The government of the United Republic of Tanzania is civilianising and streamlining its prosecution system. The process began in 2004 through the 14th amendment to the Tanzanian constitution of 1977. The amendment added Article 59B, which created the position of and conferred powers to the Director of Public Prosecutions (DPP). This was followed by the enactment of the Attorney General’s Office (Discharge of Duties) Act in 2005 whose Sections 9, 10, and 11 relate to the DPP, his duties and relations with others in the attorney general’s chambers. The National Prosecution Service Act 2008 (NPSA) established the National Prosecutions Services (NPS) led by the DPP.

Until 2007, many criminal cases were handled by public prosecutors who were also invariably part of the police or other investigating machinery such as the Prevention and Combating of Corruption Bureau, Tanzania Revenue Authority, or various health agencies among others. This phenomenon arose out of the fact that the government in the 1960s had few lawyers to constitute a full fledged office of the DPP, and hence as a stopgap measure, it was agreed in principle that police officers and officers of other investigation agencies, who already had some experience in dealing with criminal matters, assist the DPP in prosecutions as well. The phenomenon expanded and covered many investigating units, and until 2008 over 30 agencies were vested with both investigation and prosecution functions. The situation was made possible by the gazetting of all officers of such agencies of a certain rank and above to be public prosecutors.

As of 2008 all prosecution matters were firmly under the authority of the DPP, who is also charged with the duty of directing investigations in specific cases as the need arises.

The Concept of Civilianisation
The civilization of prosecutions is a fairly recent concept whereby the power to prosecute is retained by independent institutions separate from the investigating units or agencies. This move is largely a result of the development of human rights norms and of issues of accountability, integrity, and professionalism in prosecution matters. Essentially, the argument is that uniformed officers should not do both—investigate and prosecute—and that no one should be the judge of his/her own cause; in Latin, this is referred to as *nemo judex in causa sua*.

In jurisdictions where civilianized prosecutions operate, the role of prosecution agencies includes prosecuting criminal cases fairly and effectively and also advising the investigators on cases for possible prosecution, reviewing cases submitted by the investigators, preparing cases for the courts, and efficient and effective advocacy at court. In such jurisdictions, the heads of prosecutions and prosecuting staff are far removed from the investigators.
Such jurisdictions include Zanzibar, South Africa, Uganda, England, New Zealand, Scotland, France, Belgium, The Netherlands, India, and the United States. In these jurisdictions, even though the investigation and the prosecution work in close cooperation, each is able to maintain its independence. This has been achieved largely by the prosecution’s playing a middle role in the relationship between the individual, the criminal agencies, and the courts. Thus, the decision to prosecute is independent of the investigation, and in relation to the investigation of offences, the investigator is bound to comply with lawful instructions from the appropriate prosecutor. Prosecutors generally become responsible for the outcomes of the investigation. As a result, prosecutors must have authority over the investigators with regard to criminal investigations.

There are many reasons why civilianization is globally being pursued for prosecutions. The first relates to impartiality. The police or other investigatory agencies are generally an interested party in the criminal justice system. Thus, giving them prosecutorial powers is seen as undermining the impartiality of the prosecution system. The function of the public prosecutor relates to a public purpose: entrusting the office with the responsibility of acting only in the interest of the administration of justice.

Public prosecutors must be impartial since in law they are not protagonists of any party, though in theory they stand for the state, in whose name all prosecutions are conducted. This means prosecution machinery is to be completely separated from the investigation agency so that prosecutorial independence, essential for ensuring fairness in prosecution, is ensured.

**Objectives and Benefits of Civilianized Prosecutions**

In the modern system of criminal justice, the state takes up the responsibility of investigating crimes and prosecuting offenders on behalf of victims. This system is based on the principle that any crime committed by an individual is a crime against the societal order. The investigation, prosecution, and eventual punishment for the crime is therefore the responsibility of the state, not that of the victim of the crime. This responsibility--where the state acts on behalf of the victims--limits the scope for vengeance and revenge. It is in this regard that states have systems for investigation, prosecution, and adjudication of rights and obligations. These systems must display a very high sense of impartiality, which can hardly be achieved if they are not separate.

Further, the aim of the criminal justice system is to contribute to the reduction of crime and the fear of crime and to increase **public confidence in the independent review of cases and firm, fair, and effective prosecution at court**.

Thus, the overall objective of civilianisation and streamlining the prosecution system in Tanzania recognises that the fundamental objective of prosecution is to vindicate justice to those who commit offences, to punish those who deserve punishment for their offences, to provide expeditious compensation and restitution to victims of crime, and to protect the community--and to do all these in a manner that is objective, fair, and timely.
To achieve this objective, an effective and independent prosecution system is considered desirable.

The potential benefits of civilianising and streamlining the prosecution system are many including that:

- Each department will concentrate on core functions.
  
  Investigators will investigate
  Prosecutors will prosecute
  Adjudicators will adjudicate

- The independence of investigators, prosecutors, and adjudicators will be realized and not blurred.

- It will be easy to define responsibilities and evaluate performance.
  
  Investigators will be evaluated on how they handle investigations
  Prosecutors will be evaluated on how they manage prosecutions
  Adjudicators will be evaluated on cases filed in court.

**Challenges to Civilianization**

Though the benefits of civilianization are clear and widely agreed upon, the challenges are mammoth. Criminal justice works in a system. Despite the separation, investigators and prosecutors have to work for a common goal: to address criminality in the society in a manner that is **timely, fair, and for all**.

A further challenge is to ensure independence in the actual sense of the term. Prosecution is guided by norms and standards. In Tanzania, the general benchmarks for these norms and standards are found in the constitution and the NPSA. Both the constitution and the NPSA require the NPS to be guided by the public interest. The public interest, the interest to do justice, and the need to prevent abuse of the process mean little unless translated in operational rules, regulations, instructions, and policies, generally referred to as guidelines.

In practice, however, defining what is meant by “public interest” or “interest to do justice” is not always easy. What is “in the public interest” is invariably different from what is “of interest to the public.”

The general public interest requires consideration of the present requirements for action, an appreciation of how such matters have been addressed in the past, and a prediction of the impact of a particular course in the future. In this, there is an historical continuum to be considered that sometimes makes a controversial matter difficult to resolve in a way that is both in the general public interest and immediately acceptable to most, if not all, interested persons. Indeed, in many situations there will be continuing controversy. (For a general discussion of this issue, see the paper by Nicholas Cowdery AM QC, “The Independence of the Prosecutor and the General Public Interest” presented at the 23rd Pacific Islands Law Officers Meeting at Tonga from 27-29 September 2004 and posted at [http://www.odpp.nsw.gov.au/speeches/A250953.htm](http://www.odpp.nsw.gov.au/speeches/A250953.htm).)
If “the general public interest” and “acceptable to most” are viewed as reality tests for action then guidelines need to be provided. The public should have access to these principles in order to measure whether indeed the prosecutors acted according to what is written rather than to mere experience and personal whims.

It is in this regard that the NPS is developing the Prosecution General Instructions (PGIs), which will provide the necessary benchmarks for all prosecutors. The PGIs are designed to achieve one central objective: to provide comprehensive and user friendly prosecution guidelines for state attorneys and prosecutors in mainland Tanzania. The central goal is to ensure effective and fair delivery of criminal justice to all. In the words of the PGIs:

... prosecuting an individual who is alleged to have committed a crime is a serious step that requires seriousness and rational decisions in order to uphold a fair criminal justice system. As such, fairness, effectiveness and aptness should always guide those who play decisive roles in the prosecution process. This is essential in order to ensure justice to all who may be involved in the process--victims, witnesses or the accused--no matter how small or big a case may be. With this in mind, existence of proper guidelines underlying the basic principles and procedural techniques in conduct of criminal matters is crucial. It helps to attain fair and consistent decisions about prosecutions ... (NPS, Draft Prosecution General Instructions for Tanzania Mainland State Attorneys and Prosecutors, 2007.)

The framework in Tanzania also requires the NPS to be accountable for its action through a number of tools. One such tool is section 25 of the NPSA, which requires regular inspections. The second is section 10(2) NPSA, which requires the DPP to give reasons for some of his/her actions. Other tools include the disciplinary mechanism contained in the NPSA and the tradition of judicial review remedies on administrative measures taken by the NPS that affect individual rights and obligations.

The general perception among lawyers, however, is that judicial review mechanisms in Tanzania are weak and would require significant improvement if they are to be effective in making institutions accountable for their action.

**The Systemic Checks and Balance Mechanism of Criminal Justice**

It is rather natural and desirable for systems which bear different responsibilities (investigations and prosecutions) to have conflicting views over certain case dispositions. Such conflicts between the two should be considered as evidence for the proper functioning of the criminal justice system’s checks and balances mechanism.

Accordingly, investigators would be expected to welcome, or at least try not to avoid, such checks from prosecutors. Similarly, prosecutors should be prepared to receive criticisms from investigators on the way they are handling cases that have been investigated and presented for further processing. Further, prosecutor supervisory
functions, such as giving advice/instructions to investigators, should always be accompanied with clear and reasonable explanations of their grounds.

In order to make the relationship more effective, both sides should make efforts to understand and respect each other’s responsibility in criminal matters. Investigators should respect prosecutors’ advice with a view to sustain successful prosecution and try their best to protect the due process of law in the course of their investigation. Prosecutors should try to understand the difficulty the investigators face in the course of investigations and to pay as much respect as possible, within the existing legal framework, to the discretion of the investigators in their investigation.

Sharing Common Values
Effective criminal justice management requires concerted action of all relevant authorities (stakeholders) in the government, which have the same ultimate goal of realization of the rule of law. Those authorities should share substantial common values supported by strong political will. This invariably will lead to establishing joint programs or plans for the operation of the criminal justice system. The notion of working jointly has the potential to promote practical cooperation between investigators and prosecutors.

Informal Communication Key
The key to a good working relation between investigators and prosecutors is the promotion of mutual understanding through informal person-to-person contact. This can be fostered through varying approaches depending on the circumstances of each region or district.

The sections below suggest methods for ensuring formal communication between the two.

Intensive Early Stage Consultation
Intensive consultation with investigators about matters arising in connection with a particular investigation reduces frustration on the part of the investigators about releasing the accused or about subsequent termination of the proceedings and leads to better results in the investigation because there can then be precise determination in advance of what is actually needed for the purpose of preparing the main hearing. Early stage consultations enable prosecutors and those in the investigation to analyze the available material identifying perpetrators of crime and advising the investigators which of those identified as being involved should be the focus of attention. In this context prosecutors are not only able to guide investigators to those most culpable but also to indicate some sort of framework around which potential interviews could be built.
Regular Meetings, Workshops, Seminars
Regular meetings are beneficial. These meetings and joint official discussions between investigators and prosecutors invariably lead to coordinated, focused, and simplified investigations as well as prosecutions. In the same way, regular workshops and seminars can be used to exchange views on areas of contention in order to forge closer working relationship. During these seminars, sensitization should be used to ensure that both prosecutors and investigators understand that they are set up for the same purpose, namely to combat crime.

Close Liaison
There are benefits to be gained by sending liaisons to each other’s offices. The liaison system helps to bring to the attention of each other issues which are problematic at early stages of the investigation or prosecution process.

National Criminal Justice Forum
As suggested earlier, criminal justice is a networked area where multiple players operate. Section 27 of the NPSA states: “There is established a National Criminal Justice Forum whose role shall be to create an opportunity for actors in the criminal justice system to meet and discuss strategic issues involved in the administration of criminal justice.”

In principle, the forum is based on the concept that law enforcement organs and stakeholders such as the police, the intelligence community, the judiciary, and academia working together in creative ways can help solve contemporary challenges and problems related to public safety and to security threats such as crime. In practical terms the police remain central in the endeavour to curb crime, but success also hinges on the involvement of many other actors. These actors are to be found in areas such as the judiciary, the prosecutions system, the investigations system, and the intelligence community as well as national defence and security establishments. All these actors are generally interrelated and mutually reinforcing to produce a public safety and security continuum, which is one of the prerequisites for peace and tranquillity in society.

Indeed, a clear appreciation of the interplay of various processes to produce a desirable state of public safety and security helps all involved map the direction and the interventions that will ensure public safety and security in the country.

Strategic Achievements of Civilianization
The process of civilianization is not without challenges--of approach, attitude, working environment, staffing and staff retention, and the many challenges presented by the geography and size of the country to allow effective coverage by NPS. However, although it is a gradual process, the NPSA will eventually result in a number of strategic achievements: the streamlining of the prosecution of offences from the national level to the districts (and hopefully at the primary court levels), the separation of the investigative
function from the prosecution function, and the better discharge and consolidation of the powers of the Director of Public Prosecutions in relation to the control and management of criminal cases.

Indeed, an improved prosecution system would also in the long run mean better quality of work and increased productivity in terms of case disposal. It would further mean a higher degree of fairness and impartiality in decision-making and upholding the rule of law in all circumstances, untouched by external or internal influences. Finally, it will mean better accountability in the management of prosecutions in order to give greater security to people by guaranteeing them freedom from crime. The strategy then lies largely in selecting the right personnel, providing them with resources and the best training, and providing leadership and motivation through correct policies and service conditions.