

WELCOME REMARKS: CHAIRPERSON KCK, Prof. Chris Maina Peter

The Chairperson welcomed members, and thanked them for having taken time off their busy schedule to attend the workshop. He explained the background to the workshop:

KCK had commissioned studies on each of the three East African countries, including Zanzibar as well as at the East Africa Community level, with the aim of providing a comparative review of developments within the region. All the three East African countries have undertaken legal sector reform programme within the framework of poverty reduction strategy. The poverty reduction strategy which is premised on the popular definition of poverty by the grassroots persons, defines poverty beyond the absence of basic needs to include ignorance of the law, lack of access to justice and protection of the law. Accordingly, one of the aims of the legal sector reform programme is to increase access to justice especially for the poor and ensure security for the person and property, and thereby ensure good governance and development. The legal sector reform process has been quite comprehensive in some countries, while in others it is still at conceptualization stage, hence, the timeliness of the workshop to enable East Africans learn from each other processes.

Goal : To provide a regional framework to dialogue and share experiences with the aim of learning from each other's best practices, challenges, mistakes made and collectively identify opportunities present within each country in order to build on regional integration.

Prof Peter thanked SIDA for the financial support and especially appreciated Mr. David Wiking, for being a true partner of KCK and particularly for his key role in assisting with the conceptualisation of the project. He also acknowledged the presence of Mr. Lars Tengruth Embassy of Sweden Dar-es-Salaam, Mr. Lohnart Jemt Embassy of Sweden Addis Ababa and Mr. Thomas Kjell, of SIDA Stockholm.

WELCOME REMARKS: Representative of SIDA, Mr. David Wiking

In his address, Mr. Wiking representing SIDA assured the participants of SIDA's interest in East Africa, exemplified by the 300 million dollar funding invested in the region through bilateral support. Development cooperation is part and parcel of the Swedish Foreign Policy with its key tenets being human rights based approach and pro-people development. SIDA's work on democratic governance draws on a number of principles – participation, transparency, and equality in dignity and rights, norm and institutional accountability.

At the regional level, SIDA is supporting projects where a regional approach adds value. These focus on issues such as shared natural resources, particularly the Lake Victoria initiative. In addition, the sensitive and contentious nature of democracy and human rights issues within the region necessitate a regional approach to open up dialogue between concerned parties. Furthermore, a regional approach nurtures the sharing of ideas and experiences. More still, at times it is more cost effective to conduct activities on a regional basis rather than replicate them in numerous countries.

Given that the rule of law is critical to development particularly in reassuring people to trust institutions for their protection, Mr. Wiking found the workshop timely. He observed that since the East African countries were at different levels of implementation and had also adopted different approaches which underscored the imperative to share and learn from each other's experiences was underscored. Significantly, in respect to the most recent vintage of fast tracking the East African Federation, the conference provided an opportunity to reflect on the extent to which the three partner states were moving towards a regional jurisprudence.

Opening Remarks: Hon. Nuwa Amanyu Mushega, Secretary General EAC

In his opening remarks, the Secretary General, Hon. Amanyu Mushega, represented by the Legal Counsel to the Community lauded the timeliness of the workshop which coincided with the ongoing process of establishing how the integration process can be fast tracked for fast, balanced and sustainable development and for the benefit of the peoples of East Africa.

He emphasized that the EAC integration process is choice-based and that the partner states had reaffirmed their resolve to cooperate in promoting and strengthening closer linkages among business organizations, employee and employers' organisations and professional bodies and associations. He reiterated the fact that history had bitterly taught East Africa, that only a people-centred and private sector-driven integration process would avail a panacea for sustainable integration. The workshop was therefore testament of the aspiration of the people of East African to forge closer linkages and cooperate for the benefit of the Community.

Drawing on the importance the EAC attaches to the involvement of both the private sector and civil society in the integration process, he congratulated KCK on having received observer status with the EAC and challenged it to strengthen its hitherto recognizable role in the development of the integration process. He recapped that the EAC shares the conviction that co-operation in legal and judicial affairs was of paramount importance for it provides a conducive legal basis for initiation and implementation of regional projects and programmes. The Workshop, therefore, fit the bill of ongoing work in the area of legal and judicial co-operation at the Community.

The State of Harmonisation of Municipal Laws in the East African Community Context:

HON. WILBERT T.K. KAAHWA, Legal Counsel to the Community

The paper addressed the rationale and extent of the East African Community's harmonisation of the Partner States' municipal laws.

The Treaty and the Development Strategies of the EAC, 1997-2001 and 2001-2005 lay emphasis on policy rationalisation and harmonisation as a basis for the success of the integration process. Law is perceived not just as a tool for implementing economic

integration, but also as a basis for economic integration because the implementation of stable, clear and uniform legislation encourages investment and growth of markets. Further, harmonisation of laws is also a necessary consequence of globalisation due to the need to establish trading blocs as paths to both economic growth and survival in multi-lateral trading, security and political spheres.

The EAC Treaty provides for co-operation in legal and judicial affairs in respect to legal training and certification, standardisation of the judgments of courts within the Community, harmonisation of all national laws appertaining to the Community; and the revival of the East African Law Reports and journals (Art 126). Again, Partner States commit themselves to domesticate the Treaty (Art 8). The objective of harmonisation of laws is to create an enabling environment for greater private sector participation in economic and social development in East Africa through establishment of accessible, predictable and transparent laws at both regional and national levels. The East African Co-operation Development Strategy 1997 – 2000, justifies the prioritisation of co-operation in legal and judicial affairs on grounds that it facilitates the setting up of a regional mechanism for the settlement of business disputes and the harmonisation of Municipal Laws in the East African Co-operation context.

Furthermore, the East African Community Development Strategy (2001 – 2005) prioritises the harmonisation of legal training and certification within the Community for the smooth transition. In this respect, the Partner States undertook to harmonise all their national laws and regulations in the following areas: Trade and investment; Civil aviation; Telecommunications; Immigration; Environment; Health; Labour and employment; Education sector and Joint action in international agreements/protocols.

From the outset the East African Community sought to pursue the process of harmonisation of laws for a twofold purpose. First, the systematic establishment of a Customs Union, Common Market, Monetary Union and ultimately a Political Federation; and secondly the implementation of relevant policy-related decisions of the Council of Ministers in all other areas of co-operation.

The EAC takes cognisance that Partner States are concurrently undertaking reform of laws relating to activities within the contemplation of the Treaty, such as the Uganda's Institutional Capacity Building Project on the Legal Sector Reform; Kenya's Task Force on reform of various laws and Tanzania's study on the review of her Companies Ordinance.

Additionally, under the UNEP/UNDP-Joint Project on Environmental Law and Institutions in Africa, The East African Sub-regional component has emphasised the harmonisation of laws in the areas of environmental impact assessment regulations; forestry legislation; trans-boundary movement of hazardous wastes; methodology for the development of environment standards; management of the Lake Victoria environment and wildlife legislation.

Institutional framework and methods of work

The process of harmonisation of laws in the East African Community is spearheaded by a Task Force on Approximation of Laws comprised of representation from the Partner States' Law Reform Commissions, Offices of the First Parliamentary Counsel, Coordinating Ministries and line Sectoral Departments. The Task force is charged with: identifying priority areas for the approximation / harmonisation of municipal laws and statutes; facilitating exchange of information between the Law Reform Commissions; establishing synergy with other institutions and bodies engaged in law reform programmes; preparing working papers for the Sub-Committee on Approximation of Laws; and preparing draft tripartite instruments. The Task Force undertakes research on laws that require to be harmonised at national level and makes recommendations for the enactment of an EAC law or for amendments or repeal of national laws to conform to global trends or best practices. On approval by the Sectoral Councils, a recommendation becomes a directive to the Partner States to implement.

Progress to date

In 1998, the Partner States' Attorneys-General agreed to change the exercise of "Harmonisation of Laws" to "Approximation of Laws" except in cases where circumstances on specific legislation demanded otherwise. Approximation of Laws has been approached mainly through either the enactment of municipal laws to take into account the East African Community developments and needs or the use of protocols and tripartite agreements on agreed areas and activities of co-operation. Such standardisation forms the basis for the protocols and tripartite agreements, as has been the case with the Southern Africa Development Community (SADC)'s legislation on firearms' control.

In line with its mandate, the Task Force has identified the following priority areas of law for approximation: Travel Restrictions, Movement of Persons and Services; Property and Title; Commercial transactions (including insurance, building societies; banking; capital markets; and investments); Finance and Investment; Environment; Infrastructure Development; Energy; Agriculture and Animal Husbandry; and Health. Further, it has facilitated exchange of information between Partner States Law Reform Commission on approximation of municipal laws such as reports, statutes and other publications; and established synergies with other institutions and bodies engaged in law reform programmes in the East African sub-region.

Problems that Afflict the Process of Harmonisation of Laws

- i) **Sovereignty and Regional Integration:** Under international law, the partner states are obliged to ratify the treaty, domesticate it within Municipal law, and ensure its timely implementation and general adherence to its provisions. However, the question of the Partner States' sovereignty is a challenge. The EAC does not have clear mandate to enforce Council decisions upon Partner States. Rather, the implementation of relevant decisions on harmonisation remain the preserve of the Partner States. As a result most decisions of the Sectoral Council on Legal and Judicial Affairs regarding harmonisation often remain unimplemented. In comparison, the European Commission has the authority to

- issue binding directives which have the force of law even if the Member States do not adopt them into national law.
- ii) High magnitude of the expected work on harmonisation: For example, environmental law alone entails a review of at least 37 Partner States' Acts, including research at the national levels. Moreover, the fact that Zanzibar has a different municipal law system from that of mainland Tanzania, adds to the scope of work.
 - iii) A uniform legal system is critical for integration processes for it provides a legal structure necessary for capable of implementing the decisions of the member states. However, in spite of having had a common legal system received from UK and a regional legislative systems, under the defunct EAC in 1977, the Partner States adopted different and independent legal system legislative practices and procedures in the enactment of the municipal laws. Furthermore, the legislation has developed in different ways in pursuit of respective national interests. Thus the harmonization exercise is burdened by conflict of laws problems.
 - iv) For the harmonisation process to have full effect it should cover both hard law (national legislation) and soft law (rules and legal guides). To date emphasis has been only on hard law.
 - iv) Each of the Partner States lacks a legislative framework on new emerging issues such as e-transactions.
 - v) The "approximation" paradigm so far used by the EAC is open-ended. While, Partner States are expected to legislate taking cognisance of the Treaty and the harmonisation process, unfortunately sometimes the new laws do not pay due regard to the regional harmonisation process.
 - vi) The process harmonisation of laws is afflicted by lack of sufficient financial resources. The Treaty provides for the Partner States' joint funding of the budget of the Community, through equal contributions, regional and international donations and any other sources, such as incomes. For the last ten years, Partner States have found the EAC budget a burden on their national budgets. As such contributions to the EAC budget not only arrive belatedly but also in percentage portions. Furthermore, donor contributions for studies/research come with strings attached are cumbersome to access as well as inflexible for the short term requirements of the Community. Thus, programmes have either been delayed, postponed or sometimes abandoned.

Recommendations

- i) Re-Orient the Harmonisation Process: Partner States must commit themselves to supporting the EAC to ensure the timely implementation of its programmes and projects (Art 8) as well as base the enactment of national legislation on the integration process.
- ii) Broaden Participation of Stakeholders: The harmonisation process would benefit from a wider involvement of stakeholders and interested parties including civil society and the private sector, to realise the "people-centred and market driven" community.
- iii) Utilise the EALA to legislate on EAC matters;

At the time the East African Community adopted the approximation approach, the East African Community Assembly-(EALA), an organ charged with legislating for the Community (Art 49) was not in place. It is high time the Council of Ministers, using its powers to initiate and submit bills on policy matters (Art 14) utilised the EALA to effect its role.

- iv) Collaboration with other Regional Blocs: The Community ought to activate its synergies with other regional blocs for purposes of effective collaboration on the harmonisation of laws in areas of common interest. Experience of other African regional organisations such as the Economic Community for West African States (ECOWAS) and the Common Market for Eastern and Southern Africa (COMESA) are resourceful. Collaboration with other regional blocs is in tune with the African Union's Strategic Plan for rationalising the "plethora" of regional economic communities which in a number of cases address similar issues from parallel positions thereby curbing unnecessary expenses.

The Treaty for Harmonisation of African Business Laws (known as OHADA) Treaty, 1993, is considered a legal revolution in Africa given the number of countries concerned, its scope and the fact that it obliges member states to directly apply "Uniform Acts" notwithstanding any previous or subsequent provision of domestic law."

In conclusion, the process of harmonisation of laws in the East African Community has not effectively facilitated the achievement of the objectives of the Community due to conceptual straitjackets and practical limitations. At this point in time when the Partner States are assessing the integration process with a view to fast-tracking the establishment of a Political Federation, the need to subject the harmonisation of laws to another and more productive approach was stressed.

As observed by Peytz, "the harmonisation of law requires strong and unified political will, the commitment of significant resources, and the adoption and communication of clear goals and time-tables. In the absence of which, a piecemeal approach may be more likely to succeed." It is instructive to note for comparative purposes, that the Common Market for Eastern and Southern Africa (COMESA) has opted for a phased out approach.

PLENARY

Ensuring a common legal framework and laws: The fundamental question pondered in the plenary was whether the proposed Fast tracking was a realistic endeavor, given the hurdles faced by the harmonization exercise. The above being compounded by the fact that harmonization was a mammoth task necessitating a scrutiny of the laws of each country.

Participants were reassured that to alleviate the above, the EAC had developed guiding principles of harmonization, taking into account the different levels of legal development with the region. Hence, it is generally agreed that the EAC would adopt the better legislation within the region. For instance, the Task force has adopted the Uganda law on Terrorism and the Kenya Law on Research. In a few situations such as in the case of the law relating to Capital Markets, the laws are at the same level.

Based on Art 108 which pledges partner states to give precedent to EALA laws, participants underscored the imperative of having the EALA legislate on Community laws to expedite the fast-tracking towards Political Federation. Furthermore, given that the Committee of Eminent Persons had recommended that the political federation be established by 2010, it is necessary to simultaneously legislate for systematic regional integration, such as legislation to facilitate the establishment of the Custom's Union.

Participants underscored that the harmonisation or the approximation of laws was not an option for East African countries but a priority duty. Hence, the political elite need to ensure a common regional legal framework as a basis of greater integration. Indeed, having different laws compounds the difficulty for East Africans to smoothly integrate or even engage in common business.

The place of Zanzibar within the EAC : Of concern was the position of Zanzibar within the EAC. While there were some positive development on the mainland, Zanzibar lags behind. Still, Tanzania mainland continuously resists substantial discussion of Union issues, under the pretext that it is a political issue. As such, participants reiterated the need for honest and frank discussion of the sovereignty and position of Zanzibar within the EAC as a practical problem that has potential to hinder the harmonious integration of East Africa. This was informed by the fact that Zanzibar has an independent constitution, legal framework and judiciary, to mention but a few. It was conceded that while Zanzibar is purportedly represented by Tanzania, there were non-union matters such as labour, gender, sports and culture that were currently being addressed at the EAC, which require the overt representation of Zanzibar. Consequently, it was found politically and practically prudent for Tanzania to develop internal institutional mechanisms for equitable representation of Zanzibar's interest at the EAC level. The assumption by Tanzania that Zanzibar was represented by a Zanzibari in the EALA was found to be flawed, on the premise that the said representative primarily represented the interests of the ruling party rather than the national interests of Zanzibar. The participants were reassured of the preliminary efforts to have Zanzibar specially represented on the Harmonisation Task Force, as an interim solution.

Coordination of the different collaborative process aimed at regional integration:

Participants were appraised of the various collaborative initiatives within East Africa, such as The Inter State Security Committee for the heads of Police Force on interstate security matters, The Inter State Defense Committee for the Chiefs of Defense, and the regional Police Forum that brings together the police to address the decisions of the East Africa Police Collaboration (EAPCO), to mention but a few. Such collaborative initiatives often come up with protocols and memoranda of understanding on areas of cooperation. Therefore the Legal and Hamonisation Task Force has embarked on the process of reducing the various protocols agreed upon into laws.

Ensuring a People-centered Community: Finally, participants challenged the EAC to bring the EAC principles of people centeredness and being people driven to fruition. For

instance, promoting the easier freedom of movement within East African would go a long way in enhancing an East African citizenship. It was regretted that while the East African passport is in place, it is more of cosmetic value, since it is interpreted differently by the different immigration officers, at times to the detriment of the holders. In response, it was reaffirmed that the EAC Treaty is commitment to pro-people development. The people of East Africa are therefore expected to channel their concerns through civil society organizations (CSOs) with Observer Status or through their national assemblies. Further, it was disclosed that the Protocol for Free Movement of Persons would be put in place by 2007 in order to realize the lofty ideal of common identity.

Legal Sector Reforms in Tanzania: An Examination of Development and Status

DR. MAPUNDA: Faculty of Law, University of Dar-es-Salaam

The paper examined the legal sector reforms taking place in Tanzania, mainland.

Historical Background:

In pursuance of the socialist policy of centralized planning, Tanzania adopted a policy of “Socialism and Self Reliance” through the Arusha Declaration, in 1967. Accordingly, Tanzania naturalised all major means of production and simultaneously abolished multipartism and introduced a one-party state. Unfortunately, the strong centralized power resulted in inefficiency, weakened institutions and resulted in the decline of state revenues.

Since Independence, Tanzania has made many attempts to reform the legal sector. In November 1974, government appointed the Msekwa Commission, whose mandate was confined to the improvement of the process of the courts, and was as such, not a comprehensive review of the legal sector reform.

Following the coming into power of President Mwinyi, Tanzania abandoned the socialist policies and negotiated a structural adjustment program : The Economic Recovery Program with the Bretton Woods institutions in 1986, significant for which, was the introduction of market economic policies and subsequently, multiparty politics in 1992.

The Bomani Task Force

It was evident that the law lagged behind the above socio-economic and political changes in the country. Accordingly, government established the Legal Sector Task Force in April 1993, headed by Mr. Bomani. The Bomani report, presented to the government in January 1996, documented the various problems afflicting the legal sector, namely : Inordinate delays in resolving disputes and dispensing justice; Limited access to justice and legal services and justice for the majority of the people; Corruption and unethical conduct in the legal system; Outdated technological system; Limited public trust in the legal system; Low competence and morale of public sector legal personnel; Inadequate numbers of professionally trained personnel; and Poor work environment in the legal sector. The Bomani report also defined the program for the reform of the legal sector, the bigger component of which was endorsed by government.

The Medium Term Strategy and Action Plan (MTS),

The Bomani Task Force had proposed a program for the reform and refurbishing of the legal sector costed at US \$ 266 million for Tanzania mainland and Zanzibar. Given the difficulty of mobilizing such huge financial resources the government formulated the Medium Term Strategy and Action Plan (MTS), costed at US \$ 41,430,663. The MTS and its Action Plan was launched in December 1999 as a flagship for legal sector reform for key priorities areas.

The Vision of the MTS is: “Timely Justice for All.” The Mission of the legal sector is: “The development of social justice, equality and rule of law through quality and accessible legal services.” The Mission is underpinned by the following values: fairness, basic human rights, equality and social justice; rule of law and integrity of legal professionals.

Ultimately the legal sector reform is aimed at realising the following outputs: Speedy dispensation of justice; Affordability and access to justice for all social groups; Integrity and professionalism of legal officers; Independence of the judiciary; and high standard legal framework and jurisprudence that is responsive to social, political, economic and technological trends at both national and international levels.

Since its establishment the MTS has been revised twice. In 2003 the MTS was revised to anchor its objectives within the framework of Poverty Reduction Strategy and to introduce activities from the Ministry of Home Affairs. Again, in 2004 the MTS was revised to incorporate the recommendations of the joint appraisal team and views of stakeholders.

At the time of the workshop, the (MTS) was not yet operational, but was undergoing another revision that would have to be endorsed by the joint government-donor conference.

The MTS consists of key result areas: National Legal Framework; Access to Justice for the Poor and the Disadvantaged; Human Rights and Administration of Justice; Knowledge and Skills of Legal Professionals; Service Delivery Capacity in Key Legal Sector Institutions; Program Management, Coordination, Monitoring and Evaluation.

The Quick Start Project

Hand in hand with the MTS was a sister project known as the Quick Start Project (QSP) launched in October 2000, aimed at ‘Kick-Starting’ the MTS, by creating a favorable ground for the smooth take off of legal sector reform.

The QSP has six objectives:

- i) To update and harmonize the legal framework for the legal sector institutions to match the social and economic developments of the country.
- ii) To enhance administrative support, division of work and supervision mechanism of judicial officers
- iii) To enhance delegated authority (retention schemes).

- iv) To identify training needs in public legal training institutions and develop a training program
- v) To strengthening juvenile justice, through building of juvenile courts and training of magistrates to handle juvenile justice (Ibid. pp. 37-49).
- vi) To promote district based support to the judiciary: a pilot scheme in arusha and manyara regions has identified the needs, profiled the support needed and implementation has already begun.

Successes of QSP in Improving Service Delivery:

- i) **The National Legal Framework:** In order to remedy the outdated legal and regulatory framework, the Law Reform Commission has been strengthened. Furthermore, the updating and harmonization of laws is underway. Additionally, a new Companies Act was put in place in 2002 and the Land Act of 1999 and the laws governing mortgages and lending practices amended. The review of labour laws has also been initiated.
- ii) **Access to Justice for the Poor and the Disadvantaged:** A number of NGO's have trained paralegals to serve the common people, by providing legal aid and literacy programmes. It is proposed by The Law Reform Commission [LRC] that the paralegals be formally recognised as a cadre who represent people in the Primary Courts. Judges, magistrates, police, prison and welfare officers have been trained on best practices for the administration of juvenile justice. The Mbeya Approved School and Kisutu Juvenile Court have been rehabilitated and the juvenile courts in Mtwara and Mbeya designed.

- The QSP pilot scheme on district-based support in Manyara and Arusha regions, obliging the local community to participate in the construction, rehabilitation and equipping of selected Primary Courts is underway. Substantial amounts of building materials and financial contributions have already been collected.
- iii) **Civil society is a key stakeholder and player in the legal sector reform program in Tanzania and has been fully involved in the designing and revision of the MTS and are part and parcel of the implementation process of the program, particularly for the key result areas of Access to Justice for the Poor and Disadvantaged.** Further, the Legal Aid and Human Rights Network, has been established with financial support by DANIDA. Its membership include, the Legal and Human Rights Center (LHRC), Women Legal Aid Center (WLAC); Tanganyika Law Society (TLS); and Legal Aid Committee (LAC) of the Faculty of Law, University of Dar-es-Salaam (MTS, 2004, p. 22).
 - iv) **As result of civil society participation, there is improved access to justice for persons in remand homes and prisons; enhanced legal aid for disadvantaged and poor persons and dissemination of legal information; improved access to justice in rural areas and improved access to justice for juvenile offenders.**
 - v) **Human Rights and Administration of Justice:** In order to remedy the inadequate institutional safeguards against the violation of human rights, the Commission of Human Rights and Good Governance was established in 2002; The Police General Orders and Prison Orders were revised and human rights courses

- conducted for prison and police officers; the public has been sensitised against corruption and the promotion of human rights, gender equality and good governance practices.
- vi) **Knowledge and Skills of Legal Professionals:** In order to remedy the skills gap including that of the few law graduates, lack of staff in the training institutions, the Institute of Judicial Administration (IJA) in Lushoto has been established. The private sector has been allowed to establish universities; the training needs for legal sector training institutions and human rights training needs of the magistrates, state attorneys and public prosecutors have been identified. Consultancy work on the establishment of the Law School in Tanzania is underway.
 - vii) **Service Delivery Capacity in Key Legal Sector Institutions:** The training programs for the sector personnel have been designed, action plan for the establishment of an integrated management information systems for legal sector institutions developed; High Court premises in Mbeya, Sumbawanga and Moshi purchased and rehabilitated while High Court buildings in Iringa and Mwanza have been rehabilitated and District courts buildings constructed in Kongwa, Rujewa and Mbarali. The application of higher salary scales for public legal sector personnel and creation of specialist divisions at the level of the High Court to enhance efficiency have also been effected.
 - viii) Lastly, the necessary structures for the program management, coordination, monitoring and evaluation have been put in place.

Poverty Reduction Strategy Paper (PRSP)

The legal sector reform process has taken on board the national policy on poverty alleviation. Among the critical links between governance and poverty reduction is the availability of a legal system that facilitates rather than hinders poor people's access to timely justice. Indeed, Article 13 of the Constitution of the United Republic of Tanzania provides that all people are equal before the law and are entitled, without any discrimination, to protection and equality before the law. In order to strengthen democratic governance and equal enjoyment of rights by its people, the Tanzania government published its first specific Poverty Reduction Strategy Paper (PRSP) in October 2000.

The PRSP views the justice system as part of the social well-being of the people and, on that ground, emphasizes the need to reform the administration of justice and improve performance and integrity of the legal sector institutions for the benefit of the poor.

The PRSP has the following objectives:

- i) To speed up the settlement of cases in primary courts by, among others, reducing the estimated shortage of magistrates by one half;
- ii) To promote community-based security arrangements;
- iii) To rehabilitate buildings and other facilities in the Primary Courts; and,
- iv) To address the key issues in combating corruption in the legal sector institutions.
- v) To speed up court process

Challenges

Given that the MTS predated the PRSP, the MTS has been criticized for not being properly aligned to the Poverty Reduction Paper. This has necessitated a re-examination of the MTS to ensure that its plan and implementation is in consonance with the PRSP. Although a number of activities have taken place and some gains have been achieved, the reform process in the country, is still at its initial stages.

Achievements of the MTS

1. The Judiciary: The following reforms have been achieved under the judiciary, as the key organ entrusted with dispensing justice:

- i) The introduction of Alternative Dispute Resolution (ADR) system in the High Court and Resident Magistrates' and District Courts
- ii) The recruitment of two judges of the Court of Appeal, 11 judges of the High Court, 7 Resident Magistrates and 84 Primary Court Magistrates.
- iii) Conducting of special refresher courses/seminars for 600 Primary Court Magistrates, 300 resident Magistrates and 34 Judges of the High Court and the Court of Appeal on constitutionalism and human rights.
- iv) The establishment of the Institute of Judicial Administration in Lushoto (Tanga Region), has increased the number of magistrates serving Primary Courts and other court officers.
- v) The establishment of a fully functioning Commercial Division of the High Court.
- vi) The establishment of Disciplinary Committees in the Regions and Districts to monitor the conduct of judicial officers.
- vii) The introduction of the Case Flow Management Committees, involving the DPP's department, the police force, the Prison Service and the Judiciary, in order to reduce the backlog of pending cases.
- viii) The computerization of the judiciary has been initiated at the Court of Appeal and the High Court in Dar-es-Salaam has facilitated the speedy production of proceedings;

2) The Ministry of Justice and Constitutional Affairs:

- i) 36 State Attorneys were recruited in 2002/3 financial year.
- ii) All laws in mainland Tanzania have been compiled and re-printed, thus improving the availability of statutes needed for court use and other purposes.

3) The Commission for Human Rights and Good Governance was established under the law in 2001, (Act No 7 of 2001), as a watchdog institution of human rights behavior in Tanzania.

4) The Ministry of Home Affairs has put in place a training strategy for the Tanzania Prison Service and the Police Force. In addition, the Faculty of Law of the University of Dar-es-Salaam compliments its efforts.

Challenges in Reforming the Legal Sector

- i) The failure of having a clear legal sector policy has resulted in numerous reforms of the MTS, even before its implementation. Related to this, the Tanzania's

- National Development Vision: Vision 2025 cannot be achieved without a corresponding legal framework.
- ii) While conceding that donors have played a very crucial role in facilitating the take off of the reform exercise, late disbursement of funding has caused inordinate delays in the programme implementation.
 - iii) Despite the increase in government budgetary allocations to about 40% in the financial year 2001/02, the sector is still plagued by a dearth of financial resources.
 - iv) The rapid expansion and institutionally complex private sector-led market economy and globalization, has added to the complexity of building a legal framework responsive to the demands of the new global economic. E-commerce has further given rise to new legal issues including those relating to taxation, contract, liability, patents, data protection.
 - v) Lastly, is the challenge of mainstreaming gender and HIV/AIDS issues in the legal sector reforms programmes.

Recommendations.

In order to realize a meaningful reform of the legal sector, it was recommended that government does the following:

- i) Articulate the Legal Sector Policy to guide the reform process in particular and respond to the socio-economic and political developments.
- ii) Demonstrate political will to execute the reforms by providing adequate budgetary support.
- iii) Ensure democratic participation in the planning and execution of the intended reforms. This would enable the people own the reforms and thereby enhance continuity and sustainability of the reform process. Otherwise, the people will continue to perceive the programme as a government hand-out.

TANZANIA

Discussant: MATT CHIKAWA: Deputy Director Law Reform Commission:

From inception to the current Mid Term Strategy (MTS), Tanzania does not have a clearly defined Legal Sector Reform process. As a result, the reforms are disjointed and sector specific. For example, capacity building is selectively done, and at times excludes key components of the legal sector. Furthermore, lack of clarity has contributed to the confusion over what sectors comprise a comprehensive legal sector reform. For example, the police is regarded as an option programme of the legal sector, excluded or included at whim. Most times the areas of inclusion or exclusion are determined in the bilateral agreements with donors, as is the case with the strengthening of the Law Reform Commission and the Commercial Court. In summation, the anticipated Quick Start Programme QSP has neither been quick nor has it jump-started the legal sector reform process. Hence the MTS has remained on paper without implementation.

Mr. Chikawe disagreed with the lead presenter that the motive force behind legal sector reform was to ensure justice, law and order. He counter argued that legal reform was driven by the need to re-align the law to facilitate globalisation. Inevitably, the reform process has prioritised laws that sustain the operations of a market economy such as, the

new Company Act and the Land Act to facilitate easier access to land by investors. Again the labour laws are more foreigner friendly, with people not being the main beneficiaries.

Again , the fact that the legal reform process did not emanate from government is amplified by the scanty budgetary provision, rendering the reform exercise donor dependent. To circumvent the likelihood of reform aggravating the lived conditions of the people, government has to invest money in the programme. This would ultimately enable government to retain ownership of the reform and direct it towards the pro-people rhetoric. He recommended the putting into place of an office to coordinate the exercise.

Legal Sector Reform Review in Uganda:

Frederick W. Jjuuko : Professor of Law, Makerere University

The paper was specifically concerned with the current legal reform involved in the Justice Law and Order Sector (JLOS), formally launched with the adoption of the JLOS Strategic Plan in November, 2001.

History of the JLOS

The JLOS was adumbrated by earlier bilateral institutional support to specific sectors such as DFID support for Police, DANIDA for the Judiciary, Austria for the Uganda Law Reform Commission, Norway for Uganda Law Society (Legal Aid), Netherlands for DPP and Germany for Prisons (Community Service). This uncoordinated institutional approach gave way to ad hoc consultation, that resulted in “The Chain Linked” pilot whereby Prisons, DPP and judiciary co-ordinated their energies. This was to eventually lead to the introduction of a co-ordinated approach to planning and budgeting at a national level for JLOS. Likewise the JLOS was informed by various studies, namely: The Commission of Inquiry into the Judiciary, 1995; The Crown Agents Report, 1997 and The World Bank follow-up to the Crown Agents report 1998 - 1999. Although these studies have identified the problems bedeviling the various institutions, and pointed to solutions, they did not do so in a sector-wide manner.

The mission statement of the JLOS is “to enable all people to live in a safe and just society.” Its expected outcome is the “the improved safety of the person, security of property and access to justice that ensures a strong economic environment to encourage private sector development and benefits to poor and vulnerable people. The purpose of the JLOS reform strategy is to promote the rule of law and increase public confidence in the Criminal and Commercial Justice Systems in the medium term. The JLOS policy objectives are to maintain law and order and increase access to justice for all persons through infrastructure reform, law reform, improved legal services and civic education.

The JLOS is comprised of the Ministry of Justice and Constitutional Affairs, which is the lead institution, the Directorate of Public Prosecutions, the Ministry of Internal Affairs (Government Chemist, Immigration Department and Community Service Programme, Police), the Judiciary, Prisons, Judicial Service Commission, Ministry of

Local Government (Local Council Courts) and the Ministry of Gender (Probation Department).

History of and Philosophy Underlying the JLOS

The author argues that the philosophy of the JLOS sector is found in the neo-liberal economics of SAPs: privatization and reliance on market economics. It is also associated with the phenomenon of the failing state, compelling the idea of civil society participation coupled with the minimalist state provision of public goods.

More specifically the JLOS is linked to the Poverty Eradication Action Plan (PEAP), first launched in 1997 and revised during 2000 and republished in 2001. The PEAP is supposed to be Uganda's national planning framework in which the overall goals for government policy and programmes are set out. The PEAP is meant to fight poverty and "calls for a good institutional framework for delivering public goods and services. It also relies on public and private sector involvement. The PEAP has four pillars, namely:

- i) Rapid and sustainable economic growth;
- ii) Good Governance and security;
- iii) Increasing the ability of the poor to raise their incomes;
- iv) Enhancing the quality of life of the poor.

The JLOS is one of those areas where PEAP goals have been translated into Sector Wide Approach Plans (SWAPs). The SWAP is the framework in which the national goal and priorities in the PEAP are translated into plans for each sector and for local governments. SWAPs are supposed to bring together activities of government, donor and other stakeholders into a simple strategy, to be implemented through sector investment programmes and policy, institutional and budgetary reforms. SWAPs are said to be more efficient than investing in numerous single projects. They are said to clarify sector objectives, priorities and strategies and link spending with the necessary policy institutional and budgetary reforms. The process of developing and monitoring SWAPs is said to allow stakeholders to be more involved and their views to influence priorities and spending plans - hence building local commitment and ownership of the strategy.

The 1997 PEAP located the JLOS under Pillar 2: "Ensuring Good Governance and Security" and Pillar 1 : Rapid and Sustainable Economic Growth, in as far as the enforceability of contracts is concerned.

Structure of the Sector

- i) The Leadership Committee: This is comprised of the Chief Justice, Minister of Internal Affairs and Minister of Justice and Constitutional Affairs. The Leadership Committee provides political support for the sector programme.
- ii) The Steering Committee is comprised of officials at the highest level of JLOS institutions: Permanent secretaries, accounting officers and chaired by the Solicitor General. It is the operative senior level decision making, responsible for making policy decisions, monitors policy coordination and directs the Technical Committee. However, there are sector institutions that are not represented on the

- Steering Committee, such as the Company Registry, Land Registry, and Commercial Lawyers.
- iii) The Technical Committees: These are charged with the implementation of the JLOS programme and consists of representatives from all JLOS institutions as well as the Ministry of Finance Planning and Economic Development. It consists of about 40 members such as under secretaries and senior persons from Policy and Planning Units.

In reality, there are 2 sub-committees of the Technical Committee through which the Technical Committee operates, namely, the Criminal Justice sub-committee and the Commercial Justice sub-committee. The Ministry of Finance, Planning and Economic Development, donors with bilateral programmes are represented on the Technical Committee by Technical Advisors.

In addition there exists a Commercial Users Committee which meets separately from the Commercial sub-committee 4 times a year. A range of persons including lawyers, donors, academics and the IMF attends such meetings. In contrast there is no presence of stakeholders on the Criminal Committee such as victims of crime. The Uganda Law Society is represented not as a user but implementer of the legal aid programme.

- iv) Working Groups: There are five Working Groups of the Technical Committee, mostly focusing on criminal matters which emerge from the sector. These include the Budget Working Group, Gender Working Group, Juvenile Justice Working Group, The Publicity Working Group and the Local Government, Prisons and Police Working Group.
- v) The Secretariat: This is housed in the Ministry of Justice and Constitutional Affairs. The Secretariat consists of a Senior Technical Advisor, a resource person covering all JLOS wide issues and criminal reform aspects and three technical advisors on the commercial side. The Secretariat is responsible for the day to day promotion and management of the JLOS programme covering criminal and commercial justice reform; providing the Steering Committee, Technical Committee and Donor Liaison Committee with quarterly reports on progress; ensuring donor co-ordination and liaison with SWAP Donor Group of the JLOS. The Ministry of Finance attends progress meetings.
- vi) Policy and Planning Units: Each JLOS institution is supposed to have a Policy and Planning Unit to deal with planning and development at the institutional and sectoral levels. However, these seem to be preoccupied with financial matters.

All activities of JLOS are based on the 5 year Strategic Investment Plan.

Monitoring tools to measure progress include:

- i) Bi-annual Commercial and Criminal Justice Statistical and End User Surveys to measure both public perception on the impact of reform, and case management outputs against defined targets;
- ii) Commercial Reform Programme Random User Studies particularly for use

- by the Commercial Court;
- iii) Quarterly progress reports indicating achievements and constraints at institutional level in programme implementation;
- iv) Two semi-annual reviews between the Government of Uganda and Donors where an annual progress report is considered, the work plan for the next financial year approved, and a financial audit report is submitted by the sector in regard to the programme fund management.

Successes of JLOS

- i) The putting in place and operationalising the structure described above constitutes a significant achievement with regard to the realisation of a sectoral approach: promoting coordination and synergies in the sector and eliminating duplication, unnecessary competition, wastage and rationalising the financing of the sector.
- ii) The medium term 3 - 5 year programme has prioritized the criminal justice reform and commercial justice reform, for both institutional reform and legal reforms in the two areas. It appears that commercial reform is aimed at providing the appropriate legal framework for private investment while criminal law provides the public good of the general conditions of security from criminal and other aspects that may not be conducive to private investment.

Successes of the Criminal Justice Reforms

- i) The Chain Linked Initiative first piloted in Masaka District involving the Police, the DPP and prison, has considerably reduced case backlogs in Masaka High Court. This resulted in the establishment of Case Management Committees, which have been replicated in all the 29 magisterial areas.
- ii) The above coupled with the Criminal Case Backlog Project has resulted in a faster disposal of cases, as well as the development of a unified case backlog data base under the Ministry of Justice and Constitutional Affairs. Performance targets and best practices guidelines have been instituted to ensure speedy trials and as a result the remand period has been reduced from an average for 5 years to 2 years for capital offences.
- iii) Community Service Sentences, as an alternative to imprisonment were also introduced in 2001 as a pilot in Masaka, Masindi, Mpigi and Mukono Districts. The relevant law was enacted. Community service has resulted in the decongestion of prisons, saving of costs, poverty reduction for families whose incomes may be affected by custodial sentences and enabled the communities to get services that they would otherwise have to have been paid for.
- iv) Capacity Building : Training in financial management, computerization of case management systems by the DPP and Judiciary, the development of a crime statistics data base, a prison census and annual reports with statistics by the DPP and the Judiciary, training and attachment of DPP and CIP staff with specialised squads in South Africa, UK and USA have taken place.
- v) Proposed legal reform include the amendment of various laws: The Local Council Courts Bill has been prepared to increase the jurisdiction of these courts; the amendment of the Magistrates Courts Act and the Trial on Indictment Decree to

give jurisdiction over defilement to Chief Magistrates Courts; the amendment of the Penal Code, especially to comply with the 1995 Constitution; decriminalization of petty offences, principles and guidelines for sentencing and prosecution guidelines, reform of criminal trial procedures.

Successes of the Commercial Justice Reform Programme

- i) Establishment of the Commercial Court in 1996 to ensure fair adjudication of disputes with minimum expense and delay. The court moved to its own premises with a library, computerized systems, including case management. A Commercial Court Users Committee comprising private sector professional and business organizations to provide a forum for information exchange and learning is in place. In this connection the programme is developing a Commercial Users Guide. A Commercial Justice Baseline Survey of 2001 was produced.
- iii) The Centre for Arbitration and Dispute Resolution (CADER) with enabling legislation : The Arbitration and Conciliation Act are in place. Additionally, the Judiciary has approved its Rules and Practice Directives of the ADR Pilot Project.
- iv) There is now a faster disposal of cases - an average of 9 months down from 12 months for the disposal of a case. Multiple adjournments have also since reduced. However, due to the increase in the number of cases registered and a decrease in the number of judges there is an actual increase in case backlog.
- v) The Advocates Act will be amended to strengthen monitoring systems and training of commercial lawyers. Plans to develop a resource centre at Uganda Law Society headquarters for use by all lawyers are underway.
- vi) Over 18 laws have been prepared by the Law Reform Commission and are either in Cabinet or some other stage of enactment. These include: Chattels Securities; Companies Act Cap 110; Competition Act (proposed); Contract Act, formerly Cap 75; Cooperatives Act; Copyright Law; E-Commerce (Electronic Transactions); Insolvency Act; Mortgages; Patent Statute of 1991 (to become Industrial Property Statute to cover Patents, Trade Secrets, Industrial Designs and Technovations but not integrated circuits); Sale of Goods Act - Chapter 79; Special Economic Zones; Trade (Licensing) Act, No.14 of 1969; Trademarks Act and lastly the Uganda Consumer Protection Bill (1999).

Challenges of JLOS

- i) Scope of holistic legal sector: Some institutions are included or excluded without a clear criteria. For instance the exclusion of the Uganda Human Rights Commission creates a serious gap. On the other hand the inclusion of the Land Registrar, Immigration and even the Company Registry is regarded as an anomaly.
- ii) Questions of inter-sectoral approaches on such issues as gender main-streaming.
- iii) The sectoral approach may also pose problems of liaising with institutions outside the sector that have important bearing on sector activities. Such examples include the Parliament with regard to law reform and the office of the Inspectorate of Government.
- iv) Over pre-occupation with finances and accountability to donors: The sector is conceptualised in the context of PEAP and is supposed to be linked to poverty

reduction. The Ministry of Finance, as well as donors play a very significant role in the sector. As a consequence in most cases, the Technical Committees is more preoccupied with financial matters. Indeed there appear to be a lot of reporting on financial issues and the whole question of result oriented and value for money approach to reform. Moreover, there is more reporting to donors than internally within the sector. Likewise, most actors in the sector are preoccupied with attracting funding for their institutions.

- v) The programme is donor dependent not only in financial terms but also in terms of oversight and accountability. There is little peer accountability or accountability to stakeholders and civil society. Such external financing and externalised accountability may not be sustainable in the long run.

DISCUSSANT : Ms. Jackie Asiimwe : Criminal Justice Advisor, JLOS Programme
Irrespective of the skepticism by the lead presenter, Ms. Asiimwe found benefit in the Sector wide approach, namely: improvement of communication, coordination and cooperation within the JLOS; standardisation of Codes of Conduct and sentencing of guidelines, local council courts; efficient savings and proper priority setting through the Prisons Farm Project and Police Vehicle Fleet Management System. Lastly, a foundation has been laid for effective data collection with several baseline surveys completed and the improvement of the information management systems is underway.

Nonetheless, Ms. Asiimwe conceded that some challenges plagued the reform process: **Reluctance to implement a rights based approach:** Adoption of a rights based approach to development requires a paradigm shift at all levels of JLOS. In other words, despite existence of the ability and desire for a human rights and pro-people approach, this does not always translate in practical terms. For example, while torture is obviously abhorred at the policy level, the Human Rights Commission has reported this practice among the security organs.

Adhoc inter-sectoral relationships and synergy: Currently the inter-sectoral relationships that comprise the public sector reform are ad-hoc at best or basically non-existent. Further, in spite of the aims of SWAP strategy issues such as gender, juvenile justice, HIV/AIDs continue to be compartmentalized, instead of being cross-cutting issues. Therefore, in order to yield better results it is critical to strengthen inter-sectoral linkages and relationships.

Ownership of the reform process: JLOS is grappling with clarifying *whose reform and for whom?* Given that the sector is highly donor dependent infers a donor's driven agenda. As a result there is more accountability to the donors than internally within JLOS to address its weaknesses, particularly the failure of the timely implementation of the planned programme. This is partially influenced by the endemic delays in the release of funding. Accordingly, in order to enhance government ownership of the reform process, the JLOS sector included the Ministry of Finance as part of the Working Group, to prompt the Ministry to appreciate the challenges and needs of the sector and thus provide the requisite resources.

Secretariat Issues: The Secretariat is understaffed. Further there is simmering tensions accruing from issues of autonomy of the Secretariat, as it is situated in the Ministry of Justice. Furthermore, is the challenge of resource imbalance with the commercial justice programme allocated more funding than the criminal justice programme.

Poor Impact Assessment and Monitoring Tools: Obviously due to the poor Impact Assessment and Monitoring Tools, it is difficult to assess impact of reform. As such, the narrative of the JLOS neither clearly articulates the impact on the end user, the people nor the JLOS sector.

Civil Society Relations: Although JLOS has developed a partnership strategy to guide collaboration with civil society, this has not been implemented. Yet, civil society would be resourceful in voicing pro-poor views.

Failure to ensure Law reform: It was regretted that JLOS is yet to use its clout in the reform process. In spite of its numbers, JLOS has not successfully advocated for law reform to remove impediments in the JLOS programme. A number of Bills are yet to be discussed by Parliament.

Issues of Inclusion and Exclusion: There is ambivalence over who should be included under JLOS. For instance, the security organs by and large carry out law and order functions during elections and in conflict areas. Yet they are not included in the JLOS programme. Thus JLOS needs to critically address this challenge while preparing for likely scenarios in the next stages of conflict cycle.

Inadequate Preparation of the Transition: The most outstanding challenge for the JLOS is the strategic positioning of JLOS in the current political transition. Definitely, there is need for law reform to institutionalise multi-partism. Additionally there is need for the training of human resource to manage the transition.

At the end of November, JLOS held a semi-annual review that addressed some of the above concerns. The following were recommended:

- a) To develop a strategy for advocacy targeting Cabinet and Parliament to pass various critical laws
- b) To develop the 2nd SWIP to address the challenges in the reform process
- c) To develop Sector Wide Monitoring and evaluation indicators.
- d) To develop a Gender Action Plan and Sector Specific Gender Policy.

PLENARY

Generally it was observed that none of the two countries have a clearly defined Legal Sector Policy. Again, both countries have articulated their programme differently. In Tanzania, it is referred to as Legal Sector, while in Uganda it is the Justice Law and Order Sector (JLOS). In order to define the legal Sector Programme, it is imperative to clarifying its purpose.

Participants queried whether legal sector reform shall ever take off in Tanzania, amidst the numerous revisions, since 1974, without any implementation. The dramatic shifting of goal posts aggravates this. The case in point being the sudden halting of the Pilot programme on community participation in Arusha. While the public had received the programme with enthusiasm that they readily collected the building materials, the same are wasting away due to the bureaucratic hurdles such as extensive consultancy work on the drawings.

In response to the law reform process having minimal focus on the pro-people concept, Dr. Mapunda admitted that although the Bomani report highlighted the problems of the poor in accessing justice, the MTS did not pay focus on the same. A number of stakeholders have decried this lacunae and efforts are being made to reorient the programme towards being pro-people. He was of the considered view that rather than undertake continuous amendments of the MTS, it is more prudent to undertake a comprehensive review of the whole sector in a manner that promotes synergy of the different sectors. Unfortunately for Tanzania, the legal sector institutions are marginalized and allotted miniscule financial resources.

Given that Tanzania had hardly started implementing its legal sector programme, the plenary discussion essentially focused on Uganda which was in the advanced stage of implementing its JLOS programme. The participants underscored the fact that instituting reform is a process and not an event. Hence, they lauded the few successes that have been achieved by Uganda. While, JLOS had met some resistance at inception, particularly in relation to the idea of a basket funding, because the cost of reform is actually budgeted for, it has resulted in the availability of more resources for the sector. In addition, the coordinated approach under the Chain Link programme has cleared the case backlog, Land Tribunals have been established at the District level and police have put in place Human Rights Desks.

The above notwithstanding, it was cautioned that the Land Tribunals may aggravate rather than alleviate the problems faced by the poor, given that the poor are structurally marginalized. Thus, in order to improve access to justice, the law must be simplified in ordinary English and translated into local languages.

The fact that the Criminal Justice Sector was marginalised compared to the Commercial Justice Sector, was decried. Again, some of the perceived successes of the Commercial sector, such as the establishment of the Centre for Alternative Dispute Resolution, is of no consequence to the poor, who cannot afford the \$50 dollars per arbitration sitting. Furthermore, important Bills that address the immediate legal needs of the poor such as the Domestic Relations Bill, the Sexual Offences Bills, the Clarification of Jurisdiction and Bills on Fines, Reforms of the Local Council Courts which are part of the Criminal Justice Reform Programme are currently shelved.

In summation it was underscored that the success of the various reforms in both countries was highly contingent on the political will of the leadership. The cardinal questions therefore are: Who owns the process? Is East Africa addressing the core issue of access to

justice by the poor or those of the investors? This underscores the imperative to pressure governments to undertake positive reform that would result in the improvement of the lives of their people. Equally, government must put in place a progressive and realistic implementation plan as well as integrate the law sector programme into the national budget. Evidently, the public service requires more resources to meet the increased wage bill which has swelled as a result of the reform process.

The legal sector reform processes also need to comprehensively address the issue of corruption. Unfortunately for Uganda it is doubtful whether the putting in place of the Leadership Act and the amendment to the Inspectorate of Government Act would strengthen accountable leadership as the same government has challenged their positive implementation in courts of law.

Legal Sector Reform in Kenya

MS. JANE MICHUKI : Advocate and Consultant

A Historical Background of Legal Sector Reform in Kenya

The Government of Kenya as well as other key stakeholders have acknowledged the need for reform in the legal sector in Kenya for over two decades. In 1982, the Government established the Law Reform Commission. In 1992, the Attorney General established 15 reform task forces to compliment the Law Reform Commission. At the beginning of 1998, the then Chief Justice appointed a Committee chaired by Hon, Justice Kwach, a judge of the Court of Appeal to review and report on the administration of justice in Kenya. Also in 1998, the Attorney General and the Chief Justice instituted the Legal Sector Reform Program.

The Kwach Committee report made several comprehensive recommendations, including improvement in the terms and conditions of employment of judicial staff, improvement in facilities available to the judiciary, increase in judicial personnel and development and implementation of a code of conduct for judicial personnel backed by an inspectorate unit.

The division of the High Court into 4 divisions comprising family, commercial, civil and criminal divisions has since been implemented in Nairobi, but has not been replicated in other major urban areas. Simplification of Court procedures and introduction of Alternative Dispute Resolution has however remained illusive.

In 2000, government launched the Legal Sector Reform Program, focusing on the core sector institutions. This was revised in 2001 into the "the Expanded Legal Sector Reform Programme" to include the Police, the Prisons, the probation and aftercare service department, children's department and civil society represented by the Federation of Women Lawyers (FIDA-K). In 2001 the technical committee prepared and presented to the Government the Legal Sector Reform Program (LSRP) that became the focal point for the reforms in the sector at that time. However, E-LSRP did not include complete and exclusive measures to combat corruption in the legal sector institutions.

The elections of the year 2002 saw a new government elected into office on a campaign platform of enhanced good governance, restoration of law and order, fair and efficient administration of justice and a particular emphasis on the fight against corruption. A re-evaluation and refinement of Expanded Legal Sector Reform Programme was undertaken to address the issues of inclusiveness and participation, as well as lack of clear strategies against corruption.

In November 2003, the Ministry of Justice and Constitutional Affairs launched the Governance, Justice, Law and Order Sector (GJLOS) whose objective was to improve the quality of life of Kenyans and enhance effectiveness and efficiency in justice, human rights and governance.

Although the law establishing the Law Reform Commission was enacted in 1982, for the purpose of promoting the reform of the law it suffered from perennial lack of financial and human resources. Likewise, while most of the task forces had completed their work and submitted their reports by 1999, their recommendations were not implemented.

The Governance, Justice, Law and Order Reform Sector (GJLOS) Program

The GJLOS is only one of the several components of wider Government of Kenya public sector reform (PSR) initiatives. The other main components of the PSR are public service reform, parastatal reform, local government reform, and financial planning and budget reform. The gains of anchoring the legal sector reform in the PSR framework are strong coordination and co-operation of the Sector institutions and enhanced public funding of the sector institutions.

The GJLOS Programme was launched in November 2003. The Vision of GJLOS is a safe, secure, democratic, just, corruption-free and prosperous Kenya for all. Its Mission is to improve the quality of life of Kenyans, enhance effectiveness and efficiency in justice, human rights and governance.

GJLOS reform sector program seeks to further expand the legal reform sector and adopts a sector wide approach, as a significant shift from restricted institutional thinking to an integrated approach. The principles justifying sector wide approach include the fact that there are many institutions that are co-dependent in service delivery. Further it is consistent with Government's planning and budgeting framework and will also facilitate low-transactions' participation by the Development Partners. The Sector wide approach also maintains the independence of the institutions.

It is hoped that the Sector wide approach would enable systematic analysis of problems in the entire sectors; the identification of reform priorities across the sector; allocation of resources for identified priorities; rational use of government and donor funds and all-inclusive for enhanced cooperation, co-ordination and communication in policy formulation and implementation of activities between agencies in government, private sector and civil society.

Successes of the GLOS

- i) The Ministry of Justice and Constitutional Affairs was formed and given the mandate of spearheading reforms in the GJLOS.
- ii) Several Task Forces were established to review all contracts relating to jobs undertaken for the government for which payments were pending. The Ndungu Commission on land tenure and security and the Goldenberg Commission to investigate and report on the Goldenberg scandal a major financial scam involving billions of shillings were established.
- iii) In the judiciary the government arraigned 18 judges in the “radical surgery.” The process of arraignment of judicial officers has been much criticized for failure to follow due process. The suspended judges were not informed of the charge, nor were they given an opportunity to defend themselves. The exercise was therefore seen as a public relation gimmick. Many felt that the judiciary was never actually cleansed and only a few people were sacrificed in order for the government to get international aid and to create space for the appointment of the politically correct persons. Furthermore, the appointment of the new judges after the "radical surgery" was arbitrary with the operative qualification being that of a Lawyer with 7 years standing. Neither the Law Society of Kenya nor parliament were sufficiently involved in the vetting of the judges. Additionally, it is contended that this reform in the judiciary should have awaited the new Constitution which would institutionalize the checks and balances for the judiciary. The government has maintained that the rationale was solid as the Reform government needed a critical mass of reformers to carry out the reforms. It is now conceded that the process might not have been correct and the judges should have been given time to defend themselves. The acquittal and restoration of Justice Waki gives some credence to the criticism.
- iv) In terms of legislation, recent reforms include the passing of the Anti-corruption and Economic Crimes Act (which creates the Anti-Corruption Commission with the responsibility to investigate corruption and economic crimes) and the Public Officers' Ethics Act.
- v) Government has put in place the Short Term Priorities Program (STPP) as a ‘first aid’ package of the first year. The STPP is aimed at providing a common and strategic reform platform for the on-going Government initiatives; Identifying reform priorities for the GJLOS institutions that development partners can in the short term coherently support with comparatively limited resources; and to rapidly mobilize additional resources from development partners that can compliment the Government budgetary allocations for operations and reforms by the sector institutions to enable governance reforms take-off in Kenya.

Challenges

- i) Government has not lived up to its campaign pledge to give Kenyans a new constitution within 100 days of coming to power.
- ii) The whole process and mechanism for appointment, discipline, promotion or

removal of judges is still arbitrary, which compromises the independence of the judiciary. The process requires to be institutionalized, standardized and implemented.

- iii) There are many obstacles blocking an effective and efficient legal sector, including poor functioning of the court and justice system in terms of court procedures, case filing, law reporting, legal documentation, corruption as well as limited access to justice for poor people due to distant, expensive, complicated procedures and lack of knowledge of legal rights.
- iv) The GJLOS institution in Kenya is suffering from decades of under-investment. Modernization and effectiveness of operations are needed in terms of working facilities and infrastructure, management and administration methods, procedures, practices and ethics. The current budget is too limited to enable Government effectively and timely push through its very ambitious program of priority changes and reforms in the sector. Likewise, development partner's commitments are slow in coming.
- v) Existing commercial laws are biased against the small-scale trader and entrepreneurs especially the *Kiosk* owner. Moreover, the few that are favourable to small enterprises are hardly implemented. Harassment by law enforcement agents and frequent demands for payments for numerous trade and business licenses are seen as major stumbling blocks to the growth and vibrancy of the small-scale enterprise sector.
- vi) Because there had been so much "rot" in the legal sector, there was an attempt to make very ambitious reform programs that attempted to do too much too soon. In reality, there is lack of capacity to undertake STPE among the sector institutions and there is need to trim down the program to a few action points that would assure quality upon implementation.

Best Practices and Lessons

- i) Government's commitment to ensuring that the reforms benefit the public.
- ii) The GJLOS sector has established its own short and long-term priorities.
- iii) The Government, private sector, donor community and civil society partnership clearly spelt out obligations for each party;
- iv) Quarterly reports and semi-annual reviews are made.
- v) Monitoring and evaluation framework for the reform program, with milestones and indicators designed by independent technical consultants.
- vi) The Strategy has been broadened to include key sectors and institutions originally left out.
- vii) Although the program was capital intensive and required careful planning and synergetic effort, it has recognized that there were some aspects that had zero monetary returns in implementation and could be undertaken immediately.
- viii) The involvement of civil society was crucial to the success of the reform programme.

Recommendations

- i) The Legal service sub-sector has yet to perform up to expectation due to the poor access to and high cost of legal services beyond the reach of most

Kenyans.

There is need for special attention to be paid to the needs of the poor and disadvantaged by making the formal justice system more accessible to the poor and women; to strengthen the informal/traditional justice system including removing its discriminatory aspects; and to strengthen the linkages and crossover between poverty reduction and legal reform. In deed, poor people point have frequently pointed out that they cannot live in peace or freely make choices and seek the most of their opportunities if the institutions of justice and law and order fail to protect them in their daily lives.

- ii) The government in conjunction with other stakeholders need to institute a regulatory framework with a view to reducing costs, improving coverage, promoting public awareness of legal rights and encouraging a culture of seeking legal redress whenever necessary. There is also need to train paralegals, employ additional legal draft-persons and provide civic education.
- iii) Given that women constitute the largest proportion of the poor, it is proposed that the sector-wide approach be expanded to include the Ministry of Gender, Culture, Sports and Social Services.
- iv) Strengthen and streamline ongoing reforms in the provision of legal and judicial services;
- v) Provide adequate resource support to the sub-sector to bring legal and judicial services closer to the poor and the most vulnerable in society;
- vi) Implement the recommendations of the Kwach Report on the problems bedeviling the judicial service embracing creation of specialized divisions in the High Court, establishment of commercial courts (already done in Nairobi) and decentralization of the administration of justice.
- vii) Establish special court and police interrogation rooms for dealing with sensitive cases such as rape and other forms of violence.
- viii) Recruit and appoint sufficient judicial staff and legal draftsmen to speed up administration of justice;
- ix) Modernize the Legal code and dismantle outmoded, repressive and inappropriate laws; and
- x) Promote public awareness on matter relating to law and order to eliminate ignorance of the law and mitigate occurrence of petty offences.
- xi) Promote alternative dispute resolution to complement the court procedures, circumvent ineffective courts, cut loses and delays and enhance user satisfaction as well as improve access to justice for the marginalized sectors.
- xii) Promote programs that can help resolve conflicts that threaten the well being of the communities, enhance the ability of the marginalized communities to achieve quick and cost effective settlements and improve productivity by releasing monies which would otherwise be spent on litigation for investment within the communities.
- xiii) Provide internal security to the general citizenry as a conducive environment for sustained economic growth.
- xiv) Establish a National Policy on Legal Reform for the sector;
- xv) Development of the legal framework should follow extensive consultation to

- ensure public awareness, input and acceptance.
- xvi) Consultation within existing departments should be encouraged to ensure that infrastructure is cross-sectorial, efficient, cost-effective and implementable.
 - xvii) The current framework developed by GJLOS can be considered as an interim framework and can be implemented while the final framework is being modified or developed.
 - xviii) Implementing the framework should be facilitated by capacity building in implementation and review training.

Conclusion

Efficient and easy access to timely, efficient and affordable legal and judicial services encourages the culture of law-abiding citizenry, which is a requisite for social, political and economic development. Corruption, poor attitudes towards work, high costs and lack of judicial and legal services were mentioned as principal issues in the fight against poverty in Kenya. Administration of justice is critical in alleviating poverty as it creates an enabling environment for investment. Over the years, administration of justice has deteriorated resulting in delays in administration of justice and lack of access to courts; and to the creation of an uncertain environment for investment. This is aggravated by the mismatch between personnel and responsibilities, both in terms of skills and numbers, inappropriate training, unattractive terms and conditions of service and use of outdated laws and corruption.

DISCUSSANT

MS. HELLEN KWAMBOKA: Legal Officer FIDA (Kenya).

Ms. Kwamboka reiterated the fact that the NARC government is based on the campaign programme of reform characterized among others by a consultative approach of stakeholders. The GJLOS is an exceptionally comprehensive and broad sector wide reform initiative that draws from the old legal sector reform programme to include good governance, human rights and democracy and recognizes the important role played by the private sector and civil society in national development.

The GJLOS reform process is implemented in phases, with a priority focus placed on legal awareness and capacity building necessary to implement the legal reform, targeting the judiciary, Ministry of Justice and Constitutional Affairs; Attorney General; Office of the President (Department of Governance and Ethics, Provincial Administration, Kenya Police, Administration Police and Civil Registration); Ministry of Home Affairs (Prisons, Children, Probation, NACADA, NYS and Immigration Departments). Seventeen development partners through a basket fund fund the GJLOS.

The Organisational Framework include:

- i) The Inter Agency Steering Committee whose membership includes cabinet Ministers, the Attorney General and the Chief Justice. It is the apex organ responsible for the strategic direction of the GJLOS. It is chaired by the Vice President and Minister for Home Affairs. Additionally, the Attorney General and Minister for Justice provide proper legal advice.

- ii) Technical Coordination Committee: It provides technical guidance to ensure consistency with government policy. It is chaired by a Judge of the Court of Appeal. Under this is a Management Committee.
- iii) Thematic Groups reflecting the 7 specific key result areas : Ethics, Integrity and anti-corruption; Human Rights, Democracy and Rule of Law; Justice, Law and Order; Public Safety and Security; Constitutional Development and Democracy; Quality of Legal Services to Government to Government of Kenya and the public; Capacity for effective Leadership and Management of Change.
- iv) The Secretariat responsible for the implementation of the Programme
- v) Ministry of Justice and Constitutional Affairs responsible for the overall mandate of providing leadership for the implementation of the GJLOS reform strategy.

Civil society is included in all the thematic groups of the GJLOS. Women issues fall under the *Giving Quality Legal Services by Enhancing Access to Justice* Thematic Group. Advocacy for the establishment of a National Legal Aid Schemes is underway. Ms. Kwamboka expressed discomfort over the radical surgery of the judiciary for it resulted in severe backlog of cases, as many cases had to be heard anew. More still, the fact that the judicial officers are appointed on acting capacity generates loyalty towards the appointment office and thus compromises independence of the judiciary.

She acclaimed the enactment of the Gender Commission Act, The Children Act and The Criminal Law Amendment Act and the establishment of the National Commission on Gender and Development in January 2004, as resounding successes. However, as in the case of Uganda and Tanzania, Kenya has prioritized economic Bills, with Gender related bills such as the Domestic Relations Bills, the Sexual Offence Bill (2002) and the Domestic Violence Bill (2002) pending before parliament.

Legal Sector Reform in Zanzibar

PROF CHRIS MAINA PETER: Professor of Law, University of Dar-es-Salaam

In 1993 the Government of the United Republic of Tanzania decided to upgrade its legal sector as part of its wider strategy of creating an enabling environment for private economic activity and generally enhancing the role of the private sector. A Legal Task Force (LTF) was appointed to undertake an in-depth study of the legal sector in the country under the Financial and Legal Sector Management Upgrading Project (FILMUP). In the initial phase, although legal sector is not one of the Union Matters under the Constitution of the United Republic of Tanzania of 1977, Zanzibar was represented on the Task Force. It is therefore not surprising that when the proper Legal Sector Reform began as recommended by the Legal Task Force, it began in one part of the United Republic only – Tanzania Mainland. Therefore, whatever has happened in Zanzibar in terms of legal sector reform is very recent.

Consequently the presentation profiled the status of the deplorable legal sector in Zanzibar and the mammoth task confronting the government when reform begins. The legal sector in Zanzibar is that sector which deals with the administration or implementation of the law either directly or indirectly.

Historical Background

At independence on 10th December, 1963 Zanzibar began with a common law tradition entrenched in the Constitution. Chapter VI of the Constitution of the State of Zanzibar, 1963 provided for the judicature, established the High Court and tenure of its judges; the Judicial Service Commission as the organ responsible for the appointment and discipline of judicial officers including *Kadhis*. However, following the revolution on 12th January, the Constitution was abrogated. Law was not important at all. What mattered was the *Policy* of the ruling Party. Neither was legal training a priority of the Revolutionary Government of Zanzibar.

The High Court was specifically established vide High Court Decree of 1964. In 1966, a completely new judicial structure, comprised of the High Court, District Court, Primary Court, Kadhis Court; and Juvenile Court was set up. The President on consultation with the Chief Justice made appointments to these courts. A fundamental change in the judiciary in Zanzibar occurred in 1969 following the establishment of the Peoples' Courts and the abolition of all other courts save for the High Court. The *Supreme Council* appointed solely by the President, was the court of last resort. All matters – criminal and civil, with the exception of murder, attempted murder and manslaughter (which were handled solely by the High Court), went to the people's courts. The people's courts were presided over by lay persons who applied common sense. While the government was always represented in these courts by the Attorney General, no lawyers were allowed to appear before it. The Chief Justice of Zanzibar, who was also appointed by the President, was the only lawyer in the whole judicial system in Zanzibar under the People's Courts. Logically, lawyers fled the isles.

The legal sector began to pick up in 1980s following the enactment of the first post-revolution Constitution in 1979. The court system and the Zanzibar House of Representatives were established. The introduction of multiparty democracy coupled with the market driven economy in the early 1990s opened a completely new chapter in the isles, which necessitated law as a facility for adjudicating disputes. However, the highly underdeveloped legal sector in the isles was not ready for this vital role, in terms of both qualitative and quantitative legal services. Moreover, the advancement in the legal sector was checked by the polarised multi-party democracy, particularly the tensions between *Chama Cha Mapinduzi* (CCM) and the main opposition party *Civic United Front* (CUF). The signing of the Accord (*Muafaka*) between the ruling party CCM and CUF in 2001 provided a new lifeline for the rule of law and good governance and therefore the legal sector in Zanzibar.

The Status of Manpower in the Judiciary

The judiciary in Zanzibar is interesting because it is partly a purely Zanzibari matter but becomes a *Union Matter* at the highest level. In other words the highest appellate body –

the Court of Appeal of Tanzania is a Union Matter, under Item 21, while the rest of the judiciary is “domestic” to Zanzibar.

Currently, the High Court is comprised of a Chief Justice and four judges, of which only 2 are on permanent terms. The other two are on contract; one of whom is from Tanzania Mainland while the other is a retired Zanzibari aged 85 years! It was underscored that judges serving under contract cannot be said to be free and independent to administer justice in accordance with the law, because their security of tenure is entirely at the whims of the appointing authority. The Chief Justice of Zanzibar assured the researcher that the recruitment process was underway. However, he insisted that, for political reasons, judges from outside Zanzibar would still be needed in the Zanzibari judiciary, since not every lawyer can be a judge

There is currently no Resident Judge for Pemba. Those against having a resident judge in Pemba argue that it is not economically trite to have one given the few cases emanating from Pemba, to the High Court level. Those in support of stationing a judge in Pemba argue that justice is not about statistics, but fairness. Thus the possibility of a single person being wronged through denial of access to the courts of law was enough justification to provide the requisite machinery for justice. Further, the fact that there is no High Court Judge in Pemba gave magistrates a free hand to abuse the rights of residents of Pemba. Furthermore, most of the people with genuine grievances might be dissuaded by the hopelessness of the situation and opt not to waste their time going to court.

Under the High court are Regional Courts serving five Regions in Zanzibar and Pemba. The Districts and the Primary Courts are at the bottom of the judicial administrative structure. This notwithstanding, the Primary Court is the most important institution in the administration of justice because it addresses matters that directly touch the daily lives of the people. In essence, the Primary Court was meant to be a forum for alternative dispute settlement. In its criminal jurisdiction, the Primary Court can impose a custodial sentence not exceeding one year or a fine not exceeding Tshs. 2,000/= or corporal punishment. In civil matters the Primary Court has powers to deal with matters whose value did not exceed Tshs. 10,000/= However, the rising inflation has disabled the Primary Court from doing any serious work thus overburdening the District courts. Due to the nature of these courts and people who manage them, Advocates and State Attorneys are not allowed to appear in the Primary Court. However, Wakyls (unprofessional attorneys) are permitted to appear before them.

Wakyls or Vakyls are a typical Zanzibari judicial category of persons, who are admitted to practice law by the Chief Justice. The only qualification is that of being of good character and sufficient ability to practice before any court. Most wakyls are retired Court Clerks or Magistrates. Nonetheless, there is a major difference between a Wakyl and a Paralegal. The paralegal is mainly a representative of a community whose aim is to assist the poor and disadvantaged sections in the community. The Wakyl on the other

hand are businessperson in the legal sector. However, the fact that they are not trained in law, there is no moral or legal justification to allow a Wakyl to appear before the courts of law.

There are also Juvenile Courts for persons under 16. In reality the juvenile court is not a separate court, but is constituted by a Regional Magistrate and two lay members of the public one of whom must be female. It proceedings are in *camera*.

The Kadhis Courts are established under the Kadhis' Court Act, 1985, to determine questions of Muslim Law relating to personal status, marriage, divorce or inheritance in proceedings in which all parties profess the Muslim religion. It is generally regretted that the current qualifications of appointment to the office of the Kadhi are vague and unsatisfactory, the only qualification being "*an adult who commands respect in the society.*" Given that several Kadhis are educated up to University level, Prof. Peter recommended that the highly educated and deserving Kadhis should be recognised by the authorities.

Generally, all Court Clerks serve as the receptionists of court and hence the purveyors of the image of the court. It was recommended that the Court Clerks be appointed and disciplined by the Judicial Service Commission.

The fact that most typists within the legal sector institutions can hardly type their own names, delays the delivery of judgments.

The Judicial Service Commission (JSC) is established under Chapter Six of the Constitution of Zanzibar of 1984. It is chaired by the Chief Justice of Zanzibar and composed of a retired judge of the High Court or the Court of Appeal; one advocate recommended by the Zanzibar Law Society, the Chairman of the Civil Service Commission; the Attorney-General; the Chief Kadhi; and any other person the President deems fit. In 2002, the Constitution of Zanzibar was amended to fortify the position of the JSC, giving it powers to advise the President on the appointment of the Chief Justice and recommend to the President appointments of High Court judges. However, the fact that the Chief Justice is the Chairperson of the JSC is a violation of the rules of natural justice and raises issues of conflict of interest for the JSC is mandated to check the performance of the Chief Justice as the Chief Executive of the judiciary. Unfortunately, the Chief Justice is adamant, arguing that the judiciary was his turf and he should therefore be given a free hand to ensure its smooth running.

The Attorney General's Chambers is created under the Zanzibar Constitution. The Attorney General is the principal legal adviser to the Revolutionary Government of Zanzibar, appointed by the President. The fact that the Attorney General is an *ex-officio* member of the cabinet and *ex-officio* member of the Zanzibar House of Representatives

makes him a politician cum technocrat. Moreover, the current Attorney General of Zanzibar is also a member of the National Executive Committee (NEC) of the ruling party, *Chama Cha Mapinduzi*, which fuels doubts about his political impartiality.

Currently, the Attorney General Chamber's suffer from acute shortage of trained manpower. It is staffed with only 9 attorneys including the Attorney General and his Deputy, making each lawyer "a jack of all trades" without specialisation. Again, of the 9 attorneys, only 5 have experience of over five years. Unfortunately, efforts to recruit new lawyers have been stalled for lack of resources.

The DPP was created under the 8th Constitutional Amendment to the Constitution of Zanzibar of 1984 and the Director was appointed in July 2003. Accordingly, criminal prosecution was shifted from the direct supervision of the Attorney General to the newly created office of the Director of Public Prosecutions (DPP). However, the office suffers from human and fiscal resource constraints. Apart from the Director and the senior state attorney, the rest of the lawyers have no experience. Consequently, the office is heavily reliant on the few experienced attorneys from the Attorney General's Chambers. Neither has the office got any support staff. Although a comprehensive training programme is in place, there is no funding for the programme.

The Law Reform Commission (LRC), since its establishment in 1986, has no budgetary allocation and no staff, with the exception of its Chairperson : Mr. Justice Wolfgang Dourado. Legislation was last revised, consolidated and printed in 1959. Consequently, the LRC is popularly known as the "*Legal Siberia*," where there is nothing to do, but at the same time a salary is drawn.

The Office of the Registrar General is one of the oldest government offices, responsible for the registration of births, deaths, NGOs and Companies. While it has 53 workers, the majority are support staff. Most of the staff primarily relies on experience rather than knowledge. The Department of Registration of company is a one man office. None has any qualification for the document management Systems required. Further its scheme of service needs to be revised to provide for a promotion system and a training policy with clear training needs of all staff. The office also needs at least one Lawyer in each unit which deals with legal matters. Again, it suffers from inadequate funding. Furthermore, there is need to streamline the structure of the office, particularly as it deals with numerous functions.

Zanzibar Law Society: The viability of Zanzibar's machinery of justice depends on the commitment of the legal profession in practicing the law. However, the introduction of the people's courts after the revolution dissuaded and excluded lawyers from practicing law. The few private Advocates, who practice under the Zanzibar Law society, have no specialisation. Until recently, Zanzibar has been without a Bar association. Consequently, the Zanzibar Bar is still weak and was for a long time considered a "one

man show” by many of its members. The recent change of leadership provides hope for a positive vision.

Admission to the Roll of advocates in Zanzibar is under the discretionary powers of the Chief Justice, yet good governance dictates the diffusion of power among several persons instead of vesting more of the powers in one person. The Chief Justice is supportive of the idea of establishing a Council for Legal Education for Zanzibar. It is also timely to initiate dialogue with the Ministry of Justice and Constitutional Affairs of the United Republic of Tanzania to allow Zanzibaris graduating in law from institutions within Zanzibar and elsewhere to join the envisaged Law School once it is operational.

The Zanzibar University is a private institution of higher learning was established in 1998 is situated at Tunguu. Its Faculty of Law was established in 1999. It is questionable whether the University can be relied upon as a reliable source of manpower for the much starved legal sector, partly due to the fact that the University has not been vigorous enough in the selection process of the applicants. Thus some of the enrolled students would not even qualify for entry to an ordinary technical college. The University in general and the Faculty of Law in particular, largely depend on part-time staff. Currently, the Faculty has three full-time members of staff, including the Vice-Chancellor of the University who has to shoulder heavy administrative responsibilities. Additionally, the pay package is not attractive enough to attract skilled researchers. Therefore, it is critical for the University to offer competitive emoluments for its academics, in order to establish a permanent core of teaching cadre. In deed, one of the solutions to the many faceted problem of the Legal sector in Zanzibar can be addressed by effective training and specialisation in the relevant legal fields on both long and short term basis, covering all relevant departments.

In the recent past, some institutions have received some assistance, namely:

- i) The UNDP has sponsored a study of the legal sector in Zanzibar, the training of Judges, Magistrates, Clerks and Kadhis in human rights and legal research; the training of the young lawyers from the Office of the Attorney General in litigation and advocacy skills; the training of the personnel of the Office of the DPP in prosecution of white collar crime and terrorism; a study tour on the civilianization of prosecution in Uganda and the preparation of the *Prosecutors Manual*; training of the personnel of the Office of Registrar General in the development of a Data Base for births, deaths and marriage in Zanzibar as well as the funding of an awareness campaign on the need for registration. In addition, UNDP has also provided important equipment such as computers and photocopiers to the judiciary, Attorney General’s Chambers, Office of the Mufti, Office of the Registrar General and the Office of the DPP.
- ii) The Commonwealth has sponsored the training of lawyers on terrorism and how

to deal with its aftermath and training of judges, magistrates, clerks and advocates on judicial work, corruption and ethics.

In conclusion, while the assistance given to the legal sector in Zanzibar is a good starting point, it is not enough. It is haphazard and uncoordinated. In fact, one part of the legal sector does not actually know what the other is doing. Receipt of assistance is entirely dependent on how active the leader of the sector is. This necessitates identifying a senior official of the government to co-ordinate the process. It is commendable that there is enthusiasm to succeed in ensuring a functioning legal sector in Zanzibar, should adequate financial resources be provided. No doubt, fast and fundamental changes in the legal will not only improve the rule of law and constitutionalism but will also cement the on going democratic process, with the resultant multiplier effect of the socio-economic prosperity of the isles.

DISCUSANT MR. OTHMAN MASOUD: The Director of Public Prosecution

Mr. Masoud appreciated the fact that Zanzibar was in a privileged position of learning from the various reform processes in the different countries. To wit, Zanzibar had benefited from the study tour to Uganda to learn about the instructional framework on the civilianisation of prosecution in Uganda. Nonetheless, the workshop also provided a prime opportunity to explain the challenges faced by Zanzibar. He reiterated the fact that the legal sector is not a Union matter.

He recalled that prior to independence, Zanzibar boasted of a highly developed legal sector. The first British Court was established as early as 1839. Zanzibar benefited from a dual system of English and Sultan law, with a number of legislation enacted in Britain and India extended to Zanzibar. The first Zanzibar law report was produced in 1861. All the above legal developments were obstructed in 1963. Consequently, any meaningful reform to resuscitate the pitiable legal sector must commence by picking up the pieces of the pre-revolution so as to benefit from Zanzibar's rich history.

The Zanzibar reform programme is afflicted by meager resources due to the donor aid embargo on Zanzibar; after the electoral crisis aggravated by the declining clove returns and acute limited human resource. Notwithstanding the problems of compromised standards alluded to in the lead presentation, the establishment of Zanzibar University is a right step towards alleviating the over dependence on Dar-es-Salaam to fill the skills gap. Additionally, Mr. Masoud expressed the opinion that the most frustrating problem affecting legal reform in Zanzibar was the fragile political will to see the reform process to fruition. In this regard, while the *Muafaka* resulted in the establishment of the DPP's office, it is hamstrung by the resistance of the leadership within the legal sector to wholly implement the reforms. A case in point is the failure to ensure that the newly created DPP's office is indeed independent and well resourced.

He lamented the lack of a single document on Legal sector reform in Zanzibar and as a way forward, suggested the coordination of the legal sector reform in Zanzibar. He

ended by expressing optimism that since Zanzibar had ensured considerable reform with its meager resources; it would follow to learn from the developments in legal sector reform within East Africa.

PLENARY

As was the case with the earlier plenary, the discussion essentially focused on Kenya, for there is hardly any legal sector reform in Zanzibar. In the case of Zanzibar, the de-linking of the DPP's office from the Attorney General Chambers was a welcome intervention that enhanced the neutrality of the office from political manipulation. The workshop was reassured that the Government of Zanzibar had begun appointing graduates to Kadhis courts under Art 3/2003. Similarly, advocates have been permitted to appear before the same. Furthermore, that efforts to resuscitate the Zanzibar Law Reform Commission and recruit staff were underway. Again, the Deputy Attorney General pledged to act on the recommendation of the workshop, and advise government to appoint a qualified lawyer to sit on the approximation of Laws Task Force as well as review the Fieldman Report and fundraise for it.

In discussing the reforms in Kenya, it was clarified that they are in the initial stages. In addition to the gains raised in the lead presentation, it was disclosed that a new department of Governance and Ethics and the Office of the Ombudsman were functional. Kenya had also established an all woman's Police Station in Kilimani to handle gender based violence cases. Equally, commended the efforts of the Kenya National Council of Law Reports of putting its law report on the internet, which is an avenue for continuous sharing of information. The participation of very senior personalities in the GJLOS reform process was applauded as a sign of government commitment.

On the onset, participants disparaged the radical surgery for violated principles of due process. Although it was politically logical to address decades of institutional corruption, reforms in the judiciary should be fair and just for they have grave consequences for the implementation of the GJLOS. Likewise, it was regretted that in spite of the tremendous efforts made, the intended beneficiaries: the people are ignorant of the change. It was also acknowledged that illiteracy is a barrier to the notion of consultation of the people. Consequently, during consultations people expend their efforts talking about their problems without necessarily giving ideas of how to alleviate them.

Participants were reassured that in response to the problems faced by the poor such as, cumbersome court procedures, inaccessible distance, the Ministry of Justice is working on the establishment of a National Legal Aid Scheme, Small Claims Courts and the formalizing Alternative Dispute mechanisms. The Ministry of Education is also working on a Legal Education Policy. Likewise, the successful implementation of the GJLOS requires continued legal education for all officers including judges.

In defense of the slow implementation of reform, it was advanced that some of the causes, such as the late disbursement of funds by the Finance Management Agency are beyond the control of the sector. Further, participants were of the view that legislative reform is slow due to the fact that Parliaments in East Africa do not concentrate on their

core business of making laws, but spend most of their time politicking, resulting in having many pending Bills. It was counter argued that the blame lies squarely with cabinet, which in most countries is responsible for tabling Bills for discussion. In view of the above, it was advised that Parliaments be lobbied to present Private members Bills.

In conclusion, the operationalising of the rights based approach infers that issues of human rights and governance are no longer an exclusive government prerogative, but oblige the participation of all stakeholders. Civil society is obliged to regroup and organise in order to give constructive criticism aimed at collectively improving the welfare of society. Equally, important is the need to monitor the impact of reform.

REFLECTION OF THE WORKSHOP, RELEVANCE AND WAY FORWARD

Panelists:

- i) Mr. Gidudu Lawrence : Chief Registrar Courts of Judicature (Uganda)
- ii) Ms Cecilia Shiro : Tanzania Law Society
- iii) Lillian Mahiri : Ministry of Justice, Kenya
- iv) Hon. Omar Makungu : Deputy A.G. Zanzibar
- v) Hon. Medi Kagwa : Chair of the Legal Committee, East Africa Legislative Assembly

The fact that the workshop brought together practitioners within East Africa to learn from their experiences was unanimously applauded by all panelists.

Best practices

- The Sector wide approach has improved communication, coordination and cooperation amongst the key institutions and agencies, the standardisation of Codes of Conduct, proper priority setting and ultimately efficient savings.
- The participatory process of reform and the involvement of stakeholders, particularly civil society has increased the impact of the legal sector reform.

Challenges:

- In some countries, the legal sector reform process has been quite comprehensive, intended to provide a sector wide approach to development and influencing greater collaboration between different legal service providers, including civil society organizations, while in others, the process has barely started.
- While all the three East African countries have embarked on the reform of the legal sector, within the framework of the poverty reduction strategy, none of the East African countries seems to be achieving the desired goal, namely, improved service delivery in the legal sector institutions and a pro-poor development.
- The poor have defined poverty to extend beyond the absence of basic needs to include ignorance of the law, lack of access to justice and protection of the law. In spite of this, unfortunately priority has been placed on reform of the sector and laws to that facilitate investors, rather than the poor.
- None of the East African countries have clearly defined what legal sector

reform entails or its purpose. Accordingly, this had fueled the difficulty of drawing boundaries of what to include in the sector as well as a mismatch of sectors included therein.

- While pursuing regional integration, all the three countries have taken different paths in the legal sector reform. Likewise, the new laws are not aligned towards a common regional framework, but rather the protection of national interests.
- Almost all countries' budgets for the legal sector reform process about 50% donor funded.
- The process of harmonisation of laws in the East African Community has not effectively facilitated the achievement of the objectives of the Community due to conceptual straitjackets and practical limitations. These included among others: lack of an enforcement mechanism of relevant decisions due to the tensions between sovereignty and Regional Integration; high magnitude of the expected work on harmonisation; adoption of different and independent legal systems, legislative practices and procedures in the enactment of municipal laws; failure to align new laws to the regional harmonisation process and lack of sufficient financial resources.

Recommendations to Government:

- Facilitate the EALA to legislate upon EAC laws and put in place mechanisms to ensure the operationalisation of the decisions and legislate on Community laws pursuant to Art 46.
- Integrate the cost of reform in the national budgets in order to enhance government ownership of the reform. This would simultaneously enable government to direct the reform process thus mitigating against being donor driven.
- Define in concrete terms what institutions and departments form the legal sector, based on the common purpose.
- Ensure a holistic legal sector reform process which equitably embraces all sectors that address pro-poor issues.
- Given that the legal reform cannot address issues of poverty, without addressing the illiteracy programme, promote systematic inter-sectional relationships, within the public reform exercise, particularly the education sector.
- In order to remedy the anomaly of Bills being shelved in Parliaments, put in place policy or laws that would impose a time frame on the bills in the house to be concluded. In other words, within a specific time, a tabled Bill should either be discussed, adopted or rejected.
- Explore the potential of positive indigenous systems, such as the Gacaca in Rwanda and incorporate restorative justice approach of Dispute resolution.
- Broaden Participation of Stakeholders: The harmonisation process would benefit from a wider involvement of stakeholders and interested parties including civil society and the private sector, to realise the "people-centred and market driven" community.

Recommendations to Civil Society Organisations

- Popularise the reform in order to place the beneficiaries, the ordinary person on the street at the center stage of the reform by enabling them understand what is being done for their benefit.
- Urge governments to make domestic laws and policy conform to internationally acceptable principles of governance and human rights as enshrined in the Treaty.

Recommendation to the EAC

- Define what is law reform vis-à-vis Legal sector reform for East Africa
- Develop indicators of achievement and set standards for legal sector reforms for East Africa ;
- Oblige governments to report on achievements;
- Review the fashion of approximation of laws and develop model laws given the difficulties faced with the harmonization process;
- Draw and learn from other regional groupings, such as COMESA as well as tap into other initiative aimed at similar goals, such as AGOA.
- Prioritise issues that would make the Treaty meaningful to the ordinary person, such as easier freedom of movement.
- Urge Tanzania to develop internal institutional mechanism for equitable representation of Zanzibar's interest at the EAC level.

CLOSING REMARKS

HON. LADY JUSTICE SOLOMY B. BOSSA: Judge, East Africa Court of Justice and the International Criminal Tribunal for Rwanda (ICTR)

It is always prudent to remind ourselves of where we are, where we have been and where we are heading. In resurrecting the EAC, the three nations recommitted themselves to create an enabling environment to attract investments and allow the private sector and civil society to play a leading role in the socio-economic development and activities, through the development of sound macro-economic and sectoral policies and their efficient management while taking cognizance of developments in the World economy, and particularly, the principles of international law governing relationships between sovereign states.

From the presentations made here by eminent researchers, Partner States have undertaken legal sector reform within the framework of the popular definition of poverty by the grassroots persons, which defines poverty beyond the absence of basic needs to include ignorance of the law, lack of access to justice and protection of the law. Indeed, the legal sector reforms are anchored in a sector wide approach to development that would influence greater collaboration between different legal service providers, including civil society organizations. It is pleasing that civil society organizations independently undertook strategic planning for their involvement into the legal sector reform, with emphasis on access to justice, with specific focus on legal aid and legal awareness.

She congratulated the workshop for having realized the main objective of the exercise: to audit and cause amendments to laws with a view to harmonizing the legal regime, as well

as identify commonalities in objectives and approach and priority sectors to strengthen further collaboration.

Importantly she posed critical questions for a people-centred EAC: Is it possible to infuse reforms with international standards not only in trade but also in other areas particularly human rights? Which one should have been the first? Was gender question amongst the priorities identified?

She reminded the participants of the Treaty recognition of international standards both under its Preamble and main body. As such, Article 23 establishes the East African Court of Justice (EACJ) as a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty. Such “law” includes but is not limited to the Treaty and national laws, but also International law. Thus as East Africa canvasses for reforms, it is crucial that it infuses its laws with international standards, particularly as they relate to human rights. After all, amongst the fundamental principles of the EAC is “good governance, including adherence to the principle of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as a recognition, promotion, and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights (Art. 6). Hence, Art 6 provide ground to the workshop to urge governments to ratify all important human rights instruments and their implementation. Indeed, the right of freedom of movement, equal payment for equal work, health, protection and security, access to justice, are human rights issues of international and regional concern.

Justice Bossa, further challenged the EAC to seriously address gender equality as one of the fundamental principles in the EAC. Additionally, the operational principle of equitable distribution of benefits of the EAC, infers the imperative to address gender issues since women comprise the majority of the poor. Furthermore, Chapter 22 underscores the significant role of women in social economic transformation and sustainable growth, and recommends remedial action. Issues of access to land, education, equal opportunities, discriminatory laws, discriminatory application and administration of laws, lack of participation in decision- making, and lack of effective gender policies at the national levels and within the EAC make the equality of genders and the role of women in social-economic development envisaged under the Treaty, but a mockery. Yet these are matters which impact heavily on development and good governance, and on all those sectors already identified by the Legal Sector Reform Program. She queried whether the reforms in East Africa addressed gender equality as one of the fundamental principles of the Community.

Partner states can no longer afford to conduct their programs and policies as if the EAC is not in place. She emphasized that it was an opportune moment to utilize laws as tools, not only through harmonization for sustainable growth and development of nations and individuals within national and EAC boundaries. It is only then that East Africa shall achieve regional integration in total peace and security.

In summation, the legitimacy, capacity and vigilance of Partner States to enforce Treaty provisions will depend largely on what obtains in their backyards. How will governments enforce high international standards for governance and human rights at a regional level, if their own compliance to the same standards is questionable? That is the CARDINAL challenge.

Legal Sector Reform Workshop Participants

UGANDA

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| 1. Mr. Gidudu Lawrence | Chief Registrar Courts of Jurisdiction |
| 2. Mr. Edopu Peter (233886) | Uganda Law Reform Commission |
| 3. Mr. Moses Katungye | Uganda Prisons |
| 4. Ms Pamela Mudua Mafabi | LDC Legal Aid Clinic |
| 5. Ms Robina Namusisi | Former Director, Community Service |
| 6. Ms. Jackie Asiimwe | Criminal Justice Advisor (JLOS) Justice |
| Law & Order Sector (Min of Justice) | |
| 7. Mr. Erasmus Twaruhukwa | Uganda Police Head Quarters |
| 8. Ms Judy Kamanyi | UWONET |
| 9. Prof Fredrick W Jjuuko | Faculty of Law Makerere University |
| 10. Hon Medi S. K. Kaggwa | Member EALA |
| 11. Ms. Maria Nassali | KCK |
| 12. Ms Edith Kibalama | KCK |

KENYA

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|--------------------------|-----------------------------|
| 13. Ms Victoria Kattambo | Kenya Law Reform Commission |
| 14. Ms Lillian Mahiri | Min of Justice & Cont Kenya |
| 15. Ms. Jane Michuki | WILDAF, Consultant |
| 16. Hellen Kwamboka | FIDA Kenya |
| 17. Ms Susan A Seurey | Kenya Prisons Services |
| 18. Ms. Anne Kamau | Kenya Police |

TANZANIA (MAIN LAND)

- | | |
|------------------------------|------------------------------------|
| 19. Prof. Chris Maina Peter | University of Dar es Salaam |
| 20. Dr. Benedict. T. Mapunda | University of Dar es Salaam |
| 21. Mr John C Minja | Min of Home Affairs Tanzania |
| 22. Ms Florin Mushy | Min of Home Affairs Tanzania |
| 23. Capt. John W Sanze | Open University of Tanzania |
| 24. Ms Tumaini Silaa | Tanzania Women Lawyers Association |
| 25. Mr Matt Chikawe | Law Reform Commission Tanzania |
| 26. Ms Cecilia B Shiyo | Tanzania Law Society |
| 27. Ms Sophia Wambura | Judiciary Tanzania |
| 28. Mr Alute Mughwai | East Africa Law Society |

ZANZIBAR

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|-------------------------------------|---------------------------------|
| 29. Hon. Omar Makungu | PS & Deputy AG Zanzibar |
| 30. Hon. Justice Mbarouk S. Mbarouk | Znz High Court |
| 31. SSP Christabel Majaliwa (Mrs) | Commissioner of Police Zanzibar |
| 32. Mrs. Mwanamkaa Abdulrahman | Zanzibar Law Society |
| 33. Mr Othman Masoud | DPP Zanzibar |

ARUSHA

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| 34. Dr. John Ruhangisa | Registrar of EACJ |
| 35. Mr. Alutte Mughwai | Ist Deputy Secretary General, EALS |
| 36. Hon. Wilbert Kaahwa | Legal Counsel, EAC |

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| 40. Thomas Kjell | SIDA Stockholm |