

Tanzania Human Rights Report 2006

Legal and Human Rights Centre

Tanzania Human Rights Report 2006:

Progress through Human Rights

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Tanzania Human Rights Report 2006

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Acronyms and Abbreviations

AG	Attorney General
ARVs	Anti-retroviral Drugs
AU	African Union
CCM	Chama cha Mapinduzi
CHADEMA	Chama cha Demokrasia na Maendeleo
CIDA	Canada International Development Agency
CRC	Convention on the Rights of Child
CUF	Civic United Front
DOLASED	Disabled Organization for Legal Affairs and Social Economic Development
DP	Democratic Party
HIV	Human Immunodeficiency Virus
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
ILO	International Labour Organization
JKT	<i>Jeshi la Kujenga Taifa</i> (“National Service”)
LHRC	Legal and Human Rights Centre
MDGs	Millennium Development Goals
MMEM	<i>Mpango wa Maendeleo ya Elimu ya Msingi</i> (Primary Education Development Plan – PEDP)
MMES	<i>Mpango wa Maendeleo ya Elimu ya Sekondari</i> (Secondary Education Development Program – SEDP)
MKUKUTA	<i>Mkakati wa Kukuza Uchumi na Kuondoa Umaskini</i> (National Strategy for Growth and Reduction of Poverty/ NSGRP)
MKURABITA	<i>Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania</i> (Property and Business Formalization Tanzania)
NACSAP	National Anti-Corruption Strategy and Action Plan
NCCR-M	National Convention for Construction Reform
NEMC	National Environment Management Council
NGOS	Non Governmental organizations
PCB	Prevention of Corruption Bureau
PLHA+	People Living with HIV/AIDS
RE	Revised Edition (of the Laws of Tanzania)
TACAID	Tanzania Commission for Aids
TAWLA	Tanzania Women Lawyers Association
TEC	Tanzania Electoral Commission
TEMCO	Tanzania Election Monitoring Committee
TI	Transparency International
Tsh	Tanzania Shillings
UDHR	Universal Declaration for Human Rights

UNDP
UNHCR
USD
WLAC
ZLSC

United National Development Programme
United Nations High Commissioner for Refugees
United States Dollars
Women Legal Aid Centre
Zanzibar Legal Services Centre

Preface

This is the fifth Report since the LHRC decided in 2002 to prepare and disseminate a human rights situation Report for Tanzania. The first Report was prepared in the year 2002, the second in 2003, the third in 2004 and in 2005 it was the fourth Report. The LHRC as you might know by now is a private, voluntary, non-governmental, non-artisan and non-profit making organization registered and incorporated under the Companies Ordinance (Act), Chapter 212 of the Laws of Tanzania as a company without shares limited by guarantee. It is an independent autonomous entity since September 1995. It has three offices in Dar es Salaam (Main Office and two Legal Aid Clinics) and one sub-office in Arusha.

The LHRC envisions “a just and equitable society”.

The Mission of the organization is contained in the statement which reads; “LHRC is a not for profit, non-partisan, non-governmental organization striving to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania”.

The primary objective of the LHRC is to create legal and human rights awareness among the members of the public and, in particular, the underprivileged and vulnerable sections of society through human rights and civic education, trainings, advocacy, research, follow-up (monitoring) of human rights abuse and the provision of legal aid. To realize this broad objective, LHRC divides its work into four programmes of operation namely; (1) Legal Aid and Human Rights (2) Advocacy and Outreach (3) Research, Documentation Publication and (4) Institutional Capacity building.

One of the main activities of the Human Rights Monitoring Unit is the preparation of the Human Rights Report. Since the first Report the LHRC has tried to improve the Report to ensure quality of the information as well as quantity. The first Report was very short and most of its information was from newspapers.

This trend has changed and the LHRC prepares the Report from information gathered from human rights monitors who are based in most of the districts in the country, field research by research assistants is also another source of data collection while library research which is done through internet searching, reading of books, newspapers, Reports and statistics provided by other sources is another means of information gathering.

Human rights situation in the country can be measured through the established international standards and what is provided in the country's Constitutions. There is a tendency of comparing the situation of Human rights in Tanzania with other countries mostly in Africa. This has led to the observation that Tanzania is better than other countries. It is not appropriate to measure the extent of abuse by comparing with others who are weaker. If Human rights are to be measured then they should be compared with higher standards and not otherwise. The LHRC brings out this Report to show that

human rights must be observed and enjoyed by every person. This is true, since no single human being can be excluded from enjoying one of the typical human rights.

This year we have prepared the Report in two parts one for Tanzania Mainland and the second for Zanzibar. This is an outcome of recommendations given to us by our readers and thanks to the Zanzibar Legal Service Centre who agreed to join us in preparing the second part of this Report.

Through its Human Rights Monitoring and Research Programmes, LHRC has been researching for, documenting, and disseminating human rights situation of Tanzania through Reports named “Tanzania Human Rights Report” since the year 2002. The aim of these Reports is to highlight the general and specific human rights trend in Tanzania (Mainland and Zanzibar) basing on the international human rights standards, the Constitution of the United Republic of Tanzania of 1977 and the Constitution of Zanzibar of 1984.

The survey for this Report involves different methodologies for collection of Primary and Secondary data. As for primary data, the research assistants gather information from various governmental and non-governmental offices. The LHRC relies on data and information from its field Monitors and Paralegals in various districts of Tanzania. Information gathered is normally verified to ensure its authenticity. International Human Rights Instruments, Domestic Laws, Policies, textbooks, speeches, findings from other Reports, websites, newspapers and other related sources of information has also been used.

As we Progress with this exploration agenda of situational Report , it is hoped that, the information contained in this Report , shall continue to underscore the importance of respecting, promoting and safeguarding human rights in Tanzania. It should be noted that, the aim of this Human Rights Report is to show areas which need improvement. Therefore success, challenges and failures as far as human rights are concerned has been brought to the attention of all who care for human rights and have the obligation to ensure human rights becomes a culture in Tanzania.

Bishop Elinaza Sendoro
LHRC’s Board Chairperson.

Introduction

The year 2006 had its own peculiarities as far as issues of governance and human rights are concerned. It is the year when the fourth President of Tanzania, His Excellency Jakaya Mrisho Kikwete commenced his five years presidential tenure after he was elected in the 2005 general elections. Everyone kept vigil to see how the country will be governed, and how the human rights situation in Tanzania will proceed.

When delivering his first speech to the Parliament on 30th December, 2005, the President committed himself vowing that; “The Fourth Phase Government will respect and protect civil and political rights and freedoms; but only to the extent that this does not undermine national peace, security, unity and concord. True freedom is not without limit. Limitless freedom is anarchy. That will not be allowed during my watch”. In deed, we have seen some improvements in some areas such as in the keeping of peace and order.

Much as LHRC commends the Government for the improvement of human rights observance in some of its sectors, still there is a lot to be done to improve further the situation as this Report indicates in its Part One for Tanzania Mainland and Part Two for Tanzania Zanzibar. The Report is arranged in ten Chapters. Chapter one provides the Overview of Tanzania Mainland and Zanzibar. From Chapter two to Chapter ten the Chapters are in part one which covers Tanzania mainland while Part two covers Tanzania Zanzibar. In part one Chapter two covers Civil Rights and Liberties, Chapter three covers Political Rights, Chapter four covers Economic and Social Rights, Chapter five covers Vulnerable Groups, Chapter six covers HIV/AIDS, Chapter seven covers Collective Rights, Chapter eight covers Domestic Initiatives, Chapter nine covers Corruption, and Chapter ten covers International Human Rights Report .

It should be noted that, this Report is not exhaustive of all the human rights trends of the year 2006 however we have tried to sample by the rights concerned from the information received. The Report contains specific and general situation of what happened during the year in relation to human rights and good governance.

It has also been prepared to provide human rights knowledge which can be useful to academicians as well as students and other people interested in Human Rights. Moreover, it is a tool for change especially for policy makers, Government functionaries and other actors in socio-economic, legal and political arenas. We hope that the Report will serve all those purposes for the betterment of the people of Tanzania.

Ms. Helen Kijo-Bisimba, Executive Director of LHRC

Chapter One – General Overview of Tanzania

1.0 Introduction

This chapter introduces the general socio-economic, political and legal situation of the United Republic of Tanzania, which comprises of Tanzania Mainland and Zanzibar. This general information, under this chapter, is useful for the contemplation of the Human Rights situation in the country for the year 2006. Therefore, the Tanzania's geography, people, economy, its history, political and legal systems are briefly indicated for that purpose.

1.1 Tanzania: Historical Background

i. Geography

United Republic of Tanzania, which covers an area of 945,090 square kilometers, is situated in the Region of East Africa. Facing the Indian Ocean on the East, the country is bordered on the North by Kenya and Uganda, on the West by Democratic Republic of Congo, Burundi and Rwanda and on the South by Malawi, Mozambique and Zambia. The terrain of Tanzania includes plains, located along the country's coast, the central plateau region, which comprises the greater part of the country, and highlands in the North and South. The northern highlands include two of the highest peaks in Africa, Mt. Kilimanjaro and Mt. Meru.

Tanzania shares and borders three of the largest lakes on the African continent, Lake Victoria, which is the world's second-largest freshwater lake is in the Northern part of the country, Lake Tanganyika, the world's second deepest lake is in the Western part of the country, and Lake Nyasa is in the Southwest. The country has the largest forested areas in the African region, though the amount of forested land shrank in Tanzania from 42 percent to 41 percent from 1990 to 2000. This one percent decline represents an area over 883,000 hectares.¹ Deforestation is affecting first of all semi-arid area where forest and bush regeneration is slow, cattle raising lands and tobacco growing areas are also affected.

Main natural resources in Tanzania are, Tin, Phosphates, Iron Ore, Coal, Diamonds, Tanzanite, Gold, Natural Gas and Nickel. Dar es Salaam remains Tanzanians largest city though 1974 Dodoma became the new capital of the country. However many Government offices still remain in Dar es Salaam. Other important towns and cities on the Mainland are Arusha, Iringa, Kigoma, Morogoro, Mbeya, Moshi, Mtwara, Mwanza, Tabora and Tanga. Main Areas of Zanzibar include Stone Town, Kizimkazi and in Pemba, Mkoani and Chake Chake².

¹ Society for International Development: The State of East Africa Report 2006: Trends, Tensions and Contradictions: The Leadership Challenge. Nairobi, 2006.

² LHRC, Tanzania Human Rights Report 2005, Page 1.

ii. People

Tanzania is estimated to have a population of more than 34 million people. According to the last and recent official census conducted by the Government in 2002, there were 34.4 million people. Despite the fact that the population size has been increasing, for instance from 12.3 million in 1967 to 34.4 million in 2002³, the country is still sparsely populated. In 1967, the average population density was 14 persons per square kilometer. In 2002, the said average was 39 persons per square kilometer⁴.

The population is comprised of young people, almost half of the population that is 44 percent is younger than 15 years old and the median age is 18 years, only 2 – 3 per centum of Tanzanians are older than 65. Life expectancy at birth is about 45 years.

Cultural wise, about 120 different ethnic groups are living in Tanzania. The largest groups include Bantu – speaking peoples like Sukuma, Haya, Nyakuyusa, Nyamwezi and Chagga, which have more than one million members⁵.

The official language in Tanzania is Kiswahili. English is also used as primary language of commerce, administration and higher education. In addition there are over 100 local languages which are the first language of most of the people in the country.

iii. Economy

The Tanzanian economy is mostly based on agriculture, a sector, which is employing 80 percent of the labor force whereby in rural areas 75 percent of the income is earned from agricultural activities and 75 percent of all exports are from this economic sector⁶. The economy survey 2005 pointed out that the value of exports was \$ 1,676.3 million, compared to the value of imports of \$ 2,661.8 million. This means only 63 percent of the years imports could be funded by the exports.⁷

The GDP, according to the Tanzania Demographic and Healthy Survey of December 2005⁸, has increased by 6.7 percent. Growth is attributed to growth in a number of sub sectors including agriculture, trade, hotel, tourism, communication, financial and business services.

³ According to the Population and Planning Unit (PPU) of Tanzania under the Ministry of Planning, Economic and Empowerment, the population almost doubled in a period of 21 years, that is, 1967 and 1988. The data also demonstrate that the population increased by 16.9per centum in the 1948-57 intercensal period, by almost 42.96 in 1957-67 and 1967-78 by 32.3per centum in 1978-88 and now by 33.96 in 1988-2002. Moreover, the rate of population growth increased from 1.896 in 1948-57 to 3.0per centum in 1957-67, 3.296 in 1967-78, then declined to 2.896 in 1978-88 and now increased to 2.9per centum in 1988 - 2002 (URT, 1958 and URT 2002). Based on the 1988-2002 intercensal growth rates, the projection for the year 2010 is around 43 million people. (information obtained from http://www.tanzania.go.tz/ppu/demografic_situation.html).

⁴ Tanzania Demographic and Health Survey, December 2005, Page 2.

⁵ LHRC, Tanzania Human Rights Report 2005, Page 2.

⁶ *Ibid*

⁷ Gender, Democracy and Development Digest, Issue No.2 2006, p. 10

⁸ Tanzania Demographic and Health Survey, *Op. Cit*, Page 2.

However, despite the increase and improvement of macro-economy, the poverty rate especially in rural areas is still high. The macro-economy has not been effectively translated into micro-enterprises so that common people could benefit from the improvement. This situation has a direct impact to the promotion and the safeguard of human rights in Tanzania is explained under Chapter Two, Paragraph 2.3 of this Report .

iv. Historical Overview

In 1890 Tanganyika (now Tanzania) was split into different areas of influence by treaties made by German, British and the Sultan of Zanzibar. According to these treaties, 1891 Tanganyika and Ruanda – Urundi (now Rwanda and Burundi) became German East Africa, Pemba and Unguja was British protectorate. Arising opposition against European imperialism was led by charismatic leaders like Mirambo of the Nyamwezi in North eastern Tanzania, by Mkwawa of the Hehe in Southern Highlands and Meli of the Chagga in the area around Kilimanjaro. In 1905 to 1907 local opposition culminated in the *Maji Maji* resistance, inspired by Kinjekitile, Southern Tanzanian spiritual leader whose medicine alleged could avoid any harm of “white man’s bullets”. The charm used was water which in the local language is “*Maji*”. The resistance then came to be known as “*Maji-Maji*” Uprising.

German colonial domination of the mainland ended after World War I in 1919, when control of most of the territory passed to the British through a League of Nations mandate. Post World War II, Tanganyika became a United Nations Trust Territory, subject to British control. Subsequent years saw Tanganyika moving towards self-Government and independence.

On 9th December 1961 Tanganyika (now Tanzania Mainland) became an independent nation under Tanganyika African National Union (TANU), political party and one year later it became a Republic headed by Mwalimu Julius Kambarage Nyerere as President. In Zanzibar the Sultanate was overthrown on the 12th January 1964 and the Afro-Shirazi Party (ASP) came into power. In April the same year the two independent states merged to form the United Republic of Tanzania. On February 5th 1977, TANU and ASP merged to form Chama Cha Mapinduzi (CCM) which has been a ruling party ever since⁹.

In 1985 Mwalimu Nyerere retired from the presidency and Mr. Ali Hassan Mwinyi was elected the President of the United Republic of Tanzania. He served two terms of five years each. In 1995, Tanzania held its first multi-party election and CCM won the elections with its candidate Mr. Benjamin William Mkapa who was sworn in as the third Government President of the United Republic of Tanzania on November 23rd 1995. Ten years later in December 2005, Mr. Jakaya Mrisho Kikwete was elected the fourth Government President of Tanzania for a five-year term.

⁹ National Bureau of Statistics, Tanzania Demographic and Health Survey. Dar es Salaam, USAID & NBS: 2005

Considering this history in Human Rights perspective, it is clearly understood by all that colonialism was a negation of human rights. When one state colonizes another, it violates the right to self-determination of the colonial peoples. There is no law that justifies colonialism. Notwithstanding that, colonial powers never allowed the natives to enjoy any human rights¹⁰.

The Human Rights situation under the post colonial Tanzania, just like many other African states, was shadowed with a need for development. The nationalist leaders conceived the process of (economic) development to be one that may not necessarily promote or respect human rights¹¹. Bill of Rights was denied apparently due to the nationalistic reasons. There were still human rights abuses such as torture and detention through the law¹². In 1984, the Bill of Rights was incorporated in the Constitution of the United Republic of Tanzania after a long advocacy struggle by activists. The provisions of this Bill are discussed in this Report.

v. Political System

The political (governance) structure of Tanzania is divided into three organs. According to Article 4 of the Constitution of the United Republic of Tanzania, there are the Executive, the Legislature and the Judiciary. The President is the head of state and government. The Cabinet of Ministers constitutes the Government (executive arm) of the United Republic of Tanzania and includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers. Zanzibar has an independent cabinet that looks into non-union matters affecting the Isles. The Vice-President is the assistant of the President in all matters relating to the union.

There is a central and a local government, which are operating pursuant to Article 145 of the Constitution of Tanzania and the local Government laws of 1982. Currently, there are 26 administrative division called regions and more than 120 sub-divisions called districts. Each Region has an average of four to five districts. In each district, there are divisions which are formed by wards and villages.

The President of Tanzania and Members of the National Assembly are elected by direct popular vote for a five year term. The President appoints a Prime Minister who is approved by the Parliament. The Prime Minister serves as the government's leader in the National Assembly. The President appoints his cabinet from among National Assembly members and additionally he nominates 10 individuals from non-elected members to be part of the Parliament. Last general election was held in December 2005.

¹⁰ LHRC (Nov, 2006) Through a Crucible of Human Rights Struggles in Tanzania: A Decade of Legal and Human Rights, Pages 5 and 6.

¹¹ *ibid*

¹² Example, the *Preventive Detention Act 1962*, which gives the President unchallengeable powers to detain an individual for long period of time without trial or review.

The current National Assembly has 317 members¹³ of whom 5 members are elected from the Zanzibar House of Representatives to participate in the parliament. The Constituency members are 232, special seats women are 75, presidential appointees are 7 so far, and one *ex officio* member, the Attorney General of Tanzania¹⁴. The ruling party, CCM, holds 84.1 percent of the seats in the Assembly. Laws passed by the National Assembly are valid for Zanzibar only in specifically designated Union matters after being presented to Zanzibar's Representative Council by the responsible minister.¹⁵

Zanzibar's House of Representatives has jurisdiction over all non-union matters. There are currently 81 members in the House of Representatives in Zanzibar who can make laws for Zanzibar without the approval of the union Government as long as it does not involve union-designated matters. The term of office for Zanzibar's President and House of Representatives is also 5 years. The semiautonomous relationship between Zanzibar and the union is a relatively unique system of government. More information about Zanzibar are covered in part two of this Report.

vi. Judicial System

Tanzania's legal system is based on the English common law. Judicial functions are administered through the Court of Appeal of United Republic of Tanzania as the highest Court for Tanzania. Below the Judicial hierarchy in descending order are the High Court of Tanzania (Mainland), the Courts of Resident Magistrates/ District Courts and Primary Courts. For High Court and Court of Appeal the adjudicators are called Judges while in subordinate courts thereto the adjudicators are called magistrates. The Judges are appointed by the President after consultation with the Judicial Service Commission of Tanzania. The Magistrates are appointed by the Judicial Service Commission.

Apart from this Court hierarchy there are tribunals established under various laws to adjudicate special cases such as labor, tax and land tribunals. There is also a Court Martial and a Special Constitutional Court¹⁶ which is an *ad hoc* Court for resolving disputes relating to interpretation of the Constitution of Tanzania.

Zanzibar, as discussed in Part Two of this Report, has its own Judicial System consisting of the High Court of Zanzibar, *Kadhi* Courts and the Magistrates Courts. These courts have jurisdiction on matters arising in Zanzibar and which are not Union in nature¹⁷. The High Court of Zanzibar is the highest Court of Appeal for matters originating from *Kadhi*

¹³ Men are 221 (69.72 per centum) and Women are 96 (30.28 per centum). There has been an increase of women seats for this 2005 – 2010 Parliament. The last Parliament of 2000 – 2005 the statistic was that, Men 225 (78.67 per centum) while Women were 61 (21.33 per centum).

¹⁴ See the "Composition of New Parliament" Section of the Parliament of Tanzania through the web address www.parliament.go.tz

¹⁵ Constitution of Zanzibar of 1984, Article 132 (1) and (2)

¹⁶ Established under *Article 125* of the Constitution of Tanzania.

¹⁷ There are 22 Union Matters. Court of Appeal is one of the Union Matters enlisted under 1st Schedule of the Constitution of the United Republic of Tanzania. Some of other Union Matters are, the Constitution of United Republic, Foreign Affairs, Security, Police, Citizenship, Immigration, Foreign Trade, High Education, Aviation, Research, Statistics, Finance, etc.

Courts and interpretation of the Constitution of Zanzibar. Otherwise, all appeals from the High Court of Zanzibar, for cases originating from Magistrates Court, go to the Court of Appeal of the United Republic of Tanzania.

Delivery of Justice is wholly and exclusively vested in the Judiciary¹⁸. This being the case, the rights can be respectively secured or lost by the strength or weakness of the courts. Judicial system is expected to be number one activists of human rights. As Justice Edward Mwesiumo once said in the case of *Joseph Kivuyo and Others V. Reginal Police Commaner, Arusha and Another*, “This [court] is a temple of justice and nobody should fear to enter to battle his redress as provided by the law of the land”¹⁹.

According to Helen Kijo-Bisimba of Legal and Human Rights Centre and Professor Chris Maina Peter of the University of Dare s Salaam, there has been an emergence of Judicial Activism in Tanzania, which is directly connected with the developments of politics in the country. They say that, during the mono-party period, the judiciary did not enjoy its independence. Some normal disputes were being moved from courts of law to party organs for resolution²⁰. However, with time, bold stars within the judiciary emerged. Justice Mwalusanya, Mwesiumo, the late Lugakingira and others are said to be some of the bold judges who served the judiciary as far as human rights issues are concerned.

¹⁸ Article 107A of the Constitution of Tanzania.

¹⁹ The High Court of Tanzania at Arusha, Miscellaneous Civil Application No. 22 of 1978 (UnReport ed) – quoted from [Helen Kijo-Bisimba and Chris Maina Peter (2005) *Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries*, LHRC, at page 12.

²⁰ *Ibid* at Pages 4 – 10.

Chapter Two – Civil and Political Rights

2.0 Introduction

When addressing the Parliament in Dodoma on 30 December, 2005, the President of Tanzania, His Excellency Jakaya Mrisho Kikwete said that “The Fourth Phase Government will respect and protect civil and political rights and freedoms; but only to the extent that this does not undermine national peace, security, unity and concord. True freedom is not without limit. Limitless freedom is anarchy. That will not be allowed during my watch”²¹.

The civil and political rights are guaranteed by various international human rights instruments such as the International Covenant on Civil and Political Rights of 1966 (ICCPR)²², the Universal Declaration for Human Rights of 1948, the African Charter on Human and Peoples Rights of 1981 as well as in the Constitution of the United Republic of Tanzania of 1977²³ and This Report analyses some of the civil and political rights under these instruments, which are right to life, freedom from torture, equality before the law and freedom of expression.

2.1 Right to Life

The right to life is the most important of all human rights. If there was no right to life, there would be no point in having any other human right²⁴. In Tanzania, it is guaranteed under the provision of Article 14²⁵ of the Constitution of Tanzania. Right to life is also enshrined in the provisions of the ICCPR. Its violation includes the retention of the death penalty in the laws of Tanzania, extra-judicial killings, tortures which result into death, mob violence and witchcraft killings.

2.1.1 Death Penalty

Death Penalty is one of the punishments under the Penal Code of Tanzania²⁶. It is done by hanging to death of a person who has been convicted of capital offences²⁷. This form

²¹ The Speech by the President of the United Republic of Tanzania, His Excellency Jakaya Mrisho Kikwete, on inaugurating the Fourth Phase Parliament of the United Republic of Tanzania, Parliament Buildings, Dodoma, 30 December 2005. Page 4 Paragraph 3 of the English Version Speech.

²² Tanzania ratified this on September 11th, 2006

²³ Article s 12 to 29 of the Constitution of Tanzania contain the bills of rights and duties.

²⁴ Helen Kijo-Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries, *Op. Cit*, page 37.

²⁵ Article 14 stipulates, “Every person has the right to live and to the protection of his life by the society in accordance with the law”.

²⁶ Other kinds of punishments provided for under Section 25 of the *Penal Code, Cap. 16* of the Revised Edition are imprisonment, corporal punishment, fine, forfeiture, payment of compensation, finding security to keep the peace and be of good behavior or to come up for judgment and any other punishment provided by this Code or by any other law.

²⁷ There are three offences which are punishable by the death sentence in Tanzania. These are; Murder (Section 197 of the *Penal Code, Cap. 16*), Treason (Section s 39 and 40 of the *Penal Code, Cap. 16*) and

of punishment is irrevocable once it has been carried out even by judicial mistake. Moreover, it entails the taking away of the life of the convict, the ultimate of which does not help the victim killed nor reduce crimes rates²⁸.

During the year 2006, Tanzania continued to retain death penalty under *the Penal Code*²⁹ and under *the National Defence Act*³⁰. The actual number of how many inmates were in the death row during the year 2006 was not secured. However, the official statement³¹ from the Minister for Justice and Constitutional Affairs indicates that the former President of Tanzania, Mr. Benjamin Mkapa commuted all death row inmates to life imprisonment towards the end of his presidential tenure running from 1995 to 2005.

As it was in previous years, Tanzania still desists to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989, which is aimed at abolishing the death penalty. Article 1 of this protocol categorically states that no one within the jurisdiction of a state party to the Protocol shall be executed. Therefore, each state part is urged to undertake all necessary measures to abolish the death penalty within its jurisdiction. However, the Law Reform Commission of Tanzania has begun a public discussion on death penalty and this is a positive move towards the issue.

In 2006 several people were sentenced to death³² by the court. For instance three people were sentenced to death for murder of taxi driver in the Morogoro Zonal High Court session. The conviction comes five years after the case was opened³³. Another man was also sentenced to death in Morogoro after he was found guilty of murdering his sister by poison.

On 18th March 2006 it was Reported that the High Court of Tanzania Bukoba District Registry convicted one Bahati Makenya resident of Rwesero in Bukoba District to be hanged to death after he was found guilty of murder.

Misconduct of Commanders or any Service Man in the presence of an enemy (1st Schedule of the *National Defense Act, Cap. 192*).

²⁸ See “The Fact Sheet: Death Penalty Does Not Deter Crimes” at <http://www.nodeathpenaltywi.org>

²⁹ For offences of murder and treason under Sections 196 and 39 of *the Penal Code*.

³⁰ Chapter 192 of the Laws of Tanzania (RE) for an offence of misconduct of commanders or any service man in presence of the enemy under *Code 11* of the 1st Schedule to this Act as read together with Sections 53 and 85. This provision punishes offences by commanders when in action. It punishes service men who commit an offence such as “being in action, improperly withdrawn from the action”. It says that a person who is found guilty of offences under this Code, upon conviction shall be liable to suffer death or less punishment.

³¹ Taarifa ya Waziri wa Katiba na Sheria Mheshimiwa Dr. Mary Nagu (MB.) Akiwasilisha Makadirio ya Matumizi ya Kawaida na ya Maendeleo kwa Kamati ya Bunge ya Katiba, Sheria na Utawala kwa Mwaka wa Fedha 2006/2007, Mei 2006 – Dar es Salaam, *Uk. 2* (The Report - Fiscal Estimates for the year 2006/2007 of Honorable Dr. Mary Nagu (MP) to the Parliamentary Committee of Constitution, Justice and Administration, May 2006 - Dar es Salaam, *Pg. 4*).

³² According to the LHRC Research during the year, at least 21 people were sentenced to death by the High Court and Court of Appeal of Tanzania. The number is uncertain because the judiciary does not keep statistics of this nature.

³³ The sentencing Judge Hon. Augustino Shangwa held that he did not see any reason of showing leniency to the accused because strong evidence shows that the trio were notorious and cruel.

In another incidence, on May 10th 2006, the High Court of Tanzania in Dar-es-Salaam sentenced one Bernard Kimaro to death after he was convicted of murder of his wife Rukia Abdallah³⁴ in Kigamboni, Dar es Salaam. Part of the judgment read that “*this hounorable Court finds you guilty of murder for which death sentence is the only punishment available. It is there fore ordered that you be hanged till death*”.

The research³⁵ conducted by LHRC in 2006 has revealed that 68 per centum of respondents who were interviewed were not in favor of the death penalty. For instance, one Paul Mapunda, 26 years, of Temeke District – Dar es Salaam said that no one has the right to take the life of another person despite the person’s criminality. The general observation of the respondents is lined on the religious beliefs that is, it is only God who can take ones life and punish the killer. On the other side, however, 32 per centum of people interviewed were of the view that death penalty should be retained as it controls crimes rate and sort of “compensation or revenge” for the family of the victim.

Moreover, according to the Fact-Finding Mission in Prisons jointly conducted by the International Federation for Human Rights (FIDH) and LHRC in 10 to 17 October 2004, which involved Zanzibar’s Prisons, the convicted persons are ready to reform and be good people after the imprisonment. In February this year 2006³⁶, for instance, the Prisoners who were in the death row wrote a Swahili letter (translated here) to President Jakaya Kikwete that;

“We were Prisoners who were pardoned (sentence commuted) by the third phase President, Mr. Benjamin Mkapa. With due respect, we congratulate President [Jakaya Mrisho] Kikwete for his terrific and historical victory. He is a man of the people...We killed in different circumstances and we were convicted in different prisons as well. But after serving our sentences for a period of between 10 and 15 years, we were pardoned by former President [Mr. Mkapa]... We thank God for endowing him (Mr. Mkapa) with that penitence heart.

We beg our President Kikwete to pardon prisoners who have been in prisons for about 10 or 30 years, they have already tremendously reformed...[T]hose prisoners who have served their sentences for long time ... [a]re facing agonies and they have already repented...[P]risoners do not have an institute which would have assisted them to apply for clemency; therefore only rich people who can get it. It is not easy for the poor...[W]e beg of you Mr. President to pardon them – by realizing them or commuting their sentences. This would encourage others that one day they will be released. There is nobody who does not commit an offence, but can be reformed.

We were offenders and murderers but we have reformed...[I]n the prisons, there are people who behave they way we did. We beg of you President Kikwete to be empathetic like God...Please Sir, pardon them...to enable them participating in public affairs and utilize the

³⁴ The Guardian, 10th May, 2006.

³⁵ The Survey was done through various methodologies including the information obtained from LHRC Filed Monitors, Library Search, Newspaper Survey and Field Survey by Researchers. Information on the research is kept in the LHRC, [HRM Unit Database 2006](#).

³⁶ See their letter at [Tanzania DAIMA](#) “Kikwete Tusaidie Wa Kunyongwa” [“Kikwete Assist us, the Death Row Prisoners”], 7 February 2006, P age 10.

skills which they gained/learnt in prisons; Also those who are old, to go back, die and be buried by their respective families”³⁷.

The execution of Mr. Saddam Hussein, the former President of Iraq had impacted the outlook of the minds of some people in Tanzania on the death penalty. The pictures which were broadcasted on the television devastated most of the people. They came to realize how execution, especially by hanging, is conducted. After Saddam’s execution, which was broadcasted on media on 28 December 2006, LHRC received several messages and from people who actually watched the hanging of Saddam through the Media. One person commented that; *“I think the death of Saddam by hanging has given an opportunity for people to understand the cruelty of the death penalty even if it is done to cruel person like Saddam, I hope 2007 will give you (LHRC) new courage to campaign against Death Penalty”*.

LHRC and ZLSC strongly urge the Government of Tanzania to rethink about the retention of death penalty. It is our contention that the right to life is not debatable. What the Law Reform Commission is doing in seeking people’s view should not be the determinant factor. Abolition of death penalty should be in line with the obligation to preserve and protect human rights under the International Human Rights Instruments³⁸.

2.1.2. Extra-judicial Killing by State Organs

Extrajudicial Killing or Punishment is killing of a person or physically punishing the same without considering due legal processes. Generally, it is carried out by a state apparatus needing to rid itself of a dangerously disruptive influence. The concept of extrajudicial punishment means that the Government breaks its own law because the act of killing by itself is unlawful. Moreover, the extra-judicial killings presuppose guiltiness of the accused person by terminating his or her life.

The provisions of the Constitution of Tanzania provide that no person charged of a criminal offence shall be treated as guilty of the offence until proved guilty of that offence³⁹.

The year 2006 witnessed a number of extra-judicial killing incidences which were done and Reported in various places in the country. During the year banditry especially armed robbery was at its peak the situation which led to the use of extra-force by the police and in the process innocent citizens were killed.

Minister for the Ministry of Public Safety was quoted by the media giving ambiguous statements which was construed ordering all suspected bandits to be killed one spotted or apprehended after committing crimes. For instance, he was quoted saying that; *“Majambazi kokote mlipo, tena mnisikie kabisa kuwa mjitayarishe kuuawa kwa sababu*

³⁷ This letter was written/signed by ex-prisoners Christian Kake, Peter Magot ‘Tosh’ and Festo Ludiko of P.O Box 1567, Dar es Salaam, Tanzania. See Tanzania DAIMA newspaper of 7 February 2006 *ibid*.

³⁸ LHRC, Tanzania Human Rights Report 2005, *Op. Cit* see pages 9 and 10.

³⁹ Article 13 (6) (b) of the *Constitution of the United Republic of Tanzania of 1977*.

nyie ni majambazi...[M]kikamatwa na Polisi lazima muuawe...na nimeamuru Jeshi la Polisi kote nchini lifanye hivyo” that is “You Bandits wherever you are, listen to me careful, that you prepare yourselves to be killed because your are thugs...[T]he moment you will be arrested by the Police, you shall be killed...I have commanded the Police Force countrywide to do so”⁴⁰.

A case in point is the January 2006 incidence where four innocent citizens suspected to be bandits at Sinza Dar es Salaam were killed by the Police. A Presidential Probe Commission was formed to investigate the killings. The investigation found out that the police were responsible for the unlawful killings. The Government arrested the Police Officers and they were charged. The matter is still pending in court. In comparison to the previous year, there was a slight increase of extra-judicial killings in 2006.

According to the statistics available in the LHRC’s database for the year 2006 regarding “Trend of Violation of Civil Rights and Liberties in Tanzania in 2006”⁴¹, Extra-judicial Killings rated 13 per centum of all human rights violations under the group of Civil Rights and Liberties. As the Bar Chart attached herewith at the end of chapter indicates, the trend of killings was up and down. It was high between July and September probably because of the increase of banditry whereby the police used extra-power trying to control the situation as said above. The rate of the incidences is not much different from that of 2005. In this year, about 37 incidences were Reported by the media while in 2005 there were 36 incidences.

Some of the incidences reported are; on 13th March 2006 a petty trader Edger Mosses was seriously beaten up by the military official of *Jeshi la Kijenga Taifa* (JKT) in the operation to remove bus touts and petty traders in the city of Dar es Salaam and he later died⁴².

A boy one Pascal Msigala, a resident of Kihesa Kilolo in Iringa municipal council was shot dead by police officers after he was suspected to be a bandit, this was Reported by the Regional Police Commissioner⁴³.

On the 9 of March 2006 the *Express* newspaper of Tanzania Reported that the operation of the militia to remove petty traders in Mwanza city had lead to the death of a young man, believed to have been a petty trader who was shot at the abdomen.

⁴⁰ Happiness Katabazi “Mwapachu Asistiza Majambazi Wauwawe”[“Mwapachu Stresses on Killing of Bandits”] *Mtanzania*, 18th January 2006, Pages 1 and 4. The Minister (Bakari Mwapachu) further stated that, he understand that there is “*Kitu Haki za Binadamu*” (“Human Rights *Thing*”), but he is not prepared to see President Kikwete is questioned in 2010 on failure to control banditry through the Ministry of Public Safety. One of the possible interpretations of this statement would be, human rights can be derogated/passed-over when someone wants to preserve the interests of his or her boss.

⁴¹ LHRC, *HRM Unit Database 2006*.

⁴² Edmund Mihalle, “Aliyepigwa na JKT Afariki” [“The One Beaten-up by JKT has died”] *Tanzania DAIMA*, 13th March 2006, Page 2.

⁴³ Ekiasa Ally, “Auawa na Polisi Iringa Akituhumiwa Ujambazi” [“Killed by Police in Iringa for allegedly banditry”] *Mtanzania*, 13 March 2006, Page 5.

Three suspected bandits were killed by police in Kilimanjaro Region, the names of the deceased were identified as Stephen Urrasa 38, of Karansi in Hai District, Vincent Munishi 28 of five stars Boma Ng'ombe in Hai District, Selemani Kilua 30 a carpentry of Sakina Arusha Region⁴⁴.

In Mwanza it was reported that traditional Militia (*Sungusungu*) killed Paul Elius 29 by severe torture allegedly for having found him smoking Marijuana at midnight while they were in patrol⁴⁵.

Police in Arusha Region killed Mr. Bonifas Kidemi after he was suspected to be a chronic bandit in the region⁴⁶.

A policeman in Tarime District had killed a form four student of Nyamasanda Secondary School. The student by the name Joel Magige was killed on 3rd April 2006. Following this incident, the students burnt class rooms and teachers' houses causing a huge loss of property. The eye witnesses said that the deceased was shot below his chest by a police corporal from Kagoja police station while he was trying to calm down rampaging students. The police were called in by the Headmaster Mr. Adson Mganda to maintain peace and order at the school⁴⁷.

Three police officers together with other two civilians were arrested in Babati, Manyara Region for allegations of causing the death of one person, Mihayo Manyika (20). Mihayo died on 1st August 2006 and according to the relatives it was said that those three police officers were responsible for his death. The accused police officers are PC Tumaini with number F5073, PC Judica D 9664 and PC Rashid with number E 4674. This case was still pending in court⁴⁸.

Section 11 of the *Criminal Procedure Act, Cap. 20* of the Revised Edition of the laws of Tanzania clearly states that, in making the arrest, the police officer shall actually touch or confine the body of a person being arrested unless there be a submission to the custody by word or action. Section 21 also provides that a Police Officer or other person shall not use more force or subject a person in a greater indignity than is necessary to make the arrest or to prevent the escape of the person after s/he has been arrested. Therefore use of force in making arrest is actually against the law.

⁴⁴ Majira, 4th January, 2006

⁴⁵ Frederick Katulanda, Sungusungu Wadaiwa Kuuwa Mwanza” [Militia alleged to have killed in Mwanza” *Mwananchi*, 25 February 2006, Page 4.

⁴⁶ Majira 17th January, 2006

⁴⁷ Citizen Correspondent, “Students Burnt School as Police Kill Colleague” *The Citizen* (Tanzania), 4 April, 2006, Page 4.

⁴⁸ Mkami Shanyangi, “Polisi Watatu Mbaroni kwa Mauaji ya Kijana” [“Three Policemen detained for Killing a Young People”] *Tanzania DAIMA* of 4 August 2006, Pages 1 and 2.

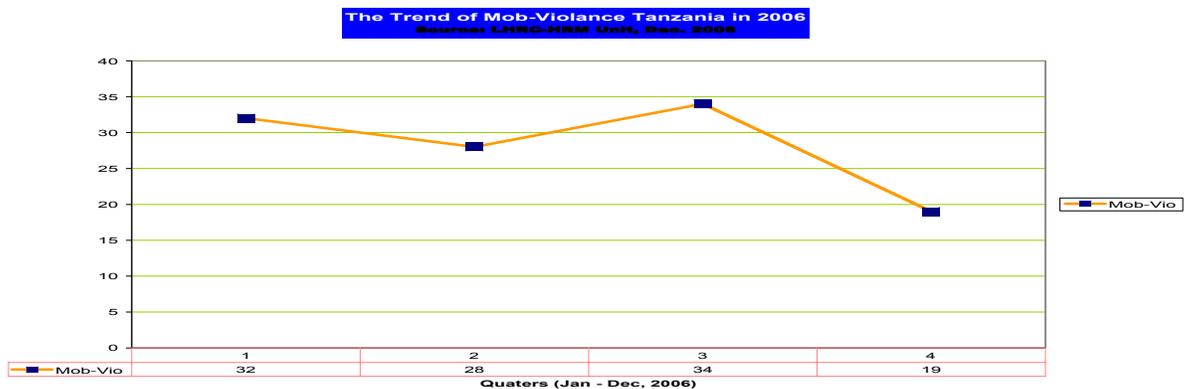
2.1.3. Mob Violence

Article 4 of the ACHPR states that; “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”. In simple meaning, mob violence means arbitrary action by a group of people punishing a person because of his or her alleged mischief. The victims of mob violence normally experience injuries, pains, lost of properties or even life.

Mob violence is perpetuated by the lack of confidence and dissatisfaction of people to the law enforcement mechanism which is in place⁴⁹. One interviewee contended that; “people do not see the need of taking a suspect to the police station. It is wastage of time and if he has money, he can be released soon after you leave the police counter (reception), this is why people kill”⁵⁰.

The 2004 and 2006 surveys of LHRC indicate that mob violence resulted into termination of life, serious bodily harm and destruction of properties. According to the findings, most of the victims of mob violence are petty traders and youths in major cities like Dar es Salaam and Arusha.

The LHRC 2006 research has revealed that Mob-violence accounted for 54 per cent of human rights violations which occurred under the group of Civil Rights and Liberties. More than 103 incidences were Reported by the media. There is a decrease of the number of incidences to compare with 2005 whereby more than 206 incidences were documented. It should also be noted that, the 2006’s findings are exclusively media survey and Reports from LHRC’s field Monitors because the researchers did not get statistics from the police. In 2006, the trend of increase and decrease of mob-violence has been fluctuating throughout the year as the graph below⁵¹ indicates.



⁴⁹ LHRC, Human Rights Report of Tanzania 2004, Pg. 11 and Pg. 12. [See also Helen and Professor Peter (2005:519), they say mob violence is associated with lack of reliable security and safety for the people due to collapse of order].

⁵⁰ Research/Interview conducted by LHRC in October 2006.

⁵¹ This is an extract from the LHRC, HRM Unit Database 2006.

Figure 2: Statistical Analysis of the Trend of Mob-Violence
Source: LHRC – HRM Unit Database, December 2007

The numbers of incidences were highly Reported between July to September. More than 30 incidences occurred during this period alone. Some of the incidences which occurred during the year 2006 were as follows; Three suspected bandits were killed after they were caught stealing cattle by Villagers of Ibakuli in Shinyanga Region⁵².

In April 2006, a young woman was found murdered with a note announcing that other killings would follow to all prostitutes in the area. The murder occurred in the Kizota area of Dodoma. The note read: ‘To the Government, please do not waste your time with this prostitute... Kizota women beware!’⁵³.

In April again, two separate mob violence incidents in Mwanza Region left five people dead. Two brothers, Benedict and William David (29) were believed to have murdered and taken the organs of Alex Aaron, an albino. When the brothers were arrested, the villagers began hurling stones at them until they died. In a separate incident, a trio of unidentified men were believed to have hired a taxi and proceeded to murder the driver and hijack the car. The three men were lynched but no account of their apprehension is Reported⁵⁴.

In Mwanza Region again three people residents of Geita District were killed by angry civilians and were burnt after they were alleged to have stolen chickens. The Report was read by the acting Regional Police Commissioner of Mwanza Ranatus Charamila were Reported theft, the deceased were Kasabaka Masami 45, Makoye Philipo 45 and Juma Jacob 29⁵⁵.

Some of other incidences recorded by the LHRC HRM Unit Database⁵⁶ are briefly summarized as follow;

- Unidentified person was killed by a mob at Mikocheni B Dar es salaam when together with other 3 people attempted to steal at the house of Pastor Lwakatare of Tanzania Assemblies of God Church.
- Gerard John of Shinyanga was killed in January 2006 by citizens at Shinyanga Region for being suspected to be as a thief, Reported by regional Police Commissioner Karibuel Shoo.
- In January 2006, two people were killed by a mob after they were attempting to steal a car, the incidence happened at Kilomero in Rural Bukoba District.

⁵² LHRC/HRM.MON.RP.X/

⁵³ ThisDay, 25th April, 2006

⁵⁴ LHRC Human Rights Monitor for Mwanza also Reported on the media see Pati Magubira, Twin Brothers Stoned to Death”, Daily News (Tanzania), 25 April 2006, Page 3).

⁵⁵ LHRC Monitor for Mwanza Zone, March, 2006

⁵⁶ LHRC, HRM Unit Database 2006 (These Reports, except those which have been footnoted, are from our district’s and zone’s Monitors/Coordinators).

- One person identified as Philip Yusto 26 at Nyanzuhura village in Mwanza Region was killed a mob when he attempted to steal a goat.
- Two people, in February this year 2006, were killed, good citizens who rescued a tax driver when the deceased were attempting to steal a taxi, which they had hired at Mabanda Mengi in Dar es Salaam Region.
- One person Frank Nyangawa 32 a villager of Majengo, in Mufindi District was killed by a mob when he was attempting to steal 14 heads of cattle.
- George Dotto 21 was killed by angry citizens in Maswa District within Shinyanga Region. The victim was caught attempting to steal three heads of cattle at night.
- Five people were killed by a mob of villagers on 21st January 2006 at Ilonga village in Kilosa District within Morogoro region.
- Chelele Sikombe 38 was killed after being alleged to have stolen two cows. This event occurred at Muyunvya village in Sumbawanga on 22nd April 2006.
- One Othman of Bukoba was killed after being suspected to have stolen fish. The Report said that Othman was a renowned thief and several times he has been taken to Court but nothing has been done. Before he was killed his eight fingers were cut off by the mob.
- Another mob violence incidence occurred in Kahama District on 11th August 2006 whereby Daudi Yusuph and Shija Kassimu were killed after being suspected to be thieves.

Therefore, it is obvious that mob violence is still a threat to the right to life in Tanzania. There is a need of curbing this situation with all available legal measures.

2.1.5. Killings due to Believe in Witchcraft

According to the *Witchcraft Act, Cap. 18* of the Revised Edition of the Laws of Tanzania, “Witchcraft” includes sorcery, enchantment, bewitching, the use of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge⁵⁷. This law incriminates any person who intentionally causes death, disease, injury or misfortune to any community, person or animal or property. Its punishment is imprisonment of not less than seven years⁵⁸.

Witchcraft killings are common in Tanzania, in most cases, the killings base on a belief of mysterious incidences which allow people to make sense of seemingly arbitrary misfortunes that affect them. They punish or kill the suspect after guessing that he or she is the reason of the misfortune. The research⁵⁹ shows rise of witch killings in (western) part of Tanzania since 1960s.

Apart from it being a criminal offence, witchcraft killing despoils the right to life because it takes the life of the suspects. Most of the victims of this situation as it has been in the

⁵⁷ Section 2 of the *Witchcraft Act, Cap. 18* of the R.E.

⁵⁸ Section 5 (1) of the Act.

⁵⁹ Example by Edward Miguel “Poverty and Witchcraft Killing”, *Review of Economic Studies* 72 (2005): 1154.

previous years have been old persons especially women and children of tender years in rural areas⁶⁰.

The LHRC's statistical information from the media survey⁶¹ recorded number of incidences of witchcraft killings rated at 13 per centum of the human rights violation under the group of civil rights and liberties. Some of the incidences which occurred during the year as reported by the media and Monitors are; Akabula Luhende of Bukoba was alleged to have killed the son of her neighbor in April 2006, Mbanya Kwiracha, claiming retribution for the death of her daughter. Luhende claimed that her neighbor bewitched her daughter because the daughter died two months after Mbanya's mother swore that Luhende would be sorry for caning Mbanya after he accidentally led cattle into Luhende's property the previous June⁶². Another woman identified as Tarita Katwiko 56 a villager of Igwamadede in Manyoni District Singida Region was killed by an axe on witchcraft beliefs in February 2006⁶³.

Other Reports as found in the media and field surveys of LHRC-HRM Unit Database⁶⁴ are as summarized below;

- One old woman, Regina Mohamed (56) and a child of five years Jeniva Asimwe were killed by one Sostenes Dominick, 26 on witchcraft beliefs in Katerela village in Biharamulo district.
- Two people, Ana Maria Remijus (67) and her grand daughter Sichoreth Archard (7) were killed in Muleba District, Kagera Region by unknown persons on 12th April 2006 at Buhanga village in Buganguzi ward on witchcraft allegations.
- A Primary School Teacher Mr. Philemon Kamili (47) was killed by villagers at Mwamunhu village in Bariadi District on the basis his habit of defiling and sodomising school children, which was taken to be for witchcraft purposes. His body was burnt after he was stoned to death by villagers.
- Another incidence from Shinyanga Region showed that the citizens killed an alleged witchdoctor for witchcraft allegations. The event occurred at Mwarushu village in Bariadi District, Shinyanga Region. Sanka Nkudi (60) was killed on 31st March 2006.
- The journalist Editha Buke of Bukoba was killed while sleeping in her room. This event was said to be relating to witchcraft beliefs.
- Another woman, Rozina Mkolwe, 98 years, was killed in Igoma village, Njombe District on the ground that she was bewitching the assailant.

⁶⁰ For instance, a child of 4 years Musswadic Hemmed was slaughtered to death by unidentified persons. The kid was taken to the forest and his head separated from his body and some other parts removed from the body, this event happened at Nalemuru village in Moshi District, the killing was associated with witchcraft beliefs (This was Reported both by LHRC field Monitor for Arusha – March, 2006 and the media see Deniel Mjema “Mtoto Achinjwa Kama Kuku, Anyofolewa Viungo” [An infant slaughtered like Hen, his Organs Mutilated], Mwananchi of 3 February 2006, Page 3.

⁶¹ LHRC, HRM Database 2006 is also comprised of information tapped from the local Newspapers.

⁶² Robert Kakwesi, “Boy Killed by Superstitious Women”, The Citizen (Tanzania), 1st May 2006, Page 5.

⁶³ LHRC, HRM Unit Database 2006.

⁶⁴ *Ibid*

The loss of the right to life through witchcraft killings is on the increase. The Government need to stage a big campaign (awareness) against this habit which claims lives of the people especially women and children in rural areas.

2.2 Freedom from Torture and Police Brutality

Article 13 (6) (e) of the Constitution of Tanzania provides that; “no person shall be subjected to torture or to inhuman or degrading punishment”⁶⁵. Paragraph (b) of Article 13 (6) provides for the presumption of innocence.

The research findings conducted in 2006⁶⁶ has revealed that, the people of Tanzania, Kenya and Uganda are suffering under police forces that are too often are corrupt, violent and brutal tools of government. This type of policing is at direct odds with the claims of democracy made by the governments of East Africa. In Tanzania the findings mention that the police torture suspects to get confessions.

Some of the reasons of the police brutality are legal and administrative anomalies of the police force. In April 2006⁶⁷, Minister for Public Safety and Security Bakari Mwapachu said the Government plans to overhaul a number of police laws⁶⁸ because they are vestiges of colonial rule⁶⁹. Sometimes, tortures are conducted in response of the seniors’ orders and/or ambiguous statements, which junior police officers make use of by taking them for granted. For instance, Minister Mwapachu was quoted by almost all local newspapers in early 2006 commanding the police to shoot at robbers on spot. The African of 21st April 2006 under the title “Mwapachu Stressed on shooting Back” said that the Minister for Public Safety reaffirmed the police policy of returning fire to robbers who commence shooting⁷⁰.

Statements or proclamations of this nature are dangerous to the spirit of the rule of law in the administration of justice anywhere in the world; because they implant sense of

⁶⁵ Also see Article 7 of the ICCPR of 1966.

⁶⁶ See The Commonwealth Human Rights Initiative (June, 2006) The Police, the People, the Politics – further information see www.humanrightsinitiative.org or LHRC’s Monitoring Database/LHRC/CHRI/VOL.I/70.

⁶⁷ See also PST/Editor, “New Police Law Long Overdue”, The Guardian (Tanzania), 19 April 2006, Page 6.

⁶⁸ For instance, *the Police Force and Auxiliary Forces Act*, Cap. 322 (formerly the Police Force Ordinance, Cap. 322), was enacted in 1939 during colonialism by the colonial power. The aim was to safeguard the interests of the colonialist.

⁶⁹ The laws governing the police were previously criticized as needing updating by the Nyalali Commission 15 years ago. Part of the suspect aspect of the laws is inquiries into the tribal affiliation of suspects and accused. The colonial powers sought this information in order to know which tribes were more crime-prone so as to incite rebellion or division between the colonized when necessary.

⁷⁰ The affirmation came at a meeting in Kilimanjaro and in response to Judge Musa’s (Kipenka) comments regarding the police killings in Dar es Salaam of 3 businessmen and 1 taxi driver. Tanganyika Law Society and LHRC reacted/responded on this. They condemned excessive pronouncements that tends to extol violence and adjudge suspects before they were legally heard and appropriately condemned in accordance with the law, they said that these pronouncements threatens the rule of law and it encourage tooth for tooth tactics and denied suspects of their Constitutional rights of being innocent until proven guilty.

arbitrariness on the minds of the law enforcers, which is actually against the Constitution of Tanzania⁷¹ and the provisions of other laws.

For instance, Section 21 of the *Criminal Procedure Act*⁷², provides that, in making an arrest “(1) A police officer or other person shall not, in the course of arresting a person, use more force or subject the person to greater indignity than is necessary to make the arrest or to prevent the escape of the person after he has been arrested. (2) Without limiting the application of Sub-section (1), a police officer shall not, in the course of arresting a person, do an act likely to cause the death of that person, unless the police officer believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to some other person” (*emphasis added*).

The survey’s findings by the LHRC have reported a slight decrease of torture incidences on part of the police. According to the statistical records, the police brutality accounted for only 7 per centum of human rights incidences⁷³, which were analyzed under the civil rights and liberties’ group of human rights. However, the number of incidences reported should not taken as conclusive evidences of increase or decrease of police brutality because not all incidences are reported to the media or spoken out by the victims.

Some of the incidents⁷⁴ Report ed especially by media and relatives of the victims through LHRC field Monitors were; On March 2006 one person, a taxi driver identified as Christopher Renatus Samson was tortured to death while in police custody by police officers after he was arrested due to allegations that he had participated in armed robbery of Tsh.11 million from an accountant of Siha Investment Limited at Nyakato bus terminal in Mwanza region. A report from Mwanza Monitor⁷⁵ and an interview with the deceased relatives indicated that Christopher was arrested, tortured by the police and died at Souk Toure Hospital in Mwanza Region on 22 February 2006. Another person also in Mwanza, Hashim Omary, a prisoner with number CC.263/2005 was severely beaten up and tortured on February 13 2006 under supervision of top prison officials, in Mwanza⁷⁶.

In January 2006, police officers murdered three men who were mineral dealers and one taxi driver at Sinza, Dar es Salaam. The murder case is still pending in Court for determination. The Presidential Commission of Inquiry (The Justice Musa’s (Kipenka) Commission) found that the four men were actually murdered by the police.

In similar incident, the police killed another taxi driver in a pub at Arusha after being alleged to be a bandit based on an anonymous tip. The person who tipped off the police claimed that the men in the pub “behaved like criminals.” Acting on the information, the police stormed the pub and ordered the immediate surrender of all its inhabitants. The

⁷¹ Article 13 provides for, *inter alia*, the presumption of innocence.

⁷² *Cap. 20* of the Revised Edition of the Laws of Tanzania.

⁷³ See “Trend of Violation of Civil Rights and Liberties Tanzania in 2006” attached at the end of this Chapter.

⁷⁴ More statistics and explanations can be obtained in the LHRC, [HRM Unit Database 2006](#).

⁷⁵ LHRC/HRM.VOL.X/3. The Pictures which show how he was tortured are in the file. You can also read Pati Magubira, “Mwanza Taxi Driver Buried at Last”, [Daily News](#) (Tanzania), 1 March 2006, Page 2.

⁷⁶ [The Citizen](#), 19th February 2006

deceased Mr. Omar Amin Mahamba is alleged to have reached for his pockets before complying and police proceeded to shot him⁷⁷.

The fact-finding team of LHRC of March 2006 revealed that at least 20 people were severely injured in a sporadic violence in different parts of the city of Dar es Salaam⁷⁸ between the S - Security Group and *Daladala* bus touts together with the petty traders in Mwenge, Kariakoo and Tandika areas⁷⁹.

2.3 Equality before the Law – Access to Justice

Equality before the law means all people in a society should be treated alike by the law itself and before all law enforcement bodies and agencies, which are created by the law⁸⁰. This right is guaranteed under Article 13 (1) of the Constitution of Tanzania and Article 14 of the ICCPR. Article 13 states that; “All Person are equal before the law and are entitled, without any discrimination, to equal opportunity before and protection of law”. It is said that, this right can not be enjoyed without, *inter alia*, access to justice⁸¹.

Access to Justice means more than access to legal advice and representation in court. For it to entail equal opportunity, there also must be public awareness and how to effect the same upon it. It may also, in its broader sense, mean availability of courts, accessible laws in the language of the majority of people, access to lawyers and trained legal representatives, and fair trial.

As for the number of courts in Tanzania, during the year, the statistics indicate that as to 2006, there were 1105 Primary Courts, 88 District Courts, 22 Courts of Resident Magistrates, 13 High Court District Registries and One Court of Appeal Station in Dar es Salaam⁸². There was no official record obtained, which indicates the increase of these courts.

There was a slight increase of the number of Advocates in 2006. Last year 2005, it was reported that there were 793 Advocates on the Roll⁸³. For this year there were 926 advocates as appearing in the Roll of Advocate of Tanzania⁸⁴. However, the classical challenges have never been resolved with this increased number of registered lawyers. The first challenge has always been that, about 80 per centum of the practicing advocates are based in Dar es Salaam. Secondly, the enrollment of advocates does not match with the increasing of the population growth, which is 2.4 per centum per annum. The number

⁷⁷ The Citizen, 1st May 2006

⁷⁸ This incident happened as the operation of the municipal councils in Dar es salaam hired soldiers from national service department to remove all bus touts and petty traders in different parts of the city.

⁷⁹ See the Fact Finding Report of LHRC of March 2006 for more details (LHRC, HRM Unit Database 2006).

⁸⁰ Helen Kijo-Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries, LHRC, page 379

⁸¹ LHRC, Tanzania Human Rights Report 2005, Page 17.

⁸² Tanganyika Law Society, December 2006.

⁸³ LHRC, Human Rights Report 2005, Page 18.

⁸⁴ According to the Tanganyika Law Society Records 2006.

of advocates who were admitted by the Chief Justice for this year was only 58 despite the fact that about 1,000 law graduates join this legal profession every year from various Universities⁸⁵.

The provision of legal aid for poor people was still overwhelmingly on the shoulders of the Civil Societies Organizations⁸⁶. Most of the people opt for legal aid because of financial constraints to hire advocates. In this way therefore, they continued to depend on the legal aid clinics established by civil societies. The number of clients looking for legal aid is steadily increasing. For instance, during the year 2006, LHRC's Legal Aid Centres alone received more than 6000 clients. Magomeni Legal Aid Clinic alone received a total of total of 4,617 clients⁸⁷.

On the other hand, the Government did not support these civil societies with any financial assistance. The implementation of the *Legal Sector Reform Programme (Medium Term Strategy) 2005/06 – 2007/08*, did not meet the target of establishing legal aid groups and centres at regional, District and ward levels. Moreover, this reform program did not put the *paralegal*⁸⁸ scheme effectively under the recognition of the law as it has been suggested by civil societies. According to Helen and Professor Peter⁸⁹, in some states in the USA they are referred to as *para-professionals* and they are accepted and have a long history of working in the Court helping litigants.

The issue of affordability of lawyer for legal representation is therefore critical. One lady, Ms. Blandina Joseph of Mikocheni, Dar es Salaam, in May 2006 explained that, she has been looking for legal assistance to file appeal against the judgment of Kisutu Resident Court, which has acquitted the person who was accused of sodomising her child. She said that, she can not hire an advocate because she does not have money to pay for the advocate thus she was seeking legal assistance to file her appeal to the High Court. There are so many Tanzanians like Blandina who feel aggrieved by the court's judgments but do not have ability to hire advocates to file appeal.

Another serious problem as far as fair trial and access to justice are concerned is the question of delay of cases pending in court. It is important to note that the time within which the case is adjudicated is vital for obtaining fair justice. Lack of facilities and human resource in the judiciary were said to be some of the challenges that the Legal Sector Reform Programme would address.

⁸⁵ The Speech of the President of Tanganyika Law Society (TLS) on 15th December, 2006 at the High Court of Tanzania at Dar es Salaam during the wearing ceremony of new Advocates by the Chief Justice of Tanzania.

⁸⁶ Such as LHRC, TLS, TAMWA, WLAC, NOLA, University of Dar es Salaam Legal Aid Centre, etc.

⁸⁷ 2360 Men and 1049 Female. Most of the cases received were employment and probate cases.

⁸⁸ A Paralegal is a lay person who has been trained on elementary principles of laws and he or she is intended to assist other members of the community; normally for minor cases and mostly civil cases in the subordinates/lower courts.

⁸⁹ Helen Kijo-Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries, *Op. Cit* at page 507.

Most of civil cases which take long time according to LHRC Legal Aid Database for the year 2006 are probate, matrimonial and employment causes. For instance, the case of *Theodora Pius V. Asekile Mwakanusya*⁹⁰ is now at its 6th year since when it was filed. This is a matrimonial case. The case of *Kasebele V. Karibu Hotel*⁹¹ has been pending in Court for the past eight years.

About 75 per centum of the respondents to the LHRC's human rights survey for the year 2006 said that delay of cases is mostly caused by corruption and other malpractices by some of the judicial officials⁹². This is also illustrated by the case of *Kinyokwe*⁹³ whose case was decided by the same magistrate, the same court, the same parties and same cause of action but different judgments of the same case.

On the other hand as it has been indicated above, the delay of cases is caused by lack of sufficient Magistrates and Judges in the judiciary to speed-up the hearing and determination of pending cases. For instance, Kisutu Resident Magistrate Court still needs more 6 Magistrates for it to effectively handle a pile of cases and at Ilala there are only 4 magistrates⁹⁴. In other places, especially rural areas, there is no Magistrates Courts. In Ruangwa district, there is no District Court building let alone the magistrates⁹⁵.

However, during the year, President Jakaya Kikwete appointed 20 new Judges of the High Court. The President did also appoint two new Justices of Appeal⁹⁶ during the year. This is one-step forward towards decongestion of cases in the High Court and Court of Appeal of Tanzania.

2.5 Freedom of Opinion and Expression

The right to freedom of opinion and expression is guaranteed under the provisions of Article 18 of the Constitution of Tanzania and other international human rights instruments⁹⁷. The right to freedom of opinion and expression includes the right to seek, receive and impart information regardless of national frontiers. It also includes the right to communicate without interference. Therefore, under this provision, every person has

⁹⁰ Civil Case No. 92/2001, High Court of Tanzania at Dar es Salaam. It is attended by LHRC's Legal Aid Clinic at Magomeni, Dar es Salaam.

⁹¹ Was filed at Kisutu Resident Magistrate Court in 1999 and it is still pending there to date. It is handled by LHRC's Legal Aid Clinic at Magomeni, Dar es Salaam.

⁹² Another example as it was revealed during the LHRC research is that, one interviewee said that, her case bounced at Kinondoni Court (She did not say what Court exactly) because she failed to bribe the clerk some money to move forward the documents.

⁹³ Civil Case No. 142/2002 at Buguruni Primary Court. LHRC has already written a letter to the Magistrate to explain the mischief.

⁹⁴ **Mtanzania, 13 March 2006**

⁹⁵ LHRC Human Rights Monitor for Ruangwa.

⁹⁶ Lady Justices Nathalia Kimaro and Engera Kileo.

⁹⁷ Article 19 of the ICCPR of 1966 and UDHR. Article 19 of the UDHR states that; "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

the right to express his or her opinion and be informed all the times of various events of importance to the lives and activities of the people.

The finding of the research conducted by LHRC in October indicates that about 99 per centum of the respondents are of the views that freedom of expression was good during the year⁹⁸. They said that media were free to cover all the issue regardless of the frontier. However, some of the Journalists interviewed said that, the media was not critical to the issues as explained in the coming Sub-section of this Report. One Journalist in particular, said that some of Government officials have declared that they will never publish advertisements through certain newspapers because of the story published against them.

2.5.1 Right to Information

The right to information is also provided for under the Constitution of Tanzania⁹⁹ and other international human rights instruments¹⁰⁰. To make this more effective, the provisions of the Bill of Rights and Duties were amended in 2005 via the 14th Constitution Amendment which, *inter alia*, removed the claw-back clauses from the provisions of the Constitution.

The said amendment did not impact the decision of the Government about the ban on HakiElimu's media spots, which revealed education sector development¹⁰¹. The ban persisted despite clarification that the aim of the spots was to communicate to the public areas of further improvement basing on their thorough research done. Instead, the Ministry insisted of an apology commenting that the spots were nothing but "*ridiculing Government efforts in development of the education sector in the country*"¹⁰².

According to Ms. Helen Kijo-Bisimba, Executive Director of LHRC and former board member of HakiElimu, the Government has failed to articulate "how the NGO ridiculed the government" and that it had "infringed on the NGO's freedom of expression and operations as independent institution"¹⁰³.

Another practical example of how this right to information has been debased is as it was ascribed by the Report by the TEMMP¹⁰⁴ which showed that seventy seven (77) hours and forty four (44) minutes on Televisions were used by CCM from 31st August to the end of October during the last year's general election. According to that Report Civic United Front Party (CUF) garnered nineteen (19) hours and six (6) minutes while

⁹⁸ Even the percentage of violation of this category was almost nil. Look at the Statistical Information attached at the end of this chapter. The Violation of Freedom of Opinion and Expression scored 0 per centum.

⁹⁹ Article 18 (2) of the Constitution of Tanzania.

¹⁰⁰ For instance, Article 19 (2) of ICCPR and Article 9 (1) of ACPHR.

¹⁰¹ The HakiElimu was suspended from issuing some of its spots by the then Minister for Education and Culture, Mr. Joseph Mungai in the year 2005. See LHRC, Human Rights Report of 2005 at Page 26.

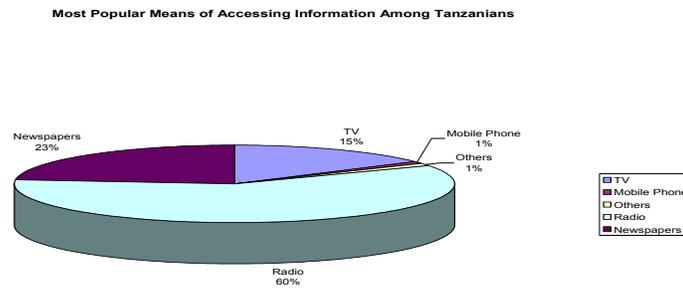
¹⁰² Majira, 7th April, 2006

¹⁰³ She made this remark on the 6th April, 2006 while giving her opinion on the government's stand to ban on HakiElimu's spots on media.

¹⁰⁴ The Tanzania Election Media Monitoring Project Report 2006.

CHADEMA got seventeen (17) hours and forty (40) minutes. It can also be urged that, other political parties under-utilised the opportunities that were given to them.

Moreover, a recent Research conducted by HakiElimu¹⁰⁵ in September 2005 indicated that the most popular means of accessing information among Tanzanians is Radio. Others sources of information and their percentages are as indicated in the graphic information extracted from HakiElimu's 2005 research;



According to HakiElimu, access to mass media particularly radio has increased significantly and is now the most important medium by which people access information.

The challenge ahead is to get right information at the right time. It has not been the custom of both Government and non-governmental organization to provide information to the people. As for the government, most of the information requested is “classified” ones – not for public. For instance, the bilateral agreements and contracts that the Government is concluding are not known to the people. The crucial point is not availability of means of information to the public, rather, it should be whether the information communicated to the public is useful and instigate their right to development, participation in public affairs, health, education, justice, gender, natural resources and so on. There is a need of law which shall make it obligatory to provide information to the public serve for utmost sensitive security information.

2.4.2 Freedom of Media

Freedom of Media is guaranteed under Article 18 (2) and (3) of the Constitution of Tanzania¹⁰⁶. Despite the 14th Amendment of the Constitution, which removed the claw-back clauses, the freedom of media is still circumvented by two major obstacles and challenges. Firstly, the laws which contain restrictive provisions such as the Newspapers

¹⁰⁵ See HakiElimu's Brief No. 06.4E (It is a Summary of Findings of the Research Done by way of Polling in September 2005, covered 21 Districts – one from each region of Tanzania).

¹⁰⁶ Sub Article (2) of Article 18, provides for the right to seek, receive and impart information while Sub Article (3) of the same provides for the freedom to communicate and the right to do so without interference.

Act, 1976¹⁰⁷, Broadcasting Service Act, 1993¹⁰⁸ and the National Security Act, 1970¹⁰⁹ were not amended. Secondly, according to LHRC field research conducted this year 2006, it was found that during the year all media (private and state owned) remained a conduit for the Government instead of designers of public agenda.

It was said by the respondents that, the media criticized whatever was said *against* the Government and praised all what was done or said *by* the government. The Kenyan media also challenged the strength of the Tanzanian media in October 2006, saying that they are setting the motion in the direction of the wind. For instance, when CBOs commented on the participation of the First Lady, Madam Salma Kikwete in the Swaziland's traditional dance, which degrade the dignity of girls and women, almost all media surprisingly stood strong to defend the decision instead of scrutinizing or analyzing it. It seemed that, all is well provided that it is done by the Government or someone related to the State or Government functionaries.

Most of the interviewees including the Journalists said that the media of today is the conduit of the government. In short, media in Tanzania were seen to have failed to perform their duties as designers of public agenda. This situation contradicts the *Rules of Conduct/ Ethics of Journalism*, which encourages a wider publicity of public information¹¹⁰. A student from College of Business Education¹¹¹ proposed that, there is a need of having a law in place, which shall guarantee their freedom and address issues of obtainment of public information from Government and non-Government offices.

Another challenge that has continued to haunt the media in Tanzania is the risk that they are exposed to especially when they uncover sensitive issues against any person or authority. This is what occurred last year whereby two journalists were beaten up by the prison wanderers at Ukonga Dar es Salaam¹¹² and Kihonda Morogoro.

Similar incidences continued to occur during this year 2006. For instance, on March 2006 *TanzaniaDaima* newspaper Reported on a Journalist Kurwa Karedia who was beaten up by JKT soldiers at Ubungo bus terminal when trying to collect information concerning the removal of *Wapiga-debe* (touts) and petty traders at the terminal, his properties were

¹⁰⁷ This among other things imposes stringent conditions for registration of newspapers as well as importation of any publication into the country. The Registrar of Newspapers has awesome powers/discretion of registering and/or deregistering any newspaper.

¹⁰⁸ This, according to the Tanzania Human Rights Report 2005 (Page 24), restricts private broadcasters to maximum range of five of the country's 21 administrative regions.

¹⁰⁹ This was singled out by the Nyalali's Commission as one of bad laws. The legislation provides the Government with complete powers to define what should be disclosed or withheld from public and making it punishable offence to investigate, obtain, possess, comment upon or publish any document or information which the Government considered classified (Also see; LHRC (2001) Human Rights repression Report 6: Freedom of Expression. Dar es Salaam.

¹¹⁰ Rule 2.19 directs that, a Journalist is supposed to make sure that the general public is given unbiased, correct and adequate information. *Rule 2.17* stipulates that, "[a] journalist must make sure that no important information is hidden unless otherwise it is for public interests".

¹¹¹ Response to LHRC field research questionnaires of October 2006.

¹¹² This incidence, according to LHRC, Tanzania Human Right Report 2005 occurred in 10th September 2005. The case is still pending into court.

stolen and her identity card lost¹¹³. It has to be understood that issuing threats to media or beating them or dragging them to Court can seriously affect the freedom of expression in our country because the confidence of the general public also lies on the media.

Freedom of Information Draft Bill

Freedom of Information Act, which was at the stage of the draft proposes to make provisions for the right to access to information, to provide for the promotion and protection of privacy of individuals, protection of reputation, protection of journalists' confidential sources of information and regulations governing operation of the media, promoting independent, pluralistic broadcasting, protection of minors and to provide for the related matter. In conformity to that, the proposed law will repeal *Newspapers Act 1976 and Broadcasting Services Act 1993*. It also amends *National Security Act Amendment Act 2002* and *Tanzania Communication Regulatory Authority Act 2003*. Some of these laws were condemned as repugnant laws.

However, most of the provisions which were subject of discussion have been incorporated to this prospective Freedom of Information Act/Bill. Furthermore, the Bill does not take into account Information and Broadcasting Policy 2003 which recognizes the Media Council of Tanzania (MCT) as a watchdog of media ethics. The Bill proposes establishment of Media Standard Board which will take over the duties of MCT. For instance under Section 41, this board is given unquestionable powers to refuse access to information when it stipulates; "A body may refuse request for access if the request is frivolous or vexatious...". The term frivolous and vexatious are not defined hence they can be used in advantage of those who wants to hide information. It should be noted also that information can seem frivolous to a certain body but serious to a media house.

Human Rights activists also challenge the qualifications of a journalist under Section 76 of this proposed Bill. This Section requires a Journalist to be a degree holder in the field of journalism and mass communication from the University saying that it infringes the right to work especially for those who do not have an ability to pay for the university degree and have already been practicing as journalists for quite sometime.

If the media is suppressed in any way, then the confidences and issues of people are also suppressed. Principle One of the *UN Special Rapporteur on the Promotion and Protection on the Right to Freedom of Opinion and Expression Report*¹¹⁴ states that; "Freedom of Information legislation should be guided by the principle of maximum disclosure, which involves a presumption that all information held by public bodies is subject to disclosure and that exceptions apply only in very limited circumstances. Exercising the right to access information should not require undue effort and the onus should be on the public authority to justify any denials".

¹¹³ TanzaniaDaima 10th March 2006

¹¹⁴ UN Special Rapporteur on the Promotion and Protection on the Right to Freedom of Opinion and Expression in the 2000 Annual Report.

The graph below indicates the general trend of violation of various human rights under this Chapter.

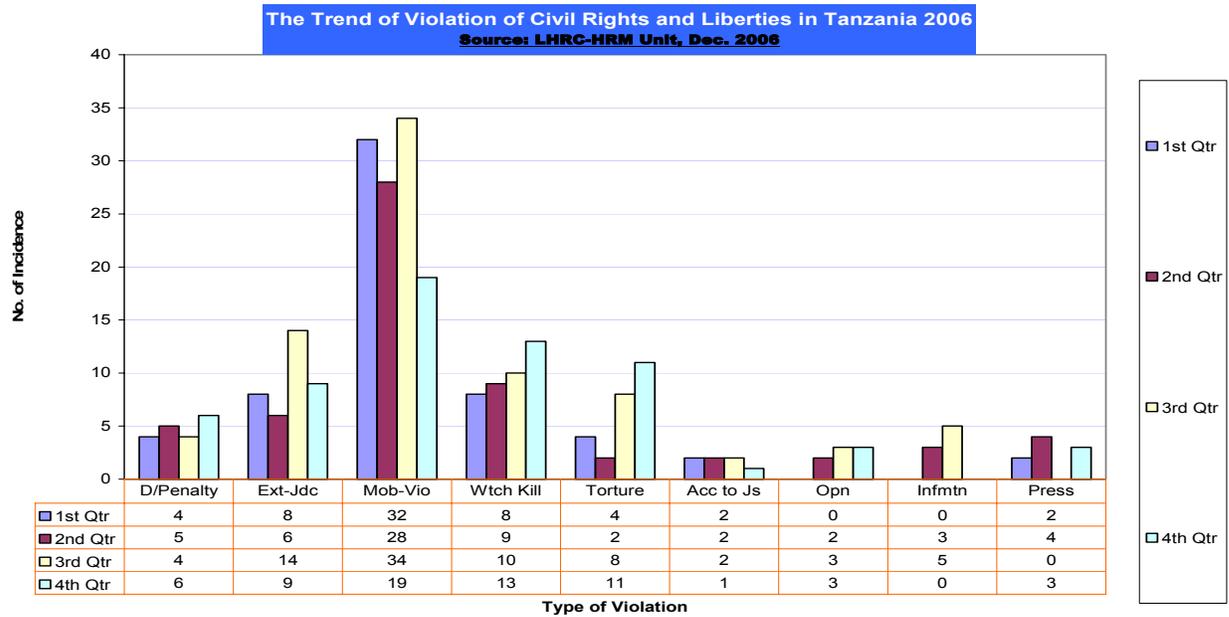


Figure 3: Stastical Analysis of the Trend of Violation of Civil Rights and Liberties in Tanzania 2006
Source: LHRC-HRM Unit Database, December 2006

Chapter Three – Political Rights

3.0 Introduction

Political rights are comprised of political related entitlements. They are enshrined in Constitution of United Republic of Tanzania and under the ICCPR. These include the freedom of association¹¹⁵, the freedom of assembly¹¹⁶, the right to take part in governance¹¹⁷ and so on.

3.1 Freedom of Association

Freedom of Association is provided for under the provision of Article 20 the Constitution of Tanzania, which provides that everyone shall have the right to join any association of his or her choice. The research by LHRC for this Report indicates that 96 per centum of the interviewees are of the views that, this right to freedom of association was fairly guaranteed. The rest did not respond to these questions and others said that they are not sure. Moreover, the accountability¹¹⁸ of registered association such as NGOs was questioned by interviewees. Ms. Faeda of Dar es Salaam said that “...mara nyingi wanakijiji hawajui, wanaojua ni watu wa mjini...” (“...in most cases villagers do not know anything, only people in town know...”). Another person of Tegeta, Kinondoni in Dar es Salaam said that “Asasi nyingi zilizosajiliwa ni za kitapeli...” (“Most of registered associations are not genuine...”).

There was no Reports of any vivid abuse of this right to association however, the presence of Section 35(1) of the *Tanzania’s NGO Act, 2002*, which provides for criminal sanctions¹¹⁹ against NGOs operating without registration is still considered as a threat because it distorts full realization of freedom of association. Considering the difficulties that prospective NGOs are facing in securing registration, the presence of this Section would discourage totally the right to associate. This law also puts a requirement of compliance. Section 11 (3) and (4) provides that, a NGO which is registered or established under any other written law shall apply to the Registrar for a Certificate of Compliance, which is issued only if the NGO complies with the terms and conditions of this law. This requirement is unnecessarily entrenched to the operation of NGOs in the country. There is no any legal justification for this requirement.

¹¹⁵ Article 20 of Constitution of Tanzania and Article 22 of ICCPR.

¹¹⁶ Article 21 of ICCPR and Article 20 of Constitution of Tanzania.

¹¹⁷ Article 25 of ICCPR and Article 21 of Constitution of Tanzania.

¹¹⁸ The Director of NGOs Coordination Unit in the Ministry of Community Development, Gender and Children, Mr. Marcel Katemba said that the move of the Government to establish the online database would improve transparency and enhance NGOs accountability to the public. That, the aim of the Government is to reduce the number of “*briefcase*” NGOs. On the other side, this would improve legislation processes at the District and regional levels.

¹¹⁹ The sanctions are fine of not exceeding T.Shs 500,000 and/or term of imprisonment not exceeding 1 year. Moreover, Sub-section 2 of Section 35 bars all individuals convicted under the Act from holding office in an NGO for up to 5 years. Also read LHRC, *Tanzania Human Rights Report 2005*, page 30.

However, during the year, the Government was on the move to improve the operationalization of the NGOs in Tanzania. According to statement¹²⁰ issued by Mr. Marcel Katemba, the Director of NGOs, Coordination Unit, Ministry of Community Development, Gender and Children the Government is establishing an online database or website for non governmental organizations which will contain information of all registered NGOs. The aim is to reduce the number of brief-case NGOs by establish the website and improving the registration process at the district and regional levels.

3.2 Freedom of Assembly

Freedom of assembly is part and parcel of the wider freedom of association and the right to participate in the national affairs of the country. It is achieved through various ways. It is the right which brings people together in order to pursue common interest and goal¹²¹. It is also another essential component of political related rights.

The research conducted by LHRC during the year did not find any infringement of this right. However, the Office of *Mufti Act, 2001 of Zanzibar*, which threatens this right to freedom of assembly was, once again, not amended in 2006. This law contains some provisions, which breach the right to assembly. The *Mufti*¹²², under this law, has been given wide and discretionary powers including the power to approve any Islamic activities or gathering in Zanzibar¹²³. With the presence of these provisions, as 2005 findings indicate¹²⁴, Muslims were restricted from gathering for religious purposes. Also, it has been on the discretion of the police to determine the routes for demonstration regardless of people's wishes.

3.3 The Right to Take Part in Governance

The main areas of concern according to the 2005's findings were: (1) NEC's Composition¹²⁵, (2) Loss of Franchise, (3) An imbalance in party subsidies and financing¹²⁶, (4) The process of party registration and requiring candidates to have an affiliation, (5) Disparities in media access and coverage and lastly, (6) The issue of *Takrima* practice¹²⁷.

¹²⁰ Shermax Ngahemera, "NGOs Information Database Planned", Daily News (Tanzania), 10 April 2006, Page 3.

¹²¹ Helen Kijo-Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries, *Op. Cit*, Page 299

¹²² The Chief Islamic Leader.

¹²³ Section 10(c) of the Act.

¹²⁴ LHRC, Tanzania Human Rights Report 2005, Pages 31 - 33.

¹²⁵ Political activists have long contended the selection of NEC's Commissioners by the Government limits political involvement by citizenry. Also NEC's independence is therefore not guaranteed.

¹²⁶ According to the NEC's 2006 Report of Presidential, Parliamentary and Councilors' Elections, page 64, some of the political parties or candidates did not conduct election campaigns fully due to lack of resources and subsidy from the government.

¹²⁷ LHRC, Tanzania Human Rights Report 2005, Page 34.

Loss of Franchise

The Election Act, 1985 does not provide for voters who can not attend at the polling stations within Tanzania because they are living abroad. Likewise, it does not provide for the opportunity for remandees and prisoners or in the situation when a Tanzanian is within the country but for reason of disability, s/he can not present her/himself at the polling stations. All these facts infringe the right to vote.

In April 12, 2006 Tanzanians who are living in Namibia asked President Jakaya Kikwete to consider allowing Tanzanians living abroad to vote in the next elections. They said, despite living abroad, they still had a stake in Tanzania's governance. According to Report from the media (ThisDay and DailyNews (of Tanzania) both of April 13, 2006), the President said that "Tanzanians abroad may vote in 2010". He said the Mozambique's absentee voting program should be able to be done in Tanzania.

Private Candidates

Article 20 of the Constitution of Tanzania provides that every one has the right to participate in public affairs. Specifically for election matters, this provision put a condition of affiliation to any political party for anyone to be elected as a (political) leader¹²⁸. The Tanzania Human Rights Report of 2005 challenged that, "...this is an obvious infringement of the right to political participation...leadership does not come through political parties only, immediate revision is clearly required"¹²⁹.

As it appears to be a direct response to the recommendation of the 2005's LHRC Report, the Judgment for the Petition filed by Reverend Christopher Mtikila, was delivered this year.

Reverend Mtikila filed a Petition¹³⁰ He prayed for "a declaration that the Constitutional amendment to Article s 39 and 67 of the Constitution of United Republic of Tanzania as introduced by amendments contained in Act No. 34 of 1994 is unconstitutional". He also prayed for "a declaration that the Petitioner has the Constitutional rights under Article 21(1) of the Constitution of the United Republic of Tanzania to contest for the post of the President of the United Republic of Tanzania and/or the seat of a Member of Parliament of the United Republic of Tanzania as a private candidate"¹³¹.

The Court declared that¹³² the said amendments introduced by Act No. 34 of 1994 "are unnecessary and unreasonable restrictions to the fundamental rights of the citizens of

¹²⁸ President, Member of Parliament or Councilor (WEO).

¹²⁹ Pages 36 and 37. During that year (2005) Rev. Christopher Mtikila of Democratic Party also filed a Petition before the High to challenge the Constitutionality of this provision.

¹³⁰ *Christopher Mtikila V. Attorney General*, Miscellaneous Civil Cause No. 10 of 2005 at the High Court of Tanzania, Dar es Salaam Main Registry, at Dar es Salaam.

¹³¹ All these provisions (Article s 21, 39 and 67 of the Constitution) provided that all candidates for presidency or constituency seats must belong to a registered political party.

¹³² Judgment was delivered on 5th May, 2006 by Principle Judge Manento, Judge Massati and Judge Mihayo of the High Court of Tanzania at Dar es Salaam.

Tanzania to run for the relevant elective posts either as party members or as private candidates”. Then the provisions were declared unconstitutional and contrary to the International Human Rights Conventions¹³³. It should be noted that, this is the second time that a case of this nature was lodged in the High Court. In 1993 the same Petitioner, Rev. Mtikila filed a Petition in the High Court at Dodoma, Tanzania, to seek among other reliefs, a declaration that citizens of Tanzania have the right to contest for the posts of President, Member of Parliament and Local Government Councilor without being forced to join a political party. The High Court, in that 1993 case decided in the favor of the Petitioner. The Government appealed but later on withdrew the appeal and sent a bill in Parliament to legislate in anticipation against the decision of the court.

Takrima

During the year also, the High Court at Dar es Salaam declared it unlawful the use of traditional hospitality (“*takrima*”) during elections to be unlawful. The judgment came after a joint petition between LHRC, LEAT and NOLA to challenge the legality of *takrima*, which according to the Petitioners it was a political corruption, which infringed the right to free and fair elections. This case is discussed at length in chapter nine of this Report .

All these judgments would increase a citizens’ ability to participate in elections regardless of political party and could increase accountability of political leaders to their constituents.

Women Participation in Governance

There is a slight increase of women especially in the parliament, Government departments, institutions and Ministries. For instance, not like previous elections this time women were given more seats. The information from the Parliament Website indicates that there are total of 75 Women under the Special Seats in the Parliament. As the *extract* from the Parliament Website indicates;

Distribution of Members of Parliament on Gender for 2000 - 2005 and 2005 – 2010 Parliamentary Terms

2000 - 2005 Parliamentary Term			2005 – 2010 Parliamentary Term		
Gender	Total	Percentage	Gender	Total	Percentage
Women	61	21.33%	Women	96	30.28%
Men	225	78.67per centum	Men	221	69.72
Total	286	100%	Total	317	100%

Source: www.parliament.go.tz (Website of the Parliament of Tanzania).

¹³³ Therefore, it was made lawful for Private Candidate to contest for the posts of President and Member of Parliament along with candidates nominated by political parties. The Government was also ordered to put in place a mechanism that will regulate private candidates before next general election.

Therefore, Tanzania has reached the 30 per centum target of women representation in the Parliament as set by the Southern African Development Community in 2000 (SADC)¹³⁴ and the Constitution of Tanzania which also requires a minimum of 30 per centum of women seat in the Parliament¹³⁵.

The SADC's efforts are to reduce discrimination against woman in governance, and, their new target is for 50 per centum representation in Parliament. Other countries meeting the 30 per centum threshold include South Africa and Mozambique. With regard to representation for women in governance, Tanzania far exceeds the U.S, which only has 10 per centum of female Congresspersons and only 1 female governor out of a possible 50 governors¹³⁶.

Moreover out of forty (40) Permanent Secretaries and eleven (11) Deputes, the total number of women is Permanent Secretaries (including the Deputes). This is 27 per centum of the current number of Permanent Secretaries. See Paragraph 5.1 of this Report, in Chapter Five on "Discrimination in Employment" for more information about women.

Highlights of Electoral Process of 2005

Tanzania held presidential and parliamentary elections on 14 December 2005. Originally scheduled for 30 October 2005, the elections were postponed due to the death of a vice-presidential candidate for CHADEMA. This election was the third since the country returned to multiparty rule in 1992. Elections for the Presidency of Zanzibar and its House of Representatives took place on 30 October 2005, as scheduled. The analysis of the results was not reported in the Tanzania Human Rights Report 2005 because they were not issued till this year by the National Electoral Commission (NEC) of Tanzania. Hereunder are the highlights of the analysis of the results and related human rights issues;

The Results

The presidential election results showed that CCM candidate, Mr. Jakaya Kikwete obtained 80.28 per centum, CUF candidate, Prof. Ibrahimu Lipumba obtained 11.68 per centum, CHADEMA candidate obtained 5.88 per centum while the rest of candidates from other seven political parties for the presidential posts received less than 1 per centum. Lack of subsidy especially for young political parties would be one of the reasons that caused them to obtain few votes. As for parliamentary seats, CCM obtained 69.66 per centum; CUF 14.22 per centum, CHADEMA 8.16 per centum and the rest

¹³⁴ President Jakaya Kikwete of Tanzania has also appointed 6 female Ministers and 10 female Deputy Ministers (being 27% of the women in the cabinet). Some of them have been placed in key and important Ministries such as Ministry of Foreign Affairs (Dr. Asha Rose Migiro) Ministry of Finance (Ms. Zakia Meghji), Ministry of Education (Mrs. Margareth Sitta), Ministry of Legal and Constitutional Affairs (Dr. Mary Nagu) and Public Service Management (Mrs. Hawa Ghasia).

¹³⁵ Article 66 of the Constitution of Tanzania.

¹³⁶ See Pudenciana Temba, "More Women Given Decision Making Posts", Daily News (Tanzania), 4 April 2006, Page 16.

obtained less than 2 per centum. At the moment CCM owns 206 parliamentary seats for the constituencies¹³⁷.

The Challenges

During the year, the “Report of the National Electoral Commission on the 2005 Presidential, Parliamentary and Councillors’ Elections”, was released by NEC. Some of the challenges that this commission highlighted are summarized as follows;

- ❖ Some Regional Police Commanders and Officer Commanding Districts were interfering with the co-ordinated campaign programmes such as stopping campaign meetings of some candidates¹³⁸.
- ❖ Some political parties or candidates could not conduct election campaigns fully due to lack of resources so they demanded to be given subsidy by the government¹³⁹ because election campaigns’ costs are very high.
- ❖ In some places such as Bariadi, Bukoba, Musoma, Tarime, Karatu and Zanzibar there were some chaos during the campaigns¹⁴⁰.
- ❖ Some political parties submitted fewer names of their proposed candidates for women special seats in some council¹⁴¹.
- ❖ Some foreign observers did not return to observe the elections after the postponement of the election¹⁴².
- ❖ The money allocated and given to conduct election was not sufficient because of the increase in the number of polling stations¹⁴³.

The presence of those anomalies in elections endangers the right to free and fair elections. It is therefore necessary to look upon them and rectify the situation. Similar situation should not happen in future. The issue of subsidy from the Government especially during electoral campaigns, for new political parties is crucial.

¹³⁷ See more details at Pages 71 and 79 of the NEC’s 2006 Report.

¹³⁸ Pages 63 and 64 of the NEC’s 2006 Report.

¹³⁹ *Ibid* Page 64

¹⁴⁰ *Ibid* Page 63

¹⁴¹ *Ibid* Page 77

¹⁴² *Ibid* Page 80

¹⁴³ *Ibid* Page 14

Chapter Four - Economic and Social Rights

4.0 Introduction

Economic and social rights are provided for under the provisions of the ICESR and some of them¹⁴⁴ in the Constitution of Tanzania and other principal and subsidiary legislations. These rights include the right to work and fair remuneration¹⁴⁵, the right to own property¹⁴⁶, the right to health¹⁴⁷, education and other social services and the right to adequate standard of living. Apart from the right to work, other rights have continued to be outside the scope of basic rights and duties of the Constitution¹⁴⁸. Therefore, they are not guaranteed as basic rights under the Constitution.

4.1 Labour Rights

Right to Work

It is arguably stated that, the right to work is important as it relates to the very survival of the individual and society in general. It is close to the right to life itself and thus requires legal protection¹⁴⁹. Under the laws of Tanzania, this right to work is enshrined in the Constitution of Tanzania¹⁵⁰ as well as the *Employment and Labour Relations Act, 2004*¹⁵¹. It is also recognized and provided for under the provisions of international human rights instruments which Tanzania is a member. For instance Article 6 of the ICESCR states that; “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”.

It is obvious that large Section of the Tanzanian population is not employed or self-employing and therefore not working. For instance, during the year 2006, the employment and labor records showed that the unemployment rate is acute. According to the *Report of the Director of Youth Development of 2006* of the then Ministry of Labour, Sports and Youth Development, 33 per centum of Tanzanians are youth of the age between 15 to 35 and that 60per centum of the unemployment group are youths. The total number of primary, secondary and university graduates for each year who entered job

¹⁴⁴ Part III of the Constitution of Tanzania, which provides for the Basic Rights and Duties enshrines only the right to work and fair remuneration. Other socio-economic rights such as the right to education, health and development have not been included in the Constitution as basic rights.

¹⁴⁵ Article 22 of the Constitution of Tanzania.

¹⁴⁶ Article 24 of the Constitution of Tanzania.

¹⁴⁷ Has not mentioned anywhere in the Constitution or any law of Tanzania.

¹⁴⁸ Part III of the Constitution – From Article 12 to 29.

¹⁴⁹ Helen Kijo-Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries, Op Cit, page 105.

¹⁵⁰ Article 22 (1) of the Constitution of Tanzania provides that every one has the right to work.

¹⁵¹ Section 3 (f) which says that this law shall give effect to the provision of the Constitution of Tanzania.

market annually is estimated at 700,000, but only 40,000 get employment in the formal sector¹⁵².

Informal sector, which accounts for more than 98 per centum of the economic activities,¹⁵³ was not accorded much attention in 2006. The Government was implementing the *Properties and Business Formalization Program (MKURABITA)*, which is aimed at formalizing the business and properties of citizen and create enabling environment for informal business sector to operate within the ambit of law. This was not done as far as Dar es Salaam and Mwanza's situations are concerned. On the other side of it, it was also expected that, people would use their formalized businesses as securities for loan in order to increase their capital base, among other benefits. The challenge is that, the beneficiaries of this program are actually not aware of it.

Secondly, despite the absence of proposed enabling working environment especially for self-employment in business, the City Councils of Dar es Salaam and Mwanza launched constant campaigns against the hawkers (petty traders) commonly known as "*Wamachinga*". As for the city of Dar es Salaam in particular, they were ordered to clean-up and vacate the street pavements by 30 October 2006. In the process as it has been indicated in chapter two, people were injured and properties destroyed by the city militia. This is a serious violation of the right to work especially by considering the fact that there is no enabling business environment for informal sector in Tanzania.

The Deputy General Secretary for CHADEMA, Mr. Shaibu A. Akwilombe had this to say¹⁵⁴;

"...in fact, the government has done nothing...for instance, there is no any preparation at Kigogo Sambusa area – where the Machinga will be transferred to...[t]he decision to evacuate the Wamachinga from city centres is a serious issue which goes to the detriment of the life of more than one million people – according to the City's statistics...[T]o touch the life of one million people who come from every district of this country is an issue which needs a very careful decision, plan, strategies and enough preparations...[T]he government needs to consider social and economic impacts. For instance, there are children who needs to eat, go to school, pay medical bills, pay rent, electricity and water bills, etc...[W]e advice the government to use appropriate measures such as training them instead of spending more than 39.3 Million Tshs for the exercise of clearing them off the streets. Instead, that sum would have been used to train them about entrepreneurship skills..."¹⁵⁵

There were other similar situations of evicting people from "illegal working places". For instance in March and April this year, about 15,000 small scale miners were ordered by

¹⁵² See also Clarence Kipobota "Self-Reliance; Key to job Creation" The African (Tanzania), 18 October, 2006, pg 9.

¹⁵³ According to the Tanzania's Survey for Properties and Businesses Formalization Programme 2005.

¹⁵⁴ LHRC/HRM.VOL.XI/47 (File) – This was a letter of CHADEMA (reference number C/HQ/ADM/SG/02 dated 29/09/2006) to the Director, Dar es Salaam City. It was copied to LHRC.

¹⁵⁵ The extract of the letter of Mr. Shaibu Akwilombe with a reference number as quoted above.

the Regional Administration of Dar es Salaam to vacate their mining sites at the Kunduchi quarry mine in the City of Dar es Salaam because it was said that they destruct the environment. The miners protested against this decision as they rightly claimed that it would definitely cause their families to go hungry and they will not be able to support themselves¹⁵⁶.

There was also continuous violation of the right to work and mining of small miners by large mining firms. The investment policies in mining and other sector are blind of the indigenous rights. As it appears to most of the people, a need of investment money from foreign companies has been usurping the interest of Tanzanians – the reason why there is always conflicts and killings incidences in the mining areas.

Early this year, for instance, the conflict between small miners and the South African investor called TanzaniaOne in Mererani erupted¹⁵⁷. The Prime Minister, Mr. Edward Lowassa was quoted saying, “the Government was committed to see how best these contracts can benefit Tanzanians... investments must serve to raise the living standards of the people”. The question is which people does the Prime Minister talking about because nothing sufficient has been done so far to safeguard the interests of the small miners in Tanzania.

The interest of foreign companies has always been overriding those of indigenous. The critical role of the state was supposed to base on the idea of strengthening indigenous capacity-building in extracting minerals rather than curtailing them in favor of the people with high technology. After all, the return of benefits that the foreign companies are remitting to the communities is insignificant comparing to the benefit they yield from the mines.

Right to equal pay, favorable remuneration and working condition

The right to fair remuneration is provided for under Article 23 of the Constitution of Tanzania. The said provision stipulates that, every person has the right to fair remuneration in accordance with the work done and the qualification of that person. Section 27 of the *Employment and Labour Relations Act, 2004* stipulates to the effect that an employer shall pay to an employee any monetary remuneration to which the employee is entitled. There is no minimum standard wage set by this law. Therefore it depends on the agreement.

¹⁵⁶ Environmental Management is vital but it is still possible adopt ways of mining which would be less harmful to the environment apart from issuing a blanket prohibition. Provision of *Article 10* of the *UN Rio Declaration of the Right to Development and Environment of 1992*, says that, environment utility is a necessary component of economic development only that people should be involved in its management to make the usage sustainable.

¹⁵⁷ The classical issues have been scramble for areas. Also people believe that big mining companies are flying minerals out of the country to avoid paying taxes (no benefit to the local communities) and that the foreign companies have been threatening to shoot small miners for trespassing to their blocks (See: Asraji Mvungi, “Small Tanzanite Miners want Government to Publish Probe Team Findings”, *The Guardian* (Tanzania), 11April 2006, Page 3.

According to the research done “Globalization and Workers Rights in Tanzania: Report of Findings on the Rights of Workers in Tanzania”¹⁵⁸ violation of this right is serious in Tanzania. It is done mainly through two ways. Firstly, by underpaying the workers or/and secondly, by curtailing their entitlements for over-work.

With the coming of globalization, labour related disputes have increased tremendously. According to the findings of Legal Aid Clinic of LHRC at Magomeni, at least 75per centum (out of 4,617 claims) of the legal complaints lodged at the clinic were labor related cases, in particular remuneration claims.

In March this year the workers of Simba Plastic Company located at Nyerere Road in Dar es Salaam, went on strike claiming that the management of the company defaulted in paying them their overtime allowances Tsh.90 Millions since 2004¹⁵⁹.

The same happened in Mbeya, whereby ten thousand (10,000) workers in tea plantations in Rungwe District claimed that they were never paid their salaries for forty eight months. Although several efforts had been done, nothing was achieved as of August 2006. The workers’ claim originates from the former investor B.E Shamji who invested up to when Mohamed Enterprises took over.¹⁶⁰

The Liberty International Foundation (LIF) of Dar es Salaam claimed that the Beijing Construction Engineering Group Company Limited of Dar es Salaam has been underpaying its workers. This Chinese Company is the one which was constructing the Dar es Salaam National Stadium. According to the President of the said LIF, Rev. Christopher Mtikila, instead of the minimal wage of (Tanzanian) shillings 150,000 per month (or shillings 5,000 per normal working day), the Company has been paying its workers as little as shillings 2,000 per day which is shillings 60,000 per month¹⁶¹.

The intimidation, beating and other violations of the right to favorable working condition was also documented in the course of 2006. For instance, in July 2006¹⁶², more than three hundred workers of the Sea Cliff Hotel of Dar es Salaam went on strike alleging intimidation by their superiors¹⁶³. Favorable working condition is not limited to good physical environment only, but it includes the mental/ psychological state of affair for the workers.

¹⁵⁸ The research was done by LHRC in 2005 and the same year the Report was published.

¹⁵⁹ Peter Mwenda, “Wafanyakazi Simba Plastic Wagoma tena” [“Simba Plastic Workers on Strike again”], Majira, 18 March 2006, Page 5.

¹⁶⁰ PST Mbeya, “Wafanyakazi 10,000 Mashamba ya Chai Walilia Mishahara ya Miezi 48” [10,000 Tea Plantations’ Workers Claim for 48 Months Salaries”], Nipashe, 4 August 2006, Page vii/7.

¹⁶¹ LHRC/HRM.VOL.XI/31. The claim was put in a form of a letter to the Company with reference dated 16th September, 2006. The letter was copied to LHRC and received 20th September 2006.

¹⁶² See Ikunda Eric and Perpetua Mbegha “Wafanyakazi 300 Sea Cliff Wagoma” [“300 Sea-Cliff Workers on Strike”], Nipashe, 11 July 2006, Pages 1 and 4.

¹⁶³ LHRC sent a fact finding-mission which revealed that, one employee was actually beaten up by the Chief Chef of the Hotel. The incidence was Report ed to the Oysterbay Police. Representatives of these workers told LHRC that, there has been inhumane harassment from the superiors at the Hotel like slapping of workers. They were threatened to be fired should they Report these incidences to the police or public.

The major challenge under this liberal market economy is how to control private companies and business entities where most of the labour related conflicts emanate. Despite the fact that the new *Labour and Employment Relations Act, 2004* addresses some of contemporary challenges such as the issue of all forms of discrimination¹⁶⁴, favorable working conditions, particularized written contracts¹⁶⁵, the right to inform employee his or her rights¹⁶⁶, and so on, it is open ended in most of its provisions. For instance, as shown above, it leaves at the discretion of the employers to set the minimum wage. Therefore, it would not sufficiently safeguard the interest of workers.

Right to Organize at Work

This is guaranteed under Article 20 (1) of the Constitution of Tanzania. The said provision states, *inter alia*, that every one has the right to establish or join any association of his or her choice. The workers' associations in Tanzania are called Trade Unions. They are registered under part IV of the *Employment and Labour Relations Act, 2004*. Formally they were registered and operate under the Trade Union Act of 2000.

One of the requirements for the registration of the trade union is that it must be established at a meeting of at least 20 employees¹⁶⁷. This is unnecessary restriction because some of the working places have less than those required 20 employees; whereas, to establish an employers' association, it requires at least 4 employers¹⁶⁸.

In July 2006, it was Reported that ten employees of Kipengele Security Group (KGS) in Morogoro Region were terminated from employment. The Report said that those 10 people were fired because of the strike. That, the Company did not pay their salaries in time thus they decided to strike, the management got angry and decided to terminate them¹⁶⁹.

It should also be noted that according to the researches and findings¹⁷⁰, most of the people in the employment sector are not aware of the importance and need of trade unions for them.

4.2 Right to Own Property

The right to own property is guaranteed under Article 24 of the Constitution of Tanzania. The said provision stipulates that every person has the right to own or hold property

¹⁶⁴ Section 7 of the *Employment and Labour Relations Act, 2004* prohibits every kind of discrimination in the working place such as on the ground of color, nationality, disability, sex, HIV/AIDS, station of life, etc.

¹⁶⁵ Section 15 written particulars such as name, age, job description, hours of work, etc.

¹⁶⁶ Section 16, every employer is required to display a statement in the prescribed form of the employee's rights under this Act in conspicuous place.

¹⁶⁷ Section 46 of the *Employment and Labour Relations Act, 2004*

¹⁶⁸ Section 46 of the *Employment and Labour Relations Act, 2004*

¹⁶⁹ Lilian Lucas, "10 Wafukuzwa Kazi Kampuni ya Ulinzi Morogoro" ["10 Terminated from Security Company in Morogoro"], *Mwananchi* 15 July 2006, Page 8.

¹⁷⁰ According to LHRC 2005 Report on *Globalization and Workers' Rights in Tanzania*, page 41, less than 45 per centum of workers are members of trade unions.

lawfully acquired and shall not be arbitrarily deprived of his property without fair and adequate compensation according to the law.

The rights to own property is still inhibited in some ways by presence of some of the provisions of the laws of Tanzania. As Reported in previous years, the *Customary Laws Declaration Orders of 1963*¹⁷¹ prohibits women from owning properties. In 2006, this was unsuccessfully challenged in Court by two widows¹⁷² from Shinyanga Region with the assistance of WLAC. They were challenging the customary law on the grounds that it discriminates against women and violates the country's Constitution. Under Customary Law, women are not allowed to inherit property from their husbands, sons, uncles and other male relatives are given preference over women in matters of inheritance. Additionally, women are restricted from disposing of clan land and are therefore restricted in where they may live and how they choose to live their lives.

Another problem or challenge is privatization of public land, which ultimately displaces people from the ownership of the land. The year 2006 witnessed series of unjustifiable and unfair evictions incidences, which violate the right to own properties. Some of them are elaborated below;

Villagers at Makete District

About 2,485 villagers of Kikondo Village, Matamba Ward in Makete District, Iringa Region were ordered to move out of Kituro National Park. According to the exclusive interview with the District Commissioner for Makete District¹⁷³, it was said that the Government is forcing residents of that village within Kituro National Park to evacuate the area after the next harvest because the land is a water catchments area and a protected national park¹⁷⁴. No compensation shall be paid to the villagers because they have been reallocated to settle at Kinyika village. The place where these villagers are forced to vacate is actually a legally registered village. According to the District Commissioner, during colonialism, Kituro Area was actually considered as Reserved Area. There were Numbe Forest established in 1958, the Livingstone Forest established in 1938 and the Kituro Farm established in 1965. Kikondo Village was within the Kituro Farm. After the Ujamaa Vijijini (Villagilization) Operation, Kikondo Village was legally registered as a village. It had about 23 hectares size and till when it was changed to be a National Park there was more than 2,485 villagers.

There has been a conflict of interest on land between the Wildlife Authority (under the *Wildlife Conservation Act, 1974*) and the Village Governments (under the *Village Land Act, 1999*). Under the wildlife law, the Minister responsible for wildlife has the power to declare any area as protected area while under the land law; village Government has been

¹⁷¹ G.N 279 of 1963.

¹⁷² *Elizabeth Stephen and Another V. The Attorney General*, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 82 of 2005.

¹⁷³ On 8th March 2006 at 1030 to 1100 Hours.

¹⁷⁴ LHRC's exclusive interview with the District Commissioner for Makete District in May, 2006.

given full mandate of the land found within the village. The conflict arises when these two powers need same land.

Hadzabe: The Indigenous, Hunters /Gatherers and Minority Group of Mbulu District

In October 2006, the Hadzabe demonstrated in protest against their land being ceded to investor at Yaeda Chini in Mbulu District northern part of Tanzania. According to the information of LHRC field monitor for Mbulu, Yaeda Chini will be allocated to an Arab investor who would be granted a permit to hunt using firearm along side with the Hadzabe. With this permit about 3,000 Hadzabe shall be affected because the experience has shown that, investment in wildlife tends to exclude indigenous from entering in the licensed hunting blocks. See detailed information about the Hadzabe at Paragraph 5.6 on Chapter 5 of this Report .

Dodoma's Water Incidence

The villagers of Mzakwe village were threatened to be evicted from their areas without fair compensations to give room for the development of Dodoma Urban Water and Sewage Authority (DUWASA). The information obtained from the media said that, some of them were paid trivial compensation for the eviction. The Ministry of Water and Livestock Development set aside shillings 750 million for compensation but the Government has only paid Tsh 400 million and more than 90 out of the 800 villagers have received no compensation. The compensation was also not fair, for instance, one villager was given Tsh 398,000 for his two houses and a three acre farm while another was given Tsh 141,000 for his four bedrooms home and a seven acre farm¹⁷⁵.

4.3 Right to Health Services

The Constitution of Tanzania does not provide for the right to health services despite the *ICCPR's* calls upon state parties to this covenant to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health¹⁷⁶.

The Government has been putting efforts to improve health services through budgetary approach and improvement of health facilities plus working condition of medical practitioners. As for the budget for instance, a total health sector budget proposed for the year 2006/07 amounts to 500.8 billion shillings. The amount is 18 per centum greater than the total budget for last financial year 2005/06 which was 426.0 billion. The proposed health spending amounts to 10.3 per centum of the total anticipated Government expenditure which is slightly lower than the last years' 10.6 per centum.

There is increase in basic salaries of medical officers but it is not clear whether this includes provision for recruitment and deployment of new front-line health workers, or whether it only represents an upward adjustment of salaries on the Ministry of Health and Social Welfare (MOHSW) pay roll. Most of the MOHSW development budget has been

¹⁷⁵ See the Citizen of 31 June 2006. This information was Report ed by Lukas Lukumbo.

¹⁷⁶ Article 12 (1) of the ICCPR, 1966.

allocated for the rehabilitation of referral hospitals, which are actually found in few major towns only.

Moreover, there is no increase in MOHSW development budget. Most goes to AIDS and Malaria. The largest items in the development budget are 41 billion allocated for HIV/AIDS activities, 17.3 billion for rehabilitation of tertiary hospitals, and 8.5 billion to support malaria activities. The AIDS and malaria parts are funded in full from foreign sources.

Another anomaly of the 2006/7 budget analysis for health sector is that the provision for medical supplies and services has declined from 93.86 billion to 77.53 billion – a cut of 17 per centum. Considering that 24 billion of this is for anti-retroviral drugs, the remaining amount for other drugs and medical supplies has suffered an even sharper decline – from 67.57 billion to 53.42 billion, a drop of 23 per centum¹⁷⁷.

About 80 per centum of people interviewed by LHRC in October 2006 say that the costs of treatment are high. During the year, drugs have continued to be available at private hospitals, where majority of people cannot afford to purchase.

In January this year, 224 suspended doctors who boycotted last year¹⁷⁸ were allowed to resume working after agreeing with the Government on the improvement of their payments. However, 29 were dismissed on the allegation that they enticed others to boycott work last year¹⁷⁹.

*Maternal and Child Mortality Rate*¹⁸⁰

According to the WHO¹⁸¹, maternal death is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes. The major causes of maternal death are bacterial infection, toxemia, obstetrical hemorrhage, ectopic pregnancy, puerperal sepsis, amniotic fluid embolus, and complications of abortions¹⁸².

The LHRC's 2005 Report¹⁸³ indicated that according to the 2004/5 Tanzania Demographic and Health Survey, maternal anemia was found to have been a frequent cause of both maternal and neonatal mortalities. The situation has not changed much, especially in rural areas. For instance during the year 2006, Lindi Region was leading in

¹⁷⁷ More information see the Commentaries from Health Equity Group on the National Health Budget 2006/7 (LHRC/TGNP File Vol. VII/74).

¹⁷⁸ See LHRC, Tanzania Human Rights Report 2005, Page 40.

¹⁷⁹ See Majira 11th January, 2006

¹⁸⁰ Maternal Mortality Rate is worldwide used as the measure of the quality of health care system in a particular country.

¹⁸¹ See "Maternal Mortality Definition" searched through http://en.wikipedia.org/wiki/Maternal_death.

¹⁸² Also a recent investigation carried out in five regions of mainland by the Union of Tanzania Press Clubs titled "*Why women die in child birth*" indicated that lack of health centres, lack of medical personnel and poor infrastructure result in women either delivering at home or dieing before reaching a health centre.

¹⁸³ LHRC: The Tanzania Human Rights Report 2005, page 50.

the country for having larger number of maternal mortalities¹⁸⁴. The Regional Medical Officer said that 750 pregnant women died out of 100,000 children who are born alive. This situation has surpassed even the national estimates of 529 maternal mortality out of 100,000 live births. The lowest mortality rates in the world in 2006 according to WHO included Iceland at 10 per 100,000 and Austria at 4 per 100,000¹⁸⁵.

In Tanzania, there is always uneven allocation of the Government block grant to Councils for health. Some of the regions such as Kilimanjaro, Mwanza and Morogoro are allocated with more fund than others. For instance the 2006/7 budget allocation of this nature shows the decrease of 25 per centum for Tabora, while an increase of more than 70 per centum in those other regions. There is a need of doing similar rate of increase to all regions. Priority should be for marginalized regions such as Lindi and Rukwa.

4.4 Right to Education

The right to education is provided for under the provisions of Article 11 of the Constitution of Tanzania. The provision says that every citizen has the right to education and that the Government shall endeavor to ensure that there are equal and adequate opportunities to all persons at all levels of education, schools and other learning institutions. The legal challenge is that, this right to education is outside the Bill of Rights and Duties of the Constitution of Tanzania therefore it can not be enforced under the *Enforcement of Basic Rights and Duties Act, 1994*. This 1994 legislation enforces the rights, which have only been mentioned in the Bills of Rights and Duties which are Article s 12 to 29 of the Constitution of Tanzania.

Tanzania is also a party to the *ICESCR* which vests a duty to every member state to secure the right to education for every citizen of the party state. The prerequisites towards realization of this right to education are mentioned under Article 13 (2)¹⁸⁶ of *ICESCR*. These include equality, free accessibility and availability of both primary, secondary, technical and vocational schools as well as higher education to all. The covenant also calls for improvement of material conditions of teaching staff.

Primary, Secondary and Vocational Training Schools

Primary School

During the year 2006, provisions of compulsory primary school education continued to improve. The government, through the Ministry of Education and Vocational Training

¹⁸⁴ Also see the Felix Mwakyembe, "Lindi yaongoza kwa Vifo vya Wajawazito" ["Lindi (Region) leads on Materiality Mortality Rate"], *Mtanzania* 17 March 2006, Page 15.

¹⁸⁵ See "Maternal Mortality Ratio" Report of WHO through http://en.wikipedia.org/wiki/Maternal_death.

¹⁸⁶ Article 13(2) (a) to (d) of *ICESCR* of 1966. Tanzania ratified this Covenant in 1976 therefore, it is part to this convention.

continued to accomplish the already adopted Primary Education Development Plan (PEDP)¹⁸⁷ and this was the last year of the 2002 -2006 program.

The PEDP is an outcome of the Education Sector Development Programme (ESDP) which, were formulated by the Government in 1990's to address the existing problems and challenges resulting from on-going macro-economic, social and political reforms¹⁸⁸. It projected to enroll more than 7.5 million primary school age children by this year 2006. According to Dr. Dachi, the 2006 study by Business Environment Strengthening for Tanzania (BEST) indicates that enrolment rate during the year 2006 was actually 7,959,884 (7.9 or approximately 8 million), which is above the target. The Gross Enrolment Rate (GER) was therefore increased by 28.3 per centum ¹⁸⁹ as to 2006. This was most successful educational programme in Tanzania.

The table below summaries the total primary education enrolment and new admissions projections from 2001 to date;

	2001	2002	2003	2004	2005	2006
Grade 1- 7	4,842,875	5,405,070	6,247,624	7,125,416	7,421,234	7,710,240
Age 7 -13	5,679,676	5,814,309	5,943,946	6,080,657	6,220,512	6,363,583
(Population)						
GER	0.85	0.93	1.05	1.17	1.19	1.21
Age 7 -12		1,500,000	1,600,000	1,640,969	1,041,880	1,065,843
(Admissions)						

Source: Government of the United Republic of Tanzania: Primary Education Development Plan

However, despite these successful stories, there were some problems especially on the component of free primary school for all introduced by the PEDP. For instance, some of the schools continued to demand educational contributions from the parents, which were in fact higher than actual school fees. According to Dr. Fidon Mwombeki of Tanzania Coalition for Debit and Development (TCDD), research shows that “some head teachers denied seeing or receiving the funds”¹⁹⁰.

Other challenges that have been Report ed during the year are shortage of teachers, books, drop-outs, pregnant girl students and post primary school opportunities especially for girls¹⁹¹. For instance it was Report ed on the Government newspaper, the Daily News¹⁹² that in Tanga 93 per centum of the girls who finish primary school do not continue with studies for secondary schools.

¹⁸⁷ This Programme, according to Dr. Dachi of the University of Dar es Salaam, is envisaged as an initial plan for achieving the education targets outlined in the Tanzania Development Vision 2025 and other related strategies.

¹⁸⁸ Dr. H. A Dachi Enrolment Expansion and Access in Primary and Secondary Education in Tanzania: Towards a Strategy for Districts' Mobilization and Allocation of Investment, UDSM, 2006.

¹⁸⁹ In 2001 it was 84.4 per centum; in 2006 it was 112.7per centum (GER) of Tanzania. The Net Enrolment Rate was also increased from 65.5 per centum to 96.1per centum in the same period. The Gender Parity Index (GPI) for 2006 was 0.99 from 0.96 in 2003. This suggests that boys and girls are slightly equal in enrolment.

¹⁹⁰ Rayner Ngonji, “Is Free Primary Education a Whitewash?”, Sunday Observer, 11 June 2006, Page 7.

¹⁹¹ More details are available at LHRC – HRM Unit Database 2006.

¹⁹² 5th April, 2006.

In Ulanga district, it was Report ed during the year that about 580 out of 45,127 pupils in 89 primary schools failed to complete Standard Seven on account of truancy, pregnancy or death. Additionally, the District is faced with a shortage of 200 primary school teachers and a deficit of about 300 classrooms¹⁹³.

Moreover, the Government did not amend the *Education (Corporal Punishment) Regulations*¹⁹⁴, made under Section 60 (o) of the *Education Act, Cap.353* of the Laws of Tanzania. The said law defines “Corporal Punishment” to mean punishment by striking a pupil on his hand or his clothed buttocks with a light, flexible stick¹⁹⁵. It can be administered for serious breaches of school discipline or for grave offences committed which bring school into disrepute¹⁹⁶. Regulation 6 says that, the refusal to accept this punishment either by a pupil or by a parent on pupil’s behalf may lead to exclusion of the pupil from school.

This regulation has been subject to criticisms from human rights activists including LHRC because of its effects to the students. For instance, the LHRC field Monitor for Singida Region Report ed that four primary school teachers of Misiko Primary School at Singida District were arrested and brought before the resident magistrate Court in January this year for canning students and causing severe injuries¹⁹⁷.

Another problem that has been recorded throughout the implementation of 2002 – 2006 PEDP was a neglect of involvement of private sector. The PEDP provides for a need of involving different stakeholders in the management of the education sector¹⁹⁸. Civil Society is only to interplay at the level of implementation. For instance, the Civic Education Teachers Association (CETA) argued in May 2006 that a recent Government change of the primary school syllabi would be counter productive because teachers and other stakeholders have not been involved in the process.

Also HakiElimu questioned curricular changes with lack of staff to fulfill the needs of the subjects. It was observed that: (1) social skills was integrated with history, geography and civics (which made getting competent teachers difficult), (2) the subject “shoe repairing” was added but there were not teachers able to teach it, (3) lack of technically trained teacher for radio and watch repairing. All these changes were made by the Ministry of Education without consulting the teachers (see the Express 20 – 26 April, 2006). Another person, Mwalimu Mapezi Yonah of St. John English Medium Primary School of Tanga said that “abrupt changes in the curriculums present a problem for

¹⁹³ The statement of the Ulanga’s District Commissioner as quoted by the *Citizen* of 20 May 2006. The DC said that Ulanga District has received Sh 54.8m/- from the Government to construct 18 classrooms and 15 teachers’ houses as well as acquire school furniture. The fund is, however, very minimal to meet the actual requirement.

¹⁹⁴ G.N No. 294 of 2002.

¹⁹⁵ Regulation 2

¹⁹⁶ Regulation 3

¹⁹⁷ The teachers were Jesca Nganga 26, Mpoli Rashid 23, Honoratus Kiowi 27 and Ramadhani Madai 47. The students were punished for being late in the queue at the School.

¹⁹⁸ See Paragraph 2.3, page 3 of the Mpango wa Maendeleo ya Elimu ya Msingi (Primary Education Development Programme – PEDP) 2002 – 2006.

schools because it requires the purchase of new books which is another costly expense for private schools”¹⁹⁹.

While the Government is celebrating the score of about 100 per centum enrolment rate in some regions like Kilimanjaro and Arusha, in other parts of the country remained without school and/or teachers. A good example of those kinds of areas is villages in Mbulu and Kiteto districts where the Minority Groups (Hadzabe and Ndorobo) are living.

In these areas, Yaeda Chini and Mongo wa Mono, the government’s efforts at offering educational opportunities to Hadzabe continue to fail because of the long distance between the schools and their villages. The 40 km hike from Endajaj Ward to Mongo-Wa-Mono Sub location where many Hadzabe live is too far to allow the children to attend schools and participate in the Hadzabe way of life. This is a serious challenge because the Hadzabe are hunter-gatherers, they are nomadic people and therefore children are integral in assisting with the procurement of food for their survival. Ruben Mathayo, the leader of the Mono-Wa-Mono location, was quoted by media²⁰⁰ arguing that the modern schools area waste for his culture because “they don’t teach the children valuable things and erode their culture”. Additionally those who are able to attend school face huge economic hurdles in attending university because of a lack of funds.

Secondary School

There is an on going programme for secondary schools, which is called the Secondary Education Development Plan (SEDP of 2004 – 2010). SEDP just like PEDP is the implementing tool of the ESDP. Its target is to reach the enrolment rate of 2,000,000 secondary school by the year 2010 from 345,000 of 2003 before the inception of this programme. The challenge though is that, this programme does not address adequately the issue of post-form four education²⁰¹. This is also most important but almost forgotten juncture in the education system of Tanzania. The enrolment of students in high schools (form five) has not been good.

For instance, according to the statement issued by the National Examination Council of Tanzania (NECTA) in March 2006 only 18,121 students were selected to join Form Five in Government secondary schools out of 79,903 students who sat for the national Form Four examinations last year (2005) and this being only 13 per centum of students who passed and joined Government advanced level secondary schools.

The Higher Education Student Loans Scheme

The Higher Education Student Loans Scheme is administer by the Higher Education Students’ Loans Board which is established under *Students Loans Board Act, Act No. 9 of*

¹⁹⁹ Erick Kabendera, “More Work Still Needs to be done about Tanga”, Citizen (Tanzania), 22 May 2006, Page 13.

²⁰⁰ See Valentine Mare Nkwame, “Satellite Schools Meant for Hadzabe Kids Fail the Mark”, ThisDay, 22 June 2006, Pages 1 and 2.

²⁰¹ Form Five or Vocational Training Education.

2004 and commenced operations in July, 2005. Among other things, the Board has been entrusted by the Government with the responsibility to disseminate loans to students pursuing Advanced Diplomas and Degree studies at accredited higher education institutions in and outside the country.

According to the Act, eligible and *needy*²⁰² Tanzanian students who secure admission in higher education institutions may seek loans from the Higher Education Students' Loan Board (HESLB) to meet part of, or all, costs of their education such as meals, accommodation, stationeries, research expenses, tuition fee and special faculty expenses. There is no mechanism in place to identify *needy* applicants for the loan. Moreover, since there is the requirement of giving anything valuable as security for the payment of the loan, it is obvious that applicants who are coming from poor families would not qualify for the loan. Therefore, the possibility of offering a loan to the applicants coming from the rich families is high.

Generally, the year 2006 was covered with a shadow of uncertainties, the result of which students from the University of Dar es Salaam and other Universities demonstrated. Lot of applicants (students) for the loan did not secure the loan despite the fact that they were already admitted for studies.

On the other side, the amount of money lent was still incompatible with the actual current life standard. According to the 2006/2007 Guidelines issued by the Board, the HESLB may provide Tshs 2,500 (less than 2 USD) for Meal and Accommodation per day; Not more than Tshs 120,000 (less than 100 USD) per year for Books and Stationeries Expenses. The leaders of the Dar Es Salaam University Student Organization (DARUSO) argued that the current allowance of Tshs 2,500 is not sufficient to sustain their basic needs of 3 meals a day, accommodation and transportation. They also said that, lack of resources place students at a marked disadvantage because hungry student will be tired and inattentive thus causing poor performance and under-qualified graduates.

The Postgraduate students were disqualified from the said loan. The Government insisted that the money that is advanced to the student was the loan and not their rights. The restriction of students who qualify for a loan is actually against the statement of President Jakaya Kikwete which he made during the inauguration of the fourth phase Parliament of Tanzania on the 30 December, 2005. The President said that "The Fourth Phase Government will concentrate on ...strengthened the Higher Education Students Loan Board so that it can offer its services to more people"²⁰³. But to the contrary the opposite is true.

²⁰² A "*Needy*" student is the one who is an orphan, disabled or has disabled poor parents, is from a poor single parent family, is from marginalized and disadvantageous groups and/or is from a low income threshold family earning national minimum wage or below (See "The Higher Education Students' Loans Board: Revised Guidelines And Criteria For Granting Student Loans Starting 2006/2007 Academic Year")

²⁰³ Page 19 Paragraph 8 of the Speech – English Version.

Chapter Five – Rights of Vulnerable Groups

5.0 Introduction

Particular attention should be given to discrimination, equality, equity and vulnerable groups. These groups generally include women, refugees, minorities or indigenous peoples, but there is no universal checklist of who is most vulnerable in every given context. Rather, rights-based approaches require that such question be answered on a local basis and the vulnerability shall be assessed in relation to major human rights concerns in a given country.

The right of equality is enshrined in Article 12 of the Constitution of Tanzania, which states that “[a]ll human beings are born free, and are all equal”. However, despite the several international and regional instruments²⁰⁴ designed to protect the vulnerable members of the society, this general principle is too often disregarded.

Moreover, Article 13 of the Constitution states that “[a]ll persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law”. At its fifth paragraph, this disposition defines the expression “discriminate” as meaning:

“to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion or station in life such that certain categories of people are regarded as weak or inferior and subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantages outside the specified conditions or the prescribed necessary qualifications”.

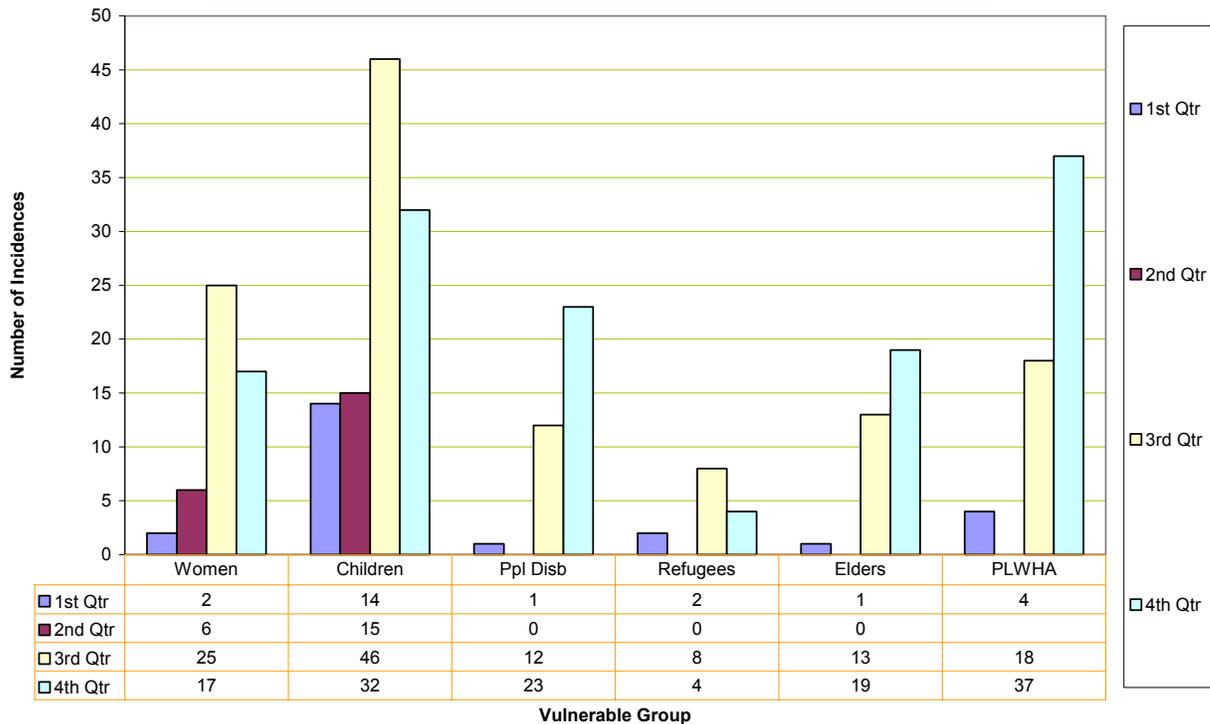
Therefore, the Constitution prohibits discrimination based on nationality, tribe, origin, political affiliation, colour, or religion. Conversely, discrimination based on sex, age or disability is not specifically prohibited by law. Besides, as presented throughout the present chapter, numerous international instruments have been ratified by the Tanzanian authorities over the years to ensure the respect of these values.

However, discrimination against vulnerable groups and difference of treatment were clearly persisting in Tanzania over the year. The following graphics give good illustrations of the problems rooted in the Tanzanian society that will be approached in this chapter.

²⁰⁴ Among others, we can cite: the UDHR (1948), the ICCPR (1966), the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), the CRC (1989), *UN Convention Relating to the Status of Refugee* (1951) modified by the *1967 Protocol Relating to the Status of Refugee* (1967), the *Convention on the Elimination of All Forms of Racial Discrimination* (1965) the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969) and the *African Charter on the Rights and Welfare of the Child* (1990).

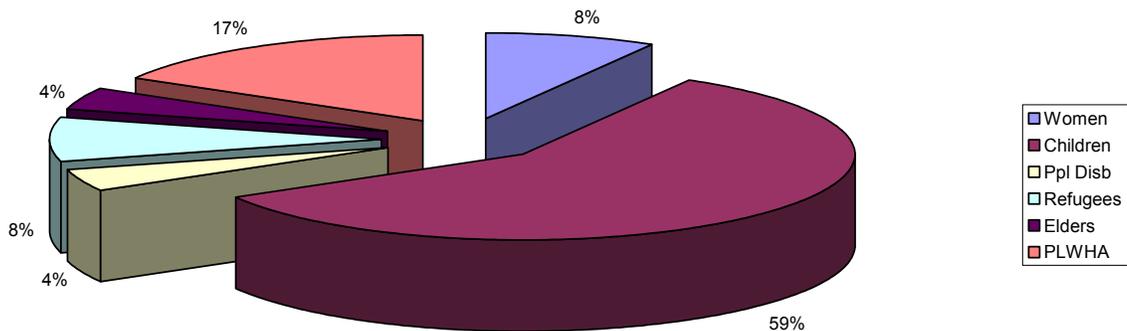
The Trend of Violation of the Rights of Vulnerable Groups in Tanzania 2006

Source: LHRC-HRM Unit Database, Dec, 2006



The Trend of Violation of the Rights of Vulnerable Groups in Tanzania 2006

Source: LHRC-HRM Unit Database, Dec, 2006



5.1 Women's Rights

In a vast majority of developing countries, women are often considered as second class citizens as they cannot sufficiently benefit from their rights to the same extent as men. Although Tanzania is a signatory to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) since 1985, the situation of the women in the country remained problematic under several circumstances in 2006. The greater part of society stays traditionalist when it comes to gender issues and the application of customary laws in certain domains like inheritance (with the application of the *Local Customary Law (Declaration) Order*, 1963) illustrates well the strength of traditions in the country.

In Tanzania, the issues commonly associated with the notion of women's rights include, though are not limited to: right to bodily integrity and autonomy, right to own property, right to education, right to work, right to fair wages as well as marital rights. This section will be devoted to the analysis of recurrent situations related to these common issues.

Female Genital Mutilation

Every year on the 6th of February since 2003, the African continent marks the war on Female Genital Mutilation (FGM). The African Union (AU) emphasized the need for all its members to end the practice of FGM because it is a “violation of the human rights and dignity of girls and women.” In Africa, 16 countries have already banned the practice²⁰⁵. FGM is defined by the World Health Organization as including “all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs, whether for cultural or other nontherapeutic reasons”²⁰⁶.

Tanzania is party to various international human rights instruments that provide for the protection of girls from the practice of FGM, including the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), the *Convention on the Rights of the Child* (1989), the *African Charter on the Rights and Welfare of the Child* (1990), the *Goal for the World Summit for Children* (1990) *Declaration and Programme of Action of the International Conference on Population and Development* (1994), *Declaration and Programme of Action of the World Summit for Social Development* (1995) as well as the *Beijing Platform for Action* (1995). More recently, on 26 October 2005, the *Protocol on the Rights of Women in Africa* (also called the “Maputo Protocol”) was added to the framework of the *African Charter on Human and Peoples' Rights*. Article 5 of the Protocol requires that all forms of FGM be condemned and prohibited. Although Tanzania has signed this Protocol in 2003, it was not ratified by the end of 2006²⁰⁷.

²⁰⁵ Addis Ababa “End female genital Mutilation – African Union,” *ThisDay* (Tanzania), 19 June 2006, Page 11.

²⁰⁶ “Executive Summary”, *World Health Organization*, 17 January 2007, http://www.who.int/reproductive-health/publications/annual_technical_Report_s/2000/ATR2000_executive_summary.htm.

²⁰⁷ *No Peace Without Justice*, 18 January 2007, <http://www.npwj.org/tf/maputo/indexnotratif.php>.

In domestic law, FGM has been prohibited since 1998 with the adoption of the *Sexual Offences Special Provisions Act*, 1998. Amending the *Penal Code*, 1930, Section 21 of the Act criminalizes FGM upon anyone under the age of 18. Punishment for the practitioner is imprisonment of from 5 to 15 years or a fine not exceeding 300,000 shillings, or both. However, the law has not been effectively enforced since then; there have been some arrests under this legislation, but the prosecutions have been very slow to take place.

Although the Tanzanian Government officially prohibit FGM, which is widely condemned by international health experts as damaging to both physical and psychological health, it is still performed in approximately 20 of the country's 130 main ethnic groups²⁰⁸. FGM is still famous in several regions such as Arusha, Manyara, Mara, Dodoma, Singida and Morogoro.

According to WHO²⁰⁹, the immediate and long-term health consequences of FGM vary according to the type and severity of the procedure performed. Long-term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse) and sexual dysfunction as well as difficulties with childbirth. In addition to various psychosexual and psychological health issues, concerns have arisen more recently about the possible transmission of HIV due to the use of infected instruments during the operation.

A recent WHO Report involving 28, 393 women from six different African countries detailed the numerous obstetric outcomes of the practice and the conclusions are alarming²¹⁰. The death rate of babies during and after birth were found to be 55% higher in some cases (the number of deaths could be higher considering the fact that all these women were receiving hospital care which most women do not). Additionally, women who received FGM III (excision of external genitalia or narrowing of vaginal opening) are 30% likelier to need caesareans. In terms of its effects on newborns, the Report found an increased need to resuscitate the babies and a 66% higher case in babies of women who received FGM III. "It is estimated that in the African context an additional 10 to 20 babies die per 1,000 deliveries as a result of [FGM]"²¹¹.

LHRC's latest research on the topic states that "cultural and social identities are the most cited reasons for the continuation of FGM in the country"²¹². Banning FGM by making it a criminal offence has produced some effects on the practice in itself (like reducing the age of the girls being mutilated in order to ensure that school officials do not discover the

²⁰⁸ "AFROL Gender Profile – Tanzania", [African News Agency](#), 16 November 2006

²⁰⁹ WHO "Fact sheet on Female Genital Mutilation", , 22 January 2007

²¹⁰ WHO "Female Genital Mutilation (FGM) and Obstetric Outcome: WHO collaborative prospective study in six African countries", 22 January 2007.

²¹¹ Nasser Kigwangallah, "The bad effects of FGM on babies", [Sunday Observer \(Tanzania\)](#), 18 June 2006, Page 8.

²¹² LHRC, [A Report on the Research into the Practice of FGM in Tanzania](#), Dar es Salaam, LHRC, 2005, 17.

mutilation²¹³ or practicing it by night²¹⁴) but has not eliminated them. LHRC also notes that “[t]he deep-seated cultural traditional values and standards that support the practices are very strong and laws banning the practice will be ineffective unless combined with an educational campaign”²¹⁵.

Hence, efforts to educate parents as well as making the religious leaders more aware about the danger of FGM has to complete the Government ban in order to eradicate the practice²¹⁶. Various actors, such as governmental institution, non-governmental organization as well as international organization, are actively working on spreading information on FGM in targeted communities and on increasing the application and effectiveness of the law prohibiting FGM.

For instance, the efforts in the region of Dodoma to eliminate the practice demonstrate well the complementarity of the diverse actions. On the one hand, the Dodoma Rural District Commissioner, Zainabu Kwikwega, assured that the Government will relentlessly prosecute people who perpetuate FGM at a ceremony honouring 280 young people from the Gogo tribe who had finalized their life skill studies (this custom is seen as an alternative to FGM, as girls are taken through the initiation without been cut)²¹⁷. On the other hand, the NGO Women Wake Up is working to educate communities about the ill effects of FGM by bringing “teachers, traditional elders, midwives, circumcisers, village Government leaders, religious leaders together with famous people in villages”²¹⁸.

The possible effects of such social implication are well demonstrated with the Anti-FGM campaign conducted by the Christian Council of Tanzania (CCT) in Nyamongo area (Tarime District, Mara Region); this campaign has Report edly reduced FGM by 67% (only 200 of 600 eligible girls were actually circumcised). The success of the CCT’s campaign was largely based on working closely with community leaders (including circumcisers) to provide them with information about the consequences of the practice²¹⁹.

Those examples show the importance of continuing to educate people about the dangers and effect of FGMs in the relevant communities as well as to bring together the various efforts on this aspect. According to the Tanzania Demographic and Health Survey released in 2006, the prevalence of FGM has slowly decline during the last decade; it had dropped from 18% in 1996 to 15% in the present survey (data collected during the years

²¹³ *Ibid.*

²¹⁴ Prosper Kwigize, “Ngariba Sasa Watumia Mbinu Mpya” [“Perpetrators (of FGM) now Opt for new Trick”], Tanzania DAIMA, 28 February 2006, Page 5.

²¹⁵ Legal and Human Rights Centre, A Report on the Research into the Practice of FGM in Tanzania, Dar es Salaam, LHRC, 2005, 4.

²¹⁶ Christine Chisha, “Poverty perpetrates FGM myths – TAMWA”, The Guardian (Tanzania), 24 July 2006, Page 5.

²¹⁷ Privatus Lipili, “DC warns FGM perpetrators”, The Guardian (Tanzania), 10 April 2006, Page 2.

²¹⁸ Tunu Ally, “Parents of FGM victims sought”, The Express (Tanzania), 29 June – 5 July 2006.

²¹⁹ Mugini Jacon, “Campaign against FGM pays off”, Daily News (Tanzania), 1 May 2006, Page 2; Story also in: Ernest Mwere, “CCT Campaign Against FGM bearing Fruits”, ThisDay (Tanzania), 1 May 2006, Page 3.

2004-2005)²²⁰. In spite of this, there is still room for major improvement and the Government has the responsibility to unify and promote the movement as well as to prosecute the people responsible of the practice.

Healthcare

Both gender differences and inequalities can create inequities between men and women in health status and access to health care. Social differences between men and women affect health and the health consequences of discrimination against women are widespread in Tanzania.

Article 12 of CEDAW specify that;

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this Article , States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

Tanzania's health policy is designed to improve the health of all Tanzanians with a focus on those most at risk. One of the major objectives is to reduce infant and maternal morbidity and mortality and to increase life expectancy. To address issues related to women's health, the Government has come with some strategies, such as: “a ministry to look after women's issues, the safe motherhood initiatives, improvement of the knowledge and skill of health care providers, as well as collaboration with nongovernmental organizations and private agencies”²²¹. These goals have however not been reached yet and the authorities seemed to have failed on improving the situation of the women in the health sector in the past years.

The situation is particularly alarming in the domain of obstetric cares. Maternal mortality is recorded at 300-400 deaths per 100,000 women; the main causes are haemorrhage, sepsis, rupture of the uterus, anaemia and others. The risk factors associated with the said causes include “maternal weight, age, child spacing, and number of births per woman; malaria and anaemia; imbalance of energy and food intake; HIV/AIDS; women's workload; and [FGM]”²²². Infant mortality and birth complications for the mother arise because of inadequate pre and post natal care as well as for the reason that more than half of all births occurs at home. While postnatal care severely reduces complication after

²²⁰ National Bureau of Statistics (NBS) [Tanzania] and ORC Macro., Tanzania Demographic and Health Survey 2004-05, Dar es Salaam, NBS and ORC Macro, 2005, 249.

²²¹ Mella PP., “Major factors that impact on women health in Tanzania: the way forward” (abstract), National Center for Biotechnology Information, 18 January 2007.

²²² *Ibid.*

delivery, more than 83% of women who deliver at home do not receive any such care. Among the contributing factors is the lack of health care centres and trained professionals in remote areas. A recent investigation carried out in five regions of the Mainland by the Union of Tanzania Press Clubs titled “*Why women die in child birth*” shows that the lack of health centres and of medical personnel as well as the poor infrastructure result in women either delivering at home or dying before reaching a health centre. Meanwhile, antenatal care appears more prevalent with 90% of women receiving it according to a Tanzanian Demographic and Health Survey from 2004-5, but the Report stresses that women may not necessarily be getting the recommended care²²³. Moreover, according to LHRC 2006 research²²⁴, more than 50% of the respondents to the questionnaire has affirmed that medical staff (especially in the maternity ward) has tended to harass pregnant women in the hospital over the year.

Actions from the Government are definitely needed to achieve health equity and a higher quality of health care for women in the country.

Domestic violence

Violence against women is a universal phenomenon that persists in every country and it is equally a consequence and a cause of gender inequality. According to the WHO Multi-country Study on Women’s Health and Domestic Violence in which Tanzania has participated, there is a false perception that home is “safe haven” for women by demonstrating that they are more at risk of experiencing violence in intimate relationship than anywhere else. It is particularly difficult to effectively react to this specific form of violence as many women accept it and consider it “normal”²²⁵.

Article 4 of the *Declaration on the Elimination of Violence against Women* reads:

“State should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women.”

The Tanzanian *Law of Marriage Act*, 1971 makes a declaration against spousal battery at Section 66 by stating that “[f]or the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse”. In addition, cruelty (whether mental or physical), is recognized and can be accepted as an evidence that the marriage has irreparably broken down (Section 107(2)(c) of the Act). However, the Act neither makes an offence of such behaviour nor provides for any punishment.

²²³ Pacifique Nkeshimana, “Child birth picture is not a rose one”, *Sunday Observer* (Tanzania), 2 April 2006.

²²⁴ Analysis of LHRC Questionnaires (October 2006).

²²⁵ WHO, “WHO Multi-country Study on Women’s Health and Domestic Violence”, 18 November 2006, view it at <http://www.who.int>.

Besides, the *Sexual Offence Special Provision Act*, 1998 avoids this matter at its section 5 by not providing for the crime of rape if the victim was married to her attacker and not separated from him at the time of the event. Therefore, there is no effective legislation addressing this specific issue. Traditional customs that subordinate women remain strong in both urban and rural areas and local magistrates often upheld such practices. During the past years, a large number of women have been killed by their husbands or commit suicide as a result of domestic violence.²²⁶

The said WHO Multi-country Study has highlighted some serious issues in its related Country Finding Sheet²²⁷. On the prevalence of partner violence, the following statistics were collected:

- 41% of ever-partnered women in Dar es Salaam and 56% in Mbeya had ever experienced physical or sexual violence at the hands of a partner; in Dar es Salaam, 33% of ever-partnered women had experienced physical violence and 23% sexual violence, compared to 47% and 31% in Mbeya;
- 17% of ever-partnered women in Dar es Salaam and 25% in Mbeya had experienced severe physical violence (being hit with a fist or something else, kicked, dragged, beaten up, choked, burnt on purpose, threatened with a weapon or had a weapon used against them); for between one third and one half of the women had experienced this in the past 12 months.

During the launching of this study, the Tanzanian Minister for Community Development, Gender, and Children, Hon. Sophia Simba, has called on the police and the judiciary to create an in-house department to deal with domestic violence. She affirmed that most women who have violent behaviour perpetrated against them reveal the aggression to friends and relatives but not to the police. She also made a general call in favour of greater education about violence against women and for effective legal channels for their assistance²²⁸.

According to its “Report on Violence Targeting Women,” Tanzania Media Women’s Association (TAMWA) is of the opinion that bride-price is also a large factor in the suffering of women. The findings come from a survey conducted in ten Mainland regions (multiple tribes were represented in the survey). Of the 725 people (439 women, 286 men) surveyed, 68.9% (351 women, 149 men) contended that bride price contribute to harassment of women in marriages. The high price of the dowry demanded by the bride’s family (usually the father of the bride-to-be) could lead to some abuse from the man and his family²²⁹. While Tanzanian law neither mentions nor prohibits bride price, it does offer a cause of action for involuntary or forcible marriage: “No marriage shall be contracted except with consent, freely or voluntarily given, by each of the parties

²²⁶ “AFROL Gender Profile – Tanzania”, [African News Agency](http://www.afrol.com), 16 November 2006, <http://www.afrol.com>.

²²⁷ “WHO Multi-country Study on Women’s Health and Domestic Violence”, *Op. Cit.*

²²⁸ Upendo Minja, “Police, Judiciary Advised to Establish Gender Violence Department”, [The African](#) (Tanzania), 20 April 2006, Page 4.

²²⁹ Erick Kabandera, “Bride Price Bane of Pursuit for Gender Equity”, [Sunday Citizen](#) (Tanzania), 14 May 2006, Page 14.

thereto,” reads section 16(1) of the *Marriage Act*, 1971.²³⁰ Unfortunately, though, most women are not aware of their legal rights or are fearful of bringing lawsuits in this matter.²³¹

Trafficking in Women

In 2000, the United Nations adopted the *Convention against Transnational Organized Crime*, also called *Palermo Convention* along with two protocols thereto:

- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*; and
- *Protocol against the Smuggling of Migrants by Land, Sea and Air*.

These instruments signed by Tanzania contain elements of the current international law on human trafficking. In municipal law, section 14 of *Sexual Offences Special Provision Act*, 1998 amends the *Penal Code*, 1930 to include a new section that criminalizes human trafficking.

However, according to the U.S. Department of State, Tanzania remained in 2006 a source and possibly a transit country for human being trafficked for forced labour and sexual exploitation. Girls from rural area are trafficked to urban centre for domestic servitude and commercial sexual exploitation. A small number of girls is also Report edly trafficked to South Africa, Oman, the United Kingdom, and possibly other European or Middle East countries for domestic servitude²³².

The deputy director of the Ministry of Community Development, Gender and Children, Mr. Henry Chali, has confirmed the growth of human trafficking in Tanzania. While the Government recognizes the existence of the problem, quantifying the issue remains hard because of the lack of official research in the area. Another major problem is the perception of what does and does not constitute trafficking. The country is still handicapped by the fact that police and local authorities are lacking in the understanding of what exactly constitute the crime. While the Tanzanian Government has joined forces with the US and the International Labour Organization, the biggest challenge facing these institutions and anti-trafficking activists is training law officers on trafficking issues, developing a witness protection mechanism, and establishing more systematic public awareness campaign.²³³

Although the Government is making efforts by improving its laws and by recognizing the scope of the issue, it does not fully comply with the minimum standards for the elimination of trafficking. In order to address trafficking in persons more effectively,

²³⁰ John Kukekana, “Study Links Dowry to Abuse of Women”, *Daily News* (Tanzania), 18 May 2006, Page 13.

²³¹ *Ibid.*

²³² “Country Narrative – Tanzania”, *GVNet*, 2 December 2006, <http://www.gvnet.com>.

²³³ Charles Nzo Mbaga, “Tanzania enters modern-day slavery,” *Daily News* (Tanzania), 10 June 2006, Page 13.

Tanzania's response to this phenomenon should include vigorous actions, like investigation and prosecution of traffickers, implementation of a plan designed to harmonize all elements of its legal code pertaining to trafficking in persons as well as building on the joint government-NGO efforts in education and awareness to result in a nationwide campaign²³⁴.

Sexual Harassment

In response to concern about violence against women, the Parliament passed the *Sexual Offences Special Provisions Act*, 1998 which, among other things, provides for life imprisonment for persons convicted of rape and child molestation. In order to target a wider range of wrongful sexual behaviours, Section 12 of the Act extends in its sub-sections the notion of "sexual harassment" to these actions;

- (2) Whoever, intending to insult the modesty of woman utters any words, makes any sound or gesture, or exhibits any other including any organ whether male or feminine, intending that such word or sound shall be heard, or that the gesture or object shall be seen, by the woman, or intrudes upon the privacy of the woman, commits the offence of sexual harassment;
- (3) For the avoidance of doubt, unwelcome sexual advances by words or actions used by a person in authority, in a working place or any other place, shall constitute the offence of sexual harassment.

Although several persons were prosecuted for rape and battery under this law during the year, the situation in Tanzania for women regarding that matter is not at its best and there is room for major improvements.

In this regard, WHO found out some alarming statistics concerning sexual abuse of girls less than 15 years of age and forced first sex in Tanzania²³⁵:

- About one out of ten respondents Report ed sexual abuse before the age of 15 years;
- About 15% of women Report ed that their first experience of sex was forced;
- The younger a woman had first sex, the more likely that this was forced, with about 40% reporting that first sex was forced when the first sexual experience was under 15 years of age.

There is a wide range of reason that tends to explain the scope of this phenomenon in the country. On the one hand, it is hard to establish some reliable information on the prevalence of rape as the majority of rape cases stays unreported. On the other hand, courts have often rejected cases in the past due to lack of evidence. Some police Report

²³⁴ "Country Narrative – Tanzania", *GVNet*, 2 December 2006, *Op. Cit*

²³⁵ WHO, "WHO Multi-country Study on Women's Health and Domestic Violence, 18 November 2006, *Op. Cit.*

edly advised rape victims to clean themselves before going to hospital for examination, which contributed to the removal of important evidence²³⁶.

Rape and sexual abuse of vulnerable women, such as refugees, women with disabilities as well as school girls, have been prevalent during 2006. Government officials frequently made public statements criticizing such abuses, but action were rarely taken against perpetrators.²³⁷ The disastrous effects of such practice are numerous. In addition to the physical and psychological damages for the victims, such violations of women's rights tend to escalate the rate of HIV infections throughout the country. Therefore, sexual oppression combined with a high biological receptiveness of viral transmission is a major treat for women. Educating the women about their legal rights as well as informing the public in general would surely be one of the key solutions to address this issue.

Discrimination in Custom, Laws and Practices

Article 2(f) of CEDAW addresses this specific issue and request from the Parties “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. In spite of this, Tanzanian women's civil rights are often limited by the existence of several factors, such as the dual legal system which includes statutory, religious and customary laws, the presence of discriminatory laws as well as some remaining traditions and practices. As a result, although the law provides for equality of women, women’s rights are in practice often disregarded.

Among others, here are some examples of discriminatory Tanzanian legislations that remain applicable in 2006:

- The *Law of Marriage Act*, 1971 is discriminatory with respect to the legal age to get married; while the Act allows marriage for those aged 18 and above, it enables girls as young as 15 to be married with the permission of parents;
- The *Citizenship Act*, 1995 has discriminatory effects when stating that: (1) a person whose father was a Tanzanian citizen at the time of the birth is entitle to naturalization (section 9(2)); and (2) a woman who is married to a citizen is entitle to be naturalized (section 11(1))²³⁸; and
- The *Local Customary Law (Declaration) Order*, 1963 excludes the possibility for a widow to inherit land from their deceased husband.

²³⁶ *Ibid.*

²³⁷ “AFROL Gender Profile – Tanzania”, *African News Agency*, 16 November 2006, *Op Cit.*

²³⁸ The regulation clearly discriminates against women by penalizing women who marry foreigners, as well as their children. In the situation where a Tanzanian woman marries a foreign man, the foreign man is not eligible to apply for citizenship and, as the dual citizenship is prohibited, these Tanzanian women might have difficulty to stay in the country with her family. Ultimately, she might have to renounce to her Tanzanian citizenship. This problem is also observed in refugee camp where Tanzanian women getting married to refugee have to join their husband in the camp. In contrast, it is interesting to note the positive discrimination created by the application of these rules toward foreign women married to Tanzanian citizen.

Civil society activists and individual people have been reporting incidences of discrimination against women especially in matters relating to inheritance. The reasons for these discriminatory restrictions on inheritance and ownership of property reside in concessions made by the Government and courts to customary and religious law.

As an example, two widows from Shinyanga Region with the assistance of WLAC have challenged the Customary Law on the grounds that it discriminates against women and violates the country's Constitution²³⁹. Under Customary Law, women are not allowed to inherit property from their husbands, sons, uncles and other male, as relatives are given preference over women in matters of inheritance. Read Paragraph 4.2 on the Right to Own Property for more detailed information about this case.

Although the Government has recognized some major issues in the application of these legislations, it has failed to respond to it yet and to propose an effective revision of the provisions concerned.

Discrimination in Employment

The principle of non-discrimination in employment is enshrined at Article 11 of CEDAW by declaring that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights [...]". Articles 22 and 23 of the Constitution of Tanzania also recognize that every person is entitled to work, without discrimination of any kind.

Although the Government promotes equal rights for men and women in the work place, discrimination against women in this sector remains the rule in practice. Women generally are not discouraged from seeking employment outside the home but in practice, their access to the job market is limited. In the public sector (which employed 80 percent of the salaried labour force) certain statutes restrict women's access to some jobs or hours of employment. While progress on women's rights is more noticeable in urban areas, strong traditional norms still divide labour along gender lines and place women in a subordinate position (such as secretary, waitress or nurse). Discrimination against women is most acute in rural areas, where women are relegated to farming as well as raising children and have almost no opportunity for wage employment²⁴⁰.

In a conference on Ethics, Gender, and HIV/AIDS by the Industrial Court of Tanzania, the Court's Deputy Chairperson, Ms. Cypriana William, made several remarks on the gender inequalities in Tanzanian employment and justice system. She drew attention to the fact that employment law does not provide adequate measures to safeguard women's security to employment and to the lack of representation for women in various sectors, like educational boards, tribunals and trade unions²⁴¹.

²³⁹ Faustine Kapama, "Widows Challenge Customary Law", *Daily News* (Tanzania), 10 April 2006.

²⁴⁰ "Country Reports on Human Rights Practices - 2005" [Released by the Bureau of Democracy, Human Rights, and Labor - 8 March 2006], U.S. Department of State, 13 November 2006, <http://www.state.gov>.

²⁴¹ Matlida Kasanga, "Gender link 'is lacking' in job laws", *Sunday Observer* (Tanzania), 21 May 2006.

In fact, the legal framework itself does not directly provide for affirmative measures for gender balance on the job market. Various researches have indicated that women have been marginalized in all sectors of economy despite the fact that they have been central part of production processes in Tanzania. They contribute to more than 75% of the household income but benefit less than 50% of the same income²⁴².

Some positive steps have been taken over the years by the authorities on that aspect. For instance, the new Public Service Regulations revealed by deputy Permanent Secretary of Public Service Management, Mr. George Yambesi, states that when men and women of equal calibre are applying for a job, the woman will be given priority because it is “a group that has been underrepresented for too long”²⁴³.

Measures were also taken in order to ensure a wider representation of women in politics. After the 2005 elections, 75 seats were allocated to women chosen by their parties in proportion to their share of the electoral vote, as required by law. In addition 17 women were elected from their constituencies and the rest were appointed by the President. Read more information about the increase of women in the political posts at Paragraph 3.3 in Chapter Three of this Report .

While progress has been noticeable in both urban and rural areas, in other sectors women often continue to be placed in subordinate positions such as secretaries, low-grade nurses, bar attendants and the like.

Girl-Child

The international community recognizes young girls as a particularly vulnerable due to the numerous human rights violations they continually confront. The CRC recognizes at its Article 2(1) that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or status". Despite the approbation of this principle by the Tanzanian authorities, several spheres in the life of girl-child in Tanzania are affected by human rights violations.

The reasons explaining this widespread phenomenon have been analyzed in the UN Fourth World Conference on Women (Beijing, 1995) in its “Girl Child Diagnosis”²⁴⁴. This document concludes that the factors responsible of the girl-child mistreatment are: negative cultural attitudes and practices against girls (such as FGM, early marriage or son preference), economic exploitation of child labour, violence against girl child (including sexual abuse) as well as discrimination in education, skills development, health and nutrition. As a result, fewer girls than boys survive into adulthood.

²⁴² Clarence Kipobota (2006), Capital Mobilization for Rural Women Economic Development Groups: Case Study of Kisarawe District, Msc. CED Thesis of OUT/ SHNU.

²⁴³ “Government Moves to Ensure Gender Equality in Civil Service”, The Citizen (Tanzania), 3 April 2006.

²⁴⁴ “FWCW Platform for Action – The Girl child”, United Nation, 24 January 2007, <http://www.un.org>.

While it is important to respect the cultural norms, values and traditions prevalent in Tanzania, it should not be done at the expense of the rights and safety of women and children. A research conducted in the country indicated that “the sexual abuse and exploitation of the girl-child as a social problem has gained increasing recognition from both the civil society and government”²⁴⁵. Although the *Sexual Offences Special Provisions Act, 1998*²⁴⁶ criminalized the sexual exploitation of children (Section 12) and considered as a rape a sexual intercourse with a child under 18 years unless the girl is 15 or more and married (Section 5), the Government has failed to efficiently enforce the law and protect the young girls from sexual abuse. Hence, sexual abuse on girl-child remain a major problem in the country and, despite several convictions, the Government still needs to rectify the situation.

When it comes to marriage, the Tanzanian girl-child continues to be confronted with a number of injustices. In fact, the current *Law Marriage Act, Cap. 29* is in conflict with several other local and international provisions. In this respect, the responsibilities of the states under the *African Charter on the Rights and Welfare of the Child* as the treaty states at its Article 21(2) that:

“Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.”

As the *Law of Marriage Act* allows girls from 15 to 18 years to get married, the Tanzanian authorities fail in respecting their international obligation. TAMWA continues to challenge this legislation as the organization considers that it goes against the Government’s plan to eradicate cruelty against women and children as well as to undermine poverty²⁴⁷. In a recent study, TAMWA showed a strong correlation between HIV/AIDS, early school dropout rate, teenage marriage and pregnancy. The study, based on pregnant adolescent girls attending hospitals in the densely populated south eastern Coast and central Morogoro regions, noted that the girls' husbands "characteristically have had multiple partners, which puts the girls at the risk of being infected with HIV/AIDS". Immature and financially dependent, the adolescent brides are unlikely to be able to negotiate for safer sex, the study said²⁴⁸.

At the same time, a recent study conducted by Dr. Monica Magoke-Mhoja, former Director of the Children’s Dignity Forum, revealed that “child widows lived in misery having neither extended family nor legal protection.” Lacking both the education and

²⁴⁵ Liebling, Helen, “Researching Sensitive Topics: Investigations of the Sexual Abuse in Uganda and Girls in Tanzania”, *University of Warwick - Electronic Law Journals*, 25 January 2007.

²⁴⁶ This law is now included in the *Penal Code, Cap. 16* of the R.E as Part XV.

²⁴⁷ Tobia Nsungwe, “Marriage Act still irks TAMWA”, *The African* (Tanzania), 3 April 2006, Page 3.

²⁴⁸ “Tanzania: Gov’t to amend girls’ age consent for marriage”, *IRIN news - UN Office for the Coordination of Humanitarian Affairs*, 24 January 2007, See it at <http://www.irinnews.org>.

social status to deal with unbalanced power dynamics, young girls suffers a great degree of sexual and psychological abuse as well as loss of extended family support²⁴⁹.

According to Deputy Justice and Constitutional Affairs Minister, Mr. Mathias Chikawe, the Tanzanian Government is now in the process of reviewing the marriage legislation in order to raise the girl age consent to 18²⁵⁰. The Chief Education officer at the Ministry of Education and vocational training, Mr. Ricky Mpama, also believes in a new law that would help ensuring punishment of those who “impregnate, marry or parents who would give away their daughters for marriage during their primary and secondary school times”²⁵¹. However, to be effective, these governmental measures must come together with a national plan of action that would ensure the effective application of the new laws as well as a programme educating the young girls on their rights.

As education is a key solution for some major issues confronted by girl-child so that they can know and claim their rights, education is also a domain where discrimination is the rule and not the exception. Overall, girls' school attendance shows a severe retardation compare to the boys. One of the major reasons explaining the absence of girls at school is their workload, both within and outside the household. Daughters are often kept at home to help the family because the social and economic value of educating girls is not recognized. TAMWA Report ed on this subject that, while enrolment of girls' students in Tanzania has risen to 90%, the education system is still failing to retain and graduate girls at the same level as boys²⁵².

Specifically related to this issue is the situation of pregnant school-girls. Despite the fact that the law does not prohibit pregnant girls to continue their studies after a maternity absence, the practice of forcing them out of school remains widespread in 2006²⁵³. This tradition is highly discriminatory and goes against the interest of the girl herself as well as the benefit of the society in general. It is recognized that, without access to education, girls are denied the knowledge and skills needed to advance their status, as educated mothers usually have smaller families, with healthier and better-educated children²⁵⁴.

²⁴⁹ Monica E. Magoke-Mhoja, Child-widows Silenced and Unheard: Human Rights Sufferers in Tanzania, CDF, 2006; as well as: Rodrick Ndomba, “Silent urgency of child widows”, ThisDay (Tanzania), 14 June 2006, Page 3.

²⁵⁰ “Tanzania: Gov't to amend girls' age consent for marriage”, IRIN news - UN Office for the Coordination of Humanitarian Affairs, *Op. Cit.*

²⁵¹ Olive Philbert, “Second chance for girls, corporal punishment still sore issues”, ThisDay (Tanzania), 19 June 2006.

²⁵² ThisDay Report er, “TAMWA: Girls enroll, but don't finish school”, ThisDay (Tanzania), 8 June 2006, Page 5.

²⁵³ “AFROL Gender Profile – Tanzania”, African News Agency, 16 November 2006, *Op. Cit.*

²⁵⁴ UN, “Women 2000, Gender Equality, Development and Peace for the twenty-first Century – The Girl Child”, 12 February 2007.

5.2 Children's Rights

By agreeing to undertake the obligations of the CRC since 1991, the Tanzanian Government has committed itself to protecting and ensuring children's rights. Although States Parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interest of the child, many Tanzanian children continued to live in a precarious situation in 2006. According to the State of the World Children Report 2006, the number of vulnerable children in the country is increasing at an alarming rate and recent estimates show that the total number of orphans reached 2.5 million²⁵⁵.

The following facts taken from UNICEF's research in the country show well the context in which Tanzanian child grow up and directly affect their living conditions:

- “Malaria is the leading killer of children;
- The HIV/AIDS prevalence rate is nearly 9 percent, though some studies say the infection rate is higher. The virus has orphaned nearly a million children and forced others to assume household responsibilities beyond their years in order to care for ailing parents;
- School enrolment rates have risen significantly since 2000. However, increased enrolment has led to a teacher shortage. Less than 20 per cent of students continue to secondary school.”²⁵⁶

Over the year, the rights of the children in the country have been violated in various ways and sectors. In order to adequately combat child abuse, there needs to be an increased respect for the status of children and a greater weight to their vulnerable position. According to the CRC, actions taken by the national authorities concerning children shall be taken considering the “best interest of the child”. This principle generally accepted in the international community is the cornerstone children's rights. However, when considering the conditions of the children in sectors such as labour, education and justice, this ideal standard has not yet been attained.

The right of the child to be “protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development” is enshrined at Article 32 of the CRC. The same disposition imposes to the States Parties the obligation to: (a) provide for a minimum age or minimum ages for admission to employment; (b) provide for appropriate regulation of the hours and conditions of employment; and (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

²⁵⁵ “The State of the World's Children 2006” [2005, p. 112], United Nation Children's Fund, 12 February 2007, <http://www.unicef.org>.

²⁵⁶ “Info by Country - Tanzania”, United Nation Children's Fund, 12 February 2007, <http://www.unicef.org>.

Although the said Article does not provide for a generally accepted minimum age for employment, it was a first major step for the abolition of child labour. In addition to this treaty, Tanzania has ratified *ILO Convention No. 59 Concerning Minimum Age for Admission to Employment in Industry* (1937) revised by *ILO Convention No. 138 Concerning Minimum Age for Admission to Employment* (1973) as well as the *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999).

In accordance with its international obligations, the Tanzanian Government passed in 2004 the *Employment and Labour Relations Act* and the *Labour Institution Act*. Both these laws protect the children's right by prohibiting exploitation in the work place as well as forced or compulsory labour. In addition, Section 5(1) of the *Employment and Labour Relations Act* clearly bans employment of children under the age of 14 (before, the basic minimum age for employment was set at 12 in the *Employment Ordinance No. 47 of 1955* (Cap. 366) which has been repealed by the 2004 legislation). It is important to note that the minimum employment age is inconsistent with the age for completing education requirement, fixed at 15 years old. Unlike the previous law, the new labour regulations established a criminal punishment for employer of child and forced labour.

A recent Report by ILO mentioned Tanzania as one of the three countries that had done a commendable job in fighting child labour. Following the ratification of Convention 182, Tanzania has become among the first countries to implement the Time Bound Programme (TBP) to fulfil its obligation related to the worst form of child labour²⁵⁷. The TBP has seen the reduction of some 15,429 children in labour from 57,531 in 11 districts throughout the country.

Nonetheless it is reported that over 3 million children in the country are away from their families working in fields predominantly staffed by adults (such as mining, domestic services and commercial sex work)²⁵⁸. Despite the encouraging Report, Tanzania has much to do to promote and ensure the reduction of child labour and to effectively enforce the new Acts²⁵⁹.

In connection with the child labour issue is the child trafficking and this problem remained significant in 2006. The information reported in the US Country Report on Human Rights released in March 2006 is very enlightening on this subject:

“Most victims were trafficked internally; boys were trafficked for exploitative work on farms, in mines, and in the large informal sector, while girls from rural areas were trafficked to the towns for involuntary domestic labour. Many of these domestic workers have fled abusive employers and turned to prostitution for

²⁵⁷ “International Programme on the Elimination of Child Labour (IPEC)/Time Bound Programme for the Elimination of Worst Forms of Child Labour”, International Labour Organization, 25 January 2007, <http://www.ilo.org>.

²⁵⁸ Peter Msungu, “Tanzania excels in fight against child labour”, Sundays Observer (Tanzania), 18 June 2006.

²⁵⁹ Michael Haonga, “Number of Child Laborers Plummets Worldwide – ILO”, The Guardian (Tanzania), 15 May 2006.

survival. Most victims came from the regions of Iringa, Mwanza, Dodoma Kigoma, Dar es Salaam, and Arusha. Girls were Report edly trafficked to South Africa, Saudi Arabia, the United Kingdom, and possibly other European countries for forced domestic labour. Indian women - who entered the country legally to work as musicians, singers, and dancers in restaurants and nightclubs- were at times exploited as prostitutes after arrival. On Zanzibar some hotels sponsored girls - for hotel work - who then become prostitutes; hotels were used by traffickers for prostitution activities.”²⁶⁰

The life conditions of child labourers are extremely difficult. A study conducted by ILO and Conservation Hotels Domestic and Allied Worker’s Union (CHODAWU)²⁶¹ stated that child domestic labour is one of the most common and traditional forms of child labour. According their research in the three Dar es Salaam municipalities of Kinondoni, Temeke and Ilala, there are about 200,000-250,000 young girls working as domestic servants in Dar es Salaam.

The majority of child domestic workers are 10-15 years old but in some cases children as young as 7 years have been found working as domestic servants. They work between 10-15 hours a day with no chance of rest. There is also evidence of physical, mental and sexual abuse of these children. CHODAWU has Report ed several cases of physical and sexual abuse, isolation, overwork and exploitation. A 2003 survey conducted by TAMWA estimates to almost 60% the house girls that have been pressured into having sex or were forced to have sex with the males in the families they served. Moreover the link between child domestic work and prostitution has been established with clarity in Tanzania.

On the top of these major difficulties, the young workers are often detached from their immediate families and have no opportunity to attend school. However, basic education is a fundamental and inalienable right for all children and is vital to human development as well as to democratic functioning. This right is protected by the following international and national instruments:

- *National Education Act* (1978);
- *African Charter on the Rights and Welfare of the Child* (1990); and
- United Nations CRC (1989).

However in Tanzania, the right to education is not recognized as such within the population and even by the authorities. Furthermore, there is inadequate teachers and facilities such as numbers of school, books and other educational materials to meet the demand. At the concluding of an event entitled “*Education for All,*” the Minister of Education, Hon. Margareth Sitta, recognized some of the major issues in the education

²⁶⁰ “Country Report s on Human Rights Practices - 2005” [Released by the Bureau of Democracy, Human Rights, and Labor – 8 March 2006], U.S. Department of State, 13 November 2006, <http://www.state.gov>.

²⁶¹ ILO, “International Programme on the Elimination of Child Labour (IPEC)/Time Bound Programme for the Elimination of Worst Forms of Child Labour”, 25 January 2007.

sector, such as the canning in school, and remarked that the Government is aware of the problem and is working on them²⁶².

Among other things, the serious difficulties confronted by Tanzanian in their childhood can lead them to criminality very soon in their life. Even in the juvenile justice sector, the rights of the child have to be protected by the authorities but the Tanzanian Government has failed to do so over the past years.

The UN General Assembly has adopted series of rules (such as the *Standard Minimum Rules for the Administration of Juvenile Justice* (also known as the Beijing Rules, 1985) as well as the *Rules for the Protection of Juveniles Deprived of their liberties* (1990)) concerning the administration of justice for minors, in order to protect them from the possible abuses of the authorities. Although the rules symbolized the will of the international community to end the abuses, these instruments are not binding treaties and do not compel the State Party to harmonize their national legislation with them. However, some of these rules has become binding by their integration to the CRC. This treaty directly protects child against abuse in the justice system by stating at its Article 40(1) that

“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society”.

In spite of this, the administration of juvenile justice in Tanzania is highly problematic at the moment and some of the issues emanate directly from the national legislation; the *Children and Young Person Act, Cap 13*. For instance, the definition of “child” in this legislation (which include a person under the age of 12) and of a young person (a person between 12 and 16 of age) directly contradict the international standards which define a “child” as anyone under 18.

Also, there is no provision about the difference of treatment that young offenders should receive from the authorities in comparison to adult and there is no banning of corporal punishment. These issues are recurrent over the past years and the Government as been very inefficient in responding to them. Before long, there should be some major efforts in improving the life of the child in Tanzania.

5.3 Rights of Persons with Disabilities

During the year, a major step has been accomplished by the international community regarding the rights of the people with disabilities. On August 28th, negotiators drafting a UN convention to protect the rights of disabled persons reached an agreement on a text that will be the first new human rights treaty of the 21st century.

²⁶² “Minister defends caning in schools”, *Daily News* (Tanzania), 1 May 2006.

The Plenary of the General Assembly has adopted the *Convention on the Rights of Persons with Disabilities* on December 13th and the treaty should be open for signature on March 30th, 2007²⁶³. This treaty comes along with the *Optional Protocol to the Convention on the Rights of Persons with Disabilities* designed to set out the Committee on the Rights of the Persons with Disabilities. State Party to the *Protocol* recognizes the competence of the Committee “to receive and consider communication from or on the behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention” (Article 1).

Although the rights of disabled were generally protected in various general human rights treaties or specifically ensured by others²⁶⁴, this event marks a major shift in the way the world's 650 million people with disabilities²⁶⁵ are treated. It represents a universal recognition of the necessity to protect their rights as well as a call to fight the discrimination against them. As stated at its Article 1, “[t]he purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. The general principles that led to the adoption of the convention are listed as such at Article 3 of the treaty:

“The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;*
- (b) Non-discrimination;*
- (c) Full and effective participation and inclusion in society;*
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- (e) Equality of opportunity;*
- (f) Accessibility;*
- (g) Equality between men and women;*
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”*

The same principles should provide inspiration to national authorities in their legislation protecting the disabled persons. In Tanzania, the rights of this vulnerable group are protected by under Article 11 of the Constitution:

²⁶³ UN, United Nations Enable, See <http://www.un.org/esa/socdev/enable>.

²⁶⁴ Such as the *ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons)*, the *Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities*, the *Convention on the Rights of the Child* (Article 23), the *African Charter of Human and People’s Rights* (Article 18(4)), the *African Charter on the Rights and Welfare of the Child* (Article 13), the *European Social Charter* (Article 15) and the *Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights)* (Article s 6 and 9).

²⁶⁵ “Convention on the Rights of Persons with Disabilities – Some Facts about Persons with Disabilities”, United Nations, 12 February 2007, <http://www.un.org/disabilities/convention/facts.shtml>.

“The State authority shall make appropriate provisions for the realization of a person’s right to work, to education and social welfare at times of old age, sickness or disability and in other cases of incapacity. Without prejudice to those rights, the State authority shall make provisions to ensure that every person earns his livelihood”.

In addition, the Government has enacted specific legislations to address the needs of disabled persons: the *Disabled Persons (Employment) Act, Cap. 184* and the *Disabled Persons (Care and Maintenance) Act, Cap. 183*. Both in their specific areas, these laws give a legal support to protect the interest and needs of the persons with disabilities. However, the LHRC Report ed in its previous human rights Report ²⁶⁶ that these instruments contain incongruities that weaken their effect. Actually, the 1982 Act was designed to include both public and private sectors, but no measures were put into place in order to ensure the right to work in this later sector. Also, the complaints procedure is complex, very bureaucratic and inadequate, as very few people know the organ responsible to hear them, namely the Director of Public Prosecutions. Finally, there is doubt on the existence of the “National Fund for Disability” since no information on it has been Report ed over the years.

In 2006, the Tanzanian Government failed to respect its obligation regarding the disabled persons. Although it is hard to obtain specific data on the number of people with disabilities in the country, it is generally recognized that they form around 10% of the total population, with more or less 3.5 millions people²⁶⁷. However, the disabled persons remain among the most marginalized of all populations and are barred by a wide range of physical, legal and social barriers from achieving their full potential.

According the LHRC 2006 survey²⁶⁸, no progress whatsoever was seen during the year to address the universal access of facilities by people with disability. For instance, public road, school even toilets have no accessibilities for people with disabilities. One respondent from Dar es Salaam said that, travelling to the city centre by public transport is very difficult due to the Conductors’ attitude toward them. Because of the large space their bicycle takes in the *Daladala* (Commuter Buses), the time it takes for disabled people to secure a transport at pick hours is unreasonable and discouraging. Actually, according to the NGO Disabled Aids and General Engineering, most private commuter buses would not stop for physically disabled persons.

Despite the fact that the Government has provided limited funding for special facilities and programs, it did not mandate access to public buildings, transportation, or Government services for persons with disabilities. In order to reverse years of neglect, the Tanzanian authorities should follow the tendency created with the adoption of the UN

²⁶⁶ LHRC, *Tanzania Human Rights Report 2005*, Op. Cit, Dar es salaam, Page 71.

²⁶⁷ “Why People with Disabilities in Tanzania Deserve Economic Empowerment”, *Independent Living Institute*, 12 February 2007, <http://www.independentliving.org>; and: “Helping the Disabled Impacted with HIV/AIDS”, *USAID*, 12 February 2007, <http://www.usaid.gov>.

²⁶⁸ Analysis of LHRC Questionnaires (October 2006). Voir note 232

Convention and do some major efforts with a view to improve significantly the life conditions of millions people living with disabilities.

5.4 Rights of Refugees

During the last decades, Tanzania has been receiving waves of refugees from the Great Lakes Region due to the geopolitical circumstances. Populations from Burundi, Rwanda, the Democratic Republic of Congo, Somalia and other nations have sought refuge in the country; making Tanzania the African state that hosts the highest number of refugees. UNHCR estimates up to 683,000,000 the number of refugees in Tanzania, 285,000 of whom lives in 12 camps assisted by UNHCR and 198,000 in three largely self-sufficient settlements. According to the Government, another 200,000 refugees have settled spontaneously in villages. From this estimation, 393,611 come from Burundi and 150,112 from Democratic Republic of the Congo. The number is however declining as last year's statistics recorded more than 800,000 refugees on the Tanzanian territory²⁶⁹.

In November 2006, the Southern African Legal Assistance Network (SALAN) joined LHRC in a field trip to three refugee camps (Nyarugusu Camp established in 1996 after the Congolese refugees wave as well as Muyovosi and Mtabila Camps established in 1974 for Burundian refugees) in order to assess the situation of the refugee in the country. In all three camps, the group noted that:

- *“There is no protection or security; people are lumped together with former enemies [and] there have been cases of people being stabbed, women raped and domestic violence is prevalent”;*
- *“The income generating activities include farming on a very small scale, rearing animals (goats) and selling merchandise”;* and
- *“Number of people complained about a lack of recreational activities, an insufficient water supply and too little food”.*²⁷⁰

In addition, they witnessed a poor situation for woman and children (especially too little resources allocated to orphans and former child soldiers), a lack of medical supply as well as a high prevalence of corruption²⁷¹.

The Tanzanian Government is responsible of the refugees' living conditions on its territory and has a wide range of obligations toward its refugee population at both an individual and a collective level. Its legal instruments must direct all the activities and policies of the State toward the task of ensuring the respect of refugees' rights and of preserving their human dignity in accordance with the international standards. However, as it will be presented in this section, the legal instruments themselves as well as their application by the authorities remained problematic in 2006.

²⁶⁹ “United Republic of Tanzania - Appeal 2007”, United Nations High Commission for Refugees, 24 November 2006, <http://www.unhcr.org/home/PUBL/4554439b0.pdf>.

²⁷⁰ Leonard Elias, Report on the Refugee and Asylum seekers Conference held on 3 November, 2006, LHRC, 10.

²⁷¹ *Ibid*, Page 11.

Tanzania is party to two sets of international regulation; the 1951 *UN Convention Relating to the Status of Refugee* modified by the 1967 *Protocol Relating to the Status of Refugee* and the 1969 *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. At a domestic level, the Tanzanian Government is also bound by two main documents that affect refugees' rights; the *Refugee Act, Cap. 37* (which superseded the 1965 *Refugee Control Act*) and the *Refugee Policy, 2003*. The 1998 Act provides for the granting of refugee status and asylum in accordance with the 1951 UN Convention and its 1967 Protocol, and the Government has established a system for providing protection to refugees.

The adoption of the 1998 law has however been highly criticized by refugee-interested groups in the country. In reality, the Government has failed to consult the international organizations as well as the local actors in the drafting process. According to Human Rights Watch, certain provisions included in this legislation may undermine refugee protection, such as "greater powers to camp commanders, the lack of adequate due process protections in the appeals process for status determination interviews and greater powers devolved to local authorities"²⁷². In spite of this, the 1998 law respects the international standards and clearly improved the laws applicable to refugees on the Tanzanian territory.

However, since the enactment of the 2003 Policy, the 1998 Act remained pertinent but the official's practice was directed by the application of the Policy. As the application of the Policy is purely dependant on executive decisions by senior Government and depends on who is writing it, a greater subjectivity in the appreciation of refugees' questions follows from the official's practice. Therefore, the enactment and application of the Policy by the authorities is a backward step in the recognition of refugee rights and is in direct violation with the international standards.

Additionally, there is a lack of harmony between the 1998 Act and the 2003 Policy and some of the practices resulting from the application of those instruments are in contradiction with the international treaties. Examples of such inconsistencies were given by Dr. Bonaventure Rutinwa and can be found in areas like the protection of refugees in safe zones inside their countries, the limitation to refugee employment to only small income generating activities within the camps and the requirement for refugees to reside in designated areas, irrespective of their circumstances²⁷³.

Among others, the refugee's freedom of movement is a matter that has created a lot of dissension in 2006. The Government policy of limiting the movement of refugees and their economic activities has been criticized by UNHCR²⁷⁴. Once out of a camp without proper authorizations, refugees can be arrested, charged under *Immigration Act, Cap. 54*

²⁷² "Human Rights Abuses and the Forced Round-ups of Refugees", *Human Rights Watch*, 30 October 2006, <http://www.hrw.org>.

²⁷³ Rutinwa, Bonaventure, "Identifying the Gaps in Protection Capacity", UNHCR, 2005.

²⁷⁴ "UNHCR Global Report 2005 - United Republic of Tanzania" [released on 1 June 2006], *United Nations High Commission for Refugees*, 27 November 2006, <http://www.unhcr.org/home/PUBL/4492678b0.pdf>.

with punishment of up to 2 years and a fine (sections 16 and 17 of *Refugee Act* for similar offences and section 24 for punishment).

This rule undermines UNHCR efforts to reduce sexual exploitation and improve refugees' health and general welfare. As a result, many adolescent girls and women resorted to prostitution and some refugees sold their non-food item for food.²⁷⁵ Moreover, according to Professor Peter of the University of Dar es Salaam, the food that is needed for distribution is not adequate. There is also a need of controlling food rationing because in most cases, men take the share and instead of taking it for the whole family, they sell and get some money for alcohol. Women and other members of the families should be involved in the process.

In addition, the application of the law for refugees found outside their camps without documentations is highly controversial; the *Immigration Act* is not consistent with the *Refugee Act*, since the application of the first can lead to immediate deportation. As a matter of legal principle, when there is a specific instrument dealing with an issue, the intent of Parliament would be rendered redundant if that specific legislation is not applied. To deal with this conflict of legislation, UNHCR has tried to engage in capacity building, distributing leaflets as well as to educate magistrates and police to use the *Refugees Act* instead of the *Immigration Act*.

Nowadays, there seems to be fewer cases with the application of the *Immigration Act* in western regions. However, as revealed by UNHCR in Dar es salaam, arrests continue in other regions. In Iringa for example, 20 Congolese were Report edly arrested and charged under the *Immigration Act*. They received a Tsh 60,000 fine or 1 year imprisonment and were also sentenced to be deported at the conclusion of either. In March 2006, UNHCR was working on an appeal for these Congolese.²⁷⁶

Another very sensitive issue with regard to the application of the national instruments is the principle of non-refoulement. In his publication "The (Tanzania) Refugees Act of 1998: Some Legal and Policy Implications", Dr. Khoti Kamanga identifies the problem as such by using the idea of "Quasi Non-Refoulement":

"The Act expressly provides for non-refoulement (ss.28(1)(a)9i), 4(3)), but both the formulation of the relevant provision and the marginal notes ('Deportation of asylum seeker of refugee') alongside it, are good cause to inquire on the true intentions of the legislator. Firstly, the authorities retain the right to deport 'any asylum seeker who does not qualify for status'. As for refugees, these would be liable to deportation should they be found to be 'dangerous to the security of the State'. The 'non-refoulement provision' in the Act effectively recognizes only two grounds: the 'political character of the offence' for which upon return, the asylum seeker will be tried; and the likelihood of the asylum seeker being subjected to

²⁷⁵ *Ibid.*

²⁷⁶ Information collected during a LHRC – UNHCR in-person interview, with: LHRC interviewers, Shazia Razzaque and Daud Mkilya and UNHCR interviewee Mathias Omar Kisegu, Dar es salaam, 13 March 2006.

'physical attack'. Evidently, these fall short of the provision of the UN Convention of 1951 and the OAU Convention of 1969."²⁷⁷

Furthermore, the approach of the *Refugees Act*, 37 in this respect is not consistent with the *Refugee Policy*, 2003, the latter is more geared towards repatriation, or with the application of the *Immigration Act*, 54, that leads to stricter sanctions (namely refoulement if found outside designated area, as presented earlier). In fact, the "non-refoulement principle" is another topic where the 2003 Policy has been implemented to the prejudice of the 1998 Act and this practice led to the weakening of that fundamental principle.

Nevertheless, the Tanzanian Government has recently recognized some inconsistencies or gap in its refugee regulation. As revealed by UNHCR during an in-person interview with the LHRC in March 2006, the organization has participated in 2005 in a country-wide retreat involving the Government where various issues were discussed. There continued to be work on improving the legislation as the Government is looking to amend the *Refugee Act* and share the document with UNHCR.²⁷⁸

In spite of these efforts, the overall attitude of the official authorities toward refugees definitely shows a disengagement from the "Open Door policy" adopted by the previous administration. During the same interview, UNHCR pointed out several reasons for the change towards refugees, including:

1. The host fatigue: perception that taking in refugees has been going on too long;
2. The Rwandan departure in 1994: starting in 1959, Tanzania granted citizenship to Rwandans, allowing education and work but many of them returned in 1994; in doing so, they abandoned their Tanzanian farms which made the Tanzanian Government feel as if these refugees had been ungrateful and disrespectful of its hospitality now that there was peace in Rwanda;
3. The policy drafting: refugees are put in camps and not allowed to be productive through their own cultivation which means no local integration and a relationship of dependency; and
4. The Government in power: when Nyerere was in power, he brought with him a strong ideology of pan-Africanism (bringing with it notions of borders being artificial and fixed by colonial interests) but this is no more the case with the recent administrations.

An additional motif explaining this change is the failure of the international community to contribute to "Burden-Sharing".

According to Dr. Kamanga, the enactment of the *Refugee Act* in 1998 also appears to have been used to accomplish a change of policy, "with a view to making Tanzania a less

²⁷⁷ Kamanga, Khoti, "The (Tanzania) Refugees Act of 1998: Some Legal and Policy Implications", *Journal of Refugee Studies*, Vol. 18, No. 1, Oxford University Press, 2005, 100.

²⁷⁸ Information collected during a LHRC – UNHCR in-person interview, with: LHRC interviewer, Shazia Razzaque and, UNHCR interviewee Mahtias Omar Kisegu, Dar es salaam (13 March, 2006).

attractive destination for asylum seeker” as well as to “convey the international community disenchantment with the humanitarian assistance system for being insufficiently responsive to the impact of refugees on economically impoverished, fragile Tanzania”²⁷⁹. This tendency was indeed dominant during 2006 in the authorities’ relations with the refugees.

The relations between the authorities and the Burundian refugees illustrate well the Government tiredness. As stated by Amnesty International, “the Government of Tanzania shifted its policy from tolerating local integration to promoting repatriation and the idea of "safe zones" inside Burundi, where individuals would be nationally protected rather than receiving international protection as refugees”²⁸⁰. Amnesty International has received Reports that Burundians seeking asylum in Tanzania have, in recent months and years, been turned away at the border, prevented from registering as refugees or *refouled* to neighbouring countries.

Since April 2002, the Tanzanian Government moved to repatriate 350,000 Burundian refugees from the country²⁸¹. Voluntary repatriation remains the durable solution for the largest number of refugees and the principle of voluntariness is a cornerstone in the international law applicable to the return of refugees. However, Burundian refugees have been pressured to return to Burundi by the Burundian Government representatives who came to visit the camps, by the Tanzanian Ministry of Home Affairs, by the regional and district level commissioners as well as by statements from the highest Tanzanian authorities²⁸².

Over the years, the lack of resources and food shortage has caused many Burundian refugees to go back to Tanzania. Large numbers of refugees who have returned home either spontaneously or through organized repatriation programs found the conditions in their home areas not yet conducive to a safe and durable return. Some of these individuals found their way back to the camps in Tanzania²⁸³.

In 2006, the drought afflicting much of East Africa has affected the living conditions of these refugees in Tanzania. During an official visit in the country, the UN High Commissioner for Refugees, Mr. António Guterres, Reported that he met some of the 5,000 Burundians sheltering at an overcrowded transit centre in Nyakimonomono, in western Tanzania. At the time, the Tanzanian Government had not allowed them to move

²⁷⁹ Kamanga, Khoti, “The (Tanzania) Refugees Act of 1998: Some Legal and Policy Implications”, Journal of Refugee Studies, Vol. 18, No. 1, Oxford University Press, 2005, 104.

²⁸⁰ “Burundi refugee Rights at Risk: Human Rights Abuses in Returns to and from Burundi” [released on 27 June 2005], Amnesty International, 24 November 2006, <http://web.amnesty.org>.

²⁸¹ Dassu Stephen, “Tanzania Voice Concern Over Returning Refugees”, Daily News (Tanzania), 13 March 2006, Page 16.

²⁸² Amnesty International, 24 November 2006, *Op. Cit.*

²⁸³ *Ibid.*

and establish refugee camps so they were stuck in a way station that was intended to accommodate people for only one or two days.²⁸⁴

Moreover, as widely reported in the Tanzanian news papers, the Government has adopted a very strict line of conduct toward the illegal immigrant during 2006. In order to reduce the influx of illegal immigrants, the authorities as started to register and repatriate these individuals. Only in Kagera Region, some 76,353 illegal immigrants have been registered. Unfortunately, some abuses have been reported and the Tanzanian authorities have been accused of harassment on their people. In addition to this, there have been some complaints about the practice of confiscating the properties (generally livestock) of the illegal immigrants who refuse to be repatriated.²⁸⁵

In conclusion, it is important to remember that Tanzania has committed itself to numerous obligations and responsibilities towards its neighbour nations in relation to the refugee question. The Government is not allowed to alter unilaterally its policies or the interpretation of its laws if the practices resulting from this change of attitude are in direct contradiction with the state's international obligations.

5.5 Rights of the Elderly

A major demographic transition took place since the middle of the twentieth century as the average life expectancy at birth has increased by 20 to reach 66 years. This worldwide phenomenon is expected to continue and the life expectancy should extend to a further 10 years by 2050. The number of persons over 60 should increase from about 600 million in 2000 to almost 2 billion in 2050. The face of the population in developing countries is also expected to undergo a global transformation as the older population is expected to quadruple during the next 50 years. In Sub-Saharan Africa, factors such as the struggle with the HIV/AIDS as well as economic and social hardship will slow down the tendency and the rise will reach half that level.²⁸⁶

The impact of such a profound transformation will affect every aspect of the international, national and individual life. Considering these ongoing developments, the international community has recently realized that the rights of this growing population can no longer be neglected and ignored. At the occasion of the 16th International Day for Older Persons on October 1st, the former UN Secretary General, Mr. Kofi Annan, called for a more positive image in ageing. In its message, he reminded the international community that:

“As people across the globe come to live increasingly longer lives, our entire human family has a stake in encouraging and easing a productive, active and

²⁸⁴Kitty, McKinsey, “Regional approach needed to address roots of displacement in Africa’s Great Lakes region, says High Commissioner”, United Nations High Commission for Refugees, 24 November 2006, Read it through <http://www.unhcr.org/news/NEWS/4408435c4.html>.

²⁸⁵ Christopher Kidanka and Frida Chinuku, LHRC Fact Finding Mission at Karagwe of April 2006.

²⁸⁶ “Madrid International Plan of Action on Ageing, 2002”, United Nations - The Second World Assembly on Ageing, 26 January 2007, <http://www.un.org>.

healthy ageing process. The whole world stands to gain from an empowered older generation, with the potential to make tremendous contributions to the development process and to the work of building more productive, peaceful and sustainable societies. [This year's International Day] is a call to all communities to work for policies and programmes that will enable their independence and provides them with adequate support and care as they age"²⁸⁷

These beliefs and values have guided and shaped the elderly fundamental rights as explicitly recognized over the last 25 years.

Beside the general human rights treaties that contain stipulations ensuring the protection of older people or that guaranty their rights as a result of their application to all human being, we can find some age-specific international instruments designed for the protection of the older people's rights. The first *International Plan of Action on Ageing* adopted at the first World Assembly on Ageing in Vienna in 1982 has guided the course of thinking and action on ageing since its adoption, by its novelty and innovative approach to the problem of the elderly around the world. Guidance in the areas of independence, participation, care, self-fulfilment and dignity were later adopted in 1991 in the formulation of the *United Nations Principles for Older Persons*.²⁸⁸

The latest major instrument is the *Madrid International Plan of Action on Ageing* and this document makes clear in its introduction that "mainstreaming ageing into global agendas is essential". The *Madrid Plan* has set up a list of recommendations for action organized according to three priority directions: older persons and development, advancing health and well-being into old age as well as ensuring enabling and supportive environments. According to the Plan, "[t]he extent to which the lives of older persons are secure is strongly influenced by progress in these three directions" and "[t]he priority directions are designed to guide policy formulation and implementation towards the specific goal of successful adjustment to an ageing world".²⁸⁹

In spite of these recent efforts, the situation of older persons on the African continent is alarming. This vulnerable faction of the population is confronted on a daily basis to a wide range of vital issues, such as:

- a limited access basic services (including water and shelter);
- a lack of basic pension and free health care;
- a rampant poverty;
- a livelihood highly affected by HIV/AIDS pandemic for them as well as for the orphans in their care;
- a restricted access to income-generating and capacity-building activities;
- a limited access to justice; and

²⁸⁷ "Promote More Positive Image of Ageing, Secretary-General Urges in Message for International Day of Older Persons", [SG/SM/10659 OBV/576, 26 September 2006], United Nations - Secretary-General Press Release, <http://www.un.org>.

²⁸⁸ "Madrid International Plan of Action on Ageing, 2002, *Op. Cit.*

²⁸⁹ United Nations - The Second World Assembly on Ageing, Madrid International Plan of Action on Ageing, 2002, 26 January 2007, <http://www.un.org/esa/socdev/ageing/waa/a-conf-197-9b.htm>.

- an unawareness of their fundamental rights.

Population ageing is on the way to become a major problem in developing countries and state authorities have the obligation to take effective measures to fight these issues and to improve the living conditions of their elderly.

According to the available statistics in 2003, with an estimated total population of 33,500,000, Tanzania had about 1.4 million older people aged 60 years and above (4 per cent of the total population). This figure will increase to 8.3 millions (10 per cent of the total population) by the year 2050²⁹⁰. This increased number of old people represents a challenge in Tanzania as well as for the continent as a whole.

The rights of elderly are provided in the Constitution of Tanzania when stating at its Article 11(1) that the State shall “within the limits of its economic capacity and development, make adequate provision for securing the right [...] to public assistance in the case of old age”. However, as this disposition is not included in the Constitution’s Bill of Rights, it is not considered as fundamental right at the national level.

During the International Year of Older People (1999), the Government of Tanzania committed itself for the adoption of a national policy on ageing. The existence of such policies is a new phenomenon to many countries and Tanzania is the second in Africa after Mauritius to have one²⁹¹. As generally envisioned in the *Madrid International Plan of Action on Ageing* 2002, Tanzania introduced its *National Policy on Ageing* in 2003. The Policy is a reminder that, above all, the question of older people should be seen in term of quality of life. According to it, the situation of older people in Tanzania is characterized by the diminution of their role by the weakening of traditional life, inadequate care, poverty, diseases, traditions encouraging discrimination toward older women, disabilities as well as a lack of adequate legal and social protection.²⁹²

The rationales behind the Tanzanian Policy are the following:

- To recognize older people as an important resource in national development;
- To allocate enough resources with goal of improving service delivery to older people;
- To involve older people in decision-making in matters that concern them and the nation at large;
- To involve older people in income generation activities;
- To provide legal protection to older people as a special group.²⁹³

As a result, the Policy commits the Government to promoting the health and income-security of older people. Combined with strong development initiatives as well as with a

²⁹⁰ “National Policy on Ageing” [September, 2003, Page 3], National Website of the United Republic of Tanzania, (<http://www.tanzania.go.tz>).

²⁹¹ *Ibid.* p. iii.

²⁹² *Ibid.* p. 3-5.

²⁹³ *Ibid.* p. 5-6.

national plan towards poverty reduction, it also provides the opportunity to ensure that the needs and rights of older people are officially recognized and protected²⁹⁴.

However, this new policy has not led to an improvement of the elderly life conditions in the country. According to LHRC findings²⁹⁵, there is no affirmative measure made by the Government for the treatment of elder people and there is a need for public social security insurance. At the moment, the Tanzanian social security system does not cover people from informal sector, which is more than 98% of all business in Tanzania, (according to the assessment of MKURABITA (*Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania*), Business and Property Formalization Program, 2005). As the peasant do not qualify for social security under the Tanzanian law, the vast majority of older people suffer severely from this lack of security, especially in rural areas.

5.6 Rights of Minority Groups

Speaking before the UN Working Group on Indigenous Population, Mr. Moringe Parkipuny (a Maasai delegate, former Member of the Tanzanian Parliament for Ngorogoro) made the following statement regarding the complexity of the issue concerning minority rights:

“Preoccupation with the promotion of the rights of the majority and the vital need to consolidate national identity and unity are beyond doubt necessary undertakings. But these concerns should never be pursued to the exclusion of the protection of the legitimate rights of vulnerable minorities. To do that undermines the very objective of national unity and places a primary component of human rights to cultural diversity outside the agenda of national ethics, integrity and freedom to development options.”²⁹⁶

In Tanzania, when thinking of minorities, the issues related to the situation of indigenous peoples necessarily come into mind. The following statement of Mr. Kofi Annan in the time he was UN Secretary General summarizes well the problem that indigenous peoples continue to confront:

“Far too long the hopes and aspirations of indigenous peoples have been ignored; their lands have been taken; their cultures denigrated or directly attacked; their languages and customs suppressed; their wisdom and traditional knowledge overlooked; and their sustainable ways of developing natural resources dismissed. Some have even faced the threat of extinction... The Answer to these grave threats must be to confront them without delay.”

²⁹⁴ “Older people’s national advocacy programme, Tanzania”, Helpage, 22 January 2007, <http://www.helpage.org>.

²⁹⁵ Analysis of LHRC Questionnaires (October 2006).

²⁹⁶ “The Indigenous Peoples Rights Question in Africa” (Statement before the United Nations Working Group on Indigenous Populations, by Moringe Parkipuny – Date unknown), Center for Indigenous Studies, 2 February 2007, <http://www.cwis.org/fwdp/Africa/parkipuny.txt>.

Social marginalization and legal discrimination place these peoples at risk of a wide range of human rights violations directed against individuals and societies as a whole²⁹⁷.

The year 2006 could have marked the international human rights of minorities if the UN Member States would have agreed on the adoption of the UN Declaration on the Rights of Indigenous Peoples proposed to the General Assembly by the Human Rights Council. On June 29th 2006, the Human Rights Council adopted a resolution on the Declaration on the Rights of Indigenous Peoples and this Declaration was forwarded to the UN General Assembly for approval.

However, the process went to a halt on November 28th 2006 when a number of African states, led by Namibia, succeeded in delaying the adoption of the document²⁹⁸. According to its detractors, the Declaration was in contradiction with numerous African national constitutions and a definition of who is indigenous was lacking (giving the opportunity to any group to identify itself as indigenous). Most importantly, concerns were raised about the recognition of indigenous peoples' right to self-determination, which could lead to uncertainty and instability within African nations²⁹⁹.

This interruption in the process constitutes an important set back in the protection of the indigenous peoples' fundamental rights. However, the Declaration must be reconsidered before the end of the General Assembly 61st session in September 2007 and there is hope that the states will reach an agreement on it. If adopted, the Declaration could represent a major step towards eliminating the widespread human rights violations suffered by over 370 million Indigenous people worldwide³⁰⁰. Although the Declaration would not directly bind the governments, this positive step would put pressure on state authorities to respect the objectives of the Declaration.

In addition, other international instruments designed over the years are directly or indirectly protecting the rights of this specific minority. Recalling the terms of the UDHR, the ICCPR, the ICESCR and others international treaties dealing with the prevention of discrimination, the states are compelled to respect and protect the rights of indigenous peoples. More specifically, in its particular field of activities, ILO dealt with the issue in two instruments; namely the *Indigenous and Tribal Populations Conventions, 1957 (No. 107)* and the *Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169)*. Despite the numerous issues concerning indigenous peoples' rights in the country, Tanzania has not ratified both instruments³⁰¹.

²⁹⁷ "The Human Rights of Indigenous", Amnesty International Canada, 2 February 2007, <http://www.amnesty.ca>.

²⁹⁸ Valerie Taliman, "Declaration on the Right of Indigenous Peoples delayed", Indian Country Today, 2 February 2007, <http://www.indiancountry.com>.

²⁹⁹ *Ibid.*

³⁰⁰ "The Declaration on the Rights of Indigenous Peoples adopted by the Human Rights Council" International Work Group for Indigenous Affairs, 2 February 2007, <http://www.iwgia.org>.

³⁰¹ "List of Ratifications of International Labour Conventions – United Republic of Tanzania" International Labour Organization, 2 February 2007, <http://webfusion.ilo.org>.

In Tanzania, indigenous minorities are subject to a myriad of rights denials, as they regularly face land alienation, discrimination, denial of justice, violation of cultural rights, lack of constitutional and legislative recognition, marginalisation from social services as well as denial of the rights to political recognition, representation and participation, to health and medical attention, to existence, to education and to their own development³⁰².

Although land rights are crucial for the survival of several Tanzanian tribes, it is one of the areas of the law where issues related to the indigenous rights are the most raised. In this respect, Mr. Moringe Parkipuny stated during his same speech that “[t]he most fundamental rights to maintain our specific cultural identity and the land that constitutes the foundation of our existence as a people are not respected by the state and fellow citizens who belong to the main steam population”³⁰³.

For instance, the establishment of Tanzanian National Parks has caused tremendous land alienations and evictions as well as restrictions of local communities from resources that were critical for their survival. In this manner, the building of Manyara, Tarangire, Ngordoto, Serengeti and Mkomazi led to eviction of Maasai from their ancestral lands without compensation³⁰⁴. In fact, the country hosts two main categories of minorities that such reform of the land deeply affects; namely the hunters and gatherers (such as the Hadzabe, Dorobo and Sandawe) as well as the pastoralists (like the Maasai)³⁰⁵.

In 1999, the Government of Tanzania enacted two land laws designed to restructure the system of land ownership; the *Land Act* and the *Village Land Act*. These legislations improved access to land for individuals, guaranteed equality in land ownership and recognized customary ownership of the land, subject to superior title of the state. The *Village Land Act* directly outlines the legitimacy and the procedures of application for indigenous land ownership³⁰⁶.

However, it is explained in the Report on the African Commission’s Working Group of Experts on Indigenous Populations/Communities that the status of pastoralists remains uncertain and precarious; “[w]hilst there are provisions recognizing collective tenure that would be favorable to recognition of ownership of pasture land, it is still unclear how pre-existing possession of land may be transformed into new title and how subservient interest may be owns”³⁰⁷. Therefore, as explained by Professor Chris Maina Peter, the

³⁰² Report on the African Commission’s Working Group of Experts on Indigenous Populations/Communities, ACHPR & IWGIA, Banjul, 2005, 15.

³⁰³ “The Indigenous Peoples Rights Question in Africa” (Statement before the United Nations Working Group on Indigenous Populations, by Moringe Parkipuny – Date unknown), Center for Indigenous Studies, 2 February 2007, <http://www.cwis.org>.

³⁰⁴ Report on the African Commission’s Working Group of Experts on Indigenous Populations/Communities, ACHPR & IWGIA, Banjul, 2005, 24-25.

³⁰⁵ “Indigenous Peoples’ Right to Land: Tanzania and African Perspectives”, Chr. Michelsen Institute, 2 February 2007, <http://www.cmi.no>.

³⁰⁶ “Training on Village Land Law Act.No.5 and 6 – Ulanga District, Morogoro Region”, ISIS Women’s International Cross Cultural Exchange, 2 February 2007, <http://www.isis.or.ug>.

³⁰⁷ Report on the African Commission’s Working Group of Experts on Indigenous Populations/Communities, ACHPR & IWGIA, Banjul, 2005, 25.

indigenous claims on their ancestral lands is not necessarily recognized under domestic law, since the traditional use of the land (like hunting, gathering or pastureland) does not directly give rise to property rights³⁰⁸. This situation can therefore lead to abuse from the state or private interests because the tribes' rights on their lands are not recognized in national legislation. In addition, since the enactment of the Acts in 1999, neither the Government nor the NGOs have educated Tanzanian people on their rights in relation to land issues³⁰⁹.

In October 2006, the Hadzabe demonstrated in protest against their land being ceded to investor at Yaeda Chini in Mbulu District northern part of Tanzania. Hadzabe people who are hunters and gatherers are internationally recognized as minority group. In Tanzania, it is said that, there are two minority groups. Other hunter-gatherers group is Ndorobo who mostly reside in Kiteto District. Hadzabe minority resides at *Yaeda Chini* and *Mongo wa Mono* in Mbulu District. Some of them are found in Matala and Mang'ora in Karatu district. They are approximately 1,200 to 3000 according to 2002 census.

The number is uncertain because of their life style which is not static. They depend on hunting and gathering kind of economy. Therefore they exclusively depend on their traditional land and surrounding natural resources for their survival. Their ways of life differ considerably from others.

According to the information of LHRC field monitor for Mbulu, Yaeda Chini is said to have been allocated to an Arab investor would be granted a permit to hunt using firearm along side with the Hadzabe. With this permit about 3,000 Hadzabe shall be affected because the experience has shown that, investment in wildlife tends to exclude indigenous from entering in the licensed hunting blocks. If they do so, they are labeled as poachers³¹⁰. Andrew Madsen says that "the village administrators and corrupt local government officials have been easily manipulated to allow the alienation of land to outsiders who take control of lands way from customary holders and others with demonstrated rights over the land"³¹¹.

The Indigenous World Report s of 2005 and 2006 indicate that the situation of this indigenous people in Tanzania is steadily deteriorating because of this kind of invasion in their traditional land. According to the Report s, Hadzabe are suffering in terms of loss of access to hunting resources, berries, honey and roots because of the inventions. It should

³⁰⁸ "Indigenous Peoples' Right to Land: Tanzania and African Perspectives", Chr. Michelsen Institute, 2 February 2007, <http://www.cmi.no>.

³⁰⁹ "Training on Village Land Law Act.No.5 and 6 – Ulanga District, Morogoro Region", ISIS Women's International Cross Cultural Exchange, 2 February 2007, <http://www.isis.or.ug>.

³¹⁰ LHRC (2003) Protection of Wildlife and Human Rights on Balance Sheet: A Case of Serengeti Killings, page 22. The same research on page 26 says that, about 57 people were killed by TANAPA Militia between 1983 and 1998 in Serengeti National Park. This fact shows that, indigenous people who do not have licence are killed by the so called Anti-Poachers in hunting blocks.

³¹¹ Madsen, A (2000) The Hadzabe of Tanzania: Land and Human Rights for Hunter-Gatherer Community. IWGIA Document No. 98, Copenhagen 2000, page 69.

be noted that, the traditional land for Hadzabe and other minority groups is the only property that they can own³¹².

³¹²This is why their interests over the traditional land are worldwide protected under the law. For instance, *Article 27* of the *ICCPR* says that Minority Groups (like the Hadzabe) shall not be denied their right to enjoy their own ways of life. *The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities* calls for special protection of this group. The ILO Convention No. 169 Convention Concerning Indigenous and Tribal People in Independent Countries of 1989 recognize lands and natural resources as human rights for minority groups.

Chapter Six – HIV/AIDS and Human Rights

6.0 Introduction

While Sub-Saharan Africa has just over 10% of the world's population, this region is home to more than 60% of all people living with HIV—25.8 million. Last year, an estimated 3.2 million people in the region became newly infected, whereas 2.4 million adults and children died of AIDS.³¹³

African heads of state meet at the beginning of May 2006 to discuss their efforts in reversing the spread of HIV/AIDS. One major issue they confront is the lack of local spending by respective African governments on combating the disease. The situation in African countries is in part to blame on the growing cost of prevention, complications in funding and the amount countries are required to pay in debt repayment. While the aid to African countries has increased from \$1.7 billion to \$4.7 billion, the amount of money is not keeping pace with the incidence of the disease and the available resources may only be able to meet 25% of costs in 2007. Additionally, African countries are saddled with of \$330 billion in debt to rich countries and international financial institutions requiring them to spend a larger percentage of their budget servicing their debt (for example Kenya, spends about \$.76 per person on Aids versus \$12.92 per person on debt repayment). Together with Botswana, Zimbabwe and Uganda, Tanzania is one of the rare countries that managed to commit over 12% of national budget spending on HIV/AIDS programmes.³¹⁴

In spite of this, the situation in Tanzania is far from encouraging. According to WHO, the country is experiencing a mature and generalized HIV epidemic, which is still in expansion. Since AIDS is a late consequence of HIV infection, the long incubation period of between 5 to 10 years and the absence of significant symptoms at early stages of the infection make impossible to know the exact prevalence of HIV/AIDS in the country. The only reliable data are from the blood donors and the few sero-prevalence studies in selected regions.

However, according to WHO and UNAIDS, the adult prevalence of HIV/AIDS is estimated at 6.4 to 11.9% (around 8.8%), which make between 1 200 000 and 2 300 000 Persons Living with HIV/AIDS (PLWHA) in the country. The National AIDS Control Programme (NACP) numbers from 2003-2004 correspond to that estimation; NACP estimated Tanzania Mainland to have about 1,840,000 PLWHA (860,000 males and 980,000 females)³¹⁵. In correlation to those figures, the statistics are establishing similar numbers of AIDS orphans, as the numbers vary from 1.1³¹⁶ to 2 millions³¹⁷ depending of the source.

³¹³ Joint United Nations Programme on HIV/AIDS, 22 January 2007, <http://www.unaids.org>.

³¹⁴ Gichinga Ndirangu, "Africa must find new ways to fund Aids fight", The East African (Tanzania), 1-7 May 2006.

³¹⁵ National AIDS Control Programme, 14 February 2007, <http://www.nacptz.org>.

³¹⁶ "AIDS Orphans", AVERTing HIV and AIDS, 14 February 2007, <http://www.avert.org>.

Within Tanzania, the HIV/AIDS epidemic shows major geographical variations. Some regions, such as Mbeya and Iringa, have HIV prevalence over 14% whereas others, like Manyara and Kigoma, have 2%³¹⁸. The epidemic is having some tremendous effects within the most affected regions. In Makete (Iringa Region) for example, one of the hardest hit districts by HIV/AIDS, nearly 45% of the population has been infected and 26,000 AIDS orphans were recorded in the region³¹⁹. Although such situations are well known, there is yet no sign of improvement. For instance, the Rungwe District (Mbeya Region) has Reported an increase HIV/AIDS related deaths (256 from 168), infections (19.9% from 14.9%), and patients (2,377 from 1,177) together with a rise of the number of orphans³²⁰.

This crisis is slowly changing the face of the country by modifying the demographic, sociologic and economic data. As stated on the Tanzania National Website by referring to the World Bank findings, the impacts of the epidemic are various and cover a variety a sectors;

“[B]ecause of the AIDS epidemic, life expectancy by 2010 will revert to 47 years instead of the projected 56 years in the absence of AIDS. [...]the mean age of the working population (labour force) will decline from 31.5 to 29 years between 1992 and 2010. The overall younger work force will have less education, less training and less experience. In addition the number of children orphaned by AIDS was estimated to be increasing from between 260,000 to 360,000 in 1995 to between 490,000 and 680,000 by the year 2000. Families, communities and the Government will be required to generate resources to cater for the needs of these children. [...] AIDS will reduce average real GDP growth rate in the period 1985-2010 from 3.9% without AIDS to between 2.8 and 3.3% with AIDS. These factors will certainly have a negative impact on the overall economic performance of the country and its living standards.”³²¹

In order to analyze the HIV/AIDS phenomenon through a human rights based approach, the right to health is often use as a starting point. As presented in a previous chapter of this Report , the Government is obliged to ensure the right to health through several international instruments, including ICCPR (Article 12(1)), ICESR, (Article 12), the *Declaration on the Right to Development* (Article 8(1)) and the *African Charter on Human and Peoples’ Rights* (Article 16(1) and (2)). More specifically, although it is not a binding treaty, the *International Guidelines on HIV/AIDS and Human Rights*, adopted by UNHCHR and UNAIDS in 1998, states at Guideline 6 that:

³¹⁷ “Follow-up to the Declaration of Commitment on HIV/AIDS (UNGASS)”, *Tanzania Commission for Aids*, 14 February 2007, <http://data.unaids.org>.

³¹⁸ “Summary Country Profile for HIV/AIDS Treatment Scale-up – United Republic of Tanzania”, *World Health Organization*, 6 November 2006, http://www.who.int/hiv/HIVCP_TZA.pdf.

³¹⁹ “The desperate plight of Makete AIDS orphans now worsened by greed”, *ThisDay* (Tanzania), 8 April, 2006).

³²⁰ Nico Mwaibale, “HIV/Aids infections on rise in Rungwe”, *The Guardian* (Tanzania), 19 April 2006.

³²¹ “Ilala Municipal Council HIV and AIDS Profile”, *Tanzania National Website*, 13 February 2007, <http://www.tanzania.go.tz>.

“States should enact legislation to provide for the regulation of HIV-related good, services and information, so as to ensure widespread availability of qualitative prevention measures, adequate HIV prevention and care information”³²².

There have been various national efforts to control the spread of HIV in Tanzania and a gradual involvement of the public sectors, NGOs and community-based organizations. This multi-sector response to the HIV/AIDS problem has involved, among others, activities for the prevention of HIV transmission, care for AIDS patients, education, Government budgetary allocation for AIDS activities as well as condom distribution.³²³ Furthermore, in order to encompass the above responses, the Government had proposed the *National Policy on HIV/AIDS*, 2001 to widen and strengthen the response against the epidemic. The overall goal of the National Policy is:

“[T]o provide for a framework for leadership and coordination of the National multisectorial response to the HIV/AIDS epidemic. This include formulation, by all sectors, of appropriate interventions which will be effective in preventing transmission of HIV/AIDS and other sexually transmitted infections, protecting and supporting vulnerable groups, mitigating the social and economic impact of HIV/AIDS. It also provides the framework for strengthening the capacity institutions, communities and individuals in all sectors to arrest the spread of the epidemic.”

In complement, the Tanzania Commission for AIDS (TACAIDS) has been created to lead the actual development, establishment and implementation of the response to HIV/AIDS in the country. However, these instruments and their application by the authorities are not sufficient in order to effectively protect the human rights of PLWHA.

Until 2006, the Tanzanian legislation has however failed to address issues related to HIV/AIDS. In order to remedy the situation, the Ministry of Justice and Constitutional Affairs has commissioned TAWLA and Policy Project (funded by USAID) together with TACAIDS in order to draft a legislation that would propose a wider protection for the rights of PLWHA³²⁴. The proposed *Tanzania HIV/AIDS Prevention and Control Act* would include: (1) criminalizing the deliberate spread of HIV/Aids, (2) mass education, (3) promotion of voluntary counselling and testing, (4) basic health care and social service to people living with Aids, (5) prevention of discrimination and stigmatization, (6) rights of infected people, widows and orphans, and (7) research on vaccination and treatment issues.³²⁵ Such instrument would help the life conditions of PLWHA but a wider and stronger response is certainly needed in order to control and restrict the crisis.

³²² “Revised Guideline 6” [United Nations: 2002], Office of the United Nations High Commission for Human Rights and the Joint United Nations Programme on HIV/AIDS, 26 January 2007, <http://www.ohchr.org>.

³²³ “HIV/AIDS in Tanzania”, Tanzania National Website, 29 January 2007, <http://www.tanzania.go.tz>.

³²⁴ “Project Activities – Tanzania”, Policy Project, 13 February 2007, <http://www.policyproject.com>.

³²⁵ Pudenciana Temba, “Bill against deliberate HIV/Aids spread ready”, Daily News (Tanzania), 13 April 2006.

Even if this legislation was adopted, Tanzania’s response to HIV/AIDS crisis would need to be much wider in order to generally address the entirety of the issues. Actions must be taken by the Government regarding the accessibility of health services, the information dissemination and the social inequities.

6.1 Right to Accessible Health Services

With the launch of the National Policy on HIV/AIDS in September 2001, comprehensive healthcare including the provision of ARV therapy was recognized as a right for all PLWHA³²⁶.

Although the overall health sector capacity in Tanzania is high compared with other countries in Eastern Africa, the access to health service and the availability of the treatments for PLWHA remain problematic³²⁷. The accessibility to the health services concerns all the member of the society, as these services include testing, counselling as well as health care for treatments.

One main issue raised in 2006 is the inadequate administration of donor funds. Dr. Joseph Temba of TACAIDS urged the numerous NGOs combating HIV/AIDS to form a union to control the management of donor funds. Currently there are many NGOs working to combat the disease and competing for donor aid. As a result, the efforts of many organizations are duplicated and funds are used for infrastructure development instead of education and assistance of those living with the disease. According to Dr. Temba, “experience shows that the most vulnerable of AIDS, especially [PLWHA] are not getting the support”³²⁸.

Therefore, despite the large amounts of money that has recently been donated by international organizations and nations, it seems that very little ends assisting those living with the disease in getting access to ARVs or educating people about the benefit of ARVs³²⁹. The Government is responsible to provide its people with healthcare system and failed on its obligation to allocate the donations according to the need of the persons that directly live with the disease.

The following LHRC survey demonstrates well of the perception of the Tanzanian society regarding the lack of healthcare for PLWHA:

N: HIV/AIDS and Human Rights: PLWHA Gets Sufficient Health Services?

S/No.	Answers	Yes = 9	Total # of Respondents = 77
		No = 68	

³²⁶ “Summary Country Profile for HIV/AIDS Treatment Scale-up – United Republic of Tanzania”, World Health Organization, 6 November 2006, http://www.who.int/hiv/HIVCP_TZA.pdf.

³²⁷ *Ibid.*

³²⁸ Pacifique Nkeshimana, “Accent laid on umbrella entity for Aids NGOs”, Sunday Observer (Tanzania), 4 June 2006.

³²⁹ *Ibid.*; and: David Mbulumi, “Let’s act on pleas: Listen a lot more to people living with HIV/AIDS”, The Citizen (Tanzania), 29 May 2006.

	Who said NO: Codified Main Reasons	Male	Female
1.	Non-Availability of ARV and Counselling Services	21	16
2.	ARV are expensive	35	28
3.	Corruption and Maltreatment of Patients	07	19
4.	Few Health Centres	14	38
5.	Lack of Information and Stigma	23	42

Sampling: Students, graduates, employees in different sectors (including health centres), informal sectors, different ages and sexes (all in Dar es Salaam's Districts).

Although the results speak by themselves, it is interesting to note the high number of interviewees that still associate HIV with stigma. The problem related to the availability and cost of ARVs is also obvious and most respondents have affirmed that governmental hospitals do not provide ARVs. One respondent even Report ed that it took her about six months from the HIV positive result to start using that treatment because of the complexity of the procedures in Kongwa District, Dodoma Region. These results correspond quite well with the reality of the numerous Tanzanian living with HIV. Many of these issues raised in the survey were Report ed over the year in the local news papers, such as the massive shortage in healthcare worker³³⁰ or the lack of access to antiretroviral therapy during pregnancy³³¹.

At a meeting with UNICEF and UNAIDS, the Prime Minister Edward Lowassa articulated the Tanzanian government's current priorities in the war against HIV/AIDS: ARVs, training of health workers and HIV screening machines. These issues correspond in fact to the common concerns within the Tanzanian population. Mr. Lowassa agreed that the number of people who are currently undergoing ARV treatment is small compared to the number of people affected. In addition there is massive shortage in health care worker since 10,000 more health workers would have to be trained in order to enhance the capacity to deal with the pandemic.³³² In practice, because of this lack of medical personnel, thousands of PLWHA cannot access life prolonging drugs ARVs in spite of their availability on the Tanzanian market.

In addition, the Head of the Care and Treatment Unit for NACP, Mrs. Emma Msuya Lekashingo, blamed the inaccessibility of many rural areas as well as the cultural misconceptions about HIV/AIDS for the situation, because more people would receive ARVs if patients would overcome their fear of being stigmatised³³³. However, some progress has been made over the year on that aspect. According to the NACP, "49,315 patients were receiving the life-prolonging medication from state facilities by mid-September, an average of about 2,500 new patients per month since December 2005,

³³⁰Citizen Report er, "Lowassa sheds light on Dar's priorities on Aids", *The Citizen* (Tanzania), 2 June 2006, Page 6.

³³¹ "WHO says fews pregnant women getting HIV drugs" [1 April, 2006], *United Nations Development Fund for Women*, 14 February 2007, <http://www.genderandaids.org>; Laura Macinnis, "WHO says few pregnant women get HIV drugs", *The African* (Tanzania), 3 April 2006.

³³² Citizen Report er "Lowassa sheds light on Dar's priorities on Aids", *The Citizen*, June 2 2006, *Op. Cit.*

³³³ "Tanzania: ARV rollout slowly improving", *IRIN Plus News – United Nations Office for the Coordination of Humanitarian Affairs*, 13 February 2007, <http://www.plusnews.org>.

when the figure was 23,000”. However, the latest statistics still largely miss the NACP's national target of placing 66,000 patients on ARVs by the end of 2005, and even more the target of 104,000 by the end of 2006.³³⁴

Finally, as the act of testing for HIV remains stigmatized, the healthcare services have to come along with educational programmes. Testing remain in 2006 a very contentious issues because of the stigma and negative consequences (*i.e.* loss of job, inability to get jobs, lack of access to medical care or housing and even social ostracizing) associated with being “infected”. There is also a need to educate people on the disease in order to end the discrimination against the people infected. As Hon. Sophia Simba, Minister for Community Development, Gender and Children, noted, the “despair and hopelessness” that a positive HIV diagnosis poses for individuals “cause them [to] spread the disease further, even unknowingly, as they will fear to seek help.” As a result of this stigmatization, programmes to distribute ARVs were not always successful because few people are willing to come out and identify as being infected.³³⁵

6.2 Information Dissemination

Despite the fact that it is over 20 years since the first HIV/AIDS case was Reported in Tanzania, there is a long way to go in changing people’s habits, some society members even continue to associate HIV with witchcraft³³⁶. As observed in the LHRC’s survey previously presented, the lack of information is an issue that explains, to a certain extend, the spread of the disease.

According to the study “Disentangling HIV and AIDS Stigma in Ethiopia, Tanzania and Zambia” from the International Center for Research on Women (ICRW), the “incomplete understanding of HIV AIDS feeds fears about casual transmission”. In its study, ICRW notes:

“Many respondents do not understand that there is a difference between HIV and AIDS, how the disease progresses, and what the longevity of a person with HIV is. Less than one-third of the respondents in Ethiopia’s quantitative survey know the difference between HIV and AIDS. Many respondents in all three countries believe that a person with HIV will die very quickly, if not immediately. As an urban Tanzanian man bluntly notes, ‘when they see that someone has HIV, they see him already dead.’”³³⁷

Informing the public on the causes of the disease (especially the groups more at risk) and its evolution remains a key solution, as it leads to a better prevention and diminution of the new infections.

³³⁴ *Ibid.*

³³⁵ “HIV/AIDS stigma leads to more infections – minister”, *The Guardian* (Tanzania), 3 June 2006.

³³⁶ Florence Lawrence. “Activist urges habit change in combating HIV/AIDS”, *Thisday* (Tanzania), 31 July 2006.

³³⁷ “Disentangling HIV and AIDS Stigma in Ethiopia, Tanzania and Zambia” [IRCW-2003], *International Center for Research on Women*, 29 January 2007, <http://www.icrw.org>.

In Tanzania, the awareness on the importance of educating people on the causes and evolution of HIV/AIDS is slowly raising. Working on that matter is clearly and specifically established in TACAIDS functions at section 5, when it states that the functions of the Commission are:

- “(e) to disseminate and share information on HIV/AIDS epidemic and its consequences in Tanzania on programmes for its prevention and control;
- (f) to promote research, information sharing and documentation on HIV/AIDS prevention and control.”³³⁸

In 2006, there have been some local initiatives on that matter. For instance, officials in Kongwa District (Dodoma Region) linked the high prevalence of HIV/AIDS in the district to the lack of knowledge about the spread of the disease and the high rate of illiteracy. Tsh 86 million have been earmarked for the upcoming year for a special campaign to educate people in the rural areas about the disease and other harmful traditions that contribute to its spread.³³⁹ Such initiatives have some positive but rather limited impacts. It is indeed the responsibility of the Government to address this issue in the context of a national policy.

According to WHO statistic based on the Demographic and Health Survey, the percentage of young people between the age of 15 to 24 who demonstrate knowledge of HIV prevention methods correctly vary from 40 % (male) to 45% (female). In addition, the same survey shows that the Reported use of condom at last higher risk sex for the same age category vary from 34 % (female) to 46% (male). These numbers demonstrate well that the past efforts on dissemination of knowledge on the disease and about condoms were clearly no enough.

As many critics believe that abstinence is an unattainable goal in order to lower HIV infection rates, availability and dissemination of condoms is of greater need. In an effort to increase awareness and access to condoms, the US Government has set aside over Tsh 130 billion for HIV prevention, care and treatment in Tanzania this year. According to Ms. Pamela White, Director for the USAID, “only 14 percent of Tanzanian young women and 20 percent of men used condoms the first time they had sex”.³⁴⁰

The lack of knowledge remains the rule rather than the exception and it has to become one of the Government’s priorities.

6.3 Social Inequities

As outlined on the Tanzania National Website, some important determinants of the epidemic that provide opportunities for HIV infection to occur to an individual are

³³⁸ *Tanzania Commission for AIDS Act*, 2001 (Act No. 22 of 2001), 9 January 2001.

³³⁹ Mathew Kwembe, “Aids spread blamed on illiteracy”, *The Citizen* (Tanzania), 3 June 2006.

³⁴⁰ Correspondent, “Diplomat counsels Tanzanians on HIV as ‘dume’ is launched”, *The Citizen* (Tanzania), 12 April 2006, Page 6.

societal³⁴¹. It means that the social status of a given individual within the Tanzanian society will have an impact on its vulnerability to HIV. Likewise, social inequities, discrimination and stigma have grown disproportionate with HIV/AIDS. Issues related to gender, poverty and labour discrimination have continued in 2006.

In consequence of biological, social and cultural factors, Tanzanian women are more likely to be infected by HIV than men. A survey carried out in 2003-2004 showing an overall prevalence of 7.2% among the 15-49 years old indicated that women (7.7%) are likely to be more infected than men (6.3%)³⁴². On that matter, a UNAIDS's Report cites the increase in HIV/AIDS among women as the chief cause of the failure of prevention programs. Owing to their relative powerlessness with regards to sex in certain cultures, women are the more susceptible to new infections³⁴³. Cultural norms, beliefs and practices that subjugate or subordinate women (such as polygamy or female circumcision) are important determinants to the spreading of HIV³⁴⁴. In addition, rape, the practice of child brides, failure to use condoms and failure to be treated are main ways in which new women are being infected.³⁴⁵ Also, many women and girls are forced into the commercial sex trade because of extreme poverty where likelihood of infection is highly increased.

It is also well established that poverty considerably influences the spread and impact of HIV/AIDS. The proportion of the population with very low and/or irregular income is indeed an important social determinant. Over 50% of Tanzanians live below the poverty line and the situation of women is worse than men. Low and or irregular income also creates an environment that encourages labour migration, which increase the HIV infections. Poverty is a factor that has impact on the vulnerability to HIV infection as well as on its progression in the individual due to malnutrition, limit access to social and health care services as well as prevention methods.³⁴⁶ The young people leaving home and school environment every year to migrate for getting employment in urban areas are also more at risk to HIV infection. These youth and especially the women, become very vulnerable because they end up getting employment, which is poorly paid and can tend to supplement their meagre income through unsafe sexual practices.

In order to break this tendency of HIV progression among the poorest and weak of the society, one could think to financial independence and education. However, discrimination based on HIV status is also problematic when it comes to work and a positive testing can even become an insurmountable obstacle. The loss of a job or the inability to found one is common consequences of an HIV diagnosis. The idea of mandatory testing as preventive measure has even been considered for some specific

³⁴¹ "HIV/AIDS in Tanzania", Tanzania National Website, 29 January 2007, <http://www.tanzania.go.tz>.

³⁴² "Summary Country Profile for HIV/AIDS Treatment Scale-up – United Republic of Tanzania", World Health Organization, 6 November 2006, <http://www.who.int>.

³⁴³ Evelyn Leopold, "AIDs increases among women, sexual control absent", The African (Tanzania), 2 June 2006.

³⁴⁴ "HIV/AIDS in Tanzania", Tanzania National Website, 29 January 2007, *Op Cit*.

³⁴⁵ Evelyn Leopold, "AIDs increases among women, sexual control absent", The African (Tanzania), 2 June 2006.

³⁴⁶ United Republic of Tanzania, Tanzania National Policy on HIV-AIDS, September 2001, Page1.

positions. Concerns over these compulsory testing have arisen considering the fact that it would open the door to a generalized discrimination.

PLWHA would have had a legal recourse against their employers if the *Employment and Labour Relation Act* would have been operationalized during the year. Section 7(4)(m) of this Act specifically prohibits discrimination based on HIV/AIDS. However, since its enactment in 2004, this Act remained inefficient and inapplicable by the court of justice in the country.

Even among the youngest of the society we can find HIV-based discrimination. According to Mrs. Magdalena Rwebangira, a Dar es Salaam based lawyer, the current laws do not protect the rights of children with HIV/AIDS especially when the children are orphaned. The current family laws allow relatives to “deprive children with HIV/AIDS of their parents’ properties like houses estates and other properties”. The situation has only been worsened by the recent increase in AIDS orphans and children infected with the disease.³⁴⁷

In addition, these children are also victim of stigmatization by their classmate (when they are able to attend to school), they are generally neglected and they lack of essential goods (such as food and clothes). The Education Aid Consult Tanzania (EACT) has worked over the year with orphans of HIV/AIDS to provide them with basic needs, like food, shelter, clothing, education and school materials. Additionally, the NGO is working with parents and guardians on how to provide proper care (especially home-care) to HIV/AIDS patients as well as to reduce the stigma related to infected children.³⁴⁸ However, such little initiatives are not enough to fight this extensive phenomenon.

HIV/AIDS stigma and discrimination against PLWHA is one of the key challenges confronted by the Tanzanian society in the prevention and control of the epidemic. Like in other African countries, they remain extremely strong and play a major role in the diffusion of HIV infection³⁴⁹. This issue should be addressed by fundamental transformation in gender and social relations in all the spheres of the life; which include private relationships, customs and traditions as well as behaviour and attitudes. The Government has the power to push for a change by adopting laws and policies that would address specifically the problem.

³⁴⁷ Peter Tindwa, “Amend laws to protect HIV/AIDS children – expert”, *The Guardian* (Tanzania), 24 June 2006.

³⁴⁸ Morislyimo “Local NGO strives to protect lives of orphans”, *The Guardian* (Tanzania), 5 April 2006.

³⁴⁹ United Republic of Tanzania, *Tanzania National Policy on HIV-AIDS*, September 2001 *Op Cit*, Page 2.

Chapter Seven – Collective Rights

7.0 Introduction

Under international law, the collective rights are defined as the rights that are exercised by individuals collectively. Hence, the protection afforded by that right is aimed at the individuals; whether the right is specific to some groups (like minorities) or more general.³⁵⁰ In clear, collective rights are the one that individuals enjoy as part of a bigger community, since they affect the populations as a whole.

The collective rights are generally associated to the “third-generation human rights”³⁵¹, which refers to those rights that go beyond the mere civil and social, as expressed in many progressive human rights international instruments. The right to self-determination is surely the most recognized and the less controversial among them. Apart from it, the concept of collective rights include, among others, the rights to economic and social development, healthy environment, natural resources, communicate, cultural heritage as well as intergenerational equity and sustainability.

Because of the principle of the sovereignty of the state, these rights have been hard to enact in legally binding documents. Providing social and economical measures to promote and implement the collective rights requires financial resources as well as organizational capacity that are often lacking in developing countries. However, given their nature, the international community has a role to play in the implementation of the collective rights when a state is not in a position to fully observe them, by assisting them through financial aid or technology transfers.

This chapter will focus on the collective rights that truly affect the Tanzanian society; namely the right to development, the right to a clean environment and the right to natural wealth and resources.

7.1 Right to Development

The strong link between human rights and development has figured in the UN deliberations since its creation and the right to development can be rooted in the UN Charter as well as in the *Universal Declaration on Human Rights*. From a human rights perspective, UNHCHR describes the concept of development as such:

“Development is people-centred, participatory and environmentally sound. It involves not just economic growth, but equitable distribution, enhancement of people’s capabilities and widening of their choices. It gives top priority to poverty elimination, integration of women into the development process, self-reliance and

³⁵⁰ “Considering collective rights, group rights and people’s rights”, Minority Rights, 30 January 2007, <http://www.minorityrights.org>.

³⁵¹ Although the division of human rights into three generations remains largely unofficial and houses an extremely broad spectrum of rights, it describes well the tendency initiated around the seventies to protect the individuals as part of a collectivity.

self-determination of people and Governments, and protection of the rights of indigenous people.

*The rights-based definition of development in Article 1 of the Declaration on the Right to Development sees it as a comprehensive economic, social, cultural and political process. Its object is the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits. The human rights approach to development is therefore integrated and multidisciplinary.*³⁵²

In 1986, the right to development was made explicit in the *Declaration on the Right to Development* at its Article 1(1) by stating that “[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”. Later, the World Conference on Human Rights, held in Vienna in 1993, reaffirmed by consensus the right to development as a universal and inalienable right and an integral part of fundamental human rights. The *Vienna Declaration and Programme of Action* expressly recognizes that “[d]emocracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing”.

In 2000, a more proactive measure from the UN member states was taken by the adoption of the Millennium Development Goals (MDGs). These states have the responsibility to ensure the eight following goals by 2015:

- 1) Eradicate extreme poverty and hunger;
- 2) Achieve universal primary education;
- 3) Promote gender equity and empower women;
- 4) Reduce child mortality;
- 5) Improve maternal health;
- 6) Combat HIV/AIDS, malaria and other diseases;
- 7) Ensure environmental sustainability; and
- 8) Develop a global partnership for development.

Apart from being a goal in itself, the eradication of extreme poverty and hunger is a key to most developing countries’ ability to achieve the rest of the MDGs. Logically, neglecting poverty and deprivation undermines the achievement of the other goals, as hunger affects the society individually and collectively. A Report put out by donor countries on the progress of East African nations has demonstrated that despite economic growth, countries have failed to reduce the amount of people living in poverty and this

³⁵² “Human Rights in Development – Rights-based approaches”, United Nations High Commission for Human Rights, 30 January 2007, <http://www.unhcr.ch/development/approaches-02.html>.

situation is preventing them from achieving their goals. The economic growth rate is largely occurring among the better off segments of society, but not filtering to the poor.³⁵³

To address those issues and in response to the Millennium Development Goals, the Poverty Reduction Strategy Paper (PRSP) was adopted in 2000 by the Tanzanian Government. In 2005, the National Strategy for Growth and Reduction of Poverty (NSGRP, or MKUKUTA in the commonly used Kiswahili acronym) was finalized in order to strengthen the commitment to MDG and increase resources for development goals.

The 2006/07 National Budget followed the first year of implementation of the NSGRP, whereby specific measures have been adopted by the Government to attempt that the budgets of all sectors conform to MKUKUTA's targets. Special focus has been given on two goals: to build a "modern self-sustaining economy" and to "empower the people so that they can participate in economic activities and in eradicating poverty"³⁵⁴. The challenge is, these development strategies have all the time been discussed in papers and especially in urban meeting. According to the random survey organised by LHRC in October 2006, more than 98 per cent of people are not aware of these strategies. Therefore, any successful story about them can only be traced in papers and not in the communities to whom they were supposed to be implemented.

The year 2006 was marked by some circumstances that have highly affected the national economy; such as the drought in Eastern Africa, the surge in world petroleum prices and the crisis that have emerged in energy and food insecurity. However, according to the *Gender, Democracy and Development Digest*, "the negative impact of drought and high petroleum prices was not inevitable – the ensuing crisis reflects the degree to which our economy is not self-sustained and is increasingly dependant on the global market and exploited by multinational corporations". In order to come with a long term strategy and achieve a sustainable economy, the Tanzanian Government has to evaluate the real structural causes for economic and social problem³⁵⁵. The natural calamities are known, what is unknown is what strategies does the government have in place to curb them? For instance, the problem of food insecurity caused by draught would have been tackled by a serious adoption of irrigation farming.

As the Tanzanian economy highly relies on agriculture (45% of its GDP³⁵⁶), a more sustainable economic development and empowerment necessarily depends on significant support to sustainable employment in that sector, whether they are private or public. However, despite last years' low production due to the poor rains, relatively small

³⁵³ Kevin Kelley, "EA Economic Growth has No Impact on Poverty War", *The East African* (Tanzania), 22 May 2006.

³⁵⁴ "Is the 2006/2007 Budget Pro-Poor and Gender Sensitive?: Need for a New Alternative Budget Framework", *Gender, Democracy and Development Digest*, Issue No. 2 2006, 1.

³⁵⁵ *Ibid.*, p. 2.

³⁵⁶ *United Nations Conference on Trade and Development*, 30 January 2007, <http://www.unctad.org>.

allocations have been made by the Government to agriculture and livestock-keeping and very little help has been given to small-scale producers.³⁵⁷

Also, MKUKUTA's plan to assist in poverty reduction could suffer major setbacks if it does not address the plan's failure to assist the rural poor. As reported in the *Business Times*, the Government's efforts to reduce poverty are focused on urban rather than rural space. Additionally, the Government's efforts in the war against HIV/AIDS are also increasingly Urban-centric since people in cities have more access to treatment. The problem is particularly heightened in rural areas where lack of hospitals and education have led to common misconceptions on the causes of the disease. Some governmental measures would help reducing rural poverty in the long term; like improving rural road network, supplying clean and safe water, building more hospitals and schools, introducing irrigation farming and increasing the availability of markets for the farmers.³⁵⁸

In connection with this, one of the issues raised by the new papers over the year is the discrepancy between the goals of development projects and the local communities that try to implement them. The failure to involve local communities and organizations in planning the project and setting out goals leads necessarily to their lack of sustainability. The aim is to have profits from the development project reinvested by the local community as a means of reducing dependence. Unfortunately the projects do not generate sufficient profits to reach the required levels of funding. In order to truly assist development a new concept of sustainability, developmental not economic, should become the focus of development projects and the targets of foreign donors.³⁵⁹

As noted by UNHCHR, the rights-based approaches of development “focus on raising levels of accountability in the development process by identifying claim-holders (and their entitlements) and corresponding duty-holders (and their obligations)”. In other words, the populations are entitled to development and their governments have the obligation to protect this right by taking measures to promote a sustainable development and provide people with effective measures that are designed to reach this goal.

Indisputably, with 44% of its population undernourished³⁶⁰, Tanzania still needs a strong framework aimed at poverty reduction. As outlined in the *Tanzanian Poverty and Human Development Report*, 36% of Tanzanians live below the basic needs poverty line and 19% of Tanzanians live below the food poverty line. According to the 2006 UNCTAD Report on Poverty, Tanzania is still among 50 poorest countries in the world while its economy is growing below the rate of 7% (although donor countries had increased grants twice as between 1999 and 2004). Among others, the problems in infrastructure and

³⁵⁷ “Is the 2006/2007 Budget Pro-Poor and Gender Sensitive?: Need for a New Alternative Budget Framework”, *Gender, Democracy and Development Digest*, Issue No. 2 2006, 2.

³⁵⁸ Sigisbert Komba, “Poverty alleviation initiative should target rural areas”, *Business Times* (Tanzania), 23-29 June 2006.

³⁵⁹ Frank Bliss, “When poverty reduction causes yet more poverty”, *Sunday Observer* (Tanzania), 23 April 2006.

³⁶⁰ “Statistic Profiles of the Least Developed Countries 2005”, *United Nations Conference on Trade and Development*, 30 January 2007, <http://www.unctad.org>.

agriculture, the poor national income, the high prevalence of some disease as well as the lack of sustainability in its development strategies will prevent Tanzania from achieving its goal.

7.2 Right to Clean and Healthy Environment

The general right to a clean and healthy environment is extremely wide and covers a myriad of issues. Based on this right, individuals are entitled to: a safe and healthy environment, the highest attainable standard of health, ecologically sustainable development, an adequate standard of living (including access to safe food and water), live and grow in an environment appropriate for physical and mental development, participate in environmental decision-making and development planning (in shaping decisions and policies affecting ones community, at the local, national and international levels), safe working conditions (including adequate safeguards for pregnant and lactating women) as well as to education and information that links health and environment³⁶¹.

A number of international treaties comprises obligations for the governments in relation to these aspects; namely the *Universal Declaration of Human Rights*, the *ICCPR*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *CRC*, and the *ILO Indigenous and Tribal Peoples Convention* (No. 169). Also, the Tanzanian Government has acceded to numerous international and regional environmental treaties:

- *Convention on Biological Diversity* ratified on 8 March, 1996;
- *Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region* and Related Protocols ratified on 1 March, 1996;
- *United Nations Convention to Combat Desertification* ratified April, 1997;
- *United Nations Framework Convention on Climate Change* ratified in April, 1996;
- *Vienna Convention on the Protection of Ozone Layer* and *Montreal Protocol on Substances that Deplete the Ozone Layer* acceded on 7 April, 1993 and 16 April, 1993 respectively;
- *Basely Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* acceded on 7 April, 1993;
- *Bamako Convention on Ban of the Import into Africa and the Control of Transboundary Movements of Hazardous Wastes within Africa* ratified on 7 April 1993,³⁶² and
- *African Charter on Human and People's Rights*, 1981.

³⁶¹ "The Human Right to A Safe and Healthy Environment", The People's Movement for Human Rights Education, 30 January 2007, <http://www.pdhre.org/rights/environment.html>.

³⁶² "Environment", Tanzania National Website, 30 January 2007, <http://www.tanzania.go.tz>.

Furthermore, with the 1992 *Rio Declaration on Environment and Development*, the Government has committed itself in a specific international instrument designed to mobilize action promoting sustainable development. The Principle 4 clearly expresses this concern by stating that, “[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”.

In Tanzania, the process of considering the environmental impacts into the national development planning took off in 2002/2003 with the review of the first PRSP and the formulation of its successor, the MKUKUTA. It has succeeded well in terms of getting poverty and environment linkages recognized. Out of the total 118 national development targets in the strategy, 16 relate to environment³⁶³. Also, the MKUKUTA’s implementation is directly linked to the national budget process including the Medium Term Expenditure Reviews and the Public Expenditure Reviews. Since the establishment of the strategy, there has been an increase in budgetary allocations to the environment sector³⁶⁴.

At the same time, the Parliament of Tanzania has recently enacted *Environmental Management Act* (EMA), 2004 to provide a legal and institutional framework for environmental management. Section 4 of the Act specifically states that every person “shall have a right to clean, safe and healthy environment”.

The enactment of this Act by the Government was surely a step in a better protection of the environment. However, as reported in 2006, the National Environment Management Council (NEMC) lacks capacity to implement the *Environmental Management Act*. The NEMC was established in 1983 to perform an advisory role to the Government on all matters relating to environmental management, by promoting and co-ordinating the issues pertaining to the environment. The NEMC Director General, Mr. Bonaventure Baya, affirmed that effective implementation of the *Environmental Management Act*, which became in operation in July 2005, might take more time, as the Council is unable to effectively implement the Act because of a lack of resources and equipment.³⁶⁵

Another issue related to the entry in force of the EMA is the authorities’ failure to promote the law and to educate the population about its consequences. A research conducted by LHRC revealed that an important portion of the population has received no information about the existence and the impact of the EMA. On 77 interviewees, 71 said that they were not aware of this law and only three said that they knew about the existence of a law governing environment. As the Act provides with punishment for people violating its provisions, the Government must provide its population with information and an effective educational programme on the environmental management issues as well as on the impact of the enactment of the EMA in peoples’ lives. According to the Lawyers’ Environmental Action Team (LEAT), “[d]espite favourable

³⁶³ “Kenian delegation learns from the Tanzanian experience of mainstreaming environment”, United Nations Environment Programme, 30 January 2007 (<http://www.unep.org>).

³⁶⁴ *Ibid.*

³⁶⁵ Joyce Mkinga, The Guardian, 11 January 2006.

constitutional provisions, the current status of a citizen's right of access to environmental information in Tanzania falls far short of internationally recognized minimum requirements". At the same time, sections 89-90 of the *Environmental Management Act* require that Environmental Impact Assessments (EIA) receive feedback from all parties affected by a project to ensure public participation in decision making about "sustainable development". As long as the Tanzanians will not be aware of their rights and duties related to the protection of the environment, the global situation in the country is not likely to improve and the application of the EMA will be difficult.

In addition to the Government's plans and directives designed to reduce environmental degradation, there must be some effective actions and positive practices. The following pro-environmental measures were announced during the year:

- Farmers and pastoralists who are alleged to have invaded and settled in Ihefu game reserve in Kilombero District, Morogoro Region have been directed to leave because the herding of cattle was overtaxing the land, leading to environmental degradation;
- Government outlawed stock routes for cattle within and outside the country;
- Tobacco and tea farmers as well as other major users of trees for energy have been directed to start their own tree plantations; and
- Industrialists were encouraged to shift from manufacturing plastic bags to paper bags.³⁶⁶

However, these limited measures were by far not enough to secure the Tanzanians in their right to a healthy and clean environment. As reported by the LEAT, there is a wide range of major environmental issues in the country, including land degradation, pollution in urban area and a lack of efficient management in the areas of agriculture and natural resources.³⁶⁷

Since it is widely accepted that environmental management is everybody's responsibility, the Government is not the only one to blame for the degradation of the environment. While the Government roles are in the areas of policy-making, education and assistance to local community, the private sector has also responsibilities with regard to its specific field of activities. For instance, business are generally accountable in planning and implementing programmes that encourage an efficient use of natural resources and a reduction of waste as well as in participating in different forum related with environmental management.³⁶⁸ At a smaller scale, individuals are not only entitled to rights in this area but they are also answerable for their own behaviours.

There is also a problem of adhering to the requirement of Environmental Impact Assessment (EIA) especially in urban areas. This has caused conflicts between industrial

³⁶⁶ "VP announces measures to stem environmental degradation", *Sunday Observer*, 2 April 2006.

³⁶⁷ "Major Environmental Problems in Tanzania: Review of the Decentralization Process and its impact on environmental and natural resources management in Tanzania", *Lawyers' Environmental Action Team*, 31 January 2007, <http://www.lead.or.tz>.

³⁶⁸ "Environment", *Tanzania National Website*, 31 January 2007, <http://www.tanzania.go.tz>.

owners and urban dwellers. The Karibu Textile Industry saga of Mbagara area in the City of Dar es Salaam can be singled out as good illustration. Since when the problem aroused more than three years ago, it is said that it has continued to exist and it seems that NEMC has failed to discharge its duties. The complaint is that, Karibu Textile Industry which is located in the residential area emits harmful chemicals to the waters sources.

In 2006, the private sector has unfortunately played a limited role in reducing environmental degradation. In the future, it needs to join in the efforts by figuring out ways to recycle products, such as phone cards and aluminium cans as well as by providing trash cans for recycling activities. The private sector should also lobby the Government to encourage these measures and to promote the idea of tax deductions for those complying with greater environmental sensitivity.³⁶⁹

7.3 Right to Natural Wealth and Resources

The right to natural wealth and resources is enshrined in the *UN Declaration on the Right to Development* at its Article 1(2):

“2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

At the national level, Article 9 of the Constitution specifies that:

“The state authority and all its agencies are obliged to direct their policies and programmes towards ensuring: [...]
(c) that public affairs are conducted in such way as to ensure that the national resources and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another; [...]
(i) that the use of national resources places emphasis on the development of the people and in particular is geared towards the eradication of poverty, ignorance and disease”.

The principal legislation governing wildlife utilization in Tanzania is the *Wildlife Conservation Act, Cap. 283*. This Act contains measures designed to plan the overall management of wildlife in the game reserves, the game conservation areas, and open lands (while the Tanzania National Parks Authority (TANAPA) is in charge of the national parks).

Recently, the passage of the EMA has also affected the rules applicable in the area of natural wealth and resources, as it is directly linked to the state of the environment. For instance, despite a 275 million investment, a Kihansi hydro-power project was undertaken and then halted because of its detrimental consequences, such as the preservation of specific specie of toads. Had an EIA been conducted prior to commencing

³⁶⁹ Emilia Siwingwa, “Careless attitude towards the environment”, *The Citizen* (Tanzania), 8 April 2006.

the project in virtue of the EMA, alternative solutions could have minimized environmental impacts and ensured the full performance of the project.³⁷⁰

During 2006, the Tanzanian civil society together with other private actors has continued its fight in protecting the country's national parks. Hence, environmentalists and conservationists emerged victorious in a dispute with a Dubai-based investment firm, Albawardy Investments, which wanted to build a 120-rooms hotel in Serengeti National Park. According to a highly critical EIA of the University of Dar es salaam, the hotel would have had a damaging effect on the Serengeti's ecosystem and would have interfered with the Park's migratory patterns. In consequence, numerous national and international organizations voiced opposition to the hotel project, including the LEAT and the Conservation Development Centre of Ireland. Due to its ecological impact, the TANAPA has resolved not to continue with the project.³⁷¹ At the same period, the East Arc Mountains environment stakeholders were calling on the Government to disallow professional gaming licenses for five years in Selous Game Reserve to help increase game in the area. The stakeholders claim that excessive and inconsiderate use of land has led to wanton destruction of biodiversity.³⁷²

In the area of wildlife preservation, the President Kikwete announced that his Government will maintain the 38% of Tanzania's land area that is devoted to wildlife protection and conservation. Additionally he called on individuals, institutions, multilateral and bilateral partners to collaborate with the Government in its efforts to conserve wildlife resources. He also urged hunters to engage in responsible environmentally and ecologically sustainable practices³⁷³.

Unquestionably, there is a real need for more effective and dedicated personnel to manage and protect wildlife in the country. There is also an urge to share information about the situation of this specific resource in order to allow the maximum amount of development with a minimal impact on the environment.

7.4 Right to Peace and Security

Article 3 of the Universal Declaration of Human Rights of 1948 provides that, "Everyone has the right to life, liberty and security of person". The right to peace and personal security is a human right independent of the right to personal liberty³⁷⁴. If individuals or groups are subject to harassment, intimidation, severe discriminatory treatment, death threats, or violent attacks, States have a positive obligation to provide a minimum standard of protection for their personal security integrity, and life.

³⁷⁰ Waiswa Abudu Sallam, "Environmental Impact Assessment vital", ThisDay (Tanzania), 10 June 2006.

³⁷¹ "Tanzania stops 120-room hotel project in Serengeti", The East African (Tanzania), 5 May 2006.

³⁷² Said Mmanga, "Environmentalists: Suspend hunting in Selous", The Guardian (Tanzania), 13 April 2006, Page i.

³⁷³ Citizen Correspondent, "JK reiterates govt's resolve on conservation of wildlife", The Citizen (Tanzania), 22 June 2006, Page 3.

³⁷⁴ Gary KING and Cristopher J.L. MURRAY's Rethinking Human Security, in Political Science Quarterly – Volume 116, number 4, 2001-02.

Tanzanian poor people, like other poor people around the world suffer from multiple forms of insecurity. In addition to experiencing financial, economic and social insecurity, they are marginalized and discriminated against development issues such as non-involvement in development policies and strategies as it has been highlighted in Paragraph 7.1 of this report.

Protective services such as police protection are not adequately provided for the rural people. They use traditional militia (*Sungusungu*) who are actually not experts of proper security keeping. As it has been reported in Chapter Two of this report, these local militiamen have caused even more problems that keeping security. In the villages especially in Mara Region, they intimidate people and in most cases beat and kill citizen. For instance, in Mwaza Region, it was reported³⁷⁵ that, the *Sungusungu* killed Paul Elias after subjected him to severe torture allegedly for having found him smoking Marijuana at mid night while they were in patrol.

³⁷⁵ See Fredrick Katulanda, “Sungusungu Wadaiwa Kuaa Mwanza” [Militiamen Alleged to have killed in Mwanza’], Mwananchi, 25 February 2006, Page 4.

Chapter Eight - Domestic Initiatives in Human Rights Protection

8.0 Introduction

A classic statement of the Tanzanian judiciary on the meaning of the rule of law was issued by Justice Mwalusanya in the 1988 case of *Chumchua s/o Marwa vs. The Officer I/C of Musoma Prison and the Attorney General*. The judge stated that:

"The Rule of Law means more than acting in accordance with the law. The Rule of Law must also mean fairness of the Government. The Rule of Law should extend to the examination of the ideal; and that the law does not give the Government too much power. The Rule of Law is opposed to the rule of arbitrary power. The Rule of Law requires that the Government should be subject to the law rather than the law subject to the Government. If the law is wide enough to justify dictatorship then there is no Rule of Law" (HCT, 1988).

In other words, governments are also subject to the application of the law and they have the duty to act when the law requires them to do so.

According to the United States Institute of Peace, "adherence to the rule of law entails far more than the mechanical application of static legal technicalities; it requires an evolutionary search for those institutions and processes that will best bring about authentic stability through justice"³⁷⁶. Therefore, the failure to undertake legal reforms that follows the concept of justice and fairness is a breach of international obligations. As rules of international human rights law have been adopted and incorporated into national laws and as constitutions have integrated human rights standards, Tanzanian authorities have the obligation to take domestic initiatives to assure the human rights protection.

8.1 Tanzania Commission for Human Rights and Good Governance

The Tanzania Commission for Human Rights and Good Governance (CHRGG) became operational on July 1st, 2001 after the coming into force of the *Commission the Human Rights and Good Governance Act No 7, 2001* and was officially inaugurated in March 2002 following the appointment of Commissioners by the President of Tanzania. The CHRGG is an independent governmental department, established as the national focal point institution for the promotion and protection of human rights and good governance in the country³⁷⁷. Its mission is to "independently promote and protect all human rights, duties and principles of administrative justice in order to enhance democracy, rule of law and good governance."³⁷⁸

In 2006, several issues were raised regarding the operation and performance of the Commission. As the Chairman of CHRGG Justice Kisanga remarked, the Commission

³⁷⁶ "About Rule of Law", United State Institute of Peace, 1 February 2007, <http://www.usip.org>.

³⁷⁷ "Client Service Charter" [October 2003, p. 6], Commission on Human Rights and Good Governance, 21 November 2006, <http://www.chragg.org>.

³⁷⁸ *Ibid.*, p. 9.

lacked the personnel and finances to effectuate its duties and prescribed goals. All of the commissioners are located in Dar es Salaam City without any officer in district and rural areas where most human rights violations are committed. Because the Commission failed to reach every part of the country, they are working with civil societies such as the LHRC, “which has been doing well in educating the public on their rights and have been giving legal assistance to those in need.”³⁷⁹

This year, the Government has been asked to consult the CHRGG to make sure certain bills comply with the basic tenets of human rights. One Commissioner remarked that labour laws failed to uphold the rights of terminated workers (by failing to give them transport to their home). At the same occasion, he also deplored the fact that laws dealing with terrorist activities are inhuman and in contradiction with human rights standards.³⁸⁰

As for the numbers of complaints handled, the Dr. Mary Nagu, the Minister for Constitutional and Legal Affairs said that³⁸¹, from July 2005 to April 2006, the CHRGG received a total of 7,781 complaints from Tanzania Mainland and 136 from Zanzibar. The Minister said that, the Commission did not resolve the complaints from Zanzibar because the law establishing the Commission was not operational in Zanzibar.

One achievement regarding the activities of the CHRGG during 2006 is the fact that it became allowed to operate in Zanzibar.

8.2 Law Reform Commission

In 1974, the Government of Tanzania established a Judicial System Review Commission to conduct a wide ranging review of the legal system and to recommend changes to improve the administration of justice. In 1977, recommendations related to important changes in the judicial system were addressed and importance on long term planning was given in order to adjust the law to the evolution of Tanzanian society. This recommendation was implemented by the adoption of the *Law Reform Commission of Tanzania Act*, 1980.³⁸² Among others, the Commission has recently proceeded to analysis concerning the legislation on tourism, mining, road traffic succession, marriage, congestion in prison, labour as well as reviews on the flow of justice.

In 2006, the Government worked towards a legal sector reform that will update old laws and increase the creation of new laws for the promotion of democracy, business and people’s rights. The role of the Commission is to continue issuing Reports on what laws need to be updated. However, the recurrent inaction of the Government subsequent to the previous recommendations from the Commission is a major issue raised every year.

³⁷⁹ Joyce Mkinga, “Human Rights commission has no working tools”, *The Guardian* (Tanzania), 5 April 2006.

³⁸⁰ Kennedy Kissula, “Laws Should Uphold Human Rights”, *The Guardian* (Tanzania), 18 May 2006.

³⁸¹ Mary Nagu Taarifa ya Waziri wa Katiba Sheria Dr. Mary Nagu (MB.) Akiwasilisha Makadirio ya Matumizi ya Kawaida na Maendeleo kwa Kamati ya Bunge ya Katiba, Sheria na Utawala kwa Mwaka wa Fedha 2006/ 2007, Mei 2006, See Page 11.

³⁸² “About Us”, *Law Reform Commission of Tanzania*, 21 November 2006, <http://www.lrcetz.org>.

The Commission has effectively complained over the Government's delays to implement recommendations for legal amendments. As an example, the Commission's Chairman, Justice Anthony Bahati, complained this year about the lack of governmental response to a Report on the laws of succession and inheritance handed over to the Ministry in 1994.³⁸³ The Chairman also requested the Government to give feedback on legal reforms of over a dozen matters, such as "Review of the Police and Prisons Legislation" (2004), "Provision of Legal Services by Paralegal" (2004), and "Road Traffic Law" (2004). The Minister for Justice and Constitutional Affairs, Hon. Mary Nagu, did not directly comment on the Government's failure in these matters but assured people that they were working hard and had chartered a strategy for legal reform. However, the Minister has not clearly stated what they would do or how they would do it.³⁸⁴

Additionally, a new challenge for the Commission comes out in 2006 due to the numerous shortfalls that appeared in the 2005 election. The review of the election law become indeed essential and Justice Bahati commented that the deficiencies included in this legislation have moved the Commission to review it.³⁸⁵

Besides the Law Reform Commission, another effort from the Government to assure the evolution of the Tanzanian regulations took place in 1993 with the creation of the Legal Sector Task Force (LSTF). Its role is to identify issues within the legal sector and to design a Legal Sector Reform Programme for the country. The LSTF has designed a Legal Sector Reform Programme (LSRP) in the context of a broader public sector reform framework to respond to the rapid transformations going on that specific sector. The mid-term review of the Programme in 2003 specified the key implementation objectives:

- Development of an effective co-ordination mechanism between legal institutions;
- Introduction of strategic management to legal institutions;
- Training to staff in legal institutions;
- Enhanced administrative support in legal institutions;
- Incorporation of inspectorate and supervision services at legal institutions; and
- Introduction of management information systems to legal institutions.³⁸⁶

The implementation of the programme has however been very slow since then. The Government refers to a lack of funds in order to explain his inaction. However, according to some experts, other reasons can explain the slow progress, including the weak

³⁸³ Daily News Report er, "Dalays Irk Law Reform Commission", Daily News, 18 March 2006.

³⁸⁴ Furaha Thonya, "Government 'Sits' on Reports by Law Reform Commission, say Chairman", ThisDay (Tanzania), 18 May 2006.

³⁸⁵ Tuma Abdallah, "Election Law for Review", Sunday News, 19 March 2006, Pages 1 and 2.

³⁸⁶ "Blue Book on Best Practice in Investment, Promotion and Facilitation – Tanzania" [p.3], United Nations Conference on Trade and Development & Japan Bank for International Cooperation, 1 February 2007, <http://www.unctad.org>.

leadership of the programme by the Government (Ministry of Justice and Constitutional Affairs)³⁸⁷.

8.3 Prisons Department

The treatment of prisoners is an issue well spread all around the world and prisons are places where human rights violations occur over and over again. Cases of torture and other ill-treatment, execution, disappearances, death penalties as well as life-threatening prison conditions are reported repeatedly.

The international community has set several standards designed to guide the countries;

- *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of May 1977;
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173 of 9 December 1988;
- *Basic Principles for the Treatment of Prisoners* adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

In Tanzania, the conditions of detention remained problematic in 2006. The shortage of prisons in the country has led to an overcrowding by non-convicted persons.

An update of statistics on prisons and prisoners shows that Tanzania had a total of 43,911 inmates in the prisons, for a 22,699 inmates' capacity. The following table portrays well the extent of the problem:

S/N	Statistical Analysis (Up to 1 st September, 2006)	Factual Number
1.	Prison population total up to 1.9.2006 (including pre-trial detainees / remand prisoners)	43,911
2.	Prison population rate (per 100,000 of national population) based on an estimated national population of 36.0 million at September 2006 (from United Nations figures)	113
3.	Pre-trial detainees / remand prisoners (percentage of prison population) up to 1.9.2006	44.0%
4.	Female prisoners (percentage of prison population)	3.4%
5.	Juveniles / minors / young prisoners incl. definition (percentage of prison population) – under 18 years.	3.5%
6.	Foreign prisoners (percentage of prison population)	2.1%
7.	Number of establishments / institutions	122
8.	Official capacity of prison system	22,699
9.	Occupancy level (based on official capacity)	193.4%

Figure 1: Statistical Analysis of Inmates in Tanzania (Mainland) Prisons.

³⁸⁷ “Conference Report - Pan African Consultative Forum on Corporate Governance”, World Bank Group, 1 February 2007”, <http://siteresources.worldbank.org>.

At a smaller scale, it has been Report ed that a prison designed for 70 inmates was hosting over 589 prisoners, from which only 50 where convicted prisoners. As a solution, the District Commissioner had to release 189 remanded prisoners. These prisoners, though, have been required to check in with the Commissioner daily to perform petty community service. Prison officials Report ed on that matter that some jails with a capacity for 300 inmates took up to four times that number, leading some of them to deaths from diseases, hunger and stress.³⁸⁸

In addition, it is important at this point to remind that the fundamental rights of people kept in the prisons' death rows are also violated. As presented in a previous section, the sentence in itself added to the conditions of detention are also highly problematic from a human rights point of view rights; since the nature of the punishment and the length of detention combined with the uncertainty about their fate constitute inhuman treatment.

There is still an urge to assure the implementation of the internationally recognized human rights and the Government is responsible for the situation. For the first time since independence, the President of the Republic has visited during the year some Tanzanian prisons (Keko, Ukonga and Segerea, in Dar es Salaam) to observe their conditions of detention. The President Kikwete promised that the Government will strive to improve the living conditions in the country's prisons to enable inmates to live like human beings. He acknowledged that the prisons are overcrowded and he agreed that concerted efforts must be made to expand the existing facilities.³⁸⁹

The Tanzanian Government has moved during the past year to reduce the number of inmates and the following measures have been taken to address the issue:

- *Extra Mural Labour Act*, 1967 – designed for convicts with short sentences to serve outside of jail;
- *Parole Boards Act* – amended in 2002, it has allowed 1730 inmates to receive parole;
- *Community Services Act*, 2003 – allows persons convicted of minor offences to be sentenced to community service instead of jail sentences; and
- Presidential Amnesty – former President Benjamin Mkapa granted amnesty to 6130 prisoners between 2004 and 2005 and President Kikwete has continued the practice in 2006.

The impacts resulting from these efforts of depopulating the prisons are however very limited. The statistical analysis indicates that there has been a minor improvement as, for past years, the estimated detainees' population was set at 45,611 for the year 2000,

³⁸⁸ Jenifer Aloyce, "Chiligati Irked by Prisons' Congestion", *The African* (Tanzania), 18 May 2006.

³⁸⁹ Patrick Kisembo, "Congestion in Prisons Irks Kikwete", *The Guardian* (Tanzania), 5 May 2006, Pages 1 and 2.

44,063 in 2002 and 43,244 in 2004³⁹⁰. However, with 43,911 prisoners recorded, the 2006 statistic goes against the past years' tendency.

Another major challenge faced by the Government in its criminal reform consist of accelerating and ameliorating the process whereby suspects are brought to trial in order to reduce the remandee prisoners – which is currently 41% of the prison population. The authorities have however been very slow address this issue, that concerns the administration of justice and the slow court system.³⁹¹

In response, the Environmental Human Rights Care and Gender Organization (ENVIROCARE) has created a program to train paralegals to assist prisoners with knowing their rights and assisting them prior to conviction. ENVIROCARE rightly believes that training paralegals to assist prisoners will help reducing the overcrowding in prisons by decreasing the number of prisoners who “could have otherwise been released, either because they committed petty offences or because their convictions were framed.” The major setback in the paralegal program is the Tanzania Prisons Services' “closed door policy” which limits access to the prisoners only to advocates with special permission.³⁹² The criminal justice system should therefore work to install and assist with paralegal services to ensure the rights of Tanzanians.

The reasons explaining the poor conditions of detention in the country are necessary directly linked to the high level of criminality. According to police and records held by other organs, an average of about half a million crimes is Report ed annually to the police, contributing in a straight line to impair the prisoners' life conditions. Therefore, in addition to working on the problem in the prisons, the Government must address the issue of the criminality in the country.

³⁹⁰ “Prison Brief for Tanzania 2006”, International Centre for Prisons Studies, 5 February 2007, <http://www.prisonstudies.org>.

³⁹¹ Christopher Magola, “Moves to Reduce the Prison Population”, Sunday Observer (Tanzania), 2 April 2006.

³⁹² Timothy Kitundu, “Paralegals to the Aid of Prisoners”, The Express (Tanzania), 11-17 May 2006.

Chapter Nine – Corruption and Abuse of Power

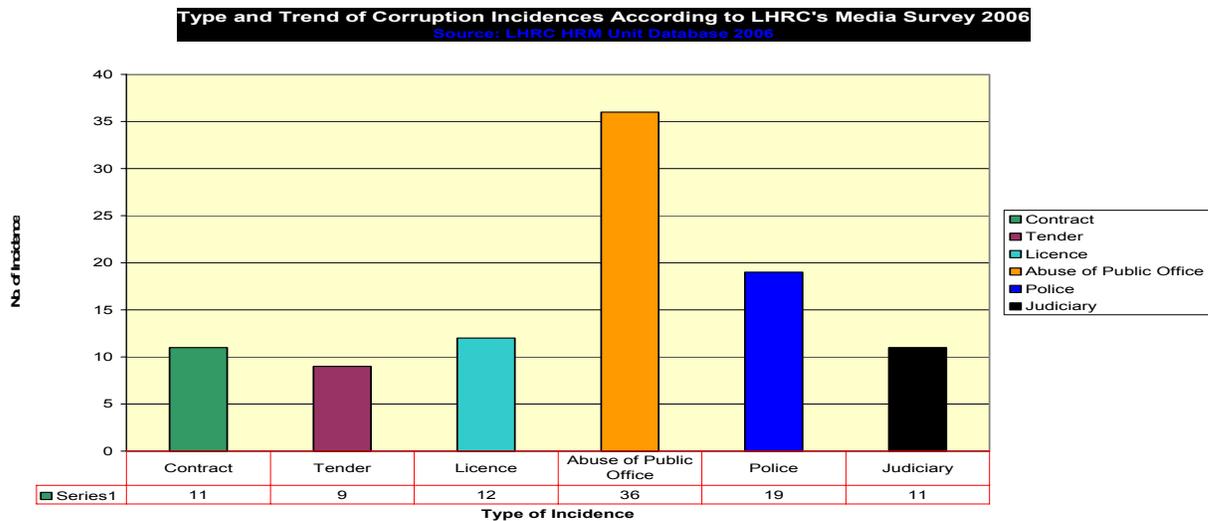
9.0 Introduction

Corruption poses a serious problem to development, as it undermines good governance and democracy and, when it implies an agent of the state, it compromises the rule of law. The economic impacts of corruption are various, as it slows down the development, increases the cost of private business and diverts public investments.

According to the 2006 “Transparent International Corruption Perceptions Index” (TICPI)³⁹³, Tanzania is ranked at the 93rd position out of 163 countries. Comparing with last year’s performance (where Tanzania’s rank was 96 out of 159), the situation has slightly improved. However the Corruption Perception Index (CPI) remained at 2.9, just as it was in 2005.³⁹⁴

Transparency International’s 2006 Report states that “the weak performance of many countries indicates that the facilitators of corruption continue to assist political elites to launder, store and otherwise profit from unjustly acquired wealth, which often includes looted state assets”³⁹⁵. Most of the tenders and/or contracts that generate corruption fall under this category.

According to LHRC’s Media Survey on Corruption presented in the following chart, the year 2006 was shadowed with corruption:



³⁹³ The “2006 Corruption Perceptions Index” is a composite index extracted from multiple expert opinion surveys that poll perceptions of public sector corruption in 163 countries around the world. It grades countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption. See more information at www.transparency.org.

³⁹⁴ “2006 Corruption Perception Index”, [Transparency International](http://www.transparency.org), 15 February 2007, <http://www.transparency.org>.

³⁹⁵ *Ibid*

Apart from these common sectors, cases of corruption were Reported in other fields. For instance, incidents of corruption in the media are indeed not isolated. According to Judge Warioba, “kwa ujumla uandishi wa ‘bahasha’ ndiyo umejikita na nathubutu kusema baadhi ya stori haziwezi kutoka bila kutoa bahasha” *i.e.* “in general, the Reporting by ‘envelope/tip’ is now common and I am inclined to say that without a tip a story would not be published”³⁹⁶. Illustrating this growing practice, Mr. Omary Shaban of Uhuru newspaper was arrested by the Prevention of Corruption Bureau (PCB) in December 2006 after having solicited funds from Shamira Sarwatt (who was also a suspect of corruption) in exchange from his silence on a story concerning Mr. Sarwatt³⁹⁷. Also, practices in the sector of land, wildlife and forest are not free of corruption. According to the Director General of the PCB, Mr. Edward Hosea, the Bureau has neglected to investigate forest and wildlife departments, despite the existence of rampant corruption³⁹⁸.

The obligations of the Tanzanian Government as regards to corruption are settled in the following national and international instruments:

- the *Prevention of Corruption Act*, 1971;
- the *AU Convention on the Prevention and Combating Corruption and Related Offences* (2003); and
- the *UN Convention against Corruption* (2003).

Therefore, as stated in Article 5 (1) of the UN Convention, the Government has the obligation to “develop and implement or maintain effective, coordinated anti-corruption policies that permit the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability”.

9.1 Post-Warioba Commission

Although it as been a decade since the issuance of Warioba Commission Report (1996) and despite the good finding and analysis of this commission, last year’s conclusion remains applicable; petty and grand corruption continued to haunt the Tanzanian society³⁹⁹.

The only vivid progress that can be singled out since 1996 is the formulation of National Anti-Corruption Strategy and Action Plan in 1999. This Plan aimed to combat corruption wherever it occurs by focusing on preventing future corruption and by changing the system rather than correcting errors from the past. The guiding principles were about

³⁹⁶ Mtanzania 6 November, 2006.

³⁹⁷ Mtanzania 14 December, 2006.

³⁹⁸ Midraji Ibrahimu, “Idara ya Misitua Inanuka Rushwa Kubwa” [“Forest Department Rotten Rampant/Grand Corruption”], Mwananchi 15 December, 2006, Pages 1 and 2.

³⁹⁹ LHRC, Tanzania Human Rights Report 2005, Page104.

prevention, enforcement, public awareness and participation as well as institution building⁴⁰⁰.

Since then, there has been swift trap for petty corruption but nothing about grand corruption⁴⁰¹. Speaking at the British Council and Management Forum on May 13, 2006, Judge Warioba himself said that, despite the enactment of legislation against corruption, these illegal practices went unabated. He believes that all the work around corruption has been “essentially finger pointing without much headway” and that corruption could be defeated through transparency and stronger laws⁴⁰². As a solution, Hon. Hamad Rashid Mohamed (Member of Parliament for Wawi Constituency, Civic United Front) also proposed at the Parliament in 2006 that the Fourth-Phase Government should prosecute all those who were found corrupted by the Warioba’s Investigation⁴⁰³.

As the previous LHRC Survey indicates, corruption in local Government is a serious issue⁴⁰⁴. In March 2006, the PCB in Singida issued a Report indicating that the Bureau has collected a total of 139 events connected with corruption in the year 2005 and, with 66 occurrences, local Government is the leading sector. On this respect, the United Nations Report called Africa Recovery, 6 March 2006⁴⁰⁵ similarly states that some of the practices which incite corruption in local governance are rigid rules and regulations which provide opportunities for its abuse. In Tanzania, the Government’s tender procedures are one of these facilitators of corruption in local government. In his acceptance speech, President Kikwete recognized that the area of contract is one front on which the Government will focus in the war to corruption and said that:

“We have to look again at our systems and processes of contract making, contract enforcement and tendering in the Government and other public offices, in order to increase transparency and accountability. Contracts remain a major loophole for

⁴⁰⁰ The National Anti-Corruption Strategy and Action Plan for Tanzania, President’ Office, November 1999, Dar es Salaam, 5-10.

⁴⁰¹ Corruption is often categorized into petty and grand corruption. Petty corruption is the everyday malpractices that take place at the implementation of politics, when officials meet the public. Grand corruption generally takes place when tax policies are made or amended.

⁴⁰² The *Prevention of Corruption Act, Cap. 329* has some weaknesses including a lack of proper definition of “Corruption” and a direct power of PCB to prosecute the case. PCB has to pass through Director of Public Prosecution to pursue the matter. PCB is also required under the law to seek for the permission of the President in order to pursue the case against against Reginal Officers and Ministers. Follow up more analysis of this in the coming paragraphs of this section.

⁴⁰³ ThisDay Report er, “Call for Charging of those named as Corrupt”, ThisDay (Tanzania), 4 April, 2006, Page 5.

⁴⁰⁴ On 17th February 2006 *Guardian* Report ed that president Jakaya Kikwete has repeated his directive to the minister of State in the Prime Ministers Office local governments and regional administration to follow up allegations of corruption and embezzlement of public funds in local authorities. The president has commented that he has already directed the minister responsible to investigate all the allegations of bribery and embezzlement of public funds by civic authorities.

⁴⁰⁵ Out of these 66 Report ed events, 27 are related to corruption in the police, 22 in the education, 11 in the courts and 6 linked with NGOs.

*corrupt practices, especially those that are called “grand corruption”. The time has come to close these loopholes”.*⁴⁰⁶

However, the practices failed to follow these good intentions and grand corruption was once again at the lead in 2006. For instance, the contract between the Government of Tanzania and the *Richmond Development Corporation* left people with serious doubt about its legality and authenticity. According to the media Reports⁴⁰⁷, this contract was concluded between the two parties without regard to the *Public Procurement Act, 2001*, which governs procurements of public goods and services. As a result, the 20 Megawatts negotiated were not generated in time and the country has to face serious power rationing.

Another unresolved grand corruption saga that occurred in 2006 concerned once again the Bank of Tanzania’s Twin Towers project. This project that cost over Tsh 200 billion to taxpayers came under scrutiny during President Mkapa’s tenure when allegations of corruption emerged, claiming that the entire project was overvalued in order to benefit a few individuals. Despite the testimony of numerous civil engineers saying that the building’s costs were beyond what it should be, the responsible persons for the project were cleared of any wrongdoing.⁴⁰⁸

Regarding the Government’s bad contracts and inefficient tendering procedures, Professor Ted Maliyamkono is of the view that there is a need for looking at the capacity and quality of decisions and decision makers. According to him, the lack of experience and of knowledge have led to the creation of many bad contracts and to considerable loss of Government funds⁴⁰⁹, as these contracts were designed in accordance to private interest and signed without considering the best interest of the country.

LHRC findings⁴¹⁰ indicate that a myriad of corruption cases continued to haunt central and local governments in Tanzania during 2006:

- ❖ On 15 February, 2006 TanzaniaDAIMA Report ed that a Legal Officer of Mbeya City Council was caught by PCB while he was receiving a Tsh.150,000 bribe from a famous business man.
- ❖ On 8 January, 2006 the Mwananchi stated that the Executive Director of Kilwa District Council in Lindi region, Mr.Tahibitha Msha Kangoto, was arrested and accused at the Tanga Resident Magistrate Court on five charges concerning corrupted practices.

⁴⁰⁶ See: The Speech Of The President Of The United Republic Of Tanzania, His Excellency Jakaya Mrisho Kikwete, On Inaugurating The Fourth Phase Parliament of The United Republic of Tanzania, Parliament Buildings, Dodoma, 30 December 2005, Page 11, Paragraph 2 (English Version Speech).

⁴⁰⁷ Clemence Mashamba, TanzaniaDaima, 30 December 2006.

⁴⁰⁸ See Sunday Citizen 2 April 2006

⁴⁰⁹ See the Guardian 28 April 2006.

⁴¹⁰ Newspaper Cuttings and Documentation at LHRC’s Resource Centre, January to December 2006.

- ❖ On 16 April, 2006 the SundayCitizen Report ed that the Dodoma Regional Commissioner revealed allegation of corruption and mismanagement of funds by Dodoma Municipal Council Director, Mrs. Monica Kwiluhya. It was said that the Council Director was allowing illegal tender procedures by not making the bidding process public and by giving the contracts to individuals employed by the Municipal Council.
- ❖ On 3 April, 2006 the Dailynews revealed that the PCB was looking into allegations on two officials from the Mwanza City Lands Department, who were associated with a scheme of illegal land sales. According to initial findings, it appears that numerous individuals had received more than one plot of land, which is the most glaring violation of the city guidelines.
- ❖ On 1 April, 2006 the TanzaniaDaima gave detail on the arrest by the PBC of a Health Officer of Arusha, Mr. Faustin Mponeja, accused of having received a bribe of Tsh 50,000.
- ❖ On 23 May, 2006 the DailyNews gave an account on an investigation related to the embezzlement of funds for Primary and Secondary Education in the Mwanza region. The journal Report ed that PCB had begun reviewing accounts for various schools, to find out that: (1) some schools were lacking of accountants managing the funds, (2) in Geita District, texts and reference books purchased for a new secondary school were nowhere to be found, and (3) in Sengerema District, an engineer was paid prior to the beginning of the construction of a new school. Altogether, between 1 and 5 millions shillings for school development have gone missing.
- ❖ On April 11, 2006 ThisDay Report ed that the Government has uncovered a scheme between the Treasury and the local Government officials that was siphoning off money from teacher's salaries. The Minister of State, Local Government and Regional Administration, Hon. Mizengo Pinda affirmed that over 103 officials have been suspended for sending "huge amounts of money to [...] municipal councils in excess of the money required to pay for teacher' salaries and later collected the difference, which is then shared among municipal council officials."
- ❖ On 15 November, 2006 the Mwananchi gave an account of the arrest of the Ward Executive Officer for Temeke, after allegation of corruption in the distribution of building permit were revealed.

There was also lot of incidences in which the law enforcers, the police and judicial officials were mentioned to have received bribes⁴¹¹. Some of the incidences gathered by LHRC's media survey are summarizes below;

⁴¹¹ Speaking at Iringa during a two days seminar, Mr. Bakari Mwapachu, Minister for Public Safety, said that the Government is suborned by the behavior of some traffic police officers, the situation which lowers the reputation of the Police Force; See also: Majira, 15 November 2006.

- ❖ On 27 January, 2006 Majira Report ed that PCB in Bukoba has arrested the Primary Court Magistrate together with his clerk after having receive a Tsh 20,000 bride.
- ❖ On 19 April, 2006 the Guardian gave details about a research conducted on recurrent malpractices of traffic police officer with regard to commuter buses (*Daladala*). The research showed that bribing police officers is part of doing business in transportation in Dar es Salaam. The drivers admit to regularly break numerous traffic and safety regulations (such as overloading or riding on unfit machinery) because police officers are easily corrupted. The standard bribe ranges between “2,000 and 5,000 per bus per day” and is charged by the officers even when no violation is committed. According to this research, some officers collect up to Tsh 300,000 daily.
- ❖ On 16 May, 2006, a similar research conducted during 2006 was Report ed by the Guardian. The research indicates that, despite numerous allegations of corruption and bribery among road-side police officials, no formal investigation by the traffic police or the anti-Government watchdog organization has been launched. According to the investigators, “required bribes” at the Iringa, Chalinze, Mlandizi and Kibaha checkpoints are commonplace with officers asking between 2,000 and 10,000 shillings per stop. The practice is so common that cargo transporters set aside a budget of Tsh 30,000 per trip in order to bribe police. In theory, the roadblocks are meant for police officers to inspect trucks and to insure that drivers have the proper road licenses, registration, insurance and cargo card. In reality, officers merely inspect the cargo and once the money given they desist from further inspection, compromising motor safety on the highways.

These highlights leave no doubt that corruption, just like in previous years⁴¹², still prevails in Tanzania despite the presence of PCB and the enactment of specific legislation. The only factor that varies is the prevalence of corruption from one sector to another. A recent study on public and private institutions by the Centre for Advanced Studies in Corporate Governance (CASCETA) of April 2006 revealed that corruption and mismanagement occurs because of lacking or inadequate corporate governance. According to CASCETA’s Director, Dr. Tadeo Satta, many members of management teams or board of directors lack knowledge on how to properly run an organization. The Government has the obligation to efficiently address this issue and in 2006, the Tanzanian Authorities failed to do so.

9.2 The *Takrima* as Corruption

As explained in last year Report⁴¹³, “*Takrima*” means “traditional hospitality” in Kiswahili and are recognized under the *Election Act*, 1985 as lawful behaviour for

⁴¹² LHRC, Tanzania Human Rights Report 2005, Page 106.

⁴¹³ *Ibid.*, 38.

candidates in election permitting them to offer hospitality (in a form of gift) to the supporters during campaigns.

Takrima is also recognized through the *Electoral Laws (Miscellaneous Amendments) Act, 2000* which amended sections 119(2) and 119(3) of the *National Election Act, Cap. 343* by providing that: (2) “*anything done in a good faith as an act of normal or traditional hospitality shall be deemed not to be treating*”; and (3) “[n]ormal or ordinary expenses spent in good faith in the election campaign or in the ordinary cause of election process shall be deemed not to be treating, bribery or illegal practice”.

The civil society together with some of the public leaders⁴¹⁴ was against these provisions. Facts collected by LHRC through its field monitors all over the country revealed some incidences whereby *takrima* was actually used to “buy” the vote⁴¹⁵.

In response, LHRC mobilized other NGOs and in 2005, a group of three organisations (LHRC, LEAT and NOLA) filed a petition before the High Court of Tanzania in Dar es Salaam⁴¹⁶ challenging the constitutionality of the said provisions. They alleged, *inter alia*, that *takrima* provisions are offensive and encourage corruption in the electoral process because they violate the right to freedom from discrimination, the right to equality before the law and the right of Tanzanian citizens to participate in fair and free elections. Therefore, they petitioned for a declaratory order to the effect that the challenged provisions should be declared unconstitutional, null and void.

In making the historic ruling on April 24th 2006, the Judges of the High Court⁴¹⁷ affirmed that:

“[T]akrima provisions are discriminative and they are violative of Article s 13(1) and 21(1) of the Constitution. They are quite unnecessary. The law as it was before the introduction of the takrima provision was sufficient to enable the court to distinguish expenses inevitable in the election process which did not amount to corrupt practices and those per se amounted to corrupt practices [...] we declare the said provisions null and void and we order the same be struck out of the National Election Act, (Cap. 343 R.E 2002)”⁴¹⁸

Following this decision, the Minister of Justice and Constitutional Affairs, Hon. Mary Nagu, informed the Parliament that, after reviewing the High Court’s decision on Takrima, the Attorney General will not go forward with an appeal of the decision. The

⁴¹⁴ For instance, on December 8th 2005, the Registrar of Political Parties, Mr. John Tendwa admitted that this practice of offering *takrima* leads to corruption and should be struck from the law; also see LHRC, *Tanzania Human Rights Report 2005*, Page 38.

⁴¹⁵ *Ibid.*

⁴¹⁶ *LHRC, LEAT and NOLA V. The Attorney General*, Misc. Civil Cause No. 77 of 2005, High Court of Tanzania at Dar es Salaam (Main Registry).

⁴¹⁷ Judges N. Kimaro, S. Massati and T. Mihayo of the High Court of Tanzania.

⁴¹⁸ Pages 38 – 40 of the Judgment.

Minister further mentioned that the issue should be revisited after a public debate on the matter⁴¹⁹.

9.3 Institutional Anti-Corruption Measures

The Laws and the Prevention of Corruption Bureau

The main legislation on corruption in Tanzania is the *Prevention of Corruption Act*, 1971. This legislation establishes the PCB as the watchdog of corruption practices in the country. The *Public Leadership Code of Ethics Act*, 1995 is a related law which duties to receive keep and verifies declarations of property owned by public leaders.

It was mentioned in last year's Report that the two legislations show technical weaknesses, which render them ineffective in the war against corruption in the country⁴²⁰. As it is under the President's Office, the independence of PCB has also been highly criticized. It has been suggested that PCB would be more effective if it was allowed to prosecute all corruption cases without going through the Director of Public Prosecution (DPP). According to the observation of the Economic and Social Research Foundation, this amendment would "speed up prosecution and remove corruption cases from *nole prosequere* prerogative"⁴²¹. Unfortunately, these legal obstacles have not been addressed yet by the Parliament.

Despite these difficulties, the Vice President of the Republic, Dr. Ali Mohammed Shein, affirmed that PCB has been able to save a total of Tsh 64.7 million since 1995, funds that were to be lost through corruption. He added that, up to 2006, 225 public servants have been disciplined through administrative procedures.

The Strategies: NACSAP II (2006 – 2010)

During 2006, the Government adopted the NACSAPII (2006-2010), which is the continuation of the NACSAPI (2001 – 2005). The NACSAPI focused on demand side of the corruption⁴²² and was envisaged to fill the gap between the Government and the civil society (including private sector) in the fight against corruption. Some of the achievements accomplished by NACSAPI took place in the establishment and strengthening of watchdog institutions, namely the Commission of Human Rights and Good Governance and the Ethics Commission. In the attempt of showing the positive

⁴¹⁹ Silas Bwena, "Government Rescinds Notice of Appeal Against *Takrima*", African 15 June 2006, Pages 1 and 4. ("*Takrima*" means traditional hospitality – see more explanations at Paragraph 9.2 of this Chapter).

⁴²⁰ For instance, it was indicated in the 2005's Tanzania Human Rights Report that the *Public Leadership Code of Ethics Act*, 1995 has been criticized for lengthy and cumbersome process of inquiry into indictments; it has loopholes to conceal information about illegal incomes and assets; that the Commissioner can neither verify the authenticity of property declarations by leaders nor initiate prosecutions for ethical breaches and that peoples lodging a complaint are required to pay a fee to access the register of assets declared by the leader; see: LHRC, Tanzania Human Rights Report 2005, Page 106.

⁴²¹ See Economic and Social Research Foundation Report, 2002; also quoted in: : LHRC, Tanzania Human Rights Report 2005, Page 107.

⁴²² Such as the principles of prevention, enforcement, public awareness and institutional building.

impact of NACSAPI, NACSAPII's implementation Report ⁴²³ mentioned that Tanzania's CPI rating score has gone up from 1.9 in 1998 to 2.9 in 2006.

However, by addressing the issue of the involvement in corruption of the private sector and of the civil society, NACSAPI failed to extend its impact to local government. LHRC is of the opinion that it might explain the steadily increase of corruption in local Government Report ed previously.

With the enactment of this new NACSAPII, there is expectation regarding the definition and the adherence to roles that the civil society, the private sector as well as the local Government are given in the fight to corruption. The level of involvement as extended by NACSAPII includes the development of anti-corruption action plan in respective (private) sector as well as the preparation of a code of conduct and of periodic Reports on anti-corruption activities submitted to the Good Governance Coordination Unit in the President's Office. In addition, civil society organizations are invited to carry out researches studies in relation to anti-corruption activities.

Through experience, one could doubt that these good intentions and measures will be effectively applied in a near future, since most of the information in Tanzania is classified confidential and because contracts and tenders are not accessible to public. In addition, as naming suspects of corruption is considered as humiliating, there is no political will to deal with the problem publicly. Hence, as long as the Government will refuse to commit itself on the freedom of information, the transparency anticipated in NACSAP document will remain a theory of politics.

In conclusion, as Judge Warioba maintain, *"the institutional forms of corruption fighting such as the PCB are not sufficient to stymie the existence of corruption"* and *"Wananchi/citizens have no confidence with their leaders as being serious in fighting corruption"*⁴²⁴. If the Government really believes in NACSAPII principles and ambitions, the first step toward its implementation should be to build the people's confidence, by making them believe that their involvement is accepted and that they can get every support from the Government including the so-called confidential information.

⁴²³ Involvement of Various Actors in the Implementation of NACSAPII, 2006 – 2010, President's Office - Good Governance Coordinating Unit (GGCU), Dar es Salaam, July 2006.

⁴²⁴ Benard Missoke, "Scrapping Takrima not Enough", The Citizen (Tanzania), 20 May 2006, Pages 1 and 2.

Chapter 10 – Tanzania and Human Rights Law

10.0 Introduction

Article 9(f) of the Constitution provides, *inter alia*, that the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring that human dignity is preserved and upheld in accordance with the spirit of the UDHR. The fundamental principles enshrined in this instrument are to be implemented by the member states through their commitment under the international human rights conventions, such as the ICCPR, ICESCR or CEDAW, together with their respective protocols. Most of these major human rights instruments have already been ratified by the Government.

Tanzania cannot pretend to a full commitment to its international obligation if the authorities are reluctant to ratify all important human rights instruments. In this respect, previous phases of governance have focused their concern on peace and security as well as on diplomacy issues. Speaking at the Parliament about foreign affairs and international cooperation issues on December 30th 2005, the newly elected President Kikwete made the following statement:

*“[T]he First Phase Government built the foundations of Tanzania’s Foreign Policy, which include good neighbourliness, defence of our borders, providing succour to refugees and defending the interests of the downtrodden. Subsequent phases have upheld these principles. The Fourth Phase Government will, likewise, be guided by these principles as well as implement the new Foreign Policy focusing on economic diplomacy”*⁴²⁵.

It is clear from this declaration that the Government does not intend to oblige itself on international human rights treaties that has not yet been ratified.

10.1 Ratification of Human Rights Treaties

As presented in the 2005 Tanzania Human Rights Report 2005, Tanzania has adopted a dualist legal system, which requires the incorporation of international obligations into domestic legal system through the adoption of national legislations. Therefore, international rules are not directly applicable in the court of law and require a further commitment from the State Authorities by the adoption of municipal laws⁴²⁶.

Among five key treaties that LHRC was recommending to ratifies⁴²⁷, the Government has only ratified one in 2006; namely the *Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’*

⁴²⁵ Speech of the President of the United Republic of Tanzania, His Excellency Jakaya Mrisho Kikwete, Inaugurating the Fourth Phase Parliament of the United Republic Of Tanzania, Parliament Buildings, Dodoma, 30 December 2005, Page 27, Paragraph 1 of “Foreign Affairs and International Cooperation” (English Version Speech).

⁴²⁶ LHRC, Tanzania Human Rights Report 2005, Page 109.

⁴²⁷ LHRC, Tanzania Human Rights Report 2004, Page 80.

Rights(1998). By ratifying this Protocol, the Government has shown its willingness to be bound by the African Human and People's Rights Court's jurisdiction. The Court is established under Article 1 of the Protocol and its jurisdiction, rooted in Article 3, shall extend to all cases and disputes submitted to it concerning the interpretation and application of the *African Charter on Human and People's Rights* (1981), of the said Protocol and of any other relevant human rights instruments ratified by the States concerned. In the event of a dispute concerning the Court's jurisdiction, the Court has competence to rule on its own jurisdiction. The Protocol came into force in January 2004, 30 days after fifteen instruments of ratification or accession was deposited⁴²⁸. On January 22, 2006, the Eighth Ordinary Session of the Executive Council of the African Union elected the first eleven Judges⁴²⁹ and the Court had its first meeting on July 2-5 2006 at its office in Arusha.

At the same period, another instrument concerning human rights and good governance came into force in June 2006 by the signature of its Memorandum of Understanding; namely the *African Peer Review Mechanism Agreement* (APRM)⁴³⁰. The voluntary APRM is described as aiming "to foster the adoption of policies and standards that lead to political stability, economic growth, sustainable development and accelerated sub-regional and continental integration" and is intended "to assure international investors of political and economic stability before they commit financial resources to a particular country"⁴³¹. As the APRM is the implementation process of the NEPAD, the instrument intends to improve national performance and develop better governance standards. The peer reviewing process has already begun working.

In spite of these recent developments, important human rights treaties remained unratified by Tanzania in 2006⁴³². These were;

- The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, (2000); Tanzania has signed it in 2003 but failed to ratify it since
- The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) together with its *Optional Protocol*: the Convention commits the governments to prevent and prohibit torture⁴³³;

⁴²⁸ As stated at: Article 34 of the Protocol.

⁴²⁹ The 11 judges are: Mr. Gerard Niyungeko, President (Burundi), Mr. Fatsah Ouguergouz (Algeria), Mr. Jean Emile Somda (Burkina Faso), Ms Sophia A.B. Akuffo (Ghana), Mrs. Kellelo Justina Masafu-Guni (Lesotho), Mr. Hamdi Faraj Fanoush (Libya), Mr. Modibo Tounty Guindo (Mali), Mr. Jean Mutsinzi (Rwanda), Mr. El Hadji Guissé (Sénégal), Mr. Bernard Ngoepe (South Africa), and Mr. George W. Kanyeihamba (Uganda).

⁴³⁰ Sothenes Mwita, "MoU Good Governance, Economy Signed", *Daily News (Tanzania)*, 9 June 2006, Page 3.

⁴³¹ "African Peer Review Mechanism to Attract Foreign Investment", *International Centre for Trade and Development*, 16 February 2006, <http://www.ictsd.org/weekly/04-02-26/inbrief.htm>.

⁴³² "Status by Country", *United Nations High Commission for Human Rights*, 20 February 2007, <http://www.unhchr.ch/tbs/doc.nsf>.

⁴³³ In spite of the fact that the Constitution of Tanzania clearly prohibits torture; about 130 countries out of 189 members of the UN have ratified this treaty.

- The *Optional Protocol to the International Covenant on Civil and Political Rights*, (1966): it allows individuals to submit their complaints directly to the UN Human Rights Committee;
- The *Second Optional Protocol to the International Covenant on Civil and Political Rights* (1989): it calls for the abolishment of the death penalty;
- The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990); and
- The *Agreement on Privileges and Immunities of the International Criminal Court* (2002).

Another challenge for Tanzania’s commitment to human rights’ principles is its unwillingness to abide with the requirements of some treaties, which request from the states to report periodically to the treaties’ monitoring bodies.

According the information available, the following table summarised of Tanzania’s overall reporting status as to February 2006:

Reporting Status per State Party as of 16 February 2006

Country(ies)	Report s Submitted	Pending Consideration	Total Overdue	5 Years Overdue	10 Years Overdue	Initial Overdue
Tanzania	24	1	9	4	2	2

Source: UN International Human Rights Instruments – HRI/MC/2006/2, 22 March 2006

This process of reporting provides an opportunity for State Parties to conduct a comprehensive review of the measures it has taken to bring its national laws and policies into line with the provisions of the treaties they have ratified. The preparation of those Report s also provides a platform for national dialogue on human rights amongst the various stakeholders. Moreover, the Report s itself provides the Government and other members of the society with a baseline for the elaboration of clearly stated and targeted policies⁴³⁴.

The status of Tanzania’s compliance with its reporting obligations can be summarized as such⁴³⁵:

- ICCPR (ratified it in 1976) requires to submit a Report every 5 years; Tanzania’s last Report to the Committee was in 1997 for its 1993 Report , it failed to submit the 2002 and 2006 Report s;
- ICESCR (ratified in 1976) requires to submit a Report every 5 years; Tanzania has only submitted its initial Report in 1979;

⁴³⁴ “Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body” [released on 22 March 2006], UN Human Rights Treaty System, 20 February 2007, www.bayefsky.com.

⁴³⁵ “Report Status by Country”, United Nations High Commission for Human Rights, 20 February 2007, <http://www.unhchr.ch/tbs/doc.nsf>; and: “Status on Submission on State Periodic Report s to the African Commission on Human & Peoples’ Rights”, African Commission on Human and Peoples’ Rights, 20 February 2007, <http://www.achpr.org>.

- CERD (ratified in 1972), requires to Report every 2 years; in October 2004, Tanzania has submitted 9 delayed Reports and is currently up to date;
- CEDAW (ratified in 1985), requires to submit a Report every 4 years, the Government submitted its second and third Report due in 1990 and 1994 in September 1996, since then no Reports were submitted;
- CRC (ratified in 1991) requires to submit a Report every five years, Tanzania submitted its last Report in 2004, the Report was due in 1998; the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* as well as the *Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography* also include reporting obligations and Tanzania failed submit the two first Reports in respectively 2006 and 2005;
- ACHPR (ratified in 1984) requires reporting every 2 years; Tanzania has only submitted one Report in 1991.

Hence, the current behaviour of the Government with regard to its reporting obligations is in contradiction with its obligation established under Article 9(f) of the Constitution. It is also important to note the Government's tendency to submit overdue Reports and to combine numerous Reports together in one submission.

Conclusion

The year 2006 was optimistically regarded as a year of new force, zeal and vigour in all aspects of governance including observance of human rights and good governance in Tanzania. This has been a case because “new force, zeal and vigour” was the motto which ushered the performance of the fourth government of United Republic of Tanzania under President Jakaya Kikwete.

As far as human rights issues are concerned, President Jakaya Kikwete took power at the midst of human rights violations, which were unveiled by Tanzania Human Rights Report 2005.

During his first speech to the Parliament in December 2005, President Jakaya Kikwete vowed that, his Fourth Phase Government shall respect and protect civil and political rights and freedoms. There was a high expectation from human rights actors about this commitment.

It can not be concluded that the year 2006 was paradox of empty promises because there are areas of governance that improvement was clearly noticed. However, in other human rights aspects, the promises were empty.

Although it ultimately remains the responsibility of government to protect and promote human rights, individual person should not be left unanswerable especially in the critical issues of corruption, public ethics, mismanagement of public funds and generally malpractice contrary to the rule of law as this Report highlights in its chapters. The political related corruption by the name of *Takrima* was found unconstitutional by the High Court’s Ruling of this year. The way forward is to look upon the grand corruption, as the Warioba’s Commission suggested, which was actually not seriously tackled during the year.

Mob violence, extra-judicial and witchcraft killings brutally claimed the life of many people during the year. Moreover, the unreasonable retention of death penalty in the laws, remained as one of the major threats to the right to life and other related human rights violation entailed to it.

There was an effort to reduce the gap of gender imbalance in the governance of the country by increasing the number of women Parliamentarians through the special seats in the Parliament. Despite this affirmative action, women continued to hold inferior posts in almost every socio-economic and political sector. The violence against women and children did not stop. They were brutalized and undignified. Moreover, the existence of discriminative laws remained to be a hard speck to break. Political willingness is one of the major obstacles that can be quickly singled out.

As for right to education, its improvement especially in terms of enrolment rates has been noticed since 2004. The PEDP has played a significant role in the improvement of Primary Education. The challenges have remained to be the improvement of secondary school, availability of studying materials and adequacy of qualified teachers especially in rural areas.

The complaints on the ownership of natural resources did not end during the year. For instance, a tag-of-war between the artisan miners and the foreign investors remained unbent and no viable solution was found. The fond of unknown and unaccountable foreign investors' money evacuated the indigenous from their land by the name of investment. In connection to this also, the secrecy of bilateral agreements and investment dealings such as the Richmond issue covered in this Report continued to haunt the mind of people. The government also stammered to review the contracts as it firmly avowed to do.

No specific laws and/or policies were put in place to safeguard the interests of the vulnerable groups especially children, women and people with disabilities who continued to suffer the agonies of their vulnerabilities because of lack of the said protection. The people, the environment and other factors are not friendly to them. This is why they need special protection. Chapter five of this Report highlights more examples on this.

Various development policies and strategies such as MKUKUTA and MKURABITA were simultaneously implemented during the year, 2006. The records from the survey conducted concludes that majority of people are not aware of what is going on. In stead of improving informal business, the Operation in the cities of Mwanza and Dar es Salaam left the petty traders helpless. Therefore, the micro-economy life of most of the common people both in rural and urban areas was not seen improving.

A long waiting promise of adhering to the Nyalali's forty bad laws by way of amending them was not, once again accorded any vivid attention. No record whatsoever from the Law Reform Commission which indicates any successful story for this year as far as this issue is concerned. As for the Commission for Human Rights and Good Governance, the 2006 amendments allowed it, for the first time, to operate in Zanzibar. This is a good step ahead in the fulfillment of its obligation within United Republic of Tanzania.

The important human rights treaties were also unratified by Tanzania in 2006. Chapter ten enlists those important instruments. Moreover, the government also remained dilatory to fulfill its obligation to Report to the treaty bodies periodically according to the requirement of treaties themselves.

Much as LHRC appreciate the improvements achieved so far, it calls upon a need to avoid the paradox of empty promises. The government should abide with what it indicated in the preamble of the constitution – “a commitment to create a society which adheres to principles of freedom, justice, fraternity and concord”.

The illustrations contained in this Report would implicate the fact that there has not been a systematic respect and promotion of human rights as it was promised by the government and in the Constitution of United Republic of Tanzania. The government, non-government and individuals should therefore pick up from the areas of weakness which this Report highlights and suggests.

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Christopher Mtikila V. Attorney General, Miscellaneous Civil Cause No. 10 of 2005 at the High Court of Tanzania, Dar es Salaam Main Registry, at Dar es Salaam.

Elizabeth Stephen and Another V. The Attorney General, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 82 of 2005.

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Commission the Human Rights and Good Governance Act, Cap. 391
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Part Two
Tanzania Human Rights Report 2006
Zanzibar Section

TANZANIA HUMAN RIGHTS REPORT 2006

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This is the first ever Report on the Human Rights situation in Zanzibar. For many years, Zanzibar has been on the news with regard to non-observance of human rights norms. The idea of publishing a Report to explain the real situation has been in the mind of the Zanzibar Legal Services Centre (ZLSC) for a long time. When the Legal and Human Rights Centre (LHRC) started in 2002 to publish a Report on the Tanzania Mainland, ZLSC started to give a serious thought to doing the same for Zanzibar. ZLSC is thankful that we are collaborating with LHRC in publishing a book that includes Reports on both sides of the Union.

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Acronyms and Abbreviations

CCM:	Chama Cha Mapinduzi
CHADEMA:	Chama Cha Maendeleo na Demokrasia
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CUF:	Civic United Front
CRC:	Convention on the Rights of the Child
EFA:	Declaration on Education for All (EFA)
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
JKU:	Jeshi La Kujenga Uchumi (JKU)
KMKM:	Kikosi Maalum Cha Kuzuia Magendo
KVZ:	Kikosi Cha Valantia Zanzibar
LHRC:	Legal and Human Rights Centre
MKUZA:	Mpango wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar
NGO:	Non-Governmental Organization
SMZ:	Serikali ya Mapinduzi ya Zanzibar
TADEA:	Tanzania Democratic Alliance
TPDF:	Tanzania People's Defense Forces
UNDP:	United Nations Development Programme
UDHR:	Universal Declaration of Human Rights
URT:	United Republic of Tanzania
ZAC:	Zanzibar Aids Commission
ZACP:	Zanzibar Aids Control Programme
ZAFELA:	Zanzibar Female Lawyers Association
ZLS:	Zanzibar Law Society
ZLS:	Zanzibar Legal Services Centre

Preface

Zanzibar fell into Al-Busaidy rule from 1832, and in 1890 it became a British Protectorate. During all this period, human rights were never observed. The basic right of self-determination and independence of the people was denied

The struggle for independence was an arduous one but culminated on 10th December 1963 with Zanzibar getting its independence from the British proclaiming its own constitution; and a membership of the United Nations Organization and the Commonwealth of Nations. This Independence Constitution enshrined a Bill of Rights.

On 12th January 1964 a people's revolution took place, swept away an Al-Busaidy monarchy and abrogated the 1963 Independence Constitution. The country was ruled by a Revolutionary Council which had legislative, executive and judicial powers.

It was only in 1979 that a new Constitution was proclaimed with most powers resting with an Executive; and although a Legislature was established, it was not directly elected. This Constitution did not have a Bill of Rights. In 1984 a new constitution was proclaimed that had a Bill of Rights. It is this Constitution that operates in Zanzibar.

The post-revolution period in Zanzibar has not been smooth one as far as civil and political rights were concerned. A number of serious violations of human rights had occurred. With the coming into power of Alhaj Aboud Jumbe in 1972, things started to ease up, a concept of the separation of powers was slowly being accepted, and a legislature established.

The coming into power of Sheikh Ali Hassan Mwinyi in 1984 saw the liberalization of the economy and the proclamation of a new Constitution. It was during this period that a more political space was opened up giving rise to more expectations amongst Zanzibaris. This ray of hope was short-lived.

With the re-establishment of a multi party system in 1992, and the elections that followed in 1995, 2000 and 2005 the politics of intolerance and animosity started to rise. The results of all the three elections have been disputed by the main opposition party, CUF. This resulted in CUF boycotting the legislatures, refusing to recognize the President and calling on the international community to impose sanctions against the Zanzibar Government.

On the initiative of the Commonwealth Secretary-General an Accord (*Muafaka I*) was achieved on 9th June 1999 between the two main political parties – CUF and CCM. But this Accord could not stand the test of time. On 26th and 27th January 2001, CUF demonstrations in both Unguja and Pemba were crushed by the Tanzania Police, more than 23 people were killed, a number injured and more 2000 Zanzibaris ran to Kenya for asylum.

A second Accord (*Muafaka II*) was signed on 10th October 2001 again by the two main political parties CUF and CCM, but again this did not last for long. As the 2005 General

Elections were approaching, intolerance and animosity erupted and intensified. In all this, few democratic gains that the people have achieved are eroded, human rights principles are put at abeyance and the people suffer; and since democracy and development are sides of the same coin, neither is attained.

One of the Centre's objectives is the advocacy for human rights as to see to their observance. But research on the matter is of primary importance. From now on the Centre intends to give this matter a foremost priority and to publishing a Report on an annual basis.

In the course of compiling this Report, the ZLSC Team met with government officials, NGO activists, some practicing and non practicing lawyers, politicians, police officers, media practitioners and individuals. The ZLSC Team also consulted the international human rights instruments, the Zanzibar Constitution of 1984, Decrees, Acts of the Zanzibar House of Representatives and the Union Parliament, international and local archival documents, books and internet based sources.

The ZLSC Team encountered numerous difficulties in the process. Getting basic information from a number of public institutions proved to be very difficult. On some occasions potential interviewees went as far as discouraging our efforts. This explains why in some areas there is a dearth of information.

This Report has been divided into six Chapters. Chapter one provides a background and an introduction to Zanzibar situation. Chapter Two discusses Civil Rights and Liberties with special emphasis on the right to life, extra judicial killings, mob violence, freedom of expression, freedom of press, freedom of association, freedom of assembly, the right to take part in governance and equality before the law.

Chapter Three examines economic and social rights. In particular it addresses the right to development, labour rights, right to own property, right to health, right to education, eradication of illiteracy, right to accessible health services (to HIV/AIDS) victims and information dissemination.

Chapter Four discusses the rights of vulnerable groups, including the rights of persons with disabilities, women and rights of the elderly. Chapter Five focuses on corruption.

Chapter Six examines the question of social inequality, within which the right to a clean environment occupies a special place; and Chapter Seven discusses the role of SMZ Special Departments in the context of human rights.

We know that this Report is not as exhaustive as one would want it to be, but it is a beginning; and as the Chinese say, a journey of 1,000 kilometers, starts with one.

Chapter One – Background Information

1.0 Background/Introduction

Zanzibar consists of two main islands, Unguja and Pemba, and several other smaller islands, all surrounded by the Indian Ocean. Zanzibar staged a Revolution on January 12th 1964, ending centuries of the Sultanate regime. On April 26th 1964, the People's Republic of Zanzibar merged with the then Republic of Tanganyika to create the United Republic of Tanzania. It is Tanzania that signatory to a number of international human rights instrument.

Although Zanzibar is now part of the United Republic of Tanzania, it is a semi-autonomous island. It has exclusive jurisdiction over non-Union matters and has its own Executive, a House of Representatives and a Judiciary. The Union Matters over which Zanzibar has no jurisdiction are:

The Constitution of Tanzania and the Government of the United Republic of Tanzania, Foreign Affairs, Defence and Security, Police, Emergency Powers, Citizenship, Immigration, External Borrowing and Trade, Service in the Government of the United Republic, Income Tax payable by individuals and by corporations, Customs Duty and Excise Duty on goods manufactured in Tanzania collected by the Customs Department, Harbours, matters relating to Air Transport, Posts and Telecommunications, All matters concerning Coinage, Currency for the purposes of legal tender (including notes), Industrial Licensing and Statistics, Higher Education, Mineral of oil resources, including crude oil and natural gas, The National Examinations Council of Tanzania and all matters connected with the functions of that Council, Civil Aviation, Research, Meteorology, Statistics, The Court of Appeal of the United Republic, Registration of Political Parties and other matters related to political parties.

The Zanzibar Constitution of 1984 contains a Bill of Rights for the protection of human rights of the Zanzibar people regardless of their social, economic, cultural and political differences. However, cases of human rights violations have been Reported in both Unguja and Pemba even after the inclusion of the Bill of Rights.

Violations of human rights have been witnessed during and after the multi-party general elections held in 1995, 2000 and 2005. These elections culminated in the signing of two reconciliation political accords ("*Muafaka*") of 1999 and 2001, as an effort to restore normality to political life in Zanzibar. It has been alleged that several acts involving violations of human rights were committed in Pemba from October to December 2005. These acts included torture, assault, rape, looting,, killings and arbitrary arrests. In the past, the Police were seen as the leading violators of human rights in Pemba, a situation that led to several educational seminars and training programmes being given to the Police to educate them on the need to respect human rights. These seminars and programmes have contributed to a decrease in the number of human rights violations committed by members of the Police Force, especially when we compare the general elections of 2000 and those of 2005.

It has also been widely believed that most of the human rights violations in Pemba are now committed by members of the Zanzibar Special Departments, with the intention of safeguarding the political interests of the government. The Special Departments under the Revolutionary Government of Zanzibar are the Marine Anti-Smuggling Unit (KMKM), Economic Development Brigade (JKU), the Educational Centres (Prisons), the Fire Brigade and the Volunteers. Recruitment of members to these Special Departments is alleged to be conducted on the basis of political affiliations; and people from certain racial groups are barred from recruitment into these state organs.

Chapter Two – Civil Rights and Liberties

2.1 Civil Rights

2.1.1 The Right to Life

The right to life is the most fundamental human right. It is enshrined in the 1984 Zanzibar Constitution, the 1977 Constitution of URT and in a range of international instruments to which Tanzania is signatory, including:

1. The International Covenant on Civil and Political Rights (ICCPR);⁴³⁶ and,
2. The African Charter on Human and Peoples' Rights⁴³⁷

The Zanzibar Constitution of 1984 contains a Bill of Rights (Articles 11 to 25), whose Article 13(1) states:

kila mtu anayo haki ya kuwa na hifadhi ya maisha yake (every person is entitled to protection of his life).

and Article 13(2) says:

kila mtu anayo haki ya kuishi na kupata kutoka kwa jamii hifadhi ya maisha yake kwa mujibu wa sheria (every person has the right to life and to protection of his life from the society according to the law).

It is unlawful for a person to kill another person for any reason, with the exception of an order of the High Court of Zanzibar. However, under sections 28 and 197 of the Zanzibar Penal Act of 2004⁴³⁸, the offences of treason and murder remain punishable by death. The application of the death penalty in Zanzibar for these offences violates both the international conventions mentioned above and Article 13(1) and (2) of the Zanzibar Constitution. However, records show that nobody who has been sentenced to death by the High Court has been executed since 1964.⁴³⁹ Information available from the Zanzibar Educational Centres (Prisons) indicates that there are currently three persons (all men) who are awaiting execution for more than three years. It is not known whether the executions will be carried out or not.

Section 28 of the Zanzibar Penal Act No. 6 of 2004 provides, in part, that a "...person who is convicted of treason shall be liable to suffer the death penalty." The offence of treason in the Zanzibar Penal Act conflicts with the decision of the Court of Appeal of Tanzania in *SMZ v. Machano Khamis Ali and 17 others* in which the Court said:

⁴³⁶ The International Covenant on Civil and Political Rights, 1966 (United Nations General Assembly Resolution 2200 of A of 16th December, 1966) which was ratified by Tanzania.

⁴³⁷ The African Charter on Human and Peoples' Rights, Nairobi, Kenya, July, 1981 which was ratified by Tanzania

⁴³⁸ Act No.6 of 2004

⁴³⁹ Retired Brigadier General Adam Mwakanjuki, the then Minister of State, Constitutional Affairs and Good Governance, in a statement made in Pemba in 2003 during a question and answer session in the Zanzibar House of Representatives..

“In a nutshell we have found that treason can only be committed against a sovereign. However, as treason is a breach of security, which in the United Republic is a Union Matter, therefore, the sovereign is the United Republic and not the Revolutionary Government of Zanzibar or the Head of the Executive of Tanzania Zanzibar who is also called the President of Zanzibar.”⁴⁴⁰

The office of the Zanzibar Director of Public Prosecutions (DPP) and the office of the Registrar of the Zanzibar High Court would not provide us with information on the number of murder cases that have occurred in Zanzibar between January and November 2006. However, it is known that several people appeared before the courts in Zanzibar charged with the offence of murder during that particular period. The failure of the concerned offices to respond also made it difficult to get a picture of how long a murder case takes from the first day of hearing to the day of judgment.

2.1.2 Extra Judicial Killings

In 2006, it was reported in the mass media that members of the KMKM shot dead one person in Fumba village in the West District of Unguja. The KMKM, one of the Special Departments, was established by a 1975 Act⁴⁴¹ for the main purpose of controlling smuggling in the waters around Zanzibar. In another incident that took place in Pemba, members of the same KMKM opened fire with live bullets on a dhow which they suspected was smuggling cloves outside the country. A young man was killed, and the remaining people were arrested and ordered to leave their dhow with its full cargo of cloves.

This cargo was never handed over to the Police. We are not in a position to state whether the soldier responsible for the killing of the villager on suspicion of being involved in smuggling activities was taken to court or not. Neither the KMKM nor the Police would make a comment on this matter. The matter does not appear to have been reported to the Police and higher authorities in the KMKM have taken no action. This incident raised a lot of questions among the people in Pemba as to whether it was proper to fire live bullets on people suspected of clove smuggling. If the answer is in the negative, then the question remains as to what steps were taken by the higher authorities against those who committed such an act and also what steps need to be taken.

All the killings mentioned above were in violation of the ICCPR and the African Charter on Human and Peoples Rights, as well as the Zanzibar Constitution.

On January 2nd 2006, it is believed that a member of the JKU, another Special Department, was ambushed and killed at Piki village. Instead of reporting the matter to the Police, it is alleged that JKU officers retaliated by ambushing Piki village at night.

⁴⁴⁰ In the Court of Appeal of Tanzania at Zanzibar (Coram: Kisanga, J.A; Ramadhan, J.A; and Lugakingira, J.A) Criminal Application No 8 of 2000 between SMZ and MACHANO KHAMIS ALI AND 17 others Criminal Application No 8 of 2000 (Revision from the Ruling of the High Court of Zanzibar (Tumaka, Deputy, C..J.) dated 3rd day of April, 2000 in Session Case No. 7 of 1999).

⁴⁴¹ Act No 13 of 1975

The whole village was put under siege for about two weeks, during which, it is alleged, violations of human rights were committed by the JKU.

It is also alleged that some members of the Tanzanian Red Cross and Medicines sans Frontiers who went to the village to provide medical facilities to the injured and sick persons were placed under arrest and tortured. Members of the police force, in uniform, who went to the village to investigate the matter are also alleged to have been arrested and tortured. One of the police officers was admitted to Wete Hospital with a fractured leg. In one case, it is alleged that legislators from the opposition camp, Mr. Khalifa Mohammed and Mr. Said Ali Mbarouk with the party District Chairman Mr. Shafi Mohammed Shafi who went to the village to find out what was going on, were also arrested and tortured for more than 12 hours.⁴⁴² They were finally released and admitted to Wete Hospital and Muhimbili National Hospital suffering from multiple fractures.

2.1.3 Mob Violence

The headquarters of the Zanzibar Police Force did not want to comment on this issue when it was approached. However, Reports gathered from the people at urban centres in Zanzibar indicate that at least six cases of mob violence have occurred in Zanzibar between January and November 2006.

2.1.4 Freedom Of Expression

Article 18 of the Constitution of Zanzibar⁴⁴³ states that every Zanzibari is entitled to his or her own opinions, to collect and disseminate information in any media regardless of national frontiers and is entitled to communication without interference. Although the Zanzibar Constitution provides for the right to freedom of expression, in reality, the actual situation on the ground is somewhat different.

Persecution and intimidation of people, especially civil servants,⁴⁴⁴ has been Reported in different fora held in both Zanzibar and outside. The main reason for the persecution is because the people affected hold views that conflict with either the government in power or the ruling party.

There is no official number of people who claim to have been intimidated or persecuted because they hold dissenting views. However, there are cases of people who have suffered simply because they have been critical of the government or have shown a kind of disagreement to the government or ruling party.

Despite several shortcomings in relation to the protection of the right to freedom of expression in Zanzibar, the government can still claim some credit, because the situation has certainly improved compared to the past four decades since Zanzibar attained its Revolution on January 12th 1964. However, the only independent newspaper to have

⁴⁴² Interview with CUF Deputy Director of Publicity Salim Bimani

⁴⁴³ The Constitution of Zanzibar of 1984

⁴⁴⁴ Interview with some affected civil servants

existed in Zanzibar in the last few years, namely DIRA was forced to stop publication in January 2004

2.1.5 Freedom of the Press

There are improvements recorded in the field of freedom of the press in Zanzibar. In February 2006, the Zanzibar House of Representatives passed the Zanzibar Information Policy⁴⁴⁵ This is the first time in history that Zanzibar has put in place a national media policy, which, among other things, regulates and controls the behaviour and operation of the mass media, as well as acts of irresponsible journalism. In addition, the Zanzibar House of Representatives, in its ordinary session held in October 2006, passed a Bill seeking to establish a School of Journalism.⁴⁴⁶

The Zanzibar Department of Information Services claims that there are 65 registered journalists in Unguja, the main island of Zanzibar, and 14 registered journalists in Pemba, bringing the total number of registered practicing journalists in Zanzibar to 79.⁴⁴⁷ The Department says that 30 newspapers had been registered by November 2006 and it is currently processing another application for registration. It is also said by the Department that no journalist or mass media organization was banned in 2006.

It is on record that two practicing journalists were warned for what was termed “anti-government articles”. These journalists were Salma Said⁴⁴⁸ and Ally Saleh.⁴⁴⁹ One other journalist from the state-owned Television Zanzibar (TVZ), Raya Hamad, was transferred to the Zanzibar Information Services for reporting a story about cockroaches at the Mnazi Mmoja government hospital. The story though true was distasteful to government officials.

In August 2006, a senior journalist in Zanzibar, Mr Ali Nabwa, was harassed by Immigration officials who claimed that he was not a bona fide Tanzanian and must undergo certain formalities in order to get his nationality back. Mr Nabwa has been a critic of the government and has published several anti-government articles in privately owned newspapers, especially DIRA of which he was the Editor in-Chief. It is Mr Nabwa ultimately had his citizenship restored and was given a Tanzania passport believed that on the intervention of the Minister of Home Affairs.

In October 2006, the Zanzibar President, H.E Amani Abeid Karume, when addressing a public rally at Kibandamaiti playgrounds, criticised some journalists for deliberately damaging the reputation of his government. This sounded like a threat to journalists.

⁴⁴⁵ The Zanzibar Information Policy of 2006.

⁴⁴⁶ A bill seeking the establishment of the Zanzibar School of Journalism 2006.

⁴⁴⁷ An official letter by the Zanzibar Department of the Information Services issued in 2006.

⁴⁴⁸ A journalist working with the Mwananchi Newspaper Published in Tanzania Mainland

⁴⁴⁹ A journalist working with the British Broadcasting Corporation (BBC)

In November 2006, Salma Said was again threatened with legal action for writing an “anti-government article” about a fresh outbreak of cholera in Zanzibar. In less than a week after the warning was given to her by the Director of Public Health Services in the Zanzibar Ministry of Health and Social Welfare, the concerned Minister, Mr Sultan Mohammed Mugheiry, issued a public statement confirming the fresh cholera outbreak and the deaths of eleven people.

In another incident in 2006, Salma Said and Issa Yussuf⁴⁵⁰ were denied permission to enter the Zanzibar State House as journalists, with no explanation being given.

The government also broadcasted a special commentary accusing Ally Saleh, a BBC correspondent in Zanzibar for airing an anti-government story about price increases during the Holy Month of Ramadhan.

The Registration of Newsagents, Newspapers and Books Act of 1988 is a legal hurdle on the question of Press Freedom in Zanzibar. The stiff conditions obtaining in this Act are frustrating the registration of newspapers. The Nyalali Commission,⁴⁵¹ which collected people’s opinions about whether Tanzania should adopt multi-partism, recommended that this provision be deleted from the Act because of its oppressive nature. However, the Act remains intact and is being enforced

2.2 Political Rights

2.2.1 Freedom of Association

Article 20 of the Zanzibar Constitution of 1984 provides for “the right of association”.

There have been instances whereby people who wanted to form of non-governmental organizations, in order to undertake their human rights activities, have either been denied registration or had it delayed. Several practicing lawyers have been quoted as saying that the Office of the Zanzibar Registrar- General has wide discretionary powers regarding whether or not to grant registration to non-governmental organizations.

The Zanzibar Registrar General delayed for more than a year the granting of a permit for the Zanzibar Female Lawyers Association (ZAFELA) to operate.⁴⁵² The Zanzibar Law Society (ZLS)⁴⁵³ also had to wait for more than a year to be registered and get a permit from the Office of the Zanzibar Registrar General. This unnecessary delay in granting permits to non-government human rights organizations to operate in Zanzibar appears to be intended to discourage professionals from seeking registration of non-governmental organizations that are aimed at promoting and protecting human rights in Zanzibar.

⁴⁵⁰ Issa Yussuf, a journalist with the Guardian Newspaper

⁴⁵¹ The Nyalali Commission Report of 1992

⁴⁵² Interview with Officials of the Zanzibar Female Lawyers Association (ZAFELA)

⁴⁵³ Interview with Officials of the Zanzibar Law Society (ZLS)

2.2.2 Freedom of Assembly

Article 20 of the Constitution of Zanzibar contains a “freedom of assembly” clause. However, there are practical examples of some opposition parties and trade unions being denied permits to hold public meetings or demonstrations.

Members of the Field Force Units (FFU) were ordered to disperse a group of employees of a Chinese Construction Firm (known as CRJE), who were heading to the firm to put pressure on it to pay their wages as determined by the Industrial Court.⁴⁵⁴ The workers, through their Trade Union, ZATHOCADAWU, were tired of non-payment of their wages by the firm.

In December 2006, members of the FFU were again used to disperse a group of students of the Zanzibar University at Tunguu.⁴⁵⁵ The students, under the auspices of the University Students Organization, had gathered at the office of the Vice Chancellor to express dissatisfaction with power cuts and erratic water supply at the institution. In the course of dispersing the group, some students were injured by the FFU.

It is alleged that the government is using the police to refuse to grant permits to opposition political parties to stage political rallies. The police claims to have the discretion to either grant or refuse to grant a permit to a political party to hold a meeting on security grounds.

The opposition party, CUF, claims that the Police first refused the party to stage a demonstration to show their opposition to a statement made by the Zanzibar President Mr Amani Abeid Karume that “there is no way for the formation of the coalition government as a way to ease the political tension that surfaced after the 2000 and 2005 general elections”. Mr Salum Bimani⁴⁵⁶ claims that the police in the Zanzibar Urban West Region had, for no good reason, ordered the CUF to change the route of its demonstration in Zanzibar town. He claims that the Police ordered them not to go around Zanzibar town because of a fear of violent outburst. However, in fact, many CUF supporters live in this area. The rally was staged at Kibandamaiti Play Grounds. Mr Bimani said the excuse advanced by the police carried no weight whatsoever. It was only a camouflage to frustrate the party’s strength.

The enactment of the Office of Mufti Act⁴⁵⁷, is another impediment curtailing the freedom of assembly in Zanzibar. The section gives power to the Mufti to approve any Islamic activities, (including Ijtimai and Lectures) or any Islamic gathering in Zanzibar. This is wrong. In Islamic perspectives it is not proper to seek permission from any authority to give lectures, say, in a mosque. The section also centralizes the power of allowing Muslims to conduct their activities in the Office of Mufti only. It is possible that

⁴⁵⁴ Judicial Form No. 39 of Civil Suit of 9 2006

⁴⁵⁵ President of the Zanzibar University Students Organization

⁴⁵⁶ Interview with CUF Deputy Director of Publicity Mr. Salim Biimani

⁴⁵⁷ Section 10 (1)(c) of Act No. 9 of 2001 of the Establishment of the Office of Mufti

the Office of Mufti may abuse the power bestowed on it and denies Muslims to give public lectures so as to appease the Executive.

2.3 The Right To Participate In Governance

The crisis of governance in Zanzibar emanates not only from the fact that a section of the population questions the legitimacy of the government in power, but from the fact also the government practices the politics of exclusion. All the three previous multi party elections indicated that the Zanzibar society is evenly divided. One would expect, therefore, that in such a situation deliberate attempts would be made to include everybody in the process of governance. On the contrary, there are accusations that people are excluded either on the basis of political affiliations, racial origin or the area from where one came. And this very much contradicts Article 21 (2) of the 1984 Zanzibar Constitution.

The opposition parties in Zanzibar claim that their supporters are not given opportunity to participate in national affairs. It is also generally believed in the islands that people who are perceived to be sympathetic to opposition parties or originate from Pemba are rarely given senior government posts. There are also claims that Zanzibaris of Arab, Indian and Comorians origins are not recruited into the SMZ Special Departments.

This situation where sections of the population feel that they are excluded from governance of their own society creates unnecessary frictions and complaints. It breeds animosity and intolerance in society. In the *Muafaka II* which has not been formally abrogated both CCM and CUF are urged to forget their differences and to restore a normal political life to Zanzibar.

2.4 Equality before the Law

Access to justice for all in Zanzibar remains a distant dream. Not all people enjoy the right to access to justice as it is enshrined in the Zanzibar Constitution.

The wealthy people seem to have an advantage in the administration of both criminal and civil justice. In situations where their rights are violated, they are able to use their money to seek legal redress in the courts of law, either by engaging advocates to represent them before the courts or even buying justice through various means.

In contrast, the poor or disadvantaged sections of Zanzibari society, particularly those people from rural areas, do not enjoy the right to access to justice. The number of people who come to the offices of the Zanzibar Legal Services Centre, both in Unguja and Pemba to seek assistance in fighting for their legal rights is evidence that not all people in Zanzibar have the right to access to justice.

In a recent meeting of the young lawyers in Zanzibar organized by ZLS as held at Bwawani Hotel, statements were made that there is a need to establish more non-governmental organizations to provide legal services to the poor and the disadvantaged.

These people continue to lose their legal rights because of ignorance of the law and a lack of money to hire an advocate to represent them in court.

Efforts have been made by the Zanzibar Legal Services Centre, the Zanzibar Law Society and the Zanzibar Female Lawyers Association, in collaboration with the United Nations Development Programme (UNDP), to educate the people on their legal rights and to help them enforce these rights. The aforementioned organizations also played a key role in providing civic education to voters during the 2005 Zanzibar General Elections.

Chapter Three – Economic and Social Rights

3.0 Introduction

In Zanzibar, the economic, social and cultural rights of the people are the product of international instruments. These instruments include the Universal Declaration of Human Rights of 1948 (UDHR) and the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR). The economic, social and cultural rights contained in these instruments are known as ‘second-generation rights’. These rights are those rights connected with the features of life such as access to food, water, housing, social security, labour rights, rights to own property, rights to education and health rights.

One of the weaknesses of the Bill of Rights in the Zanzibar Constitution is that it leaves out some rights such as rights to education and health and does not cover vulnerable groups such as the disabled, elderly, children and women.

This Report will deal with the following four rights; Labour rights, Right to own property, Right to health and Right to education.

3.1 Labour Rights

Labour is the one of the most treasured assets that human beings have. Work does not only produce wealth, but it also guarantees the very survival of a human race. It is therefore important to protect and control it. The products of labour ought to be protected as well. The right to work is as important as the right to life, as it relates to the very survival of the individual and society in general and therefore deserves and requires the same legal protection.⁴⁵⁸

A situation ought to be created whereby citizen is afforded an equal opportunity, and equal conditions, to occupy any position in the services of the Revolutionary Government of Zanzibar⁴⁵⁹.

Article 6 of the ICESCR which Tanzania has signed provides for the right to work. This international instrument also guarantees social rights such as the protection of the family, maternity protection, protection of children and juveniles, right to social security, right to an adequate standard of living including food, clothing, housing and right to health (Article 11). In relation to cultural rights, the ICESCR protects the right to education (Article 13), right to participation in cultural life and protection on intellectual property.

⁴⁵⁸ Article 21(3)

⁴⁵⁹ *Ibid*

To meet the standards in the ICESCR, the Government of Zanzibar has made significant changes to its laws and has also enacted five new laws, all of which were enacted in 2005. These are the Employment Act, the Workmen Compensation Act, the Occupational Safety and Health Act, the Social Security Fund Act and the Labour Relations Act. In 2006, the Zanzibar Legal Services Centre organized a series of seminars to build awareness among labour officers and trade union members on the new labour laws.

Achievements have been made in facilitating and promoting understanding among the law enforcers of the importance of such laws, particularly in considering the consistency of the Zanzibar Trade Policy 2006 and the Zanzibar Development Vision 2020.

3.2 Right to Own Property

Zanzibar is a multicultural society. There is therefore difficulty in determining which set of laws is applicable in the case of dispute on the ownership of property. The right to own property is the subject of both Zanzibar state legislation and Islamic law. This part of the Report covers the issue of land ownership only.

Zanzibar is a part of the United Republic of Tanzania, but it also has its own laws that govern the country. It enacted land and registration laws in order to prevent land fragmentation and maintain the distribution of land policy that was instituted in 1964 by the Zanzibar government. In 1964, the Revolutionary Council enacted a law to confiscate all immovable property including land and in 1965, the government enacted another law to give land to the people.⁴⁶⁰

Zanzibar Land Tenure Reform Laws

Several other laws were enacted in 1989. Basically, such laws consolidated the fundamental approach that was introduced in 1965, when the government declared itself the paramount landlord and vested all land in itself. The laws further defined the procedures by which the government is to allocate grants of occupation. Such grants depend on each citizen exercising his or her right to apply for the allocation. The rights of occupation are in perpetuity and transferable but subject to termination by the sovereign on ground of bad husbandry.⁴⁶¹

The government may also interfere in the transfers. The government can nullify the transfer if it offends the social well-being of the parties involved or their prospective heirs or undermines the government's development aims. Alongside the rights of occupation

⁴⁶⁰ Decree No. 13/1965.

⁴⁶¹ Section 8(2) (f) of Act No. 12 1992.

obtained from government grants are customary rights determined by the web of family, clan, village relationships and inheritance rights under Islamic law. These rights are no longer regarded as customary. Instead, they are rights of occupation that can be recognized only if registered like the rights of occupancy obtained from government grants.

The registration system, once in place, is the vehicle through which the Government controls all transfers of rights of occupation, even those originally derived from customary land rights or Islamic inheritance rules. The process of registration, if working properly, would allow the Registrar to notify the Land Transfer Board of registration of any transfers by way of inheritance. The registration is void if it has not been approved by the Land Transfer Board.⁴⁶²

Even mortgage foreclosures are regulated according to a development agenda, namely, the mortgagor is prevented from becoming a landless indigent by limiting the foreclosure to the proceeds of the land. Once the debt has been paid off, the original holder resumes full control over the right of occupation.⁴⁶³ Even if the mortgagor wishes to put up the land for sale in order to raise funds to pay off the debt, the Land Transfer Board, subject to review by the Land Tribunal, can prevent this from occurring on the basis that it is not in the best interests of the mortgagee and his or her prospective heirs.

The procedures that government is trying to put in place thus prevent the land tenure system from falling back under the control of the customary web of political and family relationships by virtue of inheritance or borrowing arrangements. This is the most radical departure from the colonial system that recognized the customary and Islamic system. Women have lost some ground under the Zanzibar land tenure laws to the extent that the law does not explicitly and automatically protect a woman's interest in the husband's land. Yet neither is the interest of the husband in the land of his wife automatically protected.

The grant of occupancy provided explicitly for life tenure for both grantee and spouse with inheritance rights for their descendants. The present Land Tenure Act makes no such provision. Nonetheless, it opens up the possibility of a woman applying for a separate grant of occupancy for land from that granted to her husband in order to meet her own particular needs. Whether women will actually take advantage of the new law will depend both on their initiative and their access to capital resources needed to develop the land. Without a separate interest in the land, women are dependent on cultivating the land of their spouses or, if divorced, on returning to the land of their natal family. Women need to take the initiative to register their interests as a joint occupancy claim on the land

⁴⁶² Land Transfer Act No.8/1994 section 2 and 15.

⁴⁶³ Section 13, Decree No.13/1965

as soon as they have contributed to the spouse's land or as soon as they foresee the need to return to their natal families.

The need can be met by inheritance distribution or borrowing from relatives and non-relatives under the principle of Islamic law that those with more land than they need or use should "lend" it to those in need. Such realities have not been worked into the new land laws.

3.3 Right To Health

The right to health is one of the important aspects of a good life. However, it is not included in the Bill of Rights in the Zanzibar Constitution.

As Zanzibar is a part of the United Republic of Tanzania and Tanzania is a member state of the African Union, Article 19 of the African Charter on Human and People's Rights is applicable to Zanzibar. This Article provides that:

- (1) *Every individual shall have the right to enjoy the best attainable state of physical and mental health.*
- (2) *Partner states shall take the necessary measures to protect the health of their people and to ensure that they receive medical care when they are sick.*

To meet these criteria, a Report by the Zanzibar Minister of Health says that the overall goal of health sector reforms is to improve the health status and well being of the people of Zanzibar. Particular attention is to be given to women, children and the disadvantaged, with a primary focus on the reduction of morbidity and mortality rates from all major health causes. The Report evidenced the disparities in health status between various groups in the community.

Accordingly, the Zanzibar government has embarked on the plan of the Zanzibar Development Vision 2020. The overall objective is to eradicate poverty in the community. The policy framework that guides the Zanzibar Health Services Reforms, which has been developed and improved by the Zanzibar House of Representatives, indicates this intention. The revised and updated English version has been available since 2001.

In Zanzibar, there are a large number of people who cannot afford to make any contribution in order to receive health care services. There is no open exemption mentioned for those who cannot afford to contribute to services. This means that it is inappropriate to treat the rich and poor equally in relation to payment for services.

Criteria should be developed to determine who should and should not be required to contribute to health care services.

There are various disadvantaged groups and individuals in the Zanzibar community who are unable to gain access to health care services. Examples of such groups are the disabled, women and children, street children and the poor in general. Due to poverty and other reasons, these vulnerable groups cannot gain access to other social welfare services or fulfill their basic needs.

Because of changing social and economic contexts, combined with the high level of poverty, the problem of drug and substance abuse is becoming substantial and poses a serious threat in Zanzibar.

It is recommended that the Zanzibar government review the law so as to:

- Improve the availability of quality health care services to disadvantaged and vulnerable groups.
- Create offices that provide social welfare services in order to benefit disadvantaged and vulnerable groups, with a particular emphasis on children, the elderly, orphans and street children.
- Liaise with other sectors and NGOs involved in taking care of disadvantaged and other vulnerable groups.
- Reduce the number of persons involved in drug and substance abuse and take care of these already affected.
- Put in place a system that will monitor, coordinate and harmonize ways of working with various donors and partners in the health sector.

3.4 Right to Education

The right to education, like the right to health, is not included in the Zanzibar Constitution of 1984. The Education Act⁴⁶⁴ provides that every citizen has a right to education. Education is declared to be both free and compulsory up to a certain age.

A Report by the Ministry of Education sets out the following objectives for educational reform in Zanzibar:

⁴⁶⁴ Act No. 6 1982 as amended in 1993.

- The institutionalization of early childhood education, care and development is a basic service for all children in the country.
- The improvement in the equality and efficiency of primary and secondary education.
- The eradication of illiteracy.
- The promotion of higher education and technology to cope with rapid technological advances.
- The creation of awareness and understanding of cultural diversity and freedom of expression and association.

The Education Act No.6 of 1982, as amended in 1993, provides the overall policy orientation of the education sector. The policy of education is guided by the declaration of compulsory and free basic education for all that was promulgated on 23rd September 1964.

Although education is declared to be free, community and individual contributions are encouraged and these have been put towards the construction of class rooms, supply of school stationery and the cost of schooling. People claim that these contributions are necessary and yet they cannot afford them. There is no set of criteria according to which people contribute to the program and that is the primary reason why the majority of people cannot afford to pay such fees.

The Zanzibar education policy has also been guided by international declarations and conventions such as the:

- 1 Millennium Development Goals for Education.
- 2 Jomtien Declaration on Education for All (EFA).
- 3 Convention on the Rights of the Child (CRC).
- 4 Convention on the Elimination of Discrimination against Women (CEDAW).

These global commitments aim at empowering the poor, including women, by providing them with their fundamental human rights, education, development and protection. The Zanzibar Education Act No. 6 of 1982, as amended in 1993, and the Zanzibar Education Policy 1991, as amended in 1995, seek to uphold these international standards by ensuring that all eligible children are enrolled in and attending school, providing good quality and relevant education and providing equal educational opportunities.

It is Reported in an article by Irin International News that the House of Representatives of Zanzibar has endorsed an education policy that is intended to make major reforms to education in Zanzibar, including allowing female students who fall pregnant to resume

their studies after giving birth. Prior to 2005, pregnant girls were forced to leave school permanently and were even imprisoned. The article quotes the Minister of Education, the Hon. Mr. Haroun Ali Suleiman, as saying:

“Unplanned and early pregnancies have been a drawback in the development of female students in our schools. Let us allow them to continue with school after giving birth and caring for their babies for some time”.

The Minister also said that the education reforms included compulsory education up to form four instead of form two, reducing the age of joining primary school standard one from seven to six years and reducing the age to register for nursery school to two years instead of four.

The Article says that the members of the House of Representatives passed the reforms despite the absence of the opposition party, Civic United Front (CUF). The opposition members staged a walkout of the session in protest, claiming that Education Policy was ill-timed and poorly prepared. One of the members of the House of Representatives from the CUF, the Hon. Mr. Hamad Masoud, conceded that the contents of the policy are good but said that there had not been enough preparation, especially good consultation with the public. He said that:

“We CUF have observed that there is too much politics in the policy instead of seriousness education reforms”.

He added that Zanzibar is still faced with the basic problems of many students in one class, lack of skilled teachers and poor quality of education, and that Zanzibar should not rush in making reforms like this.

3.5 Accessibility to Health Services

Shortly after the Zanzibar Revolution on January 12th 1964, the government announced that it would offer social services, including health services, free of charge to enable the people to enjoy the fruits of the Revolution.

Due to the financial constraints facing the current administration, especially following the collapse of the price of cloves in the world market, the government has been left with no other alternative except to introduce a cost-sharing program as a way of support to the health care sector. However, 46 per cent of the Zanzibari population is living below the poverty line and cannot afford to shoulder the cost of health services. As a result, many people are forced to rely on the inadequate health services provided by the government through its general Mnazi Mmoja hospital.

3.6 Right of Accessible To Health Services for People Living With HIV/AIDS

As discussed above, the Zanzibar Constitution guarantees the right to life. In order to ensure this right is protected, the Zanzibar government has been trying to offer medical services to its people.

In the wake of the HIV/AIDS problem, the government has launched the Zanzibar AIDS Commission (ZAC) and the Zanzibar AIDS Control Programme (ZACP) as part of its effort to help the people avoid contracting this killer disease, which claim the lives of millions of people throughout the world. The ZAC was established under Act No. 3 of 2002 and its functions include ensuring the development of strategies and policies for combating HIV/Aids, controlling and ameliorating the effects of the HIV/AIDS epidemic and controlling and coordinating the application of strategies and policies.⁴⁶⁵ The 2006 Report by the ZACP⁴⁶⁶ shows that the number of people contracting HIV/AIDS is somewhat under control. A total of 8,625 people were blood-tested between January and September 2006 and 415 were found to be HIV positive (equivalent to 4.8 per cent). The figure was a decrease from the year 2005. In 2005, 13,813 people were blood-tested in Zanzibar and 729 (equivalent to 5.27 per cent) were found to be HIV positive.

The data provided does not show the real situation in relation to HIV infection. Many people do not attend hospital for voluntary testing and those who have been found to be HIV positive are not prepared to be registered for anti-retroviral drugs. In the Zanzibari society AIDS is considered to be a stigma, and those affected are ostracized by their families and relations. Zanzibar is predominantly a Muslim Society, and it is assumed that one can only be infected with AIDS through promiscuity, hence the stigma.

It has been emphasized that the treatment of HIV patients should be conducted in accordance with the Constitution of Zanzibar and that there should be no form of discrimination against persons who have AIDS or are HIV positive.

3.8 Information Dissemination on HIV/AIDS

Although Article 18 of the Zanzibar Constitution contains a right to information, dissemination of information about HIV/AIDS is still poor. Urban Centres receive sufficient information through different channels, particularly the mass media; however, the rural areas receive less information. In addition, many non-government organizations that provide HIV/AIDS services are town-oriented, leaving the rural areas without adequate information or services.

Information dissemination or education concerning safe sex and the use of preventives has not been effective in Zanzibar. HIV/AIDS education is provided in schools but this does not cover the real issue of the use of condoms. For example, the Zanzibar AIDS

⁴⁶⁵ Section 4 (a) and (b) of Zanzibar Aids Commission Act No. 3 of 2002.

⁴⁶⁶ Report by the Zanzibar Aids Control Programme

Commission (ZAC) has published a book on HIV education for schools and Madrasa. This book quotes some verses from the Qura'an but there is no part of the book that explains the importance of using condoms since it is considered doing so would go against the Islamic morals. This is because the use of preventives is not accepted in Islam. In Islam, adultery is totally forbidden. Committing adultery, regardless of the use of condoms, is a sin and prohibited by law.⁴⁶⁷

Information dissemination on HIV/AIDS to people with disabilities is also poor. This group is extremely isolated. There is no written document for visually impaired persons or deaf persons or dumb people. Further effort is needed to strengthen information dissemination strategies to all people, especially those with disabilities that prevent them from obtaining access to information through the usual methods.

⁴⁶⁷ The Office of the Mufti Zanzibar, Islamic Direction on combating HIV/AIDS, pg 21

Chapter Four - Rights of Vulnerable Groups

4.1 Introduction

According to the Oxford Dictionary, a ‘vulnerable group’ signifies a group of people who are in a weak position and can be easily hurt either physically or emotionally. In Zanzibar, vulnerable groups include people with disabilities, women, children and the elderly. These groups are frequently the victims of human rights violations.

It is estimated by different international organizations that 10%⁴⁶⁸ of every society is disabled. On the basis of this, we can estimate that more than 100,000 Zanzibaris have one type or other of physical or intellectual disability.

People with disabilities should be regarded as equal to all other citizens in Zanzibar. They should receive all the rights recognized by international conventions and treaties.⁴⁶⁹ Although both the Constitution of the United Republic of Tanzania and the Zanzibar Constitution⁴⁷⁰ contain Bills of Rights recognizing that all people are equal, neither of these Constitutions has clearly set out the rights of people with disabilities. This issue has been raised several times, especially during the discussion on the White Paper and other periods of amendment of the Constitution. Nevertheless, the question has not been seriously considered. The failure to explicitly refer to this group in the Constitution limits the rights of people with disabilities.

On the other hand, the status of women in Tanzania mainland and Zanzibar has improved compared to some years ago. One manifestation of this is that the number of female members of the House of Representatives has increased from 25% to 30%,⁴⁷¹ which is a good start towards gender equality. Municipal laws⁴⁷² have also increased the number of women up to 30.% representatives in the local government authorities. The Ministry of Labor and Development of Youth, Women and Children is also playing a role in fighting for the rights of women and children so also a number of women NGOs in Zanzibar.

4.2 Rights of Persons With Disabilities

“The ideas and concepts of equality and full participation for persons with disabilities have been developed very far on paper, but not in reality. In all

⁴⁶⁸ Among them are UNDP and WHO.

⁴⁶⁹ These include Universal Declaration of Human Rights of 1948 and all the International human rights instruments signed and ratified by Tanzania.

⁴⁷⁰ Article 11(1) and Article 11(2) of The Constitution of United Republic of Tanzania of 1977 (as amended) and the Constitution of Zanzibar, 1984 (amended)

⁴⁷¹ The Zanzibar Constitution of 1984, Article 67 (1)

⁴⁷² Municipal Council Act No 3 of 1995

countries, and all types of living conditions, the consequences of disabilities interfere in the lives of disabled persons to a degree which is not at all acceptable... When a person is excluded from employment because of his or her disability, he/she is being discriminated against as a Human Being. If a general education system developed.....and disabled children are excluded, their rights are being violated.” 473

Although different non-governmental organizations, communities and associations of people with disabilities exist in Zanzibar and conduct a range of seminars and workshops, the United Nations standard rules on equalization of opportunities for people with disability have not been translated into simple language or into Kiswahili for local readers. Without translating those rules, the government restricts the understanding of the people of Zanzibar, including people with disabilities of their rights.

Legislation protecting the rights of people with disabilities has recently been approved and passed by the Zanzibar House of Representatives and assented to by the President of Zanzibar. If this Act is fully implemented, it will, to a great extent, reduce the number of infringements of basic human rights of people with disabilities.⁴⁷⁴ Equality of opportunity simply does not exist where a disabled child cannot attend school, where a disabled mother has no health care, where a disabled person cannot get training or a job or a cannot move freely in the streets.

It is also significant that, in December 2006, the United Nations General Assembly adopted the first human rights convention of the 21st Century. This convention aims to protect the rights of people with disabilities.

4.2.1 Employment and Persons with Disabilities

It is estimated that almost 70% of people with disabilities live below the poverty line, an indication that no serious attention has been given to their plight, this lack of attention and the discrimination in access to jobs has made their lives extremely difficult.⁴⁷⁵

Zanzibar law on employment provides for fair treatment and equal opportunity in employment for all people regardless of their physical and mental fitness, as the anti-discrimination provisions provided under section 88 demonstrate⁴⁷⁶ :

- (1) Persons with any kind of disabilities shall have equal right to be employed in any type of work depending on their standard of education, skills, and ability and shall be employed on the same terms and enjoy the same privileges under the contract.

⁴⁷³ Bengt Lindqvist, UN first Special Report er on Standard Rules (1993-2002)

⁴⁷⁴ “ Isles approved legislation on People with Disabilities” THE GUARDIAN 14TH Oct 2006

⁴⁷⁵ Declaration of the Association of People with Disabilities Zanzibar of 2005 after the general election.

⁴⁷⁶ Employment Act No. 11 of 2005.

- (2) No employer shall deny a disabled person employment on ground of his disability.
- (3) No employer shall dismiss a disabled person from employment before the expiry of his term of service on ground of disability.

But more than 90% of people with disabilities have no employment due to their lack of education and lack of adequate working conditions for them in work places⁴⁷⁷. Also a large number of them are illiterate, partly due to the architectural barriers to public buildings such as schools, which is against the Universal Declaration of Human Rights.⁴⁷⁸

On the other hand, the law, which provides for equal opportunity to people with disabilities also provides for the establishment of a Zanzibar National Council of people with disabilities, as it was not available before.⁴⁷⁹

The representatives of different organizations of people with disabilities in Africa proposed this issue at the Conference on Disability and Human Rights held in Dar-es-salaam.⁴⁸⁰ The following measures were agreed on in the conference:-

- All African countries should have a National Council of People with Disabilities, which will include Government officials.⁴⁸¹
- There must be rules for providing equal chances to people with disabilities in Africa⁴⁸².
- Governments should take responsibility to help people living with HIV and disability.⁴⁸³

4.2.2 Health Services For People With Disabilities

People with disabilities are not getting serious medical attention for the problems that they face. This is due to a lack of qualified psychiatrists and physiotherapists, lack of specialist appliances and medicines and even problems with the architectural structure of the hospitals in Zanzibar.

Taking into consideration the financial constraints facing persons with disabilities, most of them cannot afford to use private hospitals or to travel outside Zanzibar to get proper medical care. This is a significant problem and violates the human rights of this group.⁴⁸⁴ An additional problem is that Zanzibar has no special policy regarding the provision of sports facilities to enable persons with disabilities to take regular exercise.

⁴⁷⁷ Declaration of the Association of People with Disabilities of Zanzibar, after General Election. Of 2005

⁴⁷⁸ Universal Declaration of Human Rights of 1948, Article 23,

⁴⁷⁹ Section 26(1), (2) and (3) of Law of Persons with Disabilities

⁴⁸⁰ Organized by Tanzania NGO, Disabled Organization for Legal Affairs, Social and Economic Development, held in May 2005

⁴⁸¹ Conference organized by Rehab International held at Bahrain on 17th Feb.

⁴⁸² Ibid

⁴⁸³ Ibid

⁴⁸⁴ Universal Declaration of Human Rights of 1948, Article 25.

4.3 Children's Rights

4.3.1 Child Abuse

A recent Report issued by the Ministry of Labour and Development of Youth, Women and Children responsible,⁴⁸⁵ shows that there has been an increase in cases of child abuse in all urban and rural centers in 2006. Many of these cases have been Reported to the police for legal action. Those cases involve rape and child sexual molestation (rape of girls and sodomy of boys).

A large number of the cases of child abuse involve children with disabilities. The following is the list of children with disabilities who were sexually abused in different parts of Zanzibar in 2006.

- In May, a 9 year old girl suffering from physical disability, living in Uzini in the Central District, was raped by her uncle⁴⁸⁶.
- In June, a girl of 16 years of age with a physical disability, who lived in Kombeni in the West District, was raped. She is currently seven-months pregnant.⁴⁸⁷
- In May, a girl with a physical disability was raped and made pregnant by an unknown person in Mkoani District.⁴⁸⁸
- In July, a 15 year old girl, who is among deaf people was raped and made pregnant by a member of her own family at Kisiwapanza in Mkoani District.⁴⁸⁹
- In October, a 16 year old girl with a psychiatric problem was raped twice by a member of her own family in Micheweni District.⁴⁹⁰
- In August, a case was Reported of a man who sodomised four children in the same incident by luring them with a promise of giving each 200/- each. The man was arrested and charged in court.
- In September, a man raped two sisters of the same family at the same time.⁴⁹¹

The main weakness in cases of this nature is that the trial is frequently delayed because the prosecution takes a long time to collect enough evidence from the police and the hospital. For example, there was a case in 2006 in which a Mwera Regional Magistrate Court ordered the arrest of a doctor who had refused to appear before the court to produce expert evidence on the grounds that he did not have any transport to go to the court. Another factor that causes delay in cases of this kind is the loss of concrete evidence to prove the case. This generally occurs either because of a delay in Reporting the case or because the victim is cleaned before he or she can be examined by expert doctors.

⁴⁸⁵ Report of the Ministry of Labour and Development of Youth, Women and Children of 2006.

⁴⁸⁶ Interview with Field Supervisors of the Association of People with Disabilities in Zanzibar on 20th December 2006.

⁴⁸⁷ *Ibid*

⁴⁸⁸ *Ibid*

⁴⁸⁹ Interview with Field Supervisors of the Association of people with Disabilities in Zanzibar on 20th December 2006

⁴⁹⁰ *Ibid*

⁴⁹¹ *Ibid*

In January 2006, according to information available, members of the JKU invaded Piki village and forced all the men to flee from the village, leaving behind only women and children. This created conducive conditions for the JKU to commit crimes. JKU officers raped many young girls and either stole or destroyed property. For example, a house belonging to Mr Khalifa Mohammed, a member of the Union Parliament, was looted and then the water taps were turned on and the house sealed so that it flooded and its contents were destroyed.

4.3.2 Right To Education

Under the Zanzibar Education Policy adopted on September 23rd 1964, all children are entitled to a free education irrespective of their social and economic background. This policy has turned out to be successful. In collaboration with UNICEF, in 2006, Zanzibar has, for the first time in its history, offered admission to Standard I to all children in Unguja and Pemba.

However, the main setback is that the number of school-going children decreases every year for several reasons, including drop-outs, truancy and pregnancy.⁴⁹² The 2006 official government Report on the number of students who cut short their studies because of pregnancy was not available, but the 2005 Report indicates that more than 26 pupils were made pregnant before completion of their studies and in four cases the men responsible were fellow pupils. The Spinsters and Single Parent Children Protection Act No. 4 of 2005 provides that, instead of a girl being expelled from school if she becomes pregnant, as was previously the case, she is now required by law to resume school after giving birth. This law helps to protect girls and spinsters from illiteracy by ensuring that they have a right to education even if they become pregnant.

4.3.3 Child Labour

Child labour has become a serious problem in Zanzibar although it is already prohibited under sections 6 and 7 of the Employment Act.⁴⁹³ This is normally practiced in rural areas where many children are used as cheap labor with nominal payment.⁴⁹⁴ One of the most affected areas is Nungwi village in Unguja North region. Children often have to engage in productive activities to supplement their respective family incomes. Generally, child labor may be the cause of children becoming delinquents and it may lead them to prostitution, theft and robbery for the sake of getting money.

The latest research on child labor was conducted in 2001,⁴⁹⁵ with the main focus of attention on Jambiani, Paje and Bwejuu in Unguja South region and the Stone Town area. This research indicates that about 20 per cent of the children interviewed of between 6

⁴⁹² Report of the Ministry of Education and Vocational Training issued to the Zanzibar House of Representatives on the African Child Day on 16th June 2006

⁴⁹³ Employment Act No.11 of 2005

⁴⁹⁴ MKUZA 2006

⁴⁹⁵ The International Program of the Elimination of Child Labor organized by the International Labour Organization (ILO) and IPEC at Mazson hotel in 2002.

and 17 years were engaged in seaweed farming and prostitution. Also, about 62 per cent of children interviewed are working as tourist guides in Zanzibar. About 94 per cent of all interviewed children who work in the fishing sector in Pemba are male.

4.4 Women's Rights

There are many cases of women experiencing difficulties in their matrimonial homes and being kicked out by their husbands for various reasons. In many cases, women do not receive maintenance payments for their children from their ex-husbands, which exposes them to financial hardship. There were more than 100 Reported cases of women with their children being abandoned in 2006⁴⁹⁶.

In Pemba, there are a few Reports regarding human rights violations committed by members of the community. These violations mainly involve family matters in which parents refuse to consent to the marriage of their daughters to men with different political ideologies. This violates Article 16 of the United Nations Declaration on Human Rights.⁴⁹⁷

4.4.1 Domestic Violence

Domestic violence is the main problem facing women in Zanzibar. However, the affected women do not have a culture of reporting domestic violence to the police or to the Ministry of Labor, Development of Youth, Women and Children either because they are ignorant of their legal rights or they feel humiliated or they are scared. As a result, the Ministry lacks a situational analysis of the problem.⁴⁹⁸

The Ministry's Report⁴⁹⁹ shows that there have been only 8 cases of domestic violence Reported to the Ministry. However, there are 3 unreported cases of domestic violence in Bububu and Kazole villages in Unguja and at Uwandani village in Chake Chake in Pemba.⁵⁰⁰

4.4.2 Deprivation of Women's Right of Ownership

Under Zanzibar law,⁵⁰¹ every Zanzibari has the right to occupancy of land, regardless of their gender. This means that women also have the legal right to own and inherit land⁵⁰² so long as they are Zanzibaris.

⁴⁹⁶ Annual Report of the Ministry of Labour and Development of Youth Women and Children of 2006

⁴⁹⁷ Universal Declaration of Human Rights of 1948.

⁴⁹⁸ Interview with the Director of Women and Children Affairs (Ministry of Labor and Development of Youth, Women and Children.

⁴⁹⁹ Interview with Field Supervisors of the Association of People with Disabilities in Zanzibar on 20th December 2006.

⁵⁰⁰ *Ibid.*

⁵⁰¹ Section 24 of The Land Tenure Act No. 12 of 1992.

⁵⁰² *Ibid* section 27 .

However, there is a growing problem in Zanzibar of women being deprived of their legal rights of ownership, especially by inheritance and division of matrimonial assets. In 2006, a total of 50⁵⁰³ cases were forwarded to the Ministry responsible for women's affairs for adjudication regarding women's rights to inheritance or to own property. Moreover, the Zanzibar Legal Services Centre has received 28 cases of women claiming to have been deprived of their right to own property, especially land, and the right to inheritance.⁵⁰⁴

4.5 Rights of Elderly

Zanzibar has focused special attention on supporting the elderly, regardless of their place of origin or other considerations. There was no form of harassment of the elderly reported in 2006. It is on record that, in 1967, the Zanzibar government built a special house for the elderly. In addition, the government gives a stipend of 15,000/- per month to elderly persons staying at the government house in order to support them in making ends meet.

⁵⁰³ Annual Report of the Ministry of Labour and Development of Youth, Women and Children of 2006.

⁵⁰⁴ Annual Report of Zanzibar Legal Services Centre of 2006

Chapter Five – Corruption

5.0 Corruption

There is a common saying that: Whenever there is corruption the rights of people are neglected and denied. Tanzania is fast becoming a leading nation in this regard. Zanzibar being part of Tanzania is no exception. Tanzania is ranked 96th amongst the 159 nations which are seriously affected by corruption.⁵⁰⁵

Different sources of information indicate the existence of corrupt practices in Zanzibar. Presently, all corruption cases are dealt with according to the Penal Act No. 6 of 2004.⁵⁰⁶ However, few cases have actually been brought before the courts because of either of lack of sufficient evidence to prosecute them or the reluctance of members of the public to come forward.

It has been Report ed that there are plans for the establishment of an Anti-Corruption Authority and a Leadership Code in Zanzibar. The Zanzibar Government is currently using the recommendations of the National Anti- Corruption Report , which was prepared under the chairmanship of the Hon. Justice Joseph Warioba, as the basis for the Zanzibar Anti-Corruption Authority and the Leadership Code. A draft White Paper was made available to the cabinet (Baraza la Mapinduzi)

The most important thing in the White Paper which aims to prevent corruption and promote ethics and other matters connected therewith, is the establishment of the Anti-Corruption and Promotion of Ethics Authority. This body is intended to deal with all matters related to corruption.⁵⁰⁷ The bill will also set out a code of conduct for all public leaders and civil servants to avoid corruption in the public sector.⁵⁰⁸

However, the Zanzibar Cabinet⁵⁰⁹ recently refused to endorse the White Paper for the establishment of an Anti-Corruption Authority and a Leadership Code. It says that the draftsmen should first under a study tour of the Commonwealth countries to get experience before drafting that particular bill. The opposition parties in Zanzibar have criticized the Zanzibar Cabinet for its decision, and have expressed shock at the Cabinet's decision to reject the White Paper bill while the rest of the world is attempting to fight corruption.⁵¹⁰ Representatives from CHADEMA, TADEA, CUF and UPDP say that the reason for the Cabinet's decision is that the Ministers feared that the bill would negatively impact on their corrupt activities and malpractices.

⁵⁰⁵ Legal and Human Rights Center, Tanzania Human Rights Report 2005 (Dar-Es_Salaam LHRC2006) Pg. 103

⁵⁰⁶ Sections 347 (1), (2), (3) of CAP 13 OF ZANZIBAR LAWS.

⁵⁰⁷ Section 3 of the Draft Bill.on ant-corruption and leadership ethics code

⁵⁰⁸ Ibid Sections 13 to 33 .

⁵⁰⁹ The Guardian Newspaper of December 30, 2006, Issue No 3771, a front page anchor story

⁵¹⁰ Ibid, January 02nd 2007 Issue No.3773, pg .No.3

Chapter Six – Collection Rights

6.0 Introduction

Collective rights are the rights one enjoys as he or she is part of a bigger community.

6.1 Social Inequality

As many in other African nations, in Zanzibar women are more affected by HIV/AIDS than men. There are several reasons for this, including biological, economic and traditional, in a context where women continue to be very dependent on men. At the Canadian International Summit on HIV/AIDS in 2006, Steven Lewis, special Representative of the UN Secretary-General on HIV/AIDS in Africa stated:

*I hope the pressure of women will come up and will not take long for them to take action against AIDS. In order to succeed, it is the duty of all institutions; government and NGOs, to service their liabilities....women are to be enriched against poverty. Employment opportunities should consider capability and not gender... HIV tests should not be a condition for employment... the Constitution should take its position.*⁵¹¹

The levels of poverty in Zanzibar are not only expanding but are deepening too. This is attributed to many factors:

- ❖ The political climate does not encourage huge and long-term investments to be attracted to the place.
- ❖ The importance of the Zanzibar Part has diminished since it is no longer attractive to the traders to bring in goods meant for the Mainland market through Zanzibar.
- ❖ While a number of tourists visiting Zanzibar is increasing, this has no impact on job creation amongst the local community since many of the hotels employ non-Zanzibaris.

6.2 Right to Development

The right to development is one of the human rights contained in both international instruments and municipal law. All people have the right to participate in, and to attain, development.

Forty six per cent of the one million people living in Zanzibar live below the poverty line.⁵¹² In 2002, the Zanzibar Government launched a Poverty Reduction Plan to reduce the hardships facing the people. It was a three-year Plan and was directed at improving education, health services and agriculture. At present the government has embarked on a number of measures, including MKUZA, to reduce poverty. But, while the statistics might show a drop in poverty level, the real situation is that poverty is increasing.

⁵¹¹ 18th summit of Canada on HIV/AIDS, Jihadhari toleo no 4, 2006

⁵¹² Zanzibar President Amani Abeid Karume's speech during celebrations to mark 43 years of the Zanzibar Revolution delivered at the Amaan Stadium on January 12th 2007

6.3 Right to A Clean Environment

The right to a clean and healthy environment has its origins in international law. Many conventions outlining the right to live in a clean and healthy environment have now been signed and ratified by many countries and have therefore entered into force and become part of municipal law.

The Zanzibar Constitution does not directly refer to protection of the environment. However, Article 23(2) and (3) can be taken as providing some guidance.

The Environmental Administration Law for Sustainable Development states that:

Everyone has the right to a clean and healthy environment and everyone has the right and duty to protect and develop the environment.⁵¹³

The use of plastic bags and the dump at Jumbi in Unguja Central District poses an environmental danger to the people. The Department concerned needs to fulfil its duty to help the residents of those areas.

⁵¹³ Environmental Act No 2, 1996

Chapter Seven – SMZ Special Department and Human Rights

7.0 SMZ Special Departments and Human Rights

Under the Constitution of the United Republic of Tanzania of 1977, the Union Government has the power to establish and maintain “security forces”. Thus the Tanzania Peoples’ Defense Forces (TPDF), the police force, Prison Department and others were established. The forces are under the command of the President as the Commander-in-Chief of the United Republic of Tanzania.

Zanzibar is part of the United Republic of Tanzania. However, under the Zanzibar Constitution, Zanzibar is allowed to form its own forces, which are regarded as special departments of the government. These departments have been established under special Acts:

Kikosi cha Volunteer (KVZ) was established under Act No. 5 of 2004;
Kikosi cha Zimamoto (fire brigade) was established under Act No. 7 of 1999;
Kikosi cha kuzuia magendo (KMKM) was established under Act No. 13 of 1979;
and, Jeshi la kujenga uchumi (JKU) was established under Act No. 5 of 1979.

The special departments also include the Chuo Cha Mafunzo, (the Prisons Department), making a total of five. Serious accusations have recently been leveled against these five special departments. They include allegations of indiscriminate beatings of innocent people, especially before and after the elections.

It is very common nowadays to see members of KMKM, which is charged with a duty to curb smuggling, doing police work such as arresting people, searching people and places and even regulating traffic on the roads. The same applies to members of the Fire Brigade, JKU and Volunteer Forces. As these forces are not trained to carry out police work, such as mob continue and definitely not trained on human rights, it is very common for members of these forces to act in violation of basic human rights.

Conclusion

The main purpose of producing this Report is not only to draw the attention of the people and state authorities on the short-comings and expose serious human rights violations, but to also help in finding solutions to these problems. But there must be a willingness to admit that there are problems, and a political commitment to solving them.

Recommendations

Aid donors put great emphasis on observance of Human Rights' norms in countries that they support. For Zanzibar, which depends so much on donor supports in its development activities, it must therefore bear this mind.

- (i) Due to the tensions that have flared up in the last three multi party elections, it is imperative for Zanzibaris to consider the means of bringing about the reconciliation in the society. This might not necessary follow the South African example of "Truth and Reconciliation Commission." There are a number of other examples in the world that Zanzibar could follow; or Zanzibar could come with its own method. But of importance is that the climate of intolerance, hate and animosity must be eliminated, and every Zanzibari must have feeling of belonging.
- (ii) There is a need to clarify as to how Zanzibar is accountable to implementing the International Human Rights instruments to which Tanzania is a signatory especially in areas that do not fall under Union matters.
- (iii) It is important that Zanzibar government institutions, especially the Special Departments are conversant with not only the Zanzibar and Union Constitution, but also the International Human Rights instruments.
- (iv) The teaching of Human Rights in schools, colleges and universities in Zanzibar must be introduced. The media institutions especially, the state owned ones, must be required to inculcate in the general population the Human Rights norms.
- (v) Governmental and non-governmental organizations must work together to strengthen, promote and protect human rights in Zanzibar

Zanzibar Legal Services Center

Mission Statement

Zanzibar Legal Services Center is a non- Governmental, Voluntary, independent, non-partisan and non profit making organization whose major aim is to provide legal services to the poor ,women, children, the disabled and other disadvantaged and vulnerable groups in society; to promote and advocate for the respect and observance of human rights, popularize knowledge of law and produce publications in all areas of legal concern to the people of Zanzibar.

Activities

The main objectives of the Centre are implemented through the following activities;

1. Legal Counselling
2. Paralegal Training
3. Human Rights Advocacy and Training
4. Newsletter
5. Radio Programmes
6. Legal Aid Camps
7. Legal Resource Centre
8. TV Programme
9. Seminars, Bookshops and Public Lectures
10. Publications

Ethical Standards

All persons participating in the operations of the Centre must show the utmost good faith to others in all matters relating to the Centre and must not use the Centre's facilities or influence to further private gain or any partisan, religious, ethnic or similar interests contrary to the objectives of the Centre.

Associates

The Centre welcomes Associates, who can use the facilities of the Centre and participate fully in its activities. Associates must be people of impeccable character.

Organizational Structure

ZLSC is a registered Trust with a Board of Trustees of Five eminent members;

Prof. Haroub Othman (chair) - Professor, University of Dar- es- slaam, and Advocate, the High Court of Zanzibar .

Hon. Mrs. Safia Masoud Khamis - Commissioner, Tanzania Commission of Human Rights and Good Governance.

Prof. Chris Maina Peter – Professor, University of Dar- es Salaam, and Advocate, The High Court of Tanzania.

Bishop Douglas Toto – Bishop of the Anglican Church, Zanzibar.

Mr Khalfan H. Khalfan – Executive Director, Zanzibar Association of people with Disabilities

Apart from its head office in Zanzibar town, the Centre also has an office in Chake Chake, Pemba.

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