United Republic of Tanzania



OFFICE OF THE SOLICITOR GENERAL

CIVIL LITIGATION AND ARBITRATION PRACTICE DIRECTIONS

DECEMBER

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PREAMBLE

The Office of the Solicitor General (OSG) was established by the Office of the Solicitor General (Establishment) Order, G.N. No. 50 of 2018 as gazetted in the Government Gazette No. 3, Vol. 99, dated 13 February 2018. The objectives of the OSG are to enhance and strengthen the Governments ability to litigate civil cases including human rights, constitutional matters and election petitions in courts of law and undertake arbitral proceedings in tribunals both locally and internationally.

The OSG is mandated to undertake and conduct civil litigation and arbitration on behalf of the Government, and for that purpose, to supervise and direct law officers, State Attorneys and Legal Officers who conduct civil litigation or arbitration proceedingshe Office is also mandated to coordinate and institute civil suits in Courts of law and arbitral tribunals on matters which involve the Central-Government, Independent Departments, Executive Agencies, Local Government or any public corporation that the Government has substantial interest.

In fullfiling its functions, the OSG has prepared this document which contains Civil Litigation and Arbitration Practice Directions to guide State Attorneys, Law Officers or any person exercising the powers of the Solicitor General on how to handle cases that are filed against or for the Government and its Institutions in courts of law and arbitral tribunals. It covers directions on how to handle applications, counter affidavits, plaints, complaints, petitions, defences, notices or requests for arbitration, claims or memorials, reply or counter memorials, objections, arguments, and all related documents. This will ensure timely and effective response to all civil and arbitral matters which are handled by OSG or Government Institutions in its daily routine. The directions include tips on the process of preparing and writing legal documents to be filed in courts and tribunals and other related matters as directed hereunder:

Commencement

These Practice directions shall be effective from the date they are signed by the Solicitor General.

Abbreviation and Acronyms

ADR Alternative Dispute Resolution

AG Attorney General

CIMS Case Inventory Management System

DAHRM Director of Administration and Human Resources Management

DCMQA Director of Case Management and Quality Assurance

DP Director of Planning

DSG Deputy Solicitor General

GN Government Notice

ICT Information and Communication Technology

IGA Inter-Governmental Agency

LG Local Government

MDAs Ministerial, Departments and Agencies

OSG Office of the Solicitor-General

QMS Quality Management System

QSP Quality Services Procedures

SG Solicitor General

Glossary

"Arbitration"

Means any proceedings in both domestic and international arbitral bodies or tribunals that is initiated by or against the Government of the United Republic of Tanzania and its institutions, independent departments, public corporations, Executive Agencies, or Local Government Authority and is handled by the Office of the Solicitor General

"AG"

Means the Attorney General of the United Republic of Tanzania

"Civil Cases"

Means any suit and application of a civil nature filed by or against the Government of the United Republic of Tanzania and its institutions, independent departments, public corporations and includes Executive Agencies, Local Government Authorities or, any matter which the Government has interest in both local and international courts. It also includes claims arising from contracts, election petitions, tort, constitution petitions, human rights, labour relations, property rights and judicial review.

"Client"

Means Government, government institution, private institutions, companies or any individuals receiving services from the Office of the Solicitor General;

"encode"

Means to assign a coded number to particular incoming mail;

"DA"

Means Director of Arbitration

"AHRM"

Means Division of Administration and Human Resource

Management

"Dispatch"

Means Send documents to its intended destination .

"Government Institution" Means any Government Ministry, Independent
Department, Institution, Public Corporation, Agency, or
Local Government Authority.

"Registry"

Means a place where registers or records are kept

"Legal Registry"
"Legal Opinion"

Means the Legal Registry of the Office of the Solicitor General. Means a written statement by a State Attorney, Law Officer or any person exercising the powers of the Solicitor General containing factual and legal analysis on a certain legal issue with legal suggestion on how the matter should be handled.

"LG"

Means Local Government

State Attorney

Means law graduates employed by the Government, Ministry, Independent Department, Institution, Public Corporation, Agency, or Local Government Authority to perform legal functions.

Practice Direction I

Receiving Documents

- 1. The Registry shall receive all documents related to civil litigation or arbitration and stamp, date, and record the time which the said document was received.
 - a. The documents shall strictly be received during working hours;
 - b. The document shall be encoded and registered on the OSG database;
 - c. The document shall be brought to the immediate attention of the Solicitor General, Deputy Solicitor General, the Director of the Civil Litigation, the Director of Arbitration and the Director of Case Management and Quality Assurance.
 - d. The Registry shall satisfy itself that there is no similar case or application pending or completed in the list of cases and CIMS database;
 - e. Where there is a similar case or application pending or completed, that case or application shall be brought up with the documents forming the received case or application;
 - f. The Registry shall immediately open a box file for the case and forward it to the SG, DSG, DA, DCL or DCMQA depending on the nature of the matter for assignment; and
 - g. Notwithstanding sub-direction (a) (f) the above shall be done and completed within four (4) hours from the time of receiving the said document.
 - h. Other Institutions shall have registers to register all court cases at their Institution and bring their attention to the OSG

Practice Direction II

Legal Opinion

- 1. A State Attorney who receives a fresh case file shall draw a legal opinion in respect of that case and address it to the immediate supervisor SG, DSG, DA, DCL or DCMQA as the case may be within 5 working days from receiving the assignment except that; where the opinion requires information from 3rd parties, the Head of Department shall determine the time limit.
- 2. Notwithstanding paragraph 1 above, each legal opinion shall be written clearly and precisely and shall contain:
 - (a) brief facts of the matter;
 - (b) precisely identified issues that are in contention;
 - (c) structured analysis that addresses the relevant laws and authorities;
 - (d) proposed solutions to the identified problem; and
 - (e) a date and signature of the State Attorney giving the legal opinion.

Practice Direction III

Pre Litigation/Arbitration

- 1. State Attorney shall make sure that the Demand Letter/Notice and all required Annexures are available before handling the case.
- 2. The state Attorney shall then liaise with MDA/IGA for purposes of holding a meeting or ADR as Pre-Litigation/Arbitration activity.

Practice Direction IV

Drafting of pleadings

- 1. When Drafting pleadings, State Attorneys must bear in mind that pleadings are intended to present the Government's position throughout the proceedings.
- 2. State Attorneys are strongly urged to keep the pleadings as concise as possible, in a manner compatible with full presentation of the Government's position and in accordance with relevant substantive and procedural laws. In that regard, all annexes appended to the written pleadings must be carefully selected in consultation with the client.
- 3. State Attorneys shall, before drafting pleadings, conduct in-depth consultation with the relevant client for gathering relevant information in preparing a formidable defence or case.
- 4. State Attorneys shall, before filing pleadings in court, make sure that the same adhere to the legal standards, comply with the law, time limits, and have been vetted and approved by the SG, DSG, DA, DCL or DCMQA as the case may be.

Practice Direction V

Drafting of Plaint, Witness statement, Application, Petition, Notice/request for Arbitration, Statement of claim or Memorial, Referral and related matters

- 1. Notwithstanding Practice Direction IV(3), State Attorneys shall, before preparing pleadings, ensure that they have conducted an in-depth consultation with the relevant stakeholders for purposes of gathering relevant information for preparing concise pleadings to initiate proceedings on behalf of the Government.
- 2. In preparing pleading on behalf of the Government, State Attorneys shall:
 - a. Use persuasive legal language and maintain a legal tone in the language of the document which is not offensive to the other party, Judge, Adjudicator, and Arbitrator.
 - b. Remain objective and use professional and respectful language and

- avoid disparaging language and embellishing terms such as "egregious", "outrageous".
- c. Draft concisely and maintain the use of short paragraphs and sentences to make it easier for the Judge, Adjudicator, and or Arbitrator to absorb.
- d. Structure facts by using chronological sequencing.
- e. Be clear and specific by giving correct details as concretely as possible.
- f. Support facts with evidence, law, and relevant authorities.
- g. Always pray for costs.

Practice Direction VI

Drawing Written Statement of Defence, counter affidavit, reply, counter memorial, rejoinder/sur joinder.

- 1. Each defence shall be prepared with the relevant stakeholder after gathering all the material facts and be submitted to OSG or be jointly prepared by stakeholders and a State Attorney.
- 2. In preparing the defence, just as for other pleadings, each State Attorney shall:
 - a. Use persuasive legal language and maintain a legal tone in the language of the document which is not offensive to the other party, Judge, Adjudicator, and Arbitrator.
 - b. Remain objective and use professional and respectful language and avoid disparaging language and embellishing terms such as "egregious", "outrageous".
 - c. Draft concisely and maintain the use of short paragraphs and sentences to make it easier for the Judge, Adjudicator, and or Arbitrator to absorb.
 - d. Structure facts by using chronological sequencing.
 - e. Be clear and specific by giving correct details as concretely as possible.
 - f. Support facts with evidence, law and relevant authorities.
 - g. Always pray for costs.

Practice Direction VII

Preliminary objections

- 1. State Attorneys are urged to raise preliminary objections that are not aimed at prolonging the legal process but rather disposing the suit at the earliest possible stage.
- 2. State Attorneys are urged to raise preliminary objections based on pure points of law and which observe the following fundamental principles for preliminary objections:
 - i. It must be based on ascertained facts;

- ii. It must arise from the party's pleadings or necessary inference therein;
- iii. It must not touch on court's exercise of judicial discretion and;
- iv. It must be able to dispose of the matter before the Court completely.
- 3. A notice of preliminary objection should, in case of pleadings, be raised in the statement of defence and in case of applications, in a separate document to be filed in court. The objection may be on, among others, matters of jurisdiction, time limitation and locus standi.

Practice Direction VIII

Legal Arguments

- 1. State Attorneys shall present legal arguments in a professional manner that is reflective of the Office of the Solicitor General, the Public Service and Professional Code of Conduct and Etiquette for State Attornies.
- 2. State Attorneys should intensively prepare themselves and their witnesses before hearing.

Practice Direction IX

Oral Arguments/Submission

- 1. State Attorneys shall spend sufficient amount of time in research and drafting talking notes before appearing in court for oral hearing.
- 2. At the hearing, State Attorneys shall:
 - a. Present their case in an objective manner;
 - b. Organize facts thematically, and use the headings to forecast what these facts will show;
 - c. Structure facts chronologically;
 - d. Be clear, specific and precise when presenting facts;
 - e. Be bold but courteous and respectful to other counsel and the court by avoiding the use of disparaging language;
 - f. Support fact with evidence, law, and other relevant authorities; And
 - g. Pray for costs.

Practice Direction X

Written Submissions

1. Every written submission filed in court shall be filed after spending sufficient amount of time in research. The written submissions shall be drafted in an objective way using language that is not disparaging but respectful. The written

submissions shall be approved before filing by the SG, DSG, DA, DCL, DCMQA an Assistant Director, Principle State Attorney or a person authorized to do so.

The Written submission shall contain;

- a. An introduction to the case;
- b. Facts of the case arranged in consecutive numbers;
- c. Legal issues in the case that need to be addressed by the court;
- d. The position of the law supported by evidence and relevant authorities;
- e. Persuasion of the court to decide in favour of the Government;
- f. Costs;
- g. An attached list of Authorities and a copies of the authorities.

Practice Directions XI

Opening Statement

- 1. Opening statement aims at addressing the Court what the case on trial is all about. It is thus a critical part of the trial that must be carefully planned, developed, and delivered. The opening statement should give an overview of what lawyers expect to show through the witness and other evidence that will be introduced during the trial. It should therefore contain a summary of the following:
 - a. Introduction;
 - b. Parties;
 - c. Scene;
 - d. Instrumentalities;
 - e. Date, time and weather;
 - f. Issues;
 - g. What happened;
 - h. Basis of liability/non liability;
 - Anticipating and refuting defenses (Plaintiff's Case only);
 - j. Damages;
 - k. Conclusions.

Practice Directions XII

Final Submissions

1. Closing submissions are the chronological and psychological culmination of a trial. They give last opportunity to communicate directly with the Judge, present your side's themes, position on the contested issues, and the reasons why your party should get a favorable verdict. It affirms your position stated in the Opening Statement. Your closing argument should communicate three

things to the judge: your theme, why the judge should find in your favour and your enthusiasm. Final submission should contain the following:

- a. Introduction;
- b. Issues;
- c. What really happened and proof;
- d. Basis of liability/non liability;
- e. Damages (in civil cases);
- f. Instructions;
- g. Refuting the other side;
- h. Conclusion.

Practice Directions XIII

Exhibits:

- 1. Exhibit is anything, other than testimony, that can be perceived by the senses and be presented in the courtroom. Every exhibit must meet three basic requirements before it can be admitted in evidence. These are; the qualifying witness must be competent; the exhibit must be relevant and the exhibit must be authenticated and they can be admitted only when a sequence of procedural steps has been followed. Herein below are the procedural steps to be followed for the admission of exhibits:
 - a. Make sure the exhibit is the real one and in an original form (If not follow the procedure to use secondary evidence or notice to produce)
 - b. Lay the foundation for the exhibit;
 - c. Ask the court's permission to approach the witness;
 - d. Show the exhibit to the witness;
 - e. Ask the witness if the exhibit is the one he/she is testifying upon.
 - f. Show the exhibit to the opposing counsel;
 - g. Have the exhibit marked in evidence;
 - h. Obtain permission to show or read the exhibit to the Court;
 - i. Read the exhibit to the Court;
 - j. Pray for it to be admitted;

Practice Directions XIV

Examination of witnesses

1. Examination in Chief (Direct Examination)

Trials are won on the strengths of examination in chief rather than on the

weaknesses of the opponent's case. Direct examination should give an opportunity to present the reality of one's case from your side's perspective. The witness is required to SHOW and not TELL the judge what happened so that the event is re-created in the judge's mind. It must be done while keeping in mind the elements of the claims or defenses and the ever requirement of simplicity and efficiency. A witness credibility is determined by who the witness is (background), what he says (content), and how he says it (demeanor) all the three must be kept in check in the course of examination. Recurring characteristics which need to be remembered in any examination in chief are as follows;

- i. Keep it simple;
- ii. Organize logically;
- iii. Introduce witnesses and develop background;
- iv. Use introductory and transition questions;
- v. Elicit scene description first, then action;
- vi. Elicit visual descriptions;
- vii. Use pace to recreate action;
- viii. Use simple sensory language;
- ix. Use non-leading questions;
- x. Have the witness explain;
- xi. Volunteer weaknesses;
- xii. Use exhibits to highlight and summarize facts;
- xiii. Listen to the answers;
- xiv. Visibility of the witness by a judge should not be obstructed;
- xv. Practice with the witness before

2. Cross-Examination

The purpose and order for cross-examination is for eliciting favorable testimony as well as conducting destructive cross examination which is aimed at discrediting the witness or his testimony for the judge to disregard them. In preparing for cross-examination State Attorneys should take cognizance of the recommended structure and the rules applicable as provided hereinbelow. The decision of whether to cross-examine or not by State Attorneys are to be guided by the following principles:

- i. Has the witness hurt your case
- ii. Is the witness important?
- iii. Was the witness' testimony credible?
- iv. Did the withness give less than expected on direct?

- v. What are your realistic expectations on cross-examination?
- vi. What risks do you need to take?
- 3. Nothwithstanding sub-direction XIV (2) (i) (vi) when structuring your questions, the following matters are to be considered:
 - a. Have your cross-examination establish as few basis points as possible?
 - b. Make your strongest points at the beginning and end of your crossexamination.
 - c. Vary the order of your subject matter.
 - d. Don't repeat the direct examination.
- 4. Every State Attorney shall observe and adhere to the following rules which have stood the test of time during cross-examination:
 - a. Start and end crispy. Know the probable answer to your questions before you ask the questions.
 - b. Listen to the witness's answer.
 - c. Don't argue with the witness.
 - d. Don't ask the witness to explain-questions such as what, how or why. It is a recepie to invite disaster.
 - e. Keep control over the witness i.e forcing the witness to obey evidentiary rules.
 - f. Don't ask the one-question too many times.
 - g. Stop when finished.
 - h. Make your question verbal.
 - i. Make a statement of fact and have the witness agree to it.
 - j. Use short, clear questions, bit by bit.
 - k. Project and maintain a confident, table-charge attitude.
 - I. Be a good actor.
 - m. Use a style that is natural to you.

GENERAL MATTERS

Practice Direction XV

Dress Code

- 1. Each and every State Attorney shall appear in court in decent and approved dress code which is not offensive to the other party and the court (As provided for under the code of conduct made by the Attorney General and Principal Judge).
- 2. A Male State Attorney appearing in the High Court or Court of Appeal shall

- wear a black or heavy blue or grey business suit with a white or light blue shirt, white bib and black or brown shoes.
- 3. A female State Attorney shall wear a black or heavy blue or heavy grey skirt or trouser (both not tight) and matched coat with a white or light blue shirt, white bib or collarets and black or brown shoes.
- 4. For appearances before subordinate courts, Quasi-judicial bodies or tribunals the position is the same as in Sub-direction 2 and 3 above except that; no bib shall be required but appropriate neckware, such as necktie shall be heededFemale State Attorneys shall -
 - (a) Not wear sleeveless dress or shirts;
 - (b) Not wear knee lenghthy skirt or below;
 - (c) Not wear culottes, shorts or jeans; and
 - (d) Not wear stiletto shoes.

Practice Direction XVI

Official Travel

- 1. Every State Attorney shall request for permission, in writing, to travel away from their duty station from the Deputy Solicitor General through the Director of their respective division.
- 2. Upon return from any official travel, every State Attorney shall file a back-to-office report of the travel with the Director of their respective division not more than three days after arrival which shall be copied to the Solicitor General and the Deputy Solicitor General.

Practice Direction XVII

Official Communication

- 1. Every Official Communication by way of letter from the Office of the Solicitor General to any person, Government Department or Institution shall be signed either by the Solicitor General, the Deputy Solicitor General, a Director or an Assistant Director as the case may be.
- 2. No State Attorney shall communicate by way of letter with any person, Government Department or institution without prior consent of the SG, DSG, DA, DCL or DCMQA
- 3. Every Letter directed to a Minister shall be signed by the SG or the DSG.

Practice Direction XVIII

Completion of Assignment

1. Every document and pleading assigned to a State Attorney shall be fully dealt with within five (5) working days from the date such document or pleading was assigned to that State Attorney.

Practice Direction XIX

Individual Diary

- 1. Every State Attorney shall have, maintain and update an individual diary for management of cases and it shall be the duty of every State Attorney to maintain such diary and manage cases assigned to the individual.
- Every case assigned to a State Attorney shall be registered in their individual name and recorded on the Case Inventory Management Information System (CIMS) by the Divisions of Civil Litigation and Case Management and Quality Assurance
- 3. Every State Attorney shall update assigned cases in the CIMS immediately after Court sessions.

Practice Direction XX

Completed Cases

- Every withdrawn, struck out or completed case, whichever the case might be, shall be reported to the Director of Civil Litigation or Arbitration immediately and registered on the CIMS by the Division of Case Management and Quality Assurance.
- 2. Every Head of Legal Department or Unit of Government and its institution handling civil or arbitral proceedings which ought to be handled by the OSG shall report to the SG all cases completed each month.

Practice Direction XXI

Judgments, Rulings and Appeals

- Every State Attorney conducting a case, immediately after the judgment has been issued, shall obtain a certified copy of Judgment/Ruling, - and notify the Division of case Management and Quality assurance before filing the same in the respective case file and issuing a copy to the Research and Library Services Unit for record purpose.
- 2. Every State Attorney shall be required where a judgment or ruling is against

- the Government to file a notice of Appeal immediately, request a copy of the proceedings and judgment, decree or drawn order and exhibits, whatever the case might be
- 3. Every State Attorney is obliged to file Notice of Appeal and Appeal or any legal appeal document on time and serve the same to other party subject to laws governing the appeal process.
- 4. The appropriate State Attorney and Head of Legal Registry Unit shall be responsible in preparing, filing and serving records of Appeal and any other legal document for appeal purposes to the opposing party/parties.

Practice Direction XXII

Receipts

1. Every State Attorney prosecuting a case shall enter evidence of receipts indicating expenses incurred in the form provided in the CIMS.

Practice Direction XXIII

Litigation Expenses

- 1. Every State Attorney handling a case shall enter expenses incurred in attending the case into the CIMS system and in the format prescribed in the Government Costs and Remuneration Rules.
- 2. Every State Attorney shall prepare and file an application for Bill of cost immediately after being awarded costs by the Court.

Practice Direction XXIV

Management of time

1. Every State Attorney conducting a case shall observe and record time spent in the time consumption sheet provided in each case file where a minimum of only 30 minutes' activity shall be recorded).

Practice Direction xxv

General Administrative Provisions

- 1. The following are General Administrative Provisions.
 - a. The Official Working hours of the OSG shall be from $07:30HRS-15:30\ HRS$ from Monday to Friday of every week
 - b. Where State Attorneys require to work during the week-end and official holidays, prior notice will be filed with the DAHRM
 - c. Every State Attorney holding a consultative meeting with a client shall request for a meeting cube at the Library where there not more than 5

- clients and where the number exceeds 5, request one of the conference rooms based on the number.
- d. Every State Attorney holding a virtual meeting at the OSG shall inform DAHRM and request for technical support from ICT Unit at least 24 hours before the meeting, save, where the meeting is an emergency, reasonable notice will suffice.

APPLICATION

- i) The Practice Directions shall apply to all State Attorneys at the OSG and all other State Attorneys and Law Officers issued with practice instrument by the SG.
- ii) State Attorneys who fail to observe these practice directions will be dealt in accordance with the Public services laws, Regulations and Rules.
- iii) The SG shall report to the AG completed and pending cases on a regular basis .
- iv) These Practice Directions may be revised by the Solictor General at his instance from time to time.

Gabriel Paschal Malata
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