

# National Consultation Conference on **Legal Empowerment** of the Poor



Venue: Kilimanjaro Hotel Kempinski

Date: 29 - 30 November, 2006

## **COMMISSION ON LEGAL EMPOWERMENT OF THE POOR**

# **Report on the National Consultation Process: Conference on Legal Empowerment of the Poor**

**The views expressed in this paper are those of the author and do not  
necessarily reflect the views of  
the Commission on Legal Empowerment of the Poor**

**29<sup>th</sup> 30<sup>th</sup> November 2006  
Kilimanjaro Hotel Kempinski,  
Dar es Salaam, Tanzania**

## **1. Synopsis of the National Consultation Process**

A National Consultative Conference was hosted by the office of His Excellency Benjamin W. Mkapa the former President of Tanzania and organized by the Property and Business Formalization Programme for Tanzania whose *Kiswahili* acronym is MKURABITA on behalf of the Commission on the Legal Empowerment of the Poor. Overall, the conference objective was to seek and generate new policy recommendations that will reduce poverty through secure, enforceable property and labour rights within an enabling environment that seeks to expand legal business opportunity and access to justice.

The consultation process was designed in such a way that the policy recommendations are based on research findings grounded in local experience. The Conference was held on 29<sup>th</sup> – 30<sup>th</sup> November 2006 at Kilimanjaro Hotel Kempinski drawing participants from rich and a wide range of backgrounds.

The process started by identification of resource persons and thereafter requesting them to prepare thematic papers guided by specific questions, but relevant to the legal empowerment of the poor namely; Access to Justice and Rule of Law, Property Rights, Labour Rights and Entrepreneurship. In fact, these were informative and ground-breaking papers anchored on selected concepts and lessons of experience from the real world situation. The draft papers were presented in focus group discussions that preceded the conference from 7/11-8/11/2006. Participants of the focus group discussions were drawn from the civil society, members of the academia, Government Ministries and departments, and private sector. Authors were given comments from the focus group discussions in order to improve quality of their papers.

During the conference, these papers were presented by the resource persons with a view to shedding knowledge and stimulating discourse among participants. Since the conference was graced by the attendance of highly placed dignitaries, presentation of these papers was preceded by a series of opening speeches, key notes and remarks. The welcoming remarks were given by Mr. Iddi Simba the session Chairperson. H.E. Benjamin W. Mkapa Commissioner of CLEP and former President of the United Republic of Tanzania gave a speech on the objectives of the conference. Hon Dr. Madeleine Albright, Co-Chair of the commission presented a speech on the work of the commission. His Excellency Jakaya Mrisho Kikwete President of the United Republic of Tanzania was the Chief Guest, gave his speech to open the conference. These preliminaries proved useful in enlightening the conference participants on the obtaining situation with regards to legal empowerment of the poor and hence, the conference specific objectives.

Thereafter, the participants formed Working Groups based on area of interest and competence in order to share experiences on the basis of thematic areas

and specifically respond to the guiding questions designed for each group. The presentation of Group Works was followed by plenary sessions that further enriched the conference outcome. Furthermore, the findings from a Group of NGOs that researched on the needs of the poor in Tanzania were made available to each participant.

## 2. Emerging Relationship Between Legal Empowerment and Poverty Reduction

It was evident from the knowledge generated by the conference that there is a relationship between legal empowerment and poverty reduction. For the purpose of making these relationships more visible, a Matrix is used (Matrix 1).

**Matrix 1: Emerging Relationship Between Legal Empowerment and Poverty Reduction**

<b>S/ No.</b>	<b>Emerging Attribute of Legal Empowerment</b>	<b>Specific Impact/Bearing on Poverty Reduction</b>
<b><i>A. Access to Justice and Rule of Law</i></b>		
1	Improved access to Ward Tribunals and Primary Courts	Cost saving (as hired legal experts are, in most cases, not required at this level), hence, improved financial status leading to reduced poverty income
2	More disputes settled amicably after integrating formal and informal systems of resolving disputes	Decline in number of cases pursued through legal system, virtually negligible costs incurred and time is saved for alternative use in socio-economic activities.
3	Strengthened tribunals on land, labour, tax, commerce, and more specialized tribunals established	Expedited hearing of cases, reduced time and money spent on cases, hence, money and time optimally used to increase production, revenue and reduce poverty.
<b><i>B. Property Rights</i></b>		
1	Improved customary ownership of property	Informal contracts recognized, enforced and subsequently increased business credibility and productivity leading to poverty reduction.
2	Established cost-effective and efficient mechanisms on land management and especially delivery and housing for low income households	Massive access to land for the poor and massive formalization of property leading to more people seizing opportunities of modern economy where more profit is expected.
3	Incentives to formalization	Same as above
<b><i>C. Labour Laws</i></b>		
1	Effectively enforced Labour Laws	<ul style="list-style-type: none"> <li>• Employees rights protected and working conditions improved including realization of prescribed minimum wage.</li> <li>• Tax exemption is also provided for new and small businesses to grow and reduce poverty.</li> </ul>
2	Standards are designed, approved and enforced for the informal sector	Informal sector operates competitively and is able to penetrate a wider market for the goods and services provided leading to profit maximization and subsequently poverty reduction.

<b>D. Entrepreneurship</b>		
1	Local governments designate, service and allocate business premises for clustered but identical businesses to operate	Increased permanent business location leading to credit-worthiness, realization of scale economies and expanded businesses, profit maximization and poverty reduction.
2	Reduced bureaucracy, recognition and registration of small scale businesses	Increased credibility, trust and credit-worthiness and potentially providing access to business loans that if properly used could reduce poverty.
3	Increased awareness on policy and legal provisions among the poor	Increased clarity on rights and obligations leading to ability to defend their rights, improved social warfare as they will abide to regulations and rules.
4	Entrepreneurial skills imparted to small business operators	Improved creativity and innovations in business operations leading to calculated risks and profit-making businesses. Thus, poverty reduction.

### **3.0 Key Issues**

The conference generated dozens of issues pertinent to legal empowerment of the poor and poverty reduction. Since there was no technical ranking during the conference, the key emerging issues were identified on the basis of the impact they have in shaping the living conditions of the poor and marginalised. Four key issues were, therefore, identified:

- (i) Lack of capacity of judicial system especially Ward Tribunals and Primary Courts, the levels which are most accessible to the poor and marginalized;
- (ii) Complex, corrupt and costly procedures and processes to formally access property rights;
- (iii) Labour laws that are not enforceable to the poor largely because most poor do not have formal contracts with their employers; and
- (iv) Dearth of entrepreneurial skills.

#### ***3.1 Incapacitated Judicial System Especially Ward Tribunals and Primary Courts***

Experience shows that accessing judicial services is too bureaucratic, costly, excessively time consuming and complex for the poor to afford. It is difficult to access justice because the legal facilities are scarce, lawyers are few, the already few courts are flooded with cases and the majority of the poor cannot afford fees charged by legal experts. Tanzania has a six-level judiciary combining the jurisdictions of tribal, Islamic, and British common law. Christians are governed by customary or statutory law in both civil and criminal matters. Muslims may apply either customary law or Islamic law in civil matters. The formal system of dispute resolution begins with Ward Tribunals with appeals going to the Primary

Courts through the District Courts, Resident Magistrate Courts, to the High Courts, and Court of Appeals. A special focus is, therefore, made to these two facilities of judicial system because at the grassroots level, and particularly for the majority poor, Ward Tribunals (WT) and Primary Courts (PC) are more accessible.

#### *Main barriers*

With reference to WT and PC, the key **barriers** to change include:

- Shortage of human and material resources for both WT and PC,
- Both, WT and PC are not established within reasonably accessible geographical locations,
- The sheer number of cases received by PCs for the relatively few magistrates to handle them,
- Corruption,
- WT are not optimally used because they tend to assume the role of issuing compulsive orders instead of the role of a mediator, and
- On land-related conflicts, the barrier is largely due to ministerial structures that are fragmented.

#### *Drivers/incentives*

The **drivers/incentives** for change include:

- Affordable costs to access justice for the majority poor,
- In the WTs, the outcome is reconciliation between the conflicting parties and not the winner and the loser,
- Possibility of incorporating the poors' informal ways of accessing justice in the formal legal system instead of imposing "our" formal ways that tends to ignore their way of life and reasoning with respect to legal services issues.

#### *Main strategies to bring changes*

The necessary changes can be brought about through a number of **strategies**.

The major ones include:

- Change of the mindset of the public to see court's duty as civil arbiter rather than as a mediator,
- Encouraging the use of alternative system of resolving conflicts in society,
- WTs should play the role of a mediator,
- The specialized tribunals on, for instance, land, tax, labour, commercial, etc. have proved quite advantageous in disputes settlement and there is a need for the establishment of more of this kind of legislative system,
- Harmonising or/and integrating formal and quasi-formal legal systems of accessing justice,
- On land-related conflicts, ministerial structures ought to be harmonized, and

- Provision of public education in the reform process so that people are made aware of how the law system operates and understand the rationale behind many forums with differing procedures depending on the type of the dispute.

#### *Crucial institutions and partnerships to be forged*

The most crucial **institutions** are Ministry of Justice, Ministry of Lands and Human Settlements Development, Ministry of Trade, Ministry of Women and Children, Prevention of Corruption Bureau (PCB), NGOs e.g. Association of Small-scale industries and Businesses in *Kiswahili* VIBINDO, Civil Society Organisations e.g. Tanzania Women Land Access Trust (TAWLAT) and the Media. **Partnership** between the Government legal organs and the Civil Society Organisations is also crucial.

### ***3.2 Complex, Corrupt and Costly Procedures and Processes to Formally Access Property Rights***

Property rights play a major role in improving the investment climate, access to credit markets and revenue for the government. In addition, property rights offer safety nets, enhance, improve transaction in land markets and act as an incentive to addressing environmental problems. However, these benefits have not been apparent to the poor and marginalized largely because of a number of barriers.

#### *Main barriers*

The main **barriers** for the property rights not to work for the poor and marginalized in Tanzania are diverse. The major ones include:

- Land as a collateral for credit to the poor is risky because it poses a risk of rendering them landless and becoming even poorer;
- Lack of inclusive and enabling system of property rights that have a bearing to the interests of the poor and marginalized such as pro-poor land development schemes;
- Highly centralized, opaque, bureaucratic and complex system of land administration,
- Too costly land survey procedures for the majority poor,
- Lack of awareness of the poor on their rights and obligations, and
- Patriarchy attitude in many societies with respect to women and children rights to property including business.

#### *Main strategies to bring about changes/reforms*

Reforms can be brought about through the following main **strategies**:

- Adopt and improve customary processes with respect to ownership, regulation and dispute resolution since formalization may lead to loss

- instead of legal empowerment as mere titling of property, for instance land, makes it highly fungible and valuable,
- Establish cost-effective and efficient mechanisms of land management especially delivery and housing for low income households; including information and documentation systems (Registries)
  - Fast-track on-going reforms such as Residential Licensing, Pilot Village Land Certification, Establishment of Land and Ward Tribunals; and Property and Business Formalisation.
  - Decentralising, streamlining and simplifying administrative and judicial processes on property registration including to mandate local authorities to issue titles,
  - Strengthening partner institutions including establishment of village land offices,
  - Giving investment incentives to formalized properties and providing public education,
  - Creating rules that cater for both individual and collective ownership of property,
  - Harmonization and clustering of organizations dealing with property Rights
  - Procuring, installing and training simple modern technology of land demarcation and issuance of village land certificates, and
  - Establishing village reconciliation committees or organs to address inter and intra family property ownership disputes.

*Crucial institutions and strategic partnerships to be forged*

In the process, the following **institutions** are crucial:

Village and *Mtaa* Governments, Ministry of Lands and Human Settlements Development, Ministry of Justice, Ministry of Planning and Economy and Empowerment, MKURABITA, CBOs and NGOs e.g. Women Advancement Trust (WAT); and Research and Academic Institutions of Higher Learning. **Partnership** with international organizations especially the World Bank and European Union, to mention a few, is to be forged.

### ***3.3 Labour Laws that are not Adequately Enforced in Favour of the Poor***

Labour laws have a bearing in legal empowerment of the poor because if adequately enforced, they can contribute to realization of decent work agenda objectives to informal sector workers. The Conference revealed that the existing legal recognition and frameworks already provide for a fairly good support and fertile ground in achieving the objectives of decent work agenda, to some extent, even to the informal sector. However the objectives of the decent work agenda in the informal sector of Tanzania are far reaching.

*Main barriers*

The main **barriers** for the lack or ineffective law enforcement, for instance, inability to enforce prescribed minimum wage include:

- A biased approach of law enforcement which excludes employees' rights,
- Costly legal set up inhibiting employers from declaring their employees,
- Reforms that do not take into account social cultural issues including gender especially women and children.
- A very narrow definition of reforms which is largely limited to recognition and registration ignoring harmonization of various laws,
- Widespread unemployment creating freedom for the employers to abuse them,
- Limited representation of informal sector, and
- Lack of public awareness on what the formal labour laws provide for them, rights and obligations.

*Main strategies to bring about changes/reforms*

- Ensure inclusive approach in labour law enforcement in order to accommodate the needs of the poor, and
- Reforms should encompass harmonization of various laws,
- Recognize and register businesses and property,
- Enhancing contacts and networks among the poor, and
- Formulation of specific legal framework of particular standards for the informal sector to grow.
- Public awareness campaigns and translations of labour laws from English to *Kiswahili* for effective communication.

*Crucial institutions and strategic partnerships to be forged*

For the changes to take place, the leading role of the Ministry of Labour and Youth is critical. Other **institutions** include NGOs, CBOs such as a Micro-insurance project in Dar es Salaam in *Kiswahili*, UMASIDA and VIBINDO, Micro-finance institutions such as Foundation for International Community Assistance FINCA and the Promotion of Rural Initiatives and Development Enterprises (PRIDE). Strategic **partnership** can be forged between the Government of Tanzania, the ILO and NGOs dealing with Human Rights.

**3.4 Lack of Entrepreneurial Skills**

The Conference revealed and discussed a wide range of under-exploited opportunities by the poor and marginalized. With all those potentials to be harnessed and government commitment to eradicate poverty, one becomes curious to understand why these opportunities have not been adequately seized by the poor and marginalized.

### *Main barriers*

A large number of barriers were established, specifically:

- Limited formal knowledge and capacities of the operators with respect to exposure, value, attitude, knowledge and skills on business management,
- Education system that doesn't embrace entrepreneurial attitudes,
- Limited access to financial support and as most financial institutions do not understand the culture of small firms,
- Homelessness of micro firms as they operate from temporary, illegal sites or premises including lack of street names
- Low credibility of the business including low level of trusts in the society, Bureaucracy in business licensing and registration,
- Limited capacity of local authorities to support small business,
- The spirit of reforms that have not yet been fully embraced at the local government level. In Zanzibar, there is lack of specialized SME development institutions and active engagement of training institutions on business entrepreneurship.
- Limited awareness and hence, ownership of national policies, laws and regulations and strategies with a bearing on SMEs and failure to translate them into actions.

### *Main strategies to bring about changes/reforms*

- Providing education and specifically building appropriate curricula to address issues pertaining the poor and marginalized,
- Fast-tracking participatory review and operationalization of existing policies and programmes such as MKURABITA and Business Environment Strengthening Program for Tanzania (BEST) and those which favour the empowerment of the poor and marginalized,
- Introduction of agricultural incubator and specialized institution in Zanzibar to deal with SMEs,
- Ensuring that local governments designate and service special areas where related types of small businesses could operate from,
- Creating public awareness on the relevant policies, regulations and strategies on SMEs including making Tanzania Revenue Authority (TRA), Tanzania Bureau of Standards (TBS), Tanzania Food and Drug Authority (TFDA), Business Registration and Licensing Agency (BRELA) and other regulatory organizations communicate the procedures and costs to the grassroots level.

### *Crucial institutions and strategic partnerships to be forged*

The Government especially the relevant Ministries, Regulatory organizations such as TBS and BRELA, Commercial Banks especially CRDB Bank Ltd and National Microfinance Bank (NMB), research institutions and universities, NGOs such as World Vision and Civil Society Organizations such as Tanzania Gatsby Trust and

Savings and Credit Cooperative Societies (SACCOS) are crucial **institutions** to inspire and spearhead reforms. Government **partnership** should be forged with International Organizations that have shown interests on the ground such as DANIDA, IFAD, JICA, USAID and ILO. At the very grassroots level, similar partnerships could be forged with the private sector and micro-finance institutions between individuals, groups and local governments.

#### **4. Cross-cutting Issues**

Apparently, six issues emerged strongly across the four thematic areas. These are public awareness, bureaucracy, costs, risks, education and dissemination of information. The initiative, therefore, by the Commission on Legal Empowerment of the Poor (CLEP), to address any of the four key issues has to take cognizance of these concerns.

#### **5. Conclusion**

The conference has proved that with high determination from the poor and marginalized, support from the public and private sectors and above all, political commitment which is already repeatedly assured from the Government, the poor can be empowered and reduce their poverty significantly.