

# Centre for Strategic Litigation

Draft Strategic Plan  
2019-2023

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# 1. Background:

As per Article 3 of the 1977 constitution, Tanzania is a multiparty democracy consisting of the mainland and the semi-autonomous island of Zanzibar. Since independence Tanzania has taken numerous efforts to transform its legal and constitutional order to advance access to justice and to promote rule of law. Prior to 1985, Tanzania's constitutional and legal order was largely under the ambit of single party rule which was effected with the 1965 constitutional amendments. Subsequent legislative reforms including the introduction of Act No 8 of 1975 further entrenched both the hegemony of the ruling party as well as the powers of the president. Since independence, the Tanzanian constitution has undergone 14 amendments which despite marking notable progress particularly with the introduction of Part III i.e. bill of rights has left traces of an imperial presidency and ruling party hegemony.

Following several years of reforms that began since the late 1980s, the country has witnessed the setting of an important foundation for the furtherance of access to justice as well as Rule of Law in the country. The reforms aimed at building ground for pluralistic politics and society and supremacy of the constitution kicked off in earnest in 1983 after experimenting with constitutional reform at four different occasions since independence in 1961. During that year the ruling party National Executive committee commissioned a review of the national constitution to elevate the role of the parliament, building grounds for popular participation and representation in election of leaders, limiting the power of the presidency and consolidation of the union . The opening up of the political space in 1992 to allow for multiparty politics triggered a wave of other reforms to strengthen the institutional framework for the delivery of justice.

Tanzania adopted a bill of rights in 1985 24 years after independence. Following several calls by local and international actors led locally by the Tanganyika Law Society a bill of law was finally adopted in 1985 upon the commission of a 1983 review of the Tanzanian constitution issued by the Chama cha Mapinduzi National Executive Committee. Following the ushering of the bill of rights in March, 1985, there was a wave of optimism in Tanzania for further legislative and constitutional reforms. Indeed, Justice Lugakingira, J noted that "The Incorporation of a Bill of Rights into Tanzania's Constitution since 1985 has stimulated a tide of judicial activism that already promises brighter moments in the future". Tanzania's constitution and constitutional culture remains fragile, predominated by the ruling party and at no point has it been driven by others besides the ruling party.

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<sup>1</sup> Peter, Chris Maina (2000) Constitution Making in Tanzania: The Role of the People in the process. unknown.

<sup>2</sup> Ibid

## History of Judicial Activism in Tanzania

Judicial activism is not an entirely new concept in Tanzania. Before independence, up to post independence in 1964, there were no indigent members of the bench. The first African judge was Augustino Said, who was nominated in 1964 and became the first Chief Justice in 1971. The majority of judges since then were from the commonwealth. Tanzania is the only country in the commonwealth that refused to incorporate the Bill of Rights during independence negotiations. The justification given at the time, was that Tanzania was a dynamic society that wanted to develop. Hence, priority was placed on economic development and national cohesion. Moreover, there was apprehension that the Bill of Rights would be used as a weapon to declare government decisions as unconstitutional.

### Early signs of Judicial Activism in Tanzania

Early signs of judicial activism in Tanzania can be traced in the case of *Ndewawiosia Ndeamtzo v Immanuel s/o Malasi*. (1968) HCD 127. The case concerned women's right to inherit land under Chagga customary law. In this case, Chief Justice Said held that daughters and sons have equal rights. The wave of judicial activism also erupted during the 1970s due to the emergence of the Ujamaa system. At that particular time, most of the disputes concerned incongruities within the Ujamaa Villages. Although the Ujamaa system was firmly in place, there was still no governing law to regulate it. Consequently, people were constantly seeking for compensation for their labor in the villages. The then Chief Justice Said, declared that despite the absence of a governing law, all disputes concerning inadequacies resulting from the Ujamaa system were to be brought directly to him. This was however met with protest from the bench.

Biron J in 1973, during the Judges' Conference had this to say; *"The Chief Justice cannot issue seculars ordering members of the judiciary to abide by political or executive whims. Judges are supposed to act independently of political and executive pressures and thus to dispense justice without fear or favor."*

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<sup>3</sup> (1968) HCD 127.

<sup>4</sup> Wambali Ferdinand L., *Judicial Activism and Public Interest Litigation: A Comparative Analysis of the Trends in Tanzania*, A Dissertation for the Award of a Master of Degree in Law and Development at Warwick University, United Kingdom, September, 2000.





## The Nyalali Years (1977-2000)

Chief Justice Francis Lucas Nyalali experienced one of the longest tenures in Tanzanian judicial history. His tenure was marked with a lot of judicial activism since the bench was now coming of age as more Tanzanians joined it. It is widely known that the start of Nyalali's tenure however, began on a rocky path. The new Chief Justice had jumped the queue, as by the time he was appointed as Chief Justice, he had only served as a member of the bench for five years. Hence, it was said that Nyalali faced a lot of pressure while occupying this senior position, due to the constant questioning of his legitimacy. To overcome this setback, after the collapse of the East African Court of Appeal, Nyalali ensured that he personally wrote the ruling of *Martha Michael Wejja v Hon Attorney General and Three Others*, a case concerning an election petition at Ilala constituency, where there were 18 grounds of appeal, and Nyalali made sure that all 18 points were officially read in court. Nyalali continued to face obstacles from the ruling party which had then become legally supreme through Act No.18 of 1975. Despite these struggles, Chief Justice Nyalali remains an icon of judicial activism for his role in ensuring the independence of the judiciary was at all times safeguarded.

## Other Judicial Legends in Promoting Judicial Activism

**Honorable Justice Edward Mweisumo** was part of the Law Reform Commission, and also ventured into the wilderness of politics and government office. He played a major role towards upholding the law of the land in Tanzania. Justice Mweisumo's decisions conveyed an admirable sense of fearlessness. To accentuate this point, the speaker referred to the case of *Joseph Kivuyo v Regional Police Commander of Arusha and Others* where he quoted the following section from this decision, "this court is a temple of justice and nobody should fear to enter it to battle his redress as provided by the law of the land." The speaker commended Justice Mweisumo for constantly making decisions that were against the interests of the ruling party and the government in the spirit of upholding the law.

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<sup>5</sup> (1982) TLR 35.

<sup>6</sup> High Court of Tanzania at Arusha, Miscellaneous Civil Application No.22 of 1978 (Unreported).

<sup>7</sup> High Court of Tanzania at Dodoma, High Court (PC) Civil Revision No.148 of 1975. (Unreported).



**Honorable Justice Nassor Mnzavas'** contribution towards the promotion of judicial activism in Tanzania is depicted in his fight against the inequities of the Ujamaa system such as in the *Laiton Kigala v Mussa Bariti* where a decision was made against the chairpersons in different Ujamaa villages regarding compensation for villagers. His fearless spirit was also portrayed in the case of *Happy George Washington Maeda v Regional Prisons Officer* where he declared that Tanzania is not a banana republic where rulers make judgments.

**Honorable Justice Kahwa.S.K. Lugakingira's** tenure was characterized by bold judicial pronouncements on matters pertaining to the protection of the environment as well as human rights as seen in the case of *Joseph D Kessy and Others v The City Council of Dar es Salaam*. His judicial prowess was also evidenced in the case of *Athuman Ally Maumba v The United Republic of Tanzania* which concerned the rights of children where Lugakingira J sentenced the appellant for 26 years in prison and was quoted as follows "The appellant is a criminal pervert who engaged in bizarre relay of sexual assaults upon indigent youngsters, he has to be removed from the civilized society so that children may get the chance to grow up in dignity and with hopes for the future."

**Honorable Justice James Mwalusanya** is celebrated as a beacon and epitome of judicial activism in Tanzania. He consciously decided cases to ensure fairness and justice within the law. He made historical judgments that left a mark on the judicial sands of Tanzania. Mwalusanya's most famous judicial contributions, which is pronounced in the case of *Republic v Mbushuu*, a case where he declared the death penalty as unconstitutional. Justice Mwalusanya was at the forefront in the fight for gender equality as illustrated in the case of *Ephraim v Pastory and Another* about the right of women to inherit property and clan land under Haya customary law. In this judgment, he proclaimed that both men and women have equal rights.

### 1.1. Public Interest Litigation in Tanzania

As is the case with judicial activism public interest and strategic litigation is not an entirely new concept in Tanzania. There is limited record of the practice although evidence suggests early signs of it in the 1970s under the initiative of the legal aid committee of the University of Dar es Salaam. The university and the faculty of law were the only legal training institution at the time.

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<sup>8</sup> High Court of Tanzania at Arusha, Miscellaneous Criminal Cause No. 36 of 1979 (Unreported).

<sup>9</sup> High Court of Tanzania at Dar es Salaam, Civil Case No. 299 of 1988 (Unreported), Lugakingira J.

<sup>10</sup> High Court of Tanzania at Dar es Salaam, Criminal Appeal No.95 of 1989 (Unreported).

<sup>11</sup> High Court of Tanzania at Dodoma, Original Jurisdiction, Criminal Sessions Case No.44 of 1991, Reported in [1994]2 LRC 335.

<sup>12</sup> High Court of Tanzania at Mwanza (PC), Civil Appeal No.70 of 1989, Reported in [1990] LRC (Const) 757.



This period was characterized by a high level of commitment to service and empathy towards the community. Some of the cases the committee worked on include the Martha Michael Wejja v Hon Attorney General and Three Others , a case concerning an election petition at Ilala constituency, where there were 18 grounds of appeal. The other is the Hamisi Ally Ruhondo & 115 v TAZARA, Civ. Appeal No. 11986(C.A)

Besides the University of Dar es Salaam, there only four other universities with legal aid programs. They include Saint Augustine University of Tanzania, Institute of Judicial Administration, University of Iringa and Ruaha Catholic University. Apart from the University of Dar es Salaam Legal Aid Clinic (LAC), the rest of the clinics serve less than 10 persons per month

Besides the Universities, several civil society organizations have also been behind some of the more recent cases. These include the Legal and Human Rights Centre, the Media Council of Tanzania, Women Legal Aid Clinic. Private individuals like Rev Christopher Mtikila, Richard Rweyongeza and Mpale Mpoki. According to Prof. Oloka Onyango (2015) , there is widespread acceptance (especially among lawyers) of PIL as a settled feature of contemporary jurisprudence in East Africa including in individual countries like Tanzania through to the regional level at the EACJ, and even beyond, with a few cases reaching the African Commission and one even being decided at the African court. While PIL's is perceived primarily as a lawyer-dominated arena, much of the litigation has been driven by non-lawyer, public- spirited individuals such as the late Reverend Christopher Mtikila in Tanzania.

The Legal and Human Rights Center and Tanganyika Law Society petitioned against Hon. Mizengo Pinda and the AG the Tanzanian High Court. The petition was instrumental in defining the limits of parliamentary privilege and immunity. On the other hand WLAC, petitioned, Civil Cause No. 10 of 2016, in the High Court of Tanzania demanding for a recognition of the widows' efforts and contribution towards the acquisition of the matrimonial assets upon the death of her husband and a right of a widow to inherit her deceased husband's property where the law does not provide so. Unfortunately the 1st Respondent (The Attorney General) raised a preliminary Objection on point of law to the effect that the Application contravenes S. 8(2) of the Basic Rights and Duties Enforcement Act. Cap 3 R.E. 2002. As a result the application was stroke out with cost. The ruling was delivered on 24th August 2016. The Rebeca Z. Gyumi v The Attorney General which challenges the Law of Marriage

<sup>13</sup>(1982) TLR 35.

Act in relation to child marriages is another more recent case which however the government of Tanzania has appealed against at the Court of Appeal.

## **1.2. Rule of Law in Tanzania**

Tanzania's law and justice sector is composed of various actors across the different branches of government. They include the judiciary, which adjudicates disputes between citizens, public and private institutions, and economic entities (such as businesses); and delivers services to different population groups. The judiciary also interprets the constitution, protects human rights, and provides the essential governance checks and balances between the different arms of the state and within society. The Ministry of Constitutional and Legal Affairs (MOCLA) is the principle legal advisor to the government and houses the the Office of the Attorney General, which presents bills to Parliament for all sectors of the economy (e.g. mining, fisheries, roads, natural gas); and the Office of the Director of Public Prosecutions (DPP), which prosecutes crimes per the Penal Code, Health Code, Tax Code, and agricultural laws in collaboration with the police and municipal authorities. MOCLA also houses the office of the Solicitor General, which is mandated to handle civil litigation on behalf of government. Besides the formal system of justice, traditional or customary justice institutions operate in Tanzania and a large population accesses them, especially in rural areas, to resolve their communal and other customary grievances.

Tanzania subscribes to international and regional instruments such as the African Charter on Human and People's Rights, the UN's Basic Principles on Judicial Independence, and the Suva Statement on the Principle of Judicial Independence and Access to Justice. Despite this, the translation and implementation of these principles remain uneven and slow according to the World Bank (2016). The sector faces various setbacks due to uncoordinated and underfunded institutions. UNICEF reports that 1,400 children were held in adult prisons in Tanzania in 2011 out of which about 75 percent were awaiting trial. The overall police staffing of about 38,847 is low and would have to triple to fulfill the need at hand (or 1:156 per capita as compared to the UN recommended ratio of 1:450 per capita). In addition, due to poor geographic distribution of courts, a population of 21 million equal to 47 percent of the total population does not have easy access to High Court Services. Resident Magistrate Courts exist in 21 out of 25 regions, District Courts exist in 110 out of 133 districts, and there are only 960 Primary Courts country-wide, with the number of Wards currently standing at 3,338.

The 1977 constitution and the Judiciary Act of 2011 mandate the judiciary with final say in the administration of justice and policies that govern court and case management efficiency. The Tanzanian judiciary has five-tier court structure as follows: the Court of Appeal, the High Court and its four divisions, the Resident Magistrates Court, the District Magistrates Courts, and the Primary Courts. There are about 200 judges and 1,000 magistrates, 50 court administrators, and 6,000 court clerks and support staff. The court system collectively receives about 50,000 cases yearly out of which about 30,000 (60%) are disposed, This therefore leads to perpetual increase in backlogs and compounding delays. Manual event-based systems and processes result in inefficient

case management. Consequently, 50 percent of cases take up to 90 days from filing to preliminary objection, and two thirds take up 1000 days to progress from pre-trial hearing to trial, and the same fraction take as many as 1000 days from trial to decision. Court administrators have recently been introduced in high courts and other major courts to modernize management systems and incorporate e-justice for effective service provision.

There are no locally developed homegrown measures of rule of law, judicial independence and/or accountability. There are however several international assessments and measures which are important considerations in evaluation the performance of the sector;

### **The World Justice Project Rule of Law Index**

The WJP Rule of Law Index measures rule of law adherence in 113 countries and jurisdictions worldwide based on more than 110,000 household and 3,000 expert surveys. Featuring primary data, the WJP Rule of Law Index measures countries’ rule of law performance across eight factors: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. In the 2017 – 2018 WJP Rule of Law Index, the findings showed that Tanzania had a score of 0.47 with a global rank of 86 among the 113 Countries surveyed. Tanzania performed poorly in Open Government, Regulatory Enforcement and Fundamental Rights but shown in Right to Religion and Absence of Civil Conflict.

### **The World Bank Governance Indicators**

The Worldwide Governance Indicators (WGI) project constructs aggregate indicators of six broad dimensions of governance: Voice and Accountability (va), Political Stability and Absence of Violence/Terrorism (pv), Government Effectiveness (ge), Regulatory Quality (rq), Rule of Law (rl), and Control of Corruption (cc).

The six aggregate indicators are based on over 30 underlying data sources reporting the perceptions of governance of a large number of survey respondents and expert assessments worldwide. Details on the underlying data sources, the aggregation method, and the interpretation of the indicators, can be found in the WGI methodology paper

Below is a summary of how Tanzania performed/ranked across the six indicators for the period beginning 2015 – 2017 with the scores ranging from 0 – 100 with 0 being the lowest and 100 the highest.

<b>Year</b>	<b>Voice and Accountability Rank</b>	<b>Political Stability and Absence of Violence Rank</b>	<b>Government Effectiveness</b>	<b>Regulatory Authority</b>	<b>Rule of Law</b>	<b>Control of Corruption</b>
2015	38.42	31.43	30.29	28.37	42.31	27.88
2016	39.41	29.05	34.13	35.58	37.98	35.10
2017	36.95	25.71	28.37	29.81	34.62	39.42

## The Mo Ibrahim Ranking of Rule of Law and Governance

The Mo Ibrahim Foundation defines governance as the provision of the political, social and economic public goods and services that every citizen has the right to expect from their state, and that a state has the responsibility to deliver to its citizens. In the IIAG, country performance in delivering governance is measured across four key components that effectively provide indicators of a country's Overall Governance performance.

Below is a summary of how Tanzania performed in selected areas of the Index for the Years 2017 and 2016.

Year	Overall Rank	Rule of Law Ranking	Independence of the Judiciary Ranking	Freedom of Expression Ranking	Freedom of Assembly	Civil Rights and Liberties
2016	14	22	16	34	33	16
2017	14	22	16	34	33	16

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<sup>14</sup> See Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya No. 276/03 (ACHPR 2009) (27th Activity Report) (Endorois case); Institute for Human Rights and Development in Africa and others (on behalf of Children of Nubian Descent in Kenya) v. Kenya Communication 2/29 at the African Children's Rights Committee.

<sup>15</sup> The Court's first judgment came from Tanzania, which is quite fitting given that it is headquartered in Arusha, Tanzania. See Tanganyika Law Society and Another; Mtikila v. Tanzania, Applications 9/2011, 11/2011 (joined), 14 June 2013, at paras. 106.1 and 107.2

# 2. Rationale

## 2.1. What is Public Interest Litigation?

Until the 1950s, public interest litigation was considered to be an alien creature. It was inconceivable that a person that had not been directly injured in a claim could have their case heard and actually adjudicated in a court of law. So how can this alien creature be explained today? Public interest litigation can generally be defined as the use of law to advance causes that are of broad public concern. It involves court-centric advocacy before judicial bodies to promote matters of public interest.

Public interest litigation invokes the use of law by filing cases in courts of law for the sake of addressing matters that are of public concern and affect the well-being of individuals in shape or form. Public interest litigation may encompass both matters arising from the public or private realm. Public law concerns include the regulation and governing the exercise of power by public bodies while private law matters include aspects of employment and family law.

It is a unique form of litigation, which allows third parties and NGOs to file claims on behalf of a large group of affected persons, the general public or those who may not necessarily have the means to do so. Ideally, public interest litigation involves lawyers and other actors and considers the political and social context through which advocacy takes place.

## 2.2. How is Public Interest Litigation Useful in Safeguarding and Advancing Human Rights?

Public Interest Litigation has been regarded as one of the most potent innovations to seek accountability for human rights abuses. It demonstrates an ability for human rights compliance. Public interest litigation achieves this by enabling the broader community or public interest to be recognized and enforced through the judicial process. Courts are used to strengthen the protection of, educating the public about human rights and exposing systematic abuse of human rights. Public interest litigation is a powerful tool in the advancement of human rights. For instance, in the case of *Somerset v Stewart*, slavery was declared unlawful in England. As a result, over 15,000 slaves were freed as a result of that decision. Such is the power of public interest litigation.

Previously, in the motherland Tanzania, in the case of *Republic v Mbushuu*, the death penalty was declared as unconstitutional. Currently, in the case of *Rebecca Z Gyumi v the Attorney General*, child marriages that were permitted under the Law of Marriage Act of 1971 have been declared unlawful. Despite the fact that the case is still subjected to appeal, it is however a giant step in the

<sup>16</sup> (1772) 98 ER 499

<sup>17</sup> (1994) LRC 349

right direction. Public interest litigation has the power to literally transform and save lives. The most important right, the right to life can be secured through public interest litigation.

### **2.3. How is Public Interest Litigation Different from Other Tools?**

Public interest does not exist as a vacuum, there are many other techniques that seek to promote public interest. These include legislative and administrative lobbying, protests, advocacy, strategic alliances, research and media campaigns. All of these options can be utilized as tools to propagate public interests. However, public interest litigation is the most effective technique.

Public interest litigation unlike other tools such as lobbying, protests or advocacy, actually provides concrete evidence of the newly established position of law or enforceable right through public record. Court judgments and decrees serve as a strong reference points through which the public can use as a basis to demand for accountability and realization of their basic rights.

Moreover, the uniformity of the application of court judgments and decrees makes them more effective in comparison to other tools. Once a judgment is made by the superior courts of record such as the Court of Appeal, the judgment rendered in that case will apply equally to all citizens under that jurisdiction.

Public interest litigation is part of a broader effort to utilize the tools and efforts provided by legal liberalism as a means to change existing patterns of power and privilege within the society. It plays the role of judicial intervention that seeks to reveal the forces that exclude or dilute the interests of marginalized and affected groups.

### **2.4. How Does Public Interest Litigation work with Other Tools?**

Public interest litigation works in a beautiful synergy when there's harmony between litigation and social movements. The public has to be actively engaged through mobilization, lobbying and awareness in order for the impact of public interest litigation to truly be felt. Some may even argue that public interest litigation should be saved as the last supper and only resorted to once other cheaper mechanisms such as out-of-court advocacy and demonstrations have proved futile.

The interplay and the dynamics of how other tools play out may also affect the strategy to be used in public interest litigation. There must be a countervailing power of organized masses to balance the scales of institutionalized status quo and power within institutionalized hierarchies. Public interest Litigation on its own, without the compelling support of the media, administrative lobbying and advocacy will not be as forceful as intended to be.

### **2.5. Recorded Value of Public Interest Litigation**

The origins of public interest litigation emanate from the United States as first seen in the case of

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<sup>18</sup> Miscellaneous Civil Cause No.5 of 2016

<sup>19</sup> 347 U.S. 483 (1954)

<sup>20</sup> (1968) HCD 127.

Brown V Board of Education. In this case, the US Supreme Court declared as unconstitutional the state's desegregation of students in public schools by race. Brown helped to inculcate inspiration to a generation of lawyers that regarded the law as a source of liberation and transformation. In Tanzania, the invaluable contribution of public interest litigation has also left its blueprint. In the case of *Ndewawiosia Ndeamtzo v Immanuel s/o Malasi*. The case was based on the women's right to inherit land under the Chagga customary law. In this case, Chief Justice Said held that daughters and sons have equal rights. Again, in the case of *Republic v Mbushuu*, a case where he declared the death penalty as unconstitutional. Once again, we see that public interest litigation has been a weapon for fighting oppression, providing emancipation and maintaining the right to life and dignity.

## 2.6. Global Practices and the evolution of Public Interest Litigation

The origins of public interest litigation emerged from the United States of America. Under the American Common Law system, in order for a case to qualify under public interest litigation, the claimant needed to have a direct connection to the case at hand. Gradually, the evolution of jurisprudence on public interest litigation has led to the mere requirement of a logical nexus. Hence, if a causal connection between the claim and the litigant is found, then the person is deemed to possess locus standi. The term "locus standi" refers to the power and the right to address the court. In Canada, in the case of *Canada, Nova Scotia Board of Censors v McNeil* it was held that whenever a case is arguable, affects public interest and vindicates the rights of the citizens, then whoever approaches the court in that regard, would be clothed with locus standi.

Currently, the legal jurisprudence on matters pertaining to public interest litigation have vastly changed. In India, the scope of public interest litigation has been widened and morphed the concept of sufficient interest. Sufficient interest simply means that a person merely has to possess a sufficient connection to the case, even if they are not directly aggrieved, so long as they are not pursuing the case for personal gain. In the case of *SP Gupta V Union of India* Justice PN Baghwati held that whether a party has sufficient interest or not will be determined by the court in each individual case, and left to the discretion of the court by looking at the nature of the case.

In the Americas, the Inter-American Convention of Human Rights exemplifies a progressive instrument in the realm of public interest litigation. Under Article 44 of the Inter American Convention of Human Rights, class actions and action popularis are recognized and the recognition of victims is not mandatory.

In South Africa, public interest litigation has been largely perpetuated by the country's transformative Constitution. Section 38 of the South African Constitution enlists the following as having the right to institute public interest litigation. The persons who may approach the court include the following:

- a. Anyone acting in their own interest;
- b. Anyone acting on behalf of another person who cannot act in their name;

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<sup>21</sup> High Court of Tanzania at Dodoma, Original Jurisdiction, Criminal Sessions Case No.44 of 1991, Reported in [1994]2 LRC 335.

<sup>22</sup> 55 DLR 3D 632.

- c. Anyone acting as a member of, or in the interest of, a group or class of persons;
- d. Anyone acting in the public interest and
- e. An association acting in the interest of its members.

Under the South African Constitution, anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened and the court may grant appropriate relief including a declaration of rights. The drafters of this provision probably did not anticipate the purview to which this provision paved room for public interest litigation until later in the famous *Al-Bashir* case brought to the Constitutional Court of South Africa by the South African Centre for Litigation.

In this case, a South African NGO filed a public interest litigation claim, urging the South African government to hand over President Al-Bashir of Sudan to the International Criminal Court. The South African Litigation Centre argued that South Africa was legally obliged to do so as per the demands of the Rome Statute Act to which South Africa had incorporated as part of its municipal law. In this case, the Constitutional Court decided as follows;

“It is also important to all South Africans that their government be compelled to abide by the law, both international and domestic. The rule of law is a founding value of South Africa and is enshrined in the Constitution. When officials of the South African government fail to fulfill their legal obligations, particularly in such serious and public matters as the instant case, it affects South Africans equally, as It demonstrates an unjustifiable tolerance of war crimes and crimes against humanity. The applicant also therefore also brings this case in the public interest.”

Therefore, in South Africa, the level of growth in the sector of public interest litigation is to a point where third parties can even litigate on matters touching diplomatic interest, international law and state obligation. This is a very progressive step in the dominion of public interest litigation particularly the African continent and African legal jurisprudence. Furthermore, under the South African legal regime, cases under public interest litigation do not incur any order for costs.

In East Africa, Kenya has also made great strides as far as public interest litigation is concerned. Cases pertaining to the Constitution, human rights and public interest litigation, permit any person acting in good faith to approach the Kenyan courts and seek appropriate redress. The Kenyan Constitution of the Kenyan Constitution of 2010 gives everyone the right

to institute court proceedings when a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed. The following categories of persons are permitted to bring forth claims before the Court;

- a. a person acting on behalf of another person who cannot act in their own name;
- b. a person acting as a member of, or in the interest of, a group or class of persons;
- c. a person acting in the public interest; or
- d. an association acting in the interest of one or more of its members.

Therefore, public interest is duly recognized in Kenya and considered to be a constitutional right that is able to actually be enforced and realized in the courts of law.

## **2.7. The Limitations of Public Interest Litigation**

As effective as public interest litigation may be in providing a ladder towards the attainment of human rights, equality and good governance, every rose has its thorn. Public interest litigation is not without its limits. There is still suspicion surrounding public interest litigation, as the executive regards the court's role in such cases as usurpation of power and an interference with the executive's territory through judicial overreach.

Public interest litigation may also be prone to causing judicial populism. With time, some judges may find themselves as fulfilling the role of crusaders of the constitution and try to salvage all imperfections within the existing democracy. Therefore, on the one hand, although judges do have a crucial role to play in advancing the cause of public interest litigation, on the other hand, they should not fall into the potential trap of solely being judges of the people.

Public interest litigation also carries the risk of serving symbolic rather than tangible justice. This is contributed by the fact that while the intentions underlying public interest litigation are well-serving, neither the litigants nor the judges who render transformative decisions have the actual capacity to ensure the enforceability of such decisions. As such, public interest litigation may in some instances seem to portray symbolic rather than concrete justice that trickles down to the people.

Unending public interest litigation has the danger of being considered routine consequently failing to be accorded the attention it deserves. There is an inherent bias amongst courts when there seems to be a floodgate of public interest litigation cases. In most jurisdictions, public interest litigation cases are tolerated, but only to a certain degree. Therefore, there's a possibility that aggressive advocacy through public interest litigation may do more harm than good, once it's perceived as the "boy that always cried wolf" that nobody paid attention to anymore after a while.

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<sup>24</sup> Southern Africa Litigation Centre v Minister of Justice and Constitutional Development & Others 2015 (5) SA 1 (GP)

<sup>25</sup> See Article 22 of the Constitution of Kenya, 2010

Ultimately, the greatest limitation facing public interest litigation is the fact that in a battle between the executive and the judiciary, the former will remain the victor, at least for the majority of the time. The executive holds the power to ensure the enforceability of the noble decisions made by the judiciary through public interest litigation. Unfortunately, history has proven that these two arms of the government tend to be in opposition more than they are in agreement. As President Andrew Jackson was quoted in the case of *Worcester v Georgia* , “Well, John Marshall has made his decision, so let him enforce it.” In the end, negative feed back and unenforced decisions may even perpetuate sentiments of disempowerment among those it aimed to empower.

## **2.8. How Does Public Interest Litigation work with Other Tools?**

Public interest litigation works in a beautiful synergy when there’s harmony between litigation and social movements. The public has to be actively engaged through mobilization, lobbying and awareness in order for the impact of public interest litigation to truly be felt. Some may even argue that public interest litigation should be saved as the last supper ad resorted to once other cheaper mechanisms such as out of court advocacy and demonstrations have proved futile.

The interplay and the dynamics of how other tools play out may also affect the strategy to be used in public interest litigation. There must be a countervailing power of organized masses to balance the scales of institutionalized status quo and power within institutionalized hierarchies. Public interest on its own, without compelling the support of the media, lobbying and advocacy will not be as potent as intended to be.

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<sup>26</sup>(1832) 6 Peters (US) 556-62.

# 3. Our Theory of Change

## 3.1. Problem statement

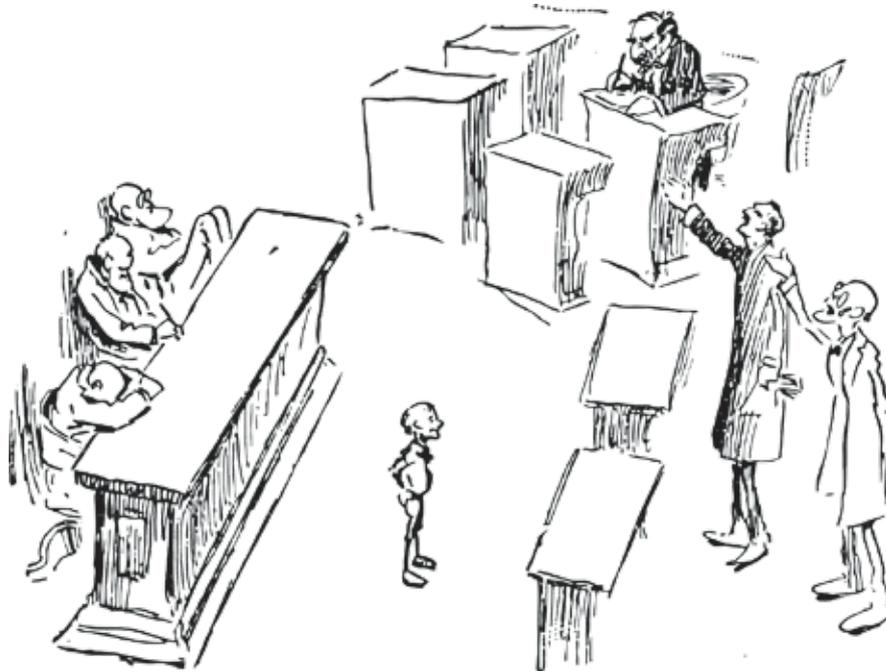
Despite numerous efforts at legal and constitutional reforms, the Tanzanian state has retained a tight grip of ideology of nationalist developmentalism where as it is viewed as the father figure and omnipotent provider. Consequently constitutional reforms in Tanzania have served more to entrench the monopoly and hegemony of the state than it has uplifted the role of the citizens in holding the state accountable. Subsequently the state has acted both with impunity and disregard to rule of law and infidelity to the mother law. Citizens on the other hand are disempowered by their ignorance, lack of concerted and coordinated effort and restrictive laws and practices from fully exercising their constitutional rights and safeguards. The state has deployed both legal and extralegal means to circumscribe basic freedoms in disregard to both the constitution as well as Tanzania's international obligation. Declining legal education, volunteerism, shift from societal conscious legal practice to liberal corporate demands have left the legal practice less vested on their professional and constitutional obligation to defend the constitution and to work with communities towards the same. The justice system is overwhelmed by operational and procedural constraints, poor coordination of the criminal justice system, low accountability and the lack of judicial independence leaving some of the most vulnerable groups in society especially women and children unable to fully access justice and to realize their rights. Put together these circumstances have allowed impunity, breach of rule of law, lack of access for the most vulnerable, declining faith in the justice system and lack of citizen agency as well as apathy towards justice among the citizenry.

## 3.2. Our Vision for the future of Rule of Law

We envision a future in which rule of law is celebrated and fidelity to the constitution prevails so that in all persons, institutions and entities, public and private are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. The states is constrained to adhere to the supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. Citizens are fully aware of their constitutionally guaranteed rights and freedoms and they are able to use the law to circumscribe the powers of the state to enact and/or enforce laws and practices that are in violation of the constitution and inconsistent with universally accepted norms and principles. A vibrant legal profession is able to work with citizens to agitate for legal and constitutional reform to ensure sustained access to justice for all particularly women, children, ethnic minorities, people with disabilities and other minorities.

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<sup>27</sup>Fimbo, G.M. (2015), Legal Education and the Rule of Law in Tanzania: Challenges and Opportunities. Paper presented at the National Rule of Law Stakeholders Forum: Strengthening Rule of Law in Tanzania at Seascope Hotel on December 10-11, 2015.



### **3.3. Some underlying assumptions behind our vision of the future**

- Tanzania's constitutional and legal architecture provides (limited) opportunity to enforce and promote rule of law and an active culture of litigation i.e. deploying the law to realize constitutional supremacy.
- Notwithstanding the limited opportunity, there is scant evidence of citizen agency in leveraging the law to ensure fidelity to rule of law and constitutional supremacy.
- Limited public legal and constitutional knowledge and debate has allowed for citizens to miss out on the potential to use the law to realize their basic freedoms and rights.
- Vulnerable groups including women, children, the elders, ethnic and other minorities remain particularly sidelined in the deployment of the law to realize their fundamental rights.
- Basic freedoms continue to be threatened by the enactment, enforcement, abuse and arbitrary use of existing legislation and a limited criminal justice system at the expense of constitutional supremacy.
- Judicial activism remains limited from lack of concerted effort by citizens and communities to test the law and to hold the bench to accountable for equity jurisdiction.
- Public Interest Litigation as a practice is limited by the lack of adequate evidence, knowledge and expertise on the part of practitioners in the communities as well as on the bench.

### **3.4. Our role in achieving this vision for change**

Our role in achieving this vision is to contribute to the body of knowledge on constitutionalism, rule of law, access to justice and public interest litigation. We will work with our partners through litigation and advocacy to challenge norms and practices that are in contravention of the constitution and that threaten the enjoyment of rule of law in the country. Through dedicated and targeted investments, we will build a cadre of legal professionals and empowered communities who are determined to use the law to demand their rights and to hold the state to account for his acts and omissions and for its commitment to the rule of law.

# 4. Our Priorities for 2019-2023

## 4.1. Strategic Priority 1: Contributing to a body of knowledge, evidence and analysis on public interest litigation, rule of law and constitutionalism in Tanzania.

We are conscious of the fact that public interest litigation is not a widely popular or common practice in Tanzania notwithstanding limited historical evidence of its application. In view of the knowledge gap, the infancy of the practice and a lack of documentation of the practice, CSL will build a body of knowledge and evidence that will form the basis upon which further work on advocacy, public legal education and litigation will be pursued. CSL will work with legal and constitutional scholars, research institutions, affected communities, and practitioners including lawyers and paralegals from within Tanzania and the region to produce legal and action research.

### 4.1.1. Establish and offline and online repository of research, analysis, briefs, academic research, audiovisual content and other documentation.

This will be achieved through collection of the most relevant material, documentation on relevant issues to public interest litigation, constitutionalism, judicial activism and rule of law in Tanzania. The CSL will work with researchers and academic institutions including the School of Law at the University of Dar es Salaam, the Tanganyika and the Zanzibar Law Society, the Judiciary of Tanzania and international research and academic institutions to gather such material. During the period of this strategy, the Center will establish a well functioning resource center and procure the services of a professional librarian/records manager to undertake the search for the most relevant materials. The size of the offline and online repository will be determined during a baseline assessment of available information which will also seek to classify material in accordance with topics considered most relevant as per consultations with the CSL management, board, network research advisors.

In addition to the collection of relevant materials and documentation, CSL will also work to produce original research on public interest litigation in Tanzania. The Center will work collaboratively on documenting all recorded public interest litigation cases in Tanzania and produce independent case notes of all such cases. The case notes will then be developed into a compendium of public interest cases along with a chapter on key lessons and recommendations for future public interest litigation. In addition to this, CSL will document past experiences of public interest litigation and judicial activism. Through this research, the center will document the experiences of some of the leading litigants in Tanzania including embarking on producing biographies of individuals, judges and lawyers who have contributed to furthering both rule of

law and judicial activism in Tanzania. Through a research advisory committee, CSL will identify as part of its annual research agenda, topics and individuals of interest to develop relevant documentation on fulfilling the goal of building a credible body of knowledge on rule of law, public interest litigation and constitutionalism in Tanzania.

#### 4.1.2. Action Research to produce original knowledge and evidence through working with communities affected by breach of rule of law.

Throughout all the litigation work conducted by the Center, concerted effort will be made to undertake thorough legal research to establish precedence from across common law in the most relevant legal systems. CSL will work with a dedicated team of legal and social researchers to produce the most compelling evidence to support its litigation as well as advocacy work. The dedicated research team will work with CSL's national and international partners to generate new knowledge and research to further public interest litigation in Tanzania. The researchers will work collaboratively with CSL's network of experts on relevant subject matter depending on the topic of litigation to generate such new knowledge. The network of experts is made up of CSL staff, advisors as well as external stakeholders from academia, civil society, government agencies, research institutions as well as international partners in the most relevant fields.

Along the same vein, CSL will work with local and national networks of paralegals to develop action research on particular issues of public interest out of which the annual litigation work plan will also be developed. CSL will work with the national networks like the Tanzania Network of Legal Aid Providers (TANLAP), the Tanzania Paralegals Network (TAPANET), the Legal Aid Committee of the University of Dar es Salaam, the Legal and Human Rights Center (LHRC) and the Network of Human Rights Monitors to identify the most pertinent issues of public interest based on the documentation of the legal aid providers. In Zanzibar, CSL will work with the Zanzibar Paralegal Organization (ZAPAO), Zanzibar Paralegal Network (ZAPANET) and Jumuiya ya Wasaidizi wa Kisheria Pemba (JUWASPE). Beyond the networks, other key players including the Zanzibar Legal Services Centre, the Tanzanian Women Lawyers Association (TAWLA), the Tanzania Gender Networking Programme (TGNP), the Zanzibar Female Lawyers' Association (ZAFELA) and the Tanzania Media Women Association (TAMWA) will be recruited as important allies in the generation and co-creation of research from the communities they work with. Assessment and Analysis of the documentation provided by these networks will inform the CSL's focus on research as well as issues for litigation. CSL believes that such networks and communities are critical sources of knowledge and adequate investment in study their lived experience in accessing justice is essential knowledge and important determinant for CSL's litigation. Given the central role of the organization, the Center will also collaborate with the Monitoring and Evaluation department of the Legal Services Facility (LSF) in processing critical issues of research and litigation. Beyond the original research produced by the LSF and

its partners, CSL will collaborate with the LSF Regional Mentor Organizations and the M & E department to organize public interest litigation clinics as well as an annual national annual public interest litigation clinic.

#### 4.1.3. Undertake a national study on rule of law/index based on global best practice to inform a localized index.

CSL will work with a local and international research partner to produce an annual study on rule of law in Tanzania. This analytical product looks to localize existing practice in measuring rule of law across jurisdiction. Inspired the work of the World Justice Project and the Bertelsmann Indices, CSL will work to develop a localized methodology for a national index that assesses the state of rule of law at subnational (regional) level in the first 3 years of the strategy while looking to go further below following consolidation of the methodology. The methodology will be developed and thereafter tested in a predetermined enumeration area equivalent to the area and sample the research is meant to cover. During the first year therefore, the localized index will focus on the preselected area in order to prepare for scaling up subject to the outcomes of the pilot.

The CSL will work collaboratively with the Commission for Human Rights and Good Governance (CHRAGG), which is the national human rights organization, and the Ethics Secretariat in the production of the national index. Following an initial pilot phase, the Center will enter a formal agreement with the statutory bodies which both have mandate over administrative justice in Tanzania as per the Articles 130(1) and 132(1) respectively of the 1977 constitution as well as subsequent legislation. In the past both organizations have participated in the assessment of the administration of justice, the former with a broader mandate which also covers human rights while the latter's work has focused on monitoring the implementation of the Public Leadership Code of Ethics (1996). Both have quasi-judicial functions although they do not in any way replace judicial mandate. The former has a track record of working jointly with civil society through public hearings and joint research work and as such forms a natural partner in view of this collaboration. In view of the latter's unique mandate in monitoring the abuse of power, it is considered critical to engage in such undertaking in view of producing the necessary evidence to undertake their mandate.

#### 4.1.4. Produce research, briefs and analysis on the political economy of rule of law in Tanzania including on the role of the judiciary.

CSL will contribute to the body of knowledge and evidence by collaborating with local and international research partners to study how rule of law in Tanzania works, the role of the judiciary and other arms of the state in facilitating/limiting rule of law. The studies so undertaken will produce practical recommendations for reforms and programming to enhance rule of law

in the country. The number of studies so produced will be determined on an annual basis in accordance with annual research agenda and based on the guidance of the CSL Research Advisory Committee.

CSL will work through its own cases in litigation and/or previously litigated cases to produce well analyzed briefs to inform case law in Tanzania and public knowledge on rule of law in Tanzania. The case notes so produced will aim to contribute to the development case law, provide opinion and enhance public education on judicial process and rule of law. Through the period of the strategy the Center will undertake two broad analytical studies on the political economy of Rule of Law in Tanzania as well as the Political Economy of Criminal Justice Reform.

## **4.2. Strategic Priority 2: Generating a cadre of Public Interest Litigants, Judicial and Constitutional Activists and contributing to a human rights friendly bench in the Tanzanian Judiciary**

### **4.2.1. Developing guideline (s) for public interest litigation in Tanzania.**

During consultations for the production of this strategy it was learnt that despite years of practice of PIL in Tanzania, there is no documented guidelines to lead those interested in pursuing strategic and public interest cases. As such, those who could potentially play an active role in litigation lack the basic skills and guidelines that would have guided their work towards this end.

In recognition of this important gap, CSL will work with existing active litigants (institutions and individuals) including the Tanganyika Law Society, the Media Council of Tanzania and the Women Legal Aid Clinic to produce a guide for Public Interest Litigation in Tanzania. The production of this guide will spark interest for actors to consider the use of public interest litigation while also offering much needed direction on such cause.

Subject to demand, CSL may develop specialized guidelines for specific areas of litigation (land rights, women's rights, disability rights etc) to cater to specific constituencies. In the same vein, CSL will develop media guidelines on public interest litigation to focus on media freedom and engaging media as part of the litigation strategy.

### **4.2.2. Training and Capacity building to promote practice of PIL among existing lawyers with a focus on recently graduating lawyers.**

In collaboration with the Tanganyika Law Society, the Zanzibar Law Society and the Law School of Tanzania, CSL will produce training manuals and guidelines for the implementation of public interest litigation training. Through this collaborative effort, CSL will identify 15 young

graduate lawyers who will be enrolled into a 1-year training which includes customized coursework, research assignments, petitioning and advocacy training. During the course of the year-long training, the 15 trainees will get the opportunity to work with the Center in implementation of this strategy. The training program is designed to include a strong mentorship component which aims at ensuring that practical skills are imparted on the recipients.

CSL will target qualified advocates for such training in order to ensure sustainability of the skills acquired. The Law School of Tanzania will nominate the graduates and through a rigorous and competitive recruitment process a group of 15 law school graduates will be identified. Through their experience and training working with the center, the candidates will be offered practical assignments, which are based on the approved strategy.

#### 4.2.3. Provide generic legal and constitutional education to non-lawyers with a keen interest on judicial and constitutional activism.

Promoting rule of law, judicial and constitutional activism can not be left to lawyers alone. As such, CSL will prepare a specialized training on Public Interest Litigation to equip those who are keen on pursuing it without the necessary academic qualifications. The training will be offered to legal aid providers, civil society organizations who are particularly interested in PIL, journalists, religious leaders and any organized group that expresses interest in pursuing public interest litigation.

In consideration of the diversity of the groups so involved, the training will be tailored to address the various public interests of the diverse groups in order to adequately cover the potentially divergent interest. However the training will not aim to provide highly technical or specialized training beyond building awareness on public interest litigation as an important tool for legislative reform and access to justice.

#### 4.2.3. Work collaboratively with the Commission for Human Rights and Good Governance and the Institute for Judicial Administration for specialized training on human rights and Public Interest Law in the judiciary.

CSL will leverage its local and international network to deliver training to officers of the judiciary on human rights jurisdiction, equity jurisdiction and public interest law to contribute to improved capacity within the bench to administer justice in the case of public interest law.

The CSL Research Unit will work with the UDSM School of Law, Kituo cha Katiba and Katiba institute to produce a compendium of studies on judicial activism to serve as input in the delivery of the training. CSL will profile the work of prominent officers of the judiciary whose work and judgments have had a profound effect on human rights jurisdiction in the region. This will serve both as an important body of evidence on judicial activism but also provide much

needed guidance to current judicial officers in allowing them to fulfill their mandate as defenders of the supremacy of the constitution. The studies will carefully document the background, rulings and role of various judges across the region and where need be across the common law tradition.

Based on these studies and other important sources CSL and its partners will develop training manuals to be adopted as part of the training by the Institute of Judicial Administration. In complementing the training CSL will leverage Katiba Institute and Kituo cha Katiba's relations with the judiciary in both Kenya and Uganda to develop a regional training.

#### 4.2.4. Support and work with legal aid clinics based at higher learning institutions on specialized training on public interest litigation.

University based Legal Aid Clinics/Committees have traditionally played a critical role in furthering public interest litigation in Tanzania. Universities have the advantage of housing legal practitioners and professionals who are able to dedicate their intellectual and technical resources to support both legal aid and public interest litigation. In view of this, CSL will first work with the Legal Aid Committee at the University of Dar es Salaam to document the experience of the LAC. Base on this, CSL will use such documentation to produce guidelines for how such model can be adopted by other institutions of higher learning in the country.

Institutions of higher learning provide an important gateway to communities in their respective localities. Given the expansive presence of such institutions in Tanzania, they form an important anchor to deliver legal aid, public interest litigation and public legal education to a majority of citizens. The university community itself is an important community in developing an active litigant culture in Tanzania.

### **4.3. Strategic Priority 3: Catalyze public demand and capacity to deploy PIL to secure fundamental freedoms**

#### 4.3.1. Public legal and constitutional education through social and mainstream media

Public interest litigation is not common practice in Tanzania for various reasons. Evidence suggests significant preference for informal network and local and traditional leaders as avenues for grievance resolution. According to several surveys including AfroBarometer as well as Sauti za Wananchi citizens have limited trust in the justice system. Only 1 in 5 (21%) believe their rights would be protected by the courts. According to the most recent AfroBarometer survey

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<sup>28</sup>The University of Dar es Salaam has a Legal Aid Committee which offers free legal services to those who are unable to employ legal advisors

while perception of corruption towards the judiciary has declined by a notable 14% from 35% in 2014, public trust towards judges and magistrates also fallen from 69% in 2014 to 66% in 2017. Tanzanians demonstrate a strong preference to revert to their local leaders in the event of grievances, as 65% of citizens believe powerful people are above the law.

In redressing this challenge, CSL will work through national and subnational networks to provide legal and constitutional education in order to catalyze public demand. This includes working with the national network of community radio, faith based networks, trade unions, farmers groups and local arts group to provide basic knowledge and understanding of available remedy through the court system and how the rights of citizens are protected within the constitution. A programmatic approach will be deployed in which an enumeration area will be defined within which CSL and partners will intervene during a defined period (3 or more years) and results will be measured over time. The determination of the enumeration area will be shaped by CSL's dialogue with the Tanzanian judiciary in view of selecting the most appropriate areas based on need. It will also be subject to other important considerations defined by CSL partners working on legal aid, criminal justice reform and the rights of marginalized groups. The aim during this strategy period will be to build a pilot which could potentially be scale up beyond the period of this strategy.

In order to enforce national reach, CSL will collaborate with national media, national faith based networks as well as national NGO networks. The purpose of this collaboration will be to provide large scale constitutional education through popular media, simplified versions of the articles of the constitution and user friendly guides on public interest litigation. This will be informed by previous experience on civic education campaigns in order to enhance the effectiveness of the outreach. A national legal and constitutional education reference group will therefore be formulated to include representatives from the civil society, the Commission for Human Rights and Good Governance, the Judiciary, Faith Based Organizations and other relevant agencies.

#### 4.3.2. Support to innovation and tech for governance initiatives (tech4Gov) to develop new approaches to public legal education

Innovation and technology play an important role in expanding access to information and formulation of new platforms for citizen participation. The blog Praxis has evidence of discussions about the possibilities of tech for governance among NGO practitioners as far back as 2011. In Tanzania, there is growing and vibrant tech4Governance sector which is creating new opportunities for citizen engagement including with the justice system. The Judiciary of Tanzania has launched an e-justice program that looks to enhance transparency in the courts as part

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<sup>29</sup> See the Afrobarometer Round 7 Survey in Tanzania, 2017

of its 5 year strategy. The program provides for the electronic filling of complaints which has the potential to expand access to the courts beyond physical access.

CSL will therefore take advantage of this wave of reforms in the justice system and the rapidly expanding tech4Governance sector to support innovation in both expanding access to information and citizen engagement with the justice system. On the former, CSL will support innovators to build tools and platforms that readily provide relevant legal, constitutional and court information. On the other hand, CSL will work with innovators to improve citizen feedback mechanism with the court system.

An annual innovation challenge will be organized and hosted by CSL along with other partners including the judiciary. The challenge will bring together emerging innovators in Tech4Governance who will benefit from training and other support as part of their participation in the challenge and each year CSL along with other partners will offered a sizeable award to the winner of the competition to build their innovation from concept development to scaling. The CSL research unit will work closely with the winners in guiding with the most relevant evidence, user experience as well as concept piloting.

#### 4.3.3. Establish and operate online media and mobile platform for access to information on the constitution and relevant legislation

CSL will also take advantage of the rapidly expanding technology and mobile telephony to provide offline and online citizen friendly constitutional education. This includes the launch of a dedicated portal to provide citizens with readily available information relevant to the constitution and other relevant laws. During the period of this strategy, CSL will give priority towards building a “pocket constitution” in the form of a dedicated website, social media pages and a mobile application through which citizens will be able to study the constitution in their most accessible language. In this regard, the platform will be developed with the help of constitutional lawyers, legal scholars, media experts, legal researchers and legal aid experts whose collective experience and user interaction will guide the process of making the constitution more accessible.

According to a Sauti za Wananchi July 2013 poll, 52% of Tanzanians have never heard of the constitution or have heard of it but are unable to explain it. While the numbers may or may not have changed given that the poll was taken during an ongoing constitutional review process. CSL will curate a public discussion on the constitution by engaging on social media through curated conversations including scheduled debates, blogs, op-eds and audio-visual content. In order to reach a diverse audience, CSL will produce customized versions of (articles of) of the

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<sup>30</sup>Visit [praxistz.org/praxis/](http://praxistz.org/praxis/)

constitution to target specific groups including women, people with disabilities, youth, children and other minority and vulnerable groups.

#### **4.4. Strategic Priority 4: Contribute to an active litigant and advocacy culture through research, direct petitions, judicial review and coordination with others**

CSL recognizes that litigation can not be deployed in isolation to secure the rights of the vulnerable and those of the marginalized. There is also appreciation of a limited litigation culture in Tanzania due to a low level of trust in the judicial system, low legal literacy levels and limited accessibility of the courts. In Tanzania, 47 percent of the total population has no access to High Court Services. Resident Magistrate Courts exist in 21 out of 25 regions with District Courts present in 110 out of 133 districts. There are 960 Primary Courts country-wide, with the number of Wards currently standing at 3,338.

Against this background, CSL's approach to public interest litigation will be shaped and linked to ongoing legal aid work. It is from the legal aid work that a majority of the cases handled by the CSL will first be identified. CSL will work closely with the community of paralegals, legal aid providers and human rights monitors to identify and develop cases for eventual litigation.

Alternatively, CSL's litigation agenda will be shaped by periodic studies and assessment of the broader human rights and civic space context in Tanzania. Through the litigation advisory committee of the Center for Strategic Litigation, strategic cases will be identified to be brought before the courts of law for petitioning, judicial review or appeal. These cases will primarily be determined during the annual litigation retreat where various studies will be presented and some of the leading litigants and experts will co-create the annual litigation agenda. The primary focus of the agenda will be to strengthen the supremacy of the constitution, securing fundamental rights and freedom and the protection of the rights of the most marginalized. The CSL Litigation Unit will lead through the thinking including organizing the annual litigation retreat.

##### **4.4.1. Organize, host, support and/or facilitate public interest litigation clinics including specialized clinics**

CSL will collaborate with existing paralegal and legal aid providers' networks in determining cases to be brought forward for litigation. Through litigation clinics, CSL will take advantage of the ongoing work of paralegals and legal aid providers to engage communities in the determination and development of cases for litigation. Litigation clinics have become common practice

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<sup>31</sup> Sauti za Wananchi is Africa's first nationally representative mobile phone survey

among the legal fraternity with several US universities leading the way. Litigation clinics have been incorporated as part of the legal education training curricular.

Beyond the paralegals and legal aid providers, CSL will work closely with the legal aid committees based at respective universities. The committees are expected to provide the technical expertise beyond the limited capacity of CSL staff. While CSL will provide guidance, advise, technical assistance, financial and other resources, the legal aid committees will be responsible in managing the community outreach programmes.

The CSL litigation advisory committee will be responsible for defining the methodology and providing guidelines for the conduct of the litigation clinics. On a needs basis, the committee will advise on identification and development of cases being brought forward from the clinics.

#### 4.4.2. Collaborate with national and regional partners in organizing and hosting the Annual Public interest litigation surgery

The annual public interest litigation surgery is aimed to be the flagship event of the CSL. The event brings together some of the leading practitioners, researchers and advocates in the region to undertake a thorough reflection on some of the ongoing cases brought before the courts. The event is organized annually to provide for rigorous intellectual debate on litigation as a field of practice, the state of constitutionalism and the role of the judiciary in safeguarding fundamental freedoms guaranteed in the constitution.

The event will bring together national and regional actors and will be organized jointly between CSL and its national and international partners. CSL will engage actors from other jurisdictions who have considerable experience working through litigation with the aim of leveraging their comparative experience towards the local context in Tanzania. As such the CSL will identify partners including the Open Society Justice Initiative, Robert F. Kennedy Human Rights, Katiba Institute and other regional partners from the global south.

The themes for the surgery will be determined on an annual basis after which studies will be commissioned on the themes so determined and expertise will be mobilized in accordance with the themes. The annual public interest litigation surgery will form a key pillar of CSL litigation work and serve as the Launchpad for its annual litigation agenda.

#### 4.4.3. Build a constituency and public support towards litigation through community mobilization, legal aid and outreach

CSL acknowledges that community mobilization is imperative for building legitimacy for the litigation work. As such, CSL will invest resources towards working with communities not only

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<sup>32</sup>The Judiciary of Tanzania, Environmental and Social Management Framework for Citizen-Centric Judicial Modernization and Justice Service Delivery Project

<sup>33</sup>The United Republic of Tanzania, 2012 Population and Housing Census

in identifying cases, providing legal and constitutional education but also learning of the lived experiences of the communities in contact and in conflict with the law.

Through an immersion program co-organized with CSL paralegal, legal aid providers and civil society partners, the litigation advisory committee will undertake a bi-annual immersion program to experience the lived realities of communities in order to best understand and reflect their expectations while doing the litigation work. The choice of the site of such immersion will be made in consultation with CSL partners subject to evidence from reports coming out of their legal aid work.

The legal aid committees of the respective universities will be co-opted to bring in research and technical input into the programme with the view to inform the research and legal aid agenda beyond the immersion program.

#### 4.4.4. Work to support, coordinate and facilitate advocacy against laws that threaten the full realization of constitutional supremacy, equity jurisdiction and the protection of fundamental rights and freedoms.

Working with others, CSL will identify issues which require redress beyond litigation. CSL recognizes that not all grievances identified through research or brought forward through legal aid clinics and community outreach will be eligible for court action. As such, CSL will pursue an advocacy agenda powered by research and evidence targeting those laws that may be in contravention of the constitution.

Advocacy will also be deployed towards enforcement of the rulings coming out of CSL public interest litigation cases in order to ensure key decisions are realized. CSL will develop a monitoring mechanism on each of the cases filed where a ruling has been produced and engage with the relevant audience to ensure their implementation.

CSL will also leverage the capacity and expertise of others and contribute to amplifying such advocacy with legal and judicial expertise. As such, CSL will build on the ongoing work of national and regional networks including the Women's rights movement, the Child Rights' movement, Media Freedom networks including the Coalition on the Right to Information (CORI) and the Constitutional Forum (JUKWAA LA KATIBA). CSL will participate actively in these networks and contribute to the attainment of shared objectives .

CSL's advocacy will prioritize opening opportunity for dialogue with relevant state agencies in order to optimize the opportunity for reforms. As such, CSL along with its partners, will seek to

identify all potential opportunities to engage with such state agencies as a fundamental part of its advocacy strategy.

In view of this, CSL will produce an annual advocacy agenda working with partners to identify the most pressing advocacy priorities of a given year. CSL's ongoing research and litigation will form a key consideration in the development of the advocacy agenda.

## **4.5. Strategic Priority 5: Reforming the criminal justice system to enhance access to justice and rule of law**

CSL reckons that strict adherence to the rule of law may in fact contribute to limiting the realization of justice in the event of a flawed criminal justice system. It is therefore important to ensure that the criminal justice system has sufficient guarantee of substantive justice beyond procedure. It is also critical to ensure that the criminal justice has the best interest of erstwhile vulnerable groups particularly women, children, ethnic minorities and people with disabilities.

CSL's work on criminal justice reform will be focused on enhancing access to the criminal justice system, protection of the rights of the marginalized, enhancing consistency with international standards and best practices and adherence to the constitutional and acceptable norms. This work will build on past experience of criminal justice reform that has led to improvement in the law of evidence, the Penal Code, the Criminal Procedures Act and the Sexual Offences Special Provisions Act (1998) and the National Prosecution Services Act (2008).

### **4.5.1. Undertake a mapping and diagnostic study of the criminal justice system and produce recommendations for reform**

In order to aptly design a criminal justice reform program in collaboration with other partners, CSL will first undertake a comprehensive mapping and diagnostic study of the criminal justice system. The study (ies) will identify the most pressing shortfalls of the current system with the view to suggest means for redressing such shortfalls.

CSL will collaborate with the Tanganyika Law Society, the Law Reform Commission, the Commission for Human Rights and Good Governance and other interested parties. These organizations have considerable experience working on criminal justice reform in Tanzania and as such are well placed to advance such reforms beyond the outcome of the studies undertaken jointly with CSL.

In order to ensure, further monitoring of the criminal justice reform agenda, CSL will engage with the parliament of Tanzania through the Sector Committee of constitution and legal affairs and other relevant committees to ensure parliament moves to act in favor of implementing the necessary reforms on the criminal justice system. A follow up mechanism will be further developed and annually a report will be produced assessing the status of the implementation of such reforms.

#### 4.5.2. Support the establishment and facilitation of the national criminal justice reform task force to ensure coordination among stakeholders on criminal justice reform.

The establishment of the criminal justice reform forum/task force will be informed by the outcome of the study on criminal justice reform. The study will among others identify the most relevant actors who have an important role in shaping the criminal justice regime in Tanzania. The actors will be pulled out of a list of stakeholders who have a particular mandate in the administration of criminal justice in Tanzania. The forum will also include representatives from civil society, research organizations as well as development partners.

The agenda of the forum will be determined by the outcome of the CSL mapping of the criminal justice system and the recommendations made in the criminal justice diagnostic study. In addition to the study, the forum will base its work on previous studies produced by the Law Reform commission and other actors including UNICEF, Women Legal Aid Clinic and EnviroCare following its dedicate work on criminal legal aid.

#### 4.5.3. Encourage co-creation of solutions to the challenges of the criminal justice system through a Criminal Justice Lab.

The purpose of CSL's work on criminal justice is not simply to identify gaps in the criminal justice system but to also develop solutions that may be deployed by the state in improving the same. Towards this end, CSL will work closely with the Law Reform commission and the Ministry for Constitutional and Legal Affairs to host a criminal justice lab based on international best practice and Tanzania's previous experience working through similar methodology.

The criminal justice lab will bring together a team of experts and stakeholders that are jointly required to find solutions to a series of complex criminal justice problems based on clear and rigorous analysis and prioritization. Through this co-creation process, the lab will produce detailed implementation plans with measurable Key Performance Indicators (KPI).

The labs are proposed as a means to enhance the effectiveness and efficiency of the criminal justice system based on expert advice. The lab provides a unique opportunity for a diverse group of stakeholders working on criminal justice reform to come together and devise solutions. Consequently it provides room for continued dialogue on monitoring the implementation of the proposed solutions.

#### 4.5.4. Establish and implement a national criminal justice reform advocacy agenda and strategy

In order to amplify CSL's efforts on criminal justice reform, advocacy will be deployed to ensure awareness by the general public and relevant stakeholders. Following work on assessing the criminal justice reform and in consultation with other actors including the Tanganyika Law Society, Women Legal Aid Clinic (WLAC) and others, CSL will lead in the development of a national agenda for criminal justice reform to allow other actors to also play an active role in instigating the reforms.

CSL will contribute through research, diagnostic and technical work by providing the most relevant input for such advocacy. CSL will facilitate the work of other actors to enhance effectiveness of their work through the necessary technical support. This will include supporting learning and exchange with CSL regional partners who have successfully undertaken advocacy on criminal justice reform in the region.





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