In recent years some significant achievements have been recorded despite persistent resource constraints and limited external support. The following specific measures to improve and modernise the administration of justice have been taken:

- Individual calendar system of managing cases in the High Court and Subordinate Courts.
- Mechanism for Alternative Disputes Resolution (ADR) of cases has been adopted by the High Court and Subordinate Courts.
- With the assistance of our development partners, there is considerable progress on the publication of a revised laws of Tanzania.
- Specialisation has been introduced by establishing a Juvenile Court for the administration of juvenile justice, and a Commercial Court for commercial cases in Dar es Salaam.
- The publishing of Law Reports on important decisions of the Court of Appeal and High Courts of Tanzania has been significantly updated.
- Over 600 Primary Court Magistrates, 300 Resident and District Magistrates and 34 Judges of the High Court and Court of Appeal have attended refresher courses or seminars on constitutionalism and human rights.
- The Institute of Judicial Administration for training of court administrators and continuing judicial education of magistrates and judges has been established at Lushoto.

- The system for recruitment and appointment of magistrates and judges has been reviewed and improved.
- Committees of Judicial Ethics have been established at the national and zonal levels; and
- Computerisation of the Judiciary has been initiated at the Court of Appeal and the High Court in Dar es Salaam and a Local Area Network (LAN) system is under implementation.

A recent move by Parliament to open the legislative process to participation by civil society organisations is also a significant development in the reform of our legal sector. At the same time, the Ministry has put into place measures to:

- Strengthen the Tanzania Law Reform Commission;
- Establish a Commission for Human Rights and Administrative Justice;
- Review the Companies' Ordinance;
- Development of the Institute of Judicial Administration at Lushoto; and
- Review and, where necessary, make constitutional amendments.



The Government's Legal Sector reform initiative must, not only address the above problems but also respond urgently and effectively to the following challenges:

- The changing social culture of the people arising from urbanisation and expanding and intensifying interaction with other cultures. Consequently, for example, the need for a more dynamic family law;
- The new pluralistic democratic political environment coupled with the movement towards participatory management of social-economic development;

- The rapidly expanding and institutionally complex private-sector-led market economy; and
- The vast growing electronic (e)-commerce. E-commerce raises many new legal issues, including those relating to regulation, taxation, contract, liability, patent, data protection, etc.

Furthermore, a vision for the legal and judicial system in the next century and beyond is inspired by the National Development Vision and Long Term Development Strategy (Vision 2025) which, *inter alia*, seeks to develop a society that has the following attributes:

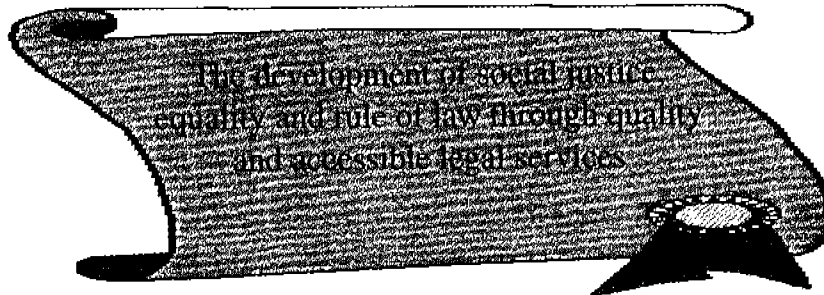
- Peace, political stability, national unity and social cohesion;
- Democracy as well as political and social tolerance; good governance, the rule of law, integrity and moral uprightness;
- Highest level of ingenuity, self confidence and self esteem;
- People-centered development;
- Economic and social justice;
- Equal opportunity to all citizens to participate in, and contribute to, the development of the nation, paying attention to all groups in the society;
- A strong, diversified, resilient and competitive economy which can effectively cope with the challenges of the development goals and confidently adapt to changing market and technological conditions in the world economy; and
- Sustainable development endeavour based on successive generations ever expanding on the achievements and potential of the nation and thereby ensuring that future generation equitably benefit from the natural resources of the country.

Moreover, the people of Tanzania have always aspired to be a society in which total social and economic justice prevails for all. The Government is committed to vigorous and sustained pursuit of this aspiration through the rule of law, democratic and good governance, inclusive of transparency and accountability in the conduct of public affairs. Government is also unequivocally committed to uphold the human rights for all in Tanzania. This commitment underpins the mission of the Ministry of Justice and Constitutional Affairs and the Judiciary to reform the country's Legal Sector.

A Shared Mission



The shared mission of all the institutions in the legal sector is:



Values and Principles



The shared mission is underpinned by the following values and principles:

- **Rule of Law**
Upholding the rule of law through the efficient, fair and transparent administration of justice is crucial to the promotion and maintenance of social peace and stability of the state. It is also vital in ensuring an enabling environment for development and prosperity of the nation.
- **Constitutionalism**
In Tanzania, the exercise of political power shall be regulated and checked by rules which determine the validity of legislative, judicial and executive actions on the basis of the doctrine of separation of powers between the three organs of the state. This principle is crucial to enhance democratic rights, accountability and transparency, and the upholding of the rule of law.
- **Fundamental Human Rights, Equality and Social Justice**
The fundamental rights and freedoms of every citizen are enshrined in the Constitution of the United Republic of Tanzania. The main organs of the

state are compelled to uphold these fundamental rights, which encompass equality and social justice. The constitutional provisions are augmented by Tanzania's ratification or accession to various international conventions and treaties, including:

- The International Convention on the Elimination of All Forms of Racial Discrimination (1972);
 - The International Covenant on Economic, Social and Cultural Rights (1984);
 - The International Covenant on Civil and Political Rights (1984);
 - The International Convention on the Elimination of All Forms of Discrimination Against Women (1985);
 - The International Convention on the Rights of the Child (1991);
 - And the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1998).
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- **Equality of All Before the Law**
Every citizen has a right to a fair trial, and the state owes to the citizen to always protect this right. This principle is enshrined in the Constitution, which specifically provides that every person is innocent until proven guilty in a Court of law.
 - **Ethical and Fair Conduct by Law Enforcement Officers**
There is need in every case that all parties are treated ethically and fairly by law enforcement officers under the due process of the law. In this regard, the officers are expected to observe the highest standards of professional integrity.
 - **Accessibility and Affordability of Legal Services for All Citizens**
This principle implies the need for the Government to ensure that even the poor, the marginalised and the disadvantaged, including women, juveniles and the disabled, have equal access to the justice system. Therefore, the legal and judicial system will be non-elitist, people-friendly and accessible to the poor and weak.
 - **Efficient and Timely Resolution of Disputes**
In pursuit of this principle, there was the recent introduction of the alternative dispute resolution practice, which is contributing to efficiency

and timeliness in resolution of civil disputes. This practice is recognised as a valuable and legitimate component of the rule of law. In future it will be made available to all potential users. In search of efficiency in the penal system, for example, alternatives to custody will be explored and adopted wherever appropriate.

- **Transparency and Accountability**

In observance of this principle, law enforcement officers shall: (i) enable the citizens to understand how courts and the justice system operate, and (ii) practice openness and accountability in the operation of the whole system of administration of justice. On its part, the Government shall uphold the role of a free and independent press in promoting transparency and accountability.



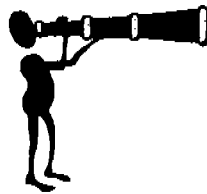
Our Vision

The vision that will inspire and sustain the reform and development of the legal and judicial system in the 21st Century and beyond will be:



This vision is characterised by:

- Speedy dispensation of justice;
- Affordability and access to justice for all social groups,
- Integrity and professionalism of legal officers;
- Independence of the judiciary; and
- A legal framework and jurisprudence of high standards that are responsive to social, political, economic and technological trends at both national and international levels.



Long Term Strategic Perspective

The long term strategic perspective for the reform and development of the legal and judicial system is geared to the realization of the shared vision. In this perspective, there shall be full implementation of all the recommendations contained in the report of the Legal Sector Task Force. The persistence of resources constraints, however, underlies the initiative to develop the legal sector reform medium strategy and action plan. Total reform of the sector and realisation of the vision is a long-term undertaking. The medium term strategy also reflects the imperative for a comprehensive approach and concerted efforts among all the institutions for effective implementation and ultimate achievement of its goals.



Medium Term Strategy

The medium term strategy and action plan for Legal Sector reform is the outcome of a collaborative effort between different Legal Sector Institutions and especially, the Bench and the Bar. It underpins the commitment of these institutions to cooperate and move in tandem in the reform of the sector. The strategic objectives of the sector reform programme for the medium term have been defined to be

- Updating and harmonising the legal and regulatory framework;
- Strengthening the management and coordination of legal sector institutions;
- Enhancing the competence and motivation of personnel in public legal sector institutions;
- Improving pre-service training of legal personnel in the country;
- Enhancing the independence of the judiciary and integrity of legal officers;
- Enhancing access to legal services for the poor and disadvantaged; and
- Developing and maintaining an enabling and conducive work environment for public legal officers.

Each of the above objectives will be the focus of a component of the reform programme's medium term strategy and action plan.

Key features of the medium term strategy include the following:

- **Committing Government to Enhanced Funding of Legal Sector Institutions**
Maintenance of law and order is the centre of the functions of Government. It is primarily the *raison d'être* for the existence of the state. It is also therefore the central plank of good governance. In this perspective, therefore, adequate funding of the operations of public legal sector institutions shall be accorded the highest priority in allocation of Government expenditures;
- **Emphasis on Relatively Low-cost Interventions**
Emphasis on low cost interventions in the initial phase of the reform is geared to maximising early impact with severely limited resources;
- **Strong Inter-agency Collaboration**
It is abundantly clear that effective institutional changes and capacity building in the legal sector must move in tandem across all the key institutions in the sector. In this context also, inter-agency collaboration is crucial.

- **Strategic Management by Legal Sector Institutions**
All the legal sector institutions will be required to prepare strategic plans with the twin goals of capacity building and improved service delivery. The strategic planning initiatives will be within the framework of the recently promulgated Public Service Employment and Management.
- **Policy, and the Performance Improvement Component of the Public Service Reform Programme**
These strategic plans will encompass the implementation of the relevant legal sector reform measures.
- **Linking and Complementing Other Public Sector Reform Programmes**
Legal sector reform is one of several major national public sector reform programmes; including: macro-economic adjustment and privatisation programmes; the Public Service Reform Programme; the Local Government Reform Programme; the Fiscal Management Reform Programme; the Presidential Anti-Corruption Drive; and sector development programmes in social services and infrastructure. The on-going constitutional review process is another reform programme. All these programmes share the overarching goals of enhancing good governance and the living conditions of the people of Tanzania. Moreover, these programmes reinforce each other in many aspects. Therefore, it is important to ensure appropriate linkages and complementarity of the reform programmes.



A Legal Sector Reform Steering Committee is spearheading the transformation of the legal and judicial system. All key legal sector institutions are represented in this Committee. In addition, inter-agency task teams will be established to spearhead each of the key areas of the reform. Furthermore, in each of the key legal sector institutions, a specific top officer has been designated to oversee and coordinate the implementation of the reform interventions in the organisation.

