



**THE PERFORMANCE ENHANCEMENT TOOL: A  
PRECURSOR FOR JUDICIAL ACCOUNTABILITY**

**PAPER PRESENTED**

**AT**

**THE ANNUAL JUDGES CONFERENCE:**

**27<sup>TH</sup>-30<sup>TH</sup> JANUARY, 2020**

**AT**

**MESTIL HOTEL, KAMPALA**

**PRESENTED BY:**

**HON. RTD JUSTICE OF THE SUPREME COURT JOTHAM  
TUMWESIGYE**

**Thursday 30<sup>th</sup> January, 2020**

**My Lord The Hon. The Chief Justice**

**My Lord The Hon. Deputy Chief Justice**

**My Lord The Hon. Principal Judge**

**My Lords The Justices and Judges of the Courts of Judicature**

**The Permanent Secretary/The Secretary to the Judiciary**

**The Chief Registrar,**

**Registrars and Magistrates,**

**Distinguished guests,**

**Ladies and gentlemen.**

I would like to thank the Chief Justice, Hon. Bart Katureebe, and the organising Committee of this conference for inviting me to address you on the Performance Enhancement Tool. As many of you no doubt know, I have, up to the time of my retirement, been in charge of the development of the Performance Enhancement Tool since its inception and I think my position of Chairperson has not yet been filled.

Article 126(1) of the Constitution provides: “**Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people...**” Clearly, therefore, in performing our functions as judicial officers we have to be conscious of the great responsibility bestowed upon us to meet the needs and expectations of the people while administering justice. In the performance of our judicial functions we are all accountable to the people we serve.

There are some judicial officers who think wrongly that since the Constitution under Article 128(2) gives Judiciary and judicial officers independence in the performance of their judicial functions their acts or omissions cannot be questioned and they are not accountable to any authority or to the public. This wrong attitude is obviously inconsistent with their being accountable to the people under Article 126(1) of the Constitution.

As one American judge said, **“in a democracy, the people have a right to measure the performance of all public officials. The contours of judicial independence are not without limits...”**

There cannot be effective performance in an organisation or institution if the performance of individual members in that organisation or institution is not periodically evaluated. All organisations whether private or public now do this. In respect of our Judiciary we have tried to evaluate our performance by using Strategic Investment Plans (SIPS) through their monitoring and evaluation functions. Judiciary has also relied on Annual Judges Conferences to assess its performance.

At an individual performance evaluation level, Judiciary has been relying on the system worked out by the Ministry of Public Service where a form is filled both by the appraisee and the appraisers. The appraisers are usually the supervisors. This Public Service system has been seriously deficient in serving the performance evaluation needs of the Judiciary. An individual Judicial Officer cannot be assessed in the same way as a public officer in a ministry can be assessed. It is not surprising therefore that under this system evaluation of individual judicial officers has been

limited only to the lower bench while those of the higher remain unevaluated. And even with respect to the lower bench the Public Service Evaluation system has not been effective. The requirements for independence and the peculiar characteristics of a judicial officer, and the fact that appellate courts (Court of Appeal and Supreme Court) carry out their work in a panel format clearly necessitate introduction of a new individual performance appraisal system peculiar to the Judiciary.

### **The Performance Enhancement Tool**

In December 2012 the Judiciary, with the assistance of Danida, contracted the Eastern and Southern African Management Institute (ESAMI) to develop a holistic Performance Enhancement Tool for the Judiciary. The consultancy, based on the Terms of Reference, was required to produce six deliverables. These were

1. An Inception Report
2. A Report on the Current Management Practices in the Judiciary
3. A Report on Regional and International Judiciary Performance Management Practices
4. A Report on the Performance Enhancement Tool for the Judiciary
5. The concrete software web-based Performance Enhancement Tool, and
6. A Final Report (summarising all deliverables and providing recommendations for implementation).

It was at that time that the Chief Justice of the time, Rtd Justice Benjamin Odoki, appointed the Performance Enhancement

Committee (PEC) to oversee the operations and performance of the consultants. It was also agreed that the consultants would work closely with the Counterpart Team drawn mainly from the Registry of Planning and headed by its Registrar.

I would like at this point to thank all the members of the Performance Enhancement Committee I have worked with over the years, members of the Counterpart team now headed by His Worship Samuel Omokor, and the consultants for the spirit of co-operation they exhibited during the formation of the Tool.

I must say, however, that due to a number of factors - some concerning the consultants themselves and others the Judiciary – the Tool has taken longer to be completed and implemented than expected. Nevertheless, last year (2019) the Consultants completed their contract and I signed it off. The Consultants have expressed readiness to assist the Judiciary in the piloting of the Tool which is expected to start soon.

I would like at this point to thank the PS/Secretary to the Judiciary who has indicated his readiness to avail funds for the processes of training judicial officers and other staff in the use of the Performance Enhancement Tool and piloting it.

### **The Performance Enhancement Tool**

The tool which is web-based aims to collect information on the performance of every judicial officer and members of staff. Its advantages are that it is more objective, strictly confidential except for those who are authorised to know, and therefore more reliable. The information collected is expected to be used by the relevant

authorities in promoting, disciplining, training and giving incentives to judicial officers and other members of staff.

Identifying the black sheep in the Judiciary is not the most important purpose of this Tool. The Tool will help the Judiciary to enhance its overall performance through identifying gaps in the system and filling them by training and promoting deserving judicial officers and other members in the judiciary.

Hitherto, training has not been based on clear identification of institutional and individual needs of judicial officers. This is especially true with respect to judicial officers who go to international institutions for post graduate courses. It is individual officers who search for academic opportunities abroad to do courses which in many cases are of marginal relevance to the needs of the Judiciary. This sometimes creates unnecessary gaps in the staffing thus undermining the effective performance of the Judiciary.

Promoting of judicial officers to higher offices has largely been based on how well a judicial officer performs during the interview. As we know, however, a good performer during interviews is not necessarily a good worker. Excellent judicial officers who are not necessarily good speakers lose chances of promotion because of their failure to impress interview panellists. Performance data collected objectively and independently should assist the Judicial Service Commission in promoting those judicial officers who have a good record of performing their judicial functions.

Systems like CCAS and the Inspectorate of Courts have not been of much help in clearly identifying judicial officers who are not up

to standard in performing their duties. The Tool we believe will be able to provide data which will inform management about those judicial officers who have performance gaps so that corrective action can be taken mainly through training.

There are judicial officers who perform their functions beyond expectations. Such should be identified and rewarded as an incentive to them and for others to do likewise.

Competences which are required of judicial officers as a basis for their evaluation were agreed upon during the Performance Enhancement Workshops that were conducted by the Consultants earlier in the project phase. There are technical competences and behavioural competences involved in the scheme of evaluating judicial officers. For technical competences targets will be set and they will be assessed on a percentage basis. Competences which are of critical importance to the Judiciary such as hearing cases and delivering judgments in time will be given more scores than those targets which may not be so critical.

Behavioural competences are divided between core and non-core competences. Core competences will include capacity to observe ethics and integrity, communication skills (oral and written), analytical skills and others. Non-core behavioural skills will include customer satisfaction, respect, courtesy and ability to work in a team.

In technical competences for judicial officers it is important to realise that while putting emphasis on the number of cases disposed of, it will be equally important to put weight on the quality of work that an individual officer produces. In assessing output in

respect of judgments delivered, it will equally be important to appreciate that cases differ in terms of their complexity. Information collected should be able to inform the appraisers of the delicate differences relating to individual work output. Targets set for every individual to meet in an evaluation period of one year will be agreed upon through consultation by supervisors with members of respective courts. The targets agreed upon will then form the basis upon which the performance of individual judicial officers will be measured.

### **360 Degrees Evaluation**

In the past evaluation of employee performance has been based on the basis of interaction between employee and supervisor question and answer in formal settings. This has been criticised by experts for being a one way and top down approach method that does not lead to performance improvement of an institution.

The 360 degrees evaluation method adopted in the Performance Enhancement Tool seeks to improve on the traditional approach by involving the following in the evaluation process:

1. The appraisee (self-appraisal)
2. Supervisor
3. Subordinate
4. Peers
5. Court users (lawyers and prosecutors)
6. Public

The weights apportioned to each appraiser will be different. Self-appraisal will be given 15% weight, supervisor 35%, subordinate

10%, Peers 20%, lawyers 5%, prosecutors 5%, and the public 10%. All this adds to 100%.

Individual Justices of the appellate courts will be evaluated using the same pattern of self-appraisal, the supervisor, peers, subordinates and court users, while making allowance for the fact that output and outcomes depend on the team as a whole and not on the individual justice concerned. It should be noted that nothing in the process shown above is cast in stone. Adjustments can be made to the Tool, and lessons learnt from the pilot phase will guide any modifications necessary to avoid serious hitches or pitfalls that may occur once the Tool is rolled out in all courts.

The system of evaluation under the Performance Enhancement Tool will be used by all the judicial officers and staff of the judiciary. The Judicial Service Commission will have access to the system for purposes of recruitment, promotion and discipline. All the users of the Tool will be trained in the use of the system before it is rolled out. Each of the users of the system will be given a password to use and will only have rights of access to information relevant to their needs. The Chief Justice will, for example, have broad rights of access to information in the system while others will have appropriate access depending on their positions in the judiciary.

### **The Plan for Operationalization of the Performance Enhancement Tool.**

The Tool has been fully developed and its operational license paid for by the Judiciary. We are now live in so far as the

software is concerned. The Judiciary has set aside funds for the consultations from ESAMI who are the developers of the tool to carry out training of the Justices of the Supreme Court and Court of Appeal. They will also train 50 carefully selected Trainers who will in turn act as trainers in 18 selected sites.

The Training programme will be agreed upon in the next PEC meeting.

The Pilot Sites:

1. Supreme Court
2. Court of Appeal
3. High Court Kampala (Headquarters)
4. Anti-Corruption Division
5. Family Division
6. Land Division
7. Commercial Division
8. Criminal Division
9. Execution and bailiffs Division
10. International Crimes Division
11. Registry of Magistrates Affairs and Data Management
12. Registry of Planning Development
13. Judicial Training Institute
14. Mengo Chief Magistrates Court
15. Buganda Road Court
16. Jinja High Court Circuit
17. Fortportal High Court Circuit
18. Prosecutors, Advocates and Court users

## **Success Factors of PET**

The successful implementation and use of the Performance Enhancement Tool will depend on factors which include:

1. Total commitment to the Tool of Top Management especially of the Chief Justice and the PS. The Chief Justice, Hon. Justice Bart Katureebe has been committed to it and I am happy that Mr. Pius Birigirimana, the PS, has already demonstrated his commitment to it.  
Equally, it is important that all justices and judges, as well as lower judicial officers understand it and embrace it.
2. It is important that the Judiciary establishes a registry of Performance Management headed by a person with a high reputation in corporate and personnel management and highly skilled in IT. The person should be reliable and of high integrity for the acceptance and respect of the tool will depend on the protection of its information.
3. As the Tool is IT based it is important that computers are procured and properly maintained for all judicial officers and other relevant members of staff. Resources to make this system work must be found. The technology and general ICT infrastructure is essential for the successful implementation and use of this Tool.
4. The need for training of users of the Tool is essential so that all users become familiar with it and use it with confidence will be essential.

5. Readiness to make modifications in the Tool as it gets implemented to suit the changing circumstances of the Judiciary will be necessary.

The Performance Enhancement Tool if properly utilised as designed to meet the unique requirements of the judiciary will bring a host of positive changes in the performance of Judiciary and this will bring about a positive impact to its image.

Thank you for listening to me.