

Legal and Human Rights Centre

Tanzania Human Rights Reports 2009

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Tanzania Human Rights Report 2009

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List of Abbreviations and Acronyms

| | |
|---------|--|
| ACPHR | African Charter on Peoples and Human Rights of 1981 |
| ADB | African Development Bank |
| Afronet | Inter-African Network for Human Rights and Development |
| A-G | Attorney General |
| AHSI | African Human Security Initiative |
| AIR | All Indian Law Reports |
| Art. | Article |
| ARV | Anti-Retro-Virals |
| BoT | Bank of Tanzania (Central Bank of Tanzania) |
| Cap. | Chapter (of the Series of the Laws of Tanzania) |
| CCBRT | Comprehensive Community Based Rehabilitation in Tanzania |
| CHRAGG | Commission for Human Rights and Good Governance |
| CCM | Chama cha Mapinduzi |
| CHAUSTA | Chama cha Haki na Ustawi |
| CUF | Civic United Front |
| CHADEMA | Chama cha Demokrasia na Maendeleo |
| CPI | Corruption Perception Index of Transparent International |
| CSOs | Civil Society Organizations |
| DARUSO | University of Dar es Salaam Students' Organization |
| DC | District Commissioner |
| Dr. | Doctor |
| DPP | Director of Public Prosecution |
| DP | Democratic Party |
| DOLASED | Disabled Organisation For Legal Assistance and Social Economic Development |
| Etc. | Etcetera [a Latin word to mean 'and so on/others'] |
| FCS | Foundation for Civil Society |
| FemAct | Feminists Activism |
| FGM | Female Genital Mutilations |
| FFU | Field Force Unit of the Police Force of Tanzania |
| FORDIA | Concern for Development Initiatives in Africa |
| FSC | Farm Service Centre |
| GCA | Game Controlled Area |
| G.N | Government Notice |
| HC | High Court |
| HRM | Human Rights Monitoring Unit of LHRC |
| ICCPR | International Covenant on Civil and Political Rights of 1966 |
| ICESCR | International Convenant on Economic, Social and Cultural Rights |
| IDASA | Institute for Democracy in South Africa |
| IDRC | International Development Research Council of Canada |
| IERPE | Institute for Empirical Research in Political Economy |
| IGP | Inspector General of Police |
| ILFS | Integrated Labour Force Survey |
| IMF | International Monetary Fund |
| ISS | Institute of Security Studies |

| | |
|---------------|---|
| J. | Judge |
| TPDF | Tanzania's People Defence Forces |
| KIWOHEDE | Kiota Women's Health and Development Organization |
| Ref. | Reference |
| LEAT | Lawyers Environmental Action Team |
| LGEs | Local Government Elections |
| LHRC | Legal and Human Rights Centre |
| LSRP | Legal Sector Reform Programme |
| LRCT | Law Reform Commission of Tanzania |
| MCT | Media Council of Tanzania |
| MISA-TAN | Media Institute of Southern Africa- Tanzania |
| MDG | Millennium Development Goals |
| Misc. | Miscellaneous |
| MoHSW | Ministry of Health and Social Welfare of Tanzania |
| NACSAP | National Anti-Corruption Strategy and Action Plan (of Tanzania) |
| NEC | National Electoral Commission |
| NEMC | National Environmental Management Council |
| No. | Number |
| NSEGPR | National Strategy for Economic Growth and Poverty Reduction (MKUKUTA) |
| NRA | National Reconstruction for Alliance |
| NLD | National League for Democracy |
| NCCR-Mageuzi | National Convention for Construction and Reform - Mageuzi |
| NOLA | National Organization for Legal Assistance |
| OBC | Ortello Business Corporation |
| OAU | Organization of African Union |
| ODAC | Open democracy Advice Centre |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| PCCB | Prevention and Combating of Corruption Bureau |
| PF | Policy Forum |
| PEDEP | Primary Education Development Plan |
| PLWHA | People Living With HIV/AIDS |
| PST | Prison Services of Tanzania |
| PPT Maendeleo | The Progressive Party of Tanzania- Maendeleo |
| PFT | Police Force of Tanzania |
| PNVR | Permanent National Voters' Register |
| R. | Republic |
| Re. | Reference |
| R.E. | Revised Edition |
| REPOA | Research on Poverty Alleviation |
| S/No. | Serial Number |
| S/o | 'Son of' |
| SADC | Southern Africa Development Community |
| SAU | Southern African Union |
| SAHRiNGON | Southern Africa Human Rights NGOs Network |
| SEDEP | Secondary Education Development Plan |
| SHIDEPHA+ | Association of People Living with HIV /AIDS |

| | |
|---------|--|
| TAWLA | Tanzania Women Lawyers Association |
| TADEA | Tanzania Democratic Alliance Party |
| TLP | Tanzania Labour Party |
| TACAIDS | Tanzania Commission for AIDS |
| | Tanganyika Law Society |
| T.shs | Tanzania Shillings |
| UDSM | University of Dar es Salaam |
| UNA | United Nations University of Japan |
| UMD | Union for Multi-Party Democracy |
| UPDP | United Peoples Democratic Party |
| UDP | United Democratic Party |
| UNAIDS | United Nations AIDS Programme |
| UNFPA | United Nations Population Fund |
| UNIFEM | United Nations Development Fund for Women |
| UK | United Kingdom |
| USA | United States of America |
| USD | United States Dollars (Type of the USA Currency) |
| VCT | Voluntary Counseling and Testing |
| VOL. | Volume |
| Vs. | Versus |
| WEO | Ward Executive Officer |
| WB | World Bank |
| WiLDAF | Women in Law and Development in Africa |
| WLAC | Women Legal Aid Centre |
| WSS | Workshop File of LHRC |

Case Law

- a) Ibrahimu Koroso & 34 Others and LHRC v District Commissioner and Officer Commanding District for Serengeti District, Case No. HBUB/S/1032/2001/2002/MARA (unreported)
- b) LHRC v Thomas Ole Sabaya and 4 Others, Civil Appeal No. 88 of 2006 (Court of Appeal of Tanzania) (unreported)
- c) LHRC v Thomas Ole Sabaya and 4 Others, Misc. Land Application No. 22 of 2005 (High Court) (unreported)
- d) LHRC, Mkombozi Centre for Street Children and the East African Law Society v Attorney General, Misc. Civil Application No. 26 of 2007 (High Court of Tanzania at Arusha)
- e) Mbushuu alias Mnyaroje and Kalai Sangula v Republic (1995) TLR 97 (Court of Appeal)
- f) Rev. Christopher Mtikila v. Attorney General, Misc. Civil Case No. 10 of 2005 (High Court) (unreported)

Legislation

Note: The phrase “of the Revised Edition 2002 of the Laws of Tanzania” has been abbreviated to “R.E. 2002”.

Affiliation Act, 1949, Cap. 278, R.E. 2002
Anti-Money Laundering Act, 2006, Act No. 12 of 2006
Anti-Trafficking in Persons Act, 2008, No. 6 of 2008
Basic Rights and Duties Enforcement Act, 1994, Cap. 3, R.E. 2002
Commission for Human Rights and Good Governance Act, 2001, Cap. 391, R.E. 2002
Community Service Act, 2002, Act No. 6 of 2002
Companies Act, 2002, Cap. 212 R.E. 2002
Constitution of the United Republic of Tanzania, 1977 Cap. 2 R.E. 2002
Criminal Procedure Act, 1985, Cap. 20, R.E. 2002
Employment and Labour Relations Act, 2004, Act No. 6 of 2004
Environmental Management Act, 2004, Act No. 20 of 2004
HIV and AIDS (Prevention and Control) Act, 2008, Act No. 28 of 2008
Land Act, 1999 Cap. 113, R.E. 2002
Law of Marriage Act, 1971 Cap. 29, R.E. 2002
Legal Aid (Criminal Proceedings) Act, 1969 Cap. 21, R.E. 2002
Local Customary Law (Declaration) Order, 1963, G.N. No. 36 of 1963
Local Government (District Authorities) Act, 1982 Cap. 287, R.E. 2002
Local Government (Elections) Act, 1979 Cap. 292 R.E. 2002
Local Government (Urban Authorities) Act, 1982 Cap. 288 R.E. 2002
Mortgage Financing (Special Provisions) Act, 2008, Act No. 17 of 2008
National Defence Act, 1965 Cap. 192, R.E. 2002
National Elections Act, 1985 Cap. 343, R.E. 2002
National Security Act, 1970 Cap. 47, R.E. 2002
Newspaper Act, 1978 Cap. 229, R.E. 2002
Non-Governmental Organization Act, 2002, Act No. 24 of 2002
Parole Board Act, 1994, Cap. 400, R.E. 2002
Penal Code, 1930, Cap. 16, R.E. 2002
Police Force and Auxiliary Services Act, 1939 Cap. 322, R.E. 2002
Political Parties Act, 1992 Cap. 258, R.E. 2002
Preventative Detention Act, 1962 Cap. 361 R.E. 2002
Prevention and Combating of Corruption Act, 2007, Act No. 11 of 2007
Prisons Act, 1967 Cap. 58, R.E. 2002
Public Leadership Code of Ethics Act, 1995 Cap. 398, R.E. 2002
Refugee Act, 1998 Cap. 37, R.E. 2002
Societies Act, 1954 Cap. 337 R.E. 2002
Transfer of Prisoners Act, 2004, Act No. 10 of 2004
Village Land Act, 1999 Cap. 114, R.E. 2002
Witchcraft Act, 1928, Cap. 18, R.E. 2002

Preface

THE Legal and Human Rights Centre (LHRC) is a private, voluntary, non-partisan and not for profit Tanzanian non-governmental organization that was registered and incorporated under the Companies Ordinance (Act), Cap. 212, R.E. 2002 as a company without shares limited by guarantee. It has been in operation since September 1995.

The overarching aim of the LHRC is to create a “just and equitable society”. This aim is reflected in the LHRC’s mission statement, which states:

[the] 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 LHRC works to create legal and human rights awareness among the public and, in particular, the underprivileged sections of society through legal and civic education, training, advocacy, research, monitoring of human rights abuses and the provision of legal aid in a bid to creating a just and equitable society.

The LHRC has three main areas under which its programmes of operation fall:

1. Policy and legislative framework and community capacity for social justice improved
2. Partnerships for Human Rights, Good Governance and Public Engagement Strengthened
3. Performance and Sustainability of LHRC Improved

The Human Rights Report is an advocacy tool designed to raise voice on matters relating to human rights and good governance. It serves as a resource and a barometer of adherence to human rights in Tanzania. It is also a platform on which violations of human rights are exposed and areas that require improvement are highlighted.

The Human Rights Report is now in its eighth year. This report has been written and published jointly by the LHRC and the Zanzibar Legal Services Centre (ZLSC). The collaboration between the two institutions ensures that the report is authentic and comprehensive enough about the state of human rights throughout the United Republic of Tanzania. This is reflected in the structure of this report, which is divided into two parts: Part One discusses the human rights situation in Tanzania Mainland, while Part Two considers the state of human rights in Tanzania Zanzibar. The partition of the report has been propagated by the peculiarity of issues and socio-political set up of each side of the union.

This report will contribute to the protection of human and peoples’ rights, the cause which we sincerely believe is noble.

Bishop Elinaza Sendoro
Chairperson, LHRC Board of Directors

Introduction

There were notable improvements in 2009 especially on education sector, HIV/AIDS, Health, Child Law, Police, some fulfillment of State's obligations to treaty bodies, some elements of labour rights and development indicators. However, violations of human rights have never gone down, but rather they have kept increasing and revolving into new dynamics continuously. The challenges for human rights protection still considerably outweigh the positive trend.

The 61st anniversary of the Universal Declaration of Human Rights, 1948 (UDHR) was not very meaningful to the majority due to short falls of the government in its commitment¹ to fulfill the UDHR and other instruments. Most of its citizens were still hooked in the chains of discrimination as well as experiencing different kinds of violations. The most prominent human rights issues of concerns were: Peoples participation in governance. It highlights monitoring results of local government elections held in October 2009

The killings of aged elderly especially women under witchcraft belief and road accidents which claimed lives of more than 2,100 people in 2009. The killings of albino which took away lives of not less than ten (10) people in 2009. Increasing incidents of citizenry disorder evidenced by clashes between law enforcers and civilians mainly due to brutality of the law enforcers.

Very poor performance and quality of education from primary school to the university level, for instance a half of primary school pupils failed in their Standard Seven examinations, while high education in Tanzania dropped compared to other African universities.

a) Delay of cases and shortage of judicial officers. For instance, primary courts which serve majority of the people were being attended by 713 magistrates, equivalent to 47.54 percent of the total 1,500 magistrates needed countrywide.

b) Pervasiveness of very low civic education which led to the poor turnout of about less than 50 percent of prospective voters registered for the Local Government Election in October 2009; less than 40 percent of the registered voters turned out to vote; and very few women who dared to contest. The national HIV prevalence rate increased up to 13.5 per cent in Iringa, Mbeya and Dar es Salaam.

c) Poverty remained very high among the rural and urban populations.

d) Land conflicts and rampant land alienation in favour of investors to the detriment of the local community continued.

e) Pathetic and awful prison conditions prevailed. There were very poor working conditions (low salaries, housing, etc) by prison staff, terrible

¹The Government of Tanzania is obligated to fulfill the rights contained in the Universal Declaration of Human Rights, 1948, as it was referentially incorporated into Art. 9(f) of the Constitution of the United Republic of Tanzania, 1977. In an effort to realize these rights, the government incorporated the Bill of Rights and Duties into the Constitution of the United Republic of Tanzania, 1977 in 1984.

congestion in cells and poor working conditions for police officers in a way that contribute to malpractice.

f) Escalating rates of maternal morbidity and mortality, signaling failure of reaching the MKUKUTA and MDGs goals.

Corruption and abuse of powers was still on increase evidenced by reports indicating that the Police Force was the most corrupt institution in Tanzania, according to results of different studies in 2009.

The aim of this report is to expose the state of Human Rights in Tanzania. It advocacy tool and provides for useful information to academicians; students; policy and law makers; and other members of the community. We firmly believe that this report can be used as a tool for change as it highlights areas that need improvement in relation to human rights and good governance.

Methodologically, Researchers have employed both primary and secondary technique in data collection. . The total number of people interviewed is 271 who were randomly picked and directly interviewed. More reliance has been given to direct information from various institutions and authorities relevant to the issue concerned..

It should also be noted that we have relied on reliable sources which touched almost every region of Tanzania Mainland on different issues. Unlike previous years, the 2009 Report made as much as possible to make a comparative analysis of Tanzania and some other African countries, including Zambia, Nigeria, Kenya, Uganda and Rwanda. The analysis also covered some Asian and European countries.

This gives the user of this report a broader understanding of human rights issues of Tanzania and beyond. However, unlike other years, the 2009 report has several new issues including the specific sub-chapter on Tanzanian Police Force and road accidents as areas which need special attention for protection of the right to life. All these efforts together have produced a document giving the user of this report a boader understanding of human rights issues of Tanzania and beyond.

Mr. Francis Kiwanga (Advocate)
Executive Director
LHRC

Chapter One

General Overview of Tanzania

1.1 Introduction

THIS chapter gives an overview of the United Republic of Tanzania², which is formed by Tanzania Mainland and Tanzania Zanzibar. The general information under this chapter is useful for the better understanding of the specific human rights issues used to describe the situation of human rights in Tanzania. Therefore, the geography, people, economy, history, political and economic development, governance and the judicial systems, are briefly described to suit the purpose.

1.2 Geography

The United Republic of Tanzania is located in East Africa between Longitudes 29° and 41° east and Latitudes 1° and 12° south. The country is a formed by two major parts - Tanzania Mainland and Tanzania Zanzibar. Zanzibar, which is formed by two islands (Unguja and Pemba) inside the Indian Ocean, is located approximately 30 kilometers from the mainland. Tanzania has a total land area of 945,090 square kilometers. It is bordered with Kenya and Uganda on the north, the Democratic Republic of the Congo, Burundi and Rwanda on the west, Malawi, Mozambique and Zambia on the south, and the Indian Ocean on the east.

Tanzania's terrain is made up of plains, which are located along the country's coast; the central plateau covering a large portion of the country; and the highlands, which are found on the northern and southern part. The northern highlands include two of the highest peaks in Africa, the Mt. Kilimanjaro and Mt. Meru. There are 32 large, medium and small mountain summits. Apart from Kilimanjaro and Meru, others include Lool Malasin, Oldeani, Lemagruti, Monduli, Mtorwi, Rungwe, Tembolin, Salala, Longido, Olosha, Shengena, Mbogo, Kisiba, Mbizi, Malonje, Mahari, and Usambara³.

Tanzania borders three of the largest lakes in Africa: Victoria, the world's second largest freshwater lake; Tanganyika, the world's second deepest lake; and Nyasa. Tanzania has tremendous wildlife resources and has established 15 national parks⁴ and 17 game reserves⁵ in Tanzania Mainland in an effort to preserve and protect these

² Note that, most of the information contained in this chapter is the same as of the previous chapters, save for updated of population growth and economic development.

³ Mt. Kilimanjaro is referred to as the "roof of Africa" as it is 5,895 meters above sea level. Mt. Meru is slightly smaller than Mt. Kilimanjaro with an altitude of 4,566 meters above sea level. The smallest mountain among the list of 32 large mountains in Tanzania is Usambara, which is 2,300 meters above sea level.

⁴ Large national parks include the Serengeti in the Serengeti District (14,750 sq. km), Ruaha in Westen Iringa(13,000 sq. km), Ngorongoro in Ngorongoro District (8,320 sq. km), Mikumi in Morogoro Region (3,230 sq.

resources. Tanzania has one of the largest forested regions in Africa. It is also blessed with numerous natural resources, such as tin, phosphates, iron ore, coal, diamonds, gold, natural gas and nickel.

The largest city in Tanzania is Dar es Salaam, which is located on the eastern coast of the country. Until 1974, Dar es Salaam was the capital city of Tanzania. However in that year, it was decided that the capital be shifted to another city – Dodoma, which is located on the central part of the country. However, despite the decision, most of the government offices are yet to shift their headquarters and activities to the designated capital city, although Parliament meetings are held in Dodoma.

There are a number of other large regions and cities in Tanzania Mainland, including Kilimanjaro (where Mt. Kilimanjaro is found), Arusha, Mbeya, Mtwara, Mwanza, Tabora and Tanga. In Zanzibar, the most famous towns are Stone Town in Unguja, and Wete and Chake Chake in Pemba.

1.3 People

Tanzania conducted the last national census in 2002, where it was established that there were 34.4 million people. With the forecasted population growth rate of 2.9 per annum, the Tanzanian population was estimated to be 40.7 million people in 2008/9. Out of 40.7 million people, 20.7 million (equivalent to 50.9 percent) are women and 20.0 million (equivalent to 49.1 percent)⁶ are men.

According to the projections, Tanzania Mainland had 39.5 million people in 2009, while Tanzania Zanzibar had 1.2 million people, with statistics indicating that 97.05 per cent of all people in Tanzania were staying in the mainland, and only 2.95 percent lived in Zanzibar⁷. It should be noted that, any citizen is allowed by the laws to reside anywhere within the United Republic of Tanzania – because citizenship is one of the Union Matters. Therefore, the imbalance of population has never been an issue for this Union.

km); others are Tarangire in Manyara Region, Katavi in Mpanda District, Saadani in Tanga Region, Udzungwa in Morogoro Region, Mt. Kilimanjaro in Kilimanjaro Region, Kitulo in Makete District, Mahale Mountains in Kigoma Region, Manyara Manyara/Arusha region, Arusha national park in Arusha Region, and Gombe Stream in Kigoma District.

⁵ These are Selous in the Lindi region (50,000 sq. km), Ruangwa in Ruangwa district (9,000 sq. km), Kigosi in Shinyanga district (8,000 sq. km), Moyowosi in Kibondo district (6,000 sq. km); others are Uwanda in Sumbawanga district, Burigi in Biharamulo and Karagwe districts, Maswa in Maswa district, Kizigo in Manyoni district, Umba in Lushoto district, Biharamulo in Biharamulo district, Mkomazi in Lushoto and Same districts, Mount Meru in Arumeru district, Ibanda in Karagwe district and Saa Nane Island in Mwanza district.

⁶ The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, pages 28 and 29 of the Swahili version of the Speech.

⁷ The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, pages 28 and 29 of the Swahili version of the Speech.

Basing on the same projections, about half of the Tanzanians (44.4 percent) are of young people of below 15 years of age. The population was further classified as follows: middle youth age of between 15 to 24 years was 29 percent of the total population; the middle aged group of between 25 and 64 was 32.4 percent; and the elderly, with 65 years and above formed only 3.4 percent of the total population⁸. There were no statistics explaining on the population trend.

The current population size has increased from only 12.3 million people in 1967 when Tanzania conducted its first national census to the current 40.7 million people in 2008/9, implying that a total of 28.4 million people have increased in over the last 42 years. The average population density was estimated to be 39 people per square kilometer in 2005 (basing of projections from the population census, the density was estimated to be 41 people per square kilometer in 2009) from only 14 people per square kilometer in 1967⁹. High population density is attributed to land pressure due to urbanization and land grabbing tendencies, which are discussed at length in chapter seven of this report.

Tanzania has a multi-ethnic population. There are approximately 120 different ethnic groups living, the largest of these being the Bantu-speaking ones. They include major tribes such as the Sukuma, Haya, Nyakyusa, Nyamwezi, Chagga, Ha, Makonde, Gogo, Hehe, Tumbatu, Ngoni, Luguru, Bena, Fipa, Sambia, Makua, Kurya, Yao, and Kaguru.

Tanzania's official language is Swahili. However, English is the official language in business and trade, administration, judiciary and higher levels of education (from secondary to university). In addition, there are over 120 vernacular languages, which are the first languages to the people, especially those residing in rural areas.

1.4 Economy

As stated in previous *Tanzania Human Rights Reports*¹⁰, the government's approach to the socio-economic development is guided by the Tanzania Development Vision 2025 at national level and by the *United Nations Millennium Development Goals (MDGs) of 2000* at the international level.

The two major strategies are implemented through various socio-economic policies and strategies, including the *National Strategy for Growth and Reduction of Poverty* (NSGRP) or, in Swahili, *Mkakati wa Kukuza Uchumi na Kuondoa Umaskini* (MKUKUTA)¹¹. One of the main indicators of macro-economic development is the increase in the

¹¹ MKUKUTA's focus is outcome orientated and organized around three clusters, namely: growth

⁸ The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, pages 28 and 29 of the Swahili version of the Speech.

⁹ See: Tanzania Demographic and Health Survey, December 2005, page 2.

¹⁰ LHRC (2008) Tanzania Human Rights Report of 2008, **page 3**.

Gross Domestic Product (GDP), as discussed extensively in chapters four and seven of this report.

It was revealed during the year that, the GDP had reached 7.4 percent. However, the 7.4 percent is still below the target of 7.8 percent set by the government in 2008. It is also very far from 10 percent that the government targeted to achieve by 2010. Basing on the situation and the pace of growth of the economy, Tanzania is unlikely to bridge the 2.4 percent gap between now (2009) and 2010¹².

Latest economic updates for 2009 also revealed that the economy experienced a double digit headline inflation, where in September 2008 it reached 11.6 percent and gradually increased to 13.5 percent by December 2008. However, the inflation rate was reduced to 10.7 percent in June 2009. It is stated that the high inflation rate was caused by skyrocketing oil prices and other factors¹³.

The overall fiscal deficit to GDP increased to 4.5 percent in 2008/9 compared to the 1.7 percent recorded in 2007/8.

| The Deficit to GDP Ratio (Including Grants) [Percent of GDP] | | | | | |
|--|---------|---------|---------|---------|---------|
| Year | 2004/05 | 2005/06 | 2006/07 | 2007/08 | 2008/09 |
| Deficit | 4.9 | 5.5 | 4.9 | 1.7 | 4.5 |

Source: Ministry of Finance and Economic Affairs records– 2009.

The national debt rose by 12 percent in 2009, from USD 7,581.4 million in 2008 to USD 8,493.8 million in 2009. The increase was attributed to new disbursements, exchange rate fluctuations and accumulation of interest arrears¹⁴. The domestic and external debts also increased by 9.4 percent and 13.4 percent respectively due to the same reasons.

The country's economy is still overwhelmed by the huge debts, which in a way have been reason for the government failure to plan and implement development programmes properly. It is not clear how the money saved from repaying debts under the Highly Indebted Poor Countries (HIPC) arrangement has benefited the country so far. However, it is certainly clear, as indicated in chapter nine of this report, that the government does not control its expenditures. It has been established that the government spends alot of money in buying luxurious cars, paying allowances and repairing senior officials' residences,

and reduction of income poverty; improved quality of life and social wellbeing; and governance and accountability.

¹² See chapter seven of this report for more explanations about the GDP.

¹³ URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, page 5.

¹⁴ URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, page 8.

which have resulted into absolutely unnecessary exorbitant recurrent expenditures.

The price of commodities in the local market shot by 10.3 percent during the year 2008/9 compared to 7.0 percent in the previous year. In May 2009, the prices went up by 11.3 percent¹⁵, adding to the sufferings and hardships of the common people, who hardly earn USD 1.25 dollars a day.

Moreover, budget allocations, in terms of recurrent and development expenditures, for the 2009/2010 financial year were uneven. Part of the Finance Minister's speech indicated that the government had planned to spend a total of Tshs 9.5 trillion in its budget - Tshs 6.7 trillion for recurrent (vehicles, salaries, allowances, office upkeep, and the like); and only Tshs 2.8 trillion for development¹⁶.

Out of the stated Tshs 2.8 trillion budget allocation for development, Tshs 1.9 trillion (67.86 percent) was to come from donors. This implies that the government itself contributed only Tshs 0.9 trillion (32.14 per cent) to its development agenda.¹⁷ And this leads to a general conclusion that a large portion of nation's economic liabilities is met by donors. This fact is an exemplary description of factors impeding Tanzania and its people the right to development.

LHRC is of the view that the government cannot achieve MKUKUTA and MDGs unless it changes its focus in budgeting. As discussed in chapter seven and nine of this report, ministries compete in buying and driving luxurious car, while rural population persistently fail to get even basic medicine in remote dispensaries and health centers. The right to development will remain a nightmare unless the government officials change their mindsets and practices.

1.5 Historical Overview: Colonialism to Present

In 1890, Tanganyika (now Tanzania) was split into different areas of influence by treaties drawn by Germany, Britain and the Sultan of Zanzibar. According to these treaties, Tanganyika and Ruanda-Urundi (now Rwanda and Burundi) were German East Africa colonies, while Zanzibar (Pemba and Unguja) were a British protectorate.

¹⁵ the Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, page 5 of the Swahili version of the Speech. The target was to control the price hike down to only 5% by June 2008 and/or 7.5 by June 2009. The Minister said the increase of prices in the markets was caused by insufficient power and gas.

¹⁶ *See: Hotuba ya Waziri wa Fedha na Uchumi Mh. Mustafa Haidi Mkulo (MB), Akiwasilisha Bungeni Mapendekezo ya Serikali Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka 2009/2010, Ukurasa 75. [The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the National Assembly the Income and Expenditure Estimates for 2009/2010, page 75].*

¹⁷ Ibid.

The agreements between Germany, Britain and the Sultan of Zanzibar were opposed by some local inhabitants of Tanganyika (now Tanzania Mainland). Tanganyika was not easily colonized. In some areas, there was a very strong resistance by indigenous people to the colonial rule in Tanganyika led by Mirambo of the Nyamwezi in western, Mkwawa of the Hehe on the southern highlands, and Mangi Meli of the Chagga on the northern part. Such pockets of stiff oppositions to colonial rule were highlighted by a popular one on the southern and eastern parts of Tanganyika that culminated to the Maji Maji resistance of 1905 to 1907. The Maji Maji resistance was inspired by Kinjekitile, a spiritual leader in Southern Tanzania whose medicine allegedly could prevent the “white man’s bullets” from harming his followers.

With the end of World War I in 1919, Germany’s colonial domination over Tanzania Mainland ended. Control of most of the territory was passed over to the British through a League of Nations mandate. After World War II, Tanganyika became a United Nations Trust Territory, subject to British control. However, Tanganyika began to move towards self-government and independence.

The area now known as Tanzania Mainland became an independent nation as Tanganyika under the Tanganyika African National Union (TANU) political party on 9th December 1961. A year later, it attained the status of Republic under Julius Kambarage Nyerere. Zanzibar gained independence from the British on 10th December 1963, but was still under the domination of the Sultan. The Sultanate of Zanzibar was overthrown on 12th January 1964 and the Afro-Shirazi Party (ASP) came into power. On 26th April 1964, the two independent states (Tanganyika – now Tanzania Mainland – and Zanzibar – Tanzania Zanzibar) merged to form the United Republic of Tanzania.

Basing on Tanzania’s history from the human rights perspective, there is no doubt that colonialism negated and suppressed human rights. When one state colonizes another, it violates the right to self-determination of the colonized people. There is no law that justifies colonialism. The colonial powers rarely allowed colonized people to enjoy any human rights¹⁸.

From 1961 to 1965, Tanzania was a multi-party state. In 1965, it adopted the single-party political system. Despite Tanzania having a one party political system, there were two political parties operating in Tanzania in the period between 1965 and 1977, namely TANU in the Mainland and ASP in Zanzibar. On 5 February 1977, TANU and ASP merged to form Chama Cha Mapinduzi (CCM). From 1977 to 1992, CCM was the only party that was allowed to operate in Tanzania. In 1984, a Bill of Rights and Duties was incorporated in the *Constitution of the United Republic of Tanzania of 1977* through the fifth constitutional amendment after a long struggle by human rights activists. The provisions of the Bill are discussed in this report. In

¹⁸ LHRC (2006) *Through a Crucible of Human Rights Struggles in Tanzania: A Decade of Legal and Human Rights*, pp. 5 to 6.

1992, opposition parties were legalized and Tanzania became a democratic state with a multi-party system¹⁹.

It is worthy noting that the first administration under Nyerere led Tanzania from 1962 to 1985. In 1985, Mr. Ali Hassan Mwinyi succeeded him and served two terms from 1985 to 1995. In 1995, Tanzania held its first multi-party election. From 1995 to 2005 Mr. Benjamin William Mkapa from CCM served two terms as a president. On December 2005, Mkapa's successor, Mr. Jakaya Mrisho Kikwete also from CCM was elected to serve as fourth-phase president.

The human rights situation in post-colonial Tanzania, like many other African states, has been overshadowed by the need for development. Nationalist leaders conceived the process of economic development to be one that may not necessarily promote or respect human rights.²⁰ The adoption of a Bill of Rights designed to protect human rights was denied apparently due to nationalistic ideas.

1.6 Governance system

In Tanzania, the governing structure comprises the executive, the legislature and the judiciary. These three bodies are established by Article 4 of the *Constitution of the United Republic of Tanzania of 1977*.

1.6.1 The Executive

The executive arm of the state is made up of the President, who is the head of state and government, and the Cabinet of ministers. The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all Ministers. The Vice-President assists the President in all union matters. Zanzibar has a semi-autonomous government charged with looking at non-union matters in the Isles. Details for the Zanzibar governance set up are provided in Part Two of this report. In 2009 the Union Executive was composed of 26 Ministers and 21 Deputy Ministers. Among them 7 are women ministers which is about 27% and 5 deputy ministers are women making 24% percent of all deputy ministers. As permanent secretaries, out of 24 only 8 are women which is 25% of all permanent secretaries.

1.6.2 The Legislature

The President of the United Republic of Tanzania and the members of the National Assembly are elected for a five year term by direct popular vote. The President appoints a Prime Minister who is approved by the Parliament. The Prime Minister serves as the leader of government business in the National Assembly. The President appoints his cabinet from National Assembly members. The President also nominates 10 individuals from non-elected members to be part of the Parliament.

¹⁹ The information in this paragraph is drawn from Mohammed Omar Maundi, 'Tanzania' in Gavin Cathra et al (Eds), *Security and Democracy in Southern Africa*. Wits University Press, Johannesburg 2007.

²⁰ *Ibid.* at pp. 5 to 6.

As of 2009, the representation to the parliament of Tanzania was as indicated below:

| Parliamentarians | | | | | | | | |
|---|-------|-------------|-------|------------|-----------------|-----|-------|------------|
| | Women | 2004 Men | Total | % of Women | 2007/8 Women | Men | Total | % of Women |
| Number of Parliamentarians Elected | 63 | 213 | 275 | 22.5 | 97 | 224 | 321 | 30.29 |
| Parliamentarians Nominated by the President | 12 | 218 | 230 | 5 | 17 | 294 | 320 | 5.16 |
| Special Seats for Women | 2 | 8 | 10 | 20 | 3 | 4 | 7 | 42.85 |
| | 48 | - | 48 | 100 | 75 | - | 75 | 100 |

Source: *Ministry of Community Development, Gender and Children [This information was obtained from the Tanzania MDG Implementation Report 2000-2008, page 11. Published 2009]*

Majority of the MPs are elected directly from constituencies. However, there are ten MPs nominated by the President and 75 special seats (women MPs) who are nominated by their respective political parties. Additionally, there are 5 MPs who are members from the Zanzibar House of Representatives and the Attorney General of Tanzania, who is a House Member by virtue of his or her office. Laws passed by the National Assembly are only valid in Zanzibar if they address specifically designated union matters and after being presented to the Zanzibar House of Representatives by the responsible minister²¹.

The Zanzibar House of Representatives has jurisdiction over all non-union matters, that is, matters that do not pertain to foreign affairs, citizenship, and higher education, etc.²². There are currently 81 members in the Zanzibar House of Representatives. The House can make laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and its House of Representatives is also 5 years. The semi-autonomous relationship between Zanzibar and the Mainland is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

²¹ Articles 132 (1) and (2) of the *Constitution of the Revolutionary Government of Zanzibar of 1984*.

²² The House of Representatives is established under Articles 63 and 64 of the *Constitution of Zanzibar of 1984*. It consists of: elected members from the Constituents; nominated members by the President of Zanzibar, female members (special seats 30% of all elected members) appointed by political parties and represented in the House of Representatives, Regional Commissioners; and the Attorney General of Zanzibar. The matters that are considered to be union matters are set out in the *Constitution of the United Republic of Tanzania, 1977 at 1st Schedule*.

There are also central and local governments, which operate pursuant to Article 145 of the *Constitution of the United Republic of Tanzania, 1977* and the local government laws that apply to the regional and district levels of government.²³ Currently, there are 26 regions and more than 125 districts. Each region has an average of four to five districts. In each district, there are divisions which are formed by wards and villages.

1.6.3 The Judiciary

The Judiciary is a constitutional organ as an arm of the State vested with powers to interpret the law (Art. 4 of the URT). Tanzania's legal system is based on the English common law.²⁴ Judicial functions are administered by various courts established in accordance with the law. The judicial hierarchy in Tanzania Mainland (in descending order) is as follows: Court of Appeal, High Court of Tanzania, Resident Magistrates Courts, District Courts and Primary Courts. In the Court of Appeal and High Court, adjudicators are called Judges. In all other courts, they are called magistrates.

Judges are appointed by the President after consultation with the Judicial Service Commission of Tanzania,²⁵ magistrates are appointed directly by the Commission. The²⁶ High Court of Tanzania has three major divisions which deal with land, labour and commercial matters respectively.

There is also a Court Martial mandated to deal with cases in relation to armed forces personnel.²⁷ Moreover, there is a special Constitutional Court, which is an ad hoc court for resolving disputes relating to interpretation of the *Constitution of the United Republic of Tanzania, 1977*.²⁸ The sole function of the Special Constitutional Court is to make decisions over matters concerning the interpretation of the *Constitution of the United Republic of Tanzania, 1977* where the interpretation or its application is in dispute between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.²⁹ One half of the members of the Special Constitutional Court are appointed by the Government of the United Republic of Tanzania and the other half is appointed by the Revolutionary Government of Zanzibar.

²⁹ Article 126 of the *Constitution of the United Republic of Tanzania of 1977*.

²³ The local government laws include the *Local Government (District Authorities) Act, Cap. 287, R.E. 2002 of the Laws of Tanzania*; the *Local Government (Urban Authorities) Act, Cap. 288 R.E. 2002 of the Laws of Tanzania*; the *Local Government (Elections) Act, Cap. 292 R.E. 2002*; the *Regional Administration Act, Cap. 97, R.E. 2002 of the Laws of Tanzania*. These laws have been amended by the *Local Government Laws (Miscellaneous Amendments) Act, 1999, Act No. 6 of 1999* and the *Local Government Laws (Miscellaneous Amendments) Act, 2006, Act No. 13 of 2006*.

²⁴ See: Articles 108, 114 and 117 of the *Constitution of the United Republic of Tanzania of 1977* also provisions of the *Magistrates Court Act, Cap. 11, R.E. 2002*.

²⁵ Articles 109 and 118 of the *Constitution of the United Republic of Tanzania of 1977*.

²⁶ Article 113(1) of the *Constitution of Tanzania*

²⁷ Court Martial, including general court martial, disciplinary court martial and standing court martial, are governed by the provisions of the *National Defence Act, Cap. 192, R.E. 2002*.

²⁸ The Constitutional Court is established by Article 125 of the *Constitution of the United Republic of Tanzania of 1977*.

Tribunals have been established under various laws to adjudicate on various matters such as cases involving labor, taxes and land issues.

Zanzibar, as discussed in Part Two of this Report, has its own judicial system consisting of (in descending order): The Court of Appeal of Tanzania, the High Court of Zanzibar, Regional and District Magistrate Courts, Primary Courts, Kadhi Appeal Courts and Kadhi Courts. These courts have jurisdiction on matters arising in Zanzibar that involve non-union matters.³⁰ The High Court of Zanzibar is the highest Court of Appeal for matters originating from Kadhi Courts and the interpretation of the Constitution of Zanzibar. However, the appeal process for a case originating from a Magistrate Court is slightly different, as the case can be appealed to the High Court of Zanzibar and then to the Court of Appeal of Tanzania.

The delivery of justice is wholly and exclusively vested in the judiciary.³¹ Therefore, rights can be respectively secured or lost by the strength or weakness of the judicial system. Members of the judiciary have the duty to promote and protect rule of law and human rights.



The University student : Advocate Fulgence Massawe for LHRC representing the Dar es salaam University Student in Kisutu Resident Court being charged of enhancing strike and peace disorder after they were in disagreement with Loans.

³⁰ There are 22 union matters. The Court of Appeal is one of the union matters listed in the First Schedule of the *Constitution of Tanzania*. Other union matters include: foreign affairs, security, police, citizenship, immigration, foreign trade, high education, aviation and statistics.

³¹ Art. 107A of the *Constitution of the United Republic of Tanzania of 1977*.

Chapter Two

Civil Rights and Liberties

2.0 Introduction

CIVIL rights and liberties are protected by various international human rights instruments, including the *Universal Declaration of Human Rights of 1948 (UDHR)*; the *International Covenant on Civil and Political Rights of 1966 (ICCPR)*; the *African Charter on Peoples and Human Rights of 1981 (ACPHR)*; the *Optional Protocol to the ICCPR*; and the *Second Optional to the ICCPR*. At the national level, some of these rights are recognized and protected by the provisions of the *Constitution of the United Republic of Tanzania of 1977* and other substantive and procedural laws.

The civil rights and liberties comprise a broad range of rights such as the right to life; the freedom from torture; freedom of thought; right to freedom of association; right to freedom of assembly; and so on. These are discussed in this chapter to assess the level of compliance to the national and international norms.

2.1 Right to Life

It is stated that, the right to life is the most fundamental right of all human rights because there would be no point in having any other human rights if the right to life did not exist.³² Article 6(1) of the *International Covenant on Civil and Political Rights of 1966* is *pari materia* to Article 14 of the *Constitution of the United Republic of Tanzania of 1977*. The two articles provide that every human being has the right to life and protection of his/ her life according to the law. They also provide that no one shall arbitrarily be deprived of his/ her life.

The violation of the right to life has continued to take various forms and some of them have increased in magnitude. Apart from the classic forms such as presence of death penalty, the right to life has been impeded by extra-judicial killings, murder, killings due to witchcraft beliefs, mob violence and others, contained in this report. Moreover, there is another factor, which ruthlessly takes the lives of thousands of people every year in Tanzania. This factor is road accidents, which the 2009 Tanzania Human Rights Report, also discusses at length.

³² 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*, page 37. ALSO read paragraph 1 of the CCPR GENERAL COMMENTS No. 14 concerning nuclear weapons and the right to life (Article 6(1) of ICCPR) made by the *UN Human Rights Committee* on 19/11/1984. Paragraph 1 of the General Comment states that “the right to life enunciated in the first paragraph of Article 6 of the ICCPR is the supreme right from which no derogation is permitted even in time of public emergency. It is basic to all human rights.”

2.1.1 Death Penalty

Tanzania still retains the death penalty as one of punishments under the Penal Code³³ and the National Defence Act³⁴. There are three offences punishable by the death sentence in Tanzania Mainland. These are murder,³⁵ treason³⁶ and misconduct of commanders or any military service man in the presence of an enemy.³⁷ The sentence for a convicted offender for above offences is death.

Records show that since independence in 1961, there have been 238 (232 men and 6 women) who were executed after being convicted of murder. The last execution was carried out in 1994 whereby 21 men were hanged.³⁸ There have been no executions since 1995. The number of executions between 1961 and 1995 amounted to 9.3 percent of death row prisoners who were hanged.

The statistical information suggests that despite the executions that were done between 1961 and 1995, incidents of offences punishable by the death penalty were increasing and are still on the rise, from 46 convicts in 1961 to 2,562 in 2007.³⁹ However, basing on these statistics, the death penalty is ineffective to curb capital crimes.

The campaign against death penalty continued all over the world in 2009 for the same reasons that the imposition of the penalty is violating the right to life,⁴⁰ which is not derogative by any reason. Death penalty is also ineffective and therefore unnecessarily kept in the penal books.⁴¹ It is ineffective because it has not deterred crimes more effectively than other punishments.⁴² Besides, the death penalty is a cruel, inhuman and degrading punishment. On the other hand, waiting on death row inflicts extremely psychological suffering and the execution itself is a physical and mental assault⁴³.

³³ Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

³⁴ Cap. 192 of the R.E. 2002 of the Laws of Tanzania.

³⁵ Section 197 of the *Penal Code*, Cap. 16.

³⁶ Sections 39 and 40 of the *Penal Code*, Cap. 16.

³⁷ 1st Schedule of the *National Defence Act*, Cap. 192.

³⁸ Source: Prisons Headquarters, Reference HQC. 68/XIX/22 of 6th June 2007 copied by this report from the LRCT's Review of Capital Punishment, Corporal Punishment and Long Term Sentences in Tanzania, March 2008, pages 63 – 65.

³⁹ Source: Prisons Headquarters, Reference HQC. 68/XIX/22 of 6th June 2007 copied by this report from the LRCT's Review of Capital Punishment, Corporal Punishment and Long Term Sentences in Tanzania, March 2008, pages 63 – 65.

⁴⁰ Article 14 of the *Constitution of the United Republic of Tanzania of 1977* states that everyone has the right to life.

⁴¹ FIDH and LHRC The Death Penalty Institutionalise?; International Fact Finding Mission, October (2004)

⁴² R Vs. *Mbushuu Mnyaroje and Kalai sangula* [1994] T.L.R 146.

⁴³ World Coalition Against the Death Penalty (2009) Report 2008: Asia-It's Time To End Executions, 6th Edition, page 12. More information on death penalty can be found in the LHRC's Tanzania Human Rights Reports of 2003, 2004, 2005, 2006, 2007 and 2008 under chapter two of those reports.

According to the Amnesty International report of 2009, ⁴⁴the global trend shows decrease in the usage of the death penalty, especially execution of convicts on the death row. The trend is shown below in the figure copied from the Amnesty International report of 2009:



By 2007 (latest available information), more than two third of the world’s countries had abolished the death penalty in law and practice. There were 93 countries which had abolished the death penalty for all crimes; 9 countries had abolished for all crimes except extraordinary crimes such as those committed in times of war; and 35 countries were *de facto* abolitionists, meaning that death penalty was still provided for in the law, but no executions were made for at least ten years. ⁴⁵Tanzania falls in the last category.

In other words, there were 137 countries (68.5 percent) which had bolished death penalty by 2009. ⁴⁶ Tanzania remained among 63 countries (31.5 percent) around the world which still retained the death penalty in their statute books. Besides, Tanzania has not ratified the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, whose aim is abolishing the death penalty.

Similarly, there are other international instruments which call for abolition of the death penalty. For instance, the United Nations General Assembly Resolution 62/149 of 18th December, 2007 calls upon all states that still retain the death penalty to progressively restrict its application, to reduce the number of offences for which it is imposed and to establish a moratorium on executions with a view to abolish it.

⁴⁴ AI (2009) Amnest International Report 2009, pg 31

⁴⁵ World Coalition Against the Death Penalty (2009) Report 2008: Asia-It’s Time To End Executions, 6th Edition, page 13.

⁴⁶ World Coalition Against the Death Penalty (2009) Report 2008: Asia-It’s Time To End Executions, 6th Edition, page 13. Rwanda, Malawi and Ivory Coast abolished it recently.

In 2009 the High Court of Tanzania in Shinyanga, sentenced three murderers of albinos to death by hanging. These were Masumbuko Madata (32), a resident of Ituga village; Emmanuel Masangwa (28), a resident of Bunyihuma village; and Charles Masangwa, a resident of Nanda village, in Bukombe District, Shinyanga Region. The murdered person was Matatizo Juma (13) who was an albino.⁴⁷

The debate on whether death penalty should be abolished was dealt with by the Law Reform Commission of Tanzania following instructions from the government. In April 2009, the Commission submitted its report to the government suggesting its abolition.⁴⁸ However, there was no any notable step taken by the government to adhere to the recommendations as of December 2009.

Subsequently, LHRC in collaboration with TLS and SAHRiNGON Tanzania Chapter continued to use media and litigation as tools for campaigning against death penalty. A strategic case against mandatory death penalty filed in 2008 went on and the media campaign as well. As a result, the president in 2009 commuted the death sentences of 75 condemned prisoners to a death row. The commuting was a success towards a moratorium against death penalty. In addition, the three organizations submitted the NGOs' report and list of issues during the 96th UN Human Rights Committee session in Geneva, Switzerland on 14th and 15th of July, 2009. Among the issues submitted was on status of death penalty. In response, UN required the government of Tanzania to make commitments towards improving civil and political rights, including abolition of death penalty. The LHRC urges the government to abolish the death penalty on the grounds advanced above.

2.1.2 Extra-Judicial Killings and other Incidences

Extra-judicial killing is generally described as an unlawful act by the state organs whereby a person is punished by an officer of any of the state organs (especially law enforcement organs) to the point of death in his or her official capacity. The acts of the extra-judicial killing basically violate Articles 13⁴⁹ and 14⁵⁰ of the *Constitution of the United Republic of Tanzania 1977* and also contravene the provisions⁵¹ of the *International Covenant on Civil and Political Rights of 1966* and other international human rights instruments.

⁴⁷ R vs. Masumbuko Madata and Others, Criminal Case No. 24/ 2009, High Court of Tanzania, Shinyanga (Unreported). The judgment by Judge Gabriel Rwakibalila. The accused conspired and committed an offence on December 1st, 2008 at Bunyihuna village, Bukombe District, Shinyanga Region.

⁴⁸ URT 'Review of Capital Punishment, Corporal Punishment and Long Sentences in Tanzania' Law Reform Commission of Tanzania (LRCT), 2009. The powers, mandate and functions of the LRCT are indicated in chapter nine of the report.

⁴⁹ Article 13 (6) (b) provides that no person charged of a criminal offence shall be treated as guilty of offence until proved guilty of that offence.

⁵⁰ Article 14 of the Constitution guarantees the right to life.

⁵¹ Article 6 of the ICCPR provides for the inherent right to life.

There are no official records of incidents of extra-judicial killings in Tanzania. However, a media survey carried out by the LHRC during the year 2009 did not suggest significant reduction of incidents of extra-judicial killings because **about 10** people were reportedly killed by state organs between January and December 2009.

Juma Lissu, a remandee, died in police custody in Arusha in February 2009. Police officers allegedly stormed his house at *Mbauda kwa Mrombo* in Arusha city, beat him up before taking him to the central police station where he was detained. The following morning his wife went to the station to send him breakfast, only to find out that he was dead. His relatives went to collect his body a few days later, where they were given a post mortem report stating that Lissu had died of natural causes due to lung problems.

However, Lissu's relatives contended that he had died due to severe police beatings at the police station.⁵² The LHRC moved to the Coroner's Court for inquest. The application was heard by the Coroner, who ordered a new post-mortem by a qualified Pathologist at the KCMC. Although contested by police, the second post-mortem was done and the report (though still controversial) stated that the deceased died due to natural causes. Basing on the report, the Coroner's Court ordered the burial and further investigation into the matter. The case is still pending at the RMS Court in Arusha and several adjournments have so far been made in the case.

The following are some incidents of extra-judicial killings that occurred in 2009:

- Rashid Tuga of Gongo la Mboto and Thomas Mwingira of Yombo Bwawani, in Dar es Salaam were reportedly killed by the police.⁵³

- Chegere Nyanchage (45) of Gibaso village in Tarime District was shot to death by the police when he attempted to escape from his home. He was suspected of stealing about 600 cattle from Gibaso and Mugumu villagers, in Serengeti District. He was said to have injured two police men at the River Mara which divides between Tarime and Serengeti.⁵⁴

- In Arusha three people were killed in three separate incidents, one of them being the killing of the businessman Ramadhani Mussa, who allegedly died after he was tortured by the police. Moreover, Shadrack Motika (22) and Ewald Mtui (36) were also shot to death by police.

- Similarly, in Mara region, three individuals were shot to death by police on 18th February and 7th May 2009. Another incident involved Iranda Matoka (26) and Abbas Adek (23), who were allegedly gunned down by police.

⁵² LHRC 'Lissu's Monitoring Report, Arusha and Dar es Salaam Offices', February to October 2009. Every step of this case was monitored by Ms. Rose Mwalongo, the LHRC Information Officer, who has written extensively on this case to the media. More stories on this can be obtained by clicking on Google 'Rose Mwalongo.'

⁵³ Writer 'Police have Killed citizens' Mwananchi, October 4, 2009.

⁵⁴ Christopher Gamaina 'Police Killed a suspected bandit' Mtanzania, November 26, 2009.

It is LHRC's concern that if the above trend is left to continue; it would certainly result into the lack of trust by the People to the Police Force. Currently there are various initiative by Police Force to work with societies such as Community Policing Initiative. LHRC feels that for these initiatives to succeed both moral and material support and peoples participation is paramount. Therefore, the government is advised to always train the law enforcers to respect human rights and where necessary to observe due process of the law when dealing with people suspected of committing crime.

2.1.3 Brutality by State Agents

Police brutality is international use of excessive force, usually physical, but potentially also in the form of verbal attack and psychological intimidation by a police officer⁵⁵.

In May 2009, a Traffic Police Officer identified as Thomas Mayapila was assaulted by the TPDF soldiers for unknown reasons.⁵⁶ He was slapped in his face several times while on duty at the Ubungo traffick lights junction. The LHRC considers this as an extreme misconduct and abuse of power by the state agencies.⁵⁷ Furthermore this was not isolated case, there are much other incidents involving members of armed forces who assault civilians.

Majority of those interviewed expressed dissatisfaction over TPDF soldiers' increasing incidents of beating up civilians in recent years. It is unfortunate that the public has not been informed of the measures taken so far against unscrupulous soldiers. If this situation is condoned, the practice will lead to the anarchy where some officers feel that they are above the law. The LHRC urges the government to inform the public on measures taken against some TPDF staff who assaulted the police officer to restore the diminishing peoples' confidence in the force.

⁵⁵ [www.en.wikipedia.org/wiki/police brutality](http://www.en.wikipedia.org/wiki/police_brutality) (accesed on 16th march 2010)

⁵⁶ 'JWTZ' is an acronym for '*Jeshi la Wananchi la Tanzania*' that mean the Tanzanian Peoples' Defence Force.

⁵⁷ Clause 65 (1) of the *Code or Service Discipline: The Disciplinary of the Defence Forces*, made under Sections 53 and 85 of the National Defence Act, Cap. 192 of the R.E. 2002 of the Laws of Tanzania, states that, "[e]very serviceman who commits a civil offence, whether in Tanzania or elsewhere, commits an offence against this section." The term 'civil offence' is defined under sub-clause (2) of Clause 65 of the same Code to mean, an act or omission punishable by the law of any part of the Tanzania in which the act was committed or the omission occurred; or an act or omission which had it been committed or occurred in Tanzania would be punishable under the *Penal Code* of Tanzania or of Zanzibar, the *National Security Act*, or any other provision of the Act. Sub-clause 3 provides for the punishment of this offence, which are subject to the findings of the civil courts and/ or court martial's procedures.

2.1.4 Mob Violence

Mob Violence means arbitrary action by a group of people punishing a person because of his or her alleged mischief.⁵⁸ The 2007 opinion survey on causes of mob violence which its results were published in the *Tanzania Human Rights Report of 2007* on page 19, suggested that mob violence is or caused by several factors including, lack of confidence in the police force, far locations of some police stations, citizens' ignorance of the due legal process of handling a suspect criminal, and public anger against petty crimes. People are of the view that most police officers are corrupt and therefore, once the suspect is taken to the police, he/she would be released on their back.



Mob violence: Unknown person being beaten up by a group of people for trying to snatch money from someones pocket which might cost his life.

It is the LHRC contention that the ongoing citizenry disorder against the law enforcers to a large extent is caused by this tendency which in most cases goes unpunished. No wonder why during the year 2009, there were notable 3 incidents in Tunduma, Geita and other places, whereby civilians invaded police stations and waged serious commotions with the police.

Few incidents happened in 2009 to prove citizenry disorder:

■ Residents of Kimara Suca in Kinondoni District, Dar es Salaam, ambushed police on patrol with stones, rollers, knives and sticks and killed one Police Officer identified as F. 1042 Constable Moshi Kabangwe. Some of them claimed that the police officers “wamezoa kuja kutusumbuasumbua ili tutoe pesa kwa visingizio vya bangi” [have a tendency of coming to trouble us with fabricated marijuana cases, so that we can give them bribes]. Apparently, the residents claimed that some police officers were fabricating cases just to drain money from them illegally.

■ In October 2009, another Police Officer, F. 88 Koplo Adabert Sanga was lynched by unknown people on allegations of unlawfully killing their colleague Zakayo Mwapi who was a taxi driver. The police had shot the driver on suspicion that he was a thug.⁵⁹

⁵⁸ LHRC (2006) Tanzania Human Rights Report of 2006, page 15.

⁵⁹ Writer ‘Residents killed Police in Dar’ Majira, October 4, 2009.

One of the respondents in the 2009 LHRC's questionnaires on the state of human rights in Tanzania, asserted:

Umasikini unasababisha watu wakwapue vitu vya watu. Ikitokea ni lazima watumuua kwa sababu polisi si watamuachia tu. Kwanza hata ukiwa unaibiwa watu hawakuambii ila ukisema tu 'mwizi' wanamuua huyo mtu. Pia wakosa kazi wengi ambao ni vibaka. [Poverty is what makes people steal from others. Once that happens people lynch the suspect because they believe after all that he would be released on their back. When you are being robbed, people don't alert you, but once you yell 'thief,' the kill that person immediately. Most of those involved in such acts are jobless].

The point of view of this person raises three important points which are also relevant when anyone wants to address the problem of mob violence in Tanzania. Firstly, prevention of crimes in needs multidisciplinary approaches, including economic empowerment of the people, especially the youths. Secondly, people are ignorant of the due legal process because police may release a suspect if his or her offence is bailable. Thirdly, community policing has many challenges to succeed. Chapter eight of this report discusses at length on some of these issues.

During the year 2009, the media reported occurrences of several incidents of mob violence, which caused deaths, injuries, destruction of peoples' properties and other kinds of human rights violations. It should be noted that latest statistics on incidents of mob violence were not available. However, the general perception, according to the LHRC media survey and reports of the field monitors, the trend of mob violence was the same. There was no any positive improvement regarding in the area.

Some of the incidents that occurred in 2009 are:

- An identified person was lynched by an angry mob in January 2009 at Goba area, Dar es Salaam on allegations of stealing two cattle and three goats. They took his life after the owner of the stolen cattle had yelled 'thief.'⁶⁰
- It was also reported that residents of Njiro in Arusha lynched a suspected robber by burning him to ashes.⁶¹
- Another incident involved a taxi driver at Nyamagana in Mwanza, who was stoned and slaughtered to death by a mob after he was alleged to have stolen meat from a person whose identity could not be immediately established. Some people in the mob said they had lynched the driver in deterrence against

⁶⁰ Hamisa Maganga 'Auawa na wananchi Dar kwa tuhuma za wizi wa ng'ombe' Mtanzania , January 1, 2009.

⁶¹ Mary Mwita 'Wananchi wadaiwa kuua kwa moto' Mtanzania, January 1, 2009.

⁶² Frederick Katulanda 'Wamuua dereva wakidai kaiba nyama' Mwananchi, January 16, 2009.

⁶³ Faida Munyomba 'Wauawa, nyumba zachomwa moto. Majira' January 16, 2009.

increased incidents of cattle rustling in Buhongwa ward.⁶²

■ Four people, suspected to be cattle rustlers were lynched by a mob at Nyakunda village in Geita district, Mwanza region in January 2009.⁶³

■ In Morogoro municipality, one person was also lynched on allegations of stealing 37 herds of cattle whose value was estimated to be T.shs 15 million.⁶⁴

The above mentioned killings can be described as ‘economic’ and relating to ‘poverty.’ The alleged offences were caused by economic factors; striving for survival and defending of the same. It is a really hard to believe that a person is killed for stealing one kilogram of meat, which costs less than USD 4! Most of those kill and get killed in such mob violence incidents are men, more specifically youths.

This also implies that the penal policy should be widened to address the root cause of this problem. The obvious reasons for this could be unemployment and lack of economic opportunities. All these circumvent to the problem of mob violence.

Moreover, about 99 percent of incidences of mob violence occur in the urban areas, mainly major cities and regions of Dar es Salaam, Arusha, Mwanza and Morogoro. This is partly caused by the rural-urban migration which brings the youths to the urban centres. When they get in the towns, they remain jobless because they are uneducated, lack skills, assets, or capital to initiate business. Most of them end up in joining groups of dishonest youths, who steal and pick pocket on streets.

LHRC urges the government to widen its scope to address the serious problem of mob violence. There are numerous prerequisite factors perpetuating increasing mob violence incidences, which in most cases violate the right to life. The NSEGPR tries to address the challenge on unemployment, but as indicated in chapters four and seven of this report, its pace is just too slow to cope with the magnitude of the problem.

2.1.5 Killings due to Witchcraft Beliefs

Witchcraft refers to the use supernatural or magical powers. Moreover, it can be refer to as the use of such powers to inflict harm or damage upon members of a certain community or their properties.⁶⁵ The belief in witchcraft is perceived throughout Tanzania⁶⁶ and has been steadily increasing regardless increased level of awareness against it.

According to the LHRC media survey of 2009, which is complimented by reports from its field monitors, incidents of killings due to witchcraft was leading among the most common areas where people violate the right to life in Tanzania. It is the leading factor of denial of the right to life, followed by killings caused by mob violence.

⁶⁴ Merina Robert ‘Auawa akidaiwa kuiba ng’ombe 37’ Mtanzania, January 17, 2009.

⁶⁵ See: <http://en.wikipedia.org>, accessed on 2nd of October 2009.

⁶⁶ Maia Green (2005) Discourses on Inequality, 5 Anthropological Theory 247, page 249 – quoted in LHRC (2008) Tanzania Human Rights Report of 2008, page 17.

The laws of Tanzania prohibit killings and witchcraft acts. The *Penal Code*⁶⁷ makes it offensive to kill any person for any reason.⁶⁸ The acts of witchcraft are also criminal offences, but under the *Witchcraft Act*.⁶⁹ Section 2 of this law define "witchcraft" to include acts, sorcery, enchantment, bewitching, the use of instrument of witchcraft,⁷⁰ the purported exercise of any occult power and the purported possession of any occult knowledge.

Section 3 of the *Witchcraft Act* makes it offensive to exercise or conduct witchcraft. It also creates the offence of possession and supply of instruments of witchcraft, and advice on threats of practicing witchcraft. Therefore, one can be liable for direct or indirect acts or behaviours which are connected to witchcraft practices. It is also an offence to defame other person as a witch or wizard by imputing to him or her use of witchcraft materials and other things.⁷¹

Thus, the government of Tanzania recognizes existence of witchcraft and the consequences of the same. The implication of the law is that witchcraft is evil therefore it should be discouraged. It is now eighty one (81) years, almost a century, since this law was enacted, but witchcraft incidences are still escalating, implying that legal sanctions to end it have failed and the law does not adequately address all parameters and the philosophy behind this social problem.

As a result, hundreds of killings due to beliefs in witchcraft continued to take place in 2009. Most of the killings targeted old women especially in Lake Zone,⁷² central,⁷³ western,⁷⁴ and southern parts of Tanzania due to cultural norms and beliefs of the tribes found in those areas⁷⁵.

⁶⁷ Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

⁶⁸ Section 196 states that '[A]ny person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.'

⁶⁹ Cap. 18 of the R.E. 2002 of the Laws of Tanzania. It was enacted and came into force on 28th December, 1928 during British colonialism in Tanganyika/ Tanzania. The British colonialists also feared acts of witchcraft. They consider it as threat to governance of the country because witchcraft creates fears to the people and can therefore disrupt socio-economic activities, peace and security.

⁷⁰ Section 2 of the law, defines "instrument of witchcraft" to mean anything which is used or intended to be used or is commonly used, or which is represented or generally believed to possess the power, to prevent or delay any person from doing any act which he may lawfully do, or to compel any person to do any act which he may lawfully refrain from doing, or to discover the person guilty of any alleged crime or other act of which complaint is made, or to cause death, injury or disease to any person or damage to any property, or to put any person in fear, or by supernatural means to produce any natural phenomena, and includes charms and medicines commonly used for any of the purposes aforesaid.

⁷¹ Section 4 of the Act. Section 5 of the Witchcraft Act provides for punishments which range between five and seven years imprisonment terms.

⁷² Regions of Mwanza, Shinyanga, Mara and Kagera.

⁷³ Especially Tabora and Singida regions.

⁷⁴ The Wasukuma, Wajita, Wahaya, Wanyamwezi, Wahehe, Wanyakyusa, Wanyambo, Wakinga, Wanyiramba, Wakinga and others. Note that, as it has been stated in chapter one of this report, Tanzania has more than 120 tribes, each with its own vernacular language and traditional norms

For instance, it was reported in February 2009 that more than 2,585 old women were killed in eight (8) regions of Tanzania Mainland over a period of not more than five years by around February 2009.⁷⁶ Apparently, the number was bigger than that because not all incidents of killings due to witchcraft are reported to the police or by the media. One of the respondents to LHRC questionnaires, who resides in Maswa district, Shinyanga region said in June 2009 that:

Ukisikia ama kuona ndugu yako kafa kwa kupigwa na wanakijiji kwa sababu za uchawi, si rahisi kufuatilia polisi kwa sababu nawe utaonekana kuwa ni mchawi mwenzake. Pia wanaweza kukuua na wewe. [It's risky to inquire with the police about a relative killed due to witchcraft reasons because you will be regarded as an accomplice. And they might end up taking your life as well].

Police statistics indicated that old women who were killed due on witchcraft beliefs are as follows:

| S/No. | Region | Number of Deaths in Past Five (5) Years – Febr. 2009 | An Average of Deaths per Year/ Region |
|-------|------------|--|---------------------------------------|
| 1. | Mwanza | 698 | 140 |
| 2. | Shinyanga | 522 | 105 |
| 3. | Tabora | 508 | 102 |
| 4. | Iringa 256 | 52 | |
| 5. | Mbeya | 192 | 39 |
| 6. | Kagera | 186 | 37 |
| 7. | Singida | 120 | 24 |
| 8. | Rukwa | 103 | 21 |
| 9. | TOTAL | 2,585 | 517 |

Source: Police Report, February 2009 [Extracted from Media by LHRC]

The table above indicates that at means, the killings of old women are very high in Mwanza, Shinyanga and Tabora regions. The average number of killings per month for Mwanza region, according to the records is 12 persons, while in Shinyanga and Tabora is 9 for each one of them. This means that one old woman is killed in Mwanza region after every three days; and for Tabora and Shinyanga, an old woman is murdered after every four days.

but united through one national language called Kiswahili.

⁷⁵ In the regions of Mbeya, Iringa, Rukwa

⁷⁶ Released by the Police Force in Mwanza to the media in February 2009. See: Meddy Mulisa 'Vikongwe wengine wauawa kwa imani za kishirikina' Mtanzania, February 13, 2009.

There were no records indicating or revealing how many murderers were convicted for committing the offence. In most cases, police fail to prosecute culprits because villagers and even relatives of the deceased are not ready to testify in court. After all, many of the villagers “are happy when a ‘witch’ is killed!”⁷⁷

Other incidents that occurred and covered by the media, mostly newspapers, during the year 2009, include the following:

■ A woman, Ngema Dotto (58 years) was killed in Sukuma ward, Magu District on allegation of witchcraft. Prior to the fate some nine months ago, the woman had reported to a nearby police station the plan to kill her. It seems the police did not take any action to protect her and she was murdered in January 2009. The killers applied knives and other traditional blunt weapons.⁷⁸ Her killing was a result of police’s irresponsibility to respond to the information given to them by the victim. This behaviour does not only cost lives of the people, but also escalates the killings as perpetrators consider the police ineffective.

■ A baby son and his mother were killed in Biharamulo District on witchcraft belief. The baby was just one month. A similar killing occurred in Bushemba village, Bunganguzi ward, Muleba District in January 2009.⁷⁹ Incidences of witchcraft killings in most cases resemble to those of mob violence in a way they are executed. Sometimes, murderers tend to kill even unintended person-like children. Similarly, Mr. Linus Sanga aged between 60 and 65 years was killed due to witchcraft beliefs in Songea rural.⁸⁰

In very rare cases, the killers target men because they believe only old women practice witchcraft. The reason for this is yet to be found, but due to socio-economic and cultural reasons, women are more likely to be implicated in bewitchment scandals. For instance, in Shinyanga region, women use a tree known as Mnyaa and sometimes cowdung as a source of energy for cooking. This kind of tree normally generates heavy smoke, which after have in contact with it for sometimes, it tends to affect the eyes by turning their color into red. Then, most of the people in those regions consider them as wizards because of the red eyes. The age groups for old women mostly attacked are those of 60 years and above because they are vulnerable and cannot defend themselves.

⁷⁷ According to our (LHRC) observation, in areas where these killings occur, people do believe unquestionably in the findings of the traditional doctors [who are relied on screening and determining who the witch in the villages is]. Once these doctors mention of someone to be a ‘witch’, that victim is killed instantly or within shortest period of time. Therefore, the justification of the killings logically comes from the said doctors.

⁷⁸ Osoro Nyawangah ‘Mwanamke auawa kikatili’ Tanzania Daima, January 2, 2009.

⁷⁹ Theonestina Juma ‘Mama, mtoto wauawa kikatili’ Majira, January 5, 2009.

⁸⁰ Alpius Mcucha ‘Auawa kwa kuhusishwa na ushirikina.’ Tanzania Daima, January 15, 2009.

- A woman aged about 75 years, resident of Lwega village in Mpanda district, Rukwa region was killed due to witchcraft.⁸¹
- Others were Mariamu Mahona (60 years) from Maswa District and Mwashu Simba (50 years) from Mwanahima Village, Meatu District, and Magdalena Sigule (70 yrs) from Ukenyenge village, Kishapu District. All these were killed by gangs using traditional weapons including clubs, knives and machetes.⁸²
- One old woman identified as Helena Gikwala, aged 60 was killed by using machetes also on witchcraft beliefs. The incidence occurred at Kahunda village, Sengerema District, in Mwanza Region.⁸³
- Ms. Balekele Dotto 75 years of age, resident of Chingunga ward in Geita District, Mwanza region was also brutally killed due to witchcraft myth.⁸⁴

Mwanza city, which is on the Lake Zone, is leading in the killings of older women and people with albinism in Tanzania. Statistics of 2009 revealed that about 60 old women were killed in Mwanza between January and August 2009 and that around 93 percent of them were killed in connection to witchcraft beliefs.

2.1.6 Situation of Killings of Albinos in 2009

As it was stated in the 2008 Tanzania Human Rights Report that the killings of albinos had dramatically increased. Statistics indicate that more than 35 people with albinism had been murdered by December 2008.⁸⁵ However, in 2009 the killings of albino has somehow dropped to 10 reported cases. The killings were also associated with a witchcraft belief that organs of people with albinism had alluring and supernatural powers which, when mixed-up with other witchcraft items by a witchdoctor, would make someone rich. Most of believers of this illusion are involved in fishing and mining activities on the Lake Zone, northern and southern parts of the country.

Early 2009, there were several incidents of killings of people with albinism, for instance:

- An albino child identified as Michael Petro (6) was kidnapped and later on murdered in January 2009. His body was found with his hands and legs chopped off at Nyamilanda village, Muleba district, Kagera region.⁸⁶

⁸¹ Mwandishi 'Kikongwe auawa akidaiwa kumpoteza kijana' Mwananchi, January 17, 2009.

⁸² Stella Ibengwe 'Elderly Women Killings due to Witchcraft start with alarming rate' Tanzania Daima, Sept 30, 2009 .

⁸³ John Maduhu 'Elderly Woman has been killed due to witchcraft myth' Mtanzania, September 14, 2009.

⁸⁴ Anthony Gervas 'Elderly Women Killed Geita' Mwananchi, August 22, 2009.

⁸⁵ LHRC (2008) Tanzania Human Rights Report of 2008, page 19.

⁸⁶ Theonestina Juma 'Mtoto albino atekwa, auawa na akatwakatwa' Majira, January 17, 2009.

■ Japhet Kalita (28), also an albino resident of Muleba District, Kagera Region was brutally butchered in January 2009. His two hands and one leg were chopped off by unidentified criminals.⁸⁷

■ In March 2009, the body of an albino was found along River Lukuledi in Lindi region. It was found with chopped off hands, private parts and forehead.⁸⁸

Despite this terrible record, none of the suspects was arraigned resulting into horror, terror and persecution of people with albinism. It took a long time before arrests were made and first suspects were prosecuted. Such lethargy compelled the LHRC to lodge a constitutional case in March 2009.⁸⁹ The case, inter alia challenged the irresponsiveness of the Police Force in curbing albino killings. The filing of the case boosted the prosecution to commence, whereby two cases were completed by end of 2009, including that of Masumbuko Madata and others.⁹⁰ All accused persons were found guilty of murder, as it has been explained earlier.

However, the incidents of albino killings did not stop despite the court's death sentences imposed upon the first batch of convicts. For instance, by August 2009, four people with albinism were killed in Mwanza.⁹¹

The media reported several incidents as follows:

■ Muhanda Sitta (4), an albino from Bariadi District, Shinyanga Region was killed and his hands chopped off.⁹²

■ Another incident involved a person identified as Aaron Nongo (also an albino) in Mwanza Region, who was killed in July 2009.⁹³ This was one among the four albino killings which occurred within a month after the High Court judgement.

⁸⁷ Theonestina Juma 'Albino acharangwa mapanga, auawa' Majira, January 19, 2009.

⁸⁸ Said Hauni 'Albino auwawa na kuondolewa baadhi ya viungo' Mwananchi, March 8, 2009.

⁸⁹ Legal and Human Rights Centre vs. Attorney General; Ministry of Health and Social Welfare; Ministry of Home Affairs and Ministry of Education and Vocational Training. The case was lodged at the High Court of Tanzania at Dar es Salaam. So far, the case is still pending in court for hearing. The LHRC petitioned to the Court on behalf of albino to seek redress on grounds that the government had failed to provide protective measures to the persons with albinism; and that, the government had failed to implement the Witchcraft Act, Cap. 18 of the R.E. 2002 of the Laws of Tanzania. There are several points contained in the Petition. The copy of the petition is available online through LHRC's website www.humanrights.or.tz

⁹⁰ R vs. Masumbuko Madata and Others, Criminal Case No. 24/ 2009, High Court of Tanzania, Shinyanga (Unreported).

⁹¹ '93 Percent Killed in Mwanza City are Women' Mwananchi August 25, 2009.

⁹² Sitta Tumma 'Albino Son Killed' Tanzania Daima' July 24, 2009.

John Maduhu 'Pastor, Herbalists Behind the Balls for Killing Albino' Mtanzania, July 2009.

■ Another albino, Gasper Elikana (10), who was a Standard Two pupil at a primary school in Geita District, Mwanza region was killed by suspected thugs who however chopped off his right leg.⁹⁴

The killings are perpetuated by people of different social and economic status, including religious leaders, youths and aged people. For instance, it was reported in March 2009 that an old woman was found in possession of organs suspected to be of an albino. She was taken to Boma Ng'ombe police station.⁹⁵ It was also reported in July 2009 that a Pastor of the Baptist Church in Magu District Alfred Komanya (35) was arrested by police after he was found in possession of human body parts suspected to belong to an albino who was killed in Mwanza on 26th June, 2009.⁹⁶

The LHRC is concerned with these killings which violate the right to life of albinos. It is shameful to note that majority of Tanzanians still believe in witchcraft. Much as LHRC respects the cultural norms of the Tanzanian people; it hereby stresses that exercising those norms shouldn't infringe the rights of other members of the society. The government is urged to take affirmative measures to address this challenge in a wider perspective. Likewise, CSOs and other stakeholders should take charge of mitigating and curbing the killings which are caused by ignorance and illusions.

2.1.7 Road Accidents Negligence of drivers, inefficiency by Police Force –Traffic Unit and Surface and Marine Transport Regulatory authority (SUMATRA) have contributed to the high number of road accidents in 2009. Road accidents have caused the death of more than 2100 innocent people in Tanzania which raises safety concern on roads as major means of transport to majority Tanzanians..

Road traffic in Tanzania is regulated mainly by the *Road Traffic Act*.⁹⁷ The law requires the drivers to possess valid driving licences obtained after traffic police tests.⁹⁸ It further prohibits taking alcohol before or while driving and driving a motor vehicle while under the influence of liquor or drugs.⁹⁹ The provisions of the law also govern the speeding,¹⁰⁰ side of driving;¹⁰¹ traffic/ road signs;¹⁰² crossings;¹⁰³ parking of vehicles;¹⁰⁴ and all other road matters.

⁹⁴ Peter Fabian: Another Albino Killed; Mtanzania, Oct 22, 2009

⁹⁵ Stella Shoo 'Ajuza abambwa na viungo vya binadamu' Majira, March 16, 2009.

⁹⁶ Jovin Mihambi 'Pastor snatched with Albino body parts' Majira July 22, 2009.

⁹⁷ Cap. 168 of the R.E. 2002 of the Laws of Tanzania. It is the 1974 legislation and has been amended time to time.

⁹⁸ Section 52 of the *Road Traffic Act*, Cap. 168.

⁹⁹ Section 44 of the *Road Traffic Act*, Cap. 168.

¹⁰⁰ Section 51 of the *Road Traffic Act*, Cap. 168.

¹⁰¹ Section 58 of the *Road Traffic Act*, Cap. 168.

¹⁰² Section 64 of the *Road Traffic Act*, Cap. 168.

¹⁰³ Section 65 of the *Road Traffic Act*, Cap. 168.

¹⁰⁴ Section 71 of the *Road Traffic Act*, Cap. 168.

Recklessness (negligent) driving which causes bodily injury or deaths makes the driver guilty of an offence¹⁰⁵ which attracts a fine of around Tshs 25,000 (USD 20) in most cases. Despite these good legal provisions, deaths and injuries caused by accidents have been increasing in Tanzania. Dar es Salaam city is leading others in having the high rates of accidents and deaths tolls, followed by Arusha and Coast region.

The prevalence of accidents between January and September 2009, as extracted from information availed by the Police Force for Tanzania Mainland regions are as follows:

| ROAD ACCIDENTS: NUMBER OF INJURIES AND DEATHS [Between January and September 2009] | | | | |
|---|-----------------|---------------------|--------------------|------------------|
| S/NO. | REGION/ CITY | NO. OF ACCIDENTS | NO. OF INJURIES | NO. OF DEATHS |
| 1. | Dar es Salaam | 6,700 | 4,510 | 300 |
| 2. | Arusha | 1,400 | - | 143 |
| 3. | Coast Region | 900 | 1,132 | 185 |
| 4. | Kilimanjaro | 813 | - | 118 |
| 5. | Shinyanga | 752 | 680 | 116 |
| 6. | Morogoro | 540 | 500 | 60 |
| 7. | Tabora | 450 | 515 | 71 |
| 8. | Mbeya | 420 | 640 | 110 |
| 9. | Mwanza | 395 | 370 | 164 |
| 10. | Mtwara | 304 | 346 | 41 |
| 11. | Ruvuma | 268 | 398 | 49 |
| 12. | Rukwa | 238 | 245 | 40 |
| 13. | Singida | 264 | 301 | 72 |
| 14. | Kagera | 190 | 347 | 116 |
| 15. | Mara | 156 | 257 | 57 |
| 16. | Lindi | 128 | 239 | 77 |
| 17. | Iringa | 139 | 101 | 117 |
| 18. | Tanga | 123 | 216 | 158 |
| 19. | Dodoma | 110 | 1,080 | 56 |
| 20. | Manyara | 50 | 146 | - |
| 21. | TOTAL | 13,745 | 12,245 | 2,145 |

Source: Tanzania Police Force [Quoted by the Citizen (Tanzania) of 2/1/2010]

Therefore, statistics from the Tanzania Police Force of 2009 indicate that a total of 13,745 road accidents occurred countrywide, which resulted into the deaths of a total of 2,145 people and injuring 13,245 others in various parts of the country between January and September, 2009.¹⁰⁶

¹⁰⁵ Section 40 of the Road Traffic Act, Cap. 168.

¹⁰⁶ Devotha John 'Improved Roads, More Accidents' The Citizen (Tanzania) 2nd January, 2010.

LHRC strongly urge the government to take stern measures against reckless drivers and traffic police officers who condone breach of traffic rules by receiving bribes from the culprits. Time is ripe for SUMATRA and the Police Force of Tanzania to involve the people in the process of administering traffic rules and roadworthiness of vehicles is not compromised. For instance, the two authorities could order all passenger buses to display police phone numbers to the passengers for them to report incidents of reckless driving immediately. The law should also be amended to impose stern penalties on those found guilty of driving recklessly.



Accident: This is one accident among the many accidents that happened in 2009 which took lives of not less than ten people.

2.2 Freedom from Torture

The Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) of 1987,¹⁰⁷ defines torture as intentionally inflicted severe pain or suffering, whether physical or mental on a person to obtain, among other things, information from him or a third person. Other international legal instruments such as the *International Convention on Civil and Political Rights (ICCPR)* of 1966¹⁰⁹⁹ and *United Nations Code of Conduct for Law Enforcement Officials* of 1979¹¹⁰ prohibit torture and other forms of cruel, inhuman or degrading treatment and punishment.¹¹¹

¹⁰⁷ Adopted by the United Nations General Assembly Resolution Number 39/46 of 10th December 1984 and took effect in 1987. Tanzania has not yet ratified it.

¹⁰⁸ Article 1(1) of the CAT. However, the torture inflicted as a result of "lawful sanctions" of the law, is excluded from the definition of the term torture. This exclusion is regarded as weakness of this provision because it create loophole of which the state or any person can take it into granted to inflict torture to another person. [See: Peter, Chirs Maina (1997) *Human Rights in Tanzania: Selected Cases and Materials*. Ridiger Koppe Verlag: Kiln, page 85].

¹⁰⁹ Article 7 of ICCPR. The said provision states that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 10 of the ICCPR states that, all person deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Therefore, Article 10 makes it illegal for the police to torture arrested persons. The CCPR GENERAL COMMENTS No. 20 concerning prohibition of torture and cruel treatment and punishment (Article 7 of ICCPR) made by the UN Human Rights Committee on 10/3/1992, states that, the aim of the provisions of Article 7 of the ICCPR is to protect both the dignity and the physical and mental integrity of the individual.

¹¹⁰ Article 5 of the *United Nations Code of Conduct for Law Enforcement Officials*, General Assembly Resolution Number 34/169 in 1979, states that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.

¹¹¹ Article 13(6)(e) of the *Constitution of the United Republic of Tanzania* of 1977 provides for the same. It states that, "no person shall be subjected to torture or inhuman or degrading punishment or treatment."

Normally, it is regarded as torture when the offence is committed by a state organ or officials, mostly the police force and police officers, who have statutory powers to deal with suspects of crimes. Infliction of pains or other kinds of inhuman treatments by civilians are regarded as normal offences of assault, battery, gross decency and the like, which are punishable as criminal offences under the *Penal Code*.¹¹²

As for the situation of torture in Tanzania and beyond, the law-enforcers have often gone beyond their bounds and have curtailed the enjoyment of the rights of the citizens.¹¹³ There is a persistent and widespread pattern of police brutality in almost all countries in SADC countries arising from:

- a) Individual misconduct, but encouraged by an institutional failure to hold police officers accountable;
- b) Inadequate systems of control or an outright refusal to recognize or respect international standards for human rights protection;
- c) Economic policies and political trends which create conditions in which these violations are becoming more widespread and increasingly severe; and
- d) Lack of motivation to police officers which in revenge resort to behaving weirdly.

Police brutality in the SADC should not be isolated from the political, social and economic contexts in which they take place. ¹¹⁴ There is great need to transform the political and legal frameworks of these countries so that the political environment and legal system respond to the need to protect, not repress or oppress the citizens.

Torture, as a human rights issue, takes different forms in Tanzania. There are reported individual incidents in which the people are subjected to torture especially when held under police custody and prisons. It is seemingly propagated by retention of the death penalty and corporal punishments in Tanzanian statute books. It should be noted that the *United Nations Human Rights Committee*¹¹⁵ considers corporal punishment, including excessive chastisement (ordered as punishment for a crime or as an educative or disciplinary measure), as torture and they are prohibited under the provisions of Article 7 of the ICCPR.

Despite the recommendations of the UN Committee on the use of corporal punishment, the government of Tanzania still retained it in 2009 as one of the punishments for criminal cases. ¹¹⁶ It is also still provided for under the Corporal Punishment Act. ¹¹⁷ Astonishingly, instead of abolishing the said provisions or laws, corporal punishment is further supported by the Education (Corporal Punishment)

¹¹² Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

¹¹³ AFRONET (2000) Police Brutality in southern Africa – A Human Rights Perspective. SAHRiNGON, pages i and ii.

¹¹⁴ AFRONET (2000) Police Brutality in southern Africa – A Human Rights Perspective. SAHRiNGON, pages i and ii.

¹¹⁵ See: General Comment No. 20, United Nations Compilation of General Comments, page 139, para. 5.

¹¹⁶ Sections 25 and 26 of the Penal Code, Cap. 16.

¹¹⁷ Cap. 17 of the R.E. 2002 of the Laws of Tanzania.

Regulations¹¹⁸ The regulations stipulate on rule 3 that corporal punishment may be administered for serious breaches of school discipline or for grave offences committed whether inside or outside the school which are deemed by the school authority to have brought or are capable of entering the school a disrepute. This regulation has been used to punish pupils and in most cases it leads to different forms of physical and psychological harm.¹¹⁹

To sum up, during the year 2009, there were several incidents of torture reported by the media. For instance, the LHRC toured Kingolwira prison in Morogoro in July 2009. During the visit, the LHRC official met with an inmate, who narrated anomalous story of the ordeal he had gone through while in custody at Turiani Police Station in Morogoro Region. He said:

Usiku ule walikuja askari polisi na wakanikamata mimi baada ya kuwaambia kuwa Kaka yangu ambaye wakikuwa wanamtafuta kwa tuhuma za kuvunja nyumba hayupo. Nadhani walidhani kuwa nimefanya njama ya kumficha. Nilipofikishwa kituoni, nilihojiwa na askari wawili, niliposema sijui kaka yuko wapi walinipiga sana. Kila sehemu ya mwili. Nina maumivu na majera ha hadi sehemu za siri. Baada ya hapo, nilipelekwa Mahakamani kesho yake, sikumbu-ki kwa kosa gani. Siku iliyofuata nikajikuta nipo hapa gerezani natu mikia kifungo. Nashukuru jela wananihudumia vizuri ila hali ni mbaya sana. [That night came the police to my home, and they arrested me after I had told them that my brother, whom they were looking for on allegations of breaking a house was not around. They must have thought that I had hid him somewhere. I was later on taken to a police station where two policemen severely beat me up on telling them that I didn't know where my brother was. The whole body is aching and I have lots of scars in my private parts. Afterwards, I was sent to court on the following day, I don't remember which offence they charged me for. The next day I was brought here, to this prison to serve a jail sentence. I am grateful that they treat me well in this prison. However, the condition here is extremely bad].

Most of torture incidences, especially those happened in police detentions, are not reported by the media because people do not speak out about them even after the ordeal. One person said: “when you are released from police custody, you don't look back, anything malicious may happen if you dare challenging them.”

The other strange incident that occurred during the year involved a district commissioner (DC). In February 2009, then DC for Bukoba Rural in Kagera region ordered a police officer to whip (canning) 31 primary school teachers over poor Standard Seven examination results. The teachers were canned during the DC's tour of primary schools in the district to inspect developments in the education sector. He used the opportunity to harass the teachers and then ordered the policemen who had escorted him to whip

¹¹⁸ G.N No. 294/2002. The stated Government Notice (GN) is made under section 60 (o) of the Education Act, Cap. 353 of the laws of Tanzania.

¹¹⁹ SAHRiNGON Tanzania Chapter's NGOs' Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Tanzania, January 2008, page 56.

them allegedly for failure discharge the duties effectively, resulting to the students' poor performance. In response, President Jakaya Kikwete immediately sacked him from the post of DC, but there were no records whether other legal measures were taken against him.

2.3 Equality before the Law - Access to Justice and Fair Trials

Article 13(1) of the Constitution of the United Republic of Tanzania of 1977 states that all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 also provides for the same. In addition it includes in this the ingredients of 'fair and public hearing; 'competent, independent and impartial tribunal/court established by law. Therefore, the equality before the law/court goes hand in hand with the guarantee of the access to justice and fair trials.

At its 21st Session in 1984, the United Nations Human Rights Committee, which monitors the implementation of the ICCPR, made the General Comment ¹²⁰ regarding the interpretation of Article 14 of the ICCPR.¹²¹

Paragraph 1 of the stated General Comment clarifies that, in order to ensure equality before the courts [and the law], issues relating to equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary must be addressed, established by law and guaranteed in practice.

Furthermore, according to paragraph 8 of the said General Comment, the right to fair hearing at large extent also comprises the right to legal representation and access to qualified lawyers, who will represent their clients in accordance with their established professional standards.

Paragraph ten, sub-paragraph 3 (c) of the general comments emphasizes on the point that, the accused should be tried without undue delay.¹²² Therefore, in order to ensure effective access to justice and fair trials as important ingredients of the right to equality before the law and courts, the following minimum elements must be addressed and ensured:

¹²⁰ 'General Comments' are principles same as precedents in normal courts which aid the members of the Treaty Monitoring Bodies (the Committees) to interpret properly the provisions of the treaties as they consider states' reports or determining the hearing lodged to the committees. The General Comments are useful for wider interpretation of the provisions. They are persuasive in nature in the national courts.

¹²¹ The ICCPR Art. 14 Human Rights Committee, General Comment 13, Article 14 (Twenty-first Session, 1984), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994).

¹²² According to the same sub-paragraph 8 (3) (c) of the said General Comment, this guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

- a) Availability of independent and impartial tribunals/ courts;
- b) Availability of competent and accessible tribunals/ courts – with sufficient resources such as numbers of Judges/Magistrates, Court rooms, stationeries, facilities – including computers, internet access, recorders, transmitters, and others;
- c) Availability of good laws, which are understood by majority of the people.
- d) Availability of sufficient and qualified lawyers to represent those who cannot defend themselves in courts and tribunals;
- e) Timely and fair trials to all, regardless of socio-economic and political status of parties concerned.

2.3.1 Independence and Impartiality of Judiciary

The principle of an independent judiciary has its origin in the theory of separation of powers which was discussed at length in chapter one of this report. The independence of judiciary means that both the Judiciary as an institution and also the individual Judges and Magistrates deciding particular cases, must be able to exercise their professional responsibilities and statutory duties without being influenced either by the Executive, the Legislature or by any other authorities.

The independence of judiciary is prerequisite for impartiality of justice and public confidence in the judiciary. Note that, lack of public confidence in the judiciary leads to anarchy, as people will not attach any importance to adhere to the due legal process, resulting to incidences of mob violence, extra-judicial killings and generally all kinds of citizenry disorder, as discussed in chapter three of this report.¹²³

At the international level, the independence of judiciary is governed by the Basic Principles on the Independence of the Judiciary (BPIJ) of 1985.¹²⁴ On the concept of ‘impartiality,’ provisions of the BPIJ states/implies that, the judges must not harbour pre-conceptions about the matter brought before them, and that they must not act in ways that promote the interests of one of the parties.

¹²³ See: UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, page 115.

¹²⁴ Adopted in 1985 during the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Principles were endorsed by the UNGA (United Nations General Assembly) in the same year. See: UNGA Res. 40/32 of 29th November, 1985 and UNGA Res. 40/146 of 13th December, 1985. Note that these principles are mere declarations but express accepted views of states members of the UN. They are important guidelines in the assessment of the independence of judiciary especially in the work of the Treaty Monitoring Bodies of UN or regional treaty bodies including those of Africa. They are also important for Tanzania’s law makers, legal practitioners and other people to understand the scope in which the independence of judiciary can be effectively guaranteed.

¹²⁵ As for ‘independence of judiciary,’ the BPIJ requires states parties to ensure that the judiciary is independent of the other branches of government. ¹²⁶ In addition, the Bangalore Principles also apply as guidance to judges in dispensation of justice.

In Tanzania the independence of judiciary is guaranteed in the provisions of *the Constitution of the United Republic of Tanzania of 1977*. Article 107B of the Constitution states that:

[i] n exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land.

In recent years, there have been no incidences of breach of principles of independence and impartiality of the Judiciary in Tanzania. However, there are some eminent threats to the independence of judiciary in Tanzania, including:

a) The supervision of the Land Tribunals by the Ministry of Lands, Housing and Human Settlement Development instead of the Judiciary. Note that, the *Land Act* ¹²⁷ and the *Village Land Act* ¹²⁸ established the Land Tribunals which have their own hierarchy from village level to the High Court level. ¹²⁹ The Adjudicators of the Land Tribunals called chairpersons are appointed and paid by the Ministry of Land. Likewise, the village land councils and ward tribunals are accountable to local governments. This, according to LHRC observation, would compromise the independence of the Judiciary, especially when one of the parties to the case is the ministry for lands or that charged with local government affairs.

¹²⁵ Article 14(1) of the BPIJ, 1985.

¹²⁶ Article 1 of the BPIJ, 1985 states that, “[t]he independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.” Article 7 of the same instrument, states that, “[i]t is the duty of each member state to provide adequate resources to enable the judiciary to properly perform its functions.”

¹²⁷ Cap. 113 of the R.E. 2002 of the Laws of Tanzania.

¹²⁸ Cap. 114 of the R.E. 2002 of the Laws of Tanzania.

¹²⁹ There is Village Land Council, Ward Land Tribunal, District Land and Housing Tribunal and the High Court Land Division. Then after that stage, the appeals go to the Court of Appeal of Tanzania. Other non-land issues are adjudicated from ward level to the Court of Appeal of Tanzania by the Ward Tribunal, Primary Court, District Court, Court of Resident Magistrates, High Court (Commercial and General Divisions) and then to the Court of Appeal of Tanzania. As it is explained in chapter one, Tanzania Zanzibar has its own judicial hierarchy but shares the same Court of Appeal of Tanzania because it is one of the union matters.

Inadequate remuneration. A judicial officer who is paid low salaries/allowances cannot work properly and he or she is vulnerable to corruption and malpractices.¹³⁰ The salaries of Magistrates are still low compared to the salaries of the chairpersons of the Land Tribunals. For example, while the Resident Magistrates earn about \$ 600 per month, their counterpart, the District Land and Housing Tribunal chairpersons earn about \$1500 per month.

b) Some of the laws of Tanzania force the Judiciary to impose sentences to certain extent. LHRC observes that, while the minimum sentences can serve as a useful guideline for the judiciary and can ensure consistency in decisions, they are also problematic when they provide for significant periods of imprisonment or death.¹³¹

c) Threats of their lives by states or individuals are also important elements to take into consideration.¹³² During the year 2009, it was reported that, Judge Mmila of High Court Arusha Branch had his house broken into by thieves in his house who managed to steal a laptop and other items.

d) Legislating against court decision. For instance, the case of independent candidate was decided by courts since 1993 but to date there is no clear position on the matter.

2.3.2 Judicial infrastructure – Human Resources and Facilities

Article 7 of the Basic Principles on the Independence of the Judiciary (BPIJ) of 1985, states that, it is the duty of each member state to provide adequate resources to enable the Judiciary to properly perform its functions. Without adequate funds, the Judiciary will be not only unable to perform its functions efficiently, but also may become vulnerable to undue outside pressure and corruption.

The judiciary still faces a critical shortage of court buildings despite the good work by the Legal Sector Reform Programme of Tanzania (LSRP) of renovating existing structures. The latest available information shows that, there are 1105 Primary Courts (while Tanzania has more than 11,000 villages), 88 District Courts (while Tanzania has more than 126 districts), 22 Resident Magistrate Courts, 13 High Courts, one Court of

¹³⁰ See: UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, *pages 116 and 117*.

¹³¹ In these instances, it is difficult to achieve justice, as the judiciary is unable to exercise its discretion to ensure that the sentence is proportionate to the offence and that the sentence takes into account the offender's circumstances. [See: LHRC (2008) Tanzania Human Rights Report of 2008, pages 28-29 for more information on this point].

¹³² See: UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, *pages 116 and 117*.

Appeal and one juvenile court.¹³³ That means, people can not easily access courts for dispute settlement. .

The most obvious reason to the persistence of this challenge is inadequacy of funds to construct new judicial structures. The LHRC views that it's important to involve the judicial officials in the preparation of the national budget to ensure they are allocated with sufficient funds. Independence of judiciary will be enhanced once human resources, working conditions and physical infrastructure are improved to enable Courts dispense justice timely.

2.3.3 Timely and Fair Trial: Log of Cases

In relation to the challenge mentioned above, another critical challenge is inadequate number of skilled judicial officials, facilities and prosecutors. In this regard, cases are inevitably piling up in courts await determination, leading to the delay of justice.

During the Prisons visit of June and July 2009, which was organized by the Tanganyika Law Society and coordinated by the LSRP, the team met several inmates in the prisons who awaited determination of their cases for over eight years. In Arusha Prison [on 8/7/2009] for instance, one of the female inmates stated:

Nakumbuka nilikamatwa mwaka 2000 asubuhi nikiwa natayarisha uji wa kijana wangu. Mume wangu alikuwa ni mgonjwa ameparalaizi kalala ndani. Tokea asubuhi ile mpaka leo (Julai 2009), sijawaona hao ndugu zangu na kesi imesimama kwa sababu hakuna cheti cha kifo cha mtu ninayedaiwa kumuua. Nilikamatwa kwa sababu walikuta maiti njiani karibu na nyumba yangu. Kila mara Mahakamani ni nenda na rudi miaka sasa imepita. [I recall that I was arrested in the morning in 2000, as I was preparing porridge for my child. My husband was paralyzed and was bedridden inside. Ever since that morning to date (July 2009), I have never seen my relatives and the case has been stalled because there is no death certificate of the deceased they claim I murdered. I was arrested because they found the corpse nearby my homestead. They have been taking me to and from the court for years now].

This is just one of the several inmates in Tanzanian prisons. Generally, the current situation indicates that investigations into murder cases take too long because there is no limit set by law for that.¹³⁴ This gap needs to be bridged as soon as possible.

On the other hand, some cases involving influential individuals are heard and determined timely by our courts. For instance, that of former Dar es Salaam Crimes Officer Abdallah Zombe, despite being murder case, it was adjudicated with maximum expedition.

¹³³ LHRC (2008) Tanzania Human Rights Report of 2008. The ongoing improvement of court structures does not involve much construction of more court rooms. However, the efforts done by the LSRP of Tanzania to renovate the court buildings are highly commendable. It is suggested that, this should go hand in hand with the construction of new court rooms especially in upcountry.

Furthermore, in connection to this, because of inadequacy of Judges for the High Court to entertain murder cases, LHRC suggests that the Judiciary can opt to use the services of retired Judges/magistrate who can work under contracts and the use of extended jurisdiction of the well experienced magistrates at the District and Resident Magistrates court levels for the purpose of hastening the disposition of criminal cases. For other minor criminal cases, the suggestion is that, the suspect should be arraigned after fully completion of investigation and not the other way round.

To mitigate the problem, the government stated during the year 2009 that it had appointed several judicial officials as part of its mission to enhance the performance of the Judiciary. The government statement showed that, in 2008/9 it appointed 15 new Judges (to make the total number of Judges for the High Court 60 and 16 Justices for the Court of Appeal of Tanzania); 95 Resident and District Magistrates; and 128 Primary Court Magistrates were employed.¹³⁵

The Primary Courts which serve majority of the people in Tanzania are supposed to have 1,500 Magistrates countrywide, but there were only 713 Magistrates (only 47.54 percent), meaning that the Judiciary was facing a deficit of 787 Magistrates (52.46 percent) as of November 2009.¹³⁶

The Court of Appeal managed to adjudicate a total of 1,189 cases out of 3,043 pending; the High Court attended 4,683 cases out of 14,152; District Courts and Resident Magistrates Courts adjudicated a total of 17,595 cases out of 30,615, the Commercial Court had a total of 117 cases pending, out of which 90 were resolved and the Land Court finalized 364 cases relating to land out of 755 which were pending.¹³⁷

Obviously, Judges and Magistrates carry heavy case logs on their shoulders. Apart from the Resident and District Courts, other courts on the hierarch have adjudicated less than 50 percent of pending cases. This means, the trend of delay of justice is above 50 percent.

As stated above, the main factor for these problems is inadequacy of funds to employ more judicial officials and increasing essential facilities, such as electrified case recording, court buildings, stationeries, and others which the LHRC suggests immediate interventions to redress the situation. Unless the Judiciary is improved, majority of the people will continue to face the injustice of delayed cases.

¹³⁴ The '60 Day' rule under Section 225 (4) of the Criminal Procedure Act, Cap. 20 of the R.E. 2002 of the Laws of Tanzania, is not applicable to capital offences.

¹³⁵ The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, page 30 of the Swahili version of the Speech.

¹³⁶ Adam Ihucha 'CJ: Give Judiciary Space to do its work' Guardian (Tanzania) November 23, 2009. NOTE 'CJ' means Chief Justice of Tanzania.

¹³⁷ The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, page 30 of the Swahili version of the Speech.

2.3.4 The Right to Legal Representation

Another challenge on access to justice is legal representation of the people who cannot stand on their own to defend or prosecute their cases. The compulsory paid-up (by the government) legal representation in Tanzania is for suspects of criminal offences only, especially those charged with murder and treason. The rest of the groups who need legal representation rely on the compassion, wishes and abilities of the Legal Aid providers belonging to the Civil Society in Tanzania, which are not subsidized by the government anyway.¹³⁸



Right to Legal Representation: The clients at LHRC Kinondoni Legal Aid Clinic in queue waiting to be allocated to lawyers. This shows that there are very few clinics in Tanzania.

On 15th July, 2009 one female inmate (26 years), detained at the Segerea Remand Prison of Dar es Salaam, stated:

Watu wanakaa muda mrefu sana bila msaada wa Kisheria japo kesi ni ndogo ndogo sana. Kesi zinachelewa sana kusikilizwa. Nakala za Hukumu pia zinachelewa sana. Hivyo kukata rufaa pia ni kwa kuchelewa sana. [People (inmates) stay for a very long time without legal aid despite the fact that they are accused of petty crimes. Hearings of cases also are delayed so much. Copies of judgements are delayed as well. As a result, appeals also delay].

Representing the people in cases is a heavy burden on the shoulders of the CSOs because it requires lots of funding for running legal aid centres taking into account that the demand for legal aid is steadily increasing.¹³⁹ The expenses include hiring of qualified lawyers and supporting staff; purchasing of stationeries; fuel expenses to and from

¹³⁸ Section 3 of the Legal Aid (Criminal Proceeding) Act, Cap. 21 of the R.E. 2002 of the Laws of Tanzania, states that "[W]here in any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be." Despite the fact that, this section of the law does not restrict provision of legal aid to other criminal offences, in practice however, the suspects of capital offences (murder and treason) alone have been accorded with pro bono legal aid by the government.

¹³⁹ For instance, LHRC alone attended total of 10,257 clients in 2009.

the court and tribunals; renting of buildings; and paying for electricity, water, telephone and other related services. Fundraising from donors for purposes of legal aid is also extremely difficult.

Most of donors are more willing to support advocacy work than service provision such as legal aid. Meanwhile, more than 80 percent of Tanzanians are poor and cannot afford to hire expensive advocates to represent them in their cases. It should be noted that in 2009 there were about 1,200 enrolled Advocates in Tanzania to serve the population of over 40 million people. That means, one Tanzanian Advocate serves an average of 34,000 people (1:34,000). Kenya has 11,700 practicing Advocates who are serving the population of 36 million people¹⁴⁰ and Uganda has 7,000 practicing Advocates who serve 31 million people¹⁴¹. However, it is expected that, with the coming of the Law School of Tanzania, more qualified Advocates will be enrolled.

Owing to those challenges, CSOs which are legal aid providers consider the proper use of Paralegals¹⁴² in Tanzania could help mitigate the problem. Experience has already proved that, the paralegal scheme is helpful especially in the rural areas. It is unfortunate that, despite the good advice advanced by CSOs to formally recognize these people, the government was yet to enact the law which can recognize paralegals in the country. The CSOs envisage paralegals who are regulated by the law.

The paralegals will also mitigate the critical problem of shortage of lawyers in Tanzania especially in rural areas. It should be noted that, despite the fact that Tanzania is a big country in terms of population and geographical area, it has fewer lawyers compared to Kenya and Uganda.¹⁴³ The system of having paralegals has so far provided positive results in other jurisdictions like Namibia, South Africa, Zimbabwe and Malawi.

Some of the important issues to consider in the proposed Paralegal law are, the definition of the paralegal, qualifications, mandate/scope of the work – extent of representation, centralized coordination, ethics and code of conduct, uniform training and minimum qualification as well as independence of their works.

2.3.5 Corruption and Other Malpractices in the Judiciary

As stated in chapter nine of this report, corruption practice is one of the factors undermining the public confidence in the delivery of public services. Moreover, when this practice involves the judicial works, the possibility of reaching unfair and unjust

¹⁴⁰ Kenya Demographic profile Report 2009

¹⁴¹ Uganda demographic profile Report 2009

¹⁴² 'Paralegals' or 'Paraprofessionals' are lay people who have been trained on elementary knowledge of some of the laws and procedures in order to attend minor legal issues at the grassroots level. LHRC and other legal aid providers have been using these people who work on voluntary basis. In some places, LHRC's paralegals are doing commendable job and have already formulated themselves into Community Based Organizations (CBOs).

¹⁴³ Reuben Kagaru; Paralegals need to be recognized: Majira, august 26, 2009

decisions becomes quite obvious. Corruption in the judiciary also prevents access to justice, as the judicial system does not operate to protect individual's rights, as these rights are set out in the laws.¹⁴⁴

Examples of allegations of corruption in the judicial system include court clerks who take bribes to open cases and to hide or misdirect files; and, magistrates or judges who occasionally accept bribes to determine guilty or innocence, or to give a certain sentence or unfair judgement in civil dispute.

For instance, a 33-year-old inmate in Arusha prison, who is already convicted, but want to appeal, gave the following reasons for the delay of appeals and other cases, which according to him as *Nyapara* (prefect) of other inmates, are largely perpetuated by corruption and other malpractices in the judiciary:

a) *Kupata nakala ya hukumu ili uende Mahakama Kuu ni kazi sana. Inachukua hata miaka miwili.* [It is very difficult to get a copy of judgment in order to appeal to the High Court. It may even take two years].

b) *Rufaa zetu hapa gerezani zinaandikwa na Nyapara ama mtu mwenye kauluzi kidogo. Naye anadai kiasi cha shilingi 10,000 hadi 15,000 toka kwa muhitaji.* [Our Appeals here in the prisons are prepared by the Prefect or any other person who is a little bit knowledgeable. They demand between Tshs. 10,000 and 15,000 from the appellant].

c) *Hatuna vitabu vya kuelekeza namna ya kuandika rufaa hivyo tunachelewa ama kukosea sana, ambayo mahakama hutupilia mbali. Tunahitaji pia kijitabu cha mwongozo wa mashauri ya Kisheria.* [There are books to guide us on how to write appeals, that is why we tend to delay or make lots of mistakes; as a result courts dismiss our appeals. We need a manual of guidelines on legal issues].

d) *Makarani wa Mahakama Kuu ya Arusha wanapenda sana rushwa. Hawawezi kukupa Kitabu cha Rufaa labda ndugu yako atoe kiasi cha laki tano (500,000) au zaidi. Usipofanya hivyo, wanapanga ovyo kile kitabu na unakuta Mahakama ya Rufaa inatupilia mbali rufaa bila hata kuzingatia kuwa ni kesi ya mtu aliyeko gerezani na siyo mwanasheria.* [The Court Clerks in the High Court of Arusha like taking bribes. They cannot give you they cannot avail records of appeal unless you pay them a bribe of Tshs. 500,000 or even more. If you don't do that, they disarrange the records, and the Court of Appeal dismisses appeals without considering the fact that appellants are in prison and are not lawyers].

¹⁴⁴ Response to LHRC opinion survey by interviewee in various places (Tanzania January to November 2009).

Corruption in the Judiciary has for a long time been a public outcry. In 1996, Judge Warioba's Report on Corruption named the Judiciary as one of the institutions where corruption prevalence was high. In 2009, findings maintained the same assertion. For instance, *The Transparency International Report of 2009* positioned the Tanzanian Judiciary at the 4th position on the list of the most corrupt public institutions in East Africa.

The LHRC urges the Chief Justice of Tanzania to consider coming up with a judicial policy for administration of justice in the Country. Courts have become too technical for common citizens to access justice through Courts.. The Judicial administration should also do a serious investigation on widely known corruption scandals and take action against those who are involved in these shameful acts. LHRC recommends for the Judiciary to put up a mechanism such as complaint box in each Court premise for people to forward their grievances to the Judiciary leadership.

2.4 Freedom of Opinion and Expression

Freedom of expression is the basic element of the 'public order',¹⁴⁵ of a democratic society; it presupposes both the widest possible circulations of news, ideas and opinions and the widest possible access to information by society as whole. In the case of *Ivcher Bronstein vs. Peru*,¹⁴⁶ which was adjudicated by the Inter-American Court of Human Rights, the court made a good explanation of the concept of public order or national security which is normally used in laws to restrict the freedom of expression and opinion. Part of the judgment in that case read:

The concept of public order [or national security] in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions, as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.

¹⁴⁵ It is stated by the scholars that, the hallmark of the concept of public order in a democratic society is free debate, that is to say a debate in which dissenting opinions can be fully heard and views can therefore be disseminated although they may shock, offend or disturb. A Society that is not well informed is not truly free [See: UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, pages 570 and 571].

¹⁴⁶ This is 2001 case. Its Judgment was delivered on 6th February, 2001, Series C, No. 74, para. 151 copied from UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, page 570. The decisions of the Inter-America Court of Human Rights are not binding in Tanzania or Africa. However, can be used by anyone or institution to clarify certain points. They are of persuasive in nature.

The Freedom of Opinion and Expression is guaranteed by several international human rights instruments mentioned above. Moreover, Article 18 of *the Constitution of the United Republic of Tanzania of 1977*, which is same as *Article 19 of the International Covenant on Civil and Political Rights of 1966* and *Article 19 of the African Charter on Human and Peoples Rights of 1981*, provide that, every person has, a freedom of opinion and expression of his ideas.¹⁴⁷

Despite this wide freedom of expression which is guaranteed by the supreme law of the country, there are enacted laws and regulations in Tanzania which in one way or the other tend to or endanger the enjoyment of the right to opinion and expression.

However, as it was held in the case of *Media Rights Agenda and Others vs, Nigeria*,¹⁴⁸ this should not mean that national laws can set aside the right to express and disseminate one's opinions. In that case, it was stated further that, international human rights standards must always prevail over contradictory national laws. That is why the LHRC and other media stakeholders find it necessary to amend certain provisions of the laws of Tanzania, in order to abide by what is stated above.

2.4.1 Right to Information

A survey that was conducted by IDASA/ODAC in collaboration with MISA-TAN in 2004 indicated that accessing information in Tanzania by a normal citizen was difficult. It is easy for a few elites living in urban cities to access information because of the infrastructure available.

Apart from the challenge of unavailability of infrastructure, there are several laws in Tanzania which contain harmful provisions to the detriment of the right to freedom of information and press. The stated laws include:¹⁴⁹

- a) The *Newspapers Act*¹⁵⁰ which allows the government to order a newspaper to cease publication if it is against public interest or in the interests of peace and good order to do so.¹⁵¹ This law also empowers the Minister charged with information affairs to prohibit publication of a newspaper when

¹⁴⁷ Including the right to seek, receive and, or disseminate information regardless of national boundaries; freedom to communicate and protection from interference from his communication; right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.

¹⁴⁸ ACHPR, Communications Nos. 105/93, 128/94 and 152/96. The Decision was adopted on 31st of October, 1998 by the African Commission of Human Rights.

¹⁴⁹ Note that, some of the arguments on this part are generously copied from the extensive work done by the MISA-TAN and MCT. Others are found in the LHRC's previous Tanzania Human Rights Reports of 2002 to 2008.

¹⁵⁰ Cap. 229 of the R. E 2002 of the Laws of Tanzania.

¹⁵¹ Section 5 of the Newspapers Act. This law also criminalizes certain conducts that would otherwise be treated as civil wrongs (Torts). Defamation, for example, has been criminalized in Tanzania. Such wrong that deals with the attack to one's reputation is criminalized. Courts have used the provisions of the Act to award exorbitant damages to plaintiffs in defamation cases

he is of opinion that it is in the *public interest or in the interest of peace and good order*¹⁵² to do so. The Law empowers the President, in his absolute discretion, to restrict importation of publication if he is of opinion that the importation of any publication would be contrary to the public interest.¹⁵³

b) The *National Security Act*¹⁵⁴ allows the government to control the dissemination of information that goes to the public for the interest of national security. However, the term national security is not defined. Therefore, because of this situation, the right to information and expression can just be arbitrarily denied or granted.

c) The *Broadcasting Services Act*¹⁵⁵ allows the government to regulate the electronic media. Towards the end of 2008, one investigative newspaper called *MwanaHALISI* was suspended from operating for three months (up to January 2009) by the government on allegation of seditious stories against the government. There were also other newspapers that were suspended by the government in 2009 such as *Kulikoni*, *Taifa Letu* and *Sema Usikike*.

d) The *Public Leadership Code of Ethics Act*, Cap. 398 and its regulations prohibit publication of information regarding assets, interests and/or liabilities of public leaders. Regulations 6 (2) and 7 (2) (c) of the *Public Leadership Code of Ethics (Declaration of Interest, Assets and Liabilities) Regulations of 1996*, made under section 31 (1) of the parent Act, prohibit publication of information regarding assets, interests and liabilities of the public leaders.

The long awaited finalization of the proposed Right to Information Bill, 2008 and the Media Services Bill, 2008 did not bring any results. The tug-of-war regarding the contents of the proposed media laws dragged the enactment process and left it stalled by the end of December 2009.

One of the issues which dissatisfied the media stakeholders is the Bill's proposal to restrict access to information to the extent of documents only when the source is any of the government agencies. Besides, the Bills proposed that the law should state that all documents containing cabinet deliberations, proposals and papers to be presented to cabinet for discussion, policy formulation processes, and many other documents are exempted from access.

Furthermore, many stakeholders feel that consider these limitations as curtailment to the principle of maximum disclosure of information and therefore insignificant as it is. More involvement of stakeholders in the process will make the forthcoming law better

regardless of the fact that such people were public officials, in which case the public interest to know would be invoked. Media is, therefore, obliged to conduct self censorship in order to avoid the commission of such offences. In so doing, the public could be denied their constitutional right to access information because of increased restrictions. Sections 26 to 37

¹⁵² See above Paragraph 2.4 of this Chapter - explanations about these terms.

¹⁵³ Sections 26 to 37 of the law.

¹⁵⁴ Cap 47 of the R. E 2002 of the Laws of Tanzania.

¹⁵⁵ Cap. 306 of the R. E 2002 of the Laws of Tanzania.

than the existing legislations.

LHRC recommends that the Right to Information law is urgently needed which will enhance transparency and accountability by public leaders. The people of Tanzania are denied some basic information which ought to be public and most of the time they are fail to make informed decisions.

2.4.2 Freedom of the Media

The freedom of media is guaranteed by several international and national human rights instruments. As mentioned earlier, Article 25 of the *International Covenant on Civil and Political Rights (ICCPR)* of 1966 is connected with the right to access to information discussed above. It is also wise to note that the media has the duty to bridge the information from the source to the public.

The General Comment 25(57) of the United Nations Committee of Human Rights, while interpreting the provision of Article 25 of ICCPR stated that in order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas should comment on public issues without censorship or restraint. Citizens should have wide access to information and opportunity to disseminate the same through media without interference.¹⁵⁶



Journalists: Musa Mkama and Peter Mtitu Journalists who were attacked in Njombe District by a group of people who were presumed to have sent by leaders of Lupembe Tea Assosiation

The *Information and Broadcasting Policy of Tanzania of 2003* brought a new turn in media revolution as it created a conducive environment for them to enjoy their right to information and expression.¹⁵⁷ Moreover, the number of tabloid newspapers, radio, television stations and journalists increased. For instance, from only five (5) state-owned newspapers and one radio station in 1992,¹⁵⁸ the country boosted 957 newspapers and journals in December 2008.¹⁵⁹ And in 2009, there was more than 50 private owned radio and television stations in Tanzania Mainland, alone broadcasting mainly in Kiswahili language.

¹⁵⁶ See: Communication No. 633/1995, R Gauthier vs. Canada (views adopted on 7th April, 1999), in UN doc, GAOR, A/54/40 (Vol. II).

¹⁵⁷ MISA (2003) *Is This Democracy? Report on the State of Media Freedom in Southern Africa*. Page 90. Note MISA is an acronym for Media Institute of Southern Africa.

¹⁵⁸ MISA (2003) *So This is Democracy? Report on the State of Media Freedom in Southern Africa*. Page 89.

¹⁵⁹ This is according to the information issued by the Ministry of Information, Culture and Sports of Tanzania Mainland. See: Happy Wamanyamba 'Magazeti, majarida 94 yasajiliwa mwaka jana' Mtanzania, Janary 20, 2009.

Lack of seriousness on their professional conducts is one of the major challenges facing the Tanzanian media today. They have curved the profession in lieu of those who fight for political powers. It is easy to realize which ideology the media supports and reasons for doing so. The media of today acts as conduits for blackmailing, crediting and discrediting wrong ways. It confuses the public who trust it as the ‘fourth pillar’ of the State. There was very few journalists who worked on investigative news by 2009. Most of journalists were mere reporters. To them, what matters the most was selling the news and not educating, imparting knowledge or advocating for a certain development agenda.¹⁶⁰ This situation is not only a breach of professional ethics, but also a violation of public rights to useful information.

The LHRC supports¹⁶¹ the analysis of Mr. Lawrence Kilimwiko, a Media Consultant, on state of media houses and welfare of journalists, as relevant challenges currently facing the media practitioners of Tanzania as listed below:

- a) That, journalists are fighting for administrative positions while at the same time battling for survival through blackmail and slander.
- b) That, media owners take advantage of the situation to exploit, subjugate and use (especially young) journalists in their businesses and political battles.
- c) That, freelance reporters are misused and increasingly regarded as cheap and casual labourers.¹⁶²
- d) That, most of the media houses infringe the rights of their workers because they do not give them employment contracts, and pay very low salaries, allowances, while at the same time delaying the payments. This is contrary to the labour laws and code of ethics.¹⁶³
- e) That, Journalists do not have trade unions¹⁶⁴ to work on their rights despite the fact they have been vocal to speak for others’ rights. In July 2009, Mr.

¹⁶⁰ Mr. Antony Ngaiza, the then Executive Secretary of MCT is of the views that media should play an important role in creating a context for social and political action, so that the public is best served when the news is of high quality. [See: Antony Ngaiza ‘Experience of Media Council of Tanzania (MCT) in Promoting Media Ethics and Self-Regulation of the Media’, page 1 - available at www.mct.or.tz viewed on December 2009].

¹⁶¹ His Article is in: MISA (2003) So This is Democracy? Report on the State of Media Freedom in Southern Africa at page 90.

¹⁶² Professor Robert White of the Saint Augustine University of Tanzania (SAUT) said in September 2009 that, the media houses treated young journalists badly. They are treated as correspondents for a long time with negligible remunerations; he said adding that such journalists are exposed to temptations of taking bribes. [See: MCT ‘Don’t Exploit Young Scribes, Media House Told’ in Newsletter of the Media Council of Tanzania – MEDIA WATCH, ISSN 0856-7662, No. 116, November 2009, pages 1 and 4.

¹⁶³ Clauses 2.2 and 2.3 of the Code of Conduct for Media *Professionals of the Media Council of Tanzania*, states that the manager/ editor shall ensure that they motivate personnel and work out incentives for job satisfaction and remunerate fairly all work done by employees.

¹⁶⁴ I As explained in chapter three of this report, formation and joining of trade unions are fundamental constitutional rights as well as very basic rights of workers. Trade unions facilitate workers to have common stand/ collective bargaining, strong voice, common agenda, and other entitlements such as ability to form themselves in SACOSS. The Employment and Labor

Kajubi Mukajanga (the current MCT executive secretary) went to Mwanza where he¹⁶⁴ said:

*Hakuna njia ya mkato ya kutetea maslahi ya waandishi wa habari, isipokuwa waandishi wenyewe kuunda chama chao cha kuwapigania na wajiunge kwa wingi ... tatizo kubwa linalowakabiri waandishi wa habari ni wenyewe kutokuwa na umoja. Hakuna sehemu yeyote duniani ambako haki ya mfanyakazi inapatikana pasipo wafanyakazi kusimama kidete kudai haki zao kupitia vyama vyao vya wafanyakazi...inashangaza kuona waandishi wa habari wanaandika kuhusu walimu kutolipwa mishahara yao na mgomo mbali mbali, lakini wao wanadhulumiwa stahili zao.*¹⁶⁴ [There is no easy way towards improving journalists' welfare. Journalists ought to form trade unions to enable them fight for their rights. Journalists lack unity, something which is impeding efforts to improve their welfare. There isn't a single place in the world where employees were able to acquire their rights without trade unions. It's sad to see media persons report on non-payment of salaries, allowances and plans for teachers' strikes, but they fail to do when their essential rights are infringed].

It should be noted that freedom of the press goes hand in hand with fulfillment of specific duties because it is not absolute, but is guided by professional ethics, human rights norms and personal attributes of individual journalists.

The LHRC urges media practitioners to fight for the removal of bad laws which inhibit access to information and to ensure that they abide by the code of conducts, respect of dignity, avoid corrupt practices, and form trade unions. It is important to note that failure to remove these huddles would mean failure to achieve the meaningful right to freedom of the press.

Otherwise, during the year, there were few reported (in public) incidents of intimidation to journalists. For instance, it was reported that, a mob of unknown people invaded journalists who were investigating a problem at the Lupembe Tea Cooperative Society at Njombe in (Mvyulu) Iringa Region.¹⁶⁷ Reasons for their invasion were not immediately known, but they were relating to intimidation.

Relations Act, 2004 of Tanzania allows formation of Trade Unions. In, other countries such as Uganda and Zimbabwe journalists have formed trade unions. It is important for Journalists to organize themselves in trade unions in additions to zonal and regional press clubs as they are not trade unions anyway.

¹⁶⁵ Mr. Kajubi Mukajanga is the Executive Secretary of the Media Council of Tanzania (MCT).

¹⁶⁶ His statement is extracted from TPC 'Wanahabari Udeni Chama cha Wafanyakazi – Mukajanga' TUWASILIANE Newsletter of the Union of Tanzania Press Club (TPC), Toleo la 05, ISSN 1821-6994, July 2009. The article was written by Paulina David, Mwanza. See: Pages 1 and 5.

Chapter Three

Political Rights

3.0 Introduction

POLITICAL rights give opportunity to citizens to participate in the governance of the country through associations and public debates/assemblies in which ideas are discussed, the electoral process, giving and receiving information through various outlets, including media, and related matters.

This chapter examines the state of political rights in Tanzania in the context of the right to freedom of association, the right to freedom of assembly and the right to participate in public affairs. It also assesses the progress reached so far by Tanzania to complying with the international standards set by the *International Covenant on Civil and Political Rights of 1966 (ICCPR)* and other instruments.

3.1 Freedom of Association

The freedom of association is guaranteed by a number of international human rights instruments, including the *Universal Declaration of Human Rights of 1948*;¹⁶⁸ *International Convention on Civil and Political Rights of 1966*;¹⁶⁹ *African Charter on Human and Peoples' Rights of 1981*¹⁷⁰ and the *Freedom of Association and Protection of the Right to Organize Convention of 1948 (ILO C87)*.¹⁷¹ *The Constitution of the United Republic of Tanzania of 1977* also provides for the same.¹⁷²

¹⁶⁷ Writer 'Mob assaulted Journalists is for Big tycoons: Leaders of the Cooperative Society' Mwananchi, July 20, 2009.

¹⁶⁸ Article 20(1) and (2) state that everyone has the right to peaceful assembly and association and that; no one shall be compelled to belong to an association.

¹⁶⁹ Article 22 states inter alia that everyone shall have the right to freedom of association with others, including forming and joining trade unions for the protection of his interests. The provision also prohibits unnecessary restrictions unless the same are for the interest of the national security or public safety (Section 22(2)).

¹⁷⁰ Article 10 stipulates to the effect that every individual shall have the right to free association provided that he/she abides by the law.

¹⁷¹ This instrument provides for the rights of employees to form trade unions, federation and the like. For instance, Article 2 of this Convention provides that, workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

¹⁷² Article 20(1) states that, "[E]very person has a freedom, to freely and peacefully assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests."

Various literatures affirm that other freedoms such as the freedom of speech and the right to participate in the governance of the country are almost impossible if the freedom of association and assembly are not guaranteed.¹⁷³ The freedom of association and assembly allow people who share similar interests to come together and form an association that represents their interests and views.¹⁷⁴

Individuals can form themselves groups for different purposes. The common groups of associations in Tanzania are trade unions, non-governmental organizations and political parties. The three are governed by different laws namely, the Employment and labour Relations Act, 2004,¹⁷⁵ the Non-Governmental Act, 2002¹⁷⁶ and the Political Parties Act.¹⁷⁷

In Principle there were few incidences which were directly or indirectly in violation of the freedom of association during the year 2009. For instance, in January 2009, the University of Dar es Salaam (UDSM) announced to have nullified all by-laws that gave the legality and powers to the UDSM Students' Association (DARUSO)¹⁷⁸ to operate. It was stated that, the reoperation of the DARUSO was subject to reconfirmation of the UDSM Council and would be published on the government gazette.¹⁷⁹

3.1.1 Association as Non Governmental Organisations(NGOs)

The Non-Governmental Organizations (NGOs)¹⁸⁰ are registered under different laws in Tanzania. They can register as societies under the Societies Act;¹⁸¹ trustees under the

¹⁷³ It is said that the exercise of freedom of association by workers, students, and others in society has always been at the heart of the struggle for democracy around the world, and it remains at the heart of society once democracy has been achieved. Without freedom of association, other freedoms lose their substance. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests. As one labor leader put it, "Freedom of expression without freedom of association is the right to speak freely in the wilderness." [See: Freedom of Association: Essential Principles available at www.democracyweb.com, viewed on 27th of December, 2009].

¹⁷⁴ LHRC (2008) Tanzania Human Rights Report of 2008, page 37.

¹⁷⁵ Act No.6 of 2004.

¹⁷⁶ Act No. 24 of 2002.

¹⁷⁷ Cap. 258 of the R.E. 2002 of the Laws of Tanzania.

¹⁷⁸ DARUSO, being students' association, was on frontline to defend, protect and promote the rights and interests of the students. It is students' government which is comprised of several leaders. In 2009, the five so called 'ring-leaders' of DARUSO were arrested and arraigned to answer a criminal charge of unlawful assembly. The case was lodged at Kisutu Resident Magistrate Court in Dar es Salaam (R vs. Antony Machibya and 4 Others, Criminal Case No. 20/2009). The case was dismissed by the court on 10th November, 2009 for want of prosecution (prosecution failed to bring witnesses). The students were defended by LHRC through its Advocate, Mr. Fulgence Massawe.

¹⁷⁹ Latifa Karugila: Daruso yafutwa, sheria mpya UdsM zatangazwa; Mwananchi, Jan 15, 2009

¹⁸⁰ An NGO is defined under Section 2 of the Non-Governmental Act, 2002 as "a voluntary grouping of individuals or organization which is autonomous, non-partisan, no profit making, which is organized locally at the grassroots, national or international levels for the purpose of enhancing or promoting economic, environmental, lobbying or advocating on issues of public interest...and includes a Non-Governmental Organization established under the auspices of any religious organization or faith propagating organization, trade union, sports club, political party or

Trustee Incorporation Act;¹⁸² as company limited by guarantee without share capital under the Companies Act;¹⁸³ or as the Non-Governmental Organization Act, 2002.¹⁸⁴

It was estimated that there were more than 3,000 NGOs registered in Tanzania under those different laws in 2009 compared to only 200 in 1990s.¹⁸⁵ The legal and political atmospheres within which the NGOs operate in Tanzania is fairly good that is why they steadily increase. LHRC commends the government for facilitating this situation. However, there are few provisions in the laws, more specifically in the *Non-Governmental Organization Act, 2002* which pose threats to the right to freedom of association of NGOs in Tanzania. For instance:

a) Section 36(1)¹⁸⁶ of the *Non-Governmental Organization Act, 2002* unjustifiably unveils the corporate status of the NGOs by shifting liabilities to individual officials of the NGOs.

b) Section 35 of the *Non-Governmental Organization Act, 2002* creates offences and penalties linked to fundraising contrary to the Act and in violation of the code of conduct. According to the LHRC observation, the criminal penalties against individuals connected to NGOs serve as a threat and deterrent against their operation in Tanzania.¹⁸⁷

c) The law puts a mandatory requirement for every NGO to be registered prior to its operation, without considering the fact that, NGOs have the right to form loose coalition for certain purposes in a particular period of time only. Note that as one of advocacy strategies, NGOs in Tanzania like elsewhere in the world form consortiums or forums or loose coalitions in order to have public uproar of what they find of interest to pursue.

community based organization, but does not include a trade union, a social club or a sports club, a political party, a religious organization or a community based organization”.

¹⁸¹ Cap. 337 of the R.E. 2002 of the Laws of Tanzania.

¹⁸² Cap. 318 of the R.E. 2002 of the Laws of Tanzania.

¹⁸³ Cap. 212 of the R.E. 2002 of the Laws of Tanzania.

¹⁸⁴ Act No. 24 of 2002. This law was enacted to harmonize the registration process of NGOs. It proposes to establish the NGO Council, which shall govern the conduct of all NGOs registered in Tanzania.

¹⁸⁵ John Ulanga ‘Tanzania Directory of Civil Society Organizations 2009/2010’, page i. Mr. John Ulanga is the Executive Director of the Foundation for Civil Society (FCS), the publisher of the said directory.

¹⁸⁶ It reads that, for the purposes of Section 35, where an offence has been committed under this Act by a Non-Governmental Organization, any of the office bearers of such Non-Governmental Organization shall be liable to be proceeded against and punished accordingly, unless any of such office bearer proves to the satisfaction of the Court that he had no knowledge, and could not, by the exercise of reasonable diligence, have had knowledge, of the commission of the offence.

¹⁸⁷ LHRC (2008) Tanzania Human Rights Report of 2008, page 40.

¹⁸⁸ Section 11 (1).

d) Article 35(2) of the Non-Governmental Organization Act, 2002 violates the freedom of association by barring all individuals convicted under the Act from holding office in an NGO for up to five years.

e) The Non-Governmental Organization Act, 2002 provides that an NGOs Coordinating Board¹⁸⁹ may refuse to approve application for registration of an NGO,¹⁹⁰ particularly if its activities do not strive for public interest. However, the definition of “public interest” is vague.¹⁹¹

f) Moreover, the Non-Governmental Organization Act, 2002 provides that the director of the NGO Coordinating Board is appointed directly by the President of the United Republic of Tanzania¹⁹² and contains no other provision relating to the qualification of members neither of the Board nor their election process thus interfering with NGOs activities.

On the other hand, some of the NGOs in Tanzania have been blamed for focusing more on urban centers, while being inaccessible in rural areas; not pursuing people’s needs, but complying to donor’s needs; misuse of donors’ funds and other problems.

A student in Serengeti district, Mara region wrote a very distressing statement in the LHRC questionnaire in August 2009 stating that:

Tuna NGO nyingi sana wilayani kwetu ila zote maneno tu, wanapata hela nyingi kwa kutumia shida zetu ambazo hawazitatu. Polisi wanatusumbua kila siku wao wanatazama tu na kujiita watetezi wa watu. Hao watu wao ni wapi. NGO ni ujanja wa pesa tu. [We have several NGOs in our district, but they are doing nothing substantial. They get a lot of funds through our problems, which they never solve anyway. Police officers mistreat us, but they just sit back while claiming that they are fighting for people’s rights. Who are those people they claim to defend? NGOs are there simply for minting money!].

This is just a single voice, but might represent millions others. The LHRC urges NGOs to adhere to principles of human rights and good governance in order to give NGOs credibility and make their existence important. The common interest of the NGOs, as associations should be focusing on the right and betterment of lives of Tanzanians, not safeguarding personal interests.

¹⁸⁹ Established under Section 6 of the Act.

¹⁹⁰ Section 7 of the Act.

¹⁹¹ According to Article 2 of the Act, “public interest includes all forms of activities aimed at providing for and improving the standard of living or eradication of poverty of a given group of people or the public at large.”

¹⁹² Section 3(1) of the Act.

Other challenges which NGOs as associations encounter, specifically the barrier to reaching rural areas, could be addressed by creating networks from the national level to the grassroots. The idea of CCBRT, LEAT, LHRC, TAWLA, WILDAF, WLAC, NOLA, DOLASED and SHIDEFA+ to initiate a network for providing legal aid to women, children, disabled and people living with HIV/AIDS is commendable. The organizations formed the network in January 2009, as way to unblock barriers to justice for vulnerable members of the communities.

In August 2009, NGOs operating in Loliondo-Ngorongoro district, Arusha, informed the FemAct's fact finding mission which went to the area to inquire on alleged violations of human rights, that the district administration, in particular the District Commissioner, Mr. Elias Wawa Lali, threatened them saying the government would ban all NGOs which "mislead" people. The Loliondo NGOs have been advocating for involvement of the people in decision making with regards to the management of the Loliondo Game Controlled Area as well as sharing of profit accruing from the concession of the villages' land to the investors. Moreover, they have been in the forefront to defend Maasai villagers from being evicted from their traditional land. None of the NGOs were closed as of December 2009.

3.1.2 Association as Political Parties

Political parties in Tanzania are registered and governed by the provisions of various laws of Tanzania, including:

- a) The *Political Parties Act*;¹⁹³
- b) The *National Elections Act*;¹⁹⁴
- c) The *Local Government (Elections) Act*;¹⁹⁵
- d) The *Local Government (District Authorities) Act*;¹⁹⁶ and
- e) The *Local Government (Urban Authorities) Act, 1982*;¹⁹⁷

The association of individuals in political parties has been hindered by some provisions of the *Political Parties Act*, which inter alia provides for the registration requirements and process for groups to form political parties. There are also other important issues on the right to associate as political parties which have not been addressed by the laws. According to the LHRC, the following are main hindrances to political parties:

¹⁹³ Cap. 258 of the R.E 2002 of the Laws of Tanzania. It provides for registration and governing of political parties in Tanzania.

¹⁹⁴ Cap. 343 of the R.E 2002 of the Laws of Tanzania. It provides for procedures of carrying out national elections in Tanzania.

¹⁹⁵ Cap. 292 of the R.E 2002 of the Laws of Tanzania. It provides for procedures of carrying out local government elections.

¹⁹⁶ Cap. 287 of the R.E 2002 of the Laws of Tanzania. It establishes local government machineries and administrative division plus powers at district level.

¹⁹⁷ Cap. 288 of the R.E 2002 of the Laws of Tanzania. It establishes local government machineries and administrative division plus powers at urban level.

a) Difficult registration process which is also too demanding. Section 10(1)(b) of the *Political Parties Act* puts unjustifiable requirement of soliciting support from at least 200 prospective voters from at least 10 regions of Tanzania.¹⁹⁸ This provision is restrictive because soliciting 200 prospective voters from at least 10 regions of Tanzania is very costly especially for groups which involve low-income members. Otherwise, only rich people would enjoy the right to form political parties.

b) The *Political Parties Act* and other laws of Tanzania do not allow crossing over to another political party while retaining a seat as councilor, MP or even the president. The freedom to change by moving from one party to another is an enlargement to the right of freedom to associate because it gives a person the right to retain his or her political position while excising his or her right to choose an association (political party). The LHRC argues that, restricting crossing over to another party amounts to restricting the freedom of association and denial of democracy.

c) The proposed *Election Expenses Bill/Act, 2009* restricts a wide range of donations from the people to the political parties, while at the same time retains the same position that public funds will not be used to fund the elections.

The LHRC argues that restriction of private sources of income of the political parties without according them alternative funding, means restricting them to operate and therefore directly infringe their right to operate as associations. More information on this proposed law (*Election Expenses Bill/Act, 2009*) is in paragraph 9.5.2 of chapter nine of this report.

3.1.3 Association as Trade Unions

The provisions of the C87 ILO's Freedom of Association and Protection of the Right to Organize Convention of 1948 require government machineries and private institutions/companies to refrain from any interference which would restrict this right or impede the lawful exercise thereof of the freedom to associate as trade unions.¹⁹⁹ The *Constitution of the United Republic of Tanzania of 1977* also recognizes and guarantees the right to associate as trade unions.

¹⁹⁸ The said provision states that '[N]o political party shall be qualified to be fully registered unless—it has obtained not less than two hundred members who are qualified to be registered as voters for the purposes of parliamentary elections from each of at least ten Regions of the United Republic of Tanzania out of which at least two Regions are in Tanzania Zanzibar being one Region each from Zanzibar and Pemba.'

¹⁹⁹ Article 2 of the *ILO's Freedom of Association and Protection of the Right to Organize Convention of 1948*. ALSO other ILO's instruments including the *Right to Organize and Collective Bargaining Convention* and the *Freedom of Association and Protection of the Right to Organize Convention* provide that employees are entitled to

The procedure of formation and joining trade unions are detailed in the Employment and Labour Relations Act, 2004. Sections 45 and 46 of this law require associations to register themselves within six (6) months after being formulated, failure of to do that is regarded as an offence. The LHRC argues²⁰⁰ that, the space of time given by the law is restrictive of the right to associate and it is, indeed, blind of the fact that most employees are put on probation for six months after the employment or commencement of the company's business.

Moreover, it is argued that, the requirement of having at least 20 employees in order to be registered as a trade union²⁰¹ does not consider the fact that in some organizations or institutions, the total number of all staffs does not exceed 19.

The LHRC also urges the Trade Unions Congress of Tanzania (TUCTA) to investigate why private security companies restrict their workers from forming and joining trade unions at their working places. The general situation suggests that, there is none or may be very few trade unions with branches in private security companies in the country. Experience shows that, the case is also true in other countries such as Uganda and the DRC.²⁰²

3.2 Freedom of Assembly

The right to freedom of assembly shares same principles with the freedom of association. It is a facilitator of one's right to participate in the governance of the country. The exercise of this right also enables a person to have a platform in which he or she will share concerns to others.²⁰³ Part of Article 20(1) of the *Constitution of the United Republic of Tanzania of 1977* reads that:

[E]very person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly...

join a union of their choice, employees should be protected from anti-union discrimination from their employers and trade unions should operate as independent entities.

²⁰⁰ LHRC (2007) Tanzania Human Rights Report of 2007, page 36.

²⁰¹ Section 46(1)(d) of the Employment and Labor Relations Act, 2004. The said provision provides inter alia that the requirements for registration as a trade union are that, "it has been established at a meeting of at least 20 employees." The big questions are: how about the companies or institutions which have less than 20 employees? Does this mean that they are not entitled to form themselves in trade union? Why this restriction?

²⁰² Read the findings on Private Security Industry in: Sabelo Gumedze (Ed) (2008) Private security Sector in Africa – Country Series. IDRC and UNA. Note that IDRC is an acronym for International Development Research Council of Canada, and UNA is an acronym for United Nations University of Japan. This research was conducted by the Institute for Security Studies in 2008.

²⁰³ Professor Chris Maina Peter says that the right to associate is one of the most important fundamental rights today. It is a right which brings people together in order to pursue common interests and common goals. This right goes hand in hand with the right to organize and assemble freely to discuss and communicate on issues of common interest. Furthermore, Professor Peter is of the view that meeting together and associating is one of the avenues for

This right is not absolute. Sections 74 and 75 of the *Penal Code* put restrictions which sometimes the law enforcement officials use loopholes of the law to arrest and prosecute innocent people. Section 74(1) defines or creates scenarios of the offence of unlawful assembly. It states that:

[W]hen three or more persons assemble with intent to commit an offence or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighborhood reasonably to fear that the persons so assembled will commit a breach of the peace or will, by that assembly needlessly and without any reasonable occasion, provoke other persons to commit a breach of the peace, they are an unlawful assembly [Emphasis Supplied].

Fear is a subjective term and absolutely vague because when people assemble they sing, dance, discuss loudly, shout, and sometimes speak provocative words as part of expression of their grievances, may be because Article 18(a) of *the Constitution of the United Republic of Tanzania of 1977* allows every person to exercise his/her freedom of opinion and expression of ideas. The constitution has not put any barrier.

Police officers have been using the Penal Code arbitrarily especially during election campaigns. However there were few incidences of unlawful assembly during the year 2009. The main one was in connection with the University of Dar es Salaam's students, who between 17 and 20 of January 2009 assembled near by the university premises to protest against the HESLB loans. The HESLB is charged with the statutory responsibilities²⁰⁴ of coordinating granting of loans to eligible students and collection of the same after studies. Five students branded by police as 'ring-leaders' were arrested and were arraigned in court to answer a criminal charge of unlawful assembly. The case was lodged in the Kisutu Resident Magistrate's Court in Dar es Salaam as *R vs. Antony Machibya and 4 Others*, Criminal Case No. 20/2009. The students were defended in Court by the LHRC's Advocate Mr. Fulgence Massawe.

attainment of social progress. Read: Peter, Chris Maina (1997) *Human Rights in Tanzania: Selected Cases and Materials*. Rudiger Koppe verlag: Koln, pages 649 and 650.

²⁰⁴ It is governed by the Students Loans Board Act, Act No. 9 of 2004. More information of this issue is well covered in paragraph 4.4 of chapter four of this report. You may also read LHRC (2006) *Tanzania Human Rights Report of 2006*, page 54 AND *Tanzania Daima* of January 21, 2009. Note that *Tanzania Daima* is a local daily Swahili newspaper of Tanzania.

The charge sheet read that, the suspect convened an unlawful assembly contrary to Sections 74(1) and 75 of the *Penal Code, Cap. 16 of the RE 2002* of the Laws of Tanzania. The particulars of the offence recorded on the charge sheet were:

Antony S/o Machibya, Owawa S/o Juma, Sabiana S/o Pius, Taitus S/o Ndula and Paul S/o Issa are jointly and together charged that, on 19/1/2009 at about 9.45 hours at the University of Dar es Salaam within Kinondoni district, Dar es Salaam region, with intent to commit an offence, did conduct themselves by carrying placards reading “*Laiti Nyerere angefufuka angelia machozi ya damu, kweli Kikwete umesahau umaskini wa Watanzania wako*” and ²⁰⁵“*Hivi kweli Pinda ni mtoto wa mkulima, wazazi wetu tuoneeni huruma tunateseka wanenu, vyyuo vya umma vimeuzwa kwa matajiri*” ²⁰⁶ in a manner that provoke other persons to commit breach of the peace.”

For the police, stating that leaders are not responsible to citizens and education was so expensive that only rich people could afford. That amounted to “*reasonable fear of breach of peace.*” The implication of this situation is to shut down anyone who attempts to challenge the weaknesses of the governance. It is even worse when this is done against university students who are expected to be critical and analytical for the country’s current and future development. Moreover, it is indeed a misuse of discretionary powers given by the law to the law enforcers and administrators. In the democratic society of today, these kinds of laws which give the law enforcers discretionary powers seem to be outdated.

The case was dismissed by the court on 10th November, 2009 after the prosecution failed to bring in witnesses. Towards the end of the year, they were readmitted by the university after missing studies for about a year. The LHRC urges the government and its machineries to consider possibilities of amending the provisions hindering the enjoyment of the freedom to assemble.

Moreover, it the LHRC strongly advises that, the best way to solve problems in higher learning institutions is through consultation and involvement of the students and other stakeholders before initiating any plan or programme affecting the students’ affairs. It should be noted here that participation of beneficiaries in the decision making process is not only a fundamental right, but also key for human rights and good governance.

²⁰⁵ That is “If Nyerere was to resurrect he , would have shed blood and tears., Could it be true that Mr. Kikwete has forgotten that Tanzanians are poor?” NOTE that, Nyerere, whose full name is Mwalimu Julius Nyerere, was the first President of Tanzania. He is the founder and father of the nation. He died in 1999. However, Tanzanians and the world all over still cherish and honor his teachings, doctrines, wisdom and his patriotism. . Mr. Jakaya Kikwete is the the reigning President of Tanzania.

²⁰⁶ That is “Is Mr. Pinda a peasants’s son Let our parents have mercy on us due to our suffering because our public universities have been sold to rich people.. NOTE that, Mr. Pinda, whose name is Mizengo Pinda is the Prime Minister of Tanzania.

3.3 Right to Take Part in Governance

The right to participate in governance is the basic and fundamental right in a democratic society.²⁰⁷ The extent to which a state is democratic can be assessed by examining the degree to which people can participate in public affairs and whether the participation is meaningful.

The participation in public affairs is only meaningful when an individual can exercise the right to participate in public affairs freely and has a genuine choice when electing representatives. Moreover, it is important to ensure equal representation of men and women in all political and non-political positions of governance.²⁰⁸

The right to take part in governance, especially through the constituency representation, was once again marred by several haddocks in 2009. This subpart gives a picture of the situation of the enjoyment of this right.

3.3.1 The Electoral Process: The Situation of the Local Government Elections of 2009

Tanzania has been a multi-party state since 1992. However, as stated in chapter one of this report, the ruling party, CCM, has continued to dominate Tanzania's politics because it holds majority of the seats in the Parliament. Tanzania's Presidents have all been from the CCM ever since 1992 and that the CCM-dominated government is responsible for appointing all government officials as well as the cabinet.²⁰⁹

There three types of elections in Tanzania, namely:

- a) The General Elections: for electing the President of the United Republic of Tanzania, President of Revolutionary Government of Zanzibar, Members of the Parliament of Tanzania Mainland and Zanzibar House of Representatives. They are periodically conducted after every five years.
- b) The Local Government Elections: for electing leaders for village, hamlets, streets, members of the village councils and members of the street councils. They are conducted after every five years (with an arrangement of one year before the general elections).
- c) The By-elections: for re-electing leaders mentioned at (a) and (b) above, once a leader dies or resign or his/her office becomes vacant by any reason.

²⁰⁷ This right is recognized by Article 13 of the African Charter on Human and Peoples' Rights, 1981; Article 25 of the International Covenant on Civil and Political Rights, 1966; and Article 21 of the Universal Declaration of Human Rights, 1948.

²⁰⁸ Articles 2, 3 and 4 of the CEDAW, 1979.

²⁰⁹ LHRC (2009) Tanzania Local Government Elections Monitoring Report of 2009, pages 2 and 3.

Elections in Tanzania are governed by the Constitution of the United Republic of Tanzania of 1977; the principal laws; 210 subsidiary legislations (rules and regulations); government circulars; and guidelines issued by the Minister and Electoral Authorities.²¹¹

The Local Government Elections (LGEs) were conducted on 25 October 2009 all over Tanzanian Mainland. Note that, Zanzibar does not have the local government elections because its structure of governance is different.

a) Registration of Voters for LGEs

The general overview indicated that, the LGEs lacked the impulsion compared to the general elections. Turnouts in these elections were low, mainly due to the lack of public awareness on civic education and negligency by most people because they didn't give them priority. At least 8,778,583 people were registered as voters countrywide for the LGEs, but only 5,213,450 turned out on the polling day to cast their votes.²¹² Therefore, only 59.39 percent of those who registered voted, and the others - 40.61 percent due to various reasons as stated in this report.

Note that, Tanzania is estimated to have more than 16.1 million people who are eligible to vote.²¹³ Therefore, the stated number of 8.7 million registered voters was only 52 percent of all prospective voters. The situation was worse in some places. For instance, at Kibaoni Centre, Hai district, Kilimanjaro region, the target was to register 1,000 voters, but only 78 turned out for registration.²¹⁴ That means, only 7.8 percent of eligible voters were registered.

²¹⁰ The Political Parties Act, Cap. 258; the National Elections Act, Cap. 343; the Local Government (Elections) Act, Cap. 292; the Local Government (District Authorities) Act of 1982, Cap. 287; the Local Government (Urban Authorities) Act of 1982, Cap. 288; the Prevention and Combating of Corruption Act, 2007; and other laws.

²¹¹ The Regulations made under the National Elections Act, 1985; Regulations made under the Local Government (Elections) Act, 1979; Regulations made under the Local Government (District Authorities) Act, 1982; Regulations made under the Local Government (Urban Authorities) Act, 1982 and others.

²¹² *Ofisi ya Waziri Mkuu, Tawala za Mikoa na Serikali za Mitaa, Taarifa Kwa Vyombo vya Habari Kuhusu Uchaguzi wa Serikali za Mitaa Uliofanyika Tarehe 25/10/2009.* The Report of the Prime Minister's Office, Regional Administration and Local Government on Local Government Elections of 25/10/2009. LHRC got the copy. But the report was also published by the DailyNews on 16 January, 2010, page 16. The Report was released by Ms. Celina O. Kombani (MP), Minister of State, Prime Minister's Office – Regional Administration and Local Government Authorities.

²¹³ The Report of the Prime Minister's Office, Regional Administration and Local Government on Local Government Elections of 25/10/2009. LHRC got the copy. But the report was also published by the DailyNews on 16 January, 2010, page 16. The Minister stated that, the government intended to register a total of 16,121,242 voters but managed to register only 52% of the same. That means 48% of eligible voters did not register themselves for the LGEs.

²¹⁴ LHRC (2009) Tanzania Local Government Elections Monitoring Report of 2009, page 16.

Some of the factors for low turnouts during registration and voting, according to the LHRC findings,²¹⁵ were:

a) Majority of Tanzanians lacked knowledge of the registration exercise and mixed up the information in the Permanent National Voters' Register (PNVR).

b) The maximum of 21 days allocated for registration of voters was also another constraint. The regulation for 2009 LGEs had stated that, registration of voters would take place from 4th October 2009 to 24th October 2009,²¹⁶ a day before the Election Day. The registration centres were also required to open from 7:30am and close at 4:00pm.²¹⁷

The fishermen and farmers who wake up early in the morning and return late in the evening failed to register. Moreover, in some places, the number of registration days were even less because of socio-economic reasons. For instance, in Ipanga village of Ileje District, the Returning Officer was breaking on Saturdays because she/he was the Seventh Day Adventists (SDA) member.²¹⁸

c) The feeling that participation in political and public affairs is of no any significance because some people consider it as irrelevant and wastage of time. This is caused by politicians who do not deliver to the satisfaction of the people. People are in a despair mood holding a view that elections are good for nothing because they don't bring any impact to their lives.

One person from Misenyi district, Kagera region stated in October 2009 (as he was speaking to the LHRC's LGE Monitor) that "*watu wanajiandikisha kwa kusuasua kwa sababu uchaguzi wenyewe wa Tanzania ni kuwapa viongozi ulaji kiuchumi tu na haku-na lolote kuhusu kutunufaisha sisi wengine tunaowapigia kura kila mwaka*" [People are reluctant to register because they believe that elections in Tanzania are meant to give leaders economic benefits not and there is nothing like serving people who vote them in in]. Same sentiments were heard in Kyela, Ukerewe, Nzega, Njombe, Makete, Lushoto, Rufiji, Babati Kwimba, Meatu, Kisarawe and other districts and regions.

²¹⁵ LHRC deployed total of 95 graduates from the Universities to monitor elections in 95 selected districts, which represented all regions of Tanzania mainland. The reports from the LGEs Monitors of LHRC have been compressed in LHRC (2009) Tanzania Local Government Elections Monitoring Report 2009. See pages 15 to 17.

²¹⁶ The Circular/Guidelines on Election of Village, Hamlet and Street Leaders to be Conducted on 25 October, 2009, issued by the Minister responsible with LGEs.

²¹⁷ Regulation 9(5) of the Local Government (Election of Chairpersons of Hamlets at District Authority Level) Regulations, 2009. The said provision states that, "vituo vya uandikishaji wa wapiga kura vitafunguliwa saa moja na nusu asubuhi na kufungwa saa kumi kamili jioni." [The registration centres shall be opened for registration at 7:30am and closed at 4:00pm].

²¹⁸ LHRC (2009) Tanzania Local Government Elections Monitoring Report of 2009, page 16.

d) Patriarchy also played a negative role in the registration process because in some areas such as Lushoto district, women/wives said that they had to get permission from their husbands to go out to the registration centres to register their names – otherwise some of them had their names changed to fulfill wishes of their husbands. A particular case arose in Lushoto whereby the husband told his wife that she should not register herself because he was travelling and he would not be around to tell his wife whom to vote for and therefore, the wife should not bother to register because she wouldn't vote anyway.²¹⁹

e) In areas, people were charged money to register their names. For instance at Mwabusalu village, Meatu district in Shinyanga region, a number of people told the LHRC LGE monitor that they did not register because they were required to pay Tshs 1,500 as registration fee. This is a symbol of lack of civic awareness.

f) The registration process was also marred by shortages of registration materials, such as pen and stamp pads. One of the registration centres which lacked registration materials was Sanza street in Kisarawe district, Coast region. In other areas registration centres were not located in the public buildings as the law requires. For instance, in Kiteto district, some registration centres were located under trees, private houses and even in the guest houses. The Kanisani hamlet's centre was located at Sunya Guest House in Kiteto district.²²⁰

g) Other prospective voters feared chaos at the registration centres because of political pressure in their areas. Residents of some parts of Dar es Salaam, especially Ilala, Tegeta, Manzese, felt unsecured to go for registration.

One of the examples to illustrate this is a statement given by a resident of Ilala district stated in October 2009. She said that “*unakuta mtu umeenda kuandikisha kupiga kura yako huna hili wala lile, mara vurugu zinatokea unakuta wanakuchanganya unapigwa virungu na kwenda kusota jela, kwa nini nisijikalie tuu nyumbani*”²²¹ [It sometimes happens that when you go register chaos ensues, they count you among trouble makers and you are beaten and locked up! Why shouldn't I just stay at home, safe?].

Lack of specific registration centres was another problem to the people and their activities in number of ways. For instance, most district councils monitored by the LHRC used primary school teachers and nurses to register voters. As a result, in some areas primary schools were closed to give room for registration to take place.

For example, in Tunduru district, all primary schools were closed for seven (7) days from 3rd to 10th of October 2009 to pave the way for the registration of voters. That

²¹⁹ LHRC (2009) Tanzania Local Government Elections Monitoring Report of 2009, page 16.

²²⁰ LHRC (2009) Tanzania Local Government Elections Monitoring Report 2009, page 17.

²²¹ LHRC (2009) Tanzania Local Government Elections Monitoring Report 2009, page 20.

logically means that dispensaries also lacked attendants. The LHRC suggests that, temporary part-time officers should be assigned to work as registers instead of teachers and nurses whose services are essential and urgently needed even at the time of registration. It is also hereby suggested that the LGEs should be supervised by the National Electoral Commission (NEC) of Tanzania because it has more expertise and ability.

b) Voting Process

As for the voting process, there were a number of issues that cropped up, including problems encountered in identifying names in the voters' register, delays in opening some polling stations and lack of election materials such as ink. Due to these and other problems, some people voted more than once, resulting into chaos, destruction of properties, rejection of results, voters exceeding the number of registered residents and the like.

The 'Takrima' and other forms of Malpractices during Election Campaigns

The provisions of the electoral laws which provides for Takrima,²²² were repealed by the decision of the High Court in 2005. Therefore, the 25 of October 2009 local government elections were the first elections to test the implementation of the decision of the High Court.

As it appears to be in conformity with the requirement of the decision of the court, the Ministry Responsible with LGEs formulated the Regulations, which inter alia explicitly made it offensive to use Takrima during the LGEs.²²³ The LHRC commends this positive move by the government and urge the same to amend the *National Election Act*,²²⁴ before The 2010 General Election.

²²² 'Takrima' means 'traditional hospitality'. It is a type of political corruption whereby candidates were allowed (under the electoral laws) to offer some gifts to their supporters as a gesture of appreciation during election campaigns. Seeing this as a threat to the right of free and fair elections, LHRC and its partners filed petition in the High Court in 2005. [Case: LHRC, LEAT and NOLA Vs. The A.G, Misc. Civil Cause No. 77 of 2005 (Unreported), High Court (HC) of Tanzania at Dar es Salaam (Main Registry) before Kimaro, J; Massati, J; and Mihayo, J). The HC declared use of Takrima during elections is unlawful because it is political corruption, which infringed the right to free and fair elections. The HC said that, the Takrima made it difficult to distinguish expenses inevitable in the election process which did not amount to corrupt practices and those per se amounted to corrupt practices. Note that, Takrima was recognized through Electoral Laws (Miscellaneous Amendments) Act, 2000 which amended sections 119(2) and 119(3) of the National Elections Act, Cap. 343 which provided that "anything done in good faith as an act of normal traditional hospitality shall be deemed not to be treating." AND, that "Normal or ordinary expenses spent in good faith in the elections campaign or in the ordinary cause of election process shall be deemed not to be treating, bribery or illegal practice."

²²³ Regulation 18 of the *Local Government (Election of Chairperson of Hamlets and Members of the Hamlet committee at Township Level) Regulations, 2009* states that, *Mgombea, mwakilishi wake au chama cha siasa hakitaruhusiwa kuendesha kampeni zake kwa kutumia rushwa, takrima, kashfa, lugha ya matusi, ubaguzi wa kijinsia* ...[The Contestant, his/her agents or a political party shall not be allowed to conduct election campaigns

However, areas monitored reflect a number of corrupt practices in the election process. Some of the strategies used such as the door to door campaigns made it difficult to detect some of the corrupt practices. However, some incidences were vividly seen and other reported to the LHRC's LGEs monitors. The reported incidences/allegations included:

In Iramba district, there were door to door night campaigns conducted by Mr. Juma Mohamed Magise, a CCM contestant and Mr. Omary Kinota, a CCM councilor. As for these two, it was alleged by informers that they were buying local brew for villagers at local bars at night. It was also alleged by young boys that they were given money to vote for CCM.

During campaigns in Kyera and Kasulu districts, some candidates were alleged to have been inducing voters with money, mosquito nets and mosquito repellants (*ngao*). This situation hindered other contestants from conducting their campaigns because they had nothing to give to the supporters as inducement.

At Malingumu ward in Mufindi district, the supporters of CCM candidates and other political parties were observed giving people some drinks. One of the candidates was heard saying that, *ugawaji wa maji ya kunywa siyo rushwa ni kipooza koo tu*. That is, the giving out of water to the people was not bribe; rather it was for quenching thirst. The LHRC Local Government Monitoring Report of 2009 has more information and examples of corruption incidences.

c) Election Results of the LGEs

The results of the LGEs were released in November 2009 after the compilation of the reports from all 132 district councils which participated in the elections. The results were as follows, the ruling CCM scored 91.72 percent of all seats followed by CUF 3.94 percent; CHADEMA 2.75 percent; TLP 0.72 percent; UDP 0.43 percent; NCCR-Mageuzi 0.32 percent; CHAUSTA 0.076 percent; PPT-Maendeleo 0.014 percent; UPDP 0.01 percent; UMD 0.006 percent; NRA 0.002 percent; NLD 0.001 percent; SAU 0.001 percent and DP 0.0007 percent. Other political parties Demokrasia Makini and Jahazi Asilia and Tadea scored zero.

The status of the results might imply two things; one, other political parties neglected and found it insignificant to participate because they do not have flow of powers down to the levels of hamlet and street; or second, lack of resources. But NEC and other election organizers need to work on this. It is something which needs attention and follow-up to ascertain the obstacles

through corruption, traditional hospitality (takrima), defamation, abusive language, gender discrimination ...].

²²⁴ Cap. 343 of the R.E. 2002 of the Laws of Tanzania.

because, it would be meaningless to have multiparty democracy in Tanzania while only one or two parties manage to participate in the elections.

Despite these shortcomings, the 2009 LGEs meant to act as a gauge to provide an early warning system for the coming General Elections in 2010. The LHRC suggests that the number of issues that have been pointed out as shortcomings should be worked on to make sure that the coming general election in 2010 is free and fair and people fully participate to make the process legitimate.

3.3.2 Loss of Universal Franchise

The laws that govern elections in Tanzania do not guarantee equal rights to voters.²²⁵ The right to vote is limited only to those who can actually present themselves during the polling day as the law requires. Therefore, those who are admitted in hospitals; very old people and disabled who cannot walk; those living abroad; and prisoners serving jail terms above 6 months are denied of their constitutional right to vote.

It is on records that, on 12 April 2006, Tanzanians living in Namibia asked President Jakaya Kikwete of Tanzania to help them in arranging for them to vote while living abroad because they felt that they still had an interest in the governance of Tanzania. Then, President Kikwete made a promise to ensure that Tanzanians living abroad would vote in 2010. Until the end of December 2009, this promise was yet to be honored because the provisions of the National Elections Act, were not changed to accommodate it. The possibility that it will be fulfilled within one year time is quite minimal.

The LHRC still urges the government to foster the process of developing the mechanisms which will enable all able bodied citizens exercise their right to participate in governance of their country, at least by voting. In other neighboring countries such as Malawi, prisoners do vote. Their electoral process is also inclusive of all groups.

3.3.3 Private Candidacy

The Court's decision²²⁷ on the right of the private candidacy in Tanzania's elections processes has not been considered by the government.²²⁸ Instead, it appealed to the

²²⁷ Following the judgment by the High Court of Tanzania, Dar es Salaam registry of May 5th 2006 by the then Principal Judge A. Manento, Massati J. and Mihayo J.

²²⁸ Legal and Human Rights Centre, 2007: *Tanzania Human Rights Report - 2005:Progress*

²²⁵ Articles 5 and 21 of *the Constitution of the United Republic of Tanzania of 1977*. Article 5(1) states that every citizen of the Tanzania who has attained the age of eighteen years is entitled to vote in any election held in Tanzania. Article 21 provides for the freedom to take part in the governance of the country. It states that every citizen of the Tanzania is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law. Also read Section 13 of the National Elections Act, Cap. 343 R.E. 2002 of the Laws of Tanzania.

²²⁶ Cap. 343 R.E. 2002 of the Laws of Tanzania.

Court of Appeal of Tanzania to contest the decision of the High Court which ruled, *inter alia*, that denial of private candidacy. Articles 20 and 21 of the *Constitution of the United Republic of Tanzania of 1977* provides for the right to everybody to associate and participate feely in public affairs.

This Court's decision has been revisited by the Registrar of the Political Parties, John Tendwa by declaring that the right of the private candidacy is not a privilege, but a fundamental right.²²⁹ The LHRC argues that, the inception of private candidacy means widening of the scope of democracy, ability and freedom to participate in the elections without coercion to affiliate to a political party.

Most of people who supports the private candidacy argue that it will increase accountability of politicians to their voters unlike the current system in which bad leaders can still be backed by their political parties, an individual candidate is himself or herself directly accountable to the people. People want a person who is accountable to them and not to his or her political party to whom he or she is affiliated to.

a) Women's Participation in Governance

The international legal instruments on the rights of women, specifically, the *Convention on Elimination of All Forms of Discrimination against Women of 1979 (CEDAW)* require state parties to take appropriate measures to eliminate discrimination against women in the political and public life of the country, in particular shall ensure to women, on equal terms with men, the right to participate in the formulation of the government policy and implementation and to hold office and perform all public functions at all levels of government.²³⁰

Moreover, the *United Nations Convention on the Political Rights of Women of 1952*²³¹ provide, inter alia, that women shall be entitled to hold public office and exercise all public functions, established by national law, on equal terms with men, without discrimination.²³² As part of fulfillment of the stated international obligations, Tanzania amended its constitution in 2005²³³ to increase the number of special seats for women

through Human Rights, Dar es Salaam

²²⁹ Patrick Kisembo: *Private Candidacy, a basic Right – Tendwa*. The Guardian, Dec. 11th 2009

²³⁰ Article 7 of the *CEDAW*. This Convention was adopted and opened for signature and accession by the United Nations General Assembly Resolution 34/180 of 18th, December, 1979. Tanzania ratified it in 1985.

²³¹ Adopted and opened for signature and ratification by the United Nations General Assembly Resolution 640(VII) of 20th December, 1952, entered into force 7th July, 1954. Tanzania ratified it on 1975

²³² Article 3 of the *United Nations Convention on the Political Rights of Women of 1952*. Article 2 of the same convention states that women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without discrimination.

²³³ Following 14th amendments of the Constitution of the United Republic of Tanzania of 1977. The 14th constitutional amendments of 2005 also removed the claw-back clauses which were enshrined in the Constitution's Bill of Rights and Duties prior to the said amendment.

in the Parliament from the previous 15 percent to the minimum of 30 percent.²³⁴

It should be noted that, despite this notable progress towards women political empowerment in the country, Tanzania has not yet reached the SADC's target of 50/50 representation of women in decision making bodies. The SADC protocol on Gender and Development 2008 requires that member countries endeavour to achieve 50/50% of women representation in both public and private sector by year 2015. LHRC supports this approach on governance as it will ensure that women issues are given priority by decision makers. Furthermore, it will give opportunity to women to participate in governance issues, an opportunity women are denied to because of patriarchal system which gives advantage to men and neglects women.

Statistics on representation of women in other public sectors show that the number of women who hold senior positions such as Ministers, Deputies and Directors is still minimal. The report of implementation of *Millennium Development Goals on 2000 – 2008 (Mid-Way Evaluation)*, which was released in 2009 by the Government of Tanzania, published the following updates on women and men in decision making positions for Tanzania Mainland 2004-2008.

| | 2004 | | | | 2007/2008 | | | |
|-------------------------------------|-------|------|-------|------------|-----------|------|-------|------------|
| Decision Making Position | Women | Men | Total | % of Women | Women | Men | Total | % of Women |
| Cabinet of Ministers | | | | | | | | |
| Ministers | 4 | 23 | 27 | 15 | 6 | 15 | 26 | 25 |
| Deputy Ministers | 5 | 12 | 17 | 29 | 6 | 15 | 21 | 33 |
| Parliamentarians | | | | | | | | |
| Number of Parliamentarians | 63 | 213 | 275 | 22.5 | 97 | 224 | 321 | 30.29 |
| Elected Parliamentarians | 12 | 218 | 230 | 5 | 17 | 294 | 320 | 5.16 |
| Nominated Parliamentarians | 2 | 8 | 10 | 20 | 3 | 4 | 7 | 42.85 |
| Special Seats for Women | 48 | - | 48 | 100 | 75 | - | 75 | 100 |
| Regional Administrative | | | | | | | | |
| Regional Commissioners | 2 | 19 | 21 | 10 | 3 | 18 | 21 | 14.28 |
| RAS (Adm. Secretaries) | 4 | 17 | 21 | 28.57 | 6 | 15 | 21 | 28.57 |
| Public Service | | | | | | | | |
| Permanent Secretaries | 7 | 18 | 23 | 30.4 | 7 | 24 | 31 | 22.05 |
| Deputy Permanent Secretaries | 1 | 7 | 8 | 12.5 | 4 | 17 | 21 | 19.04 |
| Directors | 28 | 83 | 133 | 21.05 | 133 | 1053 | 1186 | 11.21 |
| Assistant Directors | 37 | 118 | 211 | 17.53 | 37 | 118 | 155 | 23.8 |
| Commissioners | 7 | 16 | 44 | 15.9 | 44 | 37 | 81 | 54.3 |
| Local Government Authorities | | | | | | | | |
| District Commissioners | 20 | 87 | 107 | 18.69 | 28 | 85 | 113 | 24.7 |
| DAS (Adm. Secretaries) | 23 | 86 | 109 | 21.10 | 23 | 86 | 109 | 21.10 |
| District Executive Directors | 23 | 94 | 114 | 20.17 | 28 | 101 | 129 | 21.7 |
| Elected Councilors | 250 | 2237 | 2537 | 9.85 | 380 | 2267 | 2552 | 14.35 |
| Special Seats Councilors | 940 | - | 940 | 100 | 940 | - | 995 | 100 |
| Ambassadors | 2 | 34 | 36 | 5.26 | 5 | 38 | 42 | 9.75 |

²³⁴ Section 66 of the Constitution of the United Republic of Tanzania of 1977. It states that, the minimum special seats for women in the National Assembly shall be 30% of all Members of the Parliament of Tanzania.

| | | | | | | | | |
|-------------------------------|-------|-------|-------|-------|------|------|------|-------|
| Court of Appeal | | | | | | | | |
| Justice | 1 | 8 | 9 | 11.01 | 3 | 9 | 12 | 25 |
| High Court [and Lower Courts] | | | | | | | | |
| Judges | 9 | 24 | 33 | 16.16 | 13 | 40 | 53 | 24.5 |
| Registrar | 0 | 1 | 1 | 100 | 2 | 8 | 10 | 20 |
| Resident Magistrate | 22 | 123 | 45 | 15 | 25 | 130 | 155 | 16.12 |
| Primary Court Magistrate | 49 | 546 | 695 | 27.2 | 290 | 580 | 870 | 33.33 |
| TOTAL | 1,588 | 3,738 | 5,326 | 29.81 | 2056 | 4972 | 7028 | 29.25 |

Source: Ministry of Community Development, Gender and Children [These statistics were copied from the Tanzania MDG Implementation Report 2000-2008, page 11. Published 2009]

Majority of senior public positions are still being held by men. The overall number of women representation in senior positions is less than 25 percent. Moreover most of women still hold inferior positions in other formal and informal sectors. For instance, majority of receptionists, bar maids and cleaners in private and government institutions are women.

Despite its concern with the speed of increasing the number of women in the governance of the country, the LHRC is optimistic that, if the current trend to increase and empower women to take senior public positions continues, is possible to have equal representation. It has taken a number of years for European countries to accept and adhere to emancipation and equity for women.

For instance, it was not until 1970s that the government of Finland allowed several women to hold ministerial portfolios, but not for the Ministries of Finance and Foreign Affairs. The two ministries were strictly reserved for men. The first woman to hold the post of Minister for Foreign Affairs was appointed for the first time in 1994 (Ms. Tarja Halonen). Today, the Finnish Parliament has 75 women elected out of 200 Members of Parliament) compared to 19 of 1906 and 46 of 1975.²³⁵ Majority of Finnish women (85 percent) work outside their homes and are active in politics.



Minister Picture: Honourable Margret Sitta, Minister for Ministry of Community Development, Gender and Children has shown that women in higher positions can do the best for the women.

²³⁵ See: Ministry for Foreign Affairs of Finland 'Women's Role in Finnish Democracy Building: The Finnish Experience' – Written by Aura Korppi-Tommola (2006), pages 12 and 13.

Chapter Four

Economic and Social Rights

4.0 Introduction

THE realization of economic and social related rights such as right to work, right to own property, right to education, right to health services, and others, is paramount for the attainment of other rights, including the right to life and the right to development. Like other categories of human rights, which are recognized worldwide in particular human rights instruments, the economic and social rights are also guaranteed in various instruments.

The *International Covenant on Economic, Social and Cultural Rights of 1966*, which was ratified by Tanzania in 1976, details the categories of these rights. This chapter assesses the level of implementation of some of the stated rights in the view of suggesting for a better change.

4.1 Labour Rights

4.1.1 The Right to Work

The right to work is comprised of availability of decent work, fair remuneration, the right to organize in trade unions, security of tenure, and the like. The *Constitution of the United Republic of Tanzania of 1977* has provisions ²³⁶ which guarantee some of the important labour rights as enshrined in various international human rights instruments mentioned above.

The current statistical information of the *Integrated Labour Force Survey of Tanzania of 2006 (ILFS)* stated that as of 2008, Tanzania had 20.6 million labour force. The ILFS further stated that, out of the total labour force, 18.3 million were employed - 9.0 million men and 9.3 million women. ²³⁶ That means, only 2.3 million people of the available labour force were not employed in Tanzania as of 2008.

However, the study seems to be outdated because the real picture on the ground portrays quite a different outlook. There are millions of people, especially youths in cities who are jobless.

²³⁶ For instance, Article 22 of the said Constitution states that everyone has the right to work.

²³⁷ Also see: The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, page 29 of the Swahili version of the Speech.

Moreover, the agriculture sector which is the main employer of over 80 percent of people in Tanzania is neglected; as a result job seekers migrate to the urban centers.²³⁸

The Tanzania Mainland unemployment rate for people aged 15 years and above by sex and area in 2006²³⁹ presents the following factual information:

| Sex/Age | 15-24 | 25-34 | 35-64 | 65 and above | Total |
|---------|-------|-------|-------|--------------|-------|
| Male | 14.3 | 10.3 | 8.9 | 8.1 | 10.7 |
| Female | 15.4 | 13.2 | 10.2 | 10.4 | 12.6 |
| Total | 14.9 | 11.8 | 9.6 | 9.2 | 11.7 |

The *Millennium Development Goals Report*²⁴⁰ stated that looking on the trend as presented in the table above, it is apparent that, Tanzania Mainland is currently experiencing slow growth in number of persons employed compared to growth in its real GDP since 2001.

The figures also suggest that only 11.7 percent of able Tanzanians (who are 20 million) are working (not necessarily employed). That means more than 11 percent of Tanzanians weren't working.²⁴¹ Moreover, according to the survey by the National Bureau of statistics of June 2007, which is the most recent one, more than 1.57 million people in Dar es Salaam - approximately 5 million residents – are not employed.²⁴²

And for those who are working or employed, the *MKUKUTA Annual Implementation Report of 2008/2009 of November 2009*²⁴³ shows that by 2008/9, a total number of 437,205 new jobs, which is equivalent to 43.7 percent of chances of one million new jobs planned by 2010, had been created by various stakeholders. So far, the public sector has only generated 58,399 jobs. Majority of those employed - 195,017 individuals – belong to the informal sector.

It should be noted that, some employers in the informal sector don't offer decent jobs and fair remuneration. Some of the obvious challenges facing the informal sector, according to the LHRC observations are:

²³⁸ Note that, at least 7.7% of the rural population has quitted agriculture and migrated to the cities of Dar es Salaam, Arusha, Mwanza and other urban centres in search of employment. The unattracted environment in rural areas pushes the youth in the cities. Most of those who come to the cities are illiterate and therefore could not be employed in formal sectors. They end up being beggars, prostitutes, house girls/ boys and 'machinga' (roamers of the cities).

²³⁹ The chart was copied from the Integrated Labour Force Survey of 2006 of Tanzania. There was no information which was more uptodate in 2009 apart from the 2006 report..

²⁴⁰ Published by the Ministry of Finance and Economic Affairs, Poverty eradication and Economic Empowerment Division, Dar es Salaam, Tanzania. The Report was released in December 2009.

²⁴¹ See: Tanzania Human Rights Report of 2007, page 45.

²⁴² See: Tanzania Human Rights Report of 2007, page 45.

²⁴³ Published by the Ministry of Finance and Economic Affairs, Dar es Salaam, Tanzania, November 2009.

- a) Reluctance of financial institutions to provide loans to the informal sector in fear for the risk involved because most businesses in the informal sector lack proper and reliable addresses;
- b) Uncertainty of business/ working environment. The ‘Machinga’ (hawkers) are arrested and chased in big cities because they are regarded as ‘nuisance’;
- c) Lack of policy to address the issue. The current SMEs Policy focuses on formal small groups, don’t cover the informal sector;
- d) Lack of vocational skills, as the Tanzania’s education system (primary and secondary schools) doesn’t prepare children to become self-reliant when they graduate.

Considering the above challenges, those employed or working in the informal sector do not get sufficient earnings, are undermined and neglected. Therefore, since more than 98 percent of employees belong to this sector, as government reports unveil, the majority in Tanzania encounter these challenges. In that regard, no one can confidently state that such number of people is enjoying rightful decent jobs and earn fair remuneration, as the *Constitution of the United Republic of Tanzania of 1977*²⁴⁴ requires.

4.1.2 Fair Remunerations

The private sector is still blamed for paying employees below the minimum wage set by the government. In September 2009 one of the interviewees, resident of Boko area in Dar es Salaam stated:

Unajua siku hizi ni bora kuajiriwa na serikali. Kule kuna uhakika wa ajira na mishahara yao hasa ya mawakala siyo mibaya kama hivi vikampuni vya wazungu. [You know, nowadays its better to be employed by the government. There is security of tenure and at least good salaries especially in the government agencies, and not to these small-whitemens’ companies].

Moreover, most cases of unfair termination from work, which the LHRC received during 2009 and previous years have their rootcauses on the employees’ demand for fair remuneration. Usually, employers tend to fire those who dare to speak out on unfair remuneration and sometimes are mistreated. For instance, in October 2009, more than 191 workers of CAMISUMA Textile Industry which entered into a joint venture with JKT Mgulani, were beaten up by the JKT soldiers when they boycotted work, demanding payment of their salaries. The workers who were assaulted sustained serious injuries and were in bad condition. They were admitted to the Temeke Hospital for medical examination.²⁴⁵

4.2 Right to Own Property

The right to own property, which is guaranteed under the provisions of *the Constitution of the United Republic of Tanzania, 1977* has been continuously breached

²⁴⁴ Articles 22 and 23 of the Constitution state that, everyone has the right to work and receive fair remuneration.

²⁴⁵ Kulwa Karedia ‘JKT wapiga dar’ Tanzania Daima; October 29, 2009.

because of a number of factors, the major ones being greed for investment money and lack of adequate socio-economic policies to safeguard interests of the local communities against land pressure. The pressure was brought by liberalization of the Tanzanian economy, in which foreign investors are considered as saviours of the economy.²⁴⁶ As a result, thousands of Tanzanians in rural and urban areas have been evicted from their land and their properties destroyed in the process.

Chapter seven of this report gives an account of the evictions of the Maasai from Loliondo Game Controlled Area in Ngorongoro district in July 2009 because of the alleged trespassing in the Ortello Business Corporation (OBC)'s hunting area. The chapter also accounts for the forceful eviction of the pastoralists of Matai, Mkowe, Msanzi and Sopa wards of Sumbawanga District, Rukwa Region, from villages. Reports had it that the villagers were also heavily and unlawfully fined by the local government officials, including the district executives and the ward executive officers (WEOs).



Right to Own Property: This picture indicates how the people were evicted in different areas of the country and were left homeless and their properties destroyed.

Other incidences reported during the year 2009, include that of four people who were killed and more than 800 were left without homes and food after their houses were burnt due to conflict between Kaguru agriculturalists and Maasai pastoralists in Kilindi district. The incident occurred in Pagwi ward in Kilindi district, Tanga region. More than 300 families flee their homes as well due to the violence.²⁴⁷

It was also reported that, the government used force to evict residents of some areas of Kwembe ward in the city of Dar es salaam. It was said that the Kinondoni Municipality was in need of the land city planning. The residents of the areas confiscated protested and rejected the mapping exercise on grounds that it was not participatory.²⁴⁸

²⁴⁶ Note that, this has changed recently especially from 1990s as it is noted from the MCT's Agenda for Research in Tanzania, 2009. Before that and more specifically during the first two decades of Tanzania's political independence, the dominant discourse was about national liberation, national self-reliance as oppose to sheepish reliance on the so-called the international donor community and its political and other conditionalities for 'assistance', capitalism and imperialism and exploitation. In the present era of neo-liberalism, the tone is now on economic growth and considering the investors as saviors. See: MCT (2009) Agenda for Media Research in Tanzania. ISBN 978-9987-9-9, at page 5.

²⁴⁷ Anne Makange 'Wanne wafa mapigano ya ardhi' Tanzania Daima, January 20, 2009.

²⁴⁸ Reporter 'Kwembe wapokwa ardhi kwa mtutu wa bunduki' Mtanzania, March 19, 2009.

The plight of Nyamuma villagers in Serengeti district, Mara region was still unresolved as of December 2009. It is now more than five years since the Commission for Human Rights and Good Governance ruled in favour of the 135 families of the village that the eviction done by the district authority was unlawful and that the villagers should be compensated and reinstated.²⁴⁹

4.3 Right to Health Services

Despite the fact that the right to health is crucial because it is part and parcel of the right to life, the Constitution of the United Republic of Tanzania of 1977 does not recognize it as one of the fundamental rights. However, international human rights instruments recognize it and direct state parties to ensure availability of physical and mental health to their people, adequate health and medical care for all.²⁵⁰

Some of the core international human rights instruments on the right to health are:

- (a) *The Universal Declaration of Human Rights of 1948;*
- (b) *The International Covenant on Economic, Social and Cultural Rights of 1966;*
- (c) *The World Medical Declaration of Helsinki of 1964 (as amended time to time);*
- (d) *The Universal Declaration on Bioethics and Human Rights of 2005;*
- (e) *The Universal Declaration on the Human Genome and Human Rights of 1997;*
- (f) *Council for International Organizations of Medical Sciences (CIOMS): International Ethical Guidelines for Biomedical Research Involving Human Subjects, 1982 (as re-issued time to time);*
- (g) *The African Charter on Peoples and Human Rights of 1981.*

²⁴⁹ Note that, in 2001, the then District Commissioner for Serengeti District, Mr. Ole Sabaya, ordered forceful eviction of the villagers from their homesteads. Their houses and other properties were also destroyed by the police force acted under the instructions of the District Police Commanding Officer (OCD) for Serengeti District. Following these human rights violations, the villagers, under legal advice from the LHRC filed the case to the CHRGG. The citation of the case was *Ibrahimu Korosso and 134 Others & Legal and Human Rights Centre V. The District Commissioner and Officer Commanding District, Shauri Namba* HBUB/S/1032/2001/2002/MARA. The CHRGG ruled out in favor of the complainants in December 2004. But the government refused to comply with the recommendations of the CHRGG, which required the government to compensate the villagers and reinstate the same to their places. Then, in 2005 the LHRC took the case to the High Court for the enforcement of the recommendations of the CHRGG. The High Court failed to interpret properly the law (S. 28 of the Commission for Human Rights and Good Governance Act, 2001) and stated that, the recommendations of the CHRGG could not be enforced in court because they are not awards. The Court of Appeal in 2008 made it clear that, the recommendation of the CHRGG can be enforced by the High Court. The case is back and still pending in the High Court for determination. This long wait subjects the villagers into psychological and physical torture. They are still homeless.

²⁵⁰ For instance read: Article 12 of the International Covenant on Economic, Social and cultural Rights of 1966. ALSO read Article 25 of the Universal Declaration of Human Rights of 1948; Article 16 of the African Charter on Peoples and Human Rights of 1981; etc.

The government revealed during the year 2009 that the health sector is improving and there was progressive realization of the right to health services. For instance, the *Millennium Development Goals Report 2009*,²⁵¹ Tanzania lists the following improvements:

- a) Increased number of HIV testing and counseling centers from 1,035 in 2007 to 1,757 in June 2009.
- b) Increased number of VCT provision centers from 1,646 in 2007 to 1,677 in 2008;
- c) Ant-Retroviral Treatment (ARV) use increased from 145,000 in 2008 to 242,290 in 2009. This is approximately 80.7 percent of the target of 300,000 patients in need of ARVs;
- d) The number of women receiving Mother-To-Child-Transmission (PMTCT) services increased from 713,506 in 2007 to 958,108 in 2008;
- e) Decreased human resource gap in the health sector to 38 percent in 2008 from 35 percent in 2007.

But, the coverage of the PMTCT service is low despite the increase of the centers. It is estimated that HIV positive women who receive nevirapine prophylaxis or start on ARV was only 40 percent in 2008/9.²⁵²

The major challenges regarding the enjoyment of the right to health have been inaccessibility of the health services and inadequacy of facilities and resources to cutter for the ever increasing health needs. For instance, the government did not attain its target of narrowing the human resource gap in the health sector by 62 percent in 2008/9.²⁵³

Moreover, the government has been lagging behind in the attainment of the MKUKUTA and MDGs goals on health because of a number of reasons, including inadequate budgetary allocations for the sector.

| Financial Year | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|--|---------|---------|---------|---------|---------|
| Amount Allocated for Health Sector [Billion Tshs] | 426.0 | 500.8 | 589.9 | 910.8 | 963.0 |
| Percentage according to the total budget [% of whole budget] | 10.6% | 10.3% | 10.0% | Xxxxx% | Xxxxx% |

As shown above, the government budget for the health sector has never exceeded 10 percent of the total national budget over the last five years. As it was state in last year’s Tanzania Human Rithts Report, the health sector budget is markedly lower than the target set out in the Abuja *Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases, 2001* of 15 percent.²⁵⁴

²⁵¹ Read pages 47 and 48 of the said report.

²⁵² *The Millennium Development Goals Report 2009, Tanzania, page 47.*

²⁵³ *The Millennium Development Goals Report 2009, Tanzania, page 49z.*

²⁵⁴ In 2001, all the members of the Organization of African Unity agreed to the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, 2001 (Abuja, Niger adopted 24 to 27 April 2001) OAU/SPS/ABUJA/3.

Because of the said challenges, maternal and child mortality deaths have not been reduced as expected mainly due to the lack of facilities and skilled human resource.²⁵⁵ The 2008 findings indicated that, maternal mortality rates are primarily caused by the following factors; hemorrhaging (34 percent), sepsis (16 percent), hypertensive disorders (9 percent), and, obstructed labour, abortion and anemia (4 percent each).²⁵⁶ Chapter seven of this report gives more explanations on the progress reached in the implementation of MKUKUTA and in attaining MDGs.

It is also on record that the birth attended by skilled health personnel stand at 63 percent.²⁵⁷ That means 37 percent of births are not attended by health personnel, and it was unlikely that the 90 percent target would be achieved by 2015 as per MKUKUTA and MDGs.

Therefore, it can be concluded that the challenges still outweigh successes. The LHRC urges the government to increase budgetary allocations for the health sector to resolve these obvious problems. It is also suggested that the *Mfuko wa Afya ya Jamii* (Social Health Fund), a community based health fund, which is aimed at bridging the gap of deficiencies in health service delivery in the country should be improved for its services to reach more people beyond the 70 districts it covers at the moment. The government should also adopt affirmative measures to motivate health practitioners to go and work in periphery regions such as Lindi and Rukwa.

4.4 Right to Education

Education is recognized by various human rights instruments as one of the basic rights for everyone.²⁵⁸ It is the key for the fight and protection of one's right because it gives people ability to be aware of their rights. However, it is unfortunate that the *Constitution of the United Republic of Tanzania of 1977* does not include it in its Bill of Rights and Duties.²⁵⁹

As it has been stated elsewhere in this report, Tanzania has made tremendous efforts towards attaining the MDGs and implementing MKUKUTA. The current (2009's) Net Enrolment Rates (NER) in primary schools stands at 95.90 percent. Moreover, the enrolment rate in Form One has increased from 438, 901 in 2008 to 524,784 in 2009, following the successful implementation of the Primary and Secondary Education Development Plans (PEDP and SEDP) in 2007-2011 and 2004-2009 respectively.

²⁵⁵ Note that, four-fifths of health centres in 2007 (and possibly in 2009 because the budget is still the same) had never administered drugs to control hemorrhaging or pregnancy-induced tension [Poverty and Human Development Report 2007, at p. 36].

²⁵⁶ See: Paragraph 4.3 of Chapter Four of the Tanzania Human Rights Report of 2008.

²⁵⁷ See: The 'Tanzania Mid-way Assessment at a Glance' of the *Millennium Development Goals Report 2009, Tanzania*, page iii.

²⁵⁸ Example Article 13(1) of the International Covenant on Economic, Social and Cultural Rights of 1966.

²⁵⁹ It is stipulated under Article 11(3) of the Constitution. The said provision states that, the government of Tanzania shall endeavour to ensure citizens have equal and adequate opportunities to all persons to enable them to acquire education.

But the education sector is still facing a number of shortfalls, including the following, which remained unresolved and some of them worsened in 2009.

4.4.1 Primary and Secondary School Levels

There were lots of setbacks reported in 2009 which posed obstacles to the achievement of the intended educational goals. The LHRC quotes some of the challenges with the view of indicating issues that need to be addressed seriously:

a) The enrolment rate for children with disabilities in primary school is still low, despite the increase in NER. For instance, recent records indicate that, as of June 2008, there were 34,661 pupils with disabilities in Tanzania (enrolled in primary schools). Out of whom 19,998 were boys and the remaining 14,663 were girls.²⁶⁰ The figure represents only 1 per cent of children with disability in Tanzania.²⁶¹ However, the number decreased from 34,661 in 2008 to 27,422 in 2009, being a reduction of 7,139 children with disabilities.²⁶²

b) Also, the enrolment rate for children with disabilities in secondary schools is still low. For instance, in the year 2009 only 65 percent of pupils with disabilities were selected to join secondary schools, compared to 70.43 percent in 2008.²⁶³ Therefore, for one year only the number dropped by 16 percent.

c) A major hindrance to the right of the girl-child to access education is threatened by early pregnancies. Pregnancy among school girls is also still a big problem throughout the country. For instance, a total of 176 girls (pupils) in Singida region were impregnated over the last three years. According to the Regional Education Officer, 50 girls conceived in 2005; 89 girls in 2006; and 37 girls in 2007.²⁶⁴

²⁶⁰ See: The Millennium Development Goals Report 2009, Tanzania, page 119.

²⁶¹ See: HakiElimu (December 2008) Do Children with Disabilities Have Equal Access to Education? A Research Report on Access to Education for Children with Disabilities in Tanzanian School, page 7.

²⁶² See: MKUKUTA Annual Implementation Report 2008/2009, Report of November 2009, page 39.

²⁶³ In 2008, total of 212 (109 being boys and 103 girls) pupils with disabilities were selected to join Form One (secondary school), that being 70.43% of all pupils with disabilities in Tanzania. In 2009, the number was less than that of 2008 [actual figures were not obtained apart from the stated statistical information]. The results and figures were released by the Minister for Education and Vocational Training in January 2009. The Minister was quoted by media such as Majira of 7th January, 2009. See the article by Rehema Mohamed 'Ufaulu wanafunzi wenye ulemavu washuka.'

²⁶⁴ Hillary Shoo 'Wanafunzi 176 Mimba' Majira, January 7, 2009.

d) In Rukwa region, it was reported that more than 7,438 pupils and students dropped out of schools over the last seven years due to various reasons, including pregnancy and lack of school facilities. This is according to the Regional Education Officer for Rukwa, Ms. Elizabeth Mfinanga. It was also reported that, more than 287²⁶⁵ pupils in Coast region were impregnated in a period of only nine months.

e) Lack of sufficient facilities especially desks, classrooms, latrines and residential houses for teachers. For example, during the year 2009, it was reported that about 4,047 pupils out of 4,225 at Kombo Primary School in Vingunguti Ward, Ilala district, Dar es Salaam city, were sitting on the floor due to lack of desks. The demand for new desks at the school was about 1303.²⁶⁶

f) Insufficient number of teachers. While the government is claiming an improvement of the ratio of 1 teacher for about 60 students under the PEDP and SEDP, some schools, in fact many of schools in Tanzania face serious shortages of teachers. For instance, Manyoni District council needs about 180 teachers to fill up the gap of teaching staffs. The current ratio of Manyoni is 1 teacher for 126 pupils.²⁶⁷ Most districts have no conducive working environments to attracting new teachers entering the labour market to go and work there.

g) Those and other factors might be causes of poor performance of Standard Seven Pupils in 2009. Note that, in December 2009, the Ministry of Education and Vocational Training announced results in which about 445,954 pupils who sat for the 2009 Standard Seven examinations failed. Therefore, about 50.6 percent of the pupils failed because they did not get an average of 100 marks.²⁶⁸

h) The Gender Parity Index (GPI) for primary school enrolment has achieved the ratio of 1:1. This means boys and girls are equal in primary schools, but the ratio is decreasing as you go up. Thousands of girls are dropping out of

²⁶⁵ Writer '278 Pupils pregnated in Pwani Region' Mwananchi, October 5, 2009 and Juddy Ngonyani 'Wanafunzi 7,438 waacha shule' Majira, January 27, 2009.

²⁶⁶ Hamisa Maganga 'Wanafunzi 4,047 wakaa chini shuleni D'salaam' Mtanzania, January 3, 2009.

²⁶⁷ Jumbe Ismailly 'Manyoni yahitaji walimu 180' Tanzania Daima, January 5, 2009. ALSO in Dodoma region, it was reported during the year 2009 that the Mundemu Secondary school in Dodoma region is facing with a shortage of teachers and books. It has about seven teachers (7) who teach more than 484 students. The Ministry of Education and Vocational Training is urged to increase more teachers and books especially for science subjects and mathematics [See: Flora Amon 'School 484 students, 7 Teachers' Majira, October 24, 2009]. ALSO see: Lilian Justice 'Two teachers from Standard one to standard seven' Majira, November 10, 2009 – who reported that, the schools in Tegetero ward, rural Morogoro were reported to have been facing the challenges of the shortage of teachers at Hewe primary school which had only two teachers who teach from standard one to standard seven.

²⁶⁸ Leon Bahati 'Half pupils sat for STD Seven Exams failed' Mwananchi, December 11, 2009.

school along the way from primary schools to higher learning institutions. For instance, out of increased enrolment of students in higher learning institutions, only 34 percent are female. This figure implies that, ²⁶⁹only one-third of girls joined higher learning institutions in 2008/2009.

4.4.2 Higher Learning Institutions

Apart from problems surrounding primary and secondary schools, high learning institutions were also unsettled because of students' commotions attributed to various reasons. The major issue has been the granting of loans to the government sponsored students.

The higher education students' loans scheme is administered by the Higher Education Students' Loans Board (HESLB), which was established under the *Students Loans Board Act, 2004*.²⁷⁰ The Board is charged with coordinating, giving and receiving loans to and from the students pursuing advanced diplomas and degree studies in Tanzania and abroad.

The problems with the HESLB include delays in disbursing processed loans and uncertainties of the criteria set for eligibility²⁷¹ to get the loan. The criteria set, seems to be cumbersome to follow. As a result, a number of commotions occurred during the year, which includes the incident in which more than 2000 University of Dar es Salaam students at Mlimani campus were suspended due to failure to fulfill requirements for the readmission. The students staged a demonstration to object the loan means test.²⁷²

The students,²⁷³ as LHRC agrees with them, argued that, the means test policy guideline, if implemented would discriminate against students who are coming from poor families because they would definitely fail to pursue studies without accessing the 100 percent loans. Therefore, the loan policy should be revised in order to provide equal opportunity to the students in higher learning institutions. Otherwise, the LHRC commends the efforts being made so far by the government in extending the scope of the loans to reach more beneficiaries.²⁷⁴

²⁶⁹ According to the MKUKUTA Annual Implementation Report 2008/2009, Report of November 2009, page 40, the number of students enrolled at higher learning institutions increased from 82,508 in 2007/2008 to 95,525 in 2008/2009. It is stated in that report that, the increase is partly attributable to expanded enrolment by Dodoma University and improvement of infrastructure in other universities and colleges.

²⁷⁰ Act No. 9 of 2004. Commenced operation in July 2005.

²⁷¹ The Higher Education Students' Loans Board: Revised Guidelines and Criteria for Granting Student Loans Starting 2006/2007 Academic Year, set a criterion of "needy student". A Needy Student is defined to mean the one who is an orphan, disabled or has disabled poor parents, is from a poor single parent family, is from marginalized and disadvantaged group and/or is from a low income threshold family earning national minimum wage or below.

²⁷² Debora Sanja 'UDSM kwawaka moto' Mtanzania, January 10, 2009.

²⁷³ Reporter 'Kwa masharti haya UDSM ni wabaguzi' Mwananchi January 16, 2009.

²⁷⁴ The number of students accessing loans from the HESLB increased from 55,687 in 2007/2008 to 58,841 in 2008/2009, with the value of Tanzanian Shillings 112.5 billion in 2007/2008 to Tanzania Shillings 140.3 billion in 2008/2009. Note that, 1 USD is equal to approximately

Other challenges surrounding the higher learning institutions include lack of sufficient facilities and seriousness of some lecturers. Some students interviewed by the LHRC during the year in a human rights opinion survey for 2009, stated that lecturers were busy out of their duty stations doing private consultancies. They hardly attend all the lectures and on time. One UDSM students from the faculty of law, while responding to a LHRC questionnaire stated:

We hardly see lecturers attending classes. We know the teachers who rarely come to teach, but we see them in town driving cars around. We use the Open University of Tanzania (OUT) materials to read for ourselves because I want to be a good lawyer regardless of the reluctance of our lecturers to give us better knowledge.

Low level of salaries and allowances for university lecturers could be one of reasons making them to go out for additional income generating activities. Currently, most Ph.D holders receive less than USD 1500 per month as salary. This is why most professors and philosophy doctors are quitting lecturing to join politics ‘where at least, it pays.’

The combination of these and other factors have resulted into the poor quality of education. Most students from higher learning institutions are unable to articulate even simple issues. Public universities, such as the UDSM, which enjoys international recognition, have been dropping down the rank of best 100 universities in Africa.

The Table below gives the ranking position of the University of Dar es Salaam for the years 2007 to 2009:

| WRS: University of Dar es Salaam, Rankings and Its Trend from 2007 – 2009 | | | | | |
|---|---------------|---------------|---------------|--------------|--------------|
| Duration | January 2007 | January 2008 | July 2008 | January 2009 | July 2009 |
| Position per 100 Universities [Excluding S/Africa and Egypt] | 13th Position | 22nd Position | 24th Position | 18thPosition | 25thPosition |

Source: ‘Quality Assurance Bureau (QAB) [www.qab.udsm.ac.tz accessed on 23rd December, 2009]

Note that, the Webometrick Ranking System (WRS) bases its assessment by looking at web presence, visibility of teaching process, research and their results for both graduate and undergraduate levels.

The LHRC urges the responsible ministry to work on the challenges and problems facing the the higher leaning institutions in Tanzania. There is also a need to monitor very closely the quality of university lecturers and examinations especially in private universities. The class (GPA) of private universities in most cases does not correspond with the level of competence of the GPA holder in practice. The Tanzania Commission for Universities (TCU) could help with the quality assurance assessment and accreditation for all public and private universities to avoid the obvious risk of universities producing incompetent graduates.

Tanzanian Shillings 1,340 [average exchange rate of December 2009].

Chapter Five

Rights of Vulnerable Groups

5.0 Introduction

AS different chapters of this report and other surveys suggest; women, children, people with disabilities, prisoners, older people, indigenous people and people living with HIV/AIDS face the higher level of discrimination than other groups because of their vulnerability. The ‘vulnerability’ for purpose of this report refers to the risk of adverse outcome, such as impoverishment, ill health, and social exclusion.²⁷⁵

All international instruments mentioned in chapter ten of this report and others, prohibit discrimination and oppression against any person regardless of his or her social, economic, academic, gender and other status. Articles 12 and 13 of the *Constitution of the United Republic of Tanzania of 1977* provide for the same. It emphasizes on the point that, all persons are born free and are all equal in all aspects and should be given equal protection by law. This chapter looks at some social and legal challenges, which causes discrimination of the people belonging to the groups mentioned above.

5.1 Women’s Rights

The major challenges causing vulnerability of women in the Tanzania communities are mainly gender inequality and disempowerment due to prevailing socio-economic, political and legal setbacks. In an effort to rectify the situation, Tanzania has committed itself to abiding to the global commitments set under the *Millennium Development Goals of 2000-2015*, which inter alia call for promotion of gender equality and empowerment of women.²⁷⁶ Likewise, it has adopted a number of policies, strategies and laws in order to fight against gender inequality, which is seen as a major obstacle to socio-economic and political development of women.²⁷⁷

So far, notable progress has been achieved over the last ten years (1999 – 2009) on the enhancement of the rights of women especially the right to equality and empowerment. Some of these improvements include:

²⁷⁵ Leach, Valerie (2007) Children and Vulnerability in Tanzania: A Brief Synthesis. REPOA and UNICEF: Special Paper 07.25, page 1. This literature also states that, vulnerability reflects not only the likelihood that an untoward event occurs, but also capacity to cope with it. It is therefore the result not only of individual mishap, but also the social conditions which follow from systematic differences in the flow of resources and opportunities which themselves influence capacities

²⁷⁶ MDG target number 3.

²⁷⁷ URT ‘National Strategy for Gender Development of Tanzania’ September 2005, page iii.

- a) Enactment of the *Land Act, 1999*²⁷⁸ and *Village Land Act, 1999*²⁷⁹ which recognize equality of men and women in land ownership, including through customary right of occupancy.
- b) Enactment of the *Employment and labour Relations Act, 2004*²⁸⁰ which prohibits discrimination against women at working places.²⁸¹
- c) Decrease and criminalization of the Female Genital Mutilation practices.²⁸²
- d) Increased number of women in politics and decision making bodies. For instance women's special seats in the parliament have increased to 75 in 2008 from 48 in 2004. Directors who are women in public service's departments have increased from 28 in 2004 to 133 in 2008.²⁸³ More information on the increase is incorporated below.
- e) Women are now aware of their rights, most of them going to the adjudication bodies to claim for them– not as it used to be a decade ago.
- f) The Judiciary is also gender sensitive. For instance, in the case of *Ephraim vs Pastory*,²⁸⁴ the High Court stated that, the Haya customary law on inheritance discriminates against women and therefore inconsistent with Article 13(4) of the Constitution of Tanzania that bars discrimination.

However, the challenges still outweigh the success. There are still several factors frustrating the full realization of women's rights. These obstacles include the following:

5.1.1 Existence of Laws Discriminating against Women

The laws which discriminate women in Tanzania remained unamended in 2009 despite repeated calls of civil rights' groups to the government. Moreover, there is no feedback on the proposed legal reform of the discriminatory laws, which were submitted by the Law Reform Commission of Tanzania (LRCT) in 1994 – that is 15 years ago – to the government proposing reforms in the area.

This is contrary to Tanzania's obligation to the international human rights instruments. For instance, the provisions of the Convention on the Elimination of *All Forms of Discrimination Against Women, 1979 (CEDAW)* require state parties, including Tanzania, to take all appropriate measures, including legislation, to modify or abolish

²⁷⁸ Cap. 114 of the R.E. 2002 of the Laws of Tanzania.

²⁷⁹ Cap. 115 of the R.E. 2002 of the Laws of Tanzania.

²⁸⁰ Act No. 6 of 2004.

²⁸¹ Section 7(4) (h), (i), (j) and (k) of the Employment and Labor Relations Act, 2004 state that no employer shall discriminate, directly or indirectly, against an employee, in any employment policy or practice, on grounds of sex; gender; pregnancy; and marital status or family responsibility.

²⁸² Section 169A of the Penal Code, Cap. 16 states that, any person who causes female genital mutilation (FGM) or carries or causes to be carried out female genital mutilation, commits the offence of cruelty to children [and women of course].

²⁸³ URT '*Millennium Development Goals Report, Mid-Way Evaluation 2000 – 2008*' Ministry of Finance and Economic Affairs, page 11.

²⁸⁴ Citation of the case: (1990) TLR 106.

existing laws, regulations, customs and practices which constitute discrimination against women. Also to repeal all national penal provisions which constitute discrimination against women.²⁸⁵

The laws which discriminate against women include: *the Customary Law Declaration Order, 1963*²⁸⁶ which, inter alia, prohibits the widow to inherit land from her deceased husband; *the Tanzania Citizenship Act, 1995*,²⁸⁷ which states that a woman who is married to a Tanzanian citizen is entitled to be naturalized, but the opposite is not possible and that, a person whose father was a Tanzania citizen at the time of birth is entitled to naturalization;²⁸⁸ *the Law of Marriage Act, 1971*²⁸⁹ which allows marriage for young girls of even below 15 years.²⁹⁰

Once again, the LHRC urges the government to amend these laws to remove the stated and other anomalies. Its endless promises are causing millions of women unnecessary suffering and humiliation.²⁹¹

5.1.2 Prevalence of the Female Genital Mutilation

Female genital mutilation or cutting (FGM) is practiced in Tanzania over the years by Maasai, Iraque, Nyaturu, Pare, Gogo, Zanaki, Ruli, Sweta, Ikoma, Sukuma, Kurya and other tribes in Arusha, Morogoro, Manyara, Singida, Kilimanjaro, Mara and Shinyanga, as part or symbol of graduating a lady from childhood to maturity.²⁹² The mutilation of the genital organ of a woman is what constitutes an act of FGM. However, it can take different forms including the full or partial removal of females' external genitals either for the said rituals or non-therapeutic reasons.²⁹³

²⁸⁵ Article 2(f) and (g) of the CEDAW.

²⁸⁶ G.N 279/ 1963.

²⁸⁷ Cap. 357 of the R.E. 2002 of Laws of Tanzania.

²⁸⁸ Sections 11(1) and 9(2) of the Citizenship Act, 1995.

²⁸⁹ Cap. 29 of the R.E. 2002 of Laws of Tanzania.

²⁹⁰ Section 13 of the Law of Marriage Act, Cap. 29 of the R.E. 2002 of Laws of Tanzania.

²⁹¹ In 2007, the then Minister for Justice and Constitutional Affairs Ministry, Dr. Mary Nagu announced in September 2007 that the government will in fact amend the Law of Marriage Act in the next parliamentary session, which was October 2007 [See: Angel Navuri 'Government: Marriage Law for amendment next month' The Guardian (Tanzania) 26 September 2007]. The same promise was made by the Minister for Community Development, Gender and Children, Mrs. Sophia Simba. She said that her Ministry, in collaboration with Dr. Nagu's Ministry, has continued to work on laws which have gaps including the Law of Marriage Act. [See: Speech of the Minister for Community Development, Gender and Children, Presenting in the National Assembly the Budget Estimates for the Year 2007/2008, page 8. ALSO read LHRC (2007) Tanzania Human Rights Report of 2007, page 60 for more information].

²⁹² LHRC, 'The Legal Process, Can It Save Girls From FGM? Case of Three Maasai Girls in Morogoro' The Research Report and Analysis of 2004, pages 1 and 2.

²⁹³ LHRC, 'Female Genital Mutilation: A Human Rights Abuse veiled in customs and traditions, A Report on the Research into the Practice of FGM in Tanzania of 1999' page 11.

However, the overall trend suggests that the prevalence of FGM practice is decreasing. The recent statistics of prevalence trend indicate that, the frequency has been reduced from 18 per cent before 2005, to less than 15 percent in 2006. However, the LHRC is of the view that, new in-depth research should be conducted to ascertain the nationwide trend of FGM because, according to interviewees in Simanjiro district, Manyara region, FGM is being performed on infant children, who could not be easily seen or noticed by the villagers campaigning against it.²⁹⁴



Continentwise, it is stated that the prevalence of FGM is taking a downward trend thanks to various interventions adopted, including criminalization and awareness campaigns.

According to WMLW,²⁹⁵ 17 African countries have so far promulgated laws against FGM. They are Benin, Burkina Faso, Central African Republic, Chad,

Cote d'Ivoire, Djibouti, Eritrea, Egypt (in 2008), Ethiopia, Ghana, Guinea, Kenya, Mauritania, Niger, Senegal, Togo and Tanzania²⁹⁶ in different years.²⁹⁷

Female Genital Mutilation: The two girls are from Kitunda in Dar es Salaam who were to be circumcised by their parents forcibly and decided to run away and luckily were helped by LHRC, TAMWA, TBC and Ministry of Community Development, Gender and Children.

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000*, which calls for the elimination of practices that are harmful to women, including FGM.²⁹⁸ As stated above, two years before this Convention, Tanzania had already amended its Penal Code²⁹⁹ making FGM practice an offence.

Section 169A of the Penal Code provides for an offence of FGM. It states that, any person who, having the custody, charge or care of any person under eighteen (18) years of age, causes female genital mutilation or carries or causes to be carried out female genital mutilation, commits the offence of cruelty to children. That means, it is an offence only if it is conducted to a female whose age is below 18 years.

²⁹⁴ An identified person resident of Shambalali, in Manyara region said this in response to LHRC questioners in 2009.

²⁹⁵ Its acronym for of the organization (NGO) called the Women Living Under Muslims Laws.

²⁹⁶ Tanzania amended the Penal Code, Cap. 16 in 1998 through SOSPA Act, 1998 to criminalize the practice of FGM.

²⁹⁷ See: The Women Living Under Muslims Laws '*International: Global Consultation Report on FGM/ Cutting*' available at www.wml.org accessed on 30th December 2009. Moreover, this report states that, in Nigeria, 12 states enacted laws against the practice in 2009. In Uganda, community bylaws against the practice are in place. Developed countries where FGM/C is being practiced also enacted laws. In the United States, for example, the law requires that communities and medical professionals be educated about FGM.

²⁹⁸ Art. 5 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000*.

²⁹⁹ Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

The LHRC urges the government to bridge this gap with immediate effect because FGM can adversely affect all women, regardless of age. Even if a woman has reached the age of majority (above 18 years), her consent is not freely given due to undue pressure from the members of her family, clan or community. Most of the communities which believe in FGM as symbol of adulthood for women views that, if a woman skips this stage, she is considered an outcast and she therefore isolated by the community.³⁰⁰

Few cases have landed in court against the offenders of Section 169A of the Penal Code. There is no any record indicating the number of suspects convicted of the FGM offence. However, information gathered from a few cases on record has revealed that, it's difficult for the prosecution to prove FGM cases in court.

For instance, in the case of *R v. Mbwasa Madaru*³⁰¹ of Dodoma, a girl under 18 years was circumcised secretly. After sometimes, she developed some health complications and therefore she was taken to hospital for treatment. The matter was reported to the police. The girl's father was arrested and charged of performing FGM to her daughter contrary to Section 169A of the Penal Code (quoted above). The case against the father was later withdrawn for lack of evidence, because witnesses were not willing to testify against the father.

In the case of *R v. Fatma Iddi and Others*,³⁰² the accused were charged of performing FGM on a girl of 7 years. But the case did not last long in court. It was withdrawn apparently because of the pressure from within the victims' family and other people around. This, according to the LHRC observation, due to three factors:

- a) Pressure from the clan/community members from which the accused and the victims belong;
- b) Ignorance of the people about the due criminal procedure/process, as some people are still unaware that FGM is now a criminal offence (since 1998);³⁰³ and
- c) Lack of confidence in the due legal process because most of Tanzanians seem to have strong tie to their traditional councils such as *Litongo* for Kurya communities³⁰⁴ and some of them still believe that taking a case in court is as good as wasting of time and resources.

³⁰⁰ LHRC, 'The Legal Process, Can It Save Girls From FGM? Case of Three Maasai Girls in Morogoro' The Research Report and Analysis of 2004, pages 1 and 2.

³⁰¹ Criminal Case No. 261 of 1999, in the District Court of Dodoma.

³⁰² Criminal Case No. 123 of 1990, in the District Court of Singida.

³⁰³ In the case of *R v. Mussa Daudi and Others*, in which the accused admitted to have committed the FGM offence, the court which heard the case stated that, because of ignorance of the existence of the new offence, the illiterate people in the rural areas are not at all conversant of with the law (Penal Code, Cap. 16 as amended in 1998 by SOSPA Act, 1998). The court ordered the government and the parliament to educate and sensitize the community on this law. The accused/ convict was ordered to pay Tanzanian shillings 10,000 (approximately USD 90 in December 2009) or four (4) month in jail. He paid the fine and walked free.

Otherwise, statistics show that, despite the fact that FGM prevalence is dropping at the national level, it is still widely practiced in some regions especially Dodoma and eastern regions of Tanzania. For instance, information gathered in 2009 showed that the rate of FGM cases in Dodoma were still high. The report of WOWAP, an NGO of Dodoma indicated that, FGM prevalence in Dodoma region as of 2009 was at 68 percent. This is caused by some women preserving perpetrators of the custom. The WOWAP also found that, nowadays, women are ‘forceful’ and unknowingly circumcised during delivery in the hands of traditional midwives.³⁰⁵

5.1.3 Persistence of Gender-Based Violence

The gender-based violence (GBV) is still widespread not only in Tanzania, but also around the world. It is said that, the main underlying cause of violence against women lies on discrimination, which denies women equality with men in all spheres of life.³⁰⁶ This is the challenge to the public health and development; It is violation of the human rights very well connected to societal, economic and cultural factors in Africa.³⁰⁷

Article 1 of the *United Nations Declaration on the Elimination of Violence against Women*,³⁰⁸ 1993 defines violence against women as:

[a]ny act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Therefore, the GBV can take different forms and can be of different magnitudes. It can involve married or unmarried partners, other members of the family and clan or community in which, their acts or omission result into the said violations.

³⁰⁴ LHRC ‘Report of Fact Finding Mission – *Litongo* Legality, Adjudication Process and Human Rights Violations in Musoma and Tarime’, June 2007.

³⁰⁵ Augusta Njoji ‘FGM still high in Dodoma’ Tanzania Daima; September 04, 2009.

³⁰⁶ NAGAAD Umbrella Organization (2007) *Assessing Somaliland Women’s Status: In the Critical Areas of Education, Health, Economic Empowerment, Media, Environment, Law and Violence Against Women*, page 31. The same literature states that, the power structure within society, which perpetuates violence against women, are deep-rooted, although, the violence against women is mostly under-reported because women are ashamed or fear disbelief, hostility or further violence.

³⁰⁷ IGWG et al (November 2009) *Strengthening Regional Work on Gender-Based Violence. The Report of the Meeting of Activists, Practitioners and Researchers from Horn, East and Southern Africa, Kampala Uganda, November 8-9, 2009. Page iv.*

³⁰⁸ Adopted by the United Nations General Assembly Resolution Number 48/104 of 1993.

Article 4 of the said Declaration requires states to condemn violence against women and that should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. Indeed, Tanzania has made a positive stride towards prohibiting GBVs through laws, police and practice. The initiatives taken by the government include:

- a) Widening of the scope of sexual offences³⁰⁹ following the 1998's miscellaneous amendment of the *Sexual Offence Special Provisions Act, 1998 (SOSPA)*, in which Parts XV and VI of the *Penal Code*³¹⁰ were subsequently;
- b) Prohibition of infliction of corporal punishment to a spouse. *Section 66 of the Law of Marriage Act*,³¹¹ states that 'for 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.'
- c) Establishment of the Tanzania Police Female Network, which among other things, envisages creating gender desks at police stations throughout the country.³¹² This is good plan of its kind in Tanzania and needs to be supported by all stakeholders.

The provisions of the *Law of Marriage Act* don't provide for punishment. However, since unlawful infliction of corporal punishment amounts into a criminal offence of assault, then the offender can be prosecuted under the *Penal Code*.³¹³

The said provision creates a gap in which a husband can beat his wife or partner and claim that it is not an offence because he has not used corporal punishment, which this law prohibits. In order to avoid this ambiguity and anomaly, the LHRC suggests that, this provision should be rephrased to include all kinds of domestic violence plus the marital rape, which is not an offence in Tanzania at the moment.

The LHRC is also views that, since incidences of domestic violence and other forms of the GBV are increasing, and the current laws of Tanzania provide inadequately on these offences, the government should consider possibilities of enacting the *Prohibition of Gender-Based Violence Law*. This will enable follow-up to all kinds of violence.

³⁰⁹ The definitions and scope of the sexual offences were widened and penalties for the same are severe. Some of the offences relating to GBV under the Penal Code, Cap. 16 include Rape (S.130); Abduction (S. 133); Sexual Assault (S. 135); Defilement (S. 137); Sexual Exploitation of Children (S.138B); Grave Sexual Abuse (S. 138C); Sexual Harassment (S. 138D); Unnatural Offences (S. 154); and Cruelty to Children (S. 169A).

³¹⁰ Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

³¹¹ Cap. 29 of the R.E. 2002 of the Laws of Tanzania.

³¹² Statement of Hon. Margaret Simwanza Sitta (MP), Minister for Community Development, Gender and Children of the United Republic of Tanzania before the Committee of the Right of the Child, Geneva Switzerland, 29 September, 2008.

³¹³ Sections 240 to 243 of the Penal Code prohibit assaults of all kind.

A recent research (carried out in 2009) on crime and criminal justice in Tanzania³¹⁴ found that most women are vulnerable to domestic violence due to the lack of access to education, employment and depending economically on their spouses.³¹⁵ As to why women are reluctant to report to the police and other law enforcement agencies domestic or other forms of gender based violence when the perpetrators are their spouses, the same findings concluded that the women fear that once spouses are prosecuted they might end up separating with ‘their breadwinners.’³¹⁶

Moreover, women face a major challenge as police stations do not provide them with a conducive environment for reporting GBV or crimes. Most stations in Tanzania lack gender desks as proposed by the Tanzania Police Female Network. It is not certain how many police stations have already had gender desks by 2009. Certainly, it would take time to set up the desks at all stations.

However, gender desks won’t be enough, as the USAID suggests,³¹⁷ the creation of these desks should go along with provision of specific legal aid to the victims and creation of safe shelters to keep the GBV survivors at least in some places of Tanzania.

Apart from those proposed initiatives, LHRC suggests that psycho-social units/programmes should be implemented by linking the police’s gender desks and the social welfare departments under the Ministry of Health and Social Welfare. The easier way of coordinating all these is to have a GBV Forum on Crime, which would involve the police, CSOs and members of the community. Some financial challenges faced by the police would be taken care of by the forum.

Meanwhile, LHRC urges the government to facilitate the Police Force in terms of human and financial resources and essential facilities to establish the gender desks throughout the country. This should go along with the improvement of the welfare of the police officers.

Some GBV incidences that occurred in 2009 include passion killings, mere cruelty and other kinds of violations. For instance, a woman (Paulina Matoboki 43 years) was killed in Shinyanga region after a problem of matrimonial relationship. The two partners had divorced a couple of days before the incident.³¹⁸ Another passion killing involved a woman who was killed at Sanawari in Arusha city, in January 2009.³¹⁹

³¹⁴ ISS/ AHSI (2009) Crime and the Criminal Justice System: Tanzania Country Review Report Enhancing the Delivery of Security in Africa. ISS: South Africa. Note ISS and AHSI are acronyms for the ‘Institute of Security Studies’ AND ‘African Human Security Initiative’ respectively.

³¹⁵ ISS/ AHSI (2009) Crime and the Criminal Justice System: Tanzania Country Review Report Enhancing the Delivery of Security in Africa. ISS: South Africa. Page 11.

³¹⁶ ISS/ AHSI (2009) Crime and the Criminal Justice System: Tanzania Country Review Report Enhancing the Delivery of Security in Africa. ISS: South Africa. Page 11. The same report also states that, the members of the police force often view spouse abuse as marital issues that should be sorted out at home.

³¹⁷ See: USAID ‘Gender-based violence in Tanzania: An Assessment of Policies, Services and Promising Interventions’ November 2008. Page 2.

³¹⁸ Julius Sazia ‘Amuua mkewe baada ya tendo la ndoa porini’ Mwananchi, January 11, 2009.

³¹⁹ Mary Mwita ‘Auawa kwa kupigwa risasi na mpenziwe’ Mtanzania January 9, 2009.

In another incident, a widow identified as Pili Gitano (40 years), resident of Tagota village in Tarime District, Mara region was beaten up by her brothers-in-law because she refused to be ‘inherited’ by one of her deceased husband’s brothers, according to the Kurya customs. The said widow was living with 7 children after her husband died in 2007.³²⁰

5.1.4 Presence of Human Trafficking

Human trafficking or trafficking in person is comprehensively defined in the USAID publication³²¹ to mean, the recruitment, transportation, transfer, harboring, or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Therefore, it means more than transporting a person from one place to another.³²²

Tanzania is one of the member states to the *United Nations Convention against Transnational Organised Crime and, in particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.³²³ Furthermore, the country has made some positive steps towards domestication of the convention by enacting the *Anti-Trafficking in Persons Act, 2008*.³²⁴ Before the enactment of the said law, trafficking in person was and is still an offence under the provisions³²⁵ of the *Penal Code* of Tanzania.³²⁶

The *Trafficking in Persons Report of 2009 - Tanzania*³²⁷ revealed that Tanzania is a source, transit, and destination country for men, women, and children sent abroad for

³²⁰ Christopher Gamaina ‘A widow beaten up for refusing to be inherited’ Mtanzania, November 25, 2009.

³²¹ USAID ‘Gender-Based Violence in Tanzania: An Assessment of Policies, Services and Promising Interventions,’ November 2008, page 2.

³²² Section 4(1)(a) of the Tanzania’s Anti-Trafficking Act, 2008 includes on the list of scenarios of trafficking the act of transporting human being “*under pretext of domestic and overseas employment*.” This is very important especially according to Tanzanian experience in which hundreds of girls are transported from the upcountry to the cities under the pretext of employment as house girls.

³²³ This Convention was adopted by the United Nations General Assembly U.N.G.A. Res. 55/25 on November 2000. Tanzania ratified it on 24 May 2006.

³²⁴ Act No. 6 of 2008.

³²⁵ Section 169A creates the offence of trafficking of person to mean,

³²⁶ The acts of anti-trafficking in persons mentioned under Section 4 of the Anti-Trafficking in Persons Act, 2008, reassemble to acts of trafficking in persons provided for under Section 169A of the *Penal Code*, Cap. 16.

³²⁷ United States Department of States report of 16 June 2009.

the purposes of forced labor³²⁸ and sexual exploitation. The report further revealed that, the incidences of internal trafficking from one region, especially from upcountry to another,³²⁹ is higher than transnational.³³⁰

Therefore, what seem to be common in Tanzania are tendencies of trafficking in persons under pretext of domestic and overseas employment promises. An old man from Mggagao ward, Kilolo district, Iringa region informed the LHRC³³¹ in June 2009 that:

Jirani yangu ambaye alikuwa jela aliniambia kaka yake wa Kibaha anahitaji mtu wa kumsaidia na malipo yake ni kumsomesha. Ni msichana mdogo tu mtoto wa dada yangu. Nilikubali kwa sababu elimu ni muhimu, ila sasa msichana yule katorokea Kilwa kwa sababu kule walimfanyisha kazi kama punda na shule wapi. [My neighbor who was recently released from jail told me that his elder brother wanted someone to assist his family and will, in return, send her to school. She is just a young girl, a daughter of my sister. I accepted because education is very important, but the daughter has since fled to Kilwa because she was overworked like a donkey and (her sponsor) did not honor the promise of taking her to school].

The old man's tale represents hundreds or even thousands of similar stories of trafficking of young girls and women from upcountry regions to big cities and towns under the pretext of employment or education. Most of the girls of that nature come from Iringa, Singida, Dodoma, Rukwa, Lindi, Tanga and Kigoma. One of the possible reasons could be the level of income which prevails in those areas.

But some of the interviewees stated in Dar es Salaam in 2009 that, it was a little bit difficult to secure girls from those and other regions because nowadays parents send them to government and private primary and secondary schools built at the ward and village levels over the last few years. Moreover, most parents are now aware of mistreatments which their girls and young boys experiencing once they are trafficked to Dar es Salaam and other major cities of Tanzania.

The LHRC urges the government to fully implement the provisions of the Anti-Trafficking in Persons Act, 2008 and to conduct awareness campaigns on the mischief

³²⁸ For instance, it was reported the police in Tarime District, Manyara Region have arrested one David Otieno Odanga (25 years) on allegation that he had abducted two children (one and four years old) with the intention of selling them to the gold mining sites in Nyamongo area. It was alleged further that, the children were to be used as 'ingredients' of witchcraft rituals. Nyamongo is located in Tarime district, Mara region. [Guardian Correspondent 'Man arrested for child trafficking' The Guardian (Tanzania), December 14, 2009].

³²⁹ The report stated that, most of young girls and boys are trafficked to urban centers of Tanzania mainland and Zanzibar in the hotels, farms, mines and informal sector as well.

³³⁰ The report also stated that, smaller numbers of Tanzanian children and adults reportedly are trafficked to surrounding African nations, South Africa, Saudi Arabia, the United Kingdom, Sweden, and possibly other European countries for domestic servitude and sexual exploitation.

³³¹ Informed Clarence Kipobota of LHRC who visited Kilolo district during the monitoring visit of prisons of the mainland Tanzania 17 June – 17 July, 2009.

of the trafficking in persons as well as giving the communities alternatives to the “selling off” their children. Researches should be conducted to ascertain how much children are subjected into this illegal business and how far the current law does or would be effective in addressing trafficking of persons.

5.2 Child Rights

5.2.1 Child Rights Violation on Increase

According to the LHRC media survey of 2009, the violation of the rights of the child topped all other kinds of violations. The findings of the survey indicate that more than 100 incidences of violations were reported by the media, ranging from denial of certain necessities such as food and clothes, rapes, sexual abuses, working in hazardous sites, killings, lack of support and negligence.

Children have been adversely affected by these unfriendly situations due to the lack of social and proper legal protection. The combinations of all those situations and the socio-psychological factors have led to the increase of most vulnerable children (MVC) in Tanzania. The records of three years ago stated that, such children increased at an alarming rate.

The 2006 records showed that, there were 2.5 million orphans in Tanzania.³³² The number should have been more than that by 2009 because the situation, as stated above, is getting worse every day and that, between 2006 and 2009, there was no any notable measure taken to address the state of juvenile, street children and orphans. The situation seems to lack control of the community members and the government as well.

As it has been argued earlier, if vulnerability is a reflection of lack of control, then all children, and especially young children, are vulnerable simply because of their age – they depend on others to provide for their basic needs.³³³ However, there are those who do not have parents or proper guardians. These are called the most vulnerable children (MVCs). It is suggested by the research that about 6 – 8 percent of children in Tanzania are MVCs. This is about 1 million children³³⁴ probably most of them are out of the said 2.5 million orphans in Tanzania.

5.2.2 Child Labour

Article 32 of *the Convention on the Rights of the Child, 1989* (CRC) states that, children must 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

³³² See: The Tanzania Human Rights Report of 2006, page 73. The report quoted the World Children Report of 2006 of UNICEF.

³³³ Leach, Valerie (2007) Children and Vulnerability in Tanzania: A Brief Synthesis. REPOA and UNICEF: Special Paper 07.25, page 1.

³³⁴ Leach, Valerie (2007) Children and Vulnerability in Tanzania: A Brief Synthesis. REPOA and UNICEF: Special Paper 07.25, page 20.

the child’s health or physical, mental, spiritual, moral or social development.³³⁵

In conformity to this CRC requirement and in order to ensure that this principle is domesticated in Tanzania, the government facilitated the enactment of the *Employment and Labour Relations Act, 2004*. The labour law, inter alia, prohibits exploitation of the children especially in hazardous work places.³³⁶ Moreover, the MKUKUTA (cluster two) incorporates specific indicator to reduce the worst forms of child labour to less than 10 percent by 2010.



Child Labour: This picture was taken in one of the Dar es Salaam Markets which shows that child labour in Tanzania is still a problem.

Despite the stated prohibition and targets, it was estimated that in 2001 still there was over 35 percent of the children³³⁷ in Tanzania who were subjected to (hazardous) child labour in Tanzania.

The table below, extracted from the United States Department of labour Report, indicates:

| The 2008 Findings on the Worst Forms of Child labour – Tanzania | |
|---|-----------|
| Selected Statistics and Indicators on Child Labor | |
| Population, children, 5-14 years, 2001: | 9,829,325 |
| Working children, 5-14 years (%), 2001: | 35.4 |
| Working boys, 5-14 years (%), 2001: | 36.2 |
| Working girls, 5-14 years (%), 2001: | 34.5 |

³³⁵ Other international human rights instruments such as ILO Convention No. 59 on Minimum Age for Admission to Employment in Industry of 1937 – which was revised by ILO Convention No. 138 on Minimum Age for Admission to Employment of 1973 and the ILO Convention No. 182 on Prohibition and Immediate Action for Elimination of the Worst Form of Child Labour of 1999, put certain restrictions which Section 5 of the Employment and Labour Relations Act, 2004 of Tanzania has incorporated to some extent.

³³⁶ Section 5(1) and (2) of the Employment and Labour Relations Act, 2004 stipulate to the effect that, no person shall employ a child under the age of fourteen (14) years. The Subsection (2) of Section 5 of this law states that, a child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child's health and development; and does not prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child's capacity to benefit from the instruction received. The law also prohibits the engagement of the less than 18 year child in hazardous working places. Section 5(3) states that “child under eighteen (18) years of age shall not be employed in a mine, factory or as crew on a ship or in any other worksite where work conditions may be considered hazardous by the Minister.”

³³⁷ Those who are below 14 years of age.

| Working children by sector, 5-14 years (%), 2001: | |
|---|------|
| – Agriculture | 77.4 |
| – Manufacturing | 0.1 |
| – Services | 22.4 |
| – Other | 0.1 |
| Minimum age for work: | 14 |
| Compulsory education age: | 15 |

Source: United States labour Department [Information extracted from www.unhcr.org on 30th December, 2009]

However, most recent statistics suggest improvements whereby the number and percentage of children who are working have gone down. The current statistics indicate that there were 1.2 million working children (21 percent of children below 14 years of age) in 2008.³³⁸ However, this number might not include the children who are working as domestic workers especially in big towns and cities. The findings indicate that, the children who are domestic workers are also working on ‘hazardous’ condition because most of them work for more than 10 or 15 hours per a day without rest.³³⁹

5.2.3 Street Children and Juvenile Justice: The Cost of Being a Homeless Child

After a long wait of the outcome of the constitutional case,³⁴⁰ which was filed by the LHRC, *EALS and Mkombozi Centre for Street Children, to challenge the constitutionality of the Townships (Removal of Undesirable Persons) Act, 1958; Destitute Persons Act, Cap. 389*³⁴¹ and some provisions³⁴² of the *Penal Code, Cap. 16* which all together regard street children as criminals, the High Court of Tanzania in Arusha delivered its judgment on 27 November 2009.³⁴³ Symbolically this was the date when the world commemorated 20 years of Convention of Children Rights(CRC) 1989.

³³⁸ LHRC (2008) Tanzania Human Rights Report of 2008, page 88.

³³⁹ This is according to CHODAWU (Conservation Hotels Domestic and Allied Workers Union)’s findings. Read ILO ‘International Programme on the Elimination of Child Labour, IPEC/ Time Bound Programme for the Elimination of Worst Form of Child Labour’ 25 January 2007.

³⁴⁰ The case cited: Mkombozi Centre for Street Children, East African Law Society and Legal and Human Rights Centre Vs. Attorney General, Miscellaneous Civil Case No. 24 of 2007, High Court of Tanzania at Arusha (Unreported).

³⁴¹ The ‘destitute person’ is defined under Section 2 of this law to mean any person without employment and unable to show that he has visible and sufficient means of subsistence.

³⁴² Section 177(b) of the Penal Code, Cap. 16. The said provides for the control of rogues and vagabonds, called in Kiswahili ‘Wazululaji’

³⁴³ The court was presided by Mmilla, Chocha and Sambo all Judges of the High Court of Tanzania at Arusha.

The Petitioners namely; the Legal and Human Rights Centre (LHRC), the East African Law Society (EALS) and the Mkombozi Centre for Street Children argued in their petition³⁴⁴ in High Court that, the above mentioned laws which give the District Commissioner and other authorities powers to order removal (arbitrary arrest, harassment and detention/deprived of their liberty)³⁴⁵ of children from the streets without considering factors that sent them there is unconstitutional, as it breaches Articles 15 and 17 of the *Constitution of the United Republic of Tanzania of 1977*, which prohibits arbitrary arrest and provide for the freedom of movement respectively.

While dismissing the petitioners arguments, the court stated that:

[t] here is no doubt that the problem (of street children) is a product of socio-economic instability, which we are to date fruitlessly striving to balance ... in our opinion stated clearly and correctly that it is a result of family problems, poverty, movement of persons from one place to another and insufficient rains in some regions. This, in our view, suggests that the solution to the problem of street children lies in trying to address the root causes and not in the laws which are there to afford a balance between the interests of these groups and the rest of the members of the public on the other. In the circumstances, we hold that it will not be done away with because to do so will definitely remove the balancing mechanisms between individual rights on the one hand as against those of the other members of the society as a whole on the other³⁴⁶ [Emphasis Supplied].

The mind of the court failed to consider the fact that children needs special legal protection as the CRC requires. The gist of the petitioners' argument was that, children not like other people, need special protection. That is why they cited Articles 12 and 13 of the *Constitution of the United Republic of Tanzania of 1977*. Furthermore, it is the duty of the law to address problems surrounding the society because of the principle of the rule of law.

Also the court misdirected itself by not considering the fact that majority of the street children are persons of less than 13 years and therefore are not compelled to work. Doing so will amount to child labour, as it has been explained above. This explains the reason why they are not supposed to be regarded as destitute person. Note that, in its judgment,³⁴⁷ the court stated those laws are there as "*mechanisms of enforcement of the target that everyone must work, which is enshrined in the Constitution.*"

³⁴⁴ Petition is a legal document which contains the facts and prayers or requests of which a claimant requests the court to give in his or her favour. The constitutional cases and matrimonial proceedings are normally filed in court by way of Petition, while other civil suits are filed by way of Complaint.

³⁴⁵ Articles 6 of the ACPHR and 9 of the UDHR provide that every one shall have the right to liberty and security of his person and that no one shall be subjected to arbitrary arrest and detention. These provisions resembles to Article 15 of the Constitution of the United Republic of Tanzania of 1977 which provide for the same rights and principles.

³⁴⁶ Page 14 of the Judgment.

³⁴⁷ Page 16 of the Judgment.

The LHRC is of the view that, the prudent decision of the court would have been to direct the government to address this problem through legislative measure, which would compel municipal councils to take care of these children. The interest of the law should not be to incriminate the street children; rather it should safeguard their best interests because they are vulnerable and most of them are orphans, as above statistics indicate.

The current juvenile justice of Tanzania lacks proper safeguards of the interest of children. This is why they are treated as adults in the application and interpretation of the laws. The current procedural laws are blind of effective juvenile principles. It is high time to reconsider the whole package of juvenile principles to accommodate the same in the on-going Legal Sector Reform Programme (LSRP).

Other forms of child rights' abuses include assaults and killings. For instance, a child Zuhura Omari (6) was beaten up by her aunt with a hot knife which left the child with severe wounds and pain. The child was beaten up because she didn't wash the utensils on time.³⁴⁸ Also, in another incident, a 13-year-child of was killed by unknown persons after her head was chopped off and thrown it into River Meta in Mbeya region.³⁴⁹

The LHRC reiterates that, social and legal protection should be of high priority to children and other vulnerable groups discussed in this chapter.

5.3 Rights of Persons with Disabilities

Around 650 million people in the world are living with disabilities, representing 10 per cent of the world's population.³⁵⁰ As it has been stated in these reports since 2002, people with disabilities are vulnerable groups because they encounter a number of socio-economic, legal and political obstacles³⁵¹ which deny them opportunities to access education;³⁵² employment; information; health care; and the like.

5.3.1 People with Disability and Education

Education is one of the main opportunities for the people with disabilities to demand for their rights. It is a tool for giving them awareness of their rights and well being.

³⁴⁸ Benedict Kago 'A Daughter burn with hot knife' Majira, October 8, 2009.

³⁴⁹ Hawa Mathias 'A daughter killed cruelty, thrown into River Meta' Mwananchi, October 23, 2009.

³⁵⁰ See: www.un.org/disabilities accessed on 21 December, 2009.

³⁵¹ HakiElimu says that, the main challenge is lack of opportunities to facilitate them (people with disabilities) to live decent life. The main problem is denial of their basic rights which they are entitled just like other human being. [See: Gervas Zombwe, *Wenyeulemavu wana Haki ya Kupata Elimu, SautiElimu, Toleo la 22, 2009 – ISSN 1821 5076. The Newsletter of HakiElimu*].

³⁵² Note that disability rates are significantly higher among groups with lower educational attainment especially in poor country like Tanzania. A person with disability who is illiterate is more vulnerable and a possibility of him/ her to remain in the vicious cycle of poverty is quite obvious. This is why it is strongly advised by LHRC that, one of the decisive measures by the government should be on the right to education for the people with disabilities.

Therefore, denial of their rights to education means rebuff of other rights as well.

Despite this reality, by 2009 only 1 percent of children with disabilities were enrolled in primary schools, with reports indicating that the enrolment had decreased compared to the previous year.³⁵³ This situation is attributed by a number of factors, including the negative attitude of the members of the communities that, people with disabilities cannot sustain studies. Moreover, there are no decisive and affirmative measures to ensure accessibility of special facilities for children with disabilities.

The year 2009 did not bring any difference in terms of increased budgetary allocations to ensure availability of facilities for children with disabilities. Instead, the Tanzania Education Authority (TEA) begged from the public to contribute for their teaching and learning facilities. Moreover, it was found by HakiElimu³⁵⁴ in April 2009 that 95 percent of the school buildings, even those built during the implementation of Primary Education Development Plan (PEDP) didn't take into account the provision of facilities for mobility and other needs of pupils/students with disabilities. The PEDP also never or put little efforts in the construction of new special schools for children with disabilities.

One respondent of LHRC's questionnaires from Bariadi, Shinyanga said:

Nina mtoto kiziwi, ana miaka mingi sana ila hakuna shule ya yeye kuanza. Wenzake wanajaribu kumfundisha hesabu nikiwa nyumbani wakati wa usiku.
[I have a deaf child, he is grown up, but there is no (special) school for him to enroll. His colleagues try to teach him mathematics at home at night].

The Bariadi lady's complaint represents thousands of other voices depicting the plight of children of this nature who miss the opportunity to get primary school education due to inavailability of special schools around their vicinities.

³⁵³ LHRC (2008) Tanzania Human Rights Report of 2008, page 70 [Also see: Gervas Zombwe "Kutengwa Katika Elimu Kutakwisha Lini?" In Kauli Mbadala: Tunaelekea wapi? Published by HakiElimu and Mwananchi Communications Limited. ISBN 9987-423-75-2 of 2008. Page 28. Various information of the Ministry of Education and Vocational Training of Tanzania indicate that the enrolment of children in primary schools has been steadily increasing since 2001. Up to 2007, it is said that, the Net Enrolment Rate reached at 97% comparing the 59% Net Enrolment Rate of the year 2000. The Gross Enrolment Rate reached at 114% in 2007 comparing the 78% of the year 2000. As to June 2008, there were 34,661 pupils with disabilities in Tanzania (enrolled in primary school). Out of whom 19,998 were boys and the remaining 14,663 were girls but the number of enrolment of children with disabilities in primary schools is reported to have decreased from the said 34,661 in 2008 to 27,422 in 2009 [See: MKUKUTA Annual Implementation Report 2008/2009, Report of November 2009, page 39]. That figure represents only 1% of children with disability in Tanzania [See: HakiElimu (December 2008) Do Children with Disabilities Have Equal Access to Education? A Research Report on Access to Education for Children with Disabilities in Tanzanian School, page 7].

³⁵⁴ See: HakiElimu (December 2008) Do Children with Disabilities Have Equal Access to Education? A Research Report on Access to Education for Children with Disabilities in Tanzanian School, page 11. As a result, as this report points out, many pupils with disabilities tend to struggle hard in their movements within school premises. This also tends to discourage them from continuing with studies.

The LHRC urges the government and other private actors to adopt affirmative actions to ensure that, children with disabilities access education just like any other child in Tanzania. The *Education Act*³⁵⁵ and the *Policy* should be amended to reflect this reality and make it necessary for both government and private schools to have essential facilities for learning and mobility of children with disabilities.

The challenges, in which the children with disabilities are facing at primary school level, have direct bearing to their levels of performance and continuity to the secondary school level. Available statistics indicate that the level of passing examinations among pupils with disabilities is dropping. For instance, in year 2009 only 65 percent of pupils with disabilities were selected to join secondary schools, compared to 70.43 percent in 2008.³⁵⁶ Therefore, in one year alone, the number has dropped by about 16 percent. The statistics show that in 2008, 212 pupils with disabilities were selected to join Form One – 109 boys and 103 girls.

5.3.2 People with Disability and Health Care

The government promised to start bearing the medical costs for the people with albinism after the ratification of the *International Covenant of People with Disabilities*.³⁵⁷ However, there was no notable progress in fulfilling the promise. Instead, people with albinism have continued to complain about inaccessibility of special health services for them.

One responded to the LHRC's questionnaires, said:

Ile kesi huenda ikasaidia, manake polisi hawafanyi sana kazi kutusaidia japo mauaji yamepungua kwa sasa. Wenzetu walioko Dar es Salaam, hawajui sana mateso tuliyonayo. Hatuna dawa, miili yetu mabaka tupu na damu. Hata hospitali hawatujali sana naona nao hawana dawa kwa ajili yetu. [That case (filed by the LHRC) might help because the police are not doing their job to protect us despite the fact that incidences of killings have gone down at the moment. We don't have drugs; our bodies/skins are full of scars and blood strains. Even in the hospitals, they don't care much about us. The way I see, they don't have medicine for us].

³⁵⁵ Cap. 353 of the R.E. 2002 of the Laws of Tanzania.

³⁵⁶ In 2008, total of 212 (109 being boys and 103 girls) pupils with disabilities were selected to join Form One (secondary school), that being 70.43% of all pupils with disabilities in Tanzania. In 2009, the number was less than that of 2008 [actual figures were not obtained apart from the stated statistical information]. The results and figures were released by the Minister for Education and Vocational Training in January 2009. The Minister was quoted by media such as Majira of 7th January, 2009. See the article by Rehema Mohamed "Ufaulu wanafunzi wenye ulemavu washuka."

³⁵⁷ The statement was issued by Vice President of the United Republic of Tanzania, Hon. Dr. Mohamed Shein, when officiated the Albino Day at CCM Kirumba, Mwanza on 5th May 2009 [See: Sitta Tumma, Tanzania Daima, 6 May 2009, page 5].

In March 2009, the LHRC filed a case ³⁵⁸ in the High Court of Tanzania in Dar es Salaam, inter alia, asking the Court to order the government put in place decisive measures to protect the lives and dignity of persons with albinism.

In that case, the LHRC argues that, inaccessibility to the skin protective gear and reasonable skin health care services by persons with albinism in public hospitals or other public health institutions, offends their human dignity and was in breach of Articles 12(2) and 14 of the Constitution of Tanzania.³⁵⁹

5.3.3 Legal Protection to Persons with Disabilities

During the year 2009, Tanzania ratified ³⁶⁰ the *Convention on the Rights of Persons with Disabilities, 2006*.³⁶¹ The purpose of the convention is to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities. It covers a number of key areas such as universal accessibility of services, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, equality and non-discrimination.³⁶²

The convention marks a shift in thinking about disability from a social welfare concern, to a human rights issue, which acknowledges that societal barriers and prejudices are themselves disabling.³⁶³ Moreover, it does not create new rights; rather, it addresses the needs of the people with disabilities in a more special way.

As it is well explained in chapter ten of this report, Tanzania follows dual legal system whereby, international laws like this Convention are not applicable in the country until they are domesticated into domestic laws. By the end of 2009, the *Convention on the Rights of Persons with Disabilities* had not been domesticated yet. Moreover, there was no any comprehensive law or laws on the rights and welfare of the people with disabilities. Therefore, there has been no any progress on legal protection apart from mere ratification of the above treaty.

³⁵⁸ *LHRC Vs. AG, Permanent Secretary Ministry of Health and Social Welfare, Permanent Secretary Ministry of Home Affairs and Permanent Secretary Ministry of Education and Vocational Training*. Misc. application Cause 2009, HC Main Registry, Dar es Salaam.

³⁵⁹ Article 12(2) of the Constitution of Tanzania states that every person is entitled to recognition and respect for his dignity. Article 14 provides for the right to life. The Ministry of Home Affairs is enjoined in this constitutional case because of its failure to protect the lives of the people with albinism. The Ministry of Education and Vocational Training is enjoined because it has failed to design education programmes, which would have facilitated the albinos to easily access the materials for instance using enlarged script.

³⁶⁰ Ratified by the Parliament of Tanzania in April 2009.

³⁶¹ This Convention was adopted by the United Nations General Assembly' Resolution 61/106 of 13 December 2006.

³⁶² Articles 3, 4, 9, 12, 20 of the *Convention on the Rights of Persons with Disabilities, 2006*.

³⁶³ Article 8 of the *Convention on the Rights of Persons with Disabilities*. Also see: www.un.org/disabilities accessed on 21 December, 2009.

The LHRC urges the government to seriously adopt legislative measures to ensure effective legal protection of people with disabilities in Tanzania.³⁶⁴ The LHRC also urges the government to reconsider and amend the *Witchcraft Act*³⁶⁵ to give it more meaning and to regulate traditional healers. There is no mechanism in place to control traditional healers as a result fake/unscrupulous people are allowed to operate as traditional healer and practice witchcraft which fuels killings of people with albinism and elderly persons.

5.4 Rights of Refugees

Tanzania is state part to international human rights instruments on the rights and welfare of the refugees³⁶⁶ and asylum seekers³⁶⁷ namely, the *United Nations Convention Relating to the Status of Refugee of 1951* and the *Protocol Relating to the Status of Refugee Problems in Africa of 1967*. At the domestic level, Tanzania is governed by the *Refugee Act, 1998*,³⁶⁸ which domesticates more than seventy percent of the principles embodied in the refugee conventions. It has also the *Refugee Policy of 2003*.

The laws and policy of Tanzania on refugee lack harmony and sometimes, their application tend to contradict with the international instruments especially in areas like the protection of refugees in safe zones inside their countries, the limitation of refugee employment to only small income generating activities within the camps and a requirement for refugees to reside in designated areas, irrespective of their circumstance.³⁶⁹

³⁶⁴ Article 4 of the Convention on the Rights of Persons with Disabilities calls upon state parties to develop and carry out policies, laws and administrative measures for securing the rights embodied in the said treaty. The measures should include abolishment of bad laws, policies and reform of harmful practices which violate the rights of the people with disabilities.

³⁶⁵ Cap. 18 of the R.E. 2002 of the Laws of Tanzania.

³⁶⁶ A 'Refugee' is defined by Article 1 (1) of the Convention Governing the Specific Aspects of *Refugee Problems in Africa of 1969* and Section 4 (1) (a) and (b) of the Tanzanian Refugee Act, Cap. 37 to mean, any person who is outside the country of his nationality or if he has no nationality, the country of his former habitual residence, because he has or had a well founded fear of persecution by reason of his race, religion, nationality membership of a particular social group or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the Government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence; and owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

³⁶⁷ A 'Asylum Seeker' according to Section 3 of the Refugees Act, Cap. 37 of Tanzania, means a person seeking refugee status in accordance with the provisions of this Act and in accordance with other International Conventions relating to refugee matters of which Tanzania has acceded to

³⁶⁸ Cap. 37 of the R.E. 2002 of the Laws of Tanzania. It repeal and replaced the then Refugee Control Act, 1965. The old laws applicable in Tanzania before the 1965 legislation were the Defence (War Evacuees) Regulations of 1942; and the War Refugees (Control and Expulsion) Ordinance of 1946.

³⁶⁹ Rutinwa, Bonaventure 'Identifying the Gaps in Protection Capacity' UNHCR, 2005. It is quoted in LHRC (2006) Tanzania Human Rights Report of 2006, page 83.

Moreover, Section 17 of the *Refugees Act* requires asylum seekers and refugees to stay in designated areas or settlements. They are restricted to move out of the camps without prior permission of the Settlement Officer, whose permit lapses after 14 days.³⁷⁰ This law also gives the settlement officer powers to arrest without warrant, any person when he/she has reasonable ground for suspecting him/her of committing an offence.³⁷¹

On the situation of the refugees in Tanzania, the records show that the country still hosts 273,983 refugees in its camps. They are from Burundi, the Democratic of Republic of Congo (DRC) and Somalia.³⁷²

The following chart gives comparative picture of the population number of refugees in Tanzania over three years (from 2007 to 2009):

| POPULATION OF CONCERN – UNHCR, TANZANIA 1 DECEMBER 2009 | | | | |
|--|---------|----------------|----------------|----------------|
| Camps | Current | 1 January 2009 | 1 January 2008 | 1 January 2007 |
| Burundi Refugees | 36,338 | 45,920 | 118,043 | 154,406 |
| DRC Refugees | 62,818 | 79,706 | 97,099 | 127,973 |
| Mixed | 184 | 201 | 195 | 2,402 |
| Settlements | | | | |
| Burundi Refugee | 140,860 | 194,560 | 218,234 | 218,234 |
| Burundi Naturalized | 30,920 | 0 | 0 | 0 |
| Somali Refugees | 1,440 | 1,522 | 2,059 | 2,086 |
| Somali Naturalized | 1,423 | 1,222 | 732 | 182 |
| TOTAL | 273,983 | 323,131 | 436,362 | 505,283 |

Source: UNHCR, Tanzania Factsheet, 1st December, 2009.

By 2009, the UNHCR in collaboration with the governments of Tanzania and Burundi were considering the possibility naturalizing Burundian refugees who came into Tanzania since 1972 and settled at three settlements in Tabora and Rukwa region. The UNHCR stated in December 2009 that, 363,000 Burundian and 65,000 Congolese camp refugees were assisted to return to their home since 2002 and so far in 2009, a total of 5,835 camp refugees had returned to Burundi and 1,421 to the DRC.

³⁷⁰ Also read: Swenya Armando and Daniel Lema 'Refugee Protection: Practical Challenges After Ten Years of Implementation of the Refugee Law and Policy in Tanzania' in the LRCT (2009) Law Reformer Journal of the Law Reform Commission, Vol. 2, No. 1 of April 2009, page 53.

³⁷¹ Section 25 of the Refugees Act, Cap. 37.

³⁷² UNHCR Tanzania Fact Sheet 1st December 2009. Note that, for decades, Tanzania has been hosting largest refugee population on African continent. Between 1993 and 2006, Tanzania received 1.3 million refugees hosted in western regions of Kigoma and Kagera whose population is estimated to be 2.3 million. SAHRiNGON 'Research Report on Socio-Economic Impact of Refugees in Tanzania: A Case Study of Kasulu District Kigoma Region, 2007, page 1.

³⁷³ Settlements mean refugees who have been transferred into other (third) country. According to UNHCR, as to 2009 total of 1,237 refugees were re-settled mainly to the USA, Australia, Canada, Ireland, Portugal, Sweden and UK. See: UNHCR Tanzania Fact Sheet 1st December 2009.

The return of refugees has been criticized by some of the refugees for being involuntary. The government findings of 2007 showed that, 79 percent of refugees who are in Tanzania want to remain in the country, that is to be integrated and naturalized (make refugees as citizens) while only 21 percent of them want to be repatriated to their original countries.³⁷⁴

It seems logically that, more than 70 percent of the refugees who returned to their home countries have been coerced contrary to the principles of the mentioned human rights instruments.³⁷⁵ The closure of some of the refugees' camps is also a sign of forceful repatriation because it is an indication that there will be no 'homes' for the refugees anymore.³⁷⁶

³⁷⁴ Boniface Meena 'Waraka wa Uraia wa Nchi Mbili wakamilika' [Dual Citizenship bill is ready] Mwananchi 28 December 2007. This information is also quoted in the LHRC (2007) Tanzania Human Rights Report of 2007, page 70. The government's 2007 findings were announced by the then Minister for Home Affairs, Mr. Joseph Mungai. Article 34 of the Convention Relating to the Status of Refugees of 1951, which Tanzania is a member state, provides for the rights to integration and naturalization of any refugee. This seems to be the best solution to the refugee problems. The integration and naturalization are not provided for in the Refugee Act and Refugee Policy of Tanzania. The Tanzania Citizenship Act, 1995 allows one any foreigner to apply for Tanzanian citizenship. But it could not be directly applicable for the refugees because the law requires an applicant to be outside the country while he or she makes an application. That mean, the applicant will be allowed to come in Tanzania as a naturalized citizen if his or her application receives a positive consideration. This is another legal gap as far as the situation of the refugee is concerned. Professor Chris Maina Peter is of the view that, the integration and naturalization procedures for refugees should or would have been articulated in the Refugee Law/Act [See: Peter, C. M "Rights and Duties of Refugees Under Municipal Law in Tanzania: Examining a Proposed New Legislation", Journal of African Law, Volume 41, pages 81 to 99]. His article was quoted by Swenya and Lema, op cit, page 55.

³⁷⁵ Article 5 of the Convention on Specific Aspects of Refugee Problems in Africa of 1969 [came into force on 20 June 1974], provides for voluntary repatriation. It clearly states that, 'the voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.' This same principle is adopted in other several provisions of international legal instruments on the status and welfare of the refugees. Section 34 of the Refugee Act, Cap. 37 of R.E. 2002 of the Laws of Tanzania also provides for the right to voluntary repatriation. However, the way it formulated does not guarantee a refugee the right to resist involuntary repatriation. That is, it does not prohibit involuntary repatriation rather it prohibits denial of voluntary repatriation. Subsection (1) of Section 34 states that, '[A]n asylum seeker or refugee shall have the right at any time to return voluntarily to the country of his nationality or from which he entered Tanzania and any action or omission intended to prevent or restrict or which has the effect of preventing or restricting any asylum seeker or refugee from voluntary repatriation except in the due process of the law is hereby prohibited.'

³⁷⁶ The Tripartite Agreement between the governments of Tanzania, DRC and UNHCR of 13 May 2009, signed at Kigoma, it was agreed that the closure of the Lugufu refugee camp would have commenced on 30 June 2009 and supposed to be completed by 30 September 2009 "so as to maximize returns during the high season for repatriation." For the refugees who would have been unable to be repatriated, the agreement stated that they were to be reallocated to Nyarugusu camp. [See: Clauses 11 and 12 of the "Final Communiqué of the Fourth Meeting of the Tripartite Commission on Voluntary Repatriation of Congolese Refugees Living in the United Republic of Tanzania" Signed at Kigoma, Tanzania on 13 May, 2009 by Mr. Mr. Khamis Sued Kagasheki,

Moreover, it's not certain whether the repatriation considered the fact that the political situation was still unstable, especially in the DRC. For instance, one of the Congolese refugees, Ms. Sevelyne Kashindi, told the LHRC information Officer Mrs. Rose Mwalongo in September 2009, that:

I came to Tanzania in 1999 and ran away due to civil war. They shot my husband to death and there is no way I can go back. I am afraid if I return there, they might kill my children too.

Ms. Kashindi's voice represents a thousands of refugees and, in fact, supports the government's findings of 2007, as stated above. Another refugee, Sikitu Sherifu from the DRC told Mrs. Mwalongo, that the government of Tanzania should look for another option for the refugees who are not willing to go back to their home countries because of fear of persecution.

The brief report of the UNHCR in Tanzania for 2009 has not stated how it addresses the post-camping life (reintegration) of the repatriated refugees when they return to their countries in terms of security, food, continuation of school/studies, fixed properties left in Tanzania, ARV treatment, shelter for those whose houses were destroyed or invaded, families' reunion and the like.

Moreover, it seems that most of them are also suffer the psychological trauma after the incidences which killed their relatives and friends. For instance, one of the refugees who met Mrs. Mwalongo during her visit in Kigoma in 2009 strongly affirmed:

They killed my father and my mother died while waiting for a boat to come to Tanzania. I have too many memories of Congo. I would rather go to Burundi perhaps through my name someone will accept me, but not the DRC.

That is a voice of a seriously affected person. Psychological counseling and guidance would be of great help. But the important point here is to consider the fact that, repatriation of refugees to the countries which are still unstable politically, means ruining them once again.

In 20 January 2005, the voluntary repatriation agreement was signed between the government of Tanzania and that of the DRC. On 14 May 2008, the tripartite agreement between Tanzania, DRC and UNHCR re-affirmed the 2005 agreement.³⁷⁷ Again on 13 May 2009 in Kigoma Tanzania, the same agreement was re-affirmed by the delegates from the two countries and the UNHCR. The May 2009 agreement stated that, there

Deputy Minister of Home Affairs of Tanzania; Ambassador Juma Alfani Mpango, Ambassador of the DRC to Tanzania; and Mr. Yacoub El Hillo (UNHCR Representative in Tanzania).

³⁷⁷ The Tripartite Agreement between the governments of Tanzania, DRC and UNHCR of 13 May 2009, signed at Kigoma, it was agreed that the closure of the Lugufu refugee camp would have commenced on 30 June 2009 and supposed to be completed by 30 September 2009 "so The agreement was called "Final Communique of the Third Meeting of the Tripartite Commission DRC-Tanzania-UNHCR on the Voluntary Repatriation of Congolese Refugees Living in the United Republic of Tanzania" Kishasa, 14 May 2008. It was signed by Mr. Denis Kalume Numbi

were efforts exerted to improve basic services in the areas of return in all critical sectors such as shelter, water, health and education. However, it was noted that, North Kivu area is not safe as yet because of a rebel group – CNDP.

5.5 Rights of the Elderly

5.5.1 Number of Old People on the rise

According to available recent statistics of 2003, Tanzania is estimated to have a total population of 1.4 million old people (4 percent of the total population) who are aged 60 years and above.³⁷⁸ The 1.4 million population of Tanzania is part of the estimated 184 million old people around the world who are living in poverty, with no secured income.

The *National Ageing Policy of Tanzania of 2003*,³⁷⁹ states that the government is aware Tanzanian old people³⁸⁰ face a number of problems which include poverty, inadequate health services and pension, and lack of participation in important decisions affecting national development. Old people, especially women, whose number is bigger compared to that of men, are subjected to torture, killings, discrimination and the like because of harmful traditional practices as explained in this subchapter.

5.5.2 Vulnerability of Elderly Women

The *National Ageing Policy of Tanzania of 2003* makes it clear that, the elderly women are more affected by old age problems³⁸¹ than men.³⁸² It is stated in the policy that, old women faces myriad of challenges and problems relating to their gender class.

(Minister of Interior, Decentralization and Security of the DRC); Mr. Lawlence Masha (Minister of Home Affair of Tanzania) and Mr. Eusebe Hounsokou (UNHCR Representative in DRC).

³⁷⁸ See: The *National Ageing Policy of Tanzania of 2003*, Clause 1.2 paragraph one. It is estimated that, the figure would increase up to 8.3 by 2050 because the number of older people in increasing.

³⁷⁹ Policy was formulated by the government of Tanzania under the then Ministry of Labour, Youth Development and Sports in 2003. It is the first official document which specifically addresses the rights and welfare of the older people in Tanzania.

³⁸⁰ For the purpose of the said policy, an older person means a person of 60 years and above (see Clause 1.1 of the Policy).

³⁸¹ According to HelpAge Tanzania, older women in Tanzania face discrimination on the basis of their gender, age and poverty. The fact that older women live longer and are less likely to marry than older men tend to leave more older women living in vulnerable conditions, relying on the good will of relatives and neighbours for economic security. Customary laws also deny of their rights and they could not access legal remedy because of ignorance. They survey carried out in three districts of Kwimba, Kahama and Shinyanga Rural by the HelpAge in 2006 found that only 8% of older women were aware of their rights under the law compared to 39% of older men. [See: HelpAge Tanzania, April 2008, NGO Thematic Shadow Report on Older Women's Rights in Tanzania – Submitted to the 41st Session of the Committee on the elimination of All Forms of Discrimination Against Women (CEDAW) in relation to Tanzania's Combined Fourth, Fifth and Sixth Periodic Report of States Parties, 16 April 2007 [CEDAW/C/TZA/6], pages 5 and 6].

For instance, because of the harmful traditional practices especially in rural areas,³⁸³ they are denied the right to inherit and own property, including land. In some areas women have been raped and killed due to superstitious beliefs. The provisions of the *Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979*³⁸⁴ prohibit gender-based violence against older women as well and insist on availability of health services and for their legal protection.³⁸⁵

For instance, as stated in chapter two of this report on killings due to beliefs in witchcraft, it is estimated that over 2,585 old women have died over a period of five years up to February 2009 in only eight (8) regions in Tanzania. The said figure represents the fact that, an average of 497 old women are killed in the eight (8) regions only each year.³⁸⁶ The leading regions for killings of old women on witchcraft beliefs are Mwanza,³⁸⁷ Shinyanga and Tabora. That means at least 600 old women are killed in Tanzania every year.

The implication of the figures quoted above is that, old women do not have protection and their lives are in danger. These reports have been informing about the killings of old women due to witchcraft beliefs for years now. It's obvious that little has been done by the police to curbing the problem.

The Needs Assessment Survey of LHRC in 2007/8 aimed to establish paralegal units in Lake Zone, revealed that, killings of this nature occur more in Lake Zone (Mwanza, Kagera, Shinyanga and Mara) because of a number of factors, including false impression that the old women are witch.

The LHRC strongly urges the government and other civil societies to take immediate

³⁸² See: Clause 1.2.5 of the *National Ageing Policy of Tanzania of 2003. Paragraphs 108 to 110 of the Madrid International Plan of Action on Ageing of 2002* states that older women face greater risks of abuses due to non-realization of their human rights caused by, inter alia, harmful traditional and customary practices. The 22002 plan therefore calls for adoption of certain measures to end all these including enactment of legislation/ law and strengthen legal efforts to eliminate elder abuse.

³⁸³ It is said that 84% of the older women are living in rural areas (See: HelpAge Tanzania, April 2008, NGO Thematic Shadow Report on Older Women's Rights in Tanzania, page 5. However, the 84% stated is based on the 2002 records of the National Census of Tanzania.

³⁸⁴ Adopted by the UNGA in 1979 resolution No.34/180

³⁸⁵ Articles 2 and 12 of the CEDAW. Also Article 22 (b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which provides that states parties should ensure that the rights of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity are protected.

³⁸⁶ See paragraph 2.1.4 of Chapter Two of this report for more analysis and explanations of these killings.

³⁸⁷ For instance, it was reported during the year 2009 that in Mwanza alone, between January and August 2009, about 60 elders were killed, among of them 56 are women and 4 are men, and 4 albino (the killings of women amounted to 93%). SEE: Reporter '93 Percent Killed in Mwanza City are Women' Mwananchi, August 25, 2009. That means, an average of 11 – 12 older persons (mostly women) are killed in Mwanza city every month. This is shameful record in Tanzania.

measures to rectify this situation. Awareness campaigns to eliminate illusions and beliefs leading to the killings, could be among of the possible solutions.

5.5.3 Legal and Social Protection of Older People

Despite all the challenges and problems the old people are facing, Tanzania has failed as of 2009 to adopt a legal framework specifically for addressing the rights and welfare of old people, as special group in the society. The 2003 policy on the elderly cannot be enforced because it's law. Therefore, programmes and schemes for the elderly have continued to be upon the grace and wishes of those who feel-like assisting them.

The Report of the HelpAge Tanzania³⁸⁸ indicates that some district councils have started incorporating issues concerning this group in their development agenda. For instance, councils such as Meru, Songea, Iringa and Dodoma have started providing old people with basic services such as medicine and drinking water free of charge.³⁸⁹ The LHRC commends them for the initiatives. However, this will continue to be optional initiatives if there is no any law which makes it compulsory for each and every district in Tanzania to draw specific plan or plans for the old people just the way they do for the children.

The retired civil servants who were pensionable do not enjoy their retiring benefits. It take them years to get what they deserve. For instance, during the year 2009, the former employees of the former East African Community (EAC), staged a demonstration to demand payment of their long overdue pensions and other earners. Their representative said:

Bado tunapigania haki zetu ingawa wenzetu wamekufa tayari bila kuona-matunda yake. Si kweli kuwa tulishalipwa wala hatustaili kama inavyosemwa kila mara na serikali. Baadhi yetu wamelipwa kiasi ila sisi bado. Tukifa, wenzetu wataendelea pengine. [We are still fighting for our rights despite the fact that some of our colleagues have already died without enjoying the fruits. It is not true that we had already paid or not deserve payment as it is alleged by the government from time to time. Some of us had already been partially paid, but we are not yet paid. When we die, our colleagues would continue, may be].

On the importance of paying the elderly fair, adequate and timely pensions once they retire from service, the HelpAge International puts it right that a basic pension for all old people will not just reduce extreme poverty, but will also help them to stay independent, care for their families and work if they need.³⁹⁰ Most of the families consider old people as the burden. Therefore, adequate pension will relieve them to a certain extent from the mistreatments.

³⁸⁸ Helpage International – Tanzania (2008) *Sauti ya Wazee*: Initiatives for Realisation of Vulnerable Groups Entitlements in MKUKUTA (*Sauti ya Wazee* is a Swahili phrase which means the Voice of Older People).

³⁸⁹ Helpage International – Tanzania (2008) *Sauti ya Wazee*: Initiatives for Realisation of Vulnerable Groups Entitlements in MKUKUTA (*Sauti ya Wazee* is a Swahili phrase which means the Voice of Older People), pages 1 – 3.

³⁹⁰ Helpage International, Annual Review 2009, pages 5 – 7.

The current *National Ageing Policy of Tanzania of 2003* provides very little on the safeguard of the old people who were self-employees and therefore do not have retired benefits. The policy also recognize the fact that social services are inadequate and this is why despite the fact that old people are eligible for free medical care, they most of the time don't access the same because health centres are located far away from where they live.

Besides, hospitals do not have adequate staffs and medicine to give old people special treatment. These factors make the policy ineffective and fruitless to the old people. The LHRC urges the government to increase budgetary allocations for old people to be managed by the district councils. Moreover, home based cares (HBC)³⁹¹ are needed because most of the old people are incapable of walking to the health centers.

5.6 Rights of Indigenous People

Tanzania has several *indigenous people*,³⁹² including the Maasai, Barbaig, Hadzabe, Ndorobo, Sandawe, Iraqw, Gorowa and Bugurni. Some of these indigenous peoples are nomads, gatherers, hunters, collectors and fishers. They have particular form

³⁹¹ The current National Guidelines for Home-Based care Services Providers of February 2005 does not respond adequately on the needs of older people, especially women who care for the orphanage grandchildren and People Living with HIV/AIDS. For instance, in Makete District, Iringa Region southern part of Tanzania, there are the so called Mama-Mkubwa (elderly woman) who care for the orphans and other vulnerable children. These women take most of their time taking care of the children. They do not have means of transport to take sick children at hospitals. They do not have money as well for bus fare. That means, Home-Based Care is ideal solution for them. They need medicine; information; education; facilities; counseling and guidance as well. Makete district is one of the areas in Tanzania with high number of infection and deaths caused by HIV/AIDS.

³⁹² The 'indigenous people' match most of the following characteristics: they conceive themselves as first peoples and want to maintain their special identity. The groups consist of descendants of the original inhabitants of the territory before they were subjected to a foreign political system via invasions. The indigenous people differ from the rest of the people in the country in terms of language and culture. They live in close interaction with nature [See: MS-Danish Association for International Co-operation 'Strategy and Action Plan for Support to Pastoralists and Hunters Gatherers, MS-Tanzania', Dar es Salaam, Tanzania. June 1997, page 6. ALSO see Chris Maina Peter 'Human Rights of Indigenous Minorities in Tanzania and the Courts of Law' (2007) 14 International Journal on Minority and Group Rights 4, 455 for more clarification on 'indigenous people'. Professor Chris Peter is of the view that, that the people are identified as indigenous when some or all of the following four elements are present. One, they occupy and use specific territory; two, they voluntarily perpetuate their cultural distinctiveness, which may include the aspects of language, social organization, religion, spiritual values, modes of production, laws and institutions; three, they self-identify, as well as, are recognized by other groups, as a distinct collectivity; and four they experience of subjugation, marginalization, dispossession, exclusion or discrimination. Looking on these two definitions, it is certain that, those several tribes mentioned above are indigenous people in Tanzania because they live and possess all those characteristics. However, it should be noted that, the situation and more pecuniary characteristics of indigenous people tend to differ from one place/ country to another.

of production and methods of subsistence they have maintained over generations.³⁹³

The rights and welfare of the indigenous people are protected by a number of international human rights instruments. The *ILO's 169 Indigenous and Tribal People Convention of 1989* and the *United Nations Declaration on the Rights of the Indigenous People, 2007*³⁹⁴ maintain that, indigenous peoples have a right to self-determination. In pursuance of this right, they shall freely determine their political status and freely pursue their financial, social and cultural development. Article 27 of the *International Covenant on Civil and Political Rights, 1966* states that, these people have the right to enjoy their own culture, practice their own religion and use their own language.³⁹⁵

The *Declaration of the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities, 1993*³⁹⁶ requires each state to take a proactive role in protecting and promoting the identity of minorities. However, it is unfortunate that, the *Constitution of the United Republic of Tanzania of 1977* does not have any specific provision on the rights of the indigenous people. There is also no any law in Tanzania which recognizes or specifically addresses the welfare of these people as special group in the society.

As a result, experience has shown that, they are subjects of mistreatments. Because of their vulnerability caused mainly by limited knowledge of the outside world and because of the said lack of specific legal protection of their rights and welfares especially their interests over indigenous land, the land they live in, such as Loliondo, Yaeda-chini³⁹⁷ and Hanang³⁹⁸ within Ngorongoro, Mbulu and Hanang districts respectively, have been expropriated and encroached.

The LHRC has been unveiling such expropriations and suggested that; there is a need of legal protection and specific formal recognition of their traditional land³⁹⁹ because as it is stated in other sections of this chapter, the indigenous people have their very pecuniary ways of living.

³⁹³ MS-Danish Association for International Co-operation 'Strategy and Action Plan for Support to Pastoralists and Hunters Gatherers, MS-Tanzania,' Dar es Salaam, Tanzania. June 1997, page 10.

³⁹⁴ Adopted by the United Nations General Assembly Resolution Number 61/295 of 2007.

³⁹⁵ Also, Article 2 of the United Nations Declaration on the Rights of the Indigenous People, 2007, stipulates to the effect that, the indigenous people shall exercise their rights basing on their indigenous origin or identity. Article 5 of the same instruments states that, they shall have the right to maintain their distinct. That means, their rights should not be generalizing because of the said reasons.

³⁹⁶ See: UNGA 'Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities' (18 December 1992) UN Doc A/Res/47/135.

³⁹⁷ This is where the Hadzabe are living.

³⁹⁸ This is where the Barbaig and Iraqw are living.

³⁹⁹ Read Chapter 4.3 of the Tanzania Human Rights Report of 2008. Some of the previous land conflicts were the 2007 attempt to expropriate the land by the government in favour of the Arabic Investor in Yaeda-chini Valley and Mongo-wa-Mono village of Mbulu District, Tanzania; and the 2008 attempt to expropriate the land by the government in favour of the French firm, UN En-Lodge Afrique. All attempts failed because of the strong protest of the civil groups and the people themselves. The two investors withdrew their concession plans.

The *Land Act, 1999*⁴⁰⁰ and the *Village Land Act, 1999*⁴⁰¹ recognize a customary right to land, but do not specifically address the customary rights of indigenous groups as the international human rights instruments require.⁴⁰³

5.6.1 State of Indigenous People: The Maasai Forceful Eviction, July 2009

After the successful resistance of their traditional land, the Hadzabe and Barbaig are now settled though drought has affected them and endangered their lives. However, the expropriation of the traditional land was still affecting the Maasai in the Loliondo Game Controlled Area in 2009. More details on this saga are well covered in chapter seven of this report.

In July 2009, the police (FFU) forcefully and unlawfully invaded the Maasai's indigenous land situated within the Loliondo Game Controlled Area in Ngorongoro district, Arusha region. About 200 residential houses of Maasai (*boma*) were burnt off, some women miscarried, while others were sexually harassed by male police officers.⁴⁰⁴ The police officers were acting on the order of the District Commissioner, Mr. Elias Wawa Lali, who on 18/5/2009 issued the so called 'lawful order' titled "*Yah: Amri Halali ya Mkuu wa Wilaya Kuhusu Uvamizi Uliofanywa Katika Kitalu cha Uwindaji cha OBC*" [Re: District commissioner's Lawful Order on Invasion on OBC's Hunting Block].⁴⁰⁵

Firstly, the eviction of Maasai from their original land (Loliondo Game Controlled Area) was unlawful because, their villages are registered; therefore they are residing in accordance with the law. Secondly, they have the right to live in accordance with

⁴⁰⁰ Cap. 113 of the R.E. 2002 of the Laws of Tanzania.

⁴⁰¹ Cap. 114 of the R.E. 2002 of the Laws of Tanzania.

⁴⁰² Sections 3(1)(b) and 4(4)(b) of the *Land Act, 1999*. Also Section 7(1)(c) of the *Village Land Act, 1999*. These provisions of the laws recognize existence of the customary rights of occupancy, whether the land/ village is registered or not registered.

⁴⁰³ For instance, Article 1(2) of the *United Nations Declaration of the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities, 1993* requires states to adopt specific legislative measures to ensure legal protection of this group. Article 2 of the ILO's 169 *Indigenous and Tribal People Convention of 1989* states that, 'Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.' Therefore, it is the responsibility of the government to ensure very specific (and not general as it is now) legal protection of these people.

⁴⁰⁴ FemACT Report of August 2009. Note that, FemACT (which is comprised of 40 human rights NGOs of Tanzania) and PINGOS Forum of Arusha, conducted a fact finding mission to the area in conflict between 19 and 21 August 2009.

⁴⁰⁵ The order was issued via a letter with reference number KUM.NA.DC/NGOR/D.8/20/23 of 18/5/2009. The contents of the order stated that there were Maasai who invaded the hunting block of the Ortello Business Corporation (OBC) and that, the invaders were polluting environment. The said hunting block is located within the registered villages in which the Maasai are living in. Note that, the OBC was given a hunting licence way back in 1992 by the government to hunt (not own land) in Loliondo. In Tanzania, the areas which are designated as Game

their culture and tradition.⁴⁰⁶ Thirdly, the eviction process did not follow the legal procedures – of securing court order and that the police acted on the unlawful order of the District Commissioner as there is no any law in Tanzania which gives him powers to order such and eviction without the court order.

The LHRC urges the government and other stakeholders to reform laws, policies and practices which have negative perceptions on the ability of the pastoralists and indigenous people to maintain their ways of life. Any change that has to come, should involve the indigenous people after seeking their informed consent. The LHRC also urges the government to enact the specific law on the rights and welfare of the indigenous people in order to guarantee them special protection.

Controlled Areas are authorized to have a co-existence of human being and wildlife. This order was discriminatory and unlawful in the sense that, it was to evict villagers who are actually lawfully dwelling in the villages. Secondly, even if the Maasai were trespassers, the proper procedure of getting rid of them, was to use court procedures as Articles 13(3) and 107A of the *Constitution of the United Republic of Tanzania of 1977* require.

⁴⁰⁶ Articles 8 and 10 of the *United Nations Declaration of the Rights of Indigenous People, 2007* provide that, the indigenous people (e.g Maasai) have the right not to be subjected to force assimilation or destruction of their culture and that, they shall not be forceful removed from their lands or territories. Article 10 states further that, no any reallocation shall take place without their free, prior and informed consent.

Chapter Six

HIV/AIDS and Human Rights

6.0 Introduction

GENERALLY, HIV/AIDS prevalence in the world is very high. The 2006 statistics indicated that approximately 39.5 million people around the world were living with HIV/AIDS, out of which 24.7 million were coming from the sub-Saharan Africa region.⁴⁰⁷ The high prevalence experienced in most parts of the world is linked to heterosexual commercial sex behaviour, which is on increase in sub-Saharan Africa,⁴⁰⁸ including Tanzania.

However, new findings released in 2009 by UNAIDS⁴⁰⁹ revealed that new HIV infections have been reduced by 16 - 17 percent over the last eight years. It is also stated that, the prevalence was also decreasing in the East African Community partner countries – Tanzania, Burundi, Rwanda and Uganda. However, there is a concern that the epidemic could grow again in Uganda after it declined in early 2000s.⁴¹⁰

The UNAIDS sees positive progress made after the proclamation of the *United Nations Declaration of Commitment on HIV/AIDS in 2001* (discussed below). The UNAIDS report of 2009 states that the number of new infections in sub-Saharan Africa were approximately 15 percent lower compared to previous years, reflecting about 400,000 fewer infections in 2008. Increasing awareness on the use of condoms is seen as an important factor for the reduction of the pandemic.

6.1 HIV/AIDS Prevalence in Tanzania

There is no direct proof that the HIV prevalence is decreasing in Tanzania. However, the 2004 Tanzania HIV/AIDS Indicator Survey (THIS) as quoted in the TACAIDS and World Bank reports in 2007,⁴¹¹ stated that Tanzania had about 1.8 million people (0.86 million men and 0.98 women) who were HIV positive. Infection rates were high in

⁴⁰⁷ TACAIDS and WB (2007) **Effective Reporting on HIV and AIDS**, ISBN 978-9987-519-01-9, page 6.

⁴⁰⁸ Pallotti, Arrigo (Ed) (2009) *AIDS, Poverty and Democracy in Africa*. Repubblica di San Marino, page 31.

⁴⁰⁹ The information extracted from www.unaids.org accessed on 25 December, 2009. However, the UNAIDS 2007 statistics estimates the number of people living with HIV/AIDS worldwide to be 33.2 million. That means there is a reduction of 16% compared with the estimates of 2006. It is said that, the significant reduction in HIV incidence has been shown more in South East Asia than sub-Saharan Africa [See: Pallotti, Arrigo (Ed) (2009) *AIDS, Poverty and Democracy in Africa*. Repubblica di San Marino, page 29].

⁴¹⁰ Pallotti, Arrigo (Ed) (2009) *AIDS, Poverty and Democracy in Africa*. Repubblica di San Marino, page 31.

⁴¹¹ TACAIDS and WB (2007) **Effective Reporting on HIV and AIDS**, ISBN 978-9987-519-01-9, page 6.

Mbeya region (13.5 percent) and Iringa region (13.4 percent) followed by Dar es Salaam city (10.9 percent).

The numbers haven't considerably gone down since the first AIDS case⁴¹² was reported in early 1980s, despite the fact that the overall national figures suggest the prevalence was taking a downward trend. For instance in 2009, it was estimated that the number of people living with HIV and AIDS in was 1.3 million (down from the 1.8 million people in 2007).⁴¹³ Therefore, the overall national figures suggest a slight decrease in the prevalence over the last five years.⁴¹⁴

Moreover, it was estimated that about 8,000 to 10,000 people die every month due to HIV related diseases. The National Statistics on HIV projected that infection rates would increase, resulting into social and economical problems accompanying the pandemic, including increasing numbers of orphans and escalating poverty considering the fact that HIV/Aids is mostly eating up the youth people contributing the lionshare in the overall national labour force.⁴¹⁵

In terms of individual regions, the trend depicts a different picture. In a few regions, the situation was alarming. For instance, according the Tanzania Commission for AIDS (TACAIDS) statistics released in 2008, HIV prevalence in Iringa had reached 14.7 percent in 2003, up from 13.4 percent in 2007. That means the prevalence in this particular region was more than double the national prevalence of 6.2 percent. However, prevalence rates in the rest of the regions were not as high as that of Iringa region due to diversities in socio-economic factors.⁴¹⁶

Moreover, According to the data from *Tanzania HIV/AIDS Indicator Survey 2008/9*, the national prevalence among the sexually active populations of between 15 and 49 years of age was 7.0 percent. And on the gender dimension on the HIV/Aids suggests that despite the fact that HIV prevalence was taking a downward trend (as indicated above) among women and men, infection rates among women were higher (at 7.7 percent in 2004/2005 and 6.8 percent in 2007/2008) than among men (6.3 percent in 2004/2005 and 4.7 percent in 2007/2008).⁴¹⁷

⁴¹² The number has increased from first 3 AIDS cases, which were diagnosis for the first time in 1985 in Kagera region to millions of AIDS cases in 2009. See: TACAIDS "The History, Trends of Prevalence and Efforts Towards Prevention and Control of HIV and AIDS in Mainland Tanzania from 1983 – September 2009."

⁴¹³ TACAIDS and WB (2007) *Effective Reporting on HIV and AIDS*, ISBN 978-9987-519-01-9, page 6.

⁴¹⁴ See: TACAIDS "Current Status of HIV and AIDS" in www.tacaid.go.tz accessed on 25th December, 2009. But there is a need of re-conducting a survey to establish the true picture for budgeting purposes. The difference of 800,000 decreases of AIDS cases over two or three years (2007 – 2009) seems to be over-exaggerated by the reports and it seems that TACAIDS is contradicting itself with the factual figures.

⁴¹⁵ Writer 'HIV Statistics still Alarming' Tanzania Daima, December 2, 2009.

⁴¹⁶ The prevalence trend has been shifting from one region/zone to another. It has shifted from Kagera (Lake Zone) to the Southern Highlands Iringa and Mbeya regions.

⁴¹⁷ See: URT Millennium Development Goal Implementation Report (of Tanzania) 2000-2008, page 17. Published by the Ministry of Finance and Economic Planning of Tanzania in 2009.

In the neighboring country of Uganda, where once HIV/AIDS wrecked havoc on its population than in any other country in East Africa, there were some improvements, but infection rates among women were still higher among women (7.5 percent) than among men (5 percent).⁴¹⁸ That leads to a general conclusion that as it stands now, women are more vulnerable to HIV/AIDS than men.

The table below presents a comparative picture of some African countries in terms of HIV prevalence among adults of 15-49 years of age, according to the population-based HIV survey in recent years.⁴¹⁹

| Countries | 2001 HIV Prevalence (%) reported in 2002 Report on the global AIDS epidemic | 2003 HIV Prevalence (%) reported in 2004 Report on the global AIDS epidemic | 2005 HIV Prevalence (%) reported in 2006 Report on the global AIDS epidemic | World Bank MAP + GF Commitments | |
|----------------|---|---|---|---------------------------------|----------------|
| | | | | Total Million USD | Per Capita USD |
| Botswana | 38.8 | 38.0 | 24.1 | - | - |
| Burundi | - | 8.3 | 6.0 | 3.3 | 57.7 |
| Central Africa | 12.9 | 13.5 | 10.7 | 72.9 | 16.57 |
| Ghana | - | 3.0 | 3.1 | 2.3 | 131.3 |
| Kenya | - | 15.0 | 6.7 | 6.1 | 236.8 |
| Rwanda | 8.9 | 5.1 | 3.1 | 207.3 | 20.94 |
| Swaziland | 33.4 | 38.8 | 33.4 | - | - |
| Tanzania | 7.8 | 9.0 | 6.5 | 441.9 | 11.22 |
| Uganda | - | 5.0 | 4.1 | 6.7 | - |
| Zambia | - | 21.5 | 16.5 | 17.0 | 369.8 |
| Zimbabwe | 33.7 | 24.6 | 20.1 | - | - |

Source: Pallotti, *Arrigo (Ed) (2009) op cit* page 137.

When compared to other countries, the HIV prevalence in Tanzania is relatively low. However, Rwanda, Ghana and Uganda have low infection rates. Swaziland is leading for having many infections, followed by Botswana and Lesotho (23.2 percent). Rwanda deserves a special mention for decreasing the prevalence from 8.3 percent in 2001 to 3.1 percent recently. Previously, the country used to have higher prevalence rates than Tanzania. With 0.8 per cent and 1.2 percent respectively, Senegal and Niger have the lowest prevalence rates than all other African countries.

⁴¹⁸ Pallotti, Arrigo (Ed) (2009) AIDS, Poverty and Democracy in Africa. Repubblica di San Marino, page 31.

⁴¹⁹ Extracted from Pallotti, Arrigo (Ed) (2009) AIDS, Poverty and Democracy in Africa. Repubblica di San Marino, at page 137.

Therefore, Tanzania needs to do more in curbing the disease and could do so by emulating the good practices from countries like Rwanda, Uganda and Cameroon, which achieved tremendous results within a short period of time. It needs to address more vigorously, the problem of ‘drivers of epidemic.’

For instance, the recent population survey⁴²⁰ indicates that in some parts of the country, transmission through anal sexual intercourse⁴²¹ as well as drug abuse are on the rise and experts list them among key factors contributing to the escalating infection rates, and further spread of the disease. The dimension of these infection routes is not known. That is why the LHRC finds more challenges than success in HIV/AIDS prevention and control in the country.

6.2 HIV/AIDS as Human Rights Issue

The *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version – UNAIDS and OHCHR*⁴²² confirm the relationship between HIV/AIDS and human rights. It states that, the relationship between the two is profound because the vulnerability due to HIV infection and its impact feeds on violations of human rights, including discrimination against women and violations which create and sustain poverty. In turn, HIV begets human rights violations, such as further discrimination, and violence.

The linkage is supported by the Tanzania’s *National Policy on HIV/AIDS of 2001*, which recognizes that, the prevalence of HIV/AIDS has a direct bearing to the welfare of the people, their development and national budget/economy.⁴²³ The policy also addresses the rights and duties relating to HIV/AIDS such as ensuring availability of facilities, effective medication, care information, counseling and guidance, voluntary testing, and the like. The *HIV and AIDS (Prevention and Control) Act, 2008*⁴²⁴ have similar provisions on the rights and duties.

Moreover, the international human rights system explicitly recognize most of the rights of the people living with HIV/AIDS, including prohibition of discrimination basing on HIV status and the right to availability and access to HIV prevention, treatment, care and support for children and adults. On the other side, there has also been increasing commitments at international and national levels towards the full realization of human rights relating to HIV. Key commitments among those are:⁴²⁵

⁴²⁰ Population Survey 2007/2008 conducted by TACAIDS to examine Transimission of HIV/AIDS through canal sexual intercourse.

⁴²¹ Means Gays or heterosexual or among men who have sex with men. This behavior is common in European and American countries. It is unusual for most of African countries. Tanzania’s *Penal Code*, Cap. 16 makes it offensive to practice same sex relationship. It is called an unnatural offence under the *Penal Code*, Cap. 16 (See: Section 154 of the *Penal Code*, Cap. 16).

⁴²² HR/PUB/06/9, UN PUBLICATION Sales No. E.06.XIV.4, ISBN 92-1-154168-9 of 2006.

⁴²³ See: Paragraphs 1.1 and 1.2 of the Policy.

⁴²⁴ Act No. 28 of 2008.

⁴²⁵ Information extracted from the *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version – UNAIDS and OHCHR* (HR/PUB/06/9, UN PUBLICATION Sales No. E.06.XIV.4), page 11.

- a) *The Declaration of Commitment on HIV/AIDS (Global Crisis – Global Action)*;⁴²⁶
- b) *The United Nations Millennium Development Goals (MDGs)*;⁴²⁷
- c) *The General Comment 14 of the Committee on Economic, Social and Cultural Rights*; and⁴²⁸
- d) *The Commission on Human Rights Resolutions on the Right to the Highest attainable Standard of Health*⁴²⁹ and *Access to Medication*.⁴³⁰

The government of Tanzania has made commendable strides towards raising the awareness, improving the availability and providing health services on HIV/AIDS through VCTs and provision of free ARV treatment. However, despite the commitments and progress made so far, the prevalence of HIV/AIDS is still high, especially among the youths as discussed in this chapter.

Moreover, the government of Tanzania has failed to raise its health budget to 15 per cent as promised in 2001.⁴³¹ The ratio of budgetary allocation to the health sector has never gone above 10 percent of the total national budget in recent years. For instance, it has remained at a tune of 10 percent since 2007.

⁴²⁶ General Assembly Resolution S-26/2 of 27 June 2001. Article 2 of the Declaration states that all people, rich and poor, without distinction of age, gender or race are affected by the HIV/AIDS epidemic, and that people in developing countries are the most affected and that women, young adults and children, in particular girls, are the most vulnerable. Article 11 states that HIV/AIDS is linked to poverty and illiteracy and therefore, any measure to curb it should integrate the two factors [NOTE: Paragraph 1.6(q) of the *Tanzania's National Policy on HIV/AIDS of 2001* provides for the same]. Article 9 of the Declaration reaffirms the African Head of States commitment of 2001 that they will allocate at least 15% of their national budget for the improvement of the health sector and address the HIV/AIDS. Article 13 prohibits stigma and discrimination especially against women who are HIV positive. Article 14 calls for gender equality and empowerment as measures for addressing vulnerability of girls and women to HIV/AIDS. Article 38 directed that states around the world should integrate HIV/AIDS prevention, care, treatment and support and impact mitigation priorities into the mainstream of development planning, including in poverty eradication strategies, national budget allocations and sectoral development plans (by 2003).

⁴²⁷ General Assembly Resolution 55/2 of 8 September 2000. Goal No. 6 is for combating HIV/AIDS, Malaria and other diseases.

⁴²⁸ On the right to high attainable standard of health, adopted on 11 May 2000 (E/C. 12/2000/4). Paragraph 1 of the General Comment (GC) states that “[H]ealth is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.” This GC is an explanation for Article 12 of the ICESCR, Article 25(1) of the UDHR, Article 24 of the CRC, Articles 11(1)(f) and 12 of CEDAW, Article 16 of the ACHPR and the Preamble of WHO Constitution. They all provide that right to health (which includes HIV/AIDS) is one of the fundamental human rights.

⁴²⁹ Commission on Human Rights resolution 2002/31 of 22 April 2002.

⁴³⁰ Commission on Human Rights resolutions 2002/33 and 2002/32 of 22 April 2002.

⁴³¹ See: Article 9 of the United Nations Declaration of Commitment on HIV/AIDS (Global Crisis – Global Action) of 2001.

The LHRC urges the government to fulfill its commitment by raising budgetary allocations to the health sector to at least 15 percent. This is because failure to realize the rights to health and life, other categories of rights would be meaningless, and won't be there anyway.

6.3 HIV/AIDS, Gender Based Violence and Social Equalities

Women's experience with HIV and AIDS is in the context of gender norms. Women living with HIV face greater stigma and discrimination than men.⁴³² In some contexts it is a commonplace to be accused by their partner's family of bringing HIV into their households. There reports from sub-Saharan Africa of women refusing to get tested for HIV or to collect test results in fear domestic violence.⁴³³

In November 2009, the LHRC received a client – a lady who is HIV positive. She, inter alia, said that:

Nilikuwa na mahusinano ya kimapenzi na [.....] ambaye ni askari mstaafu. Tulikuwa tukiishi kwa furaha kama wapenzi kwa kama miaka minane hivi. Mambo yakawa siyyo tena baada ya kumwambia kuwa nimepima na nina VVU. Toka siku hiyo akabadilika na kuacha mara moja kunilipia kodi ya nyumba ambayo imeshaisha. Alichukua pia hati ya nyumba aliyonipa na hajarudi tena kutuona. Ninalia usiku na mchana kwa sababu pia mtoto wa mwisho niliyezaa naye ni mgonjwa na analelewa na jirani yangu. Nadhani naye ni muathirika. Kwa kweli najutia sana kumjulisha bwana huyu juu ya hali yangu hasa katika kipindi hiki ninachohitaji ada ya shule ya watoto na kodi ya pango. [I had a love affair with [.....] who is retired military officer. We stayed happily together as sexual partners for about eight years. Things changed completely when I informed him of my HIV status after I was tested and found positive. Since that day he changed a lot and immediately stopped paying for the house rent which was due. He also took the title deed of the house he gave me and completely disappeared. I am crying day and night because even our last born is ill and he is being taken care of by the neighbours. I suspect he is also HIV positive. I am really regretting to have disclosed my HIV status to him at the time I really needed money for paying rent and school fees for my children].

AIDS also disproportionately impacts women and girls because of the very dynamics articulated above. Women and girls are expected to be caregivers, regardless their illness. These situations reflect the distribution of power and resources, as well as individuals and households negotiating their own socio-economic and political contexts.⁴³⁴

⁴³² Robert, Carr "Walking the Walk: Closing the Programmatic and Financing Gap on Gender Equality, Violence against Women, and Access to Sexual and Reproductive Health Services in the Response to HIV and AIDS" in UNIFEM (2008) Promoting Gender Equality in HIV and AIDS Responses: Making Aid More Effective Through Tracking Results, pages 5 and 6.

⁴³³ Gupta, Geeta Rao et al (2003) Integrating Gender into HIV/AIDS Programming: Review Paper. Geneva: WHO.

⁴³⁴ Robert, Carr op cit page 6.

On the connection between HIV and Gender-based violence (GBV), *the Harvard Report of 2009* notes that, HIV infection as relevant to GBV is primarily acquired through sexual relations, which themselves are greatly influenced by socio-cultural factors underlying, which are gender power imbalances. GBV or the fear of it may interfere with woman or girl's ability to negotiate for safer sex or refuse unwanted sex.⁴³⁵

This fact is supported by findings presented by the LHRC in 2008⁴³⁶ that at least 43 percent of girls in rural areas of Tanzania, who are under 15 years reportedly, had their first sexual intercourse involuntarily. The same study further revealed that at least 18 percent of women in rural areas are forced to have sexual intercourse at the age of between 15 and 17 years. In urban areas, the study showed, the figures were 40 percent and 17 percent respectively.

Moreover, in March 2009 it was found that more than half of women under the age of 19 years were either pregnant or already mothers.⁴³⁷ Therefore, most women are forced to having unprotected/unsafe sexual while they are still teenagers. The same analysis suggested that Tanzanian youths accounts for 60 percent of the new HIV infection. It should be noted that the underage marriages in most cases results into sexual harassment and mistreatment, the reason why it is directly linked to the GBV.

Furthermore, violence against woman can interfere with her ability to access treatment and care, maintain adherence to ARV treatment, or to carry out her infant feeding choices. TACAIDS finds that there are numerous factors which shape the HIV epidemic in Tanzania. One of the factors outlined in its Social, economic and political gender inequalities include violence against women.⁴³⁸

Evidence also exists to support the fact that living with HIV can be a risk factor for the GBV, as many people report experiences of violence following disclosure of HIV status, or even after admitting that testing has been sought. Thus, the vicious cycle of increasing vulnerability to both GBV and HIV can be established.⁴³⁹

⁴³⁵ Programme on International Health and Human Rights, Harvard School of Public Health. 2006. HIV/AIDS and Gender-Based Violence (GBV) Literature Review. Boston, MA: Harvard School of Public Health, page 7. Quoted from UNIFEM (2008) Promoting Gender Equality in HIV and AIDS Responses: Making Aid More Effective Through Tracking Results, page 6.

⁴³⁶ LHRC (2008) Tanzania Human Rights Report of 2008, pages 91 and 92. The findings quoted the information from the International Women's Health Coalition 'Triple Jeopardy; Female Adolescence, Sexual Violence, and HIV/AIDS' June 2008, accessed on 3 December 2008 from www.iwhc.org

⁴³⁷ See: Review of the National Adolescent Health and Development Strategy – Prepared for UNFPA/ MoHSW by Dr. Calista Simbakalia and Dr. Rosemary Kigadye, March 2009, page 5. This document is also documented by LHRC – WSS. Vol. XXVII/ 149.

⁴³⁸ See: TACAIDS "Current Status of HIV and AIDS" in www.tacaids.go.tz accessed on 25th December, 2009.

⁴³⁹ Programme on International Health and Human Rights, Harvard School of Public Health. 2006. HIV/AIDS and Gender-Based Violence (GBV) Literature Review. Boston, MA: Harvard School of Public Health, page 7. Quoted from UNIFEM (2008) Promoting Gender Equality in HIV and AIDS Responses: Making Aid More Effective through Tracking Results, page 6.

6.4 HIV/ AIDS and Legal Protection

The *HIV and AIDS (Prevention and Control) Act, 2008*⁴⁴⁰ of Tanzania makes it offensive to willfully transmitting HIV to another person by any means.⁴⁴¹ The punishment for the offence of willfully transmitting HIV is imprisonment of not less than five years. The proof of this kind of offence is difficult, that's why until recently one has been prosecuted or charged with the offence.

The *Penal Code*⁴⁴² of Tanzania created offences relating to sexual harassment including forced sex.⁴⁴³ But it does not recognize the offence of marital rape, which seems to be one of the factors for the GBV and HIV/AIDS. Therefore, both laws do not provide adequate protection of women against GBV and HIV infection. It is also unfortunate that most of the GBV cases are not reported to the police and few of those reported have not been seriously handled by the law enforcers.

Other important issues relating to HIV/AIDS, which are not adequately addressed by the *HIV and AIDS (Prevention and Control) Act, 2008* and other laws are:⁴⁴⁴

- a) The effective legal protection in respect of social security and other benefits for workers (and non-workers) living with HIV, including specific life insurance, pension, health insurance, termination and death benefits.⁴⁴⁵
- b) State support for legal aid systems specializing in HIV casework, possibly involving NGOs, legal aid centres etc.;
- c) State support or inducements (e.g. tax reduction) to private sector law firms to provide free pro bono services⁴⁴⁶ to people living with HIV in areas such as anti-discrimination and disability, health-care rights (informed consent and confidentiality), property (wills, inheritance) and employment law;
- d) State support for HIV legal services and protection through a variety of offices, such as Ministries of Justice and other legal offices, health complaint units, and human rights commissions;

⁴⁴⁰ Act No. 28 of 2008.

⁴⁴¹ Section 47 of the said law.

⁴⁴² Cap. 16 of the R.E. 2002 of Laws of Tanzania.

⁴⁴³ Sections 130 to 140 of the Penal Code, Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

⁴⁴⁴ These are proposals contained in the *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version – UNAIDS and OHCHR* (HR/PUB/06/9, UN PUBLICATION Sales No. E.06.XIV.4), page 49.

⁴⁴⁵ The employers, including the government itself have not been compelled by any law to arrange for life insurance for the people living with HIV/AIDS. Most of the employers do have general health assurance which is not necessary life insurance.

⁴⁴⁶ Pro bono services means free legal aid services.

- e) States should ensure that domestic legislation provides for prompt and effective remedies in cases whereby a person living with HIV is denied or not provided access to treatment, care and support;
- f) States should also ensure due process of law so that the merits of such complaints could be independently and impartially assessed.

The LHRC urges the government to start the process of amending the *Penal Code* to criminalize marital rape and to incorporate the above recommendations in the *HIV and AIDS (Prevention and Control) Act, 2008* and other procedural laws. The rationale to this, as stated above, is that HIV/AIDS tends to negatively affect incomes of individuals as well as their physical abilities to follow-up issues. Therefore, pro bono services and prompt dispensing of justice for cases involving the PLWHA are important.

Chapter Seven

Collective Rights

7.0 Introduction

COLLECTIVE rights are those rights exercised by individuals collectively.⁴⁴⁷ They are provided for under various international human rights instruments. For instance, Article 22 of the *African Charter on Human and Peoples Rights, 1981* provides that all people have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.⁴⁴⁸ This chapter discusses some of the collective rights, namely the right to development; the right to a clean and healthy environment; and, the right to natural resources.

7.1 Right to Development

Every human being strives for survival and development⁴⁴⁹ through the resources that surround him or her. Moreover, as a country, the state strives to improve socio-economic infrastructure in order to, *inter alia*, facilitating the attainment of human development. As the UNDP puts it:

[h]uman development is a development paradigm that is about much more than the rise or fall of national incomes. It is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. People are the real wealth of nations.⁴⁵⁰

Therefore, the right to development is more than having in place effective socio-economic facilities for the people. It includes also the increase and enhancement of peoples' skills and ability to utilize available resources for their individual and national development. Access to natural resources as means of production and guarantee of property rights are some of the indicators of the realization of the right to development.

⁴⁴⁷ Moreover, they are those rights, which the individual equally enjoys as part of a group such as the right to access to natural resources, clean and health environment and the right to development [See: LHRC (2008) Tanzania Human Rights Report of 2008, page 114]

⁴⁴⁸ LHRC (2008) Tanzania Human Rights Report of 2008, page 114

⁴⁴⁹ According to LHRC, "development" is a comprehensive process involving sustainable improvement of economic, social and political well-being of all individuals and people. See: Human Rights Report of 2007, at page 83. According to Walter Rodney, *How Europe Underdeveloped Africa Development* (Tanzania Publishing House, Tanzania 1973) at p. 9, "development" in human society is a many-sided process. At the level of the individual, it implies increased skill and capacity, greater freedom, creativity, self-discipline, responsibility and material well-being.

⁴⁵⁰ UNDP 'The Human Development Concept' [www.undp.org accessed on 27th December, 2009].

In order to realize the right to development, the LHRC finds it important to consider three important prerequisites, namely; skilled and informed people, resources and good policies. These three were also propounded by the first ruling party Tanganyika National Union (TANU).⁴⁵¹ The provisions⁴⁵² of the *United Nations Declaration of the Right to Development of 1986 (DRD)*⁴⁵³ affirms this opinion as well. The provisions of the said DRD state that a human/person is the central subject of development and should be active participant and beneficiary of the right to development. As for resources and policies, the international human rights instruments states to the effect that, states have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the wellbeing 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 benefits resulting there-from⁴⁵⁴ and guarantee of social security, adequate standard of living and the like.⁴⁵⁵

The *Constitution of the United Republic of Tanzania of 1977* is silent on the right to development. But it contains some provisions seeking to ensure the attainment of human development, such as the right to work,⁴⁵⁶ the right to own property,⁴⁵⁷ the right to participate in decision making⁴⁵⁸ and the duty to safeguard natural resources.⁴⁵⁹ Moreover, there are national policies and strategies formulated in order to progressively realize this right to development.

The said policies and strategies include (but not limited to):

⁴⁵¹ See: The TANU Creed of 1967, principle number 5 part III. Note that, in 1977, the then TANU was dissolved and joined with the Afri-Shirazi Party (ASP) of Zanzibar to form the current ruling party Chama cha Mapinduzi. See chapter one of this report for more explanations on this.

⁴⁵² Sections 2, 4, 6 and 7 of the DRD.

⁴⁵³ Adopted by the UNGA Res 41/128 (4 December 1986) UN Doc A/41/53. This was one of the first international human rights instrument to state directly that the right to development is a human right.

⁴⁵⁴ See: Articles 2(3) and 4 of the Declaration on the Right to Development, 1986. Article 4(1) of the said Declaration directs that countries have the duty to take steps, individually and collectively, to formulate international development. ALSO the Rio Declaration on the Environment and Development, 1992 (adopted 12 August 1992) UN Doc. A/CONF.151/26 (vol. I) states at Principle 5 that; “[A]ll states and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.” More explanations of this can be obtained from chapter seven of the Tanzania Human Rights Report of 2008. The said 2008 report is accessible online through www.humanrights.or.tz.

⁴⁵⁵ See: Articles 1, 6, 7, 9, 11, 12, 13 and 15 of the *International Covenant on Economic, Social and Cultural Rights, 1966*.

⁴⁵⁶ Article 22(2) of the Constitution of the United Republic of Tanzania of 1977.

⁴⁵⁷ Article 24 of the Constitution of the United Republic of Tanzania of 1977.

⁴⁵⁸ Article 21(1) of the Constitution of the United Republic of Tanzania of 1977.

⁴⁵⁹ Article 27 of the Constitution of the United Republic of Tanzania of 1977.

- a) *Tanzania Development Vision 2025*.⁴⁶⁰
- b) *MKUKUTA of 2005 - 2010*.⁴⁶¹
- c) *Tanzania Assistance Strategy of 2000*;
- d) *Mining Policy of Tanzania of 1997*;
- e) *National Water Sector Development Strategy of 2006 – 2015*;
- f) *Strategic Framework for Capacity Development in the Water Sector in Tanzania of 2008*;
- g) *Rural Development Strategy of Tanzania of 2001*;
- h) *Agricultural and Livestock Policy of 1997*;
- i) *National Land Policy of 1995*;
- j) *National Environment Policy of 1997*;
- k) *Property and Business Formalization in Tanzania (MKURABITA)*.⁴⁶²

Some of those policies are enforced by specific laws as indicated in various chapters of this report. This chapter, however, will not discuss all these policies and strategies. Rather, it looks at the implementation of some of the *MKUKUTA*'s indicators and sub-sectors of economic development. It also assesses the progress of the United Nations *Millennium Development Goals (MDGs)*⁴⁶³ which is largely implemented in Tanzania through the *MKUKUTA*.

7.1.1 National Strategy for Growth and Reduction of Poverty (MKUKUTA)

Poverty reduction is one of the determinant factors for the realization of the right to development. Therefore, successful implementation of *MKUKUTA* means positive realization of the right to development. The year 2009, was the fourth in the implementation of the *MKUKUTA* because it was expected to last for five years from 2005. A year before its inception, the Growth Domestic Product (GDP) stood at 6.7 percent and *MKUKUTA* targeted to raise it to the higher levels. By then, that is 2004/05, the

⁴⁶⁰ This is a government long term plan which formulates a new economic and social development vision for Tanzania for 25 years to come. It sets priorities which Tanzania envisages to achieve within 25 years from the year 2000. Some of the priorities set are education;

⁴⁶¹ An acronym for "*Mkakati wa Kukuza Uchumi na Kuondoa Umaskini*" (National Strategy for Growth and Reduction of Poverty). The *MKUKUTA* builds on the former Poverty Reduction Strategy Pater (PRSP) of 2000 – 2003. In 2005, *MKUKUTA* was inceptioned in order to put focus on poverty reduction and increase peoples' participation in poverty reduction strategies. The *MKUKUTA* is informed by the aspirations of the Tanzania's Development Vision 2015, which envisage achieving high and shared growth, high quality of livelihood, good governance and the like. *MKUKUTA* is also committed to the said MDGs which set international agreed targets for reducing poverty, hunger, diseases, illiteracy, environmental degradation and discrimination against women by 2015.

⁴⁶² A Swahili acronym for "*Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania*" (Property and Business Formalization in Tanzania).

⁴⁶³ The MDGs are eight goals set out by the United Nations in 2000, which every country is to assess itself with and move towards targets set for 2015. The said goals are (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality 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.

inflation rate was 4.4 percent after the terrible experience of up to 6 percent before the year 2004/05.

However, not as it was expected in 2005, the MKUKUTA has failed to stimulate GDP growth. The individual income earning especially in the informal sectors is decreasing. As of 2009, the economic growth of individual citizens was still in small pace of only 2 – 2.5 percent per annum and the GDP has never raised above the 6 percent of 2004. Therefore, majority of the people still live in poverty⁴⁶⁴ and have therefore not fully enjoyed the right to development. Moreover, the gap between the poor and the rich is getting wider. The current situation, which guarantees no any economic protection, favors the fittest.⁴⁶⁵

The *UNDP's Human Development Report of 2009*, places Tanzania at 151st position on the list of 182 countries around the world in the assessment of the achievement of human development indicators⁴⁶⁶ (which are, to a large extent, same as MKUKUTA's indicators). That means, Tanzania is the 31st country from the bottom on the list of the *Human Development Index 2009 of UNDP (HDI-2009)*⁴⁶⁷ and is regarded by the HDI as a country with medium human development.

The *Human Development Report of 2009* states that, between 1990 and 2007/09 Tanzania's HDI rose by only 1.15 percent annually from 0.436 to 0.530 percent in 2009; but it experienced slower growth (of socio-economic development) as the table below shows. Note that, the 2009 HDI, referred to 2007 HDI for Tanzania.

⁴⁶⁴ Just by observing the Human Development Indicators such as availability of food, water, access to education, health services, housing, and other necessities.

⁴⁶⁵ The researches indicate that, the distribution of poverty by main source of income is very low for Tanzanians who engage in farming, livestock, fishery, and forestry activities. For these groups of economic activities, more than 74.2 percent of them are poor. [See: Tanzania Human Rights Report of 2008, page 117]. Because they do not have formal assets which could be used as collaterals for bank loans, they do not have entrepreneurship skills; they are illiterate and generally marginalized by the circumstances.

⁴⁶⁶ Read pages 63 to 73 of the UNDP's Human Development Report of 2009.

⁴⁶⁷ According to the UNDP (see information at <http://hdrstats.undp.org/> accessed on 28 December 2009) each year since 1990 the Human Development Report has published the human development index (HDI) which looks beyond GDP to a broader definition of well-being. The HDI provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and gross enrolment in education) and having a decent standard of living. The said HDI categorizes countries in to four groups namely, countries with very high human development, countries with high human development, countries with medium human development and countries with low human development. Most of the European countries belong into group one.

| Tanzania (United Republic of)'s Human Development Index 2007/2009 | | | | |
|---|---|--|---|---|
| HDI value | Life expectancy at birth (years) | Adult literacy rate (% ages 15 and above) | Combined gross enrolment ratio (%) | GDP per capita (PPP US\$) |
| 1. Norway (0.971) | 1. Japan (82.7) | 1. Georgia (100.0) | 1. Australia (114.2) | 1. Liechtenstein (85,382) |
| 149. Haiti (0.532) | 148. Senegal (55.4) | 109. Guatemala (73.2) | 141. Cambodia (58.5) | 155. Bangladesh (1,241) |
| 150. Sudan (0.531) | 149. Djibouti (55.1) | 110. Lao People's Democratic Republic (72.7) | 142. Liberia (57.6) | 156. Gambia (1,225) |
| 151. Tanzania (United Republic of) (0.530) | 150. Tanzania (United Republic of) (55.0) | 111. Tanzania (United Republic of) (72.3) | 143. Tanzania (United Republic of) (57.3) | 157. Tanzania (United Republic of) (1,208) |
| 152. Ghana (0.526) | 151. Ethiopia (54.7) | 112. Nigeria (72.0) | 144. Ghana (56.5) | 158. Haiti (1,155) |
| 153. Cameroon (0.523) | 152. Kenya (53.6) | 113. Malawi (71.8) | 145. Myanmar (56.3) | 159. Comoros (1,143) |
| 182. Niger (0.340) | 176. Afghanistan (43.6) | 151. Mali (26.2) | 177. Djibouti (25.5) | 181. Congo (Democratic Republic of the) (298) |

Source: UNDP Human Development Report of 2009 on pages 63, 64, 73, and 116.

The HDI table above provides much broader picture of Tanzania's development (apart from looking at the GDP). It also compares Tanzania and other countries, those which are above and below it in the *HDI* ranks for 2009. As the table shows, the overall *HDI* puts Tanzania in position number 151 out of 182 countries.⁴⁶⁸ But Tanzania stands in position 150 on life expectancy at birth; position 111 on adult literacy rate (from 15 years of age); and position 157 (25 on the list from the last) on GDP per capita. That means more need to be done to improve not only the GDP, but also provision of social services which would raise the *HDI*.⁴⁶⁹

The Progress and Impact of MKUKUTA 2005 to 2009: Consideration of Key Indicators and Economic Sectors

The MKUKUTA strives to increase the growth and reduction of income poverty; improve quality of life and social well being; and improve governance and accountability. Economic activities such as agriculture and livestock keeping are some of the driving forces of economic growth and poverty reduction.

⁴⁶⁸ Note that, it maintains the same position from 2008 because the 2008 Human Development Report of UNDP ranked Tanzania at 159th Position out of 177 countries assessed around the world. [Reference: <http://ochaonline.un.org> accessed on 29th December 2009].

⁴⁶⁹ It should be noted that, poverty still remains high in rural areas where 38 percent of the population falls below the basic needs poverty line. [See: Tanzania Human Rights Report of 2008, page 117].

7.1.2 Reduction of the Income Poverty – National and Individual Levels

At the global level, the HDI 2009 of the UNDP mentioned above has shown that Tanzania is not improving much in its human development indicators despite the fact that the GDP increased from 2.6 percent in 2000 to about 7.4 percent in 2008/09⁴⁷⁰ being an increase of only 0.3 percent from the record of the previous year 2007/08 (7.1 percent). Moreover, according to the *Household Budget Survey 2007 – Analytical Report of Tanzania of 2008*,⁴⁷¹ the population below the basic human needs poverty line has declined slightly from 35.7 percent in 2001 to 33.6 percent in 2009.

The *Human Development Report of 2009* shows that the growth of GDP to 7.4 percent is a result of an increase in foreign direct investments, taxes on domestic goods and other factors.⁴⁷² The trend of GDP since the year 2000 records fluctuations of improvement/ growth.

| The GDP Growth since the Year 2000 – 2009 [The Target is 10% by 2010] | | | | | | | | | | |
|---|------|------|------|------|------|------|------|------|--------|-------|
| Year | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008/9 | 2010? |
| GDP Growth % | 4.9 | 6.0 | 7.2 | 6.9 | 7.8 | 7.4 | 6.7 | 7.1 | 7.4 | 10?? |

Source: Various Reports especially Ministry of Finance Speeches of 2000/01 – 2009/10

But the 7.4 percent record is still below the target of 7.8 percent set by the government in 2008. It is also very far from the target of 10 percent it planned to achieve by 2010. Basing on the situation and the pace of economic growth of Tanzania, the government won't seal the gap of 2.4 percent between by 2010.

It should be noted that, the increase in individual income does not correspond to the increase in GDP. That means the progress of macro-economy has failed to translate into micro-economy to benefit individual citizens. As of 2009 as stated above, more than one third (about 15 million people) of the Tanzanian population still live below the basic needs' poverty line.

⁴⁷⁰ URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, pages 4 and 5.

⁴⁷¹ Published by the Tanzanian National Bureau of Statistics (NBS) in 2008. There has not been more recent study on this aspect. Therefore, the 2008 report remains to be a recent study as to December 2009.

⁴⁷² Also read the Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), Presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, pages 4 and 5 of the Swahili version of the Speech. The increase of 7.4 percent of GDP for 2008/9 means total of Tanzanian shillings 24,781.6 billion. The last year's (2007/8) 7.1 percent GDP growth means Tanzania shillings 20,948.4 billion. The increase of 0.3 percent is Tanzania shillings 3,733.2 billion.

7.1.3 Agriculture and Livestock Production: Kilimo Kwanza, Food Security and Fate of Pastoralists

The farming and livestock keeping are among the key driving force of economic development and poverty alleviation in Tanzania. They are number one in all aspects of human development. Moreover, they employ more than 80 percent of Tanzanians, particularly the rural population. Therefore, improvement of these economic subsectors means would definitely improve peoples' livelihoods through increased income, food security and increased GDP through taxes and levies.⁴⁷³

Despite the fact that agriculture and livestock keeping employ such huge number of people, it has been allocated with not more than 6.5 percent of the entire national budget for at least five years.⁴⁷⁴ As such, it hasn't been developing, and therefore its dependants (the said 70 percent of Tanzanians) remain poor because they don't produce adequately, don't sell on profit and don't save for the future. Generally, the farmers and livestock keepers cannot fight food insecurity and earn very low incomes for them to meet even the minimum standard of life.

Apart from low allocation of the national budget to the agricultural sector, there have been no practical strategies to realize the green revolution. In 2000 the government vowed to fight food insecurity and enhanced agricultural production generally through the adoption of strategies which ensured the realization of self-reliance and food security.⁴⁷⁵

The 2000 call for strategies, was just a reiteration of what the government had already said some years back in 1960s and 1990s. During those years, several strategies and policies on agricultural development were adopted, but never brought about envisaged achievements. The strategies and policies adopted since 1960s include:

- a) *The Siasa ni Kilimo of 1967 (literally means politics is agriculture);*
- b) *The Iringa Declaration of 1972;*
- c) *Kilimo cha Kufa na Kupona (Agriculture is a Matter of Life and Death)*

⁴⁷³ Note that, the contribution of the agricultural sector to the GDP dropped slowly down from 25.8% (of 2007) to 25.7% in 2008/9 [See: URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, page 5]. Other economic sectors contribute as follow: Industries Contribute 22.7% and services contribute 50.3% to the GDP. [See: <http://www.fanrpan.org> accessed on 5th January 2010]. Improvement in agriculture would have increased its share to GDP for more than 25% because agriculture is the main driving force of economy of Tanzania.

⁴⁷⁴ Note that, the *Maputo Declaration of 2003* had targeted that the budgets for African countries should set a minimum of 10% for agriculture sector.

⁴⁷⁵ See paragraph 3.1 of the Tanzania Development Vision 2025 [It can be accessed through <http://www.tanzania.go.tz/vision.htm>]. Note, food security means availability at all times of adequate food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices [See: Tanzania Human Rights Report of 2008, page 117].

- d) *The Agriculture and Livestock Policy of 1997;*
- e) *The Agricultural Sector Development Strategy of 2001;*
- f) *The Rural Development Strategy of 1998;*
- g) *The Agricultural Sector Development Programme (ASDP) of 2008;*
- h) *The PADEP of ...; and now,*
- i) *The Kilimo Kwanza (Agriculture First) Action Plan of 2009.*

7.1.4 Farming: Kilimo Kwanza Action Plan

The *Kilimo Kwanza*⁴⁷⁶ which basically means agricultural revolution or ‘agriculture first’ was launched by the President of the United Republic of Tanzania, His Excellence, Jakaya Mrisho Kikwete on the 3rd of August, 2009 in Dodoma, Tanzania. The President stated that, agriculture is everything for socio-economic development in Tanzania therefore there is a need to reconsider plans for its development.

The *Kilimo Kwanza* advocates for modern agriculture and more involvement of the private sector in its drive. As Mr. Felix Mosha of Business Council of Tanzania, puts it,⁴⁷⁷ in order to have a meaningful green revolution, Tanzania needs the following elements:

- a) Quality seeds – we need an average of 120,000 tons;
- b) Quality fertilisers – the amount of fertilisers being used is very small. Developed nations consume 120 kg per hectare, South Africa 50kg per hectare, Malawi 27/hectare while Tanzania is only 9 kg per hectare;
- c) Modern implements and chemicals – previously we had 17,000 tractors, currently there are only 8,000. Some regions have only 5 tractors. We need at least 20,000 tractors. A hand hoe accounts for 70 percent of our agriculture, oxen 20 percent and tractors only 10 percent.

The government stated that the *Kilimo Kwanza* resolution would establish the Farm Service Centre (FSC) and the Agricultural Development Banks (ADB). The FSC would be located within major farming communities to facilitate the supply of inputs.⁴⁷⁸

The LHRC shares same concerns with majority of people on Kilimo Kwanza especially on the fact that, *Kilimo Kwanza* is yet another strategy like those adopted by the government in 1960s and 1990s, which had never achieved this country meaningful agricultural development.

Moreover, *Kilimo Kwanza* is talking of modern agriculture while at least 70 percent of Tanzanians are still using a hand hoe.

⁴⁷⁶ The Kilimo Kwanza includes normal production in agriculture, livestock, forestry and fisheries.

⁴⁷⁷ See: Foundation of Civil Society ‘Report of 7th CSOs Annual Forum’, at chapter four.

⁴⁷⁸ ‘Kilimo Kwanza’ in MAPAMBANO Newsletter of June – December, 2009, published by the Ministry of Finance and Economic Planning of Tanzania. Page 27.

Tanzania still irrigates only 1 percent of its arable land, while 29 million hectares could have been irrigated considering the fact that the country is rated as the most water-laden nation in Africa after the DRC.⁴⁷⁹ Moreover, Kilimo Kwanza does not address the issue of finance for the farmers to facilitate them buy and apply modern technology.⁴⁸⁰ Another point is that, majority of farmers are ignorant of modern agricultural technologies and there is no practical plan under the Kilimo Kwanza initiative to increase extension services as it used to be in the past.

The Kilimo Kwanza also talks of commercial agriculture without addressing its impact to food security. Besides, *Kilimo Kwanza* needs millions of shillings to implement, but it is not stated how the government would increase its budgetary allocations for agriculture in the national budget beyond the current share of 6.5 percent.

Looking at the initiative, the big question to answer is, who is the target of *Kilimo Kwanza*, is it the poor Tanzanians earning below two dollars a day or the foreign investors who just want to trade in agriculture under the cover of private sector in the agricultural development? The *Kilimo Kwanza* brings more questions than answers.

7.1.4 Food Security

The MKUKUTA's goals (number three of cluster one) state that the government wants to achieve improved food availability and accessibility at household level in urban and rural areas. This goal is about food security. According to the government, achievement of food security⁴⁸¹ in a sustainable manner is a major towards eradicating

⁴⁷⁹ Tanzania is the second largest country with large volumes of water in Africa, but irrigation and water resources are not utilized well due to inadequate equipment. [See: 'Kilimo Kwanza' in MAPAMBANO Newsletter of June – December, 2009, published by the Ministry of Finance and Economic Planning of Tanzania. Page 27].

⁴⁸⁰ It is said that the credit/ loan to private sector has increased to Tanzanian shillings 4,376.4 billion in 2008 compared to Tanzanian shillings 2,976.3 billion in 2007. This said increase of credit/loans to private sector is equivalent to 47.0% [See: URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, pages 4, 5 and 7]. However, as the government itself confesses, the Banks and other financial institutions are reluctant to give loans for agriculture production/ investments. As such only 8.3 to 10.4 percent of the total loans (of the stated Tanzanian shillings 4,376.4 billion) were given to the private sector for agricultural development in 2008/9. Most of these loans are short-term for buying and selling and not for production. It is also said that, only 0.8 percent of total lending by commercial banks was directed to agricultural production. See: 'Kilimo Kwanza' in MAPAMBANO Newsletter of June – December, 2009, published by the Ministry of Finance and Economic Planning of Tanzania. Page 27 for more information. Other economic sectors had the following percentages: trade (16.1%); Manufacturing (13.1%); transport and communication (8.7%) and personal credit (19.6%) [URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, page 7].

⁴⁸¹ Note that, food security connotes also food availability (increased productivity, processing and marketability) and food accessibility including affordability.

poverty and bringing about economic development in Tanzania.⁴⁸²

A recent study has revealed that food security continued to decrease in 2009, especially on the northern and north-eastern parts of bimodal areas of Tanzania that have experienced extended drought due to the poor performance of the 2008/09 *vuli* (short rains) and 2009 *masika* (long rains). Food security conditions have also worsened in the northern coastal, southern coastal and central regions of Tanzania Mainland,⁴⁸³ especially Dodoma region, which is semi-arid.

For instance, according to the report from the Ministry of Agriculture, Food Security and Cooperatives issued in June, 2009 about 37,695 households in Chamwino district in Dodoma lacked food, with a total of 17,080 households being unable to afford a daily food. While the annual requirement for the district is 63,501 tonnes of food, the realized production for 2008/2009 season was only 12,178 tonnes, resulting to a deficit of about 51,000 tonnes in the same season.⁴⁸⁴

The *Preliminary Food Crop Production Forecast for 2009/10 Food Security Report*, which was released in June 2009 by the Ministry of Agriculture, Food Security and Cooperatives, revealed that production of food crops, especially cereals, has declined due to poor rains. According to the report, the deficit of cereals is 1.3 million tonnes due to the fact that production over the last season was 5.26 million tones, slightly below the target of 6.57 million tonnes.⁴⁸⁵

Problems and challenges surrounding the agricultural sector have been mentioned above. The LHRC urges the government to rectify the situation. The *Kilimo Kwanza* Action Strategy of 2009 cannot rectify the situation of food insecurity in Tanzania because it focuses mainly on commercialized agriculture which does not necessarily improve food production among individual farmers.

Food insecurity has a direct bearing to the right to development because; the shortage of food tends to raise the price of the same in the market. Raised food prices also push up inflation rates. For instance, the current food shortage has contributed about 55.9 percent of the inflation rate in Tanzania.⁴⁸⁶ Persistence hunger has also been one of the causes of children drop out of school.

⁴⁸² URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, page 17.

⁴⁸³ See: USAID and FEWSNET 'Tanzania Food Security Update - September 2009' available online at <http://www.tzdpq.or.tz>, accessed on 17th December, 2009. Note USAID is an acronym for United States Aids Agency and FEWSNET is acronym for Famine Early Warning Systems Network.

⁴⁸⁴ Abdul Kajumulo "Drought Exposes Thousands to Hunger in Central Tanzania" Actionaid, 12 November 2009. This is an article which is available on <http://blogs.actionaid.org.au/tanzania/2009> accessed on 23 December, 2009.

⁴⁸⁵ Ministry of Agriculture, Food Security and Cooperative 'The Preliminary Food Crop Production Forecast for 2009/10 Food Security Report,' June 2009, page 4.

⁴⁸⁶ Foundation of Civil Society 'Report of 7th CSOs Annual Forum of 2009', at chapter four.

For instance, according to ActionAid the number of pupils dropping out of schools has increased in July 2009 by 45 percent, from 10 percent in 2008 to 45 percent in July 2009. This is a shocking result in a country which tries to reduce poverty.⁴⁸⁷

7.1.5 The destiny of Pastoralism in Tanzania? Case of Sumbawanga and Loliondo

Experience shows that pastoralists in Tanzania are mistreated in number of ways, including forceful evictions from their indigenous lands; denial of grazing land; subjected to unlawful punishments and other forms of mistreatment.

In a broader picture, as the LHRC assesses, this is caused by three major factors:

- a) Lack of specific legal framework to safeguard and protect the interests of traditional pastoralists, which would have also addressed the conflicts between the farmers and pastoralists;
- b) Lack of adequate socio-economic policies to safeguard the interests of the local communities against land pressure caused by the liberalization of the Tanzanian economy, which basically consider foreign investors as main economic saviors of Tanzania.⁴⁸⁸
- c) Current practices of most political leaders which have impacted negative on the ability of traditional pastoralists to maintaining their traditional ways of cattle rearing. The traditionalists are now blamed for degradation the soils linked to unruly big numbers of cattle.

While pressure against traditional ways of cattle keeping is mounting, no alternative ways have been demonstrated so far to guide the traditionalists like Maasai and Sukuma to abandon their 'old ways.' Moreover, because of the land pressure which is exerted by greed for investments, local communities are constantly being elbowed from their traditional lands. The Sumbawanga and Loliondo cases depict a good picture of the situation.

7.1.6 The Sumbawanga Saga: The Cost of Being a Pastoralist in Tanzania?

Early 2009, the pastoralists of Matai, Mkowe, Msanzi and Sopa wards of Sumbawanga District, Rukwa Region, were reportedly forceful evicted from villages.

⁴⁸⁷ See: Abdul Kajumulo "Drought Exposes Thousands to Hunger in Central Tanzania" Actionaid, 12 November 2009.

⁴⁸⁸ Note that, this has changed recently especially from 1990s as it is noted from the MCT's Agenda for Research in Tanzania, 2009. Before that and more specifically during the first two decades of Tanzania's political independence, the dominant discourse was about national liberation, national self-reliance as oppose to sheepish reliance on the so-called the international donor community and its political and other conditionality for 'assistance', capitalism and imperialism and exploitation. In the present era of neo-liberalism, the tone is now on economic growth and considering the investors as saviors. See: MCT (2009) Agenda for Media Research in Tanzania. ISBN 978-9987-9-9, at page 5.

Additionally, the reports said, they were heavily and unlawfully fined by the local government officials, including the District Executive Officer and the Ward Executive Officers.⁴⁸⁹

On the 26 of January 2009, a group of pastoralists from the mentioned wards who were the victims of reported violations wrote a letter to the Regional Commissioner of Rukwa complaining about the mistreatment (mainly those coming from the Sukuma tribe) despite the fact that they had been legally registered as villagers in those wards. Part of their letter read:

Ndugu Mkuu wa Mkoa, wafugaji wa jamii ya wasukuma katika kata tajwahapo juu, tumekuwa tukikamatwa pamoja na mifugo yetu na kutozwa faini ya shilingi 200 kwa kila ng'ombe kwa siku ...tukiambiwa kuwa ni tamko la Makamu wa Rais Dr. Mohamed Alli Shein alilolitoa mjini Sumbawanga ... sisi tulielewa kuwa tamko hilo liliwalenga wafugaji wavamizi tu lakini lime-tukumba na sisi tuliosajiliwa na vijiji kuwa wakazi wa kudumu, na wengi wetu tumekaa zaidi ya miaka mitano hadi nane ... [Mr. Regional Commissioner, the pastoralists of Sukuma origin who are living in the mentioned wards, have been arrested and fined up for up to shillings 200 for each cow per a day ... we have been told that it was an order from the Vice President, Dr. Mohamed Alli Shein he gave it while in Sumbawaga ... we understood that the order was directed to the illegal intruders only, but we to have been included despite the fact that are registered in those villages as permanent residents and most of us have been living there for over five to eight years ...]

It is on record that, despite the fact that the fining of the pastoralists by the local government leaders is illegal, the way that the fines were collected was questionable. For instance, the villagers stated that,⁴⁹⁰ Mr. Crisence Bakuli, the Ward Executive Officer (WEO) for Msanzi Ward, Livestock Officer for Msanzi ward identified as Kitama, Mr. Moses Ntinda, the WEO for Sopa ward and the WEO for Matai ward identified as Tete received the pastoralists' fines as follows:

- From Julala Charles Receipt Number 0111877 of 23/12/1008 for Tshs 500,000, but what was recorded on the receipt is Tshs 270,000 only.
- On the same date, Tshs 880,000 was received from Bundi Mamuga, but on the receipt No. 00111876it was recorded Tshs 420,000 only.
- On 11/01/2009, W. J Mtingwa, the WEO for Mkowe ward, received Tshs 600,000 from a pastoralist known as Masanja Maganja, without issuing any receipt.⁴⁹¹

⁴⁸⁹ HRM Monitor for Sumbawanga, LHRC/HRM.VOL.XVI/89, 17/3/2009.

⁴⁹⁰ Their Demand Notice through their Advocate Simoni Mwaloko of Mbeya [Reference No. STMM/ADV/D/2009/02/12/01 dated 12-02-2009. The Demand Notice addressed to the District Executive Director for Sumbawanga District Council; Mr. Tete who was the WEO for Matai ward; Mr. Mtingwa who was the WEO for Mkowe ward; Mr. Crisensi Bakuli who was WEO for Msanzi ward; Mr. Kitama, the Livestock Officer of Msanzi ward; and Mr. Moses Ntinda, the WEO for Sopa ward. There is no feedback of whether they responded to this demand letter from the claimants.

The *Local Government (District Authority) Act*⁴⁹² and the *Local Government (Finance) Act*,⁴⁹³ provide for the procedures of collecting government revenues from different sources, including fines from offenders in the livestock and agricultural sectors.⁴⁹⁴ The laws put a limit of a fine to an amount not exceeding Tshs 300,000⁴⁹⁵ and that the one collecting the fine must issue a genuine government receipt to authenticate the receipt of the fine.⁴⁹⁶ Recording wrong figures on receipts, this is a criminal offence of forgery⁴⁹⁷ under the *Penal Code*.⁴⁹⁸

The current situation exploits the pastoralists. They are charged millions shillings, as “grazing fee/levy.” For instance, on 10 January 2009, Samweli Makengele of Nkole village, Namanyere, Sumbawanga was ordered to pay “*ushuru wa malisho*” (grazing levy) after grazing his cattle in one of the areas in Sumbawanga for 22 days. As the receipt below shows, he paid shillings 1,496,000.

That means he pays an average of shillings 68,000 per a day for his 340 cows, equivalent to shillings 24,888,000 per annum, as grazing levy.

7.2 Ruthless Eviction of Maasai Pastoralists from Loliondo

On July 4 2009, there were reported allegations of human rights violations in Loliondo area, which is within the Loliondo Game Controlled Area (GCA) situated in Ngorongoro District. The allegations were that, the police acting on District Commissioner’s order, forcefully evicted hundreds of Maasai families from their areas on allegations that they had trespassed a hunting block licensed to a foreign investing company known as Ortello Business Corporation (OBC). It was also reported in the media that, about 200 houses of Maasai were burnt, women were raped, properties got destroyed and people were subjected to torture in the process of evicting the pastoralists as explained in other sections of this report.

On 21 August 2009, a fact-finding mission team of the FemAct,⁴⁹⁹ PINGOS Forum and other Civil Society Organizations in the villages of Ololosokwani, Soitsambu, Olerien-Magaiduru and Arash, confirmed the allegations on human rights violations. The team reported that there were ruthless eviction operations conducted in Loliondo

⁴⁹¹ HRM Monitor for Sumbawanga, LHRC/HRM.VO.XVI/89, 17/3/2009.

⁴⁹² Cap.287 of the R.E. 2002 of the Laws of Tanzania.

⁴⁹³ Cap.290 of the R.E. 2002 of the Laws of Tanzania.

⁴⁹⁴ Section 67 , Cap 290

⁴⁹⁵ Section

⁴⁹⁶ Section

⁴⁹⁷ Section 337 of the Penal Code

⁴⁹⁸ Cap.16 the R.E. 2002 of the Laws of Tanzania.

⁴⁹⁹ *FemAct* is a coalition of reputable non-governmental organizations whose agenda is to promote human rights especially in respect of natural resources rights, economic opportunities, gender equality and social justice in Tanzania. This coalition has more than 50 members at the

by policemen to implement a “lawful order” from the District Commissioner of Ngorongoro District, Mr. Elias Wawa Lali.⁵⁰⁰ The FemAct also established that, the government stand that the evictees are not Tanzanians wasn’t true.

The Loliondo GCA is a tradition land of the Maasai of Tanzania from the time immemorial. They have co-existed with wild animals for many years even before the declaration of the Ngorongoro Conservation Area in 1959 or enactment of the *Wildlife Conservation Act, 1974*. An old man of Ololosokwan village told the FemAct team during the visit that, he has been there even before independence of Tanzania in 1961. He recalls to have buried his father in the same place where he is living and he, too, was evicted. All villagers interviewed narrate the same story.

The findings of the media and CSOs were confirmed by a delegation of representatives from Denmark and other European Union countries, who also visited Loliondo in September 2009. In his speech on 11 September 2009, his Excellence Bjarne H. Sorensen, the Ambassador of Denmark to Tanzania firmly commented that:

Denmark, together with 4 other countries’ representations, last week had a delegation going to Loliondo to see what the reports (of media and CSOs) were about. Unfortunately, the Local Government Authorities failed to facilitate us in visiting the affected villages. However, through consultation with others we were able to see and hear that evictions and burnings of bomas indeed have taken place. [Emphasis supplied].⁵⁰¹

The Police Officer⁵⁰² who attended the meeting of the DC and FemAct on the 20th of August 2009 at DC’s office also confirmed they actually burnt the houses. They said that, the Maasai houses (bomas) were burnt as one of the strategies of incapacitating the “intruders”

moment including the Legal and Human Rights Centre – LHRC.

⁵⁰⁰ Note that, the said District Commissioner of Ngorongoro Mr. Elias Wawa Lali, issued the said “lawful order” through one Mabuga, I. P. V (District Administrative Secretary of Ngorongoro) on 18/5/2009 vide their letter dated 18/5/2009 with reference number KUM.NA.DC/NGOR/D.8/20/23 with a caption “YAH: AMRI HALALI YA MKUU WA WILAYA KUHUSU UVAMIZI ULIOFANYWA KATIKA KITALU CHA UWINDAJI CHA OBC.” [i.e: Re: Lawful Order of the District Commissioner on Intrusion in to Hunting Block of OBC]. The said order was directed to the villagers through their local government leaders of the Arash, Orogosork, Soitsambu and Malambo wards; ALSO to the Ololosokwani, Soitsambu, Oloipiri, Arash, Olorien Magaiduru and Piyaya villages.

⁵⁰¹ See: Paragraph 7 at page 1 of the “Speech by the Ambassador of Denmark, Bjarne H. Sorensen, Closure and handing Over of ERETO on September 11, 2009.” His Excellence Sorensen also said that, those findings are of concern to the Danish Government, EU Presidency in Tanzania and to the African Commission on Human and Peoples Rights Commission. He has urged the government of Tanzania to be open and transparent in its action. The LHRC supports the recommendation of launching independent investigation of Loliondo case if the government does not agree with the findings of the CSOs of Tanzania, Media and even the EU delegation.

⁵⁰² Mr. Issack Manyoni, who was the head of the FFU Operation at Loliondo. In that meeting, there was also one who is deputy security officer for Ngorongoro District. The meeting lasted for about five hours. When the DC was asked by one of the FemAct member on where he gets the powers of ordering evictions and burning of the houses, he failed to answer that question. He said that “najua unanikejeli tu ukijua mimi ni lay man katika sheria, amri zangu zote za

from settling back into those houses again. They also touched/searched women in the process because there was no any woman police officer during the operation.⁵⁰³

There is no any law of Tanzania which gives powers to the DC or any other person to evict any person for any purpose without a lawful court order.⁵⁰⁴ Moreover, the act of willful burning of one's property as punishment or otherwise is a criminal offence⁵⁰⁵ under the *Penal Code*.⁵⁰⁶

In 2009, the trend of arbitrary exercise of powers⁵⁰⁷ by the District Commissioners on land issues emerged again. Same situation occurred in Kilombero, whereby the DC for Kilombero was accused of forcing the villagers of Namwawala to move out of their lands to pave the way for sugar plantation investment.⁵⁰⁸

The arbitrary powers of some of the government leaders on lands and other natural resources have been exercised to the detriment of the local community members and for the interest of the investors. The LHRC urge the government of Tanzania to take into task⁵⁰⁹ the DC and all those involved in human rights violations of the residents of

kufanya hayo zinatokana na sheria zote za Tanzania hata Katiba" ["I understand that you are just teasing me because you know that I am a lay man in law, my orders of doing those things emanate from all laws of Tanzania, including the constitution."]

⁵⁰³ Section 26 of the *Criminal Procedure Act, Cap. 20* states that, whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency. It is therefore, that the operation was illegal.

⁵⁰⁴ According to Article 107A of the *Constitution of the United Republic of Tanzania of 1977*, the dispensing of justice (determination of rights and duties or offences) in Tanzania is vested on the judiciary only. Therefore, it is only a court or tribunal which can give certain orders. The disputes relating to land matters such as trespass to land and all kinds of related claims are adjudicated by the land tribunals established under the *Land Act, Cap. 113*, the *Village Land Act, Cap. 114* and the *Land Disputes Courts Act, Cap. 216* of 1999, 1999 and 2002 respectively.

⁵⁰⁵ Burning of the houses and other properties are criminal offences under sections 319 and 321 of the *Penal Code, Cap. 16*. Section 319 (a) of the *Penal Code, Cap. 16* states that "[A]ny person who willfully and unlawfully sets fire to any building or structure whatever, whether completed or not; is guilty of an offence and is liable to imprisonment for life." The nature of this offence is called arson. Setting fire to crops and growing plants is also an offence under the provision of Section 321 of the *Penal Code, Cap. 16*.

⁵⁰⁶ Cap. 16 of the R.E. 2002 of the Laws of Tanzania.

⁵⁰⁷ The arbitrary act of DC (who are termed as public leaders) is against the laws of Tanzania, in particular Section 6(c) of the *Public Leadership Code of Conduct Act, Cap. 398*, which states that in relation to decision making, that public leaders shall, in fulfilling their official duties and responsibilities make decisions in accordance with law, in the public interest and with regard to the merits of each case. [Emphasis Supplied].

⁵⁰⁸ See: HakiArdhi and LHRC "Fact Finding Report on Land Dispute in Namawala Village Kiombero District conducted in May 2009.

⁵⁰⁹ Section 8(g) of the *Public Leadership Code of Conduct Act, Cap. 398* states that legal action can be initiated against the leader (who has acted arbitrarily) under appropriate laws. Section 96(1) of the *Penal Code* on arbitrary use of public powers states that any person who, being

Loliondo. Even if the local communities are intruders to the hunting block, proper legal procedures should have been followed to remove them from the area, as detailed above.

Generally speaking, all these (Sumbawanga, Loliondo and other incidences) are a result misconception on the existence of the pastoralists in Tanzania. While the government wants the pastoralists to apply modern methodologies, it does not offer any help such as extension services, viable market and the like. *The Agriculture and Livestock Policy of 1997* does not address the issue of modern or/and traditional livestock keeping as well. It talks about veterinary services, which are not available for pastoralists anyway.

LHRC urges the government of Tanzania to reform the current policy and perception on traditional pastoralists. The need for modern technology should mainstream the traditional ways to make it sustainable and acceptable to the people. More information is needed on this matter before going straight to prohibiting traditional ways. Otherwise, it is the LHRC great concern that, mistreatment of the pastoralists in Tanzania means denial of their right to development and survival.

7.3 Implementation of the MDGs by Tanzania

The Millennium Development Goals (MDGs) were incepted in September 2000 by the General Assembly Resolution of the United Nations. The MDGs require every country to assess itself with and move towards the targets set for 2015. The said goals are: to eradicate extreme poverty and hunger; to achieve universal primary education; to promote gender equality and empower women; to reduce child mortality; to improve maternal health; to combat HIV/AIDS, malaria and other diseases; to ensure environmental sustainability; and, to develop a global partnership for development.

The discussion on the progress of the implementation of the MDGs is done along with the assessment of the achievement of MKUKUTA's cluster two on improving the quality of life and social wellbeing.

The Millennium Development Goals Report of 2009 states that the world has made a positive stride towards universal primary education and the target to meet safe drinking water. However, there are myriad of challenges, making even more difficult to attain the goals by 2015. The report states that majority of people are living below the poverty line of 1.25 a day.⁵¹⁰

employed in the public service, does or directs to be done in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of an offence. [Emphasis Supplied].

⁵¹⁰ The Millennium Development Report of 2009, page 3.

As for Tanzania in particular, the recently released reports namely the *Millennium Development Goals Report 2009*⁵¹¹ and the *MKUKUTA Annual Implementation Report of 2008/2009 of November 2009*⁵¹² indicate that Tanzania Mainland is unlikely to achieve MDG's goal number one, four and five by 2015;⁵¹³ The reports state that goal number six on HIV and Malaria is achievable as there have been encouraging efforts on the same.

The midway assessment of some of the MDGs and MKUKUTA indicators are summarized in the government figures published in the *Millennium Development Goals Report 2009*⁵¹⁴ as follows:

| Millennium Development Goal | 1990 | 2000 | 2008 | | 2015 | Whether Achievable [by 2015] |
|---|------|-------|--------|----------|------|------------------------------|
| | | | Actual | Expected | | |
| Proportion of Population below Basic Needs Poverty Line | 39 | 36.33 | 64 | 25.0 | 19.5 | Unlikely to achieve |
| Primary School Net Enrolment Rate | 54.2 | 58.7 | 97.2 | 87.2 | 100 | Achievable |
| Under-five Mortality Rate (per 1,000 live births) | 191 | 153 | 112 | 99.6 | 64 | Likely to achieve |
| Infant Mortality Rate (per 100,000 live births) | 115 | 99 | 68 | 59.6 | 38 | Likely to achieve |
| Birth attended by skilled health personally | 43.9 | 35.8 | 63 | 77.1 | 90 | Unlikely to achieve |
| Maternal Mortality Rate (per 100,000 live births) | 529 | - | 578 | 244 | 133 | Unlikely to achieve |
| HIV prevalence, 15-24 years | 6 | - | 2.5 | <6 | <6 | Achievable |

This information was extracted from the 'Tanzania Mid-way Assessment at a Glance' of the *Millennium Development Goals Report 2009*, Tanzania. More details on the statistical information and other MDGs are put under this subsection by reviewing some of the MDGs and MKUKUTA's indicators.

7.3.1 Eradicate Extreme Poverty and Hunger

The assessment on this goal indicates that, Tanzania has improved on the proportion of the population living below basic needs poverty line from 39 percent in 1990 to 33.64 in 2008/09. That means Tanzania has improved by only 5.4 percent over the last twenty years. Moreover, the situation of rural areas was still poor compared

⁵¹¹ Published by Ministry of Finance and Economic Affairs, Poverty eradication and Economic Empowerment Division, Dar es Salaam, Tanzania. The Report was released in December 2009.

⁵¹² Published by Ministry of Finance and Economic Affairs, Dar es Salaam, Tanzania, November 2009.

⁵¹³ Millennium Goal 1 is to eradicate extreme poverty and hunger by 2015; Goal 4 is to reduce child mortality by 2015; and Goal 5 is to improve maternal health by 2015.

⁵¹⁴ See the first figure, page iii of the said report.

to the situation more than fifteen years ago because as of 2008/09, the rural population of Tanzania which was living below the basic needs poverty line was still 37.6 percent. A section on food security above gives more information on the status of hunger in Tanzania.

But generally, the records show that Tanzania is still one of the poorest countries in the world, with 58 percent of the population living below the USD 1 per day threshold of extreme poverty⁵¹⁵ and therefore, it is unlikely to reach the MDG target of 19.5 percent as shown in the table above.

7.3.2 Achieve Universal Primary Education

As shown above, the government of Tanzania has made a very positive progress towards realization of this goal. As of 2008/09, the enrolment rate for primary school pupils reached 87.2 percent compared to 54.2 percent in 1990. Moreover, the enrolment in primary schools increased by 12.7 percent between 2007 and 2009. Despite this reality, it was stated that, only 1 percent of children with disabilities were enrolled for primary education.⁵¹⁶

It was also stated that, the enrolment in Form 1 increased from 438,901 (252,116 boys and 186,785 girls) in 2008 to 524,784 (290,696 boys and 234,088 girls) in 2009.⁵¹⁷ However, the enrolment of children with disabilities in Form 1 was still very low. For instance, in 2009 only 65 percent of pupils with disabilities were selected to join secondary schools compared to 70.43 percent in 2008.⁵¹⁸

⁵¹⁵ OneWorld 'Millennium Development Goals Progress Review: Tanzania' (Country review September 2008). See: Tanzania Human Rights Report of 2008, page 124

⁵¹⁶ LHRC (2008) Tanzania Human Rights Report of 2008, page 124 [Also see: Gervas Zombwe "*Kutengwa Katika Elimu Kutakwisha Lini?*" In *Kauli Mbadala: Tunaelekea wapi?* Published by HakiElimu and Mwananchi Communications Limited. ISBN 9987-423-75-2 of 2008. Page 28. Various information of the Ministry of Education and Vocational Training of Tanzania indicate that the enrolment of children in primary schools has been steadily increasing since 2001. Up to 2007, it is said that, the Net Enrolment Rate reached at 97% comparing the 59% Net Enrolment Rate of the year 2000. The Gross Enrolment Rate reached at 114% in 2007 comparing the 78% of the year 2000. As to June 2008, there were 34,661 pupils with disabilities in Tanzania (enrolled in primary school). Out of whom 19,998 were boys and the remaining 14,663 were girls. That figure represents only 1% of children with disability in Tanzania [See: HakiElimu (December 2008) *Do Children with Disabilities Have Equal Access to Education? A Research Report on Access to Education for Children with Disabilities in Tanzanian School*, page 7].

⁵¹⁷ See: *The MKUKUTA Annual Implementation Report of 2008/2009 of November 2009*, page 37.

⁵¹⁸ As it is said in Chapter Five of this report, in 2008, total of 212 (109 being boys and 103 girls) pupils with disabilities were selected to join Form One (secondary school), that being 70.43% of all pupils with disabilities in Tanzania. In 2009, the number was less than that of 2008 [actual figures were not obtained apart from the stated statistical information]. The results and figures were released by the Minister for Education and Vocational Training in January 2009. The Minister was quoted by media such as *Majira* of 7th January, 2009. See the article by Rehema Mohamed "*Ufaulu wanafunzi wenye ulemavu washuka.*"

The LHRC urges the government to address the following challenges accompanying increased enrolment rates in schools:

- a) Working condition of school teachers – houses, salaries, medical schemes, etc;
- b) Number of qualified teachers;⁵¹⁹
- c) Enrolment of children with disabilities;
- d) Improvement of facilities especially of children with disabilities;
- e) Drop outs of primary school pupils;⁵²⁰
- f) Teaching curriculum to consider whether it is relevant to the current socio-economic situation.

7.3.3 Reduce Child Mortality Rates

The 2006 records on child mortality rate indicate that there were 112 deaths per 1,000 lives.⁵²¹ The figure presented in the Tanzania's *Millennium Development Goals Report 2009*⁵²² quoted above for the year 2008/09 still present the same status. Therefore, there has been no improvement in the area. The target was to reduce the rates down to 99.6 per 1,000 lives in 2009 and to further down to 64 deaths per 1,000 lives by 2015. Despite the fact that the government considered this as achievable, the trend of improvement shows that, practically, the government won't reach the target by 2015.

The LHRC urges the government to increase the budget ration for the health sector (from the current 10 percent to at least 15 percent) in order to employ and deploy more health practitioners around the country as well as increasing facilities and awareness of health related issues to the public. There is no way out in which the present situation could be rectified without investing more in this very sensitive sector.

7.3.4 Improved Maternal Health

According to Tanzania Demographic Health Survey(TDHS)by 2005 there is no significant improvement in Maternal Mortality Rate. . Recent statistics (of 2009) records the same figure of 578 deaths per every 100,000 deaths of women due to complications linked to pregnancy. The year 2006 reports quoted the same figures. As the Tanzania's *Millennium Development Goals Report 2009*⁵²³ concludes, this is unlikely to be achieved by 2015.⁵²⁴

⁵¹⁹ The current status, according to the *MKUKUTA Annual Implementation Report of 2008/2009 of November 2009*, page 37; the Primary School Teacher Ratio is averaged to 53:1. It has worsened from 52:1 of 2006. The target is to achieve a 45:1 pupil teacher ratio by 2015. Note that, the pupil per qualified teacher ratio stands at 1:60 in 2009 [See: The *MKUKUTA Annual Implementation Report of 2008/2009 of November 2009*, page 41].

⁵²⁰ According to the *MKUKUTA Annual Implementation Report of 2008/2009 of November 2009* (see page 37), the rate of students completing standard seven has declined from 67.8% in 2007 to 62.4% in 2008, far from the targeted rate of 90% by 2010. Also, the percentage of transition from standard VII to form I have declined from 56.7% in 2007 to 51.6% in 2008.

⁵²¹ See: The Tanzania Figures 2006, pages 35 – 37; The Millennium Development Goals Indicators 2006; and the Tanzania Human Rights Report of 2007, page 88.

⁵²² See the first figure, page iii of the said report.

⁵²³ See the first figure, page iii of the said report.

⁵²⁴ The target for 2015 is 133 deaths per 100,000 lives. The target for 2008 was 244 deaths

However, the proportion of births attended by skilled health personnel has increased from 46.3 percent in 2006 to 63 percent in 2008/09. This increase, though, has not achieved the target of 77.1 percent set to be reached by 2008 and it is therefore unlikely to reach the MDGs/MKUKUTA's targets of 90.0 percent by 2015.



Right to health: A picture taken in one of the government hospitals in Dar es Salaam which shows mothers facilities are yet not enough though there have been some improvements.

7.4 Right to Clean and Health Environment

The right to a healthy environment is recognised in both international conventions and the national legislation. Article 12(2)(b) of the *International Covenant on Economic Social and Cultural Rights (ICESCR)* of 1966 requires states parties to improve all aspects of environmental and industrial hygiene. Section 4(1) of the *Environmental Management Act of 2004* of Tanzania states that every person in Tanzania shall have a right to clean, safe and health environment.

More elaborative especially on the link between the environment and human development is Article 24 of the *African Charter on Human and Peoples' Rights (ACHPR)* of 1981. It states that all peoples shall have the right to a general satisfactory environment favourable to their development.⁵²⁵ Moreover, this right is linked directly to the right to life. Both Tanzanian and foreign jurisdictions interpret this right that way.

For instance, in the case of *Festo Balegele v Dar es salaam City Council*⁵²⁶ the High Court of Tanzania held that, the right to clean environment is embodied into the right to life. Therefore, pollution of the environment means violation of the right to life. In other foreign jurisdiction, especially India, the High and Supreme Courts have already laid down a number of precedents on this. For instance, in the case of *V. Lakshmipathy v. State of Karnataka*⁵²⁷ it was decided by the court that, entitlement to clean

per 100,000 lives. That means, Tanzania has failed to achieve even half of the 2008's target.

⁵²⁵ Also read Principles 3 and 4 of the UN Rio Declaration on Environment and Development of 1992. Principle 3 states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. Principle 4 provides to the effect that the environmental protection constitutes an integral part of the development process and cannot be considered in isolation from it.

⁵²⁶ *Festo Balegele v. Dar es salaam City Council*; High Court of Tanzania at Dar es salaam, Misc Civil Cause No. 90 of 1991(unreported)

⁵²⁷ AIR 1992 Kant 57. Note 'AIR' means 'All India Law Report' – the Reports which compile decisions of the courts. Same as 'TLR' Tanzania Law Reports.

environment is one of the recognized basic human rights the right to life inherent does not fall short of the required quality of life which is possible only in an environment of quality.⁵²

Furthermore, the *Economic Social and Cultural Rights Committee* has stated in *General Comment 14* that the right to a healthy environment includes, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water, and basic sanitation.

Tanzania falls short of this obligation. Latest government statistics published in the *Tanzania's National Water Sector Development Strategy of 2006 to 2015* (published in September 2008) by the Ministry of Water and Irrigation, indicate that, the coverage of access to water in major urban centres was 73 percent in 2004. The rural water supply coverage was only 53 percent and therefore, most of people were spending more than 30 minutes in search for water⁵²⁹ (not necessarily safe and clean).

This is clearly in violation of the right to clean and health environment as it has expanded by *General Comment 14 of the UN Committee of ESCR*. The government statistics, though, do not reflect the reality on the ground. Majority of people even in the urban centres lack access to safe, clean and reliable waer services. For instance, the media reported that mmajority of people in Kihonda area, Morogoro municipality have been tapping water from wells, which is unclean for human consumption.⁵³⁰

In Dar es Salaam city, it was reported by the media that, the citizens of Buguruni Malapa, were tapping water for domestic consumptions from a damaged pipe, reflecting the deepening water crisis in the city, whose residents survive for water which is not clean and safe for human needs.⁵³¹ At Kimara and Tabata areas suburbs of Dar es Salaam, there is no tape water at all. The residents of those areas purchase was in buckets from bulldozers at inflated rates, which is between Tshs 15,000 and 20,000 (USD 12 to 17) for 1,000 liters of water. Sometimes, a bucket of 20 liters is sold at a price of Tshs 450 which is about USD 0.4. This is expensive for Tanzanians who hardly earn USD 1 per day.

In one of the cases lodget for determination, the *African Commission on Human Rights*⁵³² required the government compliance with the spirit of Articles 16 and 24 of the ACPHR and must also:

⁵²⁸ Same decision in the case of *Attakoya Thangal v. Union of India* (1990 KLT 580) in which the court affirmed that, the right to sweet water, and the right to free air are attributes of the right to life, for these are the basic elements which sustain life itself; AND in the case of *Subhash Kumar v. State of Bihar* (AIR 1991 SC 420), whereby the court had stated that the right to life enshrined includes the right to enjoyment of pollution free water and air for the full enjoyment of life.

⁵²⁹ See page 18 of that document. The water sector target to be achieved by 2011 from the MKUKUTA are, increased proportion of rural population that has access to clean and safe water from 53% in 2003 to 65% by 2010/11 within 30 minutes of time spent on collection of water.

⁵³⁰ Reporter 'Maji mmh' Mwananchi, January 1, 2009.

⁵³¹ Reporter 'Maji Haba' Mwananchi; January 16, 2009.

⁵³² See: Communication No. 155/96 Fifteenth Activity Report 1999-2000, Annex V.53.

- Include ordering or at least permitting independent scientific monitoring of threatened environments;
- Requiring and publicising environmental and social impact studies prior to any major industrial development; and
- Undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities, and providing meaningful opportunities for individuals to be heard, and to participate in the making of decisions affecting their communities.

The National Environmental Council (NEMC) of Tanzania has been doing commendable job to fulfill these principles. The frequency of complaints, at least through the media concerning environmental pollution by the factories have been decreasing. What seems to be most serious in recent years is the pollution in areas surrounding mining sites.

7.4.1 The North Mara Gold Mine Saga: “The Survival of the Fittests”

During the year 2009, there were public outcries about the pollution in areas surrounding the North Mara Gold Mine (NMGM), which is situated in Tarime district, Mara region in Tanzania. The cries attracted the attention of the media which reported that, people and animals in those areas were seriously affected and some of them had died after consuming water from a local river which was contaminated by chemicals from the gold mine.



North Mara: One woman representing many other people in Tarime District who were affected by the chemicals from North Mara Gold Mine Saga with animals.

In their June 2009's report of the situation of environmental pollution caused by the NMGM to the Parliamentary Committee on Environment and Minerals, the residents of Kemambo and Matongo wards (constituting more than ten villages), deduced the following information:

- That, the problem of environmental pollution, especially littering of toxic chemicals to the water sources (in the villages) from the mining areas, started some years back.
- On 8/5/2005 preliminary complaints were submitted to Public Relations Office of the Barrick Company by the Chairperson of the hamlet (Charles Vincent), but there was no any response.
- On 29/5/2005, the residents of Nyabigena (Gonsara) hamlet convened a meeting to deliberate on the harmful chemicals coming from the PIT of Gokona to the residents' farms and water sources.

■ That, the incidences of pollutions were reported to the District Commissioner for Tarime and several officials, including the ministry charged with minerals affairs, but they could not stop the toxic emission from the mining site for unknown reasons.⁵³³

■ In 2008, the villagers resolved to shift from affected areas and Barrick promised to compensate them. By the company did not honor its promise.

■ In January 2009, Barrick piled up a lump of toxic debris of about 2,000 tonnes nearby the lands in conflict without any precaution or assessment of its impact to the surrounding communities and when the rain came, the debris were washed out and water poured into River Tighite.⁵³⁴ In every place where the water from the debris flowed through, trees and fishes had died.

■ The harmful chemicals poured into all rivers, including traditional wells, rivers Nyamohoto and Makerero of Matongo and Nyangoto villages in Tarime district.

■ Other effects include air pollution because of the dust and burning of solid plastic materials; also the noises and vibrations from the mining sites. These cause people to get high fever, coughing and their houses developing cracks.

7.4.2 The Fruitless Struggle, More Crises

The struggle by the villagers to rescue their lives from the endangerment of the pollution ended in vain because even the government itself seemed to be in favour of the investors, no matter what comes adversely to the people.

At this end, and because of the lack of social and legal protection, the reports said, their great efforts resulted into persecution of many of them and some of them lost their lives after being shot by the police and the guards of the mining company. The June's 2009 report of the villagers to the Parliamentary Committee said the following people were murdered due to the stand off:

- a) Marwa Nyansinge from Kewanja area;
- b) Mohono Marwa Gibire from Matongo;
- c) Hezroni Mangw'ena from Kewanja;
- d) Clever Jackson from Nyagoto; and
- e) Christopher from Nyangoto.

There is no record available indicating how many culprits had been arrested in connection to these killings, albeit fellow villagers. The villagers told the Parliamentary Committee [on the last page of their report] that:

Aidha waheshimiwa wabunge, kinachosikitisha ni kwamba hakuna mtu aliyechukuliwa hatua hata kufikishwa Mahakamani. Lakini kuna Mzungu

been ordered to construct its own dam for keeping emissions from the mining sites. However, what he stated were empty orders.

⁵³⁴ The said river serves three villages namely, Nyakunsuru, Nyamone and Weigita villages.

⁵³³ According to the report of the villagers, on 15/9/2005, the expert from Ministry of Environment went to the villages to assess the situation. While he was at Kewanja Village, Tarime district, that expert stated that Barrick has

aliwahi kuuawa na Majambazi, serikali ilimtafuta muuaji mpaka Kenya na kumuua. Swali la Msingi, Je kuna damu za watu zilizo halalishwa kumwagika chini bila kufuatiwa? Hii inadhihiliwa kuwa serikali inajali wawekezaji kuliko raia wake. [Moreover, Honorable MPs, what disheartens is that there is no one taken into task or arraigned. But when a Whiteman was murdered by thugs, the government searched for the alleged killer up to Kenya and hewas exterminated. An important question here is that, should it be taken that is legal to decant some peoples' blood without action? This is proves a clear proof that the government favors the investors than its own subjects].

The villagers also complained that, neither the District Commissioner nor the Regional Commissioner had gone to see them despite the reports and communications made.⁵³⁵ In October 2009, President Jakaya Kikwete visited Tarime district. The villagers asked him to declare whether River Tigite water was safe for human consumption. He declined to do so and directed that the parliamentary committee that visited the mine and the surrounding villages to assess the situation. But the President was quoted in the media proclaiming that any economic activity endangering the environment and lives of the people was not acceptable.⁵³⁶

However, as of December 2009, the Report of the Parliamentary Committee had not been made public. They seem to have also joined the dilatory move of the rest of the public officials who shy away to take actions against the environment polluters for the good of their own people. As the sufferings continue, the government was still looking for measures to address the issue some six months on.

7.5 Right to Natural Resources: Special Reflection of Mining Sector of Tanzania

Tanzania is one of very few African countries with tremendous endowment of natural resources, which include minerals, water sources, forests, wildlife, and the like, as indicated in chapter one of this report. As it is logically understood, both present and future generations of Tanzania depend on natural resources, as a source of livelihood and a means to develop the economy.⁵³⁷

⁵³⁵ For instance on 29 June 2009, the Livestock Officer of Kibasuka ward, wrote a letter to the Livestock Officer of Tarime District (P.O Box 41, Tarime) stating that, there were alleged chemicals from Nyamongo Mines. Therefore, he requested the District officer to come and investigate because people were in danger. However, as the villagers said, none of the government officials showed interest to help these residents, at least to go and see. Another letter was written to him on 4th June 2009 by the Village Executive Officer of Matongo village. Part of the letter informed that one Chacha Mwita Bhoke, his family and more than 100 animals were seriously affected by the chemicals after using the water from the said river. For instance, the children of complainant sustained rashes and the cows swell on their mouths. Another letter was written to the Office of the Vice President, Environment Division by the villagers of Matongo village. The letter was signed by the villagers on 3/7/2009. None of these and other several letters were responded to by any of the government officials.

⁵³⁶ Mugini Jacob 'JK assures small miners in North Mara of new land' The DailyNews, October 14, 2009.

⁵³⁷ LHRC (2008) Tanzania Human Rights Report of 2008, page 131 Principle 1 of the *Rio Declaration on the Environment and Development, 1992* provides that all human beings are entitled to a healthy and productive life in

Article 3 (a) of the *Convention on the Conservation of Nature and Natural Resources (of Africa) of 1968*,⁵³⁸ defines ‘natural resources’ to mean renewable resources, that is soil, water, flora and fauna. Article 2 of this Convention states:

The contracting States shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard of the best interest of the people.

That means the resources should be unutilized sustainably for the interest of the people whom the resources are found. Article 21(5) of the *African Charter on Human and Peoples’ Rights, 1981* puts it in a more straight way. It states that states have the obligation to eliminate all forms of foreign economic exploitation so that individuals are able to fully benefit from the advantages derived from their state’s natural resources.

Moreover, the *United Nations General Assembly Resolution of December 1962 on Permanent Sovereignty over Natural Resources*⁵³⁹ declares, inter alia, that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.⁵⁴⁰

Article 9 (i) of the *Constitution of the United Republic of Tanzania of 1977* contains similar spirit. It states that, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring that the use of national wealth places emphasis on the development of the (local) people and in particular is geared towards the eradication of poverty, ignorance and diseases.

harmony with nature. That is, the life of human being, just like other living things organisms directly depend on the nature.

⁵³⁸ Adopted by the Conference of the Heads of State and Government of the OAU, 15 September 1968, Algiers, Algeria. It came into force on 16 June 1969. Note that ‘OAU’ means Organisation of African Union which was formed in 1963 and later on transformed into ‘AU’ (African Union) in 2000.

⁵⁴³⁹ See: U.N.G.A. Res. 1803 (XVII), 17 U.N. GAOR Supp. (No.17) at 15, U.N. Doc. A/5217 (of 14 December 1962).

⁵⁴⁰ Clause 1 of the stated Declaration of U.N.G.A., 1962. In 1958, the first President and founder of this nation Tanzania, the Late Mwalimu Julius Kambarage Nyerere (while making his speech on the national property), he stated that, “[i]n a country such as this, where, generally speaking, the Africans are poor and foreigners are rich, it is quite possible that, within eighty or a hundred years, if poor African were allowed to sell his land, all the land in Tanganyika would belong to wealthy immigrants, and the local people would be tenants.” See: Nyerere, J.K (1966) *Freedom and Unity*. Dar es Salaam: Oxford University Press. Page 55. His speech aimed at emphasizing a point that the natural resources are national properties which should be owned by the nation for the nationals/ citizens. He meant that, any utilization of the same, should benefit all. This is why he abolished ‘freehold’ system of land tenure in those years (1960s), which permitted one individual person to unlimited size of land and other natural resources. However, with the coming of liberal market, his ideas have been neglected and put aside for the interests of the investors from abroad.

This subpart shall examine only one economic sub-sector, namely the mining subsector. The reflection of its essence, efficacy to GDP, country's development and the like will have a direct bearing to other sub-economic sectors which depend on utilization of natural resources such as wildlife and forestry.

7.5.1 Mining

Among other types of natural resources that Tanzania has invited foreign private companies to invest in, the mining sub-sector is the most reproached one due to a number of factors, including the fact that it contributes very little to the national income despite the fact that billions of minerals are callously extracted in Tanzania every minute of an hour.

The *Mineral Policy Tanzania of 1997* implies that the Tanzania has numerous categories of minerals, including the gold, tanzanite (produced only in Tanzania all over the world), nickel, cobalt, diamond, iron, copper, tin and many others scattered almost all over the country.⁵⁴¹

However, despite this endowment, the mining subsector:

- a) Contributes only 2.3 – 2.7 percent of the GDP and 3.6 percent of the government of Tanzania's total tax revenues.⁵⁴² It should be noted that, the general tax received by the government of Tanzania differs from contract to contract, even when the government negotiates with the same company.
- b) The sum of USD 200,000 which the local governments of the areas where mining companies are located receive is a fixed one.⁵⁴³ That is, it is irrespective of the company's profits for a particular year. It is not certain whether the amount changed in 2009.
- c) As it was stated in 2008, the mining subsector is not a significant source of employment for Tanzanians; it hardly generates 1 percent of new jobs in Tanzania.⁵⁴⁴
- d) Despite the fact it was stated that about 93 percent of all employees in various mines in the country are Tanzanians (and only 527 are foreigners),⁵⁴⁵ the mining companies are exempted from the general requirement that a corporation can employ a maximum of five non-Tanzanians; they can

⁵⁴¹ Pages 5 and 6 of the *Mineral Policy of Tanzania of 1997*.

⁵⁴² Policy Forum (2008) The Demystification of Mining Contracts in Tanzania, pages 1 and 2.

⁵⁴³ Policy Forum (2008) The Demystification of Mining Contracts in Tanzania, page 6.

⁵⁴⁴ LHRC (2008) Tanzania Human Rights Report of 2008, page 134

⁵⁴⁵ RWI and PF 'Reforming the Tanzanian Mining Act – Fiscal, Social and Environmental Aspects' Workshop for CSOs and Media, 12 – 14 October, 2009, Kunduchi Beach Hotel. Page 13. Note that, 'RWI' is an acronym for 'Revenue Watch Institute' and 'PF' is an acronym for 'Policy Forum.'

employ an unlimited number of non-Tanzanians.⁵⁴⁶

Moreover, it was not certain how many Tanzanians are shareholders to those companies. The situation on the ground implies that, Tanzanian employees are holding junior positions. Also, they are subjected to very difficult and dangerous works, and other forms of mistreatments.

Apart from the share in which this subsector is contributing to the GDP or tax revenues, other legal and policy issues of concern include:

e) The dominance or monopoly of the mining sector by a few, foreign-owned companies. These corporations operate subsidiaries in Tanzania.⁵⁴⁷

f) Notwithstanding all other incentives, the mining companies are given momentous tax exemptions. For instance, mining corporations pay no duty on the import of mining-related equipment during the prospecting stage and the first year of the development of a mine. After this period, mining corporations pay a 5 percent duty on these imports.⁵⁴⁸ This is attributed by the legal gap in the *Mining Act*⁵⁴⁹ which gives the companies long tax holidays,⁵⁵⁰ of which after wards they pretend to have incurred losses and they are considered in tax assessment.

g) Tanzania receives low royalties rates in which, the mining sector is estimated to pay only 5 percent of the gross income for diamond and unprocessed gem stones, while gold and other minerals are charged only 3 percent royalties.⁵⁵¹

⁵⁴⁶ See: M. Curtis and T. Lissu 'A Golden Opportunity?: How Tanzania is Failing to Benefit From Gold Mining' (Report 2nd ed. Tanzania October 2008), at pp. 38 and 39. It is said that, the mining companies are able to employ an unlimited number of foreigners, compared to a maximum of five in other sectors. The Tanzanian Mines and Construction Workers Union (TAMICO) claims that Tanzanian and foreign mine workers who are employed in the same capacities receive different monthly salaries. For instance, a Tanzanian mine employee can earn \$200 to \$4,000 (USD) per month, whereas a non-Tanzanian employee can earn between \$6,000 and \$20,000 (USD) per month, even though the two employees hold the same job.

⁵⁴⁷ For instance, Barrick Gold Corporation operates the following subsidiaries in Tanzania: Pangea Minerals Limited, Sutton Resources Limited, Kagera Mining Company Limited, Kahama Mining Corporation Limited, Afrika Mashariki Gold Mines Limited/ Placer Dome Incorporation. Barrick Gold Corporation, directly or indirectly, owns and operates three mines in Tanzania.

⁵⁴⁸ See: M. Curtis and T. Lissu 'A Golden Opportunity?: How Tanzania is Failing to Benefit From Gold Mining' (Report 2nd ed. Tanzania October 2008), pages 15 and 23.

⁵⁴⁹ Cap. 123 of the R.E. 2002 of the Laws of Tanzania.

⁵⁵⁰ RWI and PF 'Reforming the Tanzanian Mining Act – Fiscal, Social and Environmental Aspects' Workshop for CSOs and Media, 12 – 14 October, 2009, Kunduchi Beach Hotel. Page 12.

⁵⁵¹ RWI and PF 'Reforming the Tanzanian Mining Act – Fiscal, Social and Environmental Aspects' Workshop for CSOs and Media, 12 – 14 October, 2009, Kunduchi Beach Hotel. Page 12.

This situation is attributed to a number of factors, but the root cause is the weaknesses in the *Mining Act*⁵⁵² and the *Mineral Policy of Tanzania of 1997*, which among other weaknesses, give the companies massive tax exemptions as stated above.

The LHRC is concerned with this trivial earnings, which the government is getting from the mining sector and other forms of human rights violations happening in the mining sites, as indicated above (case study of North Mara Gold Mine).

The provisions of international and national legal instruments all require utilization of the natural resources in a sustainable manner and a way that the local communities and the nation directly benefit. The current trend is clearly violation of:

- a) *Clause 1 of the United Nations General Assembly Resolution of December 1962 on Permanent Sovereignty over Natural Resources*⁵⁵³
- b) *Article 21(5) of the African Charter on Human and Peoples' Rights, 1981*⁵⁵⁴
- c) *Article 3 (a) of the Convention on the Conservation of Nature and Natural Resources (of Africa) of 1968*⁵⁵⁵
- d) *Article 9 (i) of the Constitution of the United Republic of Tanzania of 1977*⁵⁵⁶

Moreover, when it comes to the mining sector, it becomes even more serious because, unlike the other economic sectors such as agriculture, trade and manufacturing, which have rooms to grow sustainably, it is very unfortunate that, after the exploration of all minerals that we have as a country, we shall remain with empty pits, empty pockets and haunting memories and blames from the future generations.

The LHRC suggests that:

- a) It is better that the government stops investment in this sector, make good plans first and then reopen later after laying down good laws and policies. The country can still survive by investing in agriculture and other sectors for a while. OR,
- b) Implement the recommendations of Judge Bomani's Commission, which inter alia, proposed the following:

⁵⁵² Cap. 123 of the R.E. 2002 of the Laws of Tanzania.

⁵⁵³ It states that that right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

⁵⁵⁴ It states that states have the obligation to eliminate all forms of foreign economic exploitation so that individuals are able to fully benefit from the advantages derived from their state's natural resources.

⁵⁵⁵ It provides that, the contracting States shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard of the best interest of the people.

⁵⁵⁶ Which states that, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring that the use of national wealth places emphasis on the development of the (local) people and in particular is geared towards the eradication of poverty, ignorance and disease.

- i. Compensation of victims whose lands were taken should be based on the new land laws;
- ii. Safeguarding the interests of small scale miners, possibly allowing them to be sole miners of Tanzanite and Sapphire;
- iii. Forming an independent Mineral Authority with mandate to develop the sector – with skilled manpower/specialists to manage the institution. They can learn from Ghana;
- iv. Increase the royalty to 5 percent on gold and to 7 percent on diamond and that 20 percent of the royalty should be allocated to the respective local governments instead of taking it all to the central government (fiscal dissolution);
- v. Establishment of Tanzania Mineral Commission.
- vi. Amendment of the laws and policies governing the mining sector.

Chapter Eight

Domestic Initiatives in Human Rights Protection

8.0 Introduction

ALMOST all international human rights instruments require State parties, including Tanzania to take some measures to ensure human rights protection and promotion. This is because, under international law, States will incur responsibility for not complying with their legal obligations to respect and *ensure effective enjoyment* of the human rights recognized in the legal instruments.

Effective enjoyment of the human rights is a result of effective protection and guarantee of the same. Having pro-human rights laws in place is just one step towards effective protection. The second and most practical step is creation of machineries for coordinating or supervising implementation of the laws enacted to address the human rights; of course, it is also important to consider the importance of domesticating the provisions of the international norms.

The enforcement machineries include the police, prisons, judiciary and human rights institutions/ agencies with specific statutory powers to enforce human rights promotion. The judiciary has already been discussed in chapter two of this report. The current chapter assesses the performance of the police, prisons and the national human rights institution commonly known as the Commission for Human Rights and Good Governance (CHRGG). The Law Reform Commission of Tanzania (LRCT) is also hereby assessed because it has statutory powers to ensure that the laws of Tanzania are abiding by international norms, among other factors.

8.1 Tanzania Commission for Human Rights and Good Governance

The constitutional ⁵⁵⁷ and statutory ⁵⁵⁸ creations and operation of the Commission for Human Rights and Good Governance (CHRGG) of Tanzania mainly followed the resolution reached during the *World Conference on Human Rights of June 1993*. At the meeting, the delegates from almost all over the world passed a declaration called the *Vienna Declaration and Programme of Action of 1993*.⁵⁵⁹

⁵⁵⁷ It is created under Article 129 of the Constitution of the United Republic of Tanzania of 1977.

⁵⁵⁸ It operates under the provisions of the Commission for Human Rights and Good Governance, Cap. 391 of the R.E. 2002 of the Laws of Tanzania.

⁵⁵⁹ Adopted during the World Conference on Human Rights held in Vienna-Austria 12 – 14 June 1993. Endorsed by the U.N.G.A Distr. GENERAL A/CONF. 157/23 of 12 July 1993.

Article 36, Paragraph 2 of the *Vienna Declaration and Programme of Action of 1993* encourages the establishment and strengthening of the said national institutions, according to *Principles Relating to the Status of National Institutions of 1993*, commonly known as the ‘Paris Principles’.⁵⁶⁰

As for the competence and responsibilities, the stated *Paris Principles of 1993* on the status and establishment of the Human Rights Institutions require that:

- a) A national institution should be vested with competence to promote and protect human rights;
- b) A national institution should be given as broad mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence;
- c) A national institution should undertake, among others, the following responsibilities, namely advise on matters pertaining to human rights situation; prepare reports on the national human rights situation; monitor human rights violations; work on ensuring harmonization of national legislations and human rights instruments; advocate for ratification of human rights treaties and raising of the human rights awareness.
- d) The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, including adequate funding. The purpose of this funding should be to enable it acquire own staff and premises, in order to be independent of the government and not be subject to financial control which might affect its independence.

The mandate given to the CHRGG by the *Constitution of the United Republic of Tanzania of 1977* and the *Commission for Human Rights and Good Governance Act*,⁵⁶¹ seems to conform well with the stated Paris Principles of 1993. However, despite a commendable job the CHRGG is doing, it has been experiencing a number of legal and practical obstacles which hinder the full realization of the *Paris Principles*.

The obstacles are at large extent, beyond the management of the CHRGG itself. The main obstacles or challenges include:

- a) Inadequacy of legal procedures to enforce its decisions;
- b) Independence of the Commission; and
- c) Accessibility in terms of awareness of its availability as well as physical accessibility.

8.1.1 Inadequacy of Legal procedures to enforce its Decisions

As for inadequacy of powers, in terms of enforcing its recommendations, the *Paris Principles* do not require the national commissions to have binding decisions, but needs them to have broad legal mandate, as indicated above. It should be noted that, with very

⁵⁶⁰ Adopted by U.N.G.A Resolution 48/134 of 20 December 1993.

⁵⁶¹ Cap. 391 of the R.E. 2002 of the Laws of Tanzania.

few exceptions, most of the commissions around the world just issue recommendations, which the violator of human rights is required to abide by within a given period of time.

However, despite this laxity posed by the stated principles, it is important that the law empowers the Commission to enforce its decision/recommendations to give them meaning once the violator refuses to comply. Certainly, this is why Section 28 (3) of the *Commission for Human Rights and Good Governance Act* was placed in the law. The provision states that:

If within the prescribed time after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commission, may after considering the comments, if any, made by or on behalf of the department, authority or person against whom the complaint was made either, bring an action before any court or recommend to any competent authority to bring an action and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission.

The CHRGG law and even the *Civil Procedure Act*⁵⁶² have not prescribed procedures to be followed if someone wants to enforce the decision/recommendation of the Commission through the High Court or any other Court. The case of *Nyamuma*⁵⁶³ brought this exemplary of stated legal gaps. In this case, the High Court (Land Division) dismissed the LHRC's petition on the basis that recommendations by the CHRGG were not judicial decisions to be enforced by a normal Court of law. Therefore, the High Court (Land Division) lacked the jurisdiction to enforce the CHRGG's recommendations.

However, the Court of Appeal of Tanzania when approached by way of appeal against the decision of the High Court⁵⁶⁴ reversed the finding of the High Court and authoritatively stated that that Section 28(3) of the *Commission for Human Rights and Good Governance Act* can be used to enforce the CHRGG's recommendations. The Court of Appeal then:

- i) Ordered the High Court for a consideration on its merits.
- ii) Noted that the Commission for *Human Rights and Good Governance Act* does not contain adequate procedures or powers for the enforcement of the CHRGG's recommendations.

⁵⁶² Cap. 33 of the R.E. 2002 of the Laws of Tanzania.

⁵⁶³ LHRC v Thomas Ole Sabaya and 4 Others (High Court (Land Division)) Misc. Land Application No. 22 of 2005 (unreported decision). Lugazia, J handled the case.

⁵⁶⁴ LHRC v Thomas Ole Sabaya and 4 Others (Court of Appeal) Civil Appeal No. 88 of 2006 (October 2008) (unreported). Some of the grounds of appeal from the decision of the High Court – Land Division were: (1) the judge erred at law by interpreting the request for the enforcement of the CHRGG's recommendation to mean that a new trial with fresh evidence was required; and, (2) the judge erred at law in holding that the CHRGG's recommendation were not enforceable according to S. 28(3) of the CHRGG Act, 2001.

iii) Recommended that the Minister to use his power under Section 38 of the *Commission for Human Rights and Good Governance Act* to make regulations that would set out the enforcement procedures of the CHRGG recommendations.

The LHRC urges the government to immediately make necessary amendments of the said provision of the *Commission for Human Rights and Good Governance Act* to prescribe detailed procedures for the CHRGG to enforce its decisions. As a Constitutional body, CHRAGG need to revisit its strategies and be more effective and responsive to human rights violations reported by victims of human rights abuse and abuse of power by individuals in power and state agents.

8.1.2 Independence of the Commission

The LHRC reiterates its position that the way that the Commission's officials, specifically the Commissioners, operate threatens its effectiveness.⁵⁶⁵ The *Paris Principles* and relevant literatures on National Human Rights Institution state that an effective national institution such as the CHRGG would be one capable of acting independently of government, of party politics and of all other entities or authorities and situations which may be in a position to affects its work.⁵⁶⁶

It is also stated that, in order to guarantee the independence of the National Human Rights Institutions, the founding legislation should address the following issues as terms and conditions:⁵⁶⁷

- i) Method of appointment;
- ii) Criteria of appointment;
- iii) Duration of appointment;
- iv) Whether members may be reappointed;
- v) Who may dismiss members and for what reasons [and procedures]; and
- vi) Privileges and immunities.

⁵⁶⁵ LHRC (2006) Tanzania Human Rights Report of 2006, page 121 LHRC (2007) Tanzania Human Rights Report of 2007, page 103 and LHRC (2008) Tanzania Human Rights Report of 2008, page 141

⁵⁶⁶ See: Paragraph 68 of the UN (1995) National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights. Professional Training Series No. 4, page 10.

⁵⁶⁷ See Paragraph 78 of the UN (1995) National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights. Professional Training Series No. 4, page 11.

It further stated that, “the method by which members of the national institutions are appointed can be critical in ensuring independence and, for this reason; consideration should be given to entrusting the task to a representative body such as parliament.”⁵⁶⁸

Tanzania does not follow the stated guideline because the Commissioners are appointed by the President.⁵⁶⁹ The LHRC asserts that, the presidential prerogative to appoint commissioners effectively allows the President to control the composition of the CHRGG, which could result in the CHRGG being composed solely of people who have views favoring the government and create biasness in the CHRGG’s decisions. Any such biasness would undermine the efficacy and relevancy of the CHRGG, as a watchdog for human rights in Tanzania.⁵⁷⁰

As such, it is suggested that, even if the law will retain the powers in the jurisdiction of the President to appoint the Commissioners, these officials should be approved by the Parliament. Moreover, the constitutional powers given to the President to give directions or orders to the CHRGG regarding any matter, if he/she is satisfied that it is in the public interest to do so,⁵⁷¹ should be removed and set free the CHRGG to operate the way it is allowed under the law. Other criticisms are contained in previous LHRC’s Tanzania Human Rights Reports.

8.1.3 Accessibility

It is said in a number of human rights guidelines that, an effective national human rights institution should be the one readily accessible to the individuals and groups it established to protect or whose interests to promote.⁵⁷²

The accessibility is of three forms, namely:

- a) Physical accessibility (geographical location of the offices);⁵⁷³

⁵⁶⁸ See: Paragraph 79 of the UN (1995) National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights. Professional Training Series No. 4, page 11.

⁵⁶⁹ Art. 129(3) of the *Constitution of the United Republic of Tanzania, 1977*. The President’s appointment of Commissioners and Assistant Commissioners is done after consultation with the Nomination Committee, the membership of which is set out under Art. 129(4) of the *Constitution of the United Republic of Tanzania, 1977*.

⁵⁷⁰ LHRC (2008) Tanzania Human Rights Report of 2008, page 141

⁵⁷¹ Art. 130(3) of the *Constitution of the United Republic of Tanzania, 1977*. The said provision states that, [t]he provisions of sub-article (2) [which gives the CHRGG autonomy] shall not be construed as restricting the President from giving directive or orders to the Commission, nor are they conferring a right to the Commission of not complying with directions or orders, if the President is satisfied that in respect of any matter or any state of affair, public interest so requires.

⁵⁷² See: Paragraph 98 of the UN (1995) National Human Rights Institutions, page 13.

⁵⁷³ See: Paragraph 102 of the UN (1995) National Human Rights Institutions, page 13.

- b) Awareness of the institution (people are informed of its existence and make use of it to report human rights abuses);⁵⁷⁴ and
- c) Accessibility through representative composition (its management and operation is done by representatives of all components of the civil society, including those whom it has been established to serve).⁵⁷⁵

The latest information indicated that, the CHRGG has only five offices in Tanzania, one in Dar es Salaam; Mwanza and Lindi regions; two in Zanzibar – one in Pemba and the other one in Unguja. It's obvious that limited distribution of the CHRGG offices makes it difficult for the majority to access the CHRGG's services and for the CHRGG to investigate complaints originating from areas it lacks an office.

The LHRC reiterates its recommendation that, the CHRGG should establish at least five regional or zonal branches to serve an average of four regions of Tanzania Mainland.⁵⁷⁶ It is further recommended (once again) that the government provide the CHRGG with sufficient funds to establish these offices and hire the personnel.

8.2 Police Force of Tanzania

The Police Force of Tanzania (PFT) was established and governed by the *Police Force and Auxiliary Services Act*.⁵⁷⁷ Section 5 of the law provides for the general powers and functions of the PFT, which are: preservation of the peace; maintenance of peace, law and order; the prevention and detection of crime; apprehension and guarding of offenders; and the protection of property.

The powers to arrest, search, interrogate and detain the suspect are provided for under the provisions of the *Criminal Procedure Act, 1985*.⁵⁷⁸ The conducts and welfare of the Police

⁵⁷⁴ See: Paragraph 100 of the UN (1995) National Human Rights Institutions, page 13.

⁵⁷⁵ See: Paragraph 105 of the UN (1995) National Human Rights Institutions, page 14.

⁵⁷⁶ Section 13 (2) of the *Commission for Human Rights and Good Governance Act*, allows expansion of CHRGG's into branches. It states that "[F]or the purposes of the better performance of its functions, the Commission may, where it considers it necessary or appropriate, establish branch offices away from its headquarters in such geographical areas as it may deem necessary and may establish divisions or departments and assign to them particular responsibilities in respect of the functions of the Commission."

⁵⁷⁷ Cap. 322 of the R.E. 2002 of the Laws of Tanzania.

⁵⁷⁸ Cap. 20 of the R.E. 2002 of the Laws of Tanzania. See Sections 11-33 (Arrest); 38-45 (Search); 48-51 (Detention); and 52-58 (Interrogation). The *People Militia Act*, Cap. 111 R.E. 2002 of the Laws of Tanzania, also provides for almost the same powers. Section 2 of this Act which defines who is the 'people militia' also indicates the powers of the people militia. It provides to the effect that "Peoples Militia" means an organized group of the people of the United Republic, operating with the authority of and under the aegis of the Government and which is receiving any military training or participating in any military, quasi-military or law enforcement exercise for the protection of the sovereignty of the United Republic or for the protection of the people or the property of the United Republic, by whatever name known, whether as Wasalama, Sungusungu or any other, but does not include the Police Force, any arm or branch of the Defence Forces, the Prisons Service, the National Service or the Immigration

Officers are provided for under the provisions of the Police General Orders and the Police Force Services Regulations of 1995.

One of the goals of the MKUKUTA (2005 – 2010) is to achieve broad outcomes to improve personal security, reduce crime, and eliminate sexual abuse and domestic violence.⁵⁷⁹ The operational target for this goal is to ensure the institutions and agents of the government such as the police, courts and prisons observe human rights and ensure justice and security for all citizens. In order to achieve this target, the MKUKUTA directs to have in place enhanced capacity of the police officials by training and equipping them to combat crime.

According to the LHRC observation and analysis of old and current trends, so far the government, through the PFT, has made commendable efforts between 2006 and 2009 to reform the institution and its functions. These include:

- a) Commencement of the transformation of policing work to be more professional, which adheres to the principles of justice and human rights. The current teaching curriculum of the PFT include issues and the subject on customer care;
- b) Establishment of the *Tanzania Police Female Network*, which among other things, envisages creating gender desks at police stations throughout the country.⁵⁸⁰ This is a good plan of its kind in Tanzania/Africa.
- c) Set new Ministry of Public Safety and Security in 2006 with the aim of addressing adequately the challenges facing the PFT;
- d) Initialization of the *Polisi Jamii*⁵⁸¹ (literally translating community policing) Strategy under the leadership of Inspector General of Police (IGP) Mr. Saidi Mwema, which inter alia, aims at involving the people/members of the communities to participate in crime prevention in Tanzania. The PFT has also published simplified documents on Polisi Jamii for the police themselves

Services [Emphasis Supplied]. However, there is nowhere in the laws of Tanzania, where the link between the PFT and the people militia is shown. The people militia seems to be informal and there is no indication that the PFT is supposed to enhance their capacity in order to facilitate them to carry well its responsibilities. They are normally organized at village levels and operate without guidelines. They are not paid by the government and basically they are ineffective, cruel, and involve themselves in illegal incidences such as corruption, torture, harassment and the like. The people militia emerged in Tanzania in 1970s and 1980s in order to rescue the situation, whereby the police was unable to control crimes.

⁵⁷⁹ See: Cluster III, Strategic Goal Number 6 of the MKUKUTA (2005 – 2010).

⁵⁸⁰ Statement of Hon. Margaret Simwanza Sitta (MP), Minister for Community Development, Gender and Children of the United Republic of Tanzania before the Committee of the Right of the Child, Geneva Switzerland, 29 September, 2008.

⁵⁸¹ Polisi Jamii is a Swahili phrase which means community policing.

⁵⁸² The philosophy behind the Polisi Jamii of Tanzania is "*Kujenga ushirikiano wa wananchi na wadau wengine katika nyanja za kijamii, kiuchumi, na kisiasa katika kutafuta ufumbuzi unaoelezea na kufafanua viini vya uhalifu badala ya kuangalia na kujaribu kutoa ufumbuzi wa dalili ama ishara za uharifu.*" (That is, the philosophy of Community Policing is to create partnership with the citizens and other stakeholders in all social, economic and political aspects in order to address the root causes of crimes instead of working on possibilities or signs of crime occurrence – that is the Polisi Jamii aims at addressing causes of the crimes and not incidences of crimes after

and the people to understand the philosophy and therefore participate fully.⁵⁸³

e) Establishing a Swahili website⁵⁸⁴ to inform the public on various issues, including crime statistics, seminars, emergence numbers, space for the public to give comments, and many other things.

f) Made concerted efforts to reducing prevalence of HIV infections within the PFT from 5.5 percent to 3 percent over the last two years. Currently there are 3,000 police officers on ARV treatment.⁵⁸⁵

g) Availled to the public (in all regions and districts of Tanzania) telephone numbers of the heads of zones, regions, districts and other police stations and any person is free to call the police officers at any time and report crime incidences. This has increased police's responsiveness to the crime commission.

8.2.1 Crime Prevention Capacity: Perception of the People on Crimes in Tanzania

It should be noted that, the test of the police efficiency is the absence of crime and disorder, not visible evidence of police actions in dealing with them. This is according to principle nine (9) of *Mr. Robert Peel's Community Policing Principles of 19th Century*, which are reproduced in this chapter.

The latest findings of the *AFROBAROMETER Survey of 2008/2009*⁵⁸⁶ which were released in April 2009 indicate that there has been some success on part of the law enforcement agencies (mainly the police) preventing and combating crime since 2003, although it is notable that these improvements were recorded before the government's renewed commitment to law and order in 2006. However, while the situation has improved substantially from 2003, over one in three Tanzanians (equivalent to 37 percent of all Tanzanians) still reportedly lived with at least occasional fear of crime in 2008/09.⁵⁸⁷

occurrence). See: Wizara ya Usalama wa Raia, Jeshi la Polisi Tanzania 'Falsafa ya Polisi Jamii/ Ulinzi Shirikishi.' Programu ya Ushirikiano Baina ya Jeshi la Polisi na Wananchi (undated), page 7.

⁵⁸³ There a publication with the following titles, namely: 'Falsafa ya Polisi Jamii/ Ulinzi Shirikishi' (Literary means 'The Philosophy of Community Policing/ Participatory Security'); 'Mpango wa Ulinzi Jirani' (Literary means 'The Neighboring Security'); 'Fahamu Mbinu za Kuzuia na Kupambana na Uhalifu' (Literary means 'Understanding Crimes' Control and Prevention Techniques'); and 'Katika Kutekeleza Mkakati wa Polisi Jamii/ Ulinzi Shirikishi' (Literary means 'In the Implementation of the Community Policing/ Participatory Security Strategy.'

⁵⁸⁴ The website of the police force of Tanzania is called www.policeforece.go.tz. However, the website has not been updated in recent years and it does not display current information such as on mob-violence, witchcraft killings, disciplinary actions against the police officers who have breached their statutory duties, road accidents, number of police officers in Tanzania, success stories and challenges.

⁵⁸⁵ This was said in October 2009 by Mr. Neven Mashango, ACP. His statement was quoted by media – see: Orton Kiishweko 'HIV infection rate drops in police force' *The DailyNews* (Tanzania), October 13, 2009.

⁵⁸⁶ REPOA, 'Citizens' Views on Crime in Tanzania' AFROBAROMETER Briefing Paper, 67/April 2009.

⁵⁸⁷ REPOA, 'Citizens' Views on Crime in Tanzania' AFROBAROMETER Briefing Paper, 67/April 2009, page 2. According to this survey, the perception of the people on police's ability/ performance in the prevention of crime has decreased from 32% in 2005 to 25% in 2008/9. The citizens' trust in police for 2003 and 2008 were as follows: In 2003, 13% said that they do not trust the police at all in prevention of crime; 35% said a little trust; 39% somewhat and only 11% stated that they were trusting the per

a) *The Police Jamii Programme*

The *Polisi Jamii*⁵⁸⁸ was brought into effective operation after the coming in to power of the current IGP Mr. Saidi Mwema in 2006. The PFT says that it is not proposing a new idea as it has been in existence from 19th Century in other countries.⁵⁸⁹ It was propounded for the first time by Mr. Robert Peel, who proposed applicability of nine principles of community policing,⁵⁹⁰ which are summarized and reproduced here⁵⁹¹ for the people who want to learn more about it:

- a) The police exists to prevent crimes and disorder as an alternative to the repression of crime and disorder by Military Force and severity of legal punishment;
- b) The ability of police to perform their duties depends on public approval of police existence, actions, behaviour and ability of the police to secure and maintain public respect;
- c) The police must secure the willing cooperation of the public in a voluntary observance of the law to be able to secure and maintain public respect;
- d) The degree of cooperation of the public that can be secured diminishes, proportionately, the necessity for the use of physical force and compulsion in achieving police objectives;
- e) The police seek and preserve public favor, not by catering to public option,

formance of the police a lot in 2003. As for the latest statistics, the same survey stated that, the perception of the people in 2008/9 on the performance of the police's ability to curb crimes were as follow: 'not at all' (14%); 'a little' (25%); 'somewhat' (34%); and 26% stated that they trusted the performance of the police 'a lot'. The percentage of those who said 'a lot' to the police's performance in 2005 was 62%. That means, the performance of the police to curb crime, according to the people's perception has improved if you compare 2008/9 and 2003, but has deteriorated badly in 2008/9 if compared with 2005. If comparing Tanzanian Police Force (TPF) and police services of other neighboring counties, the overall perception indicates that TPF is at least doing well regarding citizens' confidence of its performance. For instance, the 2009 findings of ISS/AHSI about citizens of Zambia's perception of the Zambia Police Service, half of the Zambian participants in the study were not satisfied with the performance of the police force of Zambia. 7 in 10 Zambians polled were dissatisfied with the way in which the police handled crimes. The reasons for that were poor or no response to crime calls, lack of professionalism in handling offenders, use of unnecessary violence in apprehending suspects and violations of rights of people in police custody. As a result, public has lost confidence in the police of Zambia [See ISS/ AHSI (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*. ISS: South Africa, page xvii]. NOTE most of these reasons are relevant in Tanzania as factors which mitigate public confidence in PFT [See: LHRC (2007) *Tanzania Human Rights Report of 2007*, page 19

⁵⁸⁸ *Police Jamii* is a Swahili phrase which means community policing.

⁵⁸⁹ See: Wizara ya Usalama wa Raia, Jeshi la Polisi Tanzania '*Falsafa ya Polisi Jamii/ Ulinzi Shirikishi*.' Programu ya Ushirikiano Baina ya Jeshi la Polisi na Wananchi (undated), page 1.

⁵⁹⁰ They are referred to as *Mr. Robert Peel's Community Policing Principles of 19th Century*.

⁵⁹¹ The principles are copied from the Wizara ya Usalama wa Raia, Jeshi la Polisi Tanzania '*Falsafa ya Polisi Jamii/ Ulinzi Shirikishi*.' Programu ya Ushirikiano Baina ya Jeshi la Polisi na Wananchi (undated), page 1.

but constantly demonstrating absolutely impartial service to the law, in complete independence of policy and without regard to the justice or injustice of the substance of individual law, by ready offering of individual service and friendship to all members of the society without regard to their race or social standing;

f) The police should use physical force to the extent necessary to secure observance of the law or to restore order, and should use only minimum degree of physical force that is necessary on any particular occasion for achieving a police objective;

g) The police at all times should maintain a relationship with the public that gives reality to the historic tradition that ‘the police are the public and the public are the police’, the police are only members of the public who are paid to give full time attention to the duties that are incumbent on every citizen in the interest of the community welfare;

h) The police should always direct their actions towards their functions and never appear to usurp the powers of the judiciary by avenging individuals or the state; or authoritatively judging guilt or punishing the guilty; and

i) The test of the police efficiency is the absence of crime and disorder, not visible evidence of police actions in dealing with them.

This said *AFROBAROMETER Survey of 2009*⁵⁹² further states that, majority of the people do not consider crime and security as important issue for them and the government to pay attention to. When Tanzanians were asked what they consider to be most important problems facing the country that the government should address, the issues mostly cited were access to water supply (14 percent); economic management (10 percent), and health (9 percent). Only 2 percent of Tanzanians considered crime and security as important agenda to address.

Moreover, the *AFROBAROMETER Survey* states that, the primary duty to keep peace and order is on the government. The citizens’ latest (April 2009) perceptions of the institutions responsible for maintaining law and order were as follows:

| Institution | % of Respondents |
|--------------------------|------------------|
| Central Government | 62 |
| Local Government | 26 |
| Members of the Community | 10 |
| Traditional Leaders | 1 |
| None of them | 0 |
| Don’t Know | 1 |

Source: AFROBAROMETER Survey/ REPOA, April 2009, page 4.

Therefore, only 10 percent of the people are holding the view that members of each community must take responsibility for themselves in crime prevention. That means over 89 percent of Tanzanians still feel that, crime prevention and control is wholly

⁵⁹² REPOA, ‘Citizens’ Views on Crime in Tanzania’ AFROBAROMETER Briefing Paper, 67/April 2009, page 4.

and exclusively the work of the government agencies and traditional leaders because the government is there for them.

This perception sends a signal to the *Polisi Jamii* programme that, there is a need of very intensive programmes to educate the people on the importance and rationale of the same and explain to them why they should participate. The LHRC says this because the survey has indicated that only 2 percent of Tanzanians consider crime and security as most important national agenda. This might be also reason why they are reluctant to work on issues relating to crime prevention and public security in the country.

In other African countries especially West African countries, community policing is doing well. For instance, the recent study by *AHSI and IERPE 'Survey of Crime Victims in Benin'* published in August 2008, found that, almost 22 percent of the respondents in Benin were aware on what community policing is and that, 68 percent of those who were aware of it confirmed its existence in their regions.⁵⁹³ Benin has formed the Community Policing Forum (CPF), constituting members from the police and the public. The forum is charged with coordinating the community policing strategy in that country.

The LHRC suggests that, for Tanzania's community policing to work effectively, there is a need to establish similar forums that would put into practice the eight principles mentioned above. It might be true that different stakeholders in Tanzania are aware of community policing, but they still need a coordinating mechanism, which is representative of different stakeholders and not police force's *Kitengo cha Polisi Jamii* (department of community policing) alone.

b) Private Security Companies: Level of Proficiency and Way Forward

In recent years, not more than 15 years, Tanzania allowed the interplay of private security to supplement the policing work. It is not certain whether this 'privatization of security' has been allowed as a mitigating factor for the challenges that the PFT was facing; but it is for sure that, the booming private security business is part of the liberal economy, which has put in private hands almost everything.

It is estimated that there were more than 15 registered security companies in 2009. They include Knight Support, Ultimate Security, Chui, *KK Support*, and others. These companies are registered and incorporated under the *Companies Act*⁵⁹⁴ as private limited companies.

⁵⁹³ AHSI and IERPE 'Survey of Crime Victims in Benin' published in August 2008. [Report compiled by Dr. Annie Barbara Chikwanha and others]. Page 11. Note that, 'IERPE' is an acronym for 'Institute for Empirical Research in Political Economy.

⁵⁹⁴ Cap. 212 of the R.E. 2002 of the Laws of Tanzania.

But there is no single piece of legislation which governs their professionalism in security business. The stated law which governs the PFT does not include private companies because they are not ‘police.’ As such, each of those companies set their own professional standards, including who to employ (qualifications); what to train them and how (training contents); duration of training; code of conduct (*modus operandi*); management of weapons; and even communication (radio calls). All these are not regulated by specific legislation.

There is no coordinated relationship between the PFT and private security companies. The current laws do not create any line of command from the IGP to the companies. Sometimes, the PFT and private security companies are guarding in the same premises, but none of the two becomes superior to the other because they receive commands from different uncoordinated authorities.

Another important point is, there is no even a common platform or organ in which the private security companies meet themselves to chat-down and may be set common standards despite the fact that there is no law to govern them. As such, there have been serious professional misconducts and other malpractices on part of the employers and employees of these companies, including:

a) Sexual exploitation as ‘qualification’ to secure a job place. For instance, Ms. Juliana (21 years), who was once trained under *Jeshi la Kujenga Taifa* [national service] (JKT) was employed by one of the security companies in Arusha, which is owned by a Kenyan. For her to go through the full employment after three-month probation, she had to give the boss ‘reciprocation for his kindness’ of her body. When she refused, that was a factor for her disqualification.

b) Payment of salaries below official minimum wage. Note that, in October 2007, the government of Tanzania raised the minimum wage for a number of private sectors, including private security guards. For private security guard, the minimum salary was set to Tshs 80,000 per month.⁵⁹⁵ However, some of these companies complained that they get from their clients less than what they are supposed to pay in salaries as per new salary standards; therefore they continued paying small salaries. At least 45 percent of labour cases reported to the LHRC in 2009 were against private security companies.⁵⁹⁶

c) The booming private security business which is not regulated by law is also linked to increasing weapons in private hands, which in turn are used to perpetuate crime or rent to criminals.⁵⁹⁷ It is not easy to regulate fire arms in the hands of private security companies (due to the lack of screening mechanism under the law) as it is the case with policemen under the PFT.

⁵⁹⁵ LHRC (2007) Tanzania Human Rights Report of 2007, pages 46 and 47.

⁵⁹⁶ LHRC's Legal Aid Clinic Database for 2009

⁵⁹⁷ Sabelo Gumedze (Ed) (July 2008) The Private Security Sector in Africa: Country Series. ISS MONOGRAPH SERIES, page 17.

d) Most of the founders, owners, administrators and some of the employees of the private security companies are ex-servicemen (of the army, prisons, police force or other security agencies of the government), they know the security set-up of the country or areas where they have operated in the security forces, and the response time. The dishonest ones have been using the classified information to engineer robberies.⁵⁹⁸

The 2008 ISS finding seems to be very relevant because there are now increasing organized crimes in Tanzania. If there would have been the law to regulate this sector, it would have prohibited re-employment of retired or expelled security officers into private companies.

e) Moreover, as 2008 ISS found it, the military and police have abdicated (officially given up) responsibility of security of the state and its citizens for profit when their employers use the services of private companies. The forces have simply sat back and relaxed waiting for complaints from wealthy people who can afford to ‘facilitate’ them.⁵⁹⁹

f) There is also some doubt on the effectiveness of private companies in providing long-term stability in the wake of internal conflict.⁶⁰⁰

Therefore, despite the fact that the private security sector has done a commendable job, myriad of challenges remain today and in the future as indicated above. The most important one is to enact a new law to regulate this fast growing sector in Tanzania, for the best interest of the country’s security as well as ensuring professionalism and accountability among private security operators.

8.2.3 Challenges Facing the Police Force of Tanzania

Peace and security are prerequisites for any State’s development. People cannot go to work and earn living if the security is not guaranteed. This is one of the factors making the role of the police the most important one for economic development of individuals and the nation at large.

On the same tone then, this machinery needs to be empowered and facilitated to carry out its statutory duties in a more sufficient and proficiency way. It needs increased skilled labour, modern facilities, motivated and professional staffs and the like. But, all these are actually challenges which the PFT is facing. In a more understandable way, the PFT is facing the following major challenges/problems: these are actually challenges which the PFT is facing. In a more understandable way, the PFT is facing the following major challenges/problems:

⁵⁹⁸ Sabelo Gumedze (Ed) (July 2008) *The Private Security Sector in Africa: Country Series. ISS MONOGRAPH SERIES*, page 17.

⁵⁹⁹ Sabelo Gumedze (Ed) (July 2008) *The Private Security Sector in Africa: Country Series. ISS MONOGRAPH SERIES*, page 17.

⁶⁰⁰ Sabelo Gumedze (Ed) (July 2008) *The Private Security Sector in Africa: Country Series. ISS MONOGRAPH SERIES*, page 17.

a) The corruption prevalence and other malpractices of some police officers tarnish the image and reputation of the PFT in its effort to transform itself into a more professional entity. Several surveys conducted in 2009 by different national and international institutions (fully presented in Chapter Nine of this Report) ranked the PFT among the most corrupt government agencies, for instance:

i. *The Transparency International Report of 2009* ranks it on the 2nd position in its top 10 most corrupt institutions in East Africa. The Kenyan police are number one.

ii. The *FACEIT* survey ranks Traffic Police on the 1st position among the institutions with high prevalence of corruption in Tanzania.⁶⁰¹

iii. *ForDIA's the Corruption Perception Survey of December 2009* found that, TANESCO was on the top of the list with a score of 82.35 percent of the overall corruption perception ranking of different sectors/departments, followed by the police, which scored 75.8 percent.

b) The welfare of the police officials (salaries, allowances, housing, working conditions, and the like) are very poor. Just like prisons officials, the police officers are regarded to be 'on duty' 24 hours. The junior officers earn very little-salaries.

Their responsibilities expose them to dangerous environments. For instance, on 2 October 2009 a mob stoned to death one police constable (Mushi Kabengwe) on routine patrol at Kimara Suca in Dar es Salaam.⁶⁰² Despite these eminent dangers, they are not paid *risk allowances and life insurance cover*. They don't have organized medical schemes like members of the army.

The LHRC finds these as factors for the loss of morale and prevalence of corruption in the force. All these problems would not be solved and issues resolved unless their salaries and allowances are raised to the satisfactory level and their working conditions improved.

c) Lack of operational capacity. Inadequate number of police officers. Latest information on the number of police officers in Tanzania as of 2009 was not obtained. But 2009 records indicated that, there were 29,204 police officers against the country's population of about 40 million people. Therefore, the

⁶⁰¹ Source: Dr. Edward Hoseah 'Presentation on the Tanzanian Efforts in Curbing Corruption – Progress Made as of November 2009. General Budget Support Review. 23/11/2009 [Power-point presentation]. His presentation quoted the FACEIT study (undated).

⁶⁰² Reporter 'Hooligans Stone Police Constable to Death' Sundays News (Tanzania) October 4, 2009.

policing ratio stood at 1:1,200, well far from the UN ratio, which is 1:400.⁶⁰³ Therefore, even if there would be any improvement in the 2006's records, it won't be possible to equate the UN standard by 2009.

d) Lack of facilities (cars for patrol, phones, fuel, designated rooms for interrogating suspects, cells for suspects, stationaries, and the like):

i. It was not easy to ascertain how much budget was allocated for the activities of the PFT. But the situation on the ground suggests that there were no sufficient funds.

ii. In most cases, police officers have failed to respond to the reported crimes due to the lack of essential facilities.

iii. They use private cars of clients to transfer suspects from one station or point to another. This is risky to them and owners of vehicles.

iv. New crimes such as cyber crimes, organized banditry and the like increasingly require the PFT to have modern working equipment.

v. Some police stations don't have stores for keeping safe the exhibits and files. There are no sufficient and decent offices as well as detention rooms. Moreover, there are no victims' support units (special rooms) for other groups of people such as children, the elderly and people with disabilities.

vi. When power goes off, they use mobile phones, candles and other unsafe sources to light the office, cells, etc.

There are so many problems which the LHRC urges the government to consider as soon as possible to effectively reform the PFT and staffs. These civil servants also deserve the right to decent working conditions. We urge the government to start computerizing police records.

8.3 Tanzania Prisons Services

8.3.1 Its Establishment and Initial Reforms

Another department under the Ministry of Home Affairs is the Tanzania Prisons Services (TPS). The TPS is a statutory body which is governed mainly by the *Prisons Act*.⁶⁰⁴ But there are national and international guidelines and conventions which Tanzania is a State party.

⁶⁰³ ISS/ AHSI (2009) Crime and the Criminal Justice System: Tanzania Country Review Report Enhancing the Delivery of Security in Africa. ISS: South Africa. Page 15.

⁶⁰⁴ Cap. 58 R.E. 2002 of the Laws of Tanzania.

According to latest available information,⁶⁰⁵ this institution has 122 prisons with the capacity to accommodate 27,653 prisoners⁶⁰⁶ (including detainees⁶⁰⁷); 21 regional offices; two staff training centers; four vocational training facilities and a head office in Dar es Salaam.⁶⁰⁸

As it is stated above, the TPS is also part of the global prisons standards set by dozens of regional and international human rights treaties, guidelines, conventions and declarations because Tanzania has acceded and/or ratified the same. Therefore, TPS should strive to attain these standards for better observance of human rights in prisons.

Indeed, there have been commendable efforts to transform this institution from one stage to another since pre-independence era. According to the information available on the Ministry of Home Affairs' website, the first major reform was that of 25 August 1931, whereby the TPS was separated from the Police Force, where it was originally coordinated from. This independence, which obviously was intended to enhance its proficiency and efficiency, did not result into much improvement of prisons' conditions as much emphasis was put on safe custody and colonial fashion of retribution, rather reforming or rehabilitating inmates.⁶⁰⁹

The second major reform of the TPS was the enactment of the current *Prison Act* of 1967⁶¹⁰ which became operational in January 1968,⁶¹¹ which due to amendments made in it from time to time; it has now included various human rights' norms in the provision of the law. Therefore, it is also commendable that, at least some of the basic minimum standard rules for the treatment of prisoners and management of the prisons (indicated below) are made part of the functioning of the TPS.

⁶⁰⁵ LHRC (2007) The Tanzania Human Rights Report of 2007 page 107.

⁶⁰⁶ 'Prisoner' or 'imprisoned person' mean any person deprived of his or her personal liberty as a result of conviction for an offence. The Prisons Act, Cap. 58 of R.E. 2002 of the Laws of Tanzania (See: Section 2 of the Act) defines 'Prisoner' to mean person, whether convicted or not, under detention in any person, whether convicted or not, under detention in any prison. Therefore, 'remandees' in prisons of Tanzania are also 'prisoners.'

⁶⁰⁷ 'Detainee' or 'detained person' mean any person deprived of his or her personal liberty except as a result of conviction for an offence. In Tanzania, the detainees are kept in prisons together with other inmates. For instance, during the survey, we found detainees (illegal immigrants) citizens of Ethiopia, India and other different countries.

⁶⁰⁸ See: Tanzania Prisons Service (www.moha.go.tz viewed on 22 November, 2009).

⁶⁰⁹ See: Tanzania Prisons Service (www.moha.go.tz viewed on 22 November, 2009).

⁶¹⁰ In 2002 the 1967 legislation was styled as 'Cap. 58 R.E. 2002 of the Laws of Tanzania.'

⁶¹¹ Came into operation through the G.N No. 380 of 1967. The law has been amended time to time.

8.3.2 Tanzanian Prisons' Obligation to the Human Rights Instruments

Tanzania is part to a number of international legal instruments governing the rights, welfare and management of prisons, prisoners and prison officials. Most of the following instruments require State party to enact laws and policies or adopt administrative measures conforming to the same. Note that, these are some of the instruments:

- a) *Standard Minimum Rules for Treatment of Prisoners, 1955/57 and 1977*;⁶¹²
- b) *Kampala Declaration on Prison Conditions in Africa, 1996*;⁶¹³
- c) *Basic Principles for the Treatment of Prisoners, 1990*;⁶¹⁴
- d) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988*;⁶¹⁵
- e) *International Cooperation for the Improvement of Prison Conditions, 1997*;⁶¹⁶
- f) *Kadoma Declaration on Community Service, 1998*;⁶¹⁷
- g) *United Nations Rules for the Protection of Juveniles Deprived of Liberty, 1990*;⁶¹⁸
- h) *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), 2003*;⁶¹⁹
- i) *United Nations Standard Minimum Rules for Non-Custodial Measures, 1990*;⁶²⁰
- j) *Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, 2002*;
- k) *Arusha Declaration on Good Prison Practice*;⁶²¹ and

⁶¹² 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 1976 (LXII) of 13 May 1977.

⁶¹³ The importance of the Kampala Declaration of 1996 was recognised by the UN and noted by ECOSOC Resolution 1997/36, adopted at the 36th plenary meeting on 21st July, 1997. The Kampala Declaration is an outcome of the meeting organised on 19-21 September 1996 in Kampala, Uganda by the Organisers who were: the Penal Reform International (PRI); African Commission on Human and Peoples' Rights (ACHPR); Ugandan Prison Services; International Committee of the Red Cross (ICRC); Foundation for Human Rights Initiative (FHRI) and the Observatoire International des Prisons (OIP).

⁶¹⁴ UNGA Res 45/111 (14 December 1990) UN Doc A/45/49.

⁶¹⁵ UNGA Res 43/173 (9 December 1988) UN Doc A/43/49.

⁶¹⁶ ECOSOC Resolution 1997/36.

⁶¹⁷ The importance of Kadoma Declaration was recognized by the UN and noted in ECOSOC Resolution 1998/23, adopted at the 44th plenary meeting on the 28th July, 1998.

⁶¹⁸ UNGA 45/113 (14 December 1990) UN Doc A/45/49.

⁶¹⁹ These Guidelines were formally adopted by a resolution of the African Commission during its 32nd Ordinary Session in October 2002 and approved by the Conference of Heads of State and Government of the African Union held in Maputo, Mozambique, in July 2003.

⁶²⁰ UNGA Res 45/110 (14 December 1990) UN Doc A/45/49.

⁶²¹ The importance of the Arusha Declaration was recognised by the UN and noted in ECOSOC Resolution 1999/27, adopted at the 43rd plenary meeting on 28th July, 1999.

l) *Code of Conduct for Law Enforcement Officials, 1979.*⁶²²

To domesticate and implement the stated obligations, Tanzania enacted a number of laws (apart from the *Prisons Act*⁶²³), including the *Parole Boards Act, 1994*;⁶²⁴ the *Children and Young Persons Act*;⁶²⁵ the *Commission for Human Rights and Good Governance Act*;⁶²⁶ the *Preventive Detention Act, 1962*;⁶²⁷ *Community Service Act, Cap. 291 and the Transfer of Prisoners Act of 2004*⁶²⁸

The *Constitution of the United Republic of Tanzania of 1977* was also amended in 1984 to incorporate the *Bill of Rights and Duties*,⁶²⁹ which among other rights, guarantees the right to life, freedom from torture, fair trial and equality before the law as explained in other chapters of this report.

8.3.3 Prisons' Situation of the Staff: Reality on the Ground

The TPS of Tanzania faces myriad of challenges; almost all of them are purely administrative. Unlike other civil servants and departments of the State, the welfares of the prisons' staff are rarely reported to the public for specific attention. Most of what usually comes out are rights and welfare of the prisoners.

However, the LHRC maintains a point that, the enforcement of prisoners' rights begins with the fulfillment of prison officers' rights. Psychologically, it is very hard for an 'aggrieved' person to do justice to others. This is why rectification of the prisons' situation needs a wider approach than looking at prisoners' welfare alone.

Some of the main legal and practical challenges facing the TPS basing on observation of the Prisons' situation in June and July 2009, are as follows:⁶³⁰

⁶²² Adopted by the UNGA, Res. 34/169 of 17 December, 1979.

⁶²³ Cap. 58 of the R.E. 2002 of the Laws of Tanzania.

⁶²⁴ Cap. 400 of the R.E. 2002 of the Laws of Tanzania.

⁶²⁵ Cap. 13 of the R.E. 2002 of the Laws of Tanzania.

⁶²⁶ Cap. 391 of the R.E. 2002 of the Laws of Tanzania.

⁶²⁷ Cap. 361 of the R.E. 2002 of the Laws of Tanzania.

⁶²⁸ Act No. 10 of 2004.

⁶²⁹ Article 12 to 29 of the Constitution of the United Republic of Tanzania of 1977.

⁶³⁰ Note that, LHRC acknowledges with great appreciation the information from the TLS/LSRP's Prisons Monitoring Visit Draft Report of September 2009, in which most of these challenges and recommendations are extensively covered in the stated report. Therefore, what are presented here are merely highlights and not details of the stated TLS/LSRP report. For more information on all these, the reader is strongly advised to read the TLS/LSRP Prisons Monitoring Visit Report of September 2009, which was yet to be validated as of December 2009.

a) *Inadequacy of funds to meet the necessities*

The enlisted human rights instruments require States to provide sufficient material and financial resources for (prisons) staff to discharge their duties properly and effectively.

⁶³¹ The situation on the ground vindicates the fact that the budget allocated to the prisons department is lower than the actual needs. This situation brings challenges to the Prison Officers in Charge of individual prisons to squeeze their calculations basing on the little they get.

As such, most of the prisons do not afford to give at least two pairs of uniforms to the prisoners; ⁶³² don't afford to prepare special diet for the inmates with special needs such as inmates living with HIV/AIDS and pregnant women; most prisoners also don't wash their clothes and bed sheets frequently as required. ⁶³³ It is also astonishing to note that, because of these same challenges, prisons cannot even afford to buy minor items such as razor blades for shaving, as well as stamps and envelopes. As for right to food, the situation is fairly good. Most of the open farm prisons afford to get vegetables as part of their diet, but almost all urban prisons can afford the ration of ugali (stiff porridge), beans and rice only.

Moreover, all inmates, with the exception of very few with special needs, get only one meal per day and this is regardless of the nature and amount of work they do. All these are problems caused by inadequacy funding for the prisons.

The LHRC strongly urges the government to increase the prisons budget. The government could invest in open farm prisons by giving them modern agricultural implements, modernize husbandry, ensure electricity supply and transport to boost production and increase productivity. If empowered, it is hoped that, reliance of the department to the central government's budget will decrease. It is high time to move into a new agenda in which prisons feed themselves. That will happen only if they are facilitated to produce more. The LHRC views that, if empowered, the prisons stand a better chance to implement Kilimo Kwanza more effectively than the foreign investors.

Alternatively, the judiciary and the prisons administrations can meet and look for ways to enable those found guilty of different minor offences and sentenced, serve their terms outside the jails to curb the problem of congestion. Congestion in most prisons is mainly caused by the tendency of most magistrates to deny bail to the accused. For instance, more than 70 percent of remanded prisoners at Segerea Prison in Dar es Salaam (which had more than 1,900 inmates when visited in July 2009) are inmates with petty offences, which are bailable.

⁶³¹ For instance, Article 3 of the *Kampala Declaration on Prison Conditions in Africa of 1996*.

⁶³² The TLS Team observed that most of prisoners in Magu, Uyui, Kwitanga, Namajani, Korogwe and Ilagala had only one pair of uniforms and some of them are worn out and they really look shabby.

⁶³³ Prisoners of Mgagao prison stated that they have never washed their bed sheets for over the year. NOTE, Regulation 20(2) of the *Prisons (Prison Management) Regulation of 1987* which are made under Section.105 of the *Prisons Act*, Cap.58, requires the inmates to wash their uniforms and other clothes at least once in a week.

b) Salaries and Favorable Employment Conditions of Services for Prisons' Staff

Rule 46 (3) of the *UN Standard Minimum Rules for the Treatment of Prisoners* and Articles 4, 11 and the Preamble of the *Kampala Declaration on Prison Conditions in Africa of 1996* cited above provide that, personnel appointed as full-time prison officers should be accorded with salaries adequate to attract and retain suitable men and women, and favourable employment benefits and conditions of service. Moreover, the Tanzanian prisons' regulations give rights to prison officers to occupy houses of particular standards depending on the rank and seniority of the officers. Moreover, prison officers are entitled to leave⁶³⁴ and some of them are eligible for gratuity and pension.⁶³⁵

The situation on the ground shows that the prison officers are living and working under very unfavorable conditions. Some of the critical factors are:

a) Despite the fact that the nature of their works exposes them into serious angers, and commands them to be on-duty 24 hours, there is no any provision under the laws of Tanzania which give them the rights to Risk Allowance. It should be noted that, unlike other civil servants, the law enforcers especially the police and prison officers deal directly with criminals, who are 'rejected' by the communities because of their ruthless behaviours.

Therefore, a mere fact that these law enforcement officials are 'accepting' to deal with them, would have been considered as a brave decision to be awarded for dearly.

b) Unlike other civil servants, not all prison officers are directly pensionable according to the law. This makes their post-service life to be extremely difficulty. Nearby Majimaji prison in Tunduru district, Ruvuma region, there is a retired prison officer. This person run-off from his family because he could not sustain it. He is now begging from his colleagues who are still in service.

Psychologically, the nature of this life tends to put off those who are in service, knowing that, they would face the similar problem once they retire. This is why most of newly employed staff especially those joining the institution direct from universities, tend to quit the job few days after, as they don't see the future for their service to the nation. That is why the LHRC suggests that all prisons officers should be pensionable right from the beginning. This will retain and encourage them to work on the anticipation that they would rewarded at the end of their service.

⁶³⁴ Section 16 of the *Prisons Act*, Cap. 58.

⁶³⁵ Sections 17 to 19 of the *Prisons Act*, Cap. 58.

c) Also the laws and regulations of Tanzania don't provide for extra-benefits for the prison officers working in the open farm prisons, such as Majimaji; Namajani; Kingurungundwa and Loliondo. These prisons produce a lot. For instance, as of June 2009, the Majimaji prison had more than 200 cattle and other livestock. It also owned more than 100 acres of land planted with different crops. But the prison officers who supervise the production are not entitled to anything. The prison headquarters in Dar es Salaam controls everything.

The LHRC suggests that, in order to encourage the prison officers to accept-working in remote prisons regarding as the marginalized ones. Additionally, it's important that a certain amount of what they supervise in farms benefit their particular stations and themselves. This will not only encourage production, but also the morale of the officers.

c) Situation of Staff Quarters and Other Benefits

The provisions⁶³⁶ of the *ICESCR* direct the States to recognize the right of everyone (including the prison officers) to an adequate standard of living for himself or herself and his/her family, including housing, and to the continuous improvement of living conditions.

The *Tanzania's Prison Standing Orders*,⁶³⁷ which are made pursuant to the provisions of Section 5 of the Prisons Act, state that Prison buildings will never be allowed to become dirty. Staff quarters should be re-decorated periodically. Electric light bulbs will not, after the original issue, be supplied to quarters which are wired for electricity.

But, contrary to what is stated above, the housing situation is not good. This situation is aggravated by a number of factors:

- a) Firstly, the demand of houses and rooms for prison officers usurps the government capacity and pace to meet the needs. Therefore, not all staffs are housed in staff quarters.
- b) Secondly, few houses available which were observed by this mission are in poor shape and are very old, therefore risking the lives of inhabitants. Some of the houses were built by the colonialists in 1920s and 1930s (about 90 years ago) and have never been renovated since then.⁶³⁹

⁶³⁶ Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* of 1966.

⁶³⁷ The 4th Edition of 2003.

⁶³⁸ Order 305 of the Prisons Standing Orders.

⁶³⁹ For instance, according to the Officer in Charge of the Kingolwira Women Prison of Morogoro, the staff quarters are very old and remained of the same condition since when they were constructed in 1933 and 1982. The Mtegowasimba Prison of Morogoro were constructed in 1944 and have not been repaired ever since. The Loliondo Prison of Ngorongoro District which is located 420 km from Arusha City, is struggling to construct modern houses [Source: TLS/LSRP's draft Report on Prison Monitoring Visits of June to July 2009, page 31].

As of October 2009, the deficiency of houses countrywide for prison officers stood at 14,628. Information availed by the Prison Headquarters indicates that there are 4,004 completed houses and 440 unfinished houses for prison staffs countrywide. This therefore makes the shortage to be 8,782 houses. The shortage of houses for senior prison staffs countrywide is 1,402.⁶⁴⁰

Much as the LHRC commends the ongoing efforts by the institutions to upgrade and renovate staffs' quarters as well as rehabilitating those existing, it suggests that:

a) As we proposed earlier, there is a need to create the Police-and-Prison's Welfare Special Agent to study the problems and in a broader perspective. The organ should be made accountable to the parliament through the Ministry of Justice or Home Affairs (also under the ongoing Legal Sector Reform Programme). This is because the 'blanket' reform of the legal sector seems to overshadow specific problems facing the prisons and the police.

b) It is also the LHRC's serious concern that, the government need to set priorities right for this country to grow. For instance, there is gross misallocation of public funds such as to spend more than Tshs 1,400,000,000 (about USD 1,044,776) to renovate one residential house for the Governor of the Bank of Tanzania (BoT) while hundreds of prisons and police officers, who guard the Governor and the Bank don't even have a single room of Tshs 100,000 (about USD 75) to sleep in.

8.3.4 Prisons' Situation of the Prisoners: Reality on the Ground

As for the rights and welfare of the prisoners, most of the challenges have already been reported by the *Tanzania Human Rights Report of 2008* and the previous ones. The CHRGG too has been doing the same. There have been commendable efforts to address some of the issues especially after the establishment of the CHRGG. Some of the positive trends include:

- a) Reduction of the overall overcrowding in prisons from 46,416 in years before 2007 to below 40,000 inmates in 2008 and afterwards. This was caused by an increase of the official carrying capacities of the prisons from 22,669 before 2007 to 27,653 after 2007;
- b) Improved bedding and clothing for prisoners. Some of the prisons give prisoners two pairs of uniforms;
- c) Increasing favorable conditions for the inmates to pursue their education (so far two inmates have graduated in Law while serving longterm jail sentences);
- d) Increasing in-house HIV/AIDS awareness among the prisoners themselves. Most of the prisons visited have shown awareness on various HIV/AIDS issues;
- e) Reduced incidences of sodomy among the inmates. With exception of one or two prisons visited, the rest stated that these incidences had been abolished long time ago;

⁶⁴⁰ See: TLS/LSRP's draft Report on Prison Monitoring Visits of June to July 2009, page 31.

f) Reduced number of mistreatments by prison officers. The June – July 2009 fact finding mission received only few incidences of torture done by prison officers. Most of complaints on torture were against the *Nyapara* (prison prefects). Many prisoners consider the prison officers as their friends, but at the sametime they respect the orders.

But the challenges still outweigh the successes. The mother of all challenges again is, inadequate funds. But there are also legal setbacks. Some of the main legal and practical challenges facing the inmates basing on observation of the Prisons' situation in June and July 2009 are as follows:⁶⁴¹

a) Separation/Segregation of Prisoners

In order to ensure respect of social value and dignity of the inmates, the national and international laws require their separation into different categories including age,⁶⁴² criminal records, sex,⁶⁴³ and other legal reasons.⁶⁴⁴ The provisions of the Prisons Act, also provides for the same.

In terms of separation of men and women, the situation is quite okay in all prisons visited in June and July 2009. However, few prisons faced the challenge in separating convicts and remandees; a good example is Mwanga prison. This is caused by the shortage of dormitories. In some prisons also, young prisoners were found mixed with the adults.

For instance, at Wami Vijana prison, which is a remand home for children and young persons in Morogoro, the team found some of the inmates imprisoned there were above the minimum age for young prisoners (21 years). The adults were mixed with the

⁶⁴¹ Again, note that, LHRC acknowledges with great appreciation the information from the TLS/LSRP's Prisons Monitoring Visit draft Report of September 2009, in which most of these challenges and recommendations are extensively covered in the stated report. Therefore, what are presented here are merely highlights and not details of the stated TLS/LSRP report. For more information on all these, the reader is strongly advised to read the TLS/LSRP Prisons Monitoring Visit Report of September 2009, which was yet to be validated as of December 2009.

⁶⁴² Article 37 (c) of the Convention on the Rights of the Child provides that, '*every held deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.*' Moreover, it is also essential that the relevant places of detention have an adequate infrastructure and specially trained personnel who enable their specific needs and interests to be met.

⁶⁴³ Read *Rule 8 (a) of the UN Standard Minimum Rules for Treatment of Prisoners*.

Rule 8 of the Standard Minimum Rules for the Treatment of Prisoners; Principle 8 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and Regulation 6 of the Prisons (Prison Management) Regulations. Article 10 (2) (a) of the International Covenant on Civil and Political Rights of 1966, requires accused person to be segregated from convicted prisoners and that, they should be given separate treatment appropriate to their status as unconvicted persons. It is also insisted that, women should be given special accommodation including all necessary pre-natal and post-natal care and treatment. SEE also: Rule 23 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners.

⁶⁴⁴ See: Sections 28, 29, 70, 75 and 76 of the *Prisons Act*.

children in the same wards though each one of them was sleeping in his own bed. However, the adults were accommodated in the ward because they attending studies.

The LHRC suggests that, the government should designate one of the existing prisons to accommodate adults enrolling in continuing education programmes. The designated prison should also be equipped with all facilities to enable the inmates to pursue their studies while serving their sentences.

b) Overcrowding of Inmates

Despite the fact that the general official carrying capacity of all prisons in Tanzania suggests congestion is decreasing, the situation on the ground basing on individual prison depicts a quite discouraging picture.⁶⁴⁵ Most prisons visited in June and July 2009, were overcrowded.⁶⁴⁷ For example:

a) The Korogwe prison in Tanga: the official installed prison capacity is only 87 inmates, but apparently there were 178 inmates – over twice as much the capacity. The prison exceeded its official carrying capacity by 104.5 percent.

b) The Segerea Prison in Dar es Salaam: Its installed capacity is only 900 inmates, but on 17 July 2009, the records showed that there were 1,897 inmates. That means, it has exceeded its capacity by 110.77 percent.

Moreover, at Segerea Prison also in Dar es Salaam there were dormitories (such as ward 2) which exceeded its installed capacity by more than 300 percent. For instance, ward 2 had 170 inmates, instead of 50 inmates about 340 percent above the installed capacity.

c) Kayanga Prison: Its capacity as of June 2009 was only 157 inmates, but accommodated 349 inmates. That means, it exceeded the capacity by 122.2 percent. Other prisons which had their installed capacities exceeding by more than 75 percent were Arusha; Musoma; Ndundu and Uyui.

d) Arusha Prison: The official carrying capacity was only 530 inmates, but on 18 July, 2009, there were 1,631 inmates. That means, its capacity was exceeded by 200 percent.

⁶⁴⁵ According to the Prisons Standing Order, a prisoner is required to occupy 2.5 square metres as his/ her sleeping space. However, because of the overcrowding challenge, the same square metres are occupied by at least two to three inmates.

⁶⁴⁶ Information extracted from the TLS/LSRP's Prisons Monitoring Visit draft Report of September 2009, page 37.

c) Lack of Toilets

Most inmates especially at Majimaji prison in Tunduru, Kwitanga prison in Kigoma and Kingurungundwa Prison in Kilwa complained about the lack of pit latrines. They said they were forced to use leaking buckets popularly known as *Mitondoo*⁶⁴⁷ for both short and long calls of nature. Most of the inmates who were interviewed between June and July 2009 stated that the said *Mitondoo* degraded their humanity despite the fact that they were prisoners.

One of the inmates (32 years of age) at Majimaji Prison said in dismay:

Hakuna vyoo katika selo zote. Tunatumia mitondoo ambayo nayo inavuja sana. Usiku inanuka sana kwa sababu watu wanajisaidia humo kama choo. Ukiibeba mitondoo Asubuhi yenye mavi, nguo nzima inalowa kinyesi na mkojo alafu nguo ni moja tu. Nje kuna choo chenye matundu matatu lakini siyo ndani ya selo. [There are no toilets inside the wards. We use buckets (mitondoo), which are leaking so much. At night, unpleasant smell is generated because inmates use mitondoo as toilets. Carrying them in the following morning while they are full of muck, you have your only uniform dispensed by stinking muck and urine. There is one toilet outside the wards, not inside]

Similar complains were heard in a number of prisons visited, except Korogwe Prison and very few others, which had toilets inside the cells or wards. For instance, one of the prisoners at Kingurungundwa Prison, Kilwa district, stated that, there are toilets, but the waste is not flashing far away from the wards due to the broken systems. As a result, the wards become a sanctuary for mosquitoes.

Only little funds are needed to rectify the situation and relieve the inmates from the degrading and inhuman treatments of this nature; because prisons themselves can dig the latrines and government provide few bags of cement to erect the structures.

Rules 72 (1) and 74 of the *Standard Minimum Rules for the Treatment of Prisoners* states that, “national legislation regarding health and safety at work shall apply in prison in the same way as it does in the community.” As it is then, prisons should be platforms of learning good things, settled psychology and therefore meaningful rehabilitation of a person. Some of these problems are within the prisons’ ability to resolve.

⁶⁴⁷ The *Mitondoo* is a prison slogan to mean Buckets for carrying out human desecrate.

8.4 Situation of People with Special Needs: *Women, Old People and PLWHA*

The provisions of most of the national and international human rights instruments recognize and require special treatment of the people with special needs in the prisons such as women, old persons and the People Living with HIV/AIDS (PLWHA).

For instance, the provisions of the Tanzanian *Prisons Standing Order*⁶⁴⁸ and Rule 23 (1) of the *Standard Minimum Rules for the Treatment of Prisoners* provide that pregnant women and nursing mothers, who are in prison, shall be provided with the special facilities which they need for their condition. As rights and entitlements for the elderly and PHWHA, are explained in detail in chapter five and six of this report. They all need special attention because their condition and nature make them vulnerable.

8.4.1 Women and Children

It is commendable to note that, women are not mixed with men in the prisons of Tanzania. Good efforts have been made to ensure that, they have separate wards even if they are imprisoned in the same jail. This is according to the direct observation during the June-July 2009 prison visit. However, they (women inmates) facing myriad of serious problems including:

a) Unavailability of proper sanitary pads, underwears and other specific essential items for women. In all prisons visited, women complained that they don't the necessities from the prison administrations. Availability of the same depends on the wishes of good Samaritans, who sometimes bring them as donations. For instance, an inmate at Kingolwara-Women Prison stated in July 2007 that "*Hatuna vitambaa vya hedhi. Tunatumia vitambaa fulani vitatu tulipewa vya kutumia wakati wa hedhi. Vingine vimechanika.*" [We don't have pads for menses. Instead, we using certain pieces of cloths we were given]. They also said that they use pieces of worn out clothes for the purpose.

Another inmate of the same prison stated that '*[t]he prison do not supply pads for menstrual circles. We have our own unsafe arrangements such as to get one or two from the colleague who has extra pads brought to her by relatives. I do not have relatives around. I divorced my husband some years back and my close relatives are in Songea. The shorts (Bukta) that we are supplied as underpants are unfit especially during monthly breeding.*' Indeed, this is a very serious problem and shameful to note that the government cannot afford to buy and supply essential items costing just few shillings –one pack of pads is sold at Tshs 1,200 (USD 0.9).

The lack of pads and similar necessities is degrading the women. It is not only a hygiene issue, but also a gross human rights violation.

⁶⁴⁸ Orders 728 and 729.

b) There is no special arrangement for women who have children in prisons. One of the prisoners at Kingolwira Women Prison, who is a mother to a 3-year-old child stated (on 29/6/2009) that:

Mtoto wangu hana viatu na sina hela ya kumnunulia kwa sababu niko gerezani. Pia hana madoli ya kuchezea. Hivyo inamfanya akimbie kimbie tu katika vyumba vya gerezani. Mtoto ameanza kuinga tabia za wakubwa kwa sababu ana miaka mitatu. Nahofu sana ataharibika kwa tabia za humu. Padri nilimwambia akasema atamuijia ili akae nae Parokia ya Morogoro ili niwe namuona kila baada ya miezi mitatu. Mtoto anakula ugali huo huo tunaokula watu wazima. Ila pia anakorogewa uji na ubwabwa na anakula na wagonjwa [My child does not have shoes and I don't have the money to buy her a pair because am in prison. Also, she doesn't have toys to play with. This makes her to roam around prisons' wards. She has started to imitate adults' behaviours because she is now three years. I'm worried she might get spoiled here. I told the Priest and he promised that he would come to take her to the Morogoro Parish to be raised there, and I will be visiting her after every three months. She takes the food that adults eat. But they also make some porridge for her. She sometimes eats the rice prepared for the sick].

c) Mistreatment and degrading punishment. Most of the female inmates in visited prisons (except Korogwe, Mwanga and Segerea) complained about insults in terms of vulgar language, while others said they were put in solitary confinement where inmates may be forced to undress and sleep on a bare floor with cold water on it. Some female inmates had stated on 29/6/2009 that, the officer in charge, Ms. Minde and other officers use very abusive languages such as mocking inmates as “Mbwa” [dog]; “Kumamayo” [your mother's vagina]; and many others, regardless of mixed age groups of the inmates inside and outside the wards.

8.4.2 Welfare of Aged Persons

Generally the elderly stated that they are treated fairly well. At Mtego wa Simba Prison in Morogoro, they are given special diet such as light food and milk. They sleep in bed with blankets. Their clothes and bed sheets are washed by other prisoners according to the prison arrangement. They also stated that, they don't work at all. Again, this is a good practice by the TPS, which is highly commendable.

The only point that the old inmates complained about and want to be worked upon is mercy to pardon them from their sentences. One 104-year-old inmate, who was serving a sentence since 1970s, stated in July 2009 that:

...[n]ataka nitoke nikazikwe na vijukuu vyangu nyumbani...kwani sheria haituonei huruma watu wazee kama mimi? ...hata jamii hainichukii tena...[I would like to get out of here so that I can be buried by my grandchildren... doesn't the law have pity on the elderly like me? Even those I wronged, don't hate me anymore].

The important points this old inmates would like to bring to attention here is that, the reforming process of an inmate should have time limit, not necessarily one set by the law in terms of the number of years in jail. Experience has already proved that, most people who commit (serious) crimes are able people (youths). A person whose age is above 65 or 70 years is unlikely to commit an offence because he is powerless and less ambitions to achieve worldly goals.

Therefore, the LHRC associates with the request of the old people to ask the President of Tanzania to release them from jail. They wronged, but as inmates have reformed and therefore can spend the rest of their lives to educate others on the bad side of committing crimes out side the jail.

8.4.3 Treatment of Foreigners

Until recently, there has been no any case or incidence of racial discrimination in Tanzanian prisons reported to the media or authorities. That means, the prison department is doing a good work to ensure that both citizens and foreign prisoners are treated equally in Tanzanian prisons. This is a good practice on the part of Tanzania.

However, there is a big challenge on how the issuing of deportation orders and the delay of deporting foreigners after the deportation order. The Segerea Prison's experience offers a good example. At Segerea the Officer in charge of the prison said in July 2009 that detention of deportees was a growing challenge, as the deportees are taken to prison by order of the Minister for Home Affairs. It is a challenge because the deportees remain in prison for a long time and they over burden the system.

Moreover, they way in which the deportation order is issued by the Minister (of Home Affairs) under Section 14 of the *Tanzanian Immigration Act*⁶⁴⁹ confuses really. The dilemma here is the fact that the Minister can order detention without the court's order. The officer in-charge at Segerea Prison in Dar es Salaam, gave one scenario of this confusion. He stated that Mr. Charnjeet Sighn Sahota who is an inmate, has instituted a case in court to challenge legality of the Minister's order without due legal process and therefore trying to raise a point that, he is illegally detained.⁶⁵⁰

⁶⁴⁹ Cap. 54 of the R.E. 2002 of the Laws of Tanzania.

⁶⁵⁰ Note that, this man has been detained awaiting deportation to India since 2006 at that prison. At Arusha prison the TLS team also spoke to one of the detained Ethiopians who are detained awaiting deportation to Ethiopia, according to him they were on their way to South Africa, their passports were taken by bandits before they crossed into Tanzania from Kenya. He complained that the media was publishing that they have been detained for three weeks and the truth is majority of them have been detained for up to 3 years while the two governments are not figuring out what to do. In June and July 2009 the local news papers carried a story about 13 Ethiopian deportees who were detained for three weeks, have gone on a hunger strike and were admitted at Mount Meru hospital [Information extracted from the TLS/LSRP's Prisons Monitoring Visit draft Report of September 2009, page 37].

8.4.4 Prisoners Living with HIV/AIDS/ PLWHA

The latest information on the prevalence of HIV/AIDS in Tanzanian prisons indicates that, approximately 9.2 percent of Tanzania's prison population had been infected with the HIV/Aids.⁶⁵¹ The absence of specific intervention to reduce HIV/AIDS infections in prisons as of 2009 could be a contributing factor, signaling the possibility of further increase in the future.⁶⁵²

The first concern is that, the *HIV and Aids (Prevention and Control) Act, 2008* does not specifically address HIV/AIDS' testing, counseling or treatment for persons who are under constraint. It has not considered the fact that prisoners don't necessarily accorded with the rights to public information on health issues; appropriate voluntary testing and health care; ARV and dietary issues; and protective mechanisms as it is the case with other community members. That is why there is a need to add specific provisions in the law to address the issue of HIV/AIDS among prisoners.

The second concern is that, despite the fact that most prisons have initiated awareness sessions on HIV/Aids (as they lack proper/specific guidelines); the lack of razors exposes them into the risky of getting infected. In most prisons visited in June and July 2009, the inmates complained of inadequate supply of razors from the prison administrations. Most inmates rely on razors brought to them by their relatives, but this only works for those who get visitors. Others share the shaving items.

The third concern is that, none of the prisons visited had a plan on how an inmate's life will be after incarceration term. Most of the inmates who had known their HIV status in prisons stated that it is challenging for them to accommodate back in their families and partners – especially how to 'break the ice.' One inmate of Segerea prison, who is HIV positive, had started that:

Unajua kuwa mfungwa tayari ni tatizo kutokana na mitazamo ya watu, sasa kwa mtu kama mimi nikitoka hapa alafu nikaanza kukonda si nitakuwa na unyanyapaa wa aina mbili, yaani wa kuwa yule ni muarifu na yule ni mzinzi ndiyo maana na ukimwi. Bwana watu kama sisi ni mikosi tu. [You know what, being a prisoner is a problem in itself because of perception of the people(illusion). Imagine, a person like me when I'm released from here and start getting slim, I would face double stigma; that is, being an ex-prisoner and suspected of being a HIV positive. We are jinxed people].

These are issues which the law or/and the policy ought to address. The post incarceration programmes are highly needed in Tanzania, not only for HIV/AIDS issue, but also for the other aspects of life in general. There is a possibility for an ex-prisoner to recommit crimes if there is no legal-social programmes to accommodate him/her back to the

⁶⁵¹ LHRC (2008) Tanzania Human Rights Report of 2008, page 154

⁶⁵² The 2004 findings of WHO/UNAIDS stated that rates of HIV infection among inmates of prisons and other detention centres in many countries are significantly higher than those in the general population [See: WHO/UNAIDS (2004) 'Evidence for Action on HIV/AIDS and Injecting drug Use – Policy Brief: Reduction of HIV Transmission in Prisons, 2004.5.

community. This is a point which even CSOs have failed to grasp and work upon.

As indicated above, the PST is facing myriad of problems, which some of them might take years to solve. However, the LHRC suggests that if the Police-and-Prison Special Agency would be established to draw a monitoring and evaluation plan on how all these problems can be tackled, Tanzania shall have better administered prison services in the future.

Chapter Nine

Corruption and Abuse of Power

9.0 Introduction

CORRUPTION is defined to mean acts and practices relating to bribery. Corrupt acts or behaviour enerally involve officials in the public sector who improperly and unlawfully enrich themselves, or those close to them, by misusing powers entrusted to them by the public.⁶⁵³ However, corruption can extend beyond the public sector into the private domain.⁶⁵⁴

Therefore, when addressing corruption, a holistic approach that considers both the private and public spheres should be taken.⁶⁵⁵ Public has to participate in the fight against corruption by airing their views, rejecting bribes or naming the corrupt people. Restricting people to speak about corruption, means refusing and discouraging people from fighting corruption.

The effects of corruption are many, very severe and indeed costful especially to the poor people. One expert once said:

The fight against corruption has become more urgent than ever. As our knowl edge of the phenomenon expands, we realize the extent of the harm it causs. Corruption undermines growth and development by diverting resources away from development programmes thus increasing poverty, inequality and underdevelopment.⁶⁵⁶ [Emphasis Supplied].

Therefore, as it is always pointed out, corruption is consistently recognized as the key contributor to poor governance and one that contributes directly to insufficient resource allocation in national economies. It disempowers citizens and is a major cause of poverty.⁶⁵⁷

This chapter assesses the level of prevalence of corruption in Tanzania. It also high

⁶⁵³ LHRC (2008) The Tanzania Human Rights Report of 2008, page 156.

⁶⁵⁴ Corrupt practices include the solicitation or acceptance by public official or any other person of any goods of monetary value or other benefit for himself or herself as provided for under Article 4(1)(a) of the *AU Convention on Prevention and Combating Corruption*, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11th July, 2003. As noted by one of the LHRC's 2008 survey respondents "*kila mtu anaweza kuwa fisadi katika ngazi yake*" ["everyone can be a corrupt at his or her own position"]. As such, efforts to prevent corruption should focus on public officials, as well as private individuals.

⁶⁵⁵ LHRC (2008) The Tanzania Human Rights Report of 2008, page 156.

⁶⁵⁶ Mr. M. R Baloyi, Minister for the Public services and Administration, South Africa. Chairperson of the 5th Pan African Conference of Ministers of Public/ Civil Service. Quoted from the Business Action against Corruption: An African Initiative to Combat Corruption (undated), page 2.

⁶⁵⁷ The Business Action Against Corruption: An African Initiative to Combat Corruption (undated), page 3.

lights some legal and practical challenges as well as suggesting some improvements. The samples of impending grand corruption scandals are brought forth as reminder for the government's commitment to end corruption in Tanzania.

9.1 General Corruption Perception

The general overview of the status of corruption in Tanzania suggests that the government has made notable steps in the fight against corruption, especially when compared to other East African countries. For instance, the *Transparency International Report of 2009*⁶⁵⁸ and the *MO Ibrahim Index of East African Countries' Governance of 2009*,⁶⁵⁹ which assessed and compared 12 Eastern African states,⁶⁶⁰ indicated that Tanzania is number one (on the positive trend) ahead of Kenya, Uganda and even Rwanda and Burundi.

It is also on record⁶⁶¹ that, the anti-corruption bureau, the Prevention and Combating of Corruption Bureau (PCCB) of Tanzania, has made commendable achievements as of 2009. For instance:

- a) Between 1995 and October 2009 the PCCB had served and recovered money and assets totaling Tshs 86,951,894,206 (USD 67 million) through the seizing of properties and other means.
- b) In 2009 it commenced the prosecution of 17 grand corruption cases compared to 14 in 2008 and only 1 in 2007.
- c) Raised public awareness on corruption through publications and the media.

All these and others are notable and commendable achievements. However, much as the LHRC commends the PCCB for the progress made so far, it is still calling for more improvements because the situation on the ground suggest that more need to be done to scale down the escalating vice.

⁶⁵⁸ The Transparent Report of 2009 ranks Tanzania at the 1st position (of improvement on bribery incidence) comparing with Kenya and Uganda. The bribery incidence – prevalence for Kenya is 45%; Uganda is 35% while Tanzania is only 17%. Note that, this is a *BRIBERY INCIDENCE* and not the general perception. The findings of the general perception are different.

⁶⁵⁹ Tanzania is positioned at 2nd rank after Seychelles. The third country on the rank is Kenya, followed by Uganda and Comoros. The last country on the list with poor record is Somalia, which is positioned at 12th position. The MO Ibrahim Index of 2009 showed that, the overall score for Seychelles, Tanzania, Kenya, Uganda and Comoros (the first five) were 72.1%, 55.2%, 53.7%, 53.6% and 48.6% respectively. It is commendable also to note that, Tanzania is positioned at the 12th rank of overall rank in Africa, which is comprised of 53 countries.

⁶⁶⁰ The states are Seychelles, Tanzania, Kenya, Uganda, Comoros, Rwanda, Djibouti, Ethiopia, Burundi, Eritrea, Sudan and Somalia.

⁶⁶¹ See: Dr. Edward Hoseah 'Presentation on the Tanzanian Efforts in Curbing Corruption – Progress Made as of November 2009. General Budget Support Review. 23/11/2009. NOTE that, Dr. Hoseah is the Director General of the PCCB.

The other recent findings suggest that more is desired than contented at this point. For instance, despite the fact that grand corruption cases begun in 2009, the public officials facing the allegations, who held senior positions, benefited from the obvious impunity. This situation tends to discredit somehow the PCCB, especially when it comes to handling cases involving the bigshots.

Moreover, despite the positive progress made, the *Transparence International's 2009 Corruption Perception Index (CPI)*⁶⁶² indicates that Tanzania did not improve its score. In fact, its score has dropped by 0.4 points compared to the 2008's CPI score. Tanzania, which is ranked at the 126th position, scored 2.6 points in 2009.

At the continental level, Botswana was the least corrupt country with 5.6 points, followed by South Africa which scored 4.7 points and Namibia 4.5 points. In East Africa, Rwanda is perceived as the least corrupt country (with 3.3 points) followed by Tanzania (2.6 points), Uganda (2.5 points), Kenya (2.2 points) and Burundi (1.8 points). New Zealand is leading on the global ranks with 9.4 points, followed by Denmark (9.3 points), Singapore and Sweden are tied at 9.2 points. The last on the list – perceived as the most corrupt country in the world – is Somalia with its 1.1 points.

Tanzania's scores and position held over the last ten years, according to the CPI's different reports and other sources of information which report on CPI, are as follows:

| Country: Tanzania, Years 2000 to 2009 [CPI Scores] | | | |
|--|------|------|-----------|
| S/No. | Year | Rank | CPI Score |
| 1. | 2000 | 76 | 2.5 |
| 2. | 2001 | 82 | 2.2 |
| 3. | 2002 | 71 | 2.7 |
| 4. | 2003 | 92 | 2.5 |
| 5. | 2004 | 90 | 2.8 |
| 6. | 2005 | 88 | 2.9 |
| 7. | 2006 | 93 | 2.9 |
| 8. | 2007 | 94 | 3.2 |
| 9. | 2008 | 102 | 3.0 |
| 10. | 2009 | 126 | 2.6 |

Source: Transparence International's Reports [www.transparency.org]

⁶⁶² The Corruption Perceptions Index (CPI) is used in measuring the perceived level of public-sector corruption in 180 countries and territories around the world. It is an annual survey and analysis. For more information please read www.transparency.org. The information contained here was viewed on 26th December, 2009.

It is clear from the extract above that the Tanzanian score has never gone up above 3.2. The implication of this might be that, little is done to improve the state of corruption in Tanzania or the speed of improvement is slow beyond expectations.

During the FemAct’s fact finding Mission of August 2009 in Loliondo, Ngorongoro District, Arusha region, one villager of Ososokwan pointed out that:

Kwa kweli kwa sasa hakuna viongozi wengi wenye kutetea maslahi ya wananchi. Wanaangalia pesa tu. Ukiwa na pesa utapewa kila kitu hata kama kuwaua wananchi wa Tanzania. OBC anao uwezo huo wa kubadili mawazo ya viongozi kwa pesa zake. Hongo ipo sana sasa kuliko siku za zamani...
[Surely honest leaders, who can protect the interests of the citizens are lacking nowadays. They are only after money. With money, you get everything, even if taking lives of the Tanzanians. OBC has such powers of changing leaders’ ideas and decisions. Corruption is now widespread than ever before...]

This is a strong voice of despair. It represents millions of similar voices. This perception is supported by the Corruption Perception Survey conducted by FORDIA in 2008/2009, whose results were released in 2009, in which 71 percent of citizens interviewed in seven regions of Tanzania Mainland; namely Mbeya, Kagera, Lindi, Mtwara, Morogoro, Shinyanga and Ruvuma said the government’s anti-corruption efforts had failed.

Moreover, the findings concluded that only 28.7 percent perceived the government was doing enough to curb corruption. The survey asserted that, greed and selfishness were main reasons for the escalating bribe soliciting and taking among public officials.

The said Transparency International Report of 2009 also enlists top10 most corrupt institutions in East Africa – covering Tanzania, Kenya and Uganda. The Kenyan Police Force is named as number 1 corrupt institution in East Africa, followed by the Tanzanian Police Force. The Tanzanian Judiciary is positioned on the fourth position, followed by the Ugandan Police and the Tanzanian Immigration department, on the 6th position.

Moreover, it was stated in 2009 by PCCB that, some public institutions are perceived by the citizens as worst corrupt entities. The percentages of extent of corruption are as summarized below:⁶⁶³

| Rank Position | Extent of Corruption[Worst Institution] | Percentage [Perception of People] |
|---------------|---|-----------------------------------|
| 1. | Traffic Police | 66.4 |
| 2. | Police Force | 64.7 |
| 3. | Judiciary | 59.0 |
| 4. | Health Institutions | 26.7 |
| 5. | TRA | 25.0 |

⁶⁶³ Source: Dr. Edward Hoseah ‘Presentation on the Tanzanian Efforts in Curbing Corruption – Progress Made as of November 2009. General Budget Support Review. 23/11/2009 [Power-point presentation]. His presentation quoted the FACEIT study (undated).

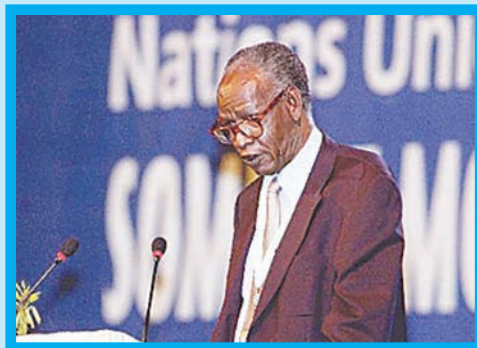
These institutions were also named on the *Warioba Report of 1996* and the LHRC *Tanzania Human Rights Report of 2006* following its brief opinion survey in 2006. The LHRC urges the government to rectify the situation. One of the solutions could be fighting impunity, due to which some culprits, especially the bigwigs cannot be taken to task, as a result the people loose confidence in the whole system.

9.2 Post Warioba Commission: Still Shambling

The *Warioba's Commission Report of 1996*

⁶⁶⁴ marked the beginning of the rejuvenated anti-corruption struggle in Tanzania. The government has done a number of good things partly as ways of complying with the recommendations of the Warioba's commission. In particular, the government has done the following:

- a) Adopted the *National Anti-corruption Strategies* (NACSAP I and II (2006-2020), which focus on the involvement of various stakeholders in the fight against corruption;
- b) Strengthened some of its institutions, including *the Controller and Auditor General's Office*, which in recent years have been very vocal on the misuse of public funds;
- c) Formed the *Commission for Human Rights and Good Governance in 2001, to inter alia*, monitor abuse of public power;
- d) Ratified the *United Nations Convention Against Corruption of 2003*, in 2006;
- e) Ratified the *African Union Convention on the Prevention and Combating of Corruption and Related Offences of 2003*, in 2005;
- f) Enacted the *Prevention and Combating of Corruption Act, 2007 in 2007, which inter alia*, widened the scope of corruption offences, strengthened the powers and duties of the PCCB and incorporated the spirit of the UN and AU conventions mentioned above.
- g) Commenced prosecution of senior public leaders, something was never done before 2008/09.



Joseph Warioba

⁶⁶⁴ Justice Joseph Warioba is a former Tanzanian Prime Minister. In 1996, he was instructed by the then President of Tanzania, Mr. Benjamin Mkapa to undertake a presidential inquiry on the state of corruption in Tanzania, with the view of ascertaining challenges and opportunities for reform. Then, he came out with a very comprehensive report in 1996 (commonly known as *Warioba's Report of 1996*). In the report, Mr. Warioba indicated that corruption was rampant in all sectors of economy, public service and politics in Tanzania. The report found that, most of the junior Civil Servants were supplemented their incomes through bribes and extortion practiced petty corruption. The senior Civil Servants were found practicing grand corruption. Although petty corruption may illicit less anger, both practices are symptomatic of the government's failure to impose administrative (and legal) control over limited funds [See: LHRC (2005) Tanzania Human Rights Report of 2005, page 104].

However, challenges still outweigh the successes. Corruption is still rampant and revolving itself into new fashions every day. Apart from the common tendencies which involve police and judiciary, as revealed in the Warioba's report, there has been, in recent years, massive embezzlement of public funds through irregularities in procurement, collection of government revenues and levies, unnecessary expenditures – purchasing luxurious vehicles, paying inflated allowances – , political corruption and so many other forms, as discussed in this chapter.

LHRC commends that the best strategy to deal with corruption is to

9.3 Tanzania's Institutional Anti-Corruption Measures

Tanzania's institutional framework for anti-corruption is composed of the laws enacted to address the challenges of corruption, institutions established to coordinate anti-corruption measures and plans formulated to guide the same. So far, all these are in place and somehow functioning well. The laws, strategies and plans have been formulated in response to the 1996 Warioba's report. Also, the establishment of the said institutional measures is part of the domestication of the international treaties on corruption and abuse of public office.

9.3.1 Strategies, Plans and Institutions on Anti-Corruption

The *United Nations Convention against Corruption of 2003*; ⁶⁶⁵ the *African Union Convention on the Prevention of Corruption and Combating Corruption and Related Offences of 2003*; ⁶⁶⁶ the SADC Protocol against Corruption of 2001 and other instruments, have called upon state parties, including Tanzania to develop effective measures for preventing and combating of corruption in their jurisdictions. ⁶⁶⁷ The Warioba's report put forward same recommendations.

The main anti-corruption strategy formulated in conformity with the provisions and recommendations of the international conventions and the Warioba's report is the *National Anti-Corruption Strategy and Action Plan (NACSAP)*. ⁶⁶⁸ As stated above, the government has also strengthened powers of the PCCB and the Controller and Auditor General (CAG) office.

⁶⁶⁵ Adopted on 31 October 2003, entry into force 14 December 2005, ratified by Tanzania 25 May 2005 (See: UN Doc A/58/422).

⁶⁶⁶ Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, ratified by Tanzania in 2005.

⁶⁶⁷ See: Common Articles 5 of the UN Convention against Corruption of 2003 and the same of the AU Convention on the Prevention and Combating Corruption and Related Offences of 2003.

⁶⁶⁸ The NACSAP was designed at first instance in 2000 to provide for general and specific guideline in which corruption will be effectively addressed. At first, there was NACSAP phase one (NACSAP I of 2000 – 2005), which was not inclusive enough of all stakeholders. For instance, the local governments were excluded in the said NACSAP. The 2006 – 2010 NACSAP is seemed to be inclusive in the fight against corruption of different stakeholders including government departments, Civil Society and Private Sector. Local Government Authorities are now required to formulate and implement specific plans on corruptions in their vicinities.

However, the PCCB continues to be under the Ministry of State in the President's Office Responsible with Good Governance. The Director of PCCB is appointed by the President without approval or consultation with any authority. Then, he/she remains in power as long as the President wishes. This arrangement compromises the independence of this institution.⁶⁶⁹

As for the CAG office, this institution has demonstrated good work since 2007. Institutions and public offices mismanaging public funds are revealed every year. But no serious actions, including instituting criminal charges, are taken against those implicated in the misuse of public funds such as local government officials with bad records.⁶⁷⁰ Therefore, business shall continue to be as usual.

The LHRC urges the government to take legal actions against those found guilty by the CAG of misuse of public funds. It is not enough to report and order administrative measures be taken against them. The rule of law requires them to face justice just like any other offender.

9.3.2 Legal Framework on Anti-Corruption: Not Yet True *Reform*

The Tanzania legal framework on corruption and abuse of public office is governed by a number of laws, including:

- a) *The Prevention and Combating of Corruption Act, 2007;*⁶⁷¹
- b) *The Public Leaders Code of Ethics Act;*⁶⁷²
- c) *The Penal Code;*⁶⁷³
- d) *Anti-Money Laundering Act, 2006;*⁶⁷⁴
- e) *Public Procurement Act, 2004;*⁶⁷⁵
- f) *Economic and Organized Crime Control Act.*⁶⁷⁶

⁶⁶⁹ Article 6(2) of the UN Convention against Corruption of 2003 states that each state party shall grant the body or bodies (anti-corruption bodies) necessary independence in order enable the body or bodies to carry out their functions effectively and free from any undue influence.

⁶⁷⁰ For instance Section 120 of the Penal Code, Cap. 16 R.E. 2002 of Tanzania, makes it offensive to commit fraud or breach of trust affecting the public by a person employed in public service. Various provisions of the Prevention and Combating of Corruption Act, 2007 contain similar offences.

⁶⁷¹ Act No. 11 of 2007. It is the main legislation on corruption in Tanzania. This law came into operation on 1st of July 2007. It repeals and replace the old one of the same nature called Prevention of Corruption Act, 1971, which established the then Prevention of Corruption Bureau – PCB. The 1971 was infective because of limited offences on corruption is had. Other weaknesses included lack of independence of PCB; delay of cases because of the requirement of seeking DPP's consent and the like [See: LHRC (2008) **Tanzania Human Rights Report of 2008**, pages 159 and 160].

⁶⁷² Cap. 398 of the R.E. 2002 of the Laws of Tanzania. This law was enacted in 1995.

⁶⁷³ Cap. 200 of the R.E. 2002 of the Laws of Tanzania. This law was enacted in 1984.

⁶⁷⁴ Cap. 16 of the R.E. 2002 of the Laws of Tanzania. This law was enacted in 1945.

⁶⁷⁵ Act No. 12 of 2006.

⁶⁷⁶ Act No. 21 of 2004.

The legal framework on the prevention and combating of corruption is still porous and therefore needs further improvements. Notwithstanding the strengths of the *Prevention and Combating of Corruption Act, 2007* as the main law on corruption, the LHRC urges the further improvements of this law as follows:

- a) The statutory requirement of seeking DPP's consent before the commencement of the corruption case, should be removed from the law;⁶⁷⁷ and/or,
- b) Clearly define the relationship between the DPP and the PCCB as well as making the PCCB more independence.
- c) The provision⁶⁷⁸ of the *Prevention and Combating of Corruption Act, 2007* that prohibits the media, civil society organizations and individuals from reporting about alleged offences being investigated by the PCCB, should be removed or rephrased to build confidence in the public and the media to report without fear on the incidences of corruption. In this way, the individuals' right to information will be enhanced as well.

9.3.3 Capacity of the PCCB to Handle Corruption Cases

Apparently, because of the said legal challenges, the LHRC and other stakeholders find that the PCCB's capacity to handle cases is still stumpy.⁶⁷⁹ It is also a concern of this and other reports that despite the fact that the PCCB's operations are national; the number of reports about corruption seemed relatively low. Moreover, the number of cases prosecuted so far over the last five years is very small.

⁶⁷⁷ The current law maintains position of the previous law on DPP's consent. Section 3(3)(b) of the Prevention of Corruption Act, 1971 stipulated that 'the functions of the bureau shall be to investigate and, subject to the directions of the Director of Public Prosecutions, to prosecute for offences under this Act and other offences involving corrupt transactions.' Section 60 of the Prevention and Combating of Corruption Act, 2007 puts the same requirement. This requirement causes unnecessary delay of prosecution of corruption cases. The law should be amended to give PCCB full mandate of prosecuting related cases because it should have full independence of planning and implementing its decisions. In this way, it will make it more effective and efficient.

⁶⁷⁸ Section 37 of the Act states that any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under this Act or any other law relating to corruption without lawful authority or reasonable excuse, discloses to the public commits an offence shall be liable on conviction to a fine of 100, 000 shillings or imprisonment of for one year or both.

⁶⁷⁹ See: LHRC (2008) **Tanzania Human Rights Report of 2008**, page 162.

In fact, the number of reported cases to the PCCB dropped in 2008 and 2009. An extract of the PCCB Statistics below tells more:

| Year | Information Received | Investigation completed | Cases filed in court | Convictions from court cases |
|------------|----------------------|-------------------------|----------------------|------------------------------|
| 1995 | 261 | 145 | 08 | 1 |
| 1996 | 513 | 245 | 21 | 2 |
| 1997 | 510 | 289 | 09 | 1 |
| 1998 | 545 | 200 | 15 | 2 |
| 1999 | 1,116 | 304 | 62 | 9 |
| 2000 | 1,244 | 276 | 49 | 6 |
| 2001 | 1,354 | 285 | 57 | - |
| 2002 | 1,383 | 732 | 52 | 12 |
| 2003 | 2,285 | 540 | 51 | 9 |
| 2004 | 2,223 | 458 | 60 | 6 |
| 2005 | 3,121 | 540 | 50 | 6 |
| 2006 | 6,320 | 1,688 | 71 | 18 |
| 2007 | 8,235 | 2,014 | 195 | 35 |
| 2008 | 6,137 | 936 | 147 | 37 |
| 2009 (Oct) | 4,936 | 1,003 | 169 | 40 |
| Total: | 40,183 | 9,656 | 1,017 | 184 |

Source: PCCB October, 2009.

As stated above, the *Prevention and Combating of Corruption Act, 2007*⁶⁸⁰ was enacted in 2007. Therefore, two years of its operation were marked in 2009. Despite the fact that its enactment was intended to widen the scope of corruption cases by creating more corruption offences, the number of reported corruption cases to the PCCB was decreasing.

The situation on the ground does not suggest that numbers of corruption incidences or practices are decreasing (the explanations below expand this point). PCCB Director General Dr. Edward Hosea in his presentation of November 2009⁶⁸¹ stated that, the situation of reporting was taking the downward trend due to the following reasons:

- a) Fear to report: 66.8 percent of the people said that people who report corruption end up suffering the most;
- b) Weak protection of the whistle blowers: 73 percent felt they cannot receive protection after reporting corruption;
- c) Ineffective procedure: 50 percent believed that there was no need to report since nothing could be done on the culprit;
- d) Impunity: 50 percent said they didn't want to betray anyone by reporting.

⁶⁸⁰ It came into operation effectively from the 1st of July 2007 [See: Government Notice/ G.N No. 153/2007, dated 22nd June 2007].

⁶⁸¹ Dr. Edward Hoseah 'Presentation on the Tanzanian Efforts in Curbing Corruption – Progress Made as of November 2009. General Budget Support Review.' 23/11/2009 [Power-point presentation].

Moreover, delays in the prosecution of cases, as pointed out by the LHRC's interviewers, was one of the serious issues which lessen peoples' confidence in reporting cases to the PCCB. People would like to see actions being taken and the impact of the information they give to PCCB. The PCCB chief, Dr. Hosea, was quoted by the media in 2009 trading blames on the office of the DPP over delays in the prosecution of big cases. For his part, the DPP Mr. Elieza Feleshi was also quoted by the media dismissing the blames.

The LHRC expected that, with the increase of branches of the PCCB in the regions and with the widening of the scope of corruption offences, more cases would have been handled and prosecuted by 2009. The clashes between the DPP and PCCB over delays of cases are rather administrative, which could be rectified by giving each side the time limit within which a case could be handled.

It is also suggested that, the government should increase the budgetary allocations for the PCCB to enable it hire more lawyers and administrators. The regional offices of the PCCB need to be strengthened institutionally because the increase of corruption offences would also mean more work to be done. The staff and facilities for the PCCB should be beefed up.

Moreover, the LHRC suggests that research on this situation should be carried out by itself or any other institution in order to find ways of rectifying the situation. The ideal anti-corruption institution should be the one that people rely on to handle cases, not the one people don't find reliable.

9.3.4 Recent Findings of the State of Corruption in Tanzania

a) REPOA Survey 2006

The 2006 survey by REPOA⁶⁸² indicates that corruption is perceived as the major challenge by majority of citizens. Yet, many of them did not know how to report corruption cases to the authorities. Those who know how and where to report are fearful of negative repercussion. Rightly, as REPOA suggests, there is urgent need of administrative and legal protections of whistleblowers. The current law⁶⁸³ does not provide adequate protection of whistleblowers.

b) Human Rights Report of 2008

The LHRC report of 2008 also suggested that majority of people are of the view that corruption is still rampant, and of course it is steadily increasing in the Police, Judiciary and Tanzania Revenue Authority. The study was also of the view that, the Parliament is seen more enthusiastic in the fight against corruption than the PCCB.⁶⁸⁴

⁶⁸² REPOA, 2006, Citizen Demand Tougher Action on Corruption in Tanzania by REPOA.

⁶⁸³ The *Prevention and Combating of Corruption Act, 2007*.

⁶⁸⁴ See the table in the See: LHRC (2008) **Tanzania Human Rights Report of 2008**, page 163. The table quoted the results of the Opinion Survey carried out by the APRM Tanzania as part of the preparation of the APRM's country Review Assessment Report of Tanzania.

c) Transparent International Report 2009

The report of the *Transparence International of 2009* as indicated above revealed that generally corruption was still rampant in Tanzania and the situation, according to this report, was worsening. For instance, Tanzania scored 2.6 points compared 3.0 points it scored in 2008. The table above, which summarizes the findings of Transparence International report, gives more details.

d) FORDIA's Report on Awareness and State of Corruption in Tanzania of December 2009

The Corruption Perception Survey (CPS)⁶⁸⁵ of FORDIA⁶⁸⁶ which was conducted between March and July in 2009 and involved 40 Local Government Authorities (LGA) in ten regions,⁶⁸⁷ revealed that majority of the people held the view that corruption was still rampant in LGA of Tanzania. The survey concluded that, the factors or forces fueling corruption in LGA include greed and selfishness; immorality; need for service fast track; weak civic competence; poverty and meager salaries.

The CPS also found that TANESCO is on the top of the list as the most corrupt institution, basing on peoples' perception at it scored 82.35 percent of the overall corruption perception ranking of different sectors/departments, followed by the police, which scored 75.8 percent. Judiciary was on the third possiotn with 75.75 per cent of the same ranking. Each of these three institutions did not record any significant improvement in 2009 when compared with the 2008 performance as FORDIA reported in the previous year.

Ludewa district is perceived as the most corrupt after it scored 93.75 persen in the FORDIA surveyt, followed by Maswa and Kongwa districts, which scored 86.6 percent and 83.35 percent respectively. Others on the top ten include the districts of Nyamagana (79.15 percent); Arusha Urban (77.35); Geita (72.9 percent); Longido (72.65 percent); Kasulu (71.3 per cent); Kisarawe (70.4 percent) and Tabora Urban (70.15 percent).

⁶⁸⁵ The said CPS measures the level of public perception in respect of functions and operations of the integrity system. For more information on this visit FORDIA's website www.fordia.org

⁶⁸⁶ FORDIA (The Concern for Development Initiatives in Africa) is a non-governmental organization, registered and incorporated under the laws of Tanzania. It works on, among other issues, good governance and human rights. It is known for its credibility of scientific researches in Tanzania and beyond.

⁶⁸⁷ Mwanza, Tabora, Singida, Iringa, Arusha, Dodoma, Coast, Kigoma, Shinyanga and Ruvuma regions.

9.4 Situation of Political Corruption in Connection to Electoral Processes

9.4.1 Local Government Elections of 2009

Political corruption has a very wide meaning. But for this context, it will mean corrupt acts or activities which are connected to the electoral process. It is therefore any kind of inducement by a contestant or his/her supporter for the purpose of furtherance of his/her political ambitions.⁶⁸⁸ One of the examples of political corruption in Tanzania is Takrima [traditional hospitality].⁶⁸⁹ However, the provisions of the electoral laws which provided for Takrima, were repealed by the decision of the High Court in 2005.⁶⁹⁰ Therefore, the 25 of October 2009 local government elections were the first national elections to test the implementation of the decision of the High Court.

Indeed, before the said local government elections, the government formulated regulations which, inter alia, prohibited the use of Takrima and all other forms of political corruptions during the 2009 elections. This was, of course, in conformity with the ruling of the High Court of 2005 mentioned above. Regulation 18 of the Local Government (*Election of Chairperson of Hamlets and Members of the Hamlet committee at Township Level*) Regulations, 2009⁶⁹¹ states that: -

Mgombea, mwakilishi wake au chama cha siasa hakitaruhusiwa kuendesha kampeni zake kwa kutumia rushwa, takrima, kashfa, lugha ya matusi, ubaguzi wa kijinsia ...[The Contestant, his/her agents or a political party shall not be allowed to conduct election campaigns through corruption, traditional hospitality (takrima), defamation, abusive language, gender discrimination ...].

⁶⁸⁸ Transparency International 'Global Corruption Report 2007 – Corruption in Judicial System' (Report Cambridge 2007), at p. xxi; Tanzania Human Rights Report of 2007, *supra*, at p. 112; APRM Tanzania and University of Dar es Salaam 'Economic Governance' (Revised final report Dar es Salaam December 2008) (Economic Governance) at p. 48.

⁶⁸⁹ 'Takrima' means 'traditional hospitality'. It is type of political corruption whereby candidates were allowed (under the electoral laws) to offer some gifts to their supporters as a gesture of appreciation during election campaigns.

⁶⁹⁰ Seeing Takrima as a threat to the right of free and fair elections, LHRC and its partners filed petition in the High Court in 2005. [Case: LHRC, LEAT and NOLA Vs. The A.G, Misc. Civil Cause No. 77 of 2005 (Unreported), High Court (HC) of Tanzania at Dar es Salaam (Main Registry) before Kimaro, J; Massati, J; and Mihayo, J). The HC declared use of takrima during elections is unlawful because it is political corruption, which infringed the right to free and fair elections. The HC said that, the takrima made it difficult to distinguish expenses inevitable in the election process which did not amount to corrupt practices and those per se amounted to corrupt practices. Note that, takrima was recognized through Electoral Laws (Miscellaneous Amendments) Act, 2000 which amended sections 119(2) and 119(3) of the National Elections Act, Cap. 343 which provided that "anything done in a good faith as an act of normal traditional hospitality shall be deemed not to be treating." AND, that "Normal or ordinary expenses spent in good faith in the elections campaign or in the ordinary cause of election process shall be deemed not to be treating, bribery or illegal practice."

⁶⁹¹ Translated (into English language by report writers) from the *Kanuni za Uchaguzi wa Mwenyekiti wa Mtaa na Wajumbe wa Kamati ya Mtaa Katika Mamlaka za Miji*, 2009.

However, despite the High Court's ruling and the provisions of the said regulation and other laws, *Takrima* and other forms of corruption prevailed during the October 2009's local government elections.

For instance, according to the findings of the LHRC of December 2009,⁶⁹² several incidences of corruptions were identified by election monitors deployed by the LHRC for the Local Government Elections. Some of the incidences revealed by the LHRC's monitors were as follows:⁶⁹³

It was alleged that in Iramba District door-to-door night campaigns were conducted by Mr. Juma Mohamed Magishe, a CCM contestant and Mr. Omary Kinota, a CCM ward councilor. Those people bought for his supporters and other people local brews at local bars during the nights. This was confessed by young boys who were given money to vote for them.

Also during the campaigns in Kyela and Kasulu districts, some candidates allegedly bribed the voters with money, mosquito nets and mosquito repellants (*ngao*). Because of this situation, other contestants who didn't have money to do the same could not conduct their campaigns fearing that no body would go to their rallies because they had nothing to offer.

The LHRC urges the government and other stakeholders to provide the Tanzanian communities with the civic education for them to understand the electoral process and the importance of participating in elections.⁶⁹⁴

9.4.2 Funding of Political Parties: *The Election Expenses Bill/Act, 2009*

The *AU Convention on Prevention and Combating of Corruption of 2003* requires each state party to adopt legislative measures in order to proscribe the use of funds acquired through illegal and corrupt practices to finance political parties and incorporate the principle of transparency into funding of political parties.⁶⁹⁵ As of December 2009, there was no law enacted to comply with this requirement in Tanzania. However, on the 11 December 2009, the *Bill on Election Expenses Act, 2009*⁶⁹⁶ was made public by the government.

⁶⁹² See: LHRC (December 2009) Tanzania Local Government Elections Monitoring Report of 2009. This report is comprised of 95 individual reports of the Electoral Monitors (graduates from Universities) who were deployed in 95 different district of Tanzania Mainland to monitor electoral processes of the local government elections. The said report can also be accessed online through www.humanrights.or.tz

⁶⁹³ See: LHRC (December 2009) Tanzania Local Government Elections Monitoring Report of 2009, at pages 32 and 33.

⁶⁹⁴ More recommendations on these issues are contained in the LHRC (December 2009) Tanzania Local Government Elections Monitoring Report of 2009. See pages 61 to 65.

⁶⁹⁵ Article 10 of the *AU Convention on Prevention and Combating of Corruption of 2003*.

⁶⁹⁶ Gazetted in G.N 50, Volume 90 dated 11 December, 2009. The Act will provide for the funding of nomination process, election campaigns and election with a view to control the use of funds and illegal practices in the nomination process, election campaigns and elections, and to make provisions for allocation, management and accountability of funds. [See its long title].

The aim of monitoring the funding of political parties is to create a fair playing ground for all political parties participating in the democratic process. Moreover, control of funding of political parties is aimed at ensuring that, they obtain funds from legal sources and not for ill-intentions.⁶⁹⁷ Some of the tricky issues to address regarding funding of political parties includes: who will fund them? What amounts from legal sources of funding? How to fundraise? How to monitor funding? And what is the repercussion of funding or non-funding?

The proposed *Election Expenses Act, 2009* has tried to answer some of these questions and leave the rest in the impasse. It defines election expenses to mean all funds spent or expenses incurred in respect of the conduct and management of nomination process, election campaign and Election Day by a political party, candidate or the government.⁶⁹⁸

This law proposes that, the Registrar of Political Parties shall be the supervisor of the election expenses under this law⁶⁹⁹ and by virtue of the said powers, he/she shall have powers to demand information, including by entering in the premises of the political party, candidate or an agent.⁷⁰⁰

The proposed law suggests that each political party or candidate should fund its electoral process through its own resources;⁷⁰¹ but it requires the nominated candidate to declare funds in his/her possession or expect to receive for election expenses within seven days after nomination to the Secretary General of his/her party and to the Registrar within thirty days.⁷⁰²

The law also intends to limit election expenses by giving the Minister Powers of setting the amount of money to be spent for elections.⁷⁰³ The donation to the political party is limited to shillings 500,000 and 1,000,000 for individuals and institutions respectively.⁷⁰⁴ Foreign funding of any kind is restricted by this proposed law.⁷⁰⁵ The Civil Society Organizations are also required to disclose sources and amount of money they expect to spend in their activities associated with elections, such as advocacy and civic education.⁷⁰⁶

⁶⁹⁷ Note that, the LHRC finds prudent to have a control of finances to the political parties, but it insists that prudence should prevail on the fact that too many restrictions will inhibit most of the political parties to fail to run their activities. Therefore, much as this issue is appreciated, emphasis should be mainly on legality of the funds received and not otherwise.

⁶⁹⁸ Section 7 of the *Election Expenses Act, 2009*.

⁶⁹⁹ Section 4 of the *Election Expenses Act, 2009*.

⁷⁰⁰ Sections 5 and 6 of the *Election Expenses Act, 2009*.

⁷⁰¹ Section 8 of the *Election Expenses Act, 2009*.

⁷⁰² Section 9 of the *Election Expenses Act, 2009*.

⁷⁰³ Section 10 of the *Election Expenses Act, 2009*.

⁷⁰⁴ Section 11 of the *Election Expenses Act, 2009*.

⁷⁰⁵ Section 12 of the *Election Expenses Act, 2009*.

⁷⁰⁶ Section 13 of the *Election Expenses Act, 2009*.

Failure to disclose funds as it is indicated amounts to disqualification from participating in the election.⁷⁰⁷ The law proposes very good things, but has a number of unnecessary restrictions that need to be relooked at.

The critical issues which this law was required to address are legality of sources of funds to sponsor the electoral process and the monitoring of the utilization during elections. The restrictions are unnecessary because they have gone far to affecting the activities of Civil Society Organizations, which are non-partisan anyway.

The restriction of foreign funding and voluntary donation would have been more meaningful if the parties were to be subsidised. As others argue, it is the political responsibility of the government to facilitate the parties to contest in elections and compete in political arena at least during campaigns that is applicable even to unrepresented political parties.⁷⁰⁸ The LHRC agrees with those who assert that public funding is the only way of controlling illegal funds in our elections.

Moreover, the LHRC suggests that the scope of voluntary donations should be expanded because they are the main sources of funding for political parties. Also, it is hereby suggested that, restrictions of funding should be for individual candidates and not political parties as institutions. After all, it is easy to monitor the finances of the institutions than of individuals. Therefore, the proposed law should take all these into account.

9.5 Misuse of Public Funds, Illicit Enrichment as Acts of Corruption

The misuse of public funds especially for personal gain is one of the corruption elements as well as cause of corruption. Embezzlement causes inefficiency in the delivery of public service and unjustifiable enrichment of selfish public leaders. This kind of offence is called illicit enrichment. It is regarded by a number of foreign jurisdictions as part of corruption.

The *AU Convention on Prevention of Corruption of 2003* mentioned above directs state parties to adopt necessary measures to establish under their laws an offence of illicit enrichment.⁷⁰⁹ Double salaries and allowances have elements of misuse of public funds. The massive allocation of funds for allowances of public leaders, who earns good salaries, is a gross violation of the socio-economic rights of the public.

As stated above, corruption undermines growth and development by diverting resources away from development programmes meant for the poor people, who do not access health facilities, fail to get three meals a day and die of hunger and manageable diseases because of lack of sufficient funds.

⁷⁰⁷ Section 20 of the *Election Expenses Act, 2009*.

⁷⁰⁸ Khatibu M.K Mwinyichande “*Political Corruption and Funding of Political Parties in Tanzania*” Paper presented during the workshop on corruption and funding of political parties in Tanzania, 16 and 17 October 2008. See page 7.

⁷⁰⁹ Article 8(1) of the said convention.

The LHRC has been condemning the misallocation of funds to the detriment of the poor people. For a number of years, about two-third of the national budget of Tanzania has been eaten up by recurrent expenditures,⁷¹⁰ which include salaries, cost of running expensive vehicles and allowances. In the last national budget for 2008/09, the government budgeted T.shs 506 billion (USD 390 million) for allowances of senior civil servants. This amount is equivalent to the annual basic salaries for 109,000 teachers, or over two third of all teachers.⁷¹¹

In 2009/10, the amount allocated for allowances was equal to 59 percent of the total wage bill.⁷¹² The Policy Forum and Twaweza⁷¹³ found during the year 2009 that, despite the level of poverty of Tanzanians and regardless of the economic crisis and inability of the government to provide social services to its people, between 2001 and 2007, the real amount spent on allowances increased more than 3 folds. The said allowances for the current budget were increased by 13 percent.

The table below, which is quoted from Policy Forum and Twaweza of 2009 report, indicates the top ten recipients of the allowances (all figures are in Billion T.shs):

| | Recipient | 2007/ 2008 | 2008/ 2009 | 2009/ 2010 | Increase 2008/09– 2009/10 |
|-----|--|---------------|---------------|---------------|------------------------------|
| 1. | President's Office and Cabinet Secretariat | 114.1 | 113.1 | 148.7 | 12% |
| 2. | The National Assembly Fund | 20.8 | 26.3 | 36.8 | 40% |
| 3. | Ministry of Home Affairs – Police Force | 27.7 | 26.5 | 33.3 | 26% |
| 4. | Ministry of Education and Vocational Training | 22.2 | 27.3 | 32.3 | 18% |
| 5. | National Services | 2.0 | 2.4 | 29.4 | 1125% |
| 6. | Ministry of Home Affairs – Police Force | 11.9 | 10.5 | 16.5 | 57% |
| 7. | Accountant General's Department | 11.3 | 12.8 | 16.5 | 29% |
| 8. | PMO RALG | 6.3 | 5.8 | 13.5 | 133% |
| 9. | Ministry of Agriculture, Food Security and Cooperative | 13.8 | 9.4 | 12.3 | 31% |
| 10. | Ministry of Natural Resources and Tourism | 2.5 | 5.2 | 11.0 | 112% |

Source: Policy Forum/ Twaweza (YAV) and verified the Budget Books – 2009.

⁷¹⁰ See: LHRC (2007) Tanzania Human Rights Report of 2007, page 4. It was stated that the government planned to spend 3.4 trillion out of which 2.1 trillion (being two-third of the budget) was for recurrent expenditure. Moreover, the LHRC (2008) Tanzania Human Rights Report of 2008, page 4, note with concern that, out of 7.2 billion estimated as overall government expenditure for the financial year 2008/9, more than 4.7 billion of the Tanzanian's budget was allocated for recurrent expenditures (public debt, payments to the ministries, local government as wages and salaries, vehicle and allowances).

⁷¹¹ Policy Forum and Twaweza, *Reforming Allowances: A Win-Win Approach to Improved Services Delivery, Higher Salaries for Civil Servant and Saving Money. Policy Brief 9.09*, page 1.

⁷¹² That is pensionable and non-pensionable basic salaries plus pensions.

⁷¹³ Policy Forum and Twaweza, *Reforming Allowances: A Win-Win Approach to Improved Services Delivery, Higher Salaries for Civil Servant and Saving Money. Policy Brief 9.09*, page 1.

The justification given for this amount of money spent in allowances of mostly senior public officials is most of the time vague.⁷¹⁴ Junior prisons officers, police officers, magistrates, doctors, teachers, nurses and other civil servant, who work under very harsh conditions in rural areas, do not get these allowances. These junior servants need the allowances as incentives and risk allowances. To these inferior cadres of public service, this would have been justifiable, not officials at the ministerial level, who are given all the essential services including cars and houses.⁷¹⁵

Mimi nilikuwa mtumishi wa umma kwa muda mrefu, nimehama idara mbali mbali ila maisha ni magumu vilevile, ushwawishi wa kupokea rushwa ndiyo umenifikisha hapa nilipo. Utafanyaje sasa na pesa ni lazima bwana. [I was public servant for a long time, transferred to different departments, but the life remained the same. The inducement of bribe is what has landed me here (in the prison). What can you do Mr, and money is very essential?].

The amount of funds allocated for allowances is extremely high for a poor country like Tanzania. The Ministry of Finance and Economic Affairs is not doing enough to control the expenditures. There are expensive and excessive travel and unnecessary ‘official’ trips, as well. For instance, the Tanzanian delegation to the annual meeting of the IMF and World Bank held in Istanbul, Turkey on the 2nd to 8th of October 2009 comprised 25 delegates. Other East African countries sent less than 8 delegates. The numbers of delegates of the East African countries were as follows:

| Delegates from East African Countries to IMF and WB Annual Meeting, Turkey, October 2009 | | | | | |
|--|----------|--------|--------|---------|-------|
| Country | Tanzania | Rwanda | Uganda | Burundi | Kenya |
| No. of Delegates Sent | 25 | 5 | 8 | 5 | 8 |

Source: Extracted from ‘Reforming Allowances ...’ Policy Forum, Policy Brief 9.09 [May view it through www.policyforum-tz.org accessed on 27th December 2009].

⁷¹⁴ Higher cadre civil servants are entitled to an allowance of T.shs 80,000 per a day when travelling to cities and municipal councils; while the lower cadre civil servants are entitled to just half of it (T.shs 45,000). Note that, 1347 T.shs is equal to 1 USD. Note that, the public officials are paid between 310 USD and 420 USD per a day as allowances while travelling outside Tanzania. While these officials are receiving such amount of moneys, a farmer at rural area, who has five children or more, very hardly receive one dollar per a day [See: Per Diem and Minimum Wage: PO-PSM, Poverty Line – National Bureau of Statistics of 2009.

⁷¹⁵ It is said that, the officials who have salary scales of PGSS/PTSS/PHTS/PUTS 17-21 (who receive around 1.3 million to 3.0 million T.shs per month as salary), are eligible for Housing Allowance which is up to 30% of their monthly salary for every month. It is ridiculous to note that, those who get more are given more allowances instead of balancing the income as it is suggested above. According to Policy Forum (see reference above), the 2008/9’s T.shs 19.5 billion allocated for the few public officials, would have paid total of 4,400 teachers).

By just using simple mathematics, the total number of the delegates of other 4 East African countries (that is 5 from Rwanda, 8 from Uganda, 5 from Burundi and 8 from Kenya) is equal to the number of Tanzanian delegates.

Tanzania has been blamed by its citizens for being insensitive in spending. During the year 2009, the Prime Minister, Honorable Mizengo Pinda, while in Dodoma, blamed public officials for buying and using luxurious vehicles while most of the dispensaries in the villages lacked essential medicine and equipment.⁷¹⁶

It is on record that, Tanzania uses billions of money for luxurious cars such as Toyota Land-Cruisers – Gx and Vx of which Tanzania is estimated to own more than 15,000. One Land-cruiser is sold at between T.shs 80,000,000 (USD 60,000) and T.shs 120,000,000 (USD 90,000). The running costs for one luxurious car of that nature are estimated to be around T.shs 1,500,000 (USD 1,200) per month.⁷¹⁷ That means the government spends billions of money per month for servicing luxurious cars, leaving the burden to the taxpayers alone. Most government officials are exempted from taxes.

The LHRC here reiterates that the challenging conditions that junior public officials experience in rural areas tend to force them to accept bribes or deliver poorly in public service. The high allowance rates allocated to senior public officials are by Tanzanian standards a lifestyle, unjustifiable. The LHRC also finds receipt of double allowances by Members of Parliament and other public officials as immoral and unethical.

⁷¹⁶ See: MP Warns on the use of luxurius vehicles: The Citezen, Jan 15th , 2010

⁷¹⁷ The information gathered from Ramadhani Simweta 'Serikali yashitukia mzigo wa mashangi-gi' [The Government is alerted of the Posh Cars] Mwananchi 9/3/2009 AND from other sources.

Chapter Ten

Tanzania and International Human Rights Law

10.0 Introduction

TANZANIA'S obligation to the international human rights law is inevitable because it is a member State to various international legal instruments which are binding in nature. Moreover, despite that reality, in recent years, the international human rights law has had an ever-growing impact on domestic judges, prosecutors and lawyers⁷¹⁸ (even for treaties and other instruments which Tanzania has not ratified).

It is therefore increasingly becoming necessary to keep abreast the knowledge of human rights and more importantly ensuring that, the principles contained in the international human rights laws, are domesticated into Tanzanian laws.

Records show that Tanzania is a signatory to many human rights treaties, conventions and has acceded to a number of declarations, guidelines, rules and directives of the UN, African Union, East Africa and other institutions such as the SADC, NEPAD. However, Tanzania follows a dual legal system in which a treat becomes applicable in the domestic courts after being ratified and domesticated in a form of enacting or reforming national laws to accommodate principles of the treaty.

The process of ratifying any treaty is stipulated under the provisions of the *Constitution of the United Republic of Tanzania of 1977*, which states that the National Assembly (parliament) shall deliberate upon and ratify all treaties and agreements to which the Tanzania is a party and the provisions of which require ratification⁷¹⁹ by 'Yes' or 'No' votes of the Members of Parliament.

Despite the ratification of many of the treaties discussed in previous chapters of this report, experience has shown that what is intended in such legal instruments to all parties is contrary to what is happening on the ground. This fact has been repeatedly stated in many previous *Tanzania Human Rights Reports reports*. Moreover, the country has been falling short of complying with international obligations by its failure to submit periodical reports on time and its reluctance to ratify some of the fundamental treaties.

⁷¹⁸ UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, page 2.

⁷¹⁹ Article 63 (3) (e) of the Constitution of the United Republic of Tanzania of 1977.

10.1 Ratification of Human Rights Treaties

Tanzania failure to ratify and domesticate some of the international and regional treaties justifies the country's deficiencies in protecting and realizing people's rights. The following treaties remain in shelves in Tanzania because they have neither been signed nor ratified:

- a) The *Optional Protocol to the International Covenant on Civil and Political Rights*, 1966, which allows individuals to submit complaints directly to the UN Human Rights Committee;
- b) The *Second Optional Protocol to the International Covenant on Civil and Political Rights*, 1989, which calls for the abolition of the death penalty;
- c) The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 and its *Optional Protocol*, which require states to prevent and prohibit torture; and,
- d) The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990;

As pointed out in last year's report, it is strange to see that, Tanzania is one of the very few countries around the world which have not yet ratified the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, while it claims to the outside world that it is a peaceful country which upholds principles of human rights.⁷²⁰

However, during the year 2009, Tanzania ratified (in April 2009) the *Convention on the Rights of Persons with Disabilities of 2003*. This was a milestone towards effective protection of the rights of this special group in the near future. However, the notable processes to domesticate the principles of this Convention were not seen pushed further, as of December 2009.

10.2 Reports to Treaty Monitoring Bodies

Tanzania, being a signatory of the International treaties, is entitled to submit periodic reports on all covenants ratified to the UN Human Rights Committee. But the history of the periodic reports submitted from Tanzania to the Commission shows lack of efficiency as reports are not submitted on time.

The delays, though some can be justified, have posed a huge challenge to the implementations of these conventions. One may be convinced that the delay depicts the lack of seriousness on the part of the government in safeguarding human rights or giving the agenda low priority.

⁷²⁰ LHRC (2008) Tanzania Human Rights Report of 2008, page 169

Some of the delays on submitting the reports to the Human Rights Commission were detailed in the *Tanzania Human Rights Report of 2008*⁷²¹ which includes:

■ *The International Covenant on Civil and Political Rights, 1966*. Requires a member state to submit a report after every five years. On 8 October 2007, Tanzania submitted its periodic report and in April 2009 resubmitted supplementary report. Note that, the report was approximately five years late. Tanzania's report was reviewed by the UN Human Rights Committee on 12 and 13 July 2009. The Concluding observations of the Committee were released on 6 August 2009.

■ *The International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, which Tanzania ratified in 1972, requires member states to submit a report after every two years. Tanzania submitted its eighth to sixteenth reports to the Committee on 2 August 2005. However, it is yet to submit its seventeenth and eighteenth reports, which were due on 26 November 2007. Concluding observations of the Committee on the Elimination of Racial Discrimination for the first reports submitted were released on 27 March, 2007.⁷²²

■ *Under the Convention on the Elimination of all Forms of Discrimination against Women, 1979*, a member state has to submit a report after every four years. Tanzania submitted its fourth, fifth and sixth periodic reports to the CEDAW Committee on 30 March 2009.⁷²³ These reports were submitted approximately five years after their due dates. Tanzania's seventh and eighth periodic reports are due on 30 September 2014.

■ Under the *Convention on the Rights of the Child, 1989*, Tanzania is required to submit a report after every five years. The last time Tanzania submitted its report to this Committee was on October 20, 2004. The report was approximately six years late. Tanzania's next report is due on 9 January 2012.

■ On 7 July 2007, Tanzania submitted a periodic report (comprising the initial report of the state part) to the *Committees for the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000*. This report was due in 2005.⁷²⁴ Therefore the government of Tanzania delayed it for two years.

⁷²¹ See page 170.

⁷²² See: <http://tb.ohchr.org> accessed on 27 December 2009.

⁷²³ See: <http://tb.ohchr.org> accessed on 27 December 2009.

⁷²⁴ See: <http://www2.ohchr.org/english/bodies/crc/crcs49.htm> accessed on 27 December 2009.

■ Tanzania submitted its report for the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, 2000 in August 2008,⁷²⁵ which was also more than a year late.⁷²⁶

■ The *International Covenant on Economic, Social and Cultural Rights, 1966* requires member states to submit periodic reports after every five years. While Tanzania ratified this instrument in 1976, it submitted a combined report of initial, '1st, 2nd, 3rd, and 4th periodic reports' on 25 August 2009, which again was late for over 33 years.

While commending the government for its efforts of submitting the reports to the treaty bodies, which are many and demanding, the LHRC suggests once again that, the government of Tanzania should establish a specific *Inter-Agency Committee or Committees* that would, among other things, advise the government on its obligations under various human rights treaties. This Committee would keep track of the UN timetables and advise the government accordingly. It could be coordinated under the Human Rights Department within the Ministry of Justice and Constitutional Affairs.

This is important because, according to the LHRC observation, the delay in submitting the reports to the treaty bodies is mainly perceived as due to the lack of specific coordination of obligations to the treaty monitoring bodies; insufficient capacity and knowledge on requirements of periodic reports and insufficient of funds to conduct researches and collecting data, including validation of the reports.

The LHRC also strongly advises the government to involve the CSOs in all stages of the preparation of the reports. This will reduce the current clashes of information between the government and the CSOs when the treaty bodies review the reports.

Finally, it is hereby advised that, there should be specific Plan of Action, preferably under the coordination of the proposed *Inter-agency committee*, for monitoring the implementation of the *Concluding Observations (COs)*. It should be noted that, after the deliberation of the country reports, normally the treaty bodies issue recommendations known as Concluding Observations. The COs contains instructions on issues which the State party is supposed to implement within a certain period of time before the next reviewing session. The CSOs are also advised to inter-play at this stage as well.

⁷²⁵ <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.TZA.Q.1.pdf> accessed on 27 December 2009.

⁷²⁶ UN Office for the High Commissioner for Human Rights 'Report Status by Country: Tanzania' <<http://www.unhchr.ch>> accessed 6 February 2009.

⁷²⁷ See: <http://www2.ohchr.org/english/bodies/cescr/future.htm> accessed on 28 December 2009.

Conclusion

TANZANIA has made commendable strides towards the promotion and protection of human rights. The government has tried a lot to submit periodical reports to the treaty monitoring bodies which were long overdue. It has also enhanced its legal framework by creating new offences, including trafficking in human. The Police Force of Tanzania also continued to reform its 'irking' behaviour and now at least the newly formulated Polisi Jamii Programme is somehow working.

The economic development is progressing, but in a snail pace. Poverty, which causes at least 70 percent of Tanzanians fail to get very basic living essentials, is still prevailing. Uneven economic planning continued to cause urbanization and increasing unemployment rates. The Kilimo Kwanza scheme is seen as 'just another programme,' which has to fail, considering the past experience.

Civil and political rights were infringed in number of ways, including denial of the right to life where by thousands of people died in 2009 because of weak legal protection, witchcraft illusions and reckless driving. Moreover, new kinds of incidences such as citizenry disorder increased in 2009. All these issues need immediate and serious attention in order to redress the situation.

Therefore, it is the conviction of the LHRC that during this time when Tanzania is emphasizing on development to each citizen on an individual capacity, these efforts need to go hand in hand with the promotion of human rights, which is centered in the broad aspect of development.

The LHRC believes that, since the destiny of Tanzania's future rests is in the hands of the government and each one of us, it's important we all get the opportunity to fully participate in the promotion and protection of human rights. It is high time also to retrieve the lost patriotism, the reason attributed to increased corruption and other forms of violations.

Zanzibar Human Rights Report - 2009

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List of Abbreviation

| | |
|--------|--|
| ACHPR | African Charter on Human and Peoples' Rights |
| ACHR | American Convention on Human Rights |
| ADR | Alternative Dispute Resolution |
| AIDS | Acquired Immunodeficiency Syndrome |
| APRM | African Peer Review Mechanism |
| ASP | Afro-Shirazi Party |
| CCM | Chama cha Mapinduzi |
| CEDAW | Convention on Elimination of all Forms of Discrimination Against Women |
| CFM | Cases Flow Management |
| CHRAGG | Commission for Human Rights and Good Governance |
| CPS | Centralized Payment System |
| CRC | Convention of the Rights of the Child |
| CUF | Civic United Front |
| DNA | Deoxyribo Nucleic Acid |
| DPP | Director of Public Prosecution |
| EIA | Environmental Impact Assessment |
| GBV | Gender Based Violence |
| GSO | Government Security Office |
| HIV | Human Immune Deficiency Virus |
| IAC | Inter-African Committee |
| ICCPR | International Convention on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICRDPD | International Convention of the Rights and Dignity of People with Disability |
| ILO | International Labour Organization |
| IMFS | Integrated Financial Management System |
| JKU | Jeshi la Kujenga Uchumi |
| KMKM | Kikosi Maalum cha Kuzuia Magendo |
| MHs | Members of House of Representatives |
| MKUZA | Mkakati wa Kukuza Uchumi na Kupunguza Umasikini |
| MLYWCD | Ministry of Labour, Youth Development, Women and Children |
| MLYWCD | Ministry of Labour, Youth, Women and Children Development |
| MoEVT | Ministry of Education and Vocational Training |
| MoHSW | Ministry of health and Social Welfare |
| MPs | Members of Parliament |
| NGOs | Non Governmental Organizations |
| PVR | Permanent Voter Register |
| SACCOS | Saving and Credit Cooperatives Societies |
| TAMWA | Tanzania Media Women Association |
| TAWLA | Tanzania Women Lawyers Association |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| URT | United Republic of Tanzania |

| | |
|--------|-------------------------------------|
| ZAC | Zanzibar Aids Commission |
| ZACP | Zanzibar AIDS Control Programme |
| ZAFELA | Zanzibar Female Lawyers Association |
| ZAN-ID | Zanzibari Identity Card |
| ZATU | Zanzibar Teachers Union |
| ZBC | Zanzibar Business Council |
| ZEC | Zanzibar Electoral Commission |
| ZLRC | Zanzibar Law Review Commission |
| ZLS | Zanzibar Law Society |
| ZLSC | Zanzibar Legal Services Centre |
| ZNP | Zanzibar Nationalist Party |
| ZPPP | Zanzibar and Pemba Peoples Party |
| ZRB | Zanzibar Revenue Board |
| ZSSF | Zanzibar Social Security Fund |
| ZSTC | Zanzibar State Trading Corporation |

Acknowledgments

THIS Report has been a joint enterprise, between the Centre and its staff on the one hand and its stakeholders on the other. It is therefore important to thank all those who in one way or the other have contributed to the making of this Report.

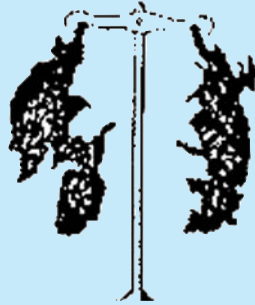
In particular, we would like to thank our consultants who did the research and took their valuable time to prepare the draft Report which was subjected to strict scrutiny by both the Board and the staff of the Centre. These are Mr. Ally Saleh ‘Alberto’ and Mr. Mohamed Khamis Hamad.

The team of experts scrutinising the Report comprised of Ms. Safia Masoud Khamis, a member of the Board of Trustees; Ms. Josefrieda Pereira, a member of the Board of Trustees; Mr. Iss-haq Ismail Shariff, the Centre’s Executive Director; Mr. Ali Uki, a close associate of the Centre. They spent long hours of their lives ensuring that what came out of the Centre was perfect. We thank them most sincerely.

Lastly but not least is the co-ordinator of the project Ms. Harusi Mpatani who did the follow-up and kept the two sides connected throughout the year.

However, at the end of the day, the Centre and its Board of Trustees remain fully responsible to both the content and form of this Report.

**ZANZIBAR LEGAL SERVICES CENTRE
(ZLSC)
TRANSFORM JUSTICE**



INTO PASSION

Introduction

THE Zanzibar Legal Services Centre (ZLSC) was established in 1992. It is a Non – Governmental, voluntary, independent and non-profit making organisation whose major aim is to provide legal services to poor, women, children, the disabled and other disadvantaged sections of the society; popularise knowledge on the law; and produce publications in all areas of legal concern to the people of Zanzibar. The Centre strives to ensure that the people have a basic understanding of legal and human rights principles and can act on them in order to build a society based on rule of law, good governance and the observance of human rights norms.

Purpose and Objectives

The Centre undertakes normal legal duties such as legal representation, litigation and arbitration in public interest cases for the poor and disadvantaged members of the Zanzibar society. In addition, the Centre provides legal education to the public in order to raise their awareness on their basic rights and civic responsibilities. To this end, the Centre conducts, co-ordinates and commissions research on legal issues; arranges workshops and seminars to enable scholars and people from all walks of life to meet, discuss and develop policies on the law; and to organise educational and scientific programmes for the purpose of training individuals and groups identified as being most likely to benefit from focussed and intensive communication of research results.

Activities

The main objectives of the Centre are implemented through among other avenues, legal counselling, human rights course, a radio programme with Sauti ya Tanzania Zanzibar and a television programme with Television Zanzibar; legal aid camps; para-legal training; film shows; ZLSC Newsletter; public lectures; conferences; workshops; seminars; and Specialised and tailor-made training. The Centre has also a Documentation Centre for legal and human rights texts and publications. It acts as a repository for all Zanzibar legal materials that can be used for research purposes.

Mission Statement

ZLSC is a non-governmental, voluntary, independent and non-profit making organisation whose major aim is to provide legal services to the poor, women, children, the disabled and other disadvantaged and vulnerable groups in the society; to promote and advocate for the respect and observance of human rights, popularise knowledge of law and produce publications in all areas of legal concern to the people of Zanzibar.

Organisational Structure

ZLSC is a registered Trust with a Board of Trustees comprising of the following members:

Prof. Chris Maina Peter – Professor of Law, University of Dar es Salaam, and Advocate, the High Court of Tanzania – Acting Chairperson;

Hon. Safia Masoud Khamis – former Commissioner, Tanzania Commission of Human Rights and Good Governance now with the Office of the Director of Public Prosecutions, Zanzibar - Trustee;

Mrs. Josefrieda Pereira – Lecturer, State University of Zanzibar – Trustee; and

Mr. Iss-haq Ismail Shariff – Advocate - Executive Director and Secretary to the Board of Trustees.

Apart from its head office in Zanzibar Town in Unguja, the Centre also has an office in Chake Chake, Pemba.

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.

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Preface

THE Zanzibar Legal Services Centre (hereinafter referred to as ZLSC or the Centre) is a nongovernmental organization which is non profit making and non-partisan. It is registered in Zanzibar under the Land Perpetual Succession Decree (CAP 101) and got Certificate of Compliance under Section 58 of the Societies Act, 1995.¹

ZLSC was established with one of its the main objective being to provide legal aid and assistance to the people in Zanzibar especially the poor, marginalised, women, children, and the disadvantaged sections of the society.

Since its establishment, ZLSC has been actively involved in various legal and human right activities. One of the sacred tasks that ZLSC has been doing since 2006 is the preparing the Zanzibar Human Right Report. This report provides comprehensive statement on the state of Human Rights on the Isles.

The 2009 Human Rights Report contains information which was well researched by writers. Both primary and secondary methods for data collection were used in writing this report. The first method involved interviews with different people in Zanzibar. The second method consisted of gathering data from various resources such as reports of Non-governmental Organizations, Government publications, Newspapers and various internet sources. Judicial decisions and domestic legislations were also relied upon in writing this report. The writers also referred to universal and regional human rights instruments.

Writing this report was limited to availability of some relevant information which would add more value to it in showing the state of human rights in Zanzibar. This situation was however not so smooth due to the fact that some of the interviewees were reluctant to give their opinion on certain points due to fear of getting into problems. Some of them agreed to respond positively but on conditions that their names remain undisclosed. Some of the information was hardly available due poor records by governmental and private institutions.

Generally, the 2009 Human Rights Report shows some improvement on the state of human right in Zanzibar while there are certain areas which need some improvements. Recommendations to improve those areas have been provided in this report.

¹ Act No. 6 of 1995.

CHAPTER ONE

General Overview of Zanzibar

1.0 Introduction

The word Zanzibar is said to have its origin in Persian or Arabic languages derived from the word Zangh Bar or Zenj that means the “Negro Coast”². Historically, Zangh or Zenj Empire consisted of wide parts of the Eastern African coasts including Mozambique, Lamu, Malindi, Mombasa, Unguja, Pemba, Kilwa, Sofala to the Congo³. However the Partition of Africa by colonial powers during 19th Century affected Zangh/Zenj Empire whereby colonial powers merged some parts forming the so-called Zenj/Zangh Empire into their areas of influences. For example Lamu, Malindi and Mombasa were merged to the present Kenya under the British and Mogadishu, Marka and Brava to present Somalia. The present Zanzibar remained only with Unguja and Pemba islands.

1.1 History

Zanzibar became independent from Britain, who had governed in co-operation with the Sultan,⁴ by handing independent instruments on 10th December, 1963,⁵ On 12th January, 1964 a revolution took place⁶ which overthrew the Sultanate post-independence government allowing members of the majority black population their first chance to hold political power; and the Government of Zanzibar proclaimed a Revolutionary

² See www.zanzinet.org/Zanzibar/people & www.combatinghivaidstz.org.

³ Ibid.

⁴ Arab Sultans from Oman ruled Zanzibar either on their own or with the British from 1828 to 1964. The rulers of Zanzibar from Seyyid Said bin Sultan to Sultan Jamshid bin Abdullah are listed in PATIENCE, Kevin, *Zanzibar: Slavery and the Royal Navy*, Bahrain: Dar Akbar Al Khaleej Press and Publishing House, 2000. See also KHAMIS, K.S. and H.H. Omar (eds.), *Historia Fupi ya Zanzibar*, Zanzibar: Al-Khayria Press Ltd., 1994; AL-ISMAILY, Issa Bin Nasser, *Zanzibar: Kinyang'anyiro na Utumwa*, Ruwi: *Sultanate of Oman*, 1999; FAIR, Laura, *Pastimes & Politics: Culture, Community, and Identity in Post-Abolition Urban Zanzibar, 1890-1945*, Athens and Oxford: Ohio University Press and James Currey, 2001; and SHAHBAL, Suleiman Said, *Zanzibar: The Rise and Fall of an Independent State 1895 – 1964*, Dubai, 2002.

⁵ Constitution of the State of Zanzibar of 1963. On the road to independence see OTHMAN, Haroub, “Political Succession in Zanzibar,” in PETER, Chris Maina and Fritz Kopsieker (eds.), *Political Succession in East Africa: In Search for a Limited Leadership*, Kampala and Nairobi: Kituo Cha Katiba and Friedrich Ebert Stiftung – Kenya Office, 2006, p. 123.

⁶ On the Zanzibar Revolution of 12th January, 1964 see LOFCHIE, Michael F., *Zanzibar: Background to the Revolution*, Princeton: Princeton University Press, 1965; OKELLO, John, *Revolution in Zanzibar*, Nairobi: East African Publishing House, 1967; REY, L., “The Revolution in Zanzibar,” in CLIFF, Lionel and John S. Saul (eds.), *Socialism in Tanzania (Volume One – Politics): An Interdisciplinary Reader*, Dar es Salaam: East African Publishing House, 1972, p. 29. See also No. 25 *New Left Review*, May-June, 1964, p. 29; MARTIN, Esmond Bradley, *Zanzibar: Tradition and Revolution*, London: Hamish Hamilton, 1978; BABU, Abdulrahman M., “The 1964 Revolution:

Government and a democratic rule.⁷ Sheikh Abeid Amani Karume became the President of Zanzibar and Chairman of the Zanzibar Revolutionary Council until his assassination on 7th April, 1972.

The Union of Tanganyika and Zanzibar was established on 26th April, 1964⁸ and the new country was officially named the United Republic of Tanzania (URT) in October 1964.⁹ Mwalimu Julius Kambarage Nyerere became the first President of the United Republic of Tanzania while Sheikh Abeid Amani Karume became the Vice President¹⁰ of the country in addition to his position as the President of Zanzibar and the Chairman of the Revolutionary Council of Zanzibar.

Lumpen or Vanguard," in SHERIFF, Abdul and Ed Ferguson (eds.), *Zanzibar Under Colonial Rule*, London: James Curry, 1991; CLAYTON, A., *The Zanzibar Revolution and Its Aftermath*, London: C. Hurst & Co, 1976; PETERSON, Don, *Revolution in Zanzibar: An America's Cold War Tale*, Boulder Colorado: Westview Press, 2002

⁷ Presidential Decree No. 1 of 1964.

⁸ On the Union between the then Tanganyika and Zanzibar see *inter alia*, BAILEY, Martin, *The Union of Tanganyika and Zanzibar: A Study in Political Integration* (Eastern African Studies IX), New York: Syracuse University, 1973; VONHOFF, Y., *Union Without Unity: The Case of Tanganyika and Zanzibar*, A Master of Laws Dissertation, University of Leiden, The Netherlands, 1987; SHIVJI, Issa G., *Tanzania: The Legal Foundations of the Union*, Dar es Salaam: Dar es Salaam University Press, 1990; JUMBE, Aboud, *The Partner-ship: Tanganyika Zanzibar Union - 30 Turbulent Years*, Dar es Salaam: Amana Publishers, 1994; MWAKYEMBE, Harrison G., *Tanzania's Eighth Constitutional Amendment and Its Implication on Constitutionalism, Democracy and the Union Questions*, Münster and Hamburg: LIT Verlag, 1995; FENGLER, Wolfgang, *Tanzania at Cross-roads: The Conflict of the Union, Its Reasons and Its Consequences*, Munich: University of Augsburg, 1995; DOURADO, Wolfgang, "Whither the Tanzania Union?" in SOCIETY FOR INTERNATIONAL DEVELOPMENT (TANZANIA CHAPTER), *Towards 1995: Proposals for a New Constitutional, Electoral and Union Order*, Dar es Salaam: Friedrich Naumann Stiftung, 1995, p. 23; BAKARI, Mohamed Ali, "The Union Between Tanganyika and Zanzibar Revisited," in ENGEL, Ulf et al (eds.), *Tanzania Revisited: Political Stability, Aid Dependency and Development Constraints*, Hamburg: Institute of African Affairs, 2000, p. 133; MWAPACHU, Juma Volter, *Confronting New Realities: Reflections on Tanzania's Radical Transformation*, Dar es Salaam: E & D Limited, 2005, p. 213; PETER, Chris Maina and Haroub Othman (eds.), *Zanzibar and the Union Question*, Zanzibar: Zanzibar Legal Services Centre, 2006; and OTHMAN, Haroub, "The Union Between Tanganyika and Zanzibar – Tanzania: The Withering of the Union," in PETER, Chris Maina and Saida Yahya-Othman, (eds.), *Haroub Othman: Farewell to the Chairman*, Zanzibar: Zanzibar Legal Services Centre, 2009, p. 277.

⁹ The name Tanzania was coined after a national competition to replace the longer name of the United Republic and Tanganyika and Zanzibar.

¹⁰ This arrangement was agreed upon in the Articles of the Union. These Articles are reproduced in full in AYANG, Samuel G., *A History of Zanzibar: A Study in Constitutional Development 1934-1964*, Nairobi: Kenya Literature Bureau, 1970, p. 181. See also SEATON, Earle E. and Sosthenes T. Maliti, *Tanzania Treaty Practice*, Nairobi: Oxford University Press, 1975. The arrangement was completely changed in 1994 through the 11th Amendment the Constitution of the United Republic of Tanzania of 1977 which removed the President of Zanzibar from Vice Presidency and reducing him to a mere member of the Union Cabinet. Professor Shivji correctly observes that "Zanzibar's President is a Stranger in the Union Cabinet." See SHIVJI, Issa G., *Let the People Speak: Tanzania*

The two countries united into one State. In the process, the government of Tanganyika disappeared while the Revolutionary Government of Zanzibar remained intact. All issues relating to the former Tanganyika were to be handled by the Union Government and those relating specifically to Zanzibar were placed in the hands of the Revolutionary Government of Zanzibar. Then there were 11 issues which were specifically mentioned in the Articles of the Union as Union Matters which covered the two parts of the Union.¹¹

Over time, the Union Matters have increased from the original 11 to 22. These Matters are now listed in Schedule One to the Constitution of the United Republic of Tanzania of 1977. The addition to the Union Matters include: All Matters relating to Coinage, Currency for the purpose of legal tender (including notes), Banks (including savings Banks) and all Banking Business, Foreign Exchange and Exchange Control, Industrial Licensing and Statistics, Higher Education, Mineral Oil Resources including Crude Oil and Natural Gas, The National Examinations Council of Tanzania and all matters connected with the functions of the Council, Civil Aviation, Research, Meteorology, Statistics, The Court of Appeal of Tanzania and Registration of Political Parties and other matters relating to Political Parties.¹²

Zanzibar has her own Executive headed by the President of Zanzibar and Chairman of the Revolutionary Council, Legislature in the name of the House of Representatives and the Judiciary provided for under the Constitution of Zanzibar of 1984¹³ and recognised in the Constitution of the United Republic of Tanzania of 1977.¹⁴

Down the Road to Neo-Liberalism, Dakar: for the Council for the Development of Social Science Research in Africa, 2006, p. 123.

¹¹ The Union matters as enshrined under Articles of Union were: (1). The Constitution of Tanzania and the Government of the United Republic; (2). External Affairs; (3). Defence; (4). Police; (5). Emergency Powers; (6). Citizenship; (7). Immigration; (8). External Trade and borrowing; (9). The Public Service in the United Republic; (10). Income Tax, Corporation Tax, Customs and Excise; and (11). Harbours, Civil Aviation, Posts and Telegraphs.

¹² See the First schedule of the URT Constitution, 1977. The legality of the addition of the 11 more Union Matters after the Union through the Parliament of the United Republic of Tanzania is a highly contested issue. See for instance, BAKARY, Abubakar Khamis, "The Union and the Zanzibar Constitutions," in PETER, Chris Maina and Haroub Othman (eds.), Zanzibar and the Union Question, op. cit., at p. 1; and MAALIM, JUMA, Mahadhi, The Union between Tanganyika and Zanzibar and the Right of Secession Under International Law and National Laws," in *ibid.*, at p. 109.

¹³ Constitution of Zanzibar of 1984. This Constitution is analysed in BAKARY, Abubakar Khamis, "The 1984 Zanzibar Constitution," Volume 22 Nos. 1 & 2 The African Review, 1995, p. 84.

¹⁴ This situation notwithstanding, it has been made very clear that Zanzibar is not a State. See the Court of Appeal of Tanzania in its decision in S.M.Z. v. Machano Khamis Ali and 17 Others, Court of Appeal of Tanzania in Zanzibar, Criminal Application No. 8 of 2000. This case is reproduced in PETER, Chris Maina and Haroub Othman (eds.), Zanzibar and the Union Question, op. cit., at p. 188. See also ARTICLE 19, Zanzibar Democracy on Shaky Foundations, London: Article 19 – The Global Campaign for Free Expression, 2000, p. 49.

The government of the United Republic of Tanzania has powers over all Union Matters and those matters pertaining to Tanzania Mainland.¹⁵ Of all Union Matters, the power to conclude international treaties including international human rights instruments vests in the Union Government. The Revolutionary Government of Zanzibar has jurisdiction over all matters which are non-union and pertaining to Zanzibar.

1.2 Geography

Zanzibar is composed of two main Islands of Unguja and Pemba. Unguja occupies an area of 640 sq miles while Pemba occupies 380 sq miles. Apart from these main Islands, there are also small islets surrounding the two that form part of Zanzibar. These other islets include Uzi, Kojani, Shamiani, Kisiwa Panza, Fundo and Tumbatu. Zanzibar is situated 20 miles from the shores of African continent. It is located approximately 30 miles from Mainland Tanzania. The Zanzibar population density is very high with an average of 258 people per square mile in Unguja and 352 in Pemba.¹⁶

1.3 People

Zanzibar is very cosmopolitan. It is composed of people with diverse racial and cultural backgrounds.¹⁷ This diversity has been largely influenced by the historical integration of Zanzibar with external world. It is recorded in history that Zanzibar integrated with external world since the 2nd Century. The integration got momentum during the 8th Century whereby traders from Persia, China, India, Arabia etc. came to Zanzibar by using dhows enabled by Monsoon Winds.

The effect of that integration was the emergence of people of mixed races in coastal regions of East Africa including Zanzibar following intermarriages between foreigners and indigenous people.¹⁸ The national census conducted in 2002 which showed that the population of Zanzibar is 979,637.¹⁹

¹⁵ Currently the name Tanganyika is not officially used and instead Tanzania Mainland is preferred.

¹⁶ On some official data on the demography of Zanzibar see REVOLUTIONARY GOVERNMENT OF ZANZIBAR, *Zanzibar Politics: A Proper Perspective*, Zanzibar: Government Printer, 2000.

¹⁶ See PEARCE, Francis B., *Zanzibar: The Islamic Metropolis of Eastern Africa*, London: Frank Cass, 1967

¹⁸ On how people of Zanzibar have been viewed over the ages See DALE, Godfrey, *The Peoples of Zanzibar*, New York: Negro Universities Press, 1969; GRAY, John, *History of Zanzibar from Middle Ages to 1856*, London: Oxford University Press, 1962; INGRAMS, William H., *Zanzibar: Its History and Its People*, London: Frank Cass, 1967; SHERIFF, Abdul, *Historical Zanzibar: Romance of the Ages*, London: HSP Publications, 1995; and is RUETE, Emily, *Memoirs of An Arabian Princes from Zanzibar: An Autobiography of Salme, Princes of Oman and Zanzibar*, Zanzibar: The Gallery Publications, 1998. Also relevant are MOHAMMED, Amir A., *A Guide to a History of Zanzibar*, Zanzibar: Quality Printing Services, 1997; and MUKANGARA, Daudi, "Race, Ethnicity, Religion and Politics in Zanzibar," in MALIYAMKONO, T.L. (ed.), *The Political Plight of Zanzibar*, Dar es Salaam: TEMA Publishers Company Ltd., 2000, p. 35.

¹⁹ See Tanzania Human Rights Report, 2008, p. 180.

1.4 Economy

For a long time, Zanzibar was dependent on cloves introduced by Arabs during 19th Century as the mainstay of her economy.²⁰ However during the mid of 1980s Zanzibar began to shift from cloves dependence to tourism. Currently, Zanzibar has become a place where tourists from different parts of the world visit every season. The opening of doors for tourism in Zanzibar has brought many socio –economic changes to the Isles and its people. In addition other service sectors like telecommunication seem to grow.

In 2000 the Government launched its long term development strategy (Vision 2020). The Vision focuses towards the eradication of absolute poverty and building a robust and internationally competitive economy for sustainable development of the people of these islands. The Zanzibar Strategy for Growth and Reduction of Poverty known by its Kiswahili acronym MKUZA (*Mkakati wa Kukuza Uchumi na Kupunguza Umasikini Zanzibar*) was launched in 2007 as a tool for implementation of Vision 2020 for the period 2007 to 2010²¹.

The Zanzibar GDP ranges between averages of 5. 4% and 6%. The total National Income of Zanzibar is Tshs. 747,950 million²² and Zanzibari per capita income is pegged at and Zanzibari per capita income is pegged at 639,000/=.²³

1.5 Political System

The wave of political changes that faced many African countries at the mid of 1980s extended to Zanzibar. Zanzibar which was ruled under one-party system shifted to multiparty democracy in 1992 following the official re-introduction of political system.²⁴ The Zanzibar Constitution was amended to fit with the system.²⁵ The Constitution provides for the periodic election every five years to elect the President of Zanzibar, Members of the House of Representatives and the Local Councillors. Also, Zanzibaris take part in Union elections to elect the President of the United Republic of Tanzania and members of the Union parliament which meets in Dodoma.

²⁰ On the place of Cloves on SHERIFF, Abdul, *Slaves, Spices & Ivory in Zanzibar: Integration of an East African Commercial Empire into the World Economy, 1770-1873*, London and Dar es Salaam: James Currey and Tanzania Publishing House, 1987.

²¹ The Harmonization of MKUZA and Sectoral Level Indicators, Prepared by Ministry of Finance and Economic Affairs Zanzibar, February, 2009.

²² Zanzibar Budget Speech, 2009/2010.

²³ Ibid.

²⁴ Political Parties Act of 1992 (Act No. 5 of 1992). It is important to note that this Act was adopted by the Union Parliament as Political Parties have been listed in Schedule One to the Union Constitution as a Union Matter. This legislation has to be read together with the Article 3 of the Constitution of the United Republic of Tanzania of 1977. These constitutional changes came following the Nyalali Commission Report published in 1991.

²⁵ Article 5 of the Constitution of Zanzibar, 1984.

The power to legislate is vested to the House of Representatives²⁶ which is composed of elected members from constituencies in Unguja and Pemba²⁷, women special seats²⁸, 10 appointed members by the Zanzibar President,²⁹ the Attorney General Zanzibar and five Regional Commissioners as ex officio members. In total there should be 81 members of the House of Representatives in Zanzibar. The House has jurisdiction over all non-union matters falling under the autonomy of the Revolutionary Government of Zanzibar.

Zanzibar is divided into five administrative regions and 10 districts. The regions are Urban West Region, South Region and North Region in Unguja. In Pemba the regions are North and South Regions. Each region is split into two Districts making 6 Districts in Unguja Island and four in Pemba Island. The districts are divided into Shehias (villages) having community leader known as Sheha.³⁰

1.6 Judiciary

The Zanzibar judiciary has a long history³¹ and has undergone several changes over the years³² and it is quite distinct from that on the Mainland Tanzania.³³ The current

²⁶ Constitution of Zanzibar of 1984, Article 5A (2).

²⁷ *ibid*, Article 65.

²⁸ *Ibid*, Article 67.

²⁹ *Ibid*, Article 66.

³⁰ See the Local Government (District and Urban Authority) Act No. 11 of 1992.

³¹ There were times during the colonial period when appeals from the courts of Zanzibar were referred to the High Court of Bombay, India. See READ, James S., "Justice on Appeal: A Century Plus of Appeal Courts and Judges in Tanzania," in PETER, Chris Maina and Helen Kijo-Bisimba (eds.), *The Law and Justice in Tanzania: Quarter a Century of the Court of Appeal* (Edited with Helen Kijo-Bisimba), Dar es Salaam: Mkuki na Nyota Publishers, 2007, p. 55 at pp. 56-61. Generally on the development of the legal system of the isles see KINGDON, H.E., *The Conflict of Laws in Zanzibar*, Zanzibar: Government Printer, 1940; and VAUGHAN, J.H., *The Dual Jurisdiction in Zanzibar*, Zanzibar: Government Printer, 1935.

³² In the late 1960s the normal conventional Common Law courts were abolished in Zanzibar and replaced by what were referred to as Peoples Courts in which legal matters were handled by lay persons. This was done vide Peoples Courts Decree, 1969 (Decree No. 11 of 1969). On the performance of these courts see RAMADHANI, Augustino, "Judicial System of Tanzania: Zanzibar," Volumes 11-14 *Eastern Africa Law Review*, 1978-1981, p. 225.

³³ On the difference between the judiciary and its performance in the two parts of the Union see BIERWAGEN, Rainer Michael and Chris Maina Peter, "Administration of Justice in Tanzania and

judiciary which was put together in 1985 has a dual court system in Zanzibar,³⁴ applying different laws and but the same procedures.³⁵ One is the common law system following English legal system and Kadhis Courts³⁶ dealing with Muslim personal matters like marriage, divorce, maintenance and inheritance. The number of Muslims in Zanzibar makes the Kadhi's courts an important institution in the isles.³⁷ That is notwithstanding the fact that it is an individual's choice to go either to the Kadhi's courts or to the common law courts.³⁸ Islamic matters and the interpretation of the Constitution of Zanzibar end at the High Court of Zanzibar. They do not go the Court of Appeal of Tanzania.³⁹

The hierarch of the Common Law courts is the Court of Appeal of Tanzania,⁴⁰ High

Zanzibar: A Comparison of Two Judicial Systems in One Country," Volume 38 Part 2 *International and Comparative Law Quarterly*, 1989, p. 395.

³⁴ See *inter alia*, OTHMAN, Masoud Othman, "The Zanzibar Judicial System," in PETER, Chris Maina and Immi Sikand (eds.), *The Judiciary in Zanzibar*, Zanzibar: Zanzibar Legal Services Centre, 2006, p. 15; TWAIB, Fauz, *The Legal Profession in Tanzania: The Law and Practice*, Bayreuth and Dar es Salaam: African Studies Series and Dar es Salaam University Press, 1997, at pp. 301-326.

³⁵ Section 9 (2) of Kadhi's Court, 1985 (Act No. 3 of 1985).

³⁶ The Kadhi's Courts were established for the first time in Zanzibar in 1897 vide the Order in Council of the same year. However, they were known then as "Sultan's Courts." They were to be re-established later towards independence through the Courts Decree of 1963. The current Kadhi's Courts in Zanzibar and Pemba are governed by the Kadhi's Court Act, 1985 (Act No. 3 of 1985).

³⁷ See LUTUN, Anne and Ismail Kaaya, *Study on Kadhi's Court and Its Implications to Human Rights in Tanzania*, Dar es Salaam: Legal and Human Rights Centre, 2007; MAJAMBA, Hamudi Ismail, *Perspectives on the Kadhi's Courts in Zanzibar*, Zanzibar: Zanzibar Legal Services Centre, 2008; MAKARAMBA, Robert V., "The Judicial Application of Islamic Law in Zanzibar," Faculty of Law, University of Dar es Salaam, 1990 (Mimeograph); HASHIM, Abdulkadir, "Muslim Personal Law in Kenya and Tanzania: Transition and Innovation," Volume 25 No. 3 *Journal of Muslim Minority Rights*, 2005, p. 449. See also OTHMAN, Haroub and Leonard P. Shaidi, "Zanzibar Constitutional Development," Volumes 11-14 *Eastern Africa Law Review*, 1978-1981, p. 186.

³⁸ Elsewhere, situations like that which exists in Zanzibar are in most cases misinterpreted. See MAMDANI, Mahmood, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror*, Kampala and Dar es Salaam: Fountain Publishers and E & D Limited, 2004.

³⁹ Article 99 (2)(b) of the Zanzibar Constitution of 1984. This constitutional position was conceded by the Court of Appeal itself but given a wider interpretation in the case of *Mohamed Rafik Ishaq & Another v. Anwar Hussein Jaffer & 2 Others*. Quoting Article 99(2)(b) of the Constitution of Zanzibar and Section 10 of the Kadhi's Court Act, 1985, the Court of Appeal stated "It is clear that this Court has no jurisdiction to hear appeals emanating from the Kadhi's Courts "on matters of Islamic Law" or just "Islamic matters" as the Constitution of Zanzibar puts it." This case is reproduced in TOUFIQ, Salum, "The Zanzibar Court System," in PETER, Chris Maina and Immi Sikand (eds.), *The Judiciary in Zanzibar*, op. cit. at p. 31 at p. 42.

⁴⁰ Article 117 of the Constitution of the United Republic of Tanzania of 1977.

Court of Zanzibar,⁴¹ Regional Magistrate Courts,⁴² District Courts and Primary Courts⁴³. Kadhis Courts hierarchy includes District Kadhis Court which is the lowest court, Chief Kadhis Court, and High Court of Zanzibar where a judge sits with a panel of *ulamaa*.⁴⁴

The judiciary in Zanzibar is headed by Chief Justice appointed by the President of Zanzibar⁴⁵. High Court is presided by a judge who is appointed by the President after consultation with Judicial Services Commission⁴⁶. Subordinate courts are presided by magistrates who are appointed by Judicial Services Commission⁴⁷.

1.7 Historical Background of Human Rights in Zanzibar

The history of human rights in Zanzibar can be traced back to 1963 when Zanzibar achieved its independence.⁴⁸ The independence followed the adoption of the first Zanzibar constitution; *The Constitution of the State of Zanzibar of 1963* that included among other things, the Bill of Rights as provided by international human rights instruments.⁴⁹

⁴¹ Article 93 of the Zanzibar Constitution of 1984. See also High Court Act no 2 of 1985.

⁴² Magistrates' Court Act, 1985 (Act No. 6 of 1985).

⁴³ Ibid.

⁴⁴ These are Islamic scholars well-versed in Islamic matters assisting the Judge to reach a just decision. See Section 10 of Kadhi's Act of 1985. Section 2 of the Establishment of the Office of Mufti Act, 2001 (Act No. 9 of 2001) defines the "*Ulamaa*" as religious scholars who had adequate knowledge of various Islamic religious matters. It is important to note that the institution of *Ulamaa* is not entirely new to Zanzibar. It has been there for years and played an important role in the resistance against the British control of the Isles. See LOIMEIER, Roman, "Coming to Terms with 'Popular Culture': The 'Ulama' and the State in Zanzibar," in LOIMEIER, Roman and Rudiger Seesemann (eds.), *The Global Worlds of the Swahili: Interfaces of Islam, Identity and Space in 19th and 20th Century East Africa*, Munster: LIT Verlag, 2006, p. 111; and BANG, Anne K., "Intellectuals and Civil Servants: Early 20th Century Zanzibar 'Ulamaa' and the Colonial State," in AMORETTI, Biancamaria Scarcia (ed.), *Islam in East Africa: New Sources*, Rome: Herder, 2001, p. 59.

⁴⁵ Article 94 of the Zanzibar Constitution of 1984.

⁴⁶ Ibid, Article 94 (1).

⁴⁷ Section 10 (1), Magistrate Courts Act, 1985.

⁴⁸ See OTHMAN, Haroub, *Zanzibar's Political History: The Past Haunting the Present?* Dar es Salaam: Institute of Development Studies, 1992.

⁴⁹ Extracts from the AYANG, Samuel G., *A History of Zanzibar: A Study in Constitutional Development 1934-1964*, Act to declare the Constitution of the State of Zanzibar enacted by the Constituent Assembly of the State of Zanzibar are reproduced in AYANG, Samuel G., *A History of Zanzibar: A Study in Constitutional Development 1934-1964*, at p. 155.

However, that Constitution lasted only one month following the 12th January, 1964 Revolution that overthrew the government that had taken over from the British on 10th December, 1963.⁵⁰ Immediately after the Revolution the Constitution was abolished and Zanzibar began to be ruled under Presidential Decrees.⁵¹ This meant the end of the Bill of Rights as enshrined under 1963 Constitution.⁵²

The main reason advanced for the banning of human rights in Zanzibar soon after the revolution of 1964 stems from the fact that human rights provisions were incorporated in the 1963 Constitution to safeguard the interests of colonialists whom among them i

Zanzibar without legal human rights safeguards continued up to 1984 when the second post-revolution constitution and the third after independence incorporated the Bill of Rights. The first post-Revolution constitution was enacted in 1979 during the era of President Aboud Jumbe Mwinyi and did not have a Bill of Rights.

⁵⁰ See MAPURI, Omar R., *Zanzibar - The 1964 Revolution: Achievements and Prospects*, Dar es Salaam: TEMA Publishers Company Ltd., 1996; and MRINA, B.F. and W.T. Mattoke, *Mapambano ya Ukombozi Zanzibar*, Dar es Salaam: Tanzania Publishing House, 1980.

⁵¹ See Presidential Decree No. 1 of 1964.

⁵² There are people who never came to terms with the Revolution. See for instance AL BARWANI, Ali Muhsin, *Conflicts and Harmony in Zanzibar – Memoirs*, Dubai, 2002. This book has now been translated into Kiswahili. See AL BARWANI, Ali Muhsin, *Kujenga na Kubomolewa Zanzibar (Kumbukumbu)*, Sultanate of Oman, 2003.

CHAPTER TWO

Civil Rights and Liberties

2.0 Introduction

Civil rights and liberties include wide ranges of rights such as right to life, equality before law, freedom of expression and freedom of religion. They imply the state's role in ensuring all citizens are equally protected by law and enjoy all rights and freedoms without discrimination of any type. These rights, which are known as integrity rights, are provided by different global and regional human rights instruments such as the Universal Declaration of Human Rights of (UDHR) of 1948, the International Convention on Civil and Political Rights (ICCPR) of 1966, The African Charter on Human and Peoples' Rights (ACHPR) of 1981 and the International Convention of the Rights and Dignity of Persons with Disability (ICRDPD) of 2006. Tanzania is signatory to all these treaties.

2.1 Right to Life

The Right to life stands as the core of civil rights and liberties and all other human rights. It is the supreme right without which other rights are meaningless. This right is provided by different international human rights instruments. Article 3 of the UDHR declares that "everyone has the right to life, liberty and security of person". It is also translated into binding form by ICCPR which provides for under Article 6 (1) "that every human being has the inherent right to life, this right shall be protected by law. No one shall be arbitrarily deprived of his life".

The Covenant has used the word inherent denoting that this right is not conferred by this Covenant but the Covenant gives the recognition of its existence. The right is also provided under regional human rights instruments like the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the ACHPR and the 1969 American Convention on Human Rights (ACHR).

Tanzania being signatory to ICCPR and ACHPR has incorporated the right to life in its Constitution of 1977 which provides under Article 14 that everyone has the right to life and equal protection of his life. It can only be permitted to be abrogated in accordance with the law.

Zanzibar being part to the United Republic of Tanzania has also incorporated in her Constitution of 1984 the protection of right to life which is *parimateria* to Article 14 of URT Constitution⁵³.

⁵³ Article 3 of Zanzibar Constitution, 1984.

In spite of its global, regional and domestic protection, right to life is reported to be increasingly violated in Zanzibar in 2009⁵⁴. Compared to 2008 where 6 people were reported to have been killed, reports show that 10 people have lost their lives under different circumstances.⁵⁵ The suspects in connection with those cases have been brought before courts of law for prosecutions.

The increase in murder cases is mainly attributed to changing social-economic scenario whereby Zanzibar is going through cultural dynamism. There is big movement of labour force into Zanzibar and at the same time upward trend of use of narcotics drugs has been a cause of surge of murder cases.

In January, 2009, it was reported that one Petro Maharage (34) was killed at Kianga Branch in West District within Urban West Region of Unguja. One Juma Nepo Majaaliwa (24) is suspected to have caused the death of the deceased. Another incident is reported to have occurred at Migombani, Urban District, within Urban West Region of Unguja where one Abdul Suleiman Steven is reported to have been killed on 7th April, 2009. The suspect in this allegation is Iddi Ramadhan Feruzi who is alleged to have attacked the deceased with a knife.⁵⁶

On 16th July, 2009, one Fadhila Khelef Nasor was killed at Kisakasaka within West District, Urban West Region of Unguja. It is further reported that on 29th February, 2009 one Ame Sungura Haji was found dead at Pangenji within North Region of Unguja. After investigation it was alleged that Pili Enzi Juma and 4 others are the suspects for the killing. On 6th November, 2009 at Kazole, Northern B District, in the Northern Region of Unguja one Lutfia Omar Joji was killed. One Ramadhan Mohd Nasor is suspected to have caused the death of the deceased.⁵⁷

Another event is reported to have occurred on the 22nd October, 2009 at Jambiani Kibigija in the Southern District within Southern Region of Unguja where one Hassan Sadik Vuai was alleged to have been killed by Sadik Vuai Hassan (49). On 21st September, 2009 at Mahonda, in Northern B District within Northern Region of Unguja, is reported that one Haroub Salum Mohamed was killed by Abdala Haji Abeid and Makata Ali Hamad. It was further reported that on 9th April, 2009 at Pagali in Central District within Southern Region of Unguja one Ramadhan John Makanyaga was killed after being attacked by one Haji Pandu Simai.⁵⁸

⁵⁴ High Court Registry at Vuga, Zanzibar.

⁵⁵ These figures do not include several deaths caused by motor accidents in Zanzibar and Pemba.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

2.3 Death Penalty

Death penalty embraces taking away of the life of a person convicted of a capital offence.⁵⁹ It is executed by various methods such as hanging by neck until a person is dead, using gas chamber, using of the lethal injection, the use of electric chair etc. There is an ongoing worldwide campaign to abolish the death penalty on the ground that it goes contrary to the protection of right to life. The International Covenant on Civil and Political Rights of 1966 provides under Article 6 (2) that for the countries which have not abolished death penalty, it may be imposed only for most serious crimes in accordance with the law.

The United Nations has introduced specific Protocol aimed at the abolition of death penalty. This is the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) of 1987 which requires all state parties to abolish death penalty in their jurisdictions⁶⁰. Besides those legal instruments, states are urged not to execute death penalty to persons below 18 years, pregnant women or to insane people and the punishment may only be carried out after legal process with all possible safeguard of fair trial including legal assistance.⁶¹

In Zanzibar death penalty is still provided under domestic penal laws. Part VI of the Penal Act, 2006⁶² provides for various penalties in which Zanzibar courts may inflict including death penalty.⁶³ The Act further provides for types of offences in which death penalty may be imposed which are Treason;⁶⁴ Entering Zanzibar with intent to organize a counter revolution;⁶⁵ Instigating invasion;⁶⁶ Murder;⁶⁷ and Child destruction.⁶⁸

⁵⁹ On the death penalty generally see Agoston, T., *May the State Kill?* Nairobi: Paulines Publications Africa, 2002; Amnesty International, *The Death Penalty*, London: Amnesty International Publications, London, 1979; Amnesty International, *Political Killing by Government*, London: Amnesty International Publications, 1983; Amnesty international (1989), *When the State kills... The Death Penalty*, London: Amnesty international Publications, 1989; Amnesty international, *Death Penalty: An Affront to our Humanity*, London: Amnesty International Publications, 1999; Guy Favieau, *Capital Punishment: Material Relating to its Purpose and Value*, Ottawa: Queen's Printer, 1963; Hood R., *The death Penalty. A World-Wide Perspective*, (Revised Edn), Oxford: Clarendon Press, 1996; Peter Chris Maina, *Human Rights in Tanzania: Selected Cases and Materials*, Cologne: Rudiger Koppe Verlag, 1997; Ramcharan, B.G. (ed.), *The Right to Life in International Law*, Dordrecht: Martinus Nijhoff Publishers, 1983; Rummel, R.J., *Death by Government*, New York: Burnswick Transaction Publishers, 1994; and Schabas, A.W., *The Abolition of Death Penalty in International Law* (2nd Ed), Cambridge: Cambridge University Press, 1997.

⁶⁰ Article 1 of the Optional Protocol

⁶¹ UN Resolution 50/1984, 25th May, 1984.

⁶² Act No. 6 of 2004.

⁶³ Section 6 of the Penal Act, 2004 (Act No. 6 of 2004).

⁶⁴ Ibid, Section 28.

⁶⁵ Ibid, Section 29.

⁶⁶ Ibid, Section 30.

⁶⁷ Ibid, section 196 and 197.

⁶⁸ Ibid, Section 217 (1).

The law provides for the mode of execution of the death penalty. It is provided for under Criminal Procedures Act, 2004⁶⁹ that a person who is sentenced to death shall be hanged by neck until he is dead.⁷⁰ Only pregnant women and children below the age of 18 years are clearly exempted from death penalty.⁷¹ However the execution of death penalty requires the approval of the President of Zanzibar.⁷² The records show that no death penalty was imposed in the year 2009. There were also no records in 2009 which show the execution of death penalty imposed previously and this is mainly attributed to culture of restraint by the President. In fact court judgement ordering a capital punishment has been carried out in the isles since 1964.

There is an intensive campaign in Zanzibar, like many other places in the world to abolish the death penalty. These campaigns have been undertaken human rights activists including various members of the civil society. The leading organization in Zanzibar is the Zanzibar Legal Services Centre (ZLSC) which conducts activities every 10th October – a date which has been internationally earmarked for that occasion. It has been organizing seminars and conducts various researches on the matter as well as circulating posters containing the detail concept of death penalty and its disadvantages.

Despite campaigns against the death penalty, there is no sign from the government to strike off the statute books. Instead the President has been invoking his power to commute the penalty as provided under the Constitution of Zanzibar of 1984.

2.4 Mob Violence

Mob violence entails arbitrary action by a group of people punishing a person for allegation that a person has committed a certain act condemned by the society. Mob violence or mob justice, as sometimes known, has been common in Zanzibar in recent years. People seem to be in favour of mob violence because of being dissatisfied by the existing law enforcement institutions. People who have been interviewed contend that it is better to take actions themselves instead of bringing the suspect to police.⁷³ They further lamented that if a suspect is brought to the police, it only a matter of time that such a suspect is back in the streets.

Mob violence is reported to persist in Zanzibar. On 12th May, 2009, it is reported that one Haji Machano Fom who was found in possession of stolen cow was seriously beaten up to death by people at Kinyasini, North "A" District, in The Northern Region of Unguja. The suspects have not yet been brought before the court to answer the charges. Another incident involving one Said Issa (35) who was alleged to have committed theft was seriously attacked and died later while being taken to Mnazi Mmoja Hospital in Unguja.⁷⁴

⁶⁹ Act No 7, 2004.

⁷⁰ Section 305 (i).

⁷¹ Section 305 (2).

⁷² Ibid, Section 310.

⁷³ Interviews conducted in the Stone Town, 5th December, 2009.

⁷⁴ Zanzibar Leo, 7th December, 2009, page 1.

Another event is reported to have occurred on 30th March, 2009 at Bububu, in West District within urban West Region of Unguja where one Khamis Machano Pande (40) was beaten to death on theft allegation. Persons responsible for his death remain unknown despite investigation by police.

2.5 Freedom from Torture

The term torture has been defined in various ways. However, it suffices to mention the definition contained in Article 1 of the United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 which says:

any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity ...

Prohibition against torture is provided by various international human rights instruments such as International Covenant of Civil and Political Rights of 1966, Universal Declaration of Human Rights, 1948 and African Charter on Human and Peoples' Rights, 1981. Tanzania is a party to these instruments. There is also the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and which Tanzania is not a signatory.

Zanzibar prohibits torture in its domestic laws. The Zanzibar Constitution, 1984 provides under Article 13 (3) the prohibition of any person to be tortured, inhumanly treated and inflicted with a degrading punishment. The prohibition against torture is elaborated by the Criminal Procedure Act, 2004 which says that a person while under restraint shall be treated humanely and with respect for human dignity. It further specifies that a person shall not be subjected to cruel, inhuman or degrading treatment.⁷⁵ In reality there is no reported case in the year 2009 in Zanzibar relating to torture.

However, there are two concerns that need to be raised at this point. One is that of what is seen as deliberate move by the Police to arrest people over the weekend just for the sake of holding them over legally allowed period but with no genuine cause of action for such an arrest and this hold constitutes torture both physically and mentally. Under the law the Police can issue a bail but this exercise has been a hard one both from the Police but also from members of the public for lack of knowledge.

There is also the issue of torture at individual level where it is inflicted among individuals including parental, school punishment or bullying which go unreported.

⁷⁵ Section 35, Criminal Procedure Act, 2004 (Act No. 7 of 2004).

2.6 Equality Before the Law - Equal Access to Justice for All

Equal access to justice is a key requirement for the enjoyment of the right to equality before the law as per Article 12 of the Zanzibar Constitution which holds that everyone has the right to be protected and get equal rights without discrimination. The Constitutional provision further assures that the rights, privileges and duties of an individual shall be protected and decided only by the courts and state organs established under the law.

Access to justice enables people to use the law to protect their rights. Realization of this right requires institutional and legal framework that would guarantee all persons accessibility to the laws of the land and the judicial bodies. In Zanzibar, there are persistent problems that hinder people from access to justice.⁷⁶ These are such follows:

2.6.1 Proximity and Availability of Courts

Proximity of courts has persistently remained one of the major problems impeding access to justice particularly in rural areas. Most primary courts are widely distributed, but the Regional Magistrate Courts, High Court and the Court of Appeal are also not proximate to the people and they have for a long time suffered from inadequate financial and human resource.

Currently, in Pemba there is one Primary and District Court in each District and one Regional Magistrate Court in each Region. Therefore, people have to travel from remote areas in order to access these few facilities. In Unguja, there is one Primary and District Court in Makunduchi, Mwera, Mkokotoni, Mfenesini, Chwaka and Mwanakwerekwe.

There is one Regional Magistrate Court at Vuga in Zanzibar Town which has territorial jurisdiction over Urban and some parts of Western District of Unguja. Another Regional Court is in Mwera having territorial jurisdiction over the whole Southern Region of Unguja and some parts of Western District areas. In Northern Region of Unguja the court is at Mfenesini, while residents of growing towns like Mkokotoni and Nungwi right at the Northern tip have to travel along way to reach the court.

For a poor person it is not easy to move such long distances in pursuit of justice. In Pemba High Court sits once per month if a Judge is available from Unguja. So far there is no Resident High Court Judge in Pemba. This does not only trigger delay disposal of cases but also access to justice. The reason for failure to have regular High Court sittings in Pemba is attributed to budgetary shortcomings.

⁷⁶ On access of justice in Zanzibar see HASSAN, Ali Ali, "The State and Accession of Individual to Fundamental Rights and Freedoms in Zanzibar," in OTHMAN, Haroub and Chris Maina Peter (eds.), *Perspectives on Legal Aid and Access to Justice in Zanzibar*, Zanzibar: Zanzibar Legal Services Centre, 2003, p. 62; and HAMID Mahmoud Hamid, "Access to Justice: A Legal Right," in OTHMAN, Haroub and Chris Maina Peter (eds.), *Perspectives on Legal Aid and Access to Justice in Zanzibar*, op. cit. p. 80.

The Court of Appeal of Tanzania sits once a year in Zanzibar and only in Unguja. People have to wait the whole year until they know the fate of their cases. The Court of Appeal has never had any session in Pemba.

There has been growing instances of land issues in Zanzibar. In understanding that this sector should have its own system to ease the burden from the courts, the Zanzibar Government had introduced the Land Tribunal⁷⁷ with powers to address land cases, but the Tribunal has a huge backlog of cases.

2.6.2 Shortage of Manpower

Besides the distances to reach courts and as well as shortage them, the number of Magistrates and Judges is also not sufficient. This shortage forces the few available Magistrates and Judges to handle many cases and thus leading to long delays. In Mwanakerekwe, it is estimated that one Magistrate handles about 9 to 10 cases per day⁷⁸. For example until 15th December, 2009, 951 criminal cases were filed in Mwanakwerekwe Primary and District courts.⁷⁹ This number does not include civil cases in which these courts have also jurisdiction to entertain. The District Magistrates are three and Primary Magistrates are also three.

There are only four High Court Judges including Chief Justice in Zanzibar to handle both criminal and civil cases. All of them are in Unguja leaving Pemba without resident High Court Judge.⁸⁰ As shown above the judge visits in Pemba once a month and this is not regularly fulfilled.⁸¹

⁷⁷ Act No 7 of 1994.

⁷⁸ Source: DPP Chambers, Mwanakwerekwe.

⁷⁹ Ibid.

⁸⁰ There are 6 magistrates with extended jurisdiction in both Unguja and Pemba – with only one of them in Pemba. This however, does not solve the problem nor does it make the life of the people easy.

⁸¹ The problem of workload mainly faces Courts in Rural areas and those of Mwanakwerekwe. The problem is not much serious in High Court and Vuga Regional Courts.

The power to entertain matters relating to land is vested to Land Tribunal. This tribunal is presided by the Chairman appointed by the President for the term of five years⁸². Between 2008 and 2009, some 290 land cases have been filed only in Unguja. About 151 cases were being handled the one Chairman who has been moving between Unguja and Pemba. In 2009 two officers, one stationed in Unguja and another in Pemba were appointed to assist the Chairman. Despite that appointment, the problem still persists. While all cases relating to land in the whole Zanzibar must be brought before this tribunal, the disposal of the cases goes very slow. The rate and the extent of disposal of cases by the Tribunal in Unguja is shown below.

| Year | Number of filed Cases | Number of Disposed Cases ⁸³ |
|------|-----------------------|--|
| 2006 | 121 | 45 |
| 2007 | 171 | 26 |
| 2008 | 151 | 13 |
| 2009 | 133 | 13 |

Source: Land Tribunal Registry⁸⁴

2.6.3 Court Fees

The payment of courts fees in civil cases is another problem that hinders equal access to justice. The practice is that any person who files civil suit before any court of law must pay court fee.⁸⁵ That fee always depends on the value of the subject matter. Most of the Zanzibaris cannot afford court fees leave alone the costs of engaging the services of an advocate. Only few people can afford payment of court fees entailing the failure of majority to enjoy the right of access to justice.

Zanzibar still has in its statute books a law that allows people with limited means otherwise known in legal circles as paupers to file for a waiver in meeting the legal requirement of paying court fees. However, for lack of knowledge of the existence of such an opportunity leads to the majority to give up on their rights. However, the process of accessing the courts through this route is very cumbersome.⁸⁶

2.6.4 Legal Education

The majority of Zanzibaris are barely knowledgeable of the law and their rights. Even those who have been to school can hardly access substantive and procedural laws due to language barriers as English is the main language used in most legal documents save

⁸² Section 4 of Land Tribunal Act, 1994 (Act No. 7 of 1994).

⁸³ The disposal of cases include cases which were withdrawn from the Tribunal for one reason or another and does not mean only cases which reached final stage.

⁸⁴ These figures are for Unguja. In Pemba there were 357 cases filed and 177 completed in 2009.

⁸⁵ The exception to this rule is Section 5 (5) of the Spinsters and Single Parents Children Protection Act, 2005.

⁸⁶ One has to go through the office of the Sheha or the District Commissioner.

for the Constitution which is in Kiswahili. Even where they can understand normal English, they still have to contend with the tough legal language found in various legal instruments.

This is a good justification for legal literacy campaigns to give people understanding of basic legal terms and particularly their human rights and duties. It was not until recently that the teaching of civics and general knowledge in secondary schools were consolidated to include the relevant knowledge of basic human rights in the school curricular. Specialised legal education is offered in the high learning institutions.

Specialised education starts from Certificate, Diploma and Undergraduate levels. Currently there is only one University offering an undergraduate degree course in law and that is the Zanzibar University. There are few other academic institutions which provide Diploma and Certificate courses in law. These institutions are Azania College of Management and Zanzibar Business School. The number of graduates in these institutions is however still low as compared to the current national population of nearly 1 million.

2.6.5 Legal Aid

The lack of proper mechanism to provide for legal aid and assistance in Zanzibar is another problem that constrains the equal access to justice. The provision of legal aid in Zanzibar is guided by the Criminal Procedure Act, 2004⁸⁷. Under this Act, the High Court in any criminal trial involving capital punishment may assign an advocate to defend unrepresented accused where it appears that the accused has no sufficient means to engage an advocate.⁸⁸ Legal aid provision is limited only to criminal trials and where a person is charged with capital offences such as murder, manslaughter and treason.

Currently, there are few NGOs that complement the provision of free Legal aid to the poor and marginalised sections of the Zanzibari society. Among these is the Zanzibar Legal Services Centre (ZLSC) which has been taking leading role in providing free legal aid services. It has recently introduced paralegals in every constituent in Zanzibar. Currently the centre has introduced 50 paralegals in all constituencies and four in Zanzibar Special Forces Departments. The main intention of introducing paralegals system is to address justice related problems to individuals and community as whole.⁸⁹ Available reports indicate that the system has been playing every positive role since its inception.⁹⁰ The chart below shows the number of people who sought for legal aid in Zanzibar Legal Services Centre in the year 2009.

⁸⁷ Act No. 7 of 2004.

⁸⁸ Ibid, Section 197.

⁸⁹ Tanzania Human Rights Report, 2008 p. 189.

⁹⁰ Evaluation Report for Paralegal establishment in Zanzibar by ZLCS, p. 13.

Reported Disputes in Unguja ZLSC Office:

| Types of Case | Men | Women | Children | Total |
|---------------------------------|-----|-------|----------|-------|
| Land dispute | 373 | 479 | 0 | 852 |
| Labor disputes | 83 | 51 | 21 | 155 |
| Inheritance disputes | 45 | 62 | 27 | 134 |
| Custody of Children | 26 | 56 | 8 | 90 |
| Family and domestic violence | 13 | 29 | 21 | 63 |
| Maintenance for children | 0 | 25 | 15 | 40 |
| Divorce & Matrimonial assets | 0 | 35 | 0 | 35 |
| Mob Violence | 15 | 8 | 0 | 23 |
| Injury and compensation dispute | 15 | 5 | 0 | 20 |
| Grievous bodily harm | 12 | 23 | 9 | 44 |
| Rent disputes | 31 | 27 | 0 | 58 |
| Election related cases | 25 | 40 | 0 | 65 |
| Total Number by Clients | 398 | 479 | 101 | 978 |

Reported Disputes in Pemba ZLSC Office:

| Types of Case | Men | Women | Children | Total |
|---|-----|-------|----------|-------|
| Land disputes | 26 | 10 | 0 | 36 |
| Labor disputes | 0 | 0 | 0 | 0 |
| Inheritance disputes/distribution of Properties | 6 | 0 | 0 | 6 |
| Custody of Children | 0 | 0 | 0 | 0 |
| Family and domestic violence | 0 | 30 | | 30 |
| Human Rights | 12 | 2 | 0 | 14 |
| Defilement | 0 | 0 | 15 | 15 |
| Rape / Early pregnancy | 0 | 0 | 19 | 19 |
| Criminal | 12 | 3 | 0 | 15 |
| Contract | 11 | 0 | 0 | 11 |
| Election | 180 | 0 | 0 | 180 |
| Injury and compensation dispute | 2 | 0 | | 2 |
| Grievous bodily harm | 0 | 0 | 0 | 0 |
| Child abuse | 0 | 0 | 18 | 18 |
| Total Number by Clients | 234 | 52 | 45 | 346 |

Source: Zanzibar Legal Services Centre, 2009.

Other organizations are Zanzibar Law Society (ZLS) and Zanzibar Female Lawyers Association (ZAFELA). ZAFELA has been playing active role in assisting the public particularly women and children in legal matters. It has been receiving complaints and assists in solving them. For example in 2009, ZAFELA received 72 complaints relating to Gender Based Violence (GBV)⁹¹. It has been assisting the public in drafting legal documents and representing them in the courts free of charge.⁹² In spite of those efforts taken by these NGOs, still members of the general public are in dire need of free legal aid services. Those NGOs are financially constrained to the extent that they cannot afford to provide for legal aid services countrywide. Apart from that, there is no legal framework that coordinate the provision of legal aid between government and private institutions

2.6.6 Legal Representation

The right to be represented in any proceedings is provided under Article 12 of the Zanzibar Constitution of 1984. However this right is hardly enjoyed due to number of drawbacks. One of those problems is the high cost of engaging advocates to appear on people's behalf or drafting legal documents. Normally a private advocate charges high costs and as result many Zanzibaris cannot afford to engage them. Another problem is the shortage of advocates. Though the data available indicate an increase in the number of enrolled advocates from 13 in 2008 to 43 in 2009. They are not proportionally spread in Unguja and Pemba. In addition, the majority of them reside and work in Zanzibar town leaving rural areas without any⁹³. The situation is still worse in Pemba where in 2009 there was only one resident advocate. At the same time a considerable number of the enrolled advocates are still in government service.

The situation in Pemba is grave. If a person wants to engage an advocate he/she has to hire one from Unguja or Tanzania Mainland which is very expensive. On top of that, advocates are not allowed to appear before Primary and Kadhis Courts⁹⁴ where most people go. Though Vakils are allowed to appear before these courts, they do not have sufficient knowledge in law to be capable of defending people effectively. Furthermore the number of Vakils is very low to cover all courts in Unguja and Pemba.⁹⁵

It has been noted that many of the enrolled advocates lack experience. This is a problem particularly for those who would like to access the Court of Appeal of Tanzania. Only advocates with five years or more experience in the High Court can appear before this court. With that shortage of advocate coupled with the lack of experienced advocates Zanzibaris cannot effectively access justice.

There is also a problem of pro bono service being provided by practising advocates normally who have to be assigned by the Chief Justice to provide such services to

⁹¹ Source: ZAFELA.

⁹² Ibid.

⁹³ Source Zanzibar Law Society.

⁹⁴ Section 8 of Magistrate Court Act, 1985.

⁹⁵ Currently there are only three Vakils who stay in Unguja Island.

people who cannot afford to pay for legal services⁹⁶. There is a need for the ZLS to regulate pro bono exercise so that it will not only be widened but also sustainable.

The Government should also review the Legal Practitioners Decree Cap 28 which is incapable of meeting the demands of the day. Also, it must be emphasised that there is a need of establishing a transparent means of enrolment of advocates in Zanzibar. This is an important task which should not be left to the discretion of the Chief Justice. It would also be our recommendation that it is high time that Zanzibar establishes a Council for Legal Education which will be responsible for setting legal education standards including ensuring that private institutions conducting legal training provide best products to the market and are recognised by the Government.

2.6.7 Delay of Cases

The common maxim falling under this head is that *justice delayed justice denied*. The delay of cases in Zanzibar courts has become a common practice. Cases in Zanzibar Courts take long to disposed of.⁹⁷ The delay of cases caused by shortage of judicial manpower, legal technicalities, absence of witnesses and sometimes councillors etc. The delay of cases compounds the negative consequences to criminal cases particularly where an accused person is in remand hence infringing his/her freedom of movement and fair trial.

In 2002, the government of Zanzibar established the office of Director of Public Prosecutions (DPP) to conduct criminal cases in Zanzibar courts.⁹⁸ The establishment of this office shifted the prosecution from the police who are also responsible for arrest and investigations to civilians in what is known as civilianization of prosecution. The establishment of this office has contributed in the speeding up and thoroughness of investigation hence assisted in early disposal of the cases by courts. The office commences with prosecutions only after the investigation has been completed. This reduces the length of the cases and the numerous mentions and adjournments before the case begins..

Cases Flow Management (CFM) committee has been introduced which involves the judiciary, the office of Director of Public Prosecution, Police, Educational Centres and MoHSW. The aim of Case Flow Management (CFM) Committee is to speed up the disposal of criminal cases in Zanzibar. The committee meets once in every two months. It is reported that since the committee began operating it has succeeded in speeding up investigation of cases, hearing and delivery of judgements.⁹⁹

⁹⁶ The assignment of these cases to advocates goes very slow and normally not all enrolled advocates are assigned those cases.

⁹⁷ Cases like *Africa Engineering Co. v. Arabian Ventures Co. Ltd*, Regional Court at Vuga, Civil Case No. 18 of 2007; *Popular Civil Contractors Ltd v. Tanzania Postal Corporation*, Regional Court at Vuga, Civil Case No. 22 of 2007 and *Eminat Tri Line v. Suleiman Nassor*, Regional Court at Vuga, Civil Case No. 3 of 2007 are still pending since they were filed in 2007.

⁹⁸ Article 56 A, Zanzibar Constitution, 1984.

⁹⁹ Budget Speech of Minister of State (President's Office) Constitutional and Good Governance before the House of Representatives.

On top of that the government has amended the Criminal Procedure Act, 2004 to include specific duration for commencement of the hearing of criminal cases. The law now provides that the hearing of criminal cases involving bailable offences must commence within four months. The court is empowered to discharge the accused if that requirement is not complied with.¹⁰⁰

In case of non-bailable offences, the hearing of the case must commence within nine months otherwise the accused may be admitted to bail¹⁰¹. This has reduced the prolonged adjournments of cases hence improve the speed of the disposal of cases.

Despite these efforts that have been taken the problem still exist in civil cases. There is no legal framework which has been introduced to speed up the disposal of those cases. The government must take up this challenge through among other actions appointing more Judges and Magistrates, improving budget for judiciary and legal institutions, the situation for the attendance of witnesses and all who assist courts in disposing the cases etc.

It is also recommended that the Revolutionary Government of Zanzibar introduce what is known as Alternative Dispute Resolution (ADR), a practice which will help in solving a lot of civil disputes outside the court trial process and hence reduce the load of handling civil cases. This system is already operational in parts of Tanzania Mainland and particularly in Dar es Salaam.

2.7 Freedom of Worship

Freedom of worship is provided by a number of global and regional Human Rights instruments.¹⁰² Zanzibar constitution guarantees this right under Article 19 which provides that:

Every person is entitled to have freedom to form opinion, conscience and choice of matters of religion including freedom to change religion or belief. A person shall also be free to propagate, worshiping and inspire religion.

The Constitution further declares that matters relating to operation of religious organisations shall not be under government authority. In practice, this constitutional provision has been contravened with the introduction of the Mufti Act in 2001.¹⁰³ A critical review has shown that the Act which was vehemently opposed by Muslim have glaring defects.¹⁰⁴

¹⁰⁰ Section 209 (1) and (2) of Criminal Procedures Act, 2004

¹⁰¹ Ibid, Section 151 (1).

¹⁰² See Article 18 of the International Covenant on Civil and Political Rights, 1966; and Article 8 of the African Charter on Human and Peoples' Rights, 1981.

¹⁰³ Act No 9 of 2001.

¹⁰⁴ Peter, Chris Maina, Mufti Act of Zanzibar, The Fundamental Rights and Freedoms of Muslims on the Isles, Zanzibar: ZLSC Publications Series (No. 6), 2008, p. 26.

The Mufti Act contains various provisions relating to the establishment of Mufti Office, appointment Mufti, functions and powers of Mufti. The Act establishes the Mufti Office which is responsible for various Muslim matters.¹⁰⁵ Under this Act, the President of Zanzibar is given power to appoint Mufti to be the head of the office. The Act further provides that the fund of the office shall include such sums as may be approved by the House of Representatives.¹⁰⁶ This may be considered as direct discrimination to other religious affiliations which do not receive that benefit as Muslims in Zanzibar.

This Act is said to go against both the Constitutions of Zanzibar and that of the Union which declare Tanzania to be a secular State. The Act directly interferes with the rights, freedoms and affairs of Muslims in Zanzibar.¹⁰⁷ It is also suggested that the Act robs Muslims in Zanzibar their right to freedom of assembly and association.¹⁰⁸

¹⁰⁵ Ibid. Section 4.

¹⁰⁶ Ibid, Section 11.

¹⁰⁷ Ibid.

¹⁰⁸ Section 9, Mufti Act, 2001. See AHMED, Nafeez Mosaddeq, Suppressing Dissent: The Crackdown on Muslims in Zanzibar, Wembley, United Kingdom: Islamic Human Rights Commission, 2001

CHAPTER THREE

Political Rights

3.0 Introduction

Politics is central to the Zanzibar society which has a very politically conscious population which follows closely political activities with zeal and conviction. Tension out of politics which at times leads to loss of life ¹⁰⁹ has been the order of the day since competitive politics began in Zanzibar. The worse electoral disturbance came following the controversial 2000 elections. ¹¹⁰ A number of people lost their lives in the violence that followed denial of the population to demonstrate and meet to discuss the outcome of the elections. ¹¹¹

Several elections on Zanzibar has failed to strike national consensus as every election since the first one held in 1959 have been disputed for one reasons or another resulting into deep mistrust by political parties. The re-introduction of multi-party politics in 1992 threatened the very basis of democracy.

Political rights are vital to any society and Zanzibar is no exception. A functioning society should guarantee the right of its members to freely take part in political activities regardless of colour, sex, creed or origin. ¹¹² One and all in a given society should have equal rights to take part in the running of the government and should have equal access to opportunities available to participate fully in politics.

¹⁰⁹ For early disturbances arising out of elections see COLONIAL OFFICE, *Report of a Commission of Inquiry into Disturbances in Zanzibar During June, 1961*, London: Her Majesty's Stationery Office, 1961; and ZANZIBAR PROTECTORATE, *Reports of the Supervisors of Elections on the Registration of Voters and the Elections Held in January, 1961*, Zanzibar: Government Printer, 1961.

¹¹⁰ On these elections see COMMONWEALTH SECRETARIAT, *The Elections in Zanzibar, United Republic of Tanzania 29 October 2000: The Report of the Commonwealth Observer Group*, London: Commonwealth Secretariat, 2001; INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS (IFES), *IFES International Observer Report: The October 29, 2000 General Elections in Zanzibar*, Washington, D.C.: IFES, 2000; TANZANIA ELECTION MONITORING COMMITTEE (TEMCO), *Interim Statement on the Elections in Zanzibar, 31st October, 2000*; TUME YA UCHAGUZI YA ZANZIBAR, *Ripoti ya Tume ya Uchaguzi ya Zanzibar Kuhusu Uchaguzi Mkuu wa Mwaka 2000, Zanzibar: Tume ya Uchaguzi ya Zanzibar*, 2001

¹¹¹ See INTERNATIONAL FEDERATION FOR HUMAN RIGHTS and LEGAL AND HUMAN RIGHTS CENTRE, Zanzibar – *Wave of Violence: A Fact Finding Report on Police Brutality and Election Mismanagement in Zanzibar*, Paris and Dar es Salaam: FIDH and LHRC, 2001; AFRICAN WATCH, *Tanzania: The Bullets Were Raining – The January 2001 Attacks on Peaceful Demonstrators in Zanzibar*, New York: African Watch, 2002; and JAMHURI YA MUUNGANO WA TANZANIA, *Tume ya Rais ya Uchunguzi wa Matukio ya Tarehe 26 na 27 Januari, 2001 – Taarifa ya Tume – Kitabu cha Kwanza: Ushahidi, Malalamiko, Maoni na Ushauri wa Wananchi na Viongozi Pamoja na Tathmini na Mapendekezo ya Tume, Dar es Salaam: Mpiga Chapa wa Serikali*, 4 Novemba, 2002.

¹¹² These are standards that no country is excluded from fulfilling although some have attempted to diverge from them for reasons of socio-economic conditions.

The pillars of sound political participation will always be freedom of association and assembly and as such these two components should be assured with minimum restrictions as possible. Here we intend to dwell on the civil and political participation of Zanzibaris as integral part of their human rights as provided under universal pronouncements and as well as under the Constitution of their country.

We shall scan albeit briefly several key issues including the state of political affairs in Zanzibar, the status of the Union between Tanganyika and Zanzibar, the freedom of assembly and association, as well as the right to participate in public affairs and the right to vote.

3.1 Political History

A politically stable society and one that provides fully the civil liberties of its people tends to be more forthcoming in ensuring observation of human rights and the contrary brews a repressive government and one that is less concerned with human rights. Moreover, it has been proven that a government that observes human rights of its people and adheres to principles of good governance will perform better economically and will record better development achievements.

Zanzibar had a vibrant political history that lasted about one decade from 1954-1964. It started with the formation of first political party Zanzibar Nationalist Party (ZNP) followed by Afro-Shirazi Party (ASP), Zanzibar and Pemba Peoples (ZPPP)¹¹³ and finally the Umma Party in 1963.

The parties were formed at a time when the struggle for independence was at its highest gear at a period that was lovingly known as *Zama za Siasa* and when the parties confronted each other in three elections up to the last one of 1963 that was followed by achieving independence on 10th December, 1963.¹¹⁴ However, on 12th January, 1964 Afro-Shirazi Party staged a successful Revolution that brought to power a peoples' government that has now lasted almost 45 years. The Revolutionary Government abolished multi-party politics until 1992 when the system was reinstated. It began with the amendment of the Union Constitution¹¹⁵ and followed by the enactment of Political

¹¹³ The ZNP was formed after local riots later known as *Vita vya Ng'ombe* in 1954; the Afro-Shirazi Party was formed in 1957 and it later splintered to allow the formation of ZPPP.

¹¹⁴ This period is captured well by persons interviewed in both in Kiswahili/German in BARWANI, Sauda A. et al (eds.), *Maisha Yetu Kabla ya Mapinduzi na Baadaye (Unser Leben vor der Revolution und danach)*, Cologne: Rudiger Koppe Verlag, 2003.

¹¹⁵ Articles 3 and 10 of the Constitution of the United Republic of Tanzania 1977 which had declared Tanzania a one party state and party supremacy respectively were amended to usher in multiparty political system. These changes were in conformity with the recommendations made in the Report of the Nyalali Commission of 1991. See GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA, *The Report and Recommendations of the Presidential Commission on Single Party or Multiparty System in Tanzania, 1991 on the Democratic System in Tanzania*, Dar es Salaam: Dar es Salaam University Press, 1992. This important milestone in the history of Tanzania is captured in TAMBILA, Kapepwa I., "The Transition to Multiparty Democracy in Tanzania: Some History and Missed Opportunities," Volume 28 No. 4 *Verfassung und Recht in Übersee*, 1995, p. 468; and MSEKWA, Pius, *The Transition to Multiparty Democracy*, Dar es Salaam: Tema Publishers Company Ltd and Tanzania Publishing House, 1995.

Parties Act, 1992.¹¹⁶ At the same time the Constitutions of the United Republic of Tanzania of 1977 and that of Zanzibar were amended to accommodate the new political system in the country.¹¹⁷

Since the re-introduction of competitive politics in Zanzibar, the main political parties have been the *Chama cha Mapinduzi* (CCM) and the Civic United Front (*Chama cha Wananchi* - CUF). CCM has won three consecutive elections 1995, 2000 and 2005 and the Opposition has cried electoral fraud and has boycotted the House of Representatives several times as well refusing to recognise the President of Zanzibar. The two parties have almost equal number following on the Isles.¹¹⁸

3.2 International Instruments and Constitutional Provisions

The political rights of the world citizenry are stipulated under the 1948 Universal Declaration of Human Rights, the most celebrated rights based document which is completed by the two Covenants of 1966.

The International Covenant on Civil and Political Rights, 1966 seeks to ensure such rights specifically under Articles 19, 21 and 22, with a binding nature to state parties for the full enjoyment of their population. The African Charter on Human and Peoples' Rights, 1981 further carries this right through Article 18 and it sets obligation on members of the African Union to promote such rights to the populace in the continent.¹¹⁹

The Zanzibar Constitution of 1984 has followed suit by ensuring the political rights in the Bill of Rights provided in Chapter Three. Article 20 of this Constitution underlines this right and it is supplemented by other legislation towards the same but more prominently the Political Parties Act, 1992.¹²⁰

¹¹⁶ Act No. 5 of 1992.

¹¹⁷ See Article 3 of the Union Constitution of 1977 and Article 5 of the Zanzibar Constitution of 1984.

¹¹⁸ This is indicated by the outcome of the 1995 Presidential where the Zanzibar Electoral Commission declared that the CCM Candidate Salmin Amour Juma got 50.2% and the CUF Candidate Seif Sharif Hamad 49.8%. On this see SOUTHALL, Roger, "Troubled Visionary: Nyerere as a Former President," in SOUTHALL, Roger and Henning Melber (eds.), *Legacies of Power: Leadership Change and Former Presidents in African Politics*, Cape Town and Uppsala: Human Sciences Research Council and Nordiska Afrikainstitutet, 2006, p. 233 at p. 248.

¹¹⁹ The Charter was adopted at a time when nationalism was very strong in Africa in the wake of independence era and as such it could not be implemented.

¹²⁰ Act No. 5 of 1992.

The right to vote which is very central and fundamental is provided under Article 7 of the Constitution, which provides power to the Zanzibar House of Representative to provide conditions for a Zanzibari to enjoy this right. It is through the said Constitution that the House of Representatives enacted the Zanzibar Election Act, 1984¹²¹, the Zanzibari Act¹²² and the Registration of Zanzibaris Resident Act, 2005¹²³, a set of legislation with direct effect on the voting rights in Zanzibar. Earlier the House of Representative had also enacted what has come to be known as Residence Law which also has had negative impact on voting right.¹²⁴

The introduction of this amendment to the electoral lawn which require Zanzibaris of voting age to have residence of 5 years in a constituency in order to be eligible to participate in elections caused a lot of problems and it is claimed that many eligible Zanzibaris were denied their voting rights. Following complaints an amendment was made to the Zanzibar Election Act, 1984 which reduced the residence requirement to 3 years.¹²⁵

3.4 The State of Political Affairs

The year 2009 preceded the General Elections to be held in 2010. Thus at times there were turbulent periods in the course of the year influenced by the political expectations of what to follow. It is worth noting that in 2009 the people of Zanzibar experienced a by-election of Magogoni constituency for the vacant seat or Magogoni Constituency following the death of House Member Mr. Hassan Daud Hassan, December, 2008. This gave them a feeling of what will take place next year.

The Magogoni Constituency by-election held on 23rd May, 2009 exposed Zanzibar to many alleged human rights violations including beatings of potential voters suffered in the hands of Zanzibar Special Forces Department¹²⁶ and others being denied their voting rights for the lack of Zanzibar Resident Identity Cards. The By-election was hailed by the Zanzibar Electoral Commission to be the starting point of the Permanent Voter Register but it ended with the Opposition CUF claiming that several voters were denied to register and the Electoral body saying there was nothing sinister.¹²⁷

There were many other claims of excessive use of force, burning of property and denial of potential voters registering into the Permanent Voter Register when the exercise began in June in North Pemba and North Unguja regions. The Opposition claimed that the requirement of Zanzibar Identity Cards will deny thousands of their members the right to participate in elections but the exercise continued unabated.

¹²¹ Act No. 11 of 1984.

¹²² Act No. 5 of 1985.

¹²³ Act No. 7 of 2005.

¹²⁴ Section 12 (3) Elections Act of 1984.

¹²⁵ Ibid.

¹²⁶ See Kumbukumbu: *Uchaguzi Mdogo wa Magogoni, Mei, 2009, Mzalendo*. Net at http://www.mzalendo.net/kumbukumbuuchaguzimdogo_wa_magogoni_mwaka_2009.

¹²⁷ Ibid. See also <http://216.69.164.44/ipp/nipashe/2009>.

In the course of the year, the functioning of the government was relatively smooth and all three arms of the government – the Executive, the Legislature and the Judiciary worked well save for the inherent limitations and others caused by external factors such as economic downturn that hit the world in the cause of last year, which did not spare Zanzibar.

The year ended with a positive note when on 5th November, 2009 the Secretary General of the Opposition Civic United Front, Maalim Seif Shariff Hamad paid a courtesy call to the State House meeting President Amani Karume.¹²⁸ This was followed by the Opposition announcing on 7th November, 2009 of their decision to recognise the government of Karume which they had boycotted since 2005 following yet another disputed elections, which the Opposition claimed was stolen from them like the previous ones in 1995 and 2000. Both leaders have stated that this step will help in enabling Zanzibar have violence free of political stability.

The gesture, of the meeting of the two leaders and the discussion which has been called *Maridhiano* (Accord),¹²⁹ has also helped in solving a long standing nomination of two opposition members into the House of Representative which required consultation between the Presidency and the leader of the Opposition in the House of Reps. Finally on 14th December, 2009 the President of Zanzibar nominated Mr. Juma Duni Haji and Mr. Nassor Mazrui Members of the Zanzibar House of Representatives fulfilling the requirement of Article 66 of the Zanzibar Constitution.¹³⁰

The article providing for the nomination of the two Opposition members was a result of protracted *Muafaka II* (Accord) following disastrous result of demonstration to challenge the Presidential results in the year 2000 General Elections.¹³¹ The inclusion of the Article was meant as one of the means to encourage confidence building between the two main protagonists in the Zanzibar political scene – CCM and CUF.

¹²⁸ When the news broke out it spread like wild fire. The political shift and momentum has changed ever since. As expected the move has had its proponents and opponents- conservatives from each side of the Zanzibar political divide.

¹²⁹ It is interesting to note that up to now, save for the two gentlemen who met i.e. President Amani Karume and Maalim Seif Shariff Hamad, nobody else knows the contents of the 'Accord' between them. Incidentally, not even the top functionaries in their own parties.

¹³⁰ Article 66 of the Constitution which empowers the President to nominate 10 persons into the Zanzibar House of Representatives including two of them being members nominated in consultation with the leader of the opposition in Zanzibar.

¹³¹ On the developments in negotiations between the two major political parts on the isles see ANGLIN, D., "Zanzibar: *Political Impasse and Commonwealth Mediation*," Volume 18 No. 1 *Journal of Contemporary African Studies*, 2000, p. 39; CHAMA CHA MAPINDUZI (CCM) and CHAMA CHA WANANCHI (CUF), *Political Accord between Chama Cha Mapinduzi (CCM) and Chama Cha Wananchi (CUF) on Resolving the Political Crisis in Zanzibar*, Zanzibar: Multi-Colour Printers Ltd., October, 2001. See also BAKARI, Mohamed A., *The Democratisation Process in Zanzibar: A Retarded Transition*, Hamburg: Institute of African Affairs, 2001; and OLOKA-ONYANGO, Joseph and Maria Nassali (eds.), *Constitutionalism and Political Stability in Zanzibar: The Search for a New Vision*, Kampala: Kituo Cha Katiba, 2003.

3.5 The Status of the Union

Zanzibar merged with Tanganyika on 26th April, 1964 to form the United Republic of Tanzania, which has now notched 45 years of existence but which has gone through many testing times. The Union passed through one of its lowest ebb last year when two issues threatened to wreck the political arrangement that is perceived to be of advantage to one side and with constant nagging from both partners.

A statement issued by Prime Minister of Tanzania, Hon. Mizengo Pinda during the National Assembly question time to the effect that Zanzibar was not a country (*Zanzibar si Nchi*), but rather part of the state of Tanzania, was source of heated exchanges between ordinary people and politicians from the two sides of the Union.¹³²

The Zanzibar House of Representative also backed the Zanzibar Government in holding that any petroleum found in the surroundings of the archipelago shall be solely for the enjoyment of Zanzibar contrary to the fact that under Union arrangement natural resources were to be shared.

Zanzibar disputes a 1968 Constitutional Amendment which had added petroleum and gas on the list of Union Matters in the First Schedule to the 1977 Union Constitution. Under the Amendment the Tanzania Petroleum Development¹³³ has its powers extended to the Zanzibar jurisdiction though the Act does not stipulate any such power extension.¹³⁴ Voices have been raised from general public warning that Tanzania should be careful in handling the issue because oil curse has been source of violence and division in many other African countries.

Another issue which has threatened to rock the Union was that of Isles enjoyment of the economic side especially dividends accruing from the Bank of Tanzania to which Zanzibar claims to be a partner. Dr. Mwinyihaji Makame, the State Minister for Finance told the Zanzibar House of Representatives that Zanzibar government was not enjoying the presence of and the now mushrooming of the Commercial Banks which pay all their taxes to the Union Government and not a shilling trickles back to Zanzibar coffers.¹³⁵

An announcement by the Zanzibar Revenue Board (ZRB) on 9th May, 2009 that it was going to fully implement requirements of the 1992 Zanzibar Land Tenure Act¹³⁶ by charging land taxes on foreigners and Mainlanders was considered to segregate and discriminate Tanzanians of Mainland origin. According to ZRB Zanzibaris are to enjoy different and favourable land tax rights from non-Zanzibaris including foreigners and Mainlanders and this caused an uproar and claims of discrimination.¹³⁷ This is because Zanzibaris as Tanzanians are allowed to own land on the Mainland without restriction.

¹³² Nipashe News paper, 5th July, 2009.

¹³³ The Government Establishment Order of 1969, see also The Tanzania Petroleum (Exploration and Production) Act No 27 of 1980. For more details visits <http://www.tpdz.com>.

¹³⁴ The Zanzibar House of Representative passed a resolution to the effect that petrol was not legally included in the Union matters.

¹³⁵ Mwananchi Newspaper, 13th July, 2009.

¹³⁶ Act No 12 of 1992.

¹³⁷ See <http://www.jamii.forums.com/jukwaa-la-siasa>.

At the same time, several laws have been extended and become operational without necessarily going through constitutional rigours to ascertain the legality of their operation in Zanzibar. These include the Deep Sea Act, 1998¹³⁸, The Broadcasting Services Act, 1993¹³⁹ and the Tanzania Communication Act, 1993.¹⁴⁰ All issues covered under the said three Acts with extension into Zanzibar are not included in the list of Union Matters which began as 11 and have now reached 22 as explained above.

3.6 Right to Participate in Governance

The right to participate in governance is a right that enables individuals to participate in the decision-making process of their country. This participation can be either directly or indirectly through their freely chosen representatives. This right has been enshrined in different international instruments including global and regional instruments. The UDHR is the first international document that has entrenched the right to participate in the governance of the country. Article 21 of the Declaration provides that:

1. Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of the Government; which shall be expressed in periodic elections which shall be by Universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 21 of UDHR, 1948 as mentioned above is translated into binding form by Article 25 of the ICCPR, 1966 by providing that:

Every citizen shall have the right and opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a). To take part in the conduct of public affairs, directly or through chosen representatives;
- (b). To vote and to be elected at genuine periodic election which shall be by Universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c). To have access, on general terms of equality, to public service in his country.

Although in Article 21 of UDHR, the word democracy has not been mentioned, Article 25 contains a set of rights that goes to the heart of a democratic society. It appears that the drafters of this Article have taken the view that the enjoyment of this right requires a democratic government based on the consent of the people.¹⁴¹ This Article is considered currently as laying international standards in conducting democratic elections. It contains what the so-called election elements which include periodic elections, genuine elections, right to stand for election, universal suffrage, right to vote, equal suffrage, secrecy of votes and free expression of the will of voters.

¹³⁸ The Deep Sea Fishing Authority Act No 1 of 1998.

¹³⁹ Act No 6 of 1993.

¹⁴⁰ Act No 8 of 1993.

¹⁴¹ Alex, C. Scott, D. and Richard, B., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, Ashgate Publishing Limited, 2004, p. 68.

3.7 Right to Participate in Governance in Zanzibar

Tanzania being signatory of ICCPR has incorporated the provisions of this Article in her Constitution. Zanzibar as a part to URT has also done the same as URT Constitution. In Article 21 (1) of its 1984 Constitution of Zanzibar this right is provided as follows:

Every Zanzibari shall have the right to take part in the conduct of the government of the country, either directly or indirectly through freely chosen representatives.

Article 21 (2) gives every Zanzibari the right and freedoms to participate effectively in decision-making on matters affecting him personally or the nation.

The right to vote, as one element of the right of participation in governance, has been provided in Article 7 of the Constitution of Zanzibar. The Article reads:

Every Zanzibari who has attained the age of 18 years has the right to vote in the election conducted in Zanzibar.

The voting exercise is slated for every five years unless in some other circumstances already aforementioned in both the Constitution and the Elections Act of 1984.

Several conditions for the enjoyment of this right are laid down under the Constitution and the said Elections Act, 1984.

The Constitution provides under Article 6 that there shall be a Zanzibari who shall enjoy all rights accorded under the Constitution as well as other relevant laws, and one among those rights is that of voting. A Zanzibari is legally defined in the Zanzibari Act, 1985.¹⁴²

However, that Constitutional right provided to a Zanzibari is curtailed by providing some conditions that tend to restrict the broader meaning of the voting right under Article 11 of the Constitution and further that right is eroded with the enactment of the Registration of Zanzibari Resident Act of 2005 which has specific provision on the holding of Resident Zanzibari Identity (ZAN-Id) card as a condition precedent for participating in elections as per Section 12 (1) (b) of the Act.¹⁴³ The requirement of identity card during registration of voters has raised legal discussions relating to the constitutionality of that requirement. Some Zanzibaris have decided to file petition before the High Court of Zanzibar applying for orders of certiorari, mandamus and prohibition against that requirement.¹⁴⁴

¹⁴² Act No. 5 of 1985.

¹⁴³ The ZAN-Ids are handled by the Zanzibar Identity Cards Registration Office established under Section 3 of Act No. 7 of 2005. Currently, the head of this controversial office is Mr. Mohamed Juma Ame.

¹⁴⁴ *Hamad Mussa Yussuf, Dadi Kombo Dadi and Ali Omar Juma v. Director of Zanzibar Electoral Commission and Attorney General of Zanzibar*, High Court of Zanzibar at Zanzibar, Civil Case No 16 of 2009.

The registration exercise for the 2010 General Elections began in June 2009 aiming at registering 550,000 but the exercise has been challenged by the Opposition Civic United Front¹⁴⁵ which questioned the legality of the ZAN-Id and also what it raised as claims to deliberately sideline its members. As it has been indicated above, there is a pending case in the High Court of Zanzibar on this matter.

The Zanzibar Electoral Commission has been scoffing such allegations and earlier in the year it ruled out any suggestions that it should work under the supervision of the international bodies in order to ensure transparency as well as free and fair elections. Despite the up and downs and challenges threatening to derail the electoral exercise ZEC continues with registration of potential voters and had almost gone through the first of the several rounds of the registration exercise.

However, a big number of Zanzibaris who happen to have residence outside Zanzibar are excluded in the governance of their country. These might be Zanzibari who live in the Mainland and hence have opportunity to come back easily or Zanzibaris who live in foreign lands but still maintain their Tanzania citizenship and hence still Zanzibaris under the law. It is recommended that the government of Zanzibar pave way for the Zanzibar Diaspora to exercise the right to governance of their country.

3.8 Right to Stand for Elections

The will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others.¹⁴⁶ Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or due to political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.¹⁴⁷

The right to stand for election has been provided by the Constitution of Zanzibar according to each contested posts in elections. In other words, the conditions differ between one contested posts to another. In Presidential election, the Constitution provides that any person may qualify to be elected as a President if:¹⁴⁸

- (a). He/she is a Zanzibari by birth;
- (b). Has attained the age of 40 years;
- (c). Has qualifications to be elected a member of House of Representatives and
- (d). Is a member of and candidate proposed by a political party officially registered subject to Political Party Act of 1992.

The Constitution also provides for the specific qualifications for House of Representatives contestants which also include proposition by officially registered

¹⁴⁵ *The Guardian*, 31st August, 2009. The issue never left the media throughout the year.

¹⁴⁶ UN Resolution of Enhancing the Effectiveness of Periodic and Genuine Elections, A/Res/46/137, 1991, paragraph 4.

¹⁴⁷ UN Human Rights Committee, General Comments of article 25 of ICCPR, paragraph 15.

¹⁴⁸ Article 26 (2) of the Zanzibar Constitution of 1984.

political party. This qualification has raised a very persistent discussion in the country as infringing the right to stand for elections. Since the inception of multiparty politics there have been persistent calls from opposition political parties and members of civil-society for the opening up of the electoral system to allow independent/ private candidates to contest elections at all levels.¹⁴⁹

In Tanzania Mainland where the same provision as contained in Zanzibar Constitution, the discussion led the matter to be brought twice before the High Court of Tanzania where on both occasions the court decided in favour of independent candidacy.¹⁵⁰ Being decisions of the High Court of Tanzania, these decisions are not binding in Zanzibar. At best they have persuasive value in case the matter is filed in the High Court of Zanzibar.

3.9 Persons with Disability and the Right to Take Part in Governance

The above Constitutional guarantee relating to the right to take part in governance of the country does not exclude persons with disability. Persons with disabilities are entitled to enjoy equal rights as other members of public. This is given more clarity by Persons with Disability (Right and Privileges) Act , 2006¹⁵¹ by insisting that all persons with disabilities have the same rights to participate in the political life in society as all other citizens including right to vote in secret and contest for elective offices.

In exercising the right to vote, the Election Act, 1984¹⁵² lays down procedures rendering persons with disability in the exercise of this right. The Act maintains that if a voter is incapacitated by blindness or other physical cause, or unable to read he may call the presiding officer or companion without the presence of any other person and give the name of candidate he or she would like to vote for and the presiding officer shall correctly vote for him or her. The Act lays down further procedures to be observed when a voter with disabilities exercises his/her right to vote .¹⁵³ The Persons with Disability Act, 2006 requires the proper implementation of that procedure and more particularly provide for offence in case of its violation.¹⁵⁴ Though the Act has tried to see to it that the will of person with disability is respected, in practice the secrecy of votes of the persons with disabilities is not ensured. It is high time that the responsible authorities to introduce ballot papers which can be readable to person with blindness and good

¹⁴⁹ 2009 *African Peer Review Mechanism Report on Tanzania*, p. 35.

¹⁵⁰ This matter has been before the High Court of Tanzania twice. First in the case of *Rev. Christopher Mtikila v. Attorney-General*, High Court of Tanzania at Dodoma, Civil Case No. 5 of 1993, [Reported in Volume 1 *Commonwealth Human Rights Law Digest*, 1996, p. 11]; and again in *Christopher Mtikila v. the Attorney General*, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 10 of 2005. In both cases the right of the individual to stand for elections as an independent candidate was upheld. In the first case the State gave notice to appeal and then abandoned the case and now it is still appealing the latest decision. However, this time around the Court of Appeal is taking more seriously and wants to wind up this matter once and for all.

¹⁵¹ Act No. 9 of 2006.

¹⁵² Act No. 11 of 1984.

¹⁵³ Section 68(3)(h)-k of the Persons With Disability (Right and Privileges) Act, 2006 (Act No. 9 of 2006).

procedures are laid down to make it easy for other persons with disability to exercise this right.

The Person with Disabilities Act, 2006 further provides for accessibility of polling stations to persons with disabilities during elections including the provisions of necessary devices and services to facilitate the exercise of this right.¹⁵⁵ The situation on the field is not in conformity with this provision. Some of the polling stations during the updating of the Permanent Voter Register exercise were very far to be accessible by some members of the public particularly those with disabilities especially in rural areas. For example in Pemba, the registration centres at Kisiwani Kwa Binti Abeid in Wete District, Within Northern Region of Pemba, was serving people from up to 5 kilometre radius. Some of those areas do not have even public transport. Therefore this situation does not provide accessibility to some members of the public particularly persons with disabilities. It is recommended that polling stations should be brought close to the public and must be as many as possible so that people may have better access of their right.

The involvement of persons with the disabilities in the government positions is not sufficient. There is only one member of the House of Representatives from persons with the disabilities who is from Special Women Seats. It is recommended that the government and political parties to provide more chances to the persons with disabilities in high positions particularly chances to contest in different positions.

3.10 Institutional Framework

The UN Human Rights Committee comments on Article 25 of the International Covenant on Civil, Political Rights (ICCPR) above that, the rights and obligations provided for in paragraph (b) should be guaranteed by law. This must go parallel with establishment of an institution to administer electoral process. This institution must be based on independence, fairness, impartiality and observe the established laws which are compatible with ICCPR.¹⁵⁶ In Zanzibar the power to administer elections is vested in the Zanzibar Electoral Commission (ZEC) under Article 119 of the Zanzibar Constitution. According to Elections Act, 1984, ZEC is empowered to supervise the general conduct of presidential, members of the House of Representatives and members of Local Authority elections.¹⁵⁷ It is also responsible for coordinating and promoting voter education.¹⁵⁸ The Constitution empowers ZEC to divide Zanzibar into electoral constituencies having such boundaries and names as ZEC deems fit, which are not less than 40 and not more than 55. It is not clear which criterion ZEC uses in determination

¹⁵⁴ Ibid, Section 24 (2-5).

¹⁵⁵ Section 25 of the Act.

¹⁵⁶ UN Human Rights Committee comments on Article 25 of ICCPR, 1966

¹⁵⁷ Section 5 of Elections Act, 1984.

¹⁵⁸ Ibid, Section 5 (b).

of constituencies in both Unguja and Pemba Isles. Over the years, people have questioned the basis of merging constituencies and expanding others in a way that would affect the composition of the Zanzibar House of Representatives and the representation of Zanzibar in the Union Parliament.¹⁵⁹

ZEC is composed of a Chairman who is appointed by the President as he deems fit;¹⁶⁰ two members appointed by the President on the recommendation of the leader of Government Business in the House of Representatives;¹⁶¹ two members appointed by the President on the recommendation of the Leader of Opposition in the House of Representatives;¹⁶² one member appointed by the President from among the Judges of the High Court;¹⁶³ and one member who shall be appointed by the President as he deems fit.¹⁶⁴ The Chairman of ZEC should be a person who has been or has qualification to be a Judge of the High Court or of Court of Appeal in any part of the Commonwealth or an eminent person in the society.¹⁶⁵

The President has wide powers in the appointment of Chairman and some members of ZEC. The qualification attached to a person who can be a Chairman is so loose that there are no criteria to determine the eminence of a person in the society and who has to determine the eminency of that person. This gives the discretion to the President to choose any person of his choice. He can choose any person he feels comfortable with. This creates problems particularly where the president is also a contestant in the elections. This creates doubts on the independence, impartiality and effectiveness of ZEC in conducting free and fair elections.

The representation of two commissioners from opposition parties creates another problem in ZEC. It has been observed that when the commissioners vote on any critical issue with bearing on the parties, the outcome is always that CCM gets five against two votes by CUF. This implies two things: first is that while the four commissioners from CCM and CUF always vote along partisan lines, the remaining three (non-party member commissioners at least by law) have consistently been on the CCM's side¹⁶⁶. The involvement of CUF in ZEC has further brought tension between CCM and CUF.

¹⁵⁹ The division of constituencies in Zanzibar evokes a very fearful memory because of the tendency to hold such decision with sinister mind. When this was done during colonial era it was raised as a plot to deny majority victory to the majority holding Afro-Shirazi-Party but the same was claimed by the Civic United Front when the Zanzibar Electoral Commission reduced the number of constituencies in Pemba from 21 to 18 and increased those in Unguja from 29 to 31. Strangely, while increasing the Unguja constituencies, ZEC unilaterally decided to merge Mkunazini and Malindi constituencies in the heavily populated Stone Town area into a single Constituency – Mji Mkongwe.

¹⁶⁰ Article 119 (1) (a) of the Zanzibar Constitution, 1984

¹⁶¹ Ibid, Article 119 (1) (b).

¹⁶² Ibid, Article 119 (1) (c).

¹⁶³ Ibid, Article 119 (1) (d).

¹⁶⁴ Ibid, Article 119 (1) (e).

¹⁶⁵ Ibid, Article 119 (2) (a).

¹⁶⁶ *APRM Report on Tanzania*, 2009, p. 37.

Therefore ZEC is seen as another battle ground where these two parties collide. This has undermined the capacity of ZEC to decide objectively and fairly on election issues.¹⁶⁷

3.11 Freedom of Association and Assembly

Freedom of association is an important right which allows people who share common interests to join together to establish associations representing their interests. These associations may be political, nongovernmental, or trade unions. These associations are very important in the country as they make a state accountable for its actions. They also create important forum for people to express their grievances and promote democracy and rule of law.

Freedom of assembly and association is provided under Article 20 of the Zanzibar Constitution, 1984. The Article provides that every person is entitled, subject to ones free choice to freely and peaceably assemble, associate and cooperate with other persons and more specifically to form or join associations, trade unions, human rights organizations or other organizations for his/her interests permitted by law. However the enjoyment of this right is without prejudice to matters relating to defence, security of the people, health and public interest. Other matters include those required for the purpose of protecting rights freedom of others as well as matters required for keeping prohibitions to government officers, army officers or those voluntarily appointed.

To put the right into practice, the multi party system has been officially re-introduced in Tanzania through Political Parties Act, 1992. Currently there are about 18 registered political parties in Tanzania.¹⁶⁸ Political parties must have pan-territorial image that is to say they should attract membership from all sides of the Union. The Political Parties Act, 1992 requires that in order for a political party to get registration it must have 200 members from at least ten regions of Tanzania including regions in Tanzania Mainland and Zanzibar.¹⁷⁰ The requirement of the registration of political parties as provided by Political Parties Act, 1992 is said to be a barrier to freedom of association as some political parties may be unable to fulfil the registration requirements.¹⁷¹

¹⁶⁷ While criticism may be levelled that no conditions are put for the President to make his appointments of ZEC members, the same may apply to the opposition. This may have the disadvantage of deserving the population and hence have a weak delegation to the Electoral Commission or that one which is more inclined to party politics and hence have ZEC into partisan lines.

¹⁶⁸ Article 20 (2) a-c.

¹⁶⁹ Office of the Registrar of Political Parties.

¹⁷⁰ Section 10, Political Parties Act, 1992.

¹⁷¹ *Tanzania Human Rights Report 2008*, p. 38.

Furthermore the Act provides that one among the sources of political party fund is government subvention.¹⁷² There is still a critical problem regarding the requirements for a party to qualify for subvention from the government. Only registered political parties which have parliamentary seats and popular votes are qualified as follows: 50 percent of the funds shall be disbursed amongst qualifying parties on the basis of the ratio between the number of parliamentary constituencies in the United Republic and the other 50 percent of the funds shall be disbursed amongst qualifying parties, i.e. those with at least 5 percent of all the valid votes cast in all constituencies in the United Republic. The disbursement of funds to the parties is on the basis of the ratio between the total number of valid votes cast for the parliamentary candidates of the party and the total number of all the valid votes cast in the parliamentary election for all the qualifying parties. This distribution of funds creates a great gap between parties. Some of the emerging parties can hardly compete with others because of the lack of funds. There is a concern among opposition parties that this wide resource disparity constrains the opposition to spread nationwide.¹⁷³

In Zanzibar civil society associations are governed by Societies Act, No 6 of 1995. The Act requires every society to apply for registration to the Registrar of the Societies.¹⁷⁴ The Act empowers the Registrar power to refuse to register a society if he is satisfied that special grounds as provided under Section 12 of the Act exist. One of those grounds is that if in the opinion of the Registrar the society is repugnant with the provisions of any law or is *otherwise undesirable*.¹⁷⁵ The word *undesirable* is not defined in the Act which opens it to the possibility of abuse in practice. The Minister is also empowered to declare a society unlawful when he considers essential for public interest.¹⁷⁶ The law is silent on whether the decision of the Minister may be appealed against or not. This also creates possibility of this power to be abused hence constrains the freedom of association.

The Labour Relations Act, 2005¹⁷⁷ provides the rights to employees to take part in the formation of trade unions or federation of trade unions and rights to be members of the same as well as their protection.¹⁷⁸ Employees have positively used that right where currently 14 trade unions have been established in Zanzibar.¹⁷⁹

A part from that Act the Government of Zanzibar has formulated Zanzibar NGOs Policy of 2009 aimed at promoting the effectiveness of NGOs in Zanzibar. In this policy definition, objectives, vision and structure of NGOs are provided. The policy further provides for the co-operation between the government and NGOs, information sharing, accountability and policy implementation of NGOs.

¹⁷² Section 139 (1) (v), Political Parties Act, 1992.

¹⁷³ *APRM Report on Tanzania*, p. 34.

¹⁷⁴ Section 10 of the Society Act, 1995.

¹⁷⁵ Section 12 (2) iii of the Act.

¹⁷⁶ *Ibid*, Section 5.

¹⁷⁷ Act No. 1 of 2005.

¹⁷⁸ Section 4 of the Act.

¹⁷⁹ Source from the Zanzibar Labour Commission.

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The registration of NGOs by Registrar's Office is still a problem. It was reported in 2008 that the registration of NGOs is mainly conducted in Registrar's office in Unguja.

¹⁸⁰The situation still persists as those applications filed in Pemba sub office must be then transferred to Unguja Office where applications are considered. This leads to pilling up of applications hence delay the registration of NGOs. The statistics show that more than 700 NGOs have been so far registered by the Registrar General.¹⁸¹ It is recommended that the registration exercise should be decentralized so that the registration exercise is conducted effectively.

¹⁸⁰ *Tanzania Human Rights Report 2008.*

¹⁸¹ Source from the Office of Registrar General, Zanzibar. The office has no proper records of the registered NGOs but the number is more than 700.

CHAPTER FOUR

Economic, Social Rights and Cultural Rights

4.0 Introduction

Any administration worth its name cannot afford to distance itself from the provision or assurance of deliverance of economic and social rights. These are basic rights which form the foundation of any given society and hence their respect is paramount. These rights reflect the strength and determination of any government to care for its citizens because they are expensive and their return is not outright which tends to make some administration to shy away from guaranteeing them.

These are the rights that 'cost' governments that have to spend money to provide standards of living, or meet cultural expectations. It is far easier to respect or acknowledge a right such as the right to vote, than it is to promise that 'no child will live in poverty.' These rights 'cost' because often social and economic rights depend on someone else giving up their share of resources, or access to power. Few do that willingly.¹⁸² The aim of economic and social rights is to ensure such guarantee to people as a whole and they are founded on belief that everyone deserves social and economic justice.

Such rights are even more important now when poverty is entrenching itself and that is why the United Nations is putting great emphasis knowing that failure to have acceptable standards will result in a catastrophe from the already observed implications:¹⁸³

- A fifth of the developing world's population goes hungry every night;
- A quarter lacks access to basic necessity like safe drinking water;
- A third lives in state of abject poverty;
- A billion suffer from extreme poverty like malnutrition, chronic ill health;
- A billion and half do not have clean water, or basic sanitation facilities;
- More than a billion adults cannot read or write; and
- More than 500 million children cannot get even a primary education.

However important these rights are and though the international community has tried to keep standards to be toed, individual countries have always found excuses and this has been helped because there is lack of established mechanism for checking the same.

¹⁸² A paper by Prof. Radhika Balakrishnan, "Auditing Economic Policy in the Light of Obligations on Economic and Social Rights", www.cwgl.rutgers.edu

¹⁸³ www.un.org

The economic, social and cultural rights are internationally provided by specific instrument adopted by the international community for such purpose. The leading one is the International Covenant on Economic and Social and Cultural Rights of 1966 (ICCPR). This covenant is binding on its parties. The instrument provides for rights like right to work, right to receive social security, right to health and right to education. This Covenant was later on followed by the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Year) which contains individual complaint mechanism. Tanzania has ratified the International Covenant on Economic, Social and Cultural Rights and incorporated a number of its provisions in its domestic law.¹⁸⁴

4.1 Right to Work

In Zanzibar the right to work is provided for under Article 21 (3) and (4) of the Constitution of Zanzibar of 1984, which provides *inter alia*:

- (i). Every Zanzibari has a right to work and is entitled equal rights and privileges, and hold any position in employment under jurisdiction of Zanzibar.
- (ii) Every person without any discrimination of any form has the right to receive remuneration according to his/her work and all persons working in accordance with their competence and qualifications shall receive remuneration according to their qualifications.

Sub Article 3 basically addresses non-discrimination in the labour market while sub Article 4 advocates for equal pay for a similar job which removes the possibility of distinct salary scales. The Constitution of Zanzibar, like the Constitution of the United Republic of Tanzania provides for the right to work as a right to be enjoyed by all citizens.

Zanzibar has enacted other laws over and the above constitutional provisions. These laws include Employment Act of 2005,¹⁸⁵ The Workers Compensation Act, 1986,¹⁸⁶ the Occupational Safety and Health Act, 2005,¹⁸⁷ Labour Relations Act, 2005¹⁸⁸ and Social Security Fund Act, 2005.¹⁸⁹ Apart from those laws there are also various policies and Action Plans formulated by the Government. These include The Zanzibar Youth Employment Action Plan of 2007, the Job Programme for Zanzibar 2007, the Zanzibar Employment Policy of 2007 and the Zanzibar Children Protection and Survival Policy of 2001.

¹⁸⁴ Among the economic and social rights guaranteed under the Constitution of the United Republic of Tanzania of 1977 is the right to work (Article 22), the right to equal pay for equal work (Article 23) and right to own property (Article 24).

¹⁸⁵ Act No. 11 of 2005.

¹⁸⁶ Act No. 15 of 1986 as amended by Act No. 5 of 2005.

¹⁸⁷ Act No. 8 of 2005.

¹⁸⁸ Act No. 1 of 2005.

¹⁸⁹ Act No. 2 of 2005.

The most detailed legislation which lays down matters relating to employment in Zanzibar is the Employment Act, 2005. The Act, to great extent has considered the international standards particularly international labour standards as set by the International Labour Organization (ILO). The Act, among other things provides for the fundamental rights of employees which include prohibition of forced labour, discrimination, employment of children, worst forms of child labour and sexual harassment.

Others include freedom of association and collective bargaining which was at its best practice between September and December 2009 when the Zanzibar Teachers Union (ZATU) challenged the Zanzibar government on the provision of salaries that the government had failed to fulfil in time following a promise it had made. Jointly the teachers signed a petition to the Ministry of Education and Vocational Training on grounds that the government had failed to fulfil its obligation. The Ministry reacted angrily but the issue was amicably settled after the Ministry met the ZATU leadership.

Despite the above provisions the situation of employees in Zanzibar is not satisfactory. Though the government increased the minimum wage rate from Tshs. 80,000/= to Tshs. 100, 000/= per month in 2009, the rate does not go parallel with the current rate of inflation and standard of living in Zanzibar. It is recommended that basic salary to be increased so that it can match with the current standard of living of Zanzibaris.

The Zanzibar government through President Amani Karume reiterated its position to provide to its labour force salaries that would enable them to cope with the present life conditions¹⁹⁰. There is stark difference between those employed by the government and the private sector. Although the private sector may look attractive and offering better working conditions for its working force it is also true that this sector has its problems too. There are many workers in this sector working either without valid contracts or short-term contracts. In addition, many workers have no job security and thus can be terminated at any time for no apparent reasons.¹⁹¹

The presence of good laws has not been a guarantee for the provision of labour rights. Various cases have arisen in which employees have claimed that they have not received deserving and legal treatment including many employers failing to observe the minimum wage.

The right to work is restrictive to some government sectors like that of teaching. Teachers who have had been placed to work in Pemba have found it hard to get placements in Unguja. They are being told to work in their areas of origin and this is segregative against them because their rights to movement and free labour under the Constitution are curtailed.

The right to work is not spelt out clearly in relation to certain groups such as people living with HIV and people with disability. While there is no defence for people who get HIV during their employment period to continue with employment before some

¹⁹⁰ The Guardian 2nd May, 2009.

¹⁹¹ An interview conducted with an ex-hotel employee who pleaded anonymous at Zanzibar Stone Town on 15th December, 2009.

excuse is found to fire them, the employers appear not to fulfil legal requirement to employ people with disability as well making places of work accessible by them.¹⁹²

For some time now the Zanzibar government has established a department known as Government Security Office (GSO) whose legality is not known and whose primary task is to vet potential government employees especially on strategic positions.

Unfortunately the procedures of this organ are not publicly known especially when most of government placements are not advertised and allow for merit competition. It is recommended that the work of this department should be made open and transparent and the government should be open on what it requires from potential employees and job interviews if any should be professionally conducted in order to enable all Zanzibaris to have equal access to government jobs.

4.2 Right to Property

Zanzibar had passed through several stages in as far as the question of property ownership is concerned and the trend had been dictated by the social economic conditions of the day. Private ownership of property and the whole question of protection was well pronounced during the colonial era for the *colonial masters* because private ownership was the basis of the mode of production of the day and private property was sacrosanct. It was not the same for the indigenous Zanzibaris who were guaranteed nothing.

Things changed dramatically after the 1964 Revolution when the Zanzibar Government enacted first the Confiscation Immovable Property Decree, 1964 and the Land Distribution Decree, 1967 with the aim of confiscating property and land owned by absent landlords or who owned excess land that was acquired against the will of poor peasants. This went hand in hand with the policy of the day of distributing land and landed property to the masses as way of fulfilling the Afro-Shirazi Party (ASP) manifesto. Over 90,000 acres were distributed to 3,000 people in Unguja and Pemba but it is believed that most of the distributed land has reverted back to original owners or has gone into private hands.¹⁹³ This is due to the fact that peasants who were allocated land after the 1964 Revolution in the three acre allocation system are selling the same to those with the means to develop this land.¹⁹⁴

¹⁹² Section 8 of the Persons with Disabilities (Rights and Privileges) Act No. 9 of 2006.

¹⁹³ Zanzibar has been in persistent land problems since January 1964. See <http://zanzibaryetu.wordpress.com/2009> and [www://bongo5.com/content/view](http://www.bongo5.com/content/view); and also SHAO, Ibrahim F., *The Political Economy of Land Reforms in Zanzibar: Before and After the Revolution*, Dar es Salaam: Dar es Salaam University Press, 1992; and CHACHAGE, Chachage S., *Environment, Aid and Politics in Zanzibar*, Dar es Salaam: Dar es Salaam University Press (1996) Limited, 2000, pp. 15 to 61. On the distribution of land during colonial and post-revolutionary period in Zanzibar see AFRO-SHIRAZI PARTY, *The Afro-Shirazi Party Revolution 1964 – 1974*, Zanzibar: ASP, 1974. See also HOWELL, John B., *Zanzibar's Afro-Shirazi Party 1957-1977 - A Bibliography*, Washington, D.C.: Library of the Congress (Maktaba Africana Series), 1978.

¹⁹⁴ JONES, Christina, "The Evolution of Zanzibar Land Law from Colonial Times to Present," in DEBUSMANN, Robert and Stefan Arnold (eds.), *Land Law and Land Ownership in Africa: Case*

It was only in 1984 that Zanzibar reversed this image following the enactment of the third Zanzibar Constitution since 1963, which under Section 17 provides for protection from deprivation of property except and upon compliance of the set out conditions. The Section reads:

No person shall be deprived of his property interest or right in that property except and upon compliance with the following conditions:

- (a). that the acquisition and occupancy of the property is of utmost importance for defence and security of people, health requirement; town planning and any other development in the public interest;
- (b). That the need to acquire the property in question is absolutely necessarily to the extent that it legalizes its acquisition even if it is detrimental to the owner; and
- (c). That there exist a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.

That right is governed by other laws enacted by the Revolutionary Government of Zanzibar. These laws include Land Tenure Act, 1992¹⁹⁵ which provides for, among other things, the right to occupy land by Zanzibaris and its procedures, transfer of the right of occupancy, leases and termination of the right of occupancy. The Act provides that the right of occupancy in land may arise if granted by Minister, recognition of the interest following adjudication carried out under the Land Adjudication Act, 1992 and be registered under Registered Land Act, 1990 and through inheritance of lawful registered interest.¹⁹⁶ Other modes include purchase of a lawful registered interest and gift of registered interest from *bonafide* holder of a right of occupancy.¹⁹⁷

The Act further provides that in order for a right of occupancy to exist the holder must be a Zanzibari of 18 years old or above.¹⁹⁸ The Act provides for the termination in case the grantee of the right is proved not to be a Zanzibari. This requirement has raised discussion as contravening the Articles 17 and 24 of Union Constitution, 1977 that gives right to all Tanzanians the freedom of movement and the right to own property. The rights guaranteed in this part of the Bill of Rights is circumvented to affect sections of Zanzibaris too who are denied access to land. This touches those without proper papers and particularly the ZAN-Id.

Studies from Colonial and Contemporary Cameroon and Tanzania, Bayreuth: African Studies Series, 1996, p. 131; and JONES, Christina, "Plus ca Change, Plus ca Reste le Même? The New Zanzibar Land Law Project," Volume 40 No. 1 Journal of African Law, 1996, p. 19.

¹⁹⁵ Act No 12 of 1992.

¹⁹⁶ Ibid, Section 57.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid., Section 8(1).

Non Zanzibaris have no right to own land in the form of Right of Occupancy but in the form of leases. Article 17 of Constitution of Zanzibar of 1984 guarantee right to own land and is attached as a Schedule to the Investment Act, 1986 to attract for investors.¹⁹⁹ However in 2009 several public leases have been terminated by Minister on ground of contravention of terms of lease without compensation for the unexhausted improvements.²⁰⁰

Reports show the increase of land disputes in Zanzibar in 2009. The power to entertain land disputes is vested in the Land Tribunal.²⁰¹ The number of filed disputes in the tribunal show how the magnitude of the problem in Zanzibar and most of the cases have to do with land prime for investment. One case is reported to take place in North Pemba Region where the Regional Commissioner is alleged to have used an undue influence to acquire consent from local people into accepting an offer from an investor only to realise that the money given to them was not worth the land they had surrendered. The matter is now before the land Tribunal for judicial settlement.²⁰²

It is reported in 2009 that some houses were demolished at Kwarara in West District within the Zanzibar Urban West Region without justifiable cause. A number of houses were demolished and several families were left without shelter. It is said that the houses were demolished by order issued by District Commissioner of West District. The aggrieved have filed the case against the demolition challenging the legality of the action.²⁰³ This demolition was condemned by the members of the civil society including the Zanzibar Legal Services Centre.

¹⁹⁹ On investments in Zanzibar in general see PETER, Chris Maina, "The 1986 Investment Protection Act of Zanzibar," *ICSID REVIEW: Foreign Investment Law Review*, Fall 1988, p. 338; REVOLUTIONARY GOVERNMENT OF ZANZIBAR, *Investment Act 1986 and Guidelines for Investors*, Zanzibar: Zanzibar Government, 1989; PETER, Chris Maina, *Foreign Private Investments in Tanzania: A Study of the Legal Framework*, Konstanz: Hartung-Gorre Verlag, 1989, p. 117; PETER, Chris Maina, *Foreign Investments in Tanzania: The Mainland and Zanzibar*, Dar es Salaam: Friedrich Ebert Stiftung and Department of International Law of University of Dar es Salaam, 1994; and EBENROTH, Carsten Thomas and Chris Maina Peter, "Protection of Investments in Tanzania: Some New Issues from Zanzibar," Volume 8 Part 4 *African Journal of International and Comparative Law* (London: UK), 1996.

²⁰⁰ The case of *Chapwani Hotels Ltd v. Minister for Water, Construction, Energy and Land, Zanzibar*, High Court of Zanzibar at Zanzibar, Civil Case No. 11 of 2009 is an example of cases filed before Courts law opposing the Minister's decision to terminate land lease.

²⁰¹ Section 3 of Land Tribunal Act no 7 of 1994.

²⁰² *Karim Omar Kombo v. D.C Chake Chake*, Land tribunal, Chake Chake Pemba, Civil Case No. 9 of 2009.

²⁰³ See Khamis Hassan Ali and 4 others v.. *Sheha wa Shehia ya Tomondo*, Regional Commissioner of Urban and West Region and District Commissioner of West District High Court of Zanzibar, Civil Case No. 17 of 2009. Two cases have been filed before Land Tribunal which form part of this crises. These cases are *Suleiman Khalfan v. Mohamed Shehe and 2 Others*, Land Tribunal of Zanzibar, Civil Case No. 6 of 2006; and *Suleiman Khalfan v. Shaibu Rashid Salum and 23 Others*, Land Tribunal of Zanzibar, Civil Case No. 122 of 2007.

Despite the guarantee of the right to own property, the Cloves Act, 1985²⁰⁴ limits the enjoyment of that right by prohibiting the transfer of the same by any person. The Act confers the power to export cloves to the Zanzibar State Trading Corporation (ZSTC).²⁰⁵ The Act provides for the offence in case of the violation of that provision. The Act obliges the owner of cloves to sell cloves to ZSTC only. This includes the prohibition of storage of cloves in ones house or any other place. It is an offence to contravene those provisions.²⁰⁶ This Act contravenes the provisions relating to right own property as envisaged by the Constitution. It is recommended that the Act to be amended so that persons may have better access to their rights to own property as provided in the Constitution.

4.3 Right to Education and Health

Zanzibar like many other developing countries has found it difficult to ensure the provision of full basket of internationally acclaimed rights, and instead has chosen to divide between them. For this division the Zanzibar Constitution, 1984 has categorised two groups. One that is enforceable under Chapter III and others like right to education, health and other social services have been put under Chapter II as fundamental objectives as directive principles and policies and which cannot be enforced in court of law.

The Zanzibar Constitution does not include the right to education as one of the enforceable rights. It is rather enshrined under Article 10 (6) as one of the political objectives of the government. The right to education is provided for under the Education Act, 1982²⁰⁷ which provides for free and compulsory education.²⁰⁸ The Education Act provides for obligation on the part of parents or guardians to ensure that the child regularly attends school until he or she completes the basic education. Basic education is defined to mean basic primary and junior secondary which every child in Zanzibar is entitled to be provided.²⁰⁹

It is reported that the number of schools and students have increased during the year 2009.²¹⁰ The reports show the increase of secondary schools to 219 in 2008/09 with 82,796 students.²¹¹ There are three Universities so far in Zanzibar providing different academic disciplines. These universities are State University of Zanzibar, a government owned University with 300 students; University College of Chukwani with 725 students and Zanzibar University situated at Tunguu with 1,727 students.²¹² The government has established higher educational fund to sponsor students at higher learning institutions. The fund has sponsored 371 students - 219 males and 152 females, who

²⁰⁴ Act No. 11 of 1985.

²⁰⁵ Section 3 of the Cloves Act, 1985.

²⁰⁶ Section 7 of the Act.

²⁰⁷ Act No. 6 of 1982.

²⁰⁸ Section 19 of Act No. 6 of 1982.

²⁰⁹ Ibid, Section 20 (1-2).

²¹⁰ The statistics relating to nursery and primary schools are shown in Chapter Five.

²¹¹ Budget Speech Ministry of Education and Vocational Training, House of Representatives, 2009, p. 24.

²¹² Ibid.

joined different Universities within and outside Zanzibar.²¹³ It is known that 336 students joined various Universities in Tanzania and 35 outside Tanzania.²¹⁴

Although statistics show the increase of schools established by government, there are some areas of Zanzibar which still do not have a single school. Therefore students have to walk long distances in pursuit of education. This problem persists mainly in rural areas. On top of that the quality of education in government schools is very poor compared to privately owned schools. This compels people to send their children to private schools although fees are high and hence a heavy burden to them.

The low salary coupled with lack of incentives paid to teachers is another problem constraining the provision of quality education in Zanzibar in government schools. This is another factor discouraging teachers from good services in their works and remains in government schools. It is recommended that government improve benefits to teachers so that they can provide good services hence improve the standard of education in Zanzibar.

It is obvious that the government can hardly cope with high population increase as well as the positively implement the Millennium Goals which Zanzibar want do by 100 percent. In order to go around this obligation, the Ministry of Education, which has the legal obligation of providing basic education,²¹⁵ has developed what are known as large classes especially in high density areas in order to meet the minimum compulsory education goal.

In addition, the government has paved way for private schools and has strengthened their role and has established alternative learning centres (*Vituo vya Elimu Mbadala*) in order to absorb several drop outs. In all there are 20 such centres scattered all over the islands and which have done a good job to occupy such dropouts and turn them into useful citizens.

In the health sector, while the government has declared that it will provide free health to all Zanzibaris, it has been difficult to implement this wish. At several stages the Zanzibar government has reviewed this position including issuing a policy paper in Year 2000 that health services will be run under cost-sharing program.

When President Amani Karume was inaugurating the CT scan machine insisted that the cost sharing arrangement should continue but administrators should also consider people with lower income.²¹⁶ On the other hand the government has been under considerable pressure to provide free health services to the extent that such efforts border compromising the quality of the services and as such private hospitals and health clinics has mushroomed.

²¹³ Ibid, p. 25.

²¹⁴ Ibid.

²¹⁵ Ibid, Section 19.

²¹⁶ During inauguration ceremony of the machine at Victoria garden Zanzibar on 11th April, 2009.

CHAPTER FIVE

Rights of Vulnerable Groups

5.0 Introduction

There are some groups in the society that are considered vulnerable to human rights violation and incapable of enforcing their rights. Because of their unique characteristics, the society tends to marginalize, disempowering and think that they are different from other people. Due to this situation different international human rights instruments have been developed to take care of the rights of these groups in the society. These instruments include Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW); Convention on the Rights of the Child, 1989 (CRC); International Covenant on Civil and Political Rights, 1966; the African Charter on Human and Peoples Rights, 1981 and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2000 and International Convention of the Rights and Dignity of People with Disability of 2006 (ICRDPD). Currently, there is world-wide campaign to ensure these groups are guaranteed their rights as other members of the society. In this part the rights women, children, people with disabilities and elderly persons will be critically examined.

5.1 Women and Girls

The international human rights instruments provide for equal guarantee of human rights to all individuals within a state. Apart from the general human rights instruments; there is a very important instrument which specifically contains the rights of women. This instrument is the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW), 1979²¹⁷ which requires governments to ensure that women are not discriminated against any sphere of life. Another instrument is The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2000. Tanzania being signatory to these instruments,²¹⁸ is bound by their provisions.

5.2 Legal Framework for Women Protection in Zanzibar

The government of Zanzibar has taken specific steps to translate into reality key provisions of the above international human rights instruments relating to women's rights in its domestic laws.

The Constitution of Zanzibar guarantees equal rights to all Zanzibaris without discrimination of any kind. Article 11 of the Constitution provides that all human beings are born free and all are equal and that every person is entitled recognition and respect of his/her dignity. The Constitution further elaborates under Article 12 that all persons are equal and are entitled without discrimination to protection and equality before the law and that no law shall be discriminatory. The Constitution puts more clarity on the term

²¹⁷ Adopted on 19th December, 1979, entered into force 3rd September, 1981.

²¹⁸ Tanzania ratified it on 20th August, 1985.

discrimination under Article 12 (5) to mean to fulfil people's needs on the basis of their nationality, ethnic, place of origin, political opinion, gender, religion or colour whereby some people are considered to be inferior than others or barriers are kept on some people but are not on others or some enjoy some privileges but not others. Therefore, all rights provided in the Zanzibar Constitution shall be enjoyed equally by all members of the Zanzibari society.

Apart from constitutional safeguard, other laws have been enacted which contain some provisions that protect the interest of women in Zanzibar. Examples of those laws are Penal Act, 2004²¹⁹ which, among other things, protects women from sexual abuse. In that case, some acts when committed amount to crimes punishable by law. Those offences include rape, indecent assault, defilement, abduction, grave sexual abuse, defilement of imbeciles, procuring for prostitution, detaining female person in brothel, prostitution, keeping brothel, living from earnings of prostitution, sexual harassment and adultery.²²⁰ In addition to the provisions of those offences, the law imposes severe punishment for those who commit them. This law further protects the identity of the victims of those offences by prohibiting the disclosure of the name of the victims of such offences except with courts' permission.²²¹

The dignity of women is further protected by some procedural laws. Suffice to mention Criminal Procedure Act, 2004²²² which provides for the proper mode of searching women. Under the Act whenever it is necessary to cause a woman to be searched, the search shall be conducted by a policewoman or any other woman asked to do so in absence of a policewoman. In addition, the search will be done with strict regard to her decency.²²³

Considering the vulnerability of women in employment, laws relating to employment have also considered the protection of women from harassment at the workplace. The Zanzibar Employment Act, 2005 prohibits all forms of sexual harassment in employment. Examples of sexual harassment include a request for sexual intercourse, use of unreasonable language whether written or spoken of sexual nature, use of unreasonable visual material of sexual nature, or showing physical behaviour of a sexual nature which directly or indirectly subjects the employee to unwelcome behaviour or offensive to the employee which has detrimental effect to the employees' employment, job performance and satisfaction.²²⁴

²¹⁹ Act No. 6 of 2004.

²²⁰ See Part XV of the Penal Act, 2004.

²²¹ Ibid, Section 164.

²²² Act No. 7 of 2004.

²²³ Section 19 of Criminal Procedure Act, No. 7 of 2004.

²²⁴ Ibid, Section 11 Employment Act No. 11 of 2005.

In addition to the above laws, there are also other laws that guarantee equal rights regardless of gender. These include Spinster and Single Parents Children Protection Act, 2005²²⁵ which provides for the rights of spinster, girls, female divorcee or unmarried woman to institute suits for maintenance of the child.²²⁶ Laws relating to land such as Land Adjudication Act, 1989;²²⁷ Land Tenure Act, 1992;²²⁸ Land Transfer Act, 1994;²²⁹ and Land Tribunal Act, 1994²³⁰ have been enacted to regulate land matters and meet economic reforms and thus provide equal opportunities for the people.

The government has formulated various policies relating to women's rights and protection. Those policies include the Zanzibar Employment Policy (2009), which among other things, promotes equal access to employment opportunities. Other policies are Zanzibar Food Security and Nutrition Policy (2008); Zanzibar Small and Medium Enterprises Development Policy (2006); Community Development Policy (2007); the Education Policy (2006); and Zanzibar Mainstreaming Operational Plan.

Currently the Ministry of Labour, Youth, Women and Children Development (MLYW-CD) is finalizing the Gender Policy that aims at enhancing effective involvement of women in socio-economic and political issues including their participation in leadership and decision-making.

However, the law in Zanzibar has not moved forward in the area of matrimonial property division especially when marriage partners split without reaching an agreement. In Tanzania Mainland this issue is now settled by the Court of Appeal of Tanzania through a positive interpretation of the Law of Marriage Act, 1971.²³¹ According to the Court of Appeal in the case of *Sawe v. Sawe*,²³² in case of divorce the spouses share equally all the matrimonial property acquired during the subsistence of their union.

5.3 Institutional Framework on Protecting Vulnerable Groups

In order to show how it values the issues relating to women and children, the Revolutionary Government of Zanzibar has established special Ministry dealing with affairs of women and children - Ministry of Labour, Youth, Women and Children Development (MLYWCD). This Ministry has taken a number of initiatives in protecting and promoting the rights of women and children in Zanzibar. The ministry has become a centre where women have been submitting their complaints including violations of their rights.

²²⁵ Act No 4, 2005.

²²⁶ Ibid, Section 5.

²²⁷ Act No. 8 of 1989.

²²⁸ Act No. 12 of 1992.

²²⁹ Act No. 8 of 1994.

²³⁰ Act No. 7 of 1994.

²³¹ Act No. 5 of 1971.

²³² See *Richard William Sawe v. Waitara Richard Sawe*, (unreported) Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 38 of 1992 (Unreported).

Besides that Ministry, there are several NGOs dealing with women affairs. These include Zanzibar Female Lawyers Association (ZAFELA) which has been playing a very vital role in providing legal services and awareness to women in understanding their rights.²³³

5.4 Gender Based Violence

Gender based violence (GBV) refers to any action that results in or is likely to result in physical, sexual or psychological harm or suffering occasioned to women including acts of threats of such harm or suffering, coercion, or arbitrary deprivation of liberty whether occurring in public or private life. GBV constitutes one of the most serious human rights abuses and public health problems in the contemporary world. It may occur in various locations such as in families, school, religious institutions, work places etc. It always has negative consequences on children in the household, the unity of family, and the society as a whole.

In Zanzibar GBV is not defined under Zanzibar laws. However as shown above, laws address various forms of sexual violence which is a kind of GBV.²³⁴

5.4.1 Gaps in Laws Relating to GBV

Despite being so provided by the above mentioned laws, there are some gaps which can give rooms for GBV occurrence without legal protection. One of those gaps is that, the Penal Act, 2004 makes rape an offence only when it is committed by a male person who is not legally married to the victim. This excludes the act of lawful married couple to have sexual intercourse with his wife without her consent. This implies that when a husband desire to have sexual intercourse with his wife and if a wife refuses, it is not wrong or a crime for the husband to do or to use whatever means including using force to fulfil his sexual desires. This entails sexual violence against women as provided under United Nations Declaration on the Elimination of Violence against Women, 1979. This is the area where the government of Zanzibar should look into.

Another grey area in Zanzibar penal laws is on the circumstances amounting to rape as provided under Penal Act, 2004. One of the circumstances amounting to rape is having sexual intercourse with a girl under eighteen years with or without her consent unless the women is the wife of man who is not lawfully separated from the man.²³⁵ Marriage matters in Zanzibar are regulated by Islamic laws. Under Islamic laws marriage is allowed when the girl is at puberty, though she may be married before puberty on the condition that no sexual intercourse takes place until she attains puberty. Islamic laws in Zanzibar relating to marriage, divorce, inheritance and maintenance are enforceable in Kadhi's Courts. They do not include Islamic penal laws which are not in fact applicable in Zanzibar. Zanzibar uses penal laws based on common law system which does not address the question of the minimum age of the girl in the marriage. This raises the possibility of a "husband" having sexual intercourse with the girl, regarded in law as his "wife" even before puberty which can amount to sexual violence.

²³⁴ Refer to Part XV of the Penal Act 2004 and Employment Act, 2005.

²³⁵ Section 125 (2) (e) of the Penal Act, 2004.

Another controversial area stems from the fact that the definition of the “carnal knowledge” which is a precondition to constitute rape and similar offences, seems to be too narrow. Under Zanzibar laws, in order to prove the crimes involving sexual violence, penetration is necessary.²³⁶ This entails that it will be rape if male genital organ penetrates into vagina of a woman. This does not extend to penetration of other organs of the offenders which can amount to sexual violence. Although the use of other organs may amount to indecent assault, it may create evidential problem particularly when a person is charged with rape or unnatural offence but before the defence raises impotence as a defence.

Procedurally, all criminal trials are conducted in open courts except those cases involving juvenile offenders. There is no legal requirement requiring courts from conducting sexual offences cases in *camera*. This may prejudice the victims of those offences from properly testifying before courts when their cases are heard in open court hence leading to miscarriage of justice. This is a gap in law although Penal Act prohibits people from disclosure of the identity of the victims of these offences.²³⁷

5.4.2 Current Situation on GBV in Zanzibar

Practically, it is reported that GBV cases in Zanzibar have been increasing. It is reported that GBV cases which have been reported to the police amount to 543 from 2007-2009. North A District is leading having 186 cases followed by Southern District with 131 cases, followed by North B Unguja having 120 cases. Central District has small number compared to the former having only 60 cases. In Pemba, Wete District takes a lead with 46 reported cases.²³⁸ From 2007- 2009, about 47 girls were reported to become pregnant and forced to drop out of schools.²³⁹ Studies show that many cases remain unreported due to ignorance and stigma attached to the subject.²⁴⁰ Some of the reported cases do not go further because matters are resolved at police stations. For example in one case which occurred in Kambini Pemba, a 13 years old girl was raped by two men but police convinced her parents to resolve the matter for the consideration of Tshs 800,000/=. The parents agreed with the deal and the case was not brought to the court.²⁴¹

5.4.3 Enforcement of Sexual Violence Cases

Though many cases are reported to the police and subsequently brought before courts of law, there are many problems which inhibit the proper prosecution of those cases.

²³⁶ Ibid, Section 124.

²³⁷ Ibid, Section 164.

²³⁸ Zanzibar Leo, 7th December, 2009.

²³⁹ This information is derived from Tanzania Media Women Association (TAMWA) which has been very active in the protection of the girl child. The work of TAMWA is partially explained in MBILINYI, Marjorie, “Transformative Education and the Strengthening of Civil Society,” in OTHMAN, Haroub (ed.), *Reflections on Leadership in Africa: Forty Years after Independence: Essays in the Honour of Mwalimu Julius K Nyerere on the Occasion of his 75th Birthday*, Dar es Salaam and Brussels: Institute of Development Studies, University of Dar es Salaam and VUB University Press, 2000, at p. 195.

²⁴⁰ Ibid.

²⁴¹ Ibid.

The following are some of those problems:

5.4.3.1 Poor Investigation

In any criminal case including sexual offences, the prosecution has the burden to prove beyond reasonable doubts. In order to discharge this burden there must be good evidence. Good evidence is collected through investigation which is conducted after the event has been reported to police. The main organ vested with the power to conduct investigation is the police. However, investigation is constrained by number of factors hindering the collection of valuable evidence to prove charges. Such problems are poor science and technology and infrastructure that allow quick response to the events and overcome various challenges. Another problem that constrains the investigation is the delay of the parents to report the matter to police. The sexual cases must be reported to the authority once the incident has occurred. However it has been discovered that normally victims delay to report incidents for some days during which the evidence disappears.²⁴²

The problem of poor investigation begins at the first instance when a victim enters into a Police Station to report an assault. Most Police Stations do not have Police Officers with good knowledge on how to handle such cases. Also, police women who can be expected to be sympathetic and understanding in situations of this nature are very few in Zanzibar.

5.4.3.2 Deoxyribo Nucleic Acid (DNA) Test

There are some cases that necessitate the scientific examination of the victims. Examples of those are sexual offences cases. The relevant test in those cases is Deoxyribo Nucleic Acid (DNA). In Zanzibar, this test is not done because there is no machine for such purpose. The only machine in the whole Tanzania for conducting tests of this nature is found in Dar-es-salaam. Due to the current level of awareness and the need to prove cases the number of cases has increased and therefore one machine is definitely not enough for the whole country. Worse still police and members of the public can not afford expenses for conducting the test as a single test is said to cost not less than Tshs. 300,000/=. This problem becomes serious particularly for those cases where it is necessary to test pregnancy of a woman in order to ascertain paternity and thus pin down the man responsible for the pregnancy.

5.4.3.3 Shortage of Medical Experts

Most of sexual abuse cases need testimony of the medical experts to prove whether a victim has been raped or not. In Zanzibar there is a shortage of experts in this area who have to move around all courts having jurisdiction over those offences. This problem makes these cases to delay hence renders the miscarriage of justice. On top of that there are few health centres examining victims of those offences. Many of them are in urban areas leaving people in rural areas to travel far seeking for the services.

²⁴² MLYWCD, A Study on Analysis of the Policies and Laws Related to Sexual and Reproductive Rights in Zanzibar, 2003.

5.4.3.4 Ignorance of the People

The society is still ignorant of procedures to be taken after sexual assaults occur. As shown above, once such incident occurs, the victim must be brought to proper authorities for examination. That is not often done. It may take 3 to 7 days until the matter is reported to the police while the potential evidence has disappeared. On top of that some parents of victims decide to resolve the matters of this nature privately instead of sending the matter to law enforcement agencies. This allows the culprit to escape legal consequences.

5.5 Domestic Violence

The term domestic violence refers to violence which occurs when a family member, partner or ex partner attempts to physically or psychologically dominate another.²⁴³ It normally occurs between spouses but may also include cohabitants and unmarried intimate partners.²⁴⁴

Domestic violence may also take different forms such as direct physical violence ranging from unwanted physical contact to murder. It may also be indirect where violence may include destruction of object, striking or throwing objects near the victim. Additionally domestic violence may include mental or emotional abuse including verbal threats of physical violence to the victim, her children and other home occupants such as insults, and attacks.²⁴⁵

Emotionally it can involve humiliating the victim, controlling what the victim can do or not do, withholding information from the victim, doing things with the intention of making the victim diminished or embarrassed, isolating her from friends and family and refusing the victim access to resources. This form puts the victim in an imminent risk for suicide, eating disorders, drug and alcohol abuse.²⁴⁶

Another form of domestic violence is economic abuse whereby the abuser controls the victims' economic resources such as money and other properties. This includes putting victim under strict dependency, withholding money at will and forcing her or him to beg for it. It may also prevent the victim getting education, employment and other needs.

Domestic violence has many negative consequences to the victims and society in general. It is a world-wide problem that transcends cultural boundaries and more. It is one of the prominent tools used to violate the women rights in the society. It may be the cause for street kids, drug abuses by young people and divorces.²⁴⁷

²⁴³ Tanzania Human Rights Report, 2008, p. 200.

²⁴⁴ Ibid.

²⁴⁵ See Domestic Violence in: <http://en.wikipedia.org/wiki/domestic-violence>.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

5.6.1 Legal Framework in Combating Domestic Violence in Zanzibar

Domestic violence issues in Zanzibar are regulated by various laws such as Penal Act, 2004; Employment Act, 2005; and Kadhi's Court Act, 1985. There is no specific legislation addressing domestic violence issues in Zanzibar apart from those laws.

Zanzibar Penal Act, 2004 provides for many offences relating to domestic violence. Part XVI of the Act provides for offences relating to marriage and domestic relations. In this Part, it is made an offence for any person to wilfully and by fraud to cause any woman who is not lawfully married to believe that she is lawfully married to and to cohabit or have sexual intercourse with him.²⁴⁸ The Act further makes it an offence to marry again during lifetime of a husband or wife. Other offences include undergoing a marriage ceremony fraudulently; cruelty to children; desertion of children; neglecting to provide food to children; masters not providing for servants or apprentices; trafficking of person and child stealing.²⁴⁹

Part XVII of the Act provides for offences against person which include murder, manslaughter and infanticide.²⁵⁰ Other offences are acts causing grievous harm to another person;²⁵¹ removing of human organs from a body of another person;²⁵² and assaulting a person.²⁵³ All these are offences punishable under this Act.

Part XXV of the Act enumerates offences against liberty. These offences include kidnapping from lawful guardian kidnapping or abducting with intent to confine a person; kidnapping abducting in order to subject person to grievous harm; wrongful restraint; wrongful confinement; and habitual dealing in slaves.²⁵⁴ Part XXVI of the same legislation criminalizes acts of stealing from another including theft committed by husband from his wife and *vice versa*.²⁵⁵

5.6.2 Enforcement of Protection of Women

Some of the problems relating to the enforcement of sexual offences are just like those facing the authorities in dealing with domestic violence cases. Many of the later cases are not reported to the law enforcement authorities due to the secrecy. Parties feel ashamed of reporting matters to police or other authorities.²⁵⁶

²⁴⁸ Section 165 of the Penal Act, 2004.

²⁴⁹ Ibid, Sections 166-173.

²⁵⁰ Ibid Section 195, 196 and 205.

²⁵¹ Ibid, Sections 225.

²⁵² Ibid, Section 239.

²⁵³ Ibid, Sections 246-249.

²⁵⁴ Ibid, Sections 251-264.

²⁵⁵ Ibid, Sections 267-274.

²⁵⁶ Tanzania Media Women Association (TAMWA).

Of all offences provided under Penal Act, 2004 relating to domestic violence as shown above, there is no procedure requiring courts to hear them in *camera*. This discourages women from bringing their complaints as they may be heard publicly.

As for matters falling under Kadhi's Courts, there are also some problems in these courts. The Chief Justice in consultation with Chief Kadhi is empowered to make rules for these courts²⁵⁷ but they have not done so. Therefore, there are no specific rules currently applicable to these Courts. With that problem, advocates are not allowed to appear in Kadhi's Courts. Although Vakils are allowed to appear in those courts, not only they are very few to cover all courts but also they are not conversant in Islamic law - the only law applicable in those courts. Therefore, women have to defend themselves hence deprived of their right to a fair hearing. It is strongly recommended that the Chief Justice should prepare specific rules of procedures as stipulated in Section 9(2) of the Kadhis Courts Act if procedures have not been put in place than the Civil Procedure should be applied. Also there is need to train Kadhi's to be able to deal with the current situation, but also to utilise graduates from the Universities that teach Islamic Law.

5.6.3 Current Situation on Domestic Violence in Zanzibar

In spite of the above legal protection of women against domestic violence, it is reported that domestic violence cases in Zanzibar are ever increasing. According to ZAFELA, in 2009, about 72 cases have been reported in its office by parties. Majority of those complaints relate to maintenance of wives by their husbands or ex-husbands. About 30 complaints were reported to the Ministry of Labour, Youth and Women between 2008 and 2009²⁵⁸. At the same time, some 93 complaints of domestic violence have been handled by the Zanzibar Legal Services Centre in the course of 2009.

5.7 Women Participation in Decision Making

The Constitution of Zanzibar, 1984 guarantees every Zanzibari regardless gender has the right to take part in the governance of their country. Article 21 (1) of the constitution reads:

Every Zanzibari is entitled to take part in matters pertaining to governance of the country, either directly or through representatives freely elected.

This provision suggests that women as long as they are Zanzibaris have equal rights to hold any political office in their government or to elect people on their behalf.

²⁵⁷ Section 9 (2) of the Kadhi's Court Act, 1985 (Act No. 3 of 1985).

²⁵⁸ Report submitted to the House of Representatives on the implementation of Rights of the Child on the 16th June, 2009.

To put that right into practice the government has taken steps to ensure that women participate in the decision-making as men. Considering the historical background of women status in our society, some priorities have been given to women. One of those priorities has been provided in the Constitution regarding the nomination of women as members of the House of the Representatives. The Constitution provides for 30% of the women recommended by their political parties to be nominated as members of the House. However this is limited only to political parties which have acquired 10% of seats from constituencies.²⁵⁹

At the local governance level, the Miscellaneous Amendment Act, 2005²⁶⁰ requires women members of Municipal Council, District Council and in Town Council to be 30% in representation.

Presently the gap between men and women in the government leadership is still high. There are only 3 Ministers out of 14 and only one Deputy Minister.²⁶¹ Apart from the nominated Members in the House of Representatives, there are only three elected members from constituencies.²⁶² This is partly because women are reluctant to come forward and contest for elective positions. At the same time, political parties do not provide women with opportunity to contest for elections despite the fact that each strong political party in Zanzibar i.e. CCM and CUF have their safe seats in Pemba and Unguja respectively.

Very few women hold senior positions in the government;²⁶² NGOs; and Shehias compared to men. Currently there are 303 *Shehas* in Unguja and Pemba. However, only 14 equally to 4.47% are women. It is recommended that women participation in the governance should be increased to give them chance to participate in the decision making process. Political parties also must appoint women to hold high positions including appointing them to contest for elections in different constituencies.

²⁵⁹ Article 67 of the Zanzibar Constitution, 1984.

²⁶⁰ Act No. 10 of 2005. This legislation amends both the Zanzibar Municipal Councils Act, 1995 (Act No. 3 of 1995); and Town Councils and District Councils Act, 1995 (Act No. 4 of 1995).

²⁶¹ The Ministers are: Samia Suluhu Hassan, The Minister for Tourism and Trade; Asha Abdalla Juma for MoYLWC and Zainab Omar who is a Minister without Portfolio.

²⁶² Fatma Fereji of CUF from Mji Mkongwe Constituency; Shawana Buheti Hassan, who is also Deputy Minister for MoHSW from Dole Constituency and Asha Mohamed Bilali of Magogoni all in Unguja.

²⁶³ There are two female Principal Secretary out of 12.

5.8 Women and Employment

In Zanzibar as shown above the right to work is provided for under Article 21 (3) and (4) of the Constitution of Zanzibar of 1984, which provides *inter alia*:

- (3). Every Zanzibari has a right to work and is entitled equal opportunity and right on equal terms to hold any office or discharge any function under the state authority of Zanzibar.
- (4) Every person without any discrimination of any kind is entitled to remuneration commensurate with his work and all persons working according to their ability shall be remunerated according to the measure and nature of the work done.

Sub Article 3 of the said Zanzibar Constitution, 1984 basically addresses non discrimination in the labour market while sub Article 4 advocates for equal pay for a similar job which removes the possibility of double salary scales. The Constitution of Zanzibar, like the Constitution of the United Republic of Tanzania provides for the right to work as a right to be enjoyed by all citizens.

Despite all the efforts that have been made by the Government, there are some instances of discrimination based on employment. Women have limited access to employment opportunities in the formal sector. The current statistics show that the female employees constitute only 36.4 percent of the total employees in the formal sector.²⁶⁴ Of those employed, only 8.64 percent are in supervisory and technical posts. Most of the other women are engaged in informal sector doing petty businesses having very low income returns including small farming, seaweed farming, pottery and handcrafts.²⁶⁵

The Employment Act, 2005 contains various provisions protecting women from domestic violence. The Act prohibits direct or indirect discrimination against employee in any employment policy or practice on any ground including gender. In that case the employer is required to take positive steps to guarantee equal remuneration for men and women for work of equal value. If an employee is discriminated in any way described above by the employer or his representative, the employee shall be entitled to lodge a complaint with the labour officer who has powers to handle the matter.

The Act further prohibits employment, engagement of women or assignment of a female employment at night in any industrial undertaking.²⁶⁶ However certain categories of female are excluded from that exemption. These include those holding responsible leadership positions, management positions, those employed in factories or industries in which they are only dependent and if the nature of the employment requires their presence.²⁶⁸

²⁶⁴ MLYDWC.

²⁶⁵ Ibid.

²⁶⁶ Section 85 of the Employment Act.

²⁶⁷ Ibid.

²⁶⁸ *Zanzibar Leo Newspaper*, 7th December, 2009, p. 1.

Most of Zanzibari working women are engaged in the informal sector. Women have found working in this sector very competitive option because of lack of education, specialised skills as well as sheer discrimination against them because of their gender. The government has tried to redress this problem by creating funds that women can access such as the Jakaya Kikwete and Amani Karume Entrepreneurship Fund and also private sector funds such as Business Development Gateway whereby through this women can be economically empowered. The Kikwete/Karume fund for the year 2008/09 has set aside Tshs. 1.2 billion for Zanzibar for use as cash guarantee against loans to be issued by the Peoples' Bank of Zanzibar (PBZ) to SACCOS and individual Small and Medium Enterprises operators.

5.9 Women and Health

Health as right is not provided for under the Bill of Rights in the Constitution of Zanzibar of 1984. However one of the political objectives of the Zanzibar government as provided for under Article 10 is providing good health services. The government through Ministry of Health and Social Welfare is taking legal, political and technical measures to ensure women have access to improved health, nutrition, safe motherhood, supporting fight against HIV/AIDS and sexually transmitted diseases.

Other efforts include reducing the maternal mortality and reviewing its health policies to include gender.

Notwithstanding all these efforts, health situation to women is not conducive. It is reported that about 377 women die while giving birth out of 300,000. It is recommended that more efforts should be made to improve health sector to women. These include bringing health centres close to villages so that women in rural areas get access to health services.

5.10 Women and Education

The Zanzibar Constitution does not include the right to education as one of the enforceable rights. It is rather enshrined under Article 10 (6) as one of the political objectives of the government. The right to education is provided for under the Education Act, 1982 which provides for free and compulsory education.²⁶⁹

In Zanzibar the number of female students attending schools, Colleges and Universities is reported to have increased in 2009. The number of girls in the Secondary Schools particularly form III and IV is 9,192 which forms 34. % compared to boys who are 9,064.²⁷⁰ The number of women in colleges and Universities is also satisfactory in 2009 compared to previous years. For example, the number of female students in Zanzibar University has improved from 697 in 2007/2008 to 744 in 2008/2009.²⁷¹ The state University of Zanzibar has registered 388 students in 2009²⁷². 261 out of that number are female students.²⁷³

²⁶⁹ Act No. 6 of 1982.

²⁷⁰ Source MLYWCD.

²⁷¹ See Budget speech of Minister for MoEVT in the House of Representatives, 2009 p 28-29

²⁷² *ibid*

²⁷³ *ibid*

The government has established various alternative learning centres to enable women and girls who drop out from schools due early marriages, pregnancy and absconding to continue with education. About 20 centres with about 988 students have been so far been established in Zanzibar.²⁷⁴

Spinster and Single Parents Children Protection Act, 2005²⁷⁵ gives protection to the unmarried woman who is of the age between eighteen and twenty one years and who has not given birth to a child. One among the step taken forward by this Act is the prevention of the pregnant pupil from being permanently expelled from school as envisaged by Education Act, 1982. This Act has repealed the provision of the Education Act, 1982 requiring the pregnant girls to be expelled from school instead the Act requires the woman to be suspended until she gives birth whereby she can be reinstated.²⁷⁶

5.11 Definition of the Child

Legally, there is no specific definition of the child in Zanzibar. Each law has got its own definition regarding the child. For example Employment Act, 2005 defines a child to mean a person under the age of 17 years; provided that for the purpose of employment in hazardous sectors child means a person under 18 years.²⁷⁷ This is different from Penal Act, 2004 where a child has not been defined instead there are definitions of girl and boy. The Act defines a boy to mean a male person of the age up to 18 years and who is not married²⁷⁸. The girl is defined as female person of the age up to 18 years, who is not married and not given birth to a child.²⁷⁹ The Children and Young Persons Decree Cap 58 defines a child to mean a person who is under 14 years old and young person is a person of 14 years or upwards and under the age of 16 years²⁸⁰. The Interpretation of Laws and General Provisions Act, 1984²⁸¹ defines a minor as a person who has not attained the apparent age of 18 years.²⁸² The lack of specific definition of the child affects the existence of clear and uniform protection of the child in Zanzibar. This necessitates the need of having specific legislation of the children which will lay down definition, rights and other matters relating to the child in Zanzibar.

²⁷⁴ Ibid.

²⁷⁵ Act No. 4 of 2005.

²⁷⁶ Section 16 of the Spinster and Single Parents Children Protection Act, 2005 (Act No. 4 of 2005).

²⁷⁷ Section 3 (1), of the Employment Act.

²⁷⁸ Section 4 of the Penal Act, 2004.

²⁷⁹ Ibid, Section 4.

²⁸⁰ Section 2 of the Decree Cap 58.

²⁸¹ Act No. 7 of 1984.

²⁸² Section 4 of the Act

Tanzania has ratified almost all international conventions which govern the protection of the rights of children and young persons. The country is a state party to the Convention of the Rights of the Child (CRC), 1989 and its Optional Protocols which are: Optional Protocol on the Involvement of Children in Armed Conflicts, 2000 and Optional Protocol on the Sale of Children 2000, Child prostitution and Child Pornography of 2000 as well as other internationally recognized conventions and instruments designed to facilitate the protection and promotion of the rights of the child and the young persons. This is cogent proof of the commitment of the government of Tanzania and effectively that of Zanzibar as well as the political leadership to promoting, protecting and enforcing respect to the rights of children and young persons.

However, under the international instruments there has been provided the definition of a child to mean a person under the age of 18 years old. However this may soon end as Zanzibar is now in the process of enacting the Child Law, the zero draft of Bill was being finalised at the end of 2009.²⁸³

The government of Zanzibar has formulated various policies and created several specific institutions for implementing and safeguarding the rights of the child and young persons. The government has created a specific ministry; Ministry of Labour, Youth Development, Women and Children Zanzibar which is responsible for the affairs of the children in Zanzibar. There are also various NGOs dealing with the affairs of the children. To a great extent, the government has created space and conducive environment for the NGOs to complement efforts, hence attaining the most desired synergy in the endeavour to enhance respect to the rights of the child. A child has the rights to life, to grow, to be protected and to be involved in social affairs.

5.11.1 Right to Life

In Zanzibar a child's life is protected while is still in womb of his/her mother. The Penal Act, 2004 protects that by criminalizing infanticide, murder, child destruction, and cruelty to children.²⁸⁴

To protect the life of the child the government has taken a number of steps. One of those efforts is improving nutrition and vaccination. Statistics show that there is improvement of mother sending their children in health centres to check their children's nutrition.²⁸⁵

Distribution of Vitamin A and medicines to fight against worms has also been improved in Zanzibar. There is country wide exercise to provide for vitamin A and measles medicines conducted annually. The statistics show that there is improvement from 82.7% to 84% for vitamin A and from 78% to 92.2% for measles until August 2008. Improvement were made in the year 2009.²⁸⁶

²⁸³ Source MLYWCD.

²⁸⁴ Sections 196, 205, 217 and 168 of the Penal Act, 2004.

²⁸⁵ Source MoHSW.

²⁸⁶ Ibid.

Vaccination services for mother and children are normally provided in Zanzibar by the Ministry of Health and Social Welfare (MoHSW) to reduce deaths of children. The statistics show improvements on vaccination provided by the Ministry in 2009.²⁸⁷

The government has taken steps to fight against malaria. These efforts include distribution of mosquito nets to pregnant women and children under 5 years. About 196,442 treated nets have been distributed in four districts in Zanzibar. These Districts are Central, West, North B and Micheweni District in Pemba between 2008/2009.²⁸⁸ Along with those efforts the government has been taking various efforts to promote other social services to improve health of children and pregnant mothers. Despite those efforts, there are still some problems facing children and pregnant mothers in Zanzibar. These problems include poor social services like clean water, electricity and food particularly those living countryside. Other problems include shortage of health centres in rural areas and lack of sufficient health knowledge by pregnant mothers.

5.11.2 Right to Grow and Develop

In addition to having a right to life, a child has a right to grow well. A child can grow well if he/she is properly maintained and educated. The Penal Act, 2004 provides for special treatment to the child by criminalizing cruelty to children, desertion of children, neglecting to provide food, clothes, bedding and other necessities and child stealing.²⁸⁹

5.11.2.1 Right to Education for the Child

Zanzibar Education Act, 1982 provides for compulsory attendance of pupils at school whereby a parent, guardian of every child enrolled for primary education is under legal obligation to ensure the child regularly attends schools until the child completes the basic education.²⁹⁰ Basic education is defined to mean basic primary and junior secondary education which every child in Zanzibar is entitled to.²⁹¹ In order to make the enrolled child continues with the education, it prohibited for the girl child to get married before completion of her basic education.²⁹² If that provision is violated, the responsible pupil is expelled from school. The child expulsion from school is construed to be violation of child right of education. The law provides for the suspension of the child found pregnant. However the child may be reinstated to school after delivery.²⁹³

²⁸⁷ Report Submitted to the House of Representatives on the Implementation of the Rights of Child, 16th June, 2009.

²⁸⁸ MoHSW.

²⁸⁹ Section 168,169,170 and 173 of the Penal Act, 2004.

²⁹⁰ Section 20 (1) of the Elections Act, 1984.

²⁹¹ *ibid*, Section 20 (3).

²⁹² Section 23 (3) of the Education Act.

²⁹³ Section 16 (1), Spinsters Act, 2005.

The number of the enrolled pupils from nursery to secondary schools in Zanzibar is increasing. Up to May 2009, about 235 nursery schools with 21,696 pupils have been introduced in Zanzibar.²⁹⁴ These schools include government and private schools. The number of pupils in government schools is 1930 boys and 2105 girls. In private nursery schools the number of the enrolled pupils is 8,956 boys and 10,635 girls.²⁹⁵

The number is also rising for the enrolled students into primary and secondary education. The statistics show that the number has been increasing from 216,731 pupils in 2008 to 220,773 in 2009.²⁹⁶ There are 202 secondary schools in Zanzibar with 85,451 students. 175 of those schools with 81,074 are government schools and 27 with 4,377 students are private schools.²⁹⁷

However, after the enrolment in schools the number of the students has been decreasing in every year. The main reasons for that decrease have been due to absconding, early marriage, poverty and early pregnancy.²⁹⁸ It is reported that in the highest number of cases occurred in the Unguja Southern Region where 47 students dropped out from schools due to early pregnancy.²⁹⁹ It is further reported that about 148 pupils have dropped out from schools in Unguja due to pregnancy.³⁰⁰ For example, in spite of the above mentioned number of the enrolled students in primary education in 2008, only 22,884 students sat their Standard VII examinations.³⁰¹

The establishment of alternative learning centres has accommodated number of students who drop out from schools for the above reasons. In the years 2008/09 about 152 students successfully completed in those centres and joined normal classes in different schools.

Academic consideration is also given to children with special needs so as to make them enjoy right to education as other children. The so-called inclusive education has been introduced to children with special needs. Schools providing for such education have been increased from 46 in 2007 to 76 in 2008-09 with 2,795 students and 603 teachers³⁰² Different centres have been introduced in Zanzibar accommodating children who need special care such as orphans, disabled, and those deserted by their parents. These centres include Forodhani Orphanage Centre; Save Our Soul (SOS); Istiqama; and African Muslim Agency. These centres have been playing crucial roles in maintaining children who need special care.

²⁹⁴ *Supra*, Report to the House of Representatives, 2009.

²⁹⁵ Source MoEVT.

²⁹⁶ Ibid.

²⁹⁷ Ibid; Almost all the private schools are in based in Unguja and in fact concentrated in the Urban and West Region, this is attributed to economic reasons.

²⁹⁸ *Supra*, Report to the House of Representatives, 2009.

²⁹⁹ *Kulikoni Newspaper*, 6th April, 2009.

³⁰⁰ *Zanzibar Leo*, 13th October, 2009 as revealed to the newspaper from an official of Mnazi Mmoja Hospital.

³⁰¹ *Supra*, Report to the House of Representatives, 2009.

³⁰² Source MoEVT.

In spite of the above developments, there are number of problems facing children from accessing this right. These problems include poor infrastructures, overcrowding of students in classes, shortage of qualified teachers particularly science teachers etc. These problems involve both government and private schools and can be put in general as due to fast growth of the population and the failure of lack of corresponding investment in the education sector

Another problem facing child education in Zanzibar is that of free movement of the child in pursuit of education while still under his or her parents. For example, it has been hard for Pemba students to move with their parents or guardians if it involves transfer from a Pemba school to one in Unguja. It is recommended that this practice should not continue for the interest and welfare of the child who is psychologically disturbed when put under such a test.

Right to education for the Zanzibari child was threatened in 2009 when the Zanzibar Electoral Commission (ZEC) used schools as registration centres for the Permanent Voters Register and coincided with a political standoff between the government and the Opposition Civic United Front (CUF) who were keen to disrupt the exercise. CUF were protesting against what they alleged as deliberate moves to sideline their members from registering by denying them Zanzibar Resident Identity Card. As a result of that the first two months of registration exercise in Pemba in September and October, 2009 involved a lot of scuffle between CUF members and the Police and the security forces in general whereby shots were fired and tear gas used around some of the school's environs. The politicisation and militarisation of the school environment disrupts the learning process in schools.

5.11.3 Children in Custody

A serious problem exists to children who are remanded or imprisoned in Educational Centres (Prison). The law provides for special treatment for children who are in those Centres including being separated from adults. This has been hardly implemented as it is reported that there is no separate building for children. They are only separated during nights but the rest of the time they intermingle with adults³⁰³. It is thus highly recommended that the Government should ensure that these children undertake their education while in custody so as to prepare them to become useful citizens and not losing hope on them so early because they have committed offences and are thus rightfully in custody.

5.11.4 Right to be Protected

A child needs to be protected from being sexually abused, child labour and cruelty. The Penal Act, 2004 provides for prohibition of rape and other form of sexual abuse and cruelty to a child.³⁰⁴

There is growing interest in the area of child protection not only because of the mushrooming NGOs dealing with that area, but also a need has been found of having a network that will coordinate such efforts. This is little known area and its expertise

³⁰³ Report by CHRAGG on Inspection of Police Stations and Educational Centres, 2007/2008 issued in 2009.

³⁰⁴ Sections 125 (1) (2) e, 163 and 168 of the Act

is limited and hence such effort will complement what is being done by the government.

5.11.4.1 Child Abuse

Notwithstanding the efforts taken by Zanzibar Revolutionary Government to improve the conditions of children, it is reported that children are being sexually abused. According to the reports 41 complaints relating to children sexual abuse have been reported to the MLYWCD.³⁰⁵ The Ministry directed all complaints to be referred to courts of laws for action. Sexual abuse cases involving children, which have been filed in Regional Court of Vuga in Unguja the year 2009, are 39. In Mwanakwerekwe District Court 10 cases have been prosecuted and 29 cases in Mwera Regional Court. These statistics though do not cover the whole Zanzibar show how serious the problem is in Zanzibar. Those are the only cases reported to the proper authorities. Statistics from ZLSC indicate that between February and August, 2009 a total of 29 cases of child abuse were reported in the Pemba Office alone. These cases involved assault, sodomy, defilement and rape. In the Unguja Office paralegals reported about 50 similar cases during the same period. In addition, some 37 similar cases were directly reported to the Centre itself in Unguja.

5.11.4.2 Child Labour

Child labour is legally prohibited in Zanzibar. The Employment Act, 2005 prohibits all child labour including the worst forms of child labour which include:

- All forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and serfdom and force or compulsory labour including forced or compulsory recruitment of children for use in armed conflict;
- The use, procuring or offering of child for prostitution, production of pornography or pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for production and trafficking of drugs;
- Work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety of children.

The law only allows employing a child for domestic work but a parent or guardian has to ensure that a child gets sufficient time for education and rest.³⁰⁶

The law only allows employing a child for domestic work but a parent or guardian has to ensure that a child gets sufficient time for education and rest.

Despite legal protection of the child from forced labour and other forms of worst works, it is reported in Zanzibar the problem is more acute. The studies show that about 9.2 % of children in Zanzibar are involved in child labour.¹⁹² Among prominent sectors employing children are fisheries, transportation, tourism and agriculture.³⁰⁷

³⁰⁵ *Supra*, Report submitted to the House of Representatives, 2009.

³⁰⁶ Section 6 (3) of the Act.

³⁰⁷ *Supra*, Report submitted to the House of Representatives, 2009, p. 38.

To fight against child labour the government is taking various steps including formulation of policy and program of fighting against child labour.

5.11.4.3 Maintenance of Children

In Zanzibar, matters relating to maintenance are governed by Islamic law. Kadhi's courts are vested with the jurisdiction to entertain matters relating to maintenance where all parties are Muslims. A part from that, the government has enacted Spinsters and Single Parent Act, 2005 which provides for legal safeguard for maintenance of single parent children. This Act provides that any father or alleged father of the child has obligation to provide for maintenance to the child.³⁰⁸ The mother of the child born out of the wedlock may institute a suit regarding maintenance of the child in District Court. This is possible where it has already been proved that a person is the father of the child. Where it is not, it will be very difficult for such mother to file for suit claiming for maintenance of the child. To prove responsibility of pregnancy, a woman needs to wait until she gives birth and conducting a DNA test. As noted above Zanzibar has no facility to conduct such a test and the only one existing in the country is in Dar es Salaam on Tanzania Mainland and the test is prohibitly expensive and thus hardly available. This is also a problem in proving sexual cases committed against children in Zanzibar.

Kadhi's Courts are empowered to entertain matters falling under Muslim personal laws such as personal status, marriage, divorce, guardianships and custody of the children in cases all parties are Muslims. Matters also relating to Wakf or religious charitable trusts, *gift intervivos* and inheritance where parties are Muslims as well as claims of maintenance where the claim is for a lump sum of not exceeding five thousand shillings or for a periodical payment to be made at a rate not exceeding fifty thousand shillings per month.³⁰⁹

The problem of the maintenance of children exists in Zanzibar. It is reported that between July 2008 up to May 2009, about 105 complaints were reported to MLYWCD, regarding maintenance of children where 96 complaints were solved by agreement of the parties and 9 complaints were referred to Kadhi's Court for judicial settlement.³¹⁰ According to ZAFELA a number of complaints received in 2009 were about maintenance of children s.³¹¹ Some of the fathers of the children, against whom complaints had been lodged, agreed to pay for the maintenance of their children and others were referred to courts for further legal action.

It is hoped that the Child Draft Bill now under discussion and to be tabled to the House of Representative later next year will address the issue of child maintenance more deeply including putting a mechanism to follow up if the child benefits from such orders of the court. It is recommended that Zanzibar adapts a system of having social officers who could be legally responsible to follow up such cases. It is also hoped that the Draft Bill will provide the definition of a child for Zanzibar as it is missing now.

³⁰⁸ Section 8, Spinsters and Single Parent Act, 2005.

³⁰⁹ Section 6, Kadhis Court Act, 1985.

³¹⁰ *Supra*, Report submitted to the House of Representatives, 2009.

³¹¹ See 2.7.5 above.

5.11.5 Right to Participate in Social Affairs

Children also have the right to participate in the decision making in the society in the various matters affecting their life. Zanzibar has taken various steps to involve children in various aspect of life. These efforts include the formation of Children Councils in different parts of Zanzibar. About 100 Councils have been formed in 100 Shehias of Unguja and Pemba. Among them 60 are in Unguja and 40 are in Pemba.³¹² In these Councils, children get chance to discuss many issues relating to their rights and duties. The MLYWCD in collaboration of Zanzibar Aids Commission has formed children Symposium composed of 100 children to ensure that children participate in discussing matters relating to AIDS and its effects to society.³¹³

5.12 Rights of the Elderly

The rights of older persons internationally were first considered in the Vienna International Plan of Action on Ageing, 1982³¹⁴ and later on in the Madrid International Plan of Action on Ageing, 2002 (Madrid Plan).³¹⁵ The latter plan contained detailed recommendations to UN member states on how to realize the rights of older people through three main areas which are development, improving health and well-being as well as creating an enabling and supportive environment for older persons.

There is no agreed definition of elderly internationally. Most developed world countries have accepted the chronological age of 65 years as a definition of 'elderly' or older person, but like many westernized concepts, this does not adapt well to the situation in Africa. While this definition is somewhat arbitrary it is at times associated with the age at which one can begin to receive pension benefits. At the moment, there is no United Nations standard numerical criterion, but the UN agreed cut-off is 60+ years to refer to the older population.³¹⁶

At domestic level, the rights of older people are not specifically provided for in the Zanzibar Constitution, 1984. However, the Constitution guarantees all Zanzibaris equal rights. The government has taken various steps to ensure the well-being of the older persons. The issue of older people is dealt in detail in the long term economic plan for Zanzibar known as *Mkakati wa Kukuza Uchumi Zanzibar (MKUZA)*, where a special focus on older people has been made. The government has maintained, albeit with some constraints,³¹⁷ the long established centres for accommodating older persons in Unguja and Pemba. These are Welezo, Sebleni, Gamba for Unguja and Limbani for Pemba.

³¹² *Supra*, Report submitted to the House of Representatives, 2009.

³¹³ *Ibid*.

³¹⁴ Adopted by the world Assembly on Ageing held in Vienna, Austria from 26th July - 6th August, 1982, endorsed by UN General Assembly 37/51.

³¹⁵ Adopted at the 10th Plenary meeting of the Second Assembly on Ageing 12th April, 2002.

³¹⁶ see <http://www.who.int/health.info/survey/ageingdefnolder>.

³¹⁷ The situation in these Centres is problematic. Some have not been repaired for years and the facilities are not up to standard nor are they in a state to care for the elderly. For instance, Sebleni Centre in Unguja was inaugurated on 1st November, 1966 by the then President of the United Republic of Tanzania Mwalimu Julius K. Nyerere. See JUMA, Ali Shaaban, Zanzibar Hadi Mwaka 2000: *Kitabu cha Historia ya Zanzibar Kuanzia Karne ya Kumi na Sita Hadi Mwaka Elfu Mbili, Zanzibar*. Rafiki Publishers, 2007, p. 199.

The last population census that took place in 2002 recorded that there were 45,437 people aged over 60 in Zanzibar making 4.6 % of the total population. The major problems facing older persons in Zanzibar currently are health and social welfare. Studies show that older people are highly affected by some diseases that go with age which include high blood pressure, diabetes, eye problems, overweight/obesity and underweight.³¹⁸ Factors contributing to vulnerability of older persons were identified as food and nutrition insecurity, limited access to productive assets, poor health, unemployment, lack of support networks, and lack of support to education, discrimination and social exclusion.

The government has established various health centres to provide for health facilities to older persons. However there are problems relating to inadequate professional staff in those centres. The situation is explained to be worse in Pemba where it is reported that an average of one nurse per three wards in most health facilities and the services in those wards are provided by paramedics.³¹⁹ This problem is coupled with the scarcity of health equipment and financial resources which is attributed to limited government expenditure on health that is less than US\$ 4 per capita³²⁰. This situation compounds the negative consequences on access to health services by older people.

Majority of older persons in Zanzibar receive no regular income at all. Only few of them receive Tshs. 5,000 per month provided by the government which is less than 1/3 of the food poverty line. Some of older persons living in older people's homes mentioned above receive only Tshs 25,000 per month which is too small to get even nutrition for themselves.

The government has established the Zanzibar Social Security Fund (ZSSF) whose functions include paying benefits to members or their dependents upon attaining old age or death.³²¹ However formal workers only represent around 10% of the working age population. Other people work in informal sectors particularly in rural areas where people engage themselves in agriculture, fishing etc mainly on subsistence basis. This number is not covered by ZSSF therefore they do not enjoy such benefits at old age.

Actually there is no clear policy for older people in Zanzibar and weak coordination of multi people community strategies implemented by various national health programs and multiple disease specific activities undertaken by various actors. There is also no explicit mechanisms to qualify older people for free health care and exemption from cost sharing³²²

³¹⁸ A statement on the State of Older People in Zanzibar published by the Help Age International Tanzania, 2009, p. 5.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Section 4 and 26 of the Zanzibar Social Security Fund Act, No. 2 of 2005.

³²² *Supra*, A statement of the State of Older People in Zanzibar, 2009, p. 7.

5.13 Rights of Persons with Disabilities

The most prominent international instrument providing for the rights of the people with disability is the International Convention on the Protection of the Rights and Dignity of Persons with Disability, 2006³²³ in which Tanzania is a signatory. Zanzibar being a part to the Tanzania is also bound with that instrument.

Accordingly, various definitions have been made to understand who a disable person is and it is also a great challenge to explain various forms of disabilities are there because of different social economic context they considered from. According to the World Health Organisation (WHO), disability is an umbrella term covering impairments, activities limitations and participation restrictions.³²⁴ . Thus disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he or she lives.³²⁵

Domestically, Zanzibar has enacted Persons with Disabilities (Rights and Privileges) Act, 2006³²⁶ which provides for rights and privileges of people with disabilities. These include right to employment, access to education, and entitlement to medical care, accessibility and mobility.³²⁷ The Act apart from providing such rights and privileges also imposes obligations to government and every person to provide for rights and privileges to those people.

Practically, rights and privileges as provided under that Act are hardly implemented. People with disabilities are limited to access some buildings in conformity with the requirements of the Act as they have barriers limiting them from accessing.

Institutionally, previously the affairs of the Persons with Disabilities were undertaken by Organization of People with Disabilities as non-governmental organization (*Umoja wa Walemavu Zanzibar*) which is more like an umbrella organization embracing all other organization falling on this category. The Persons with Disabilities Act, 2006 provides for the establishment of the Zanzibar National Council for persons with disabilities as an autonomous body.³²⁸ Currently there is a special department of Persons with disabilities affairs an integral part of the government of Zanzibar dealing with affairs of persons with disabilities. There are various NGOs that complement the department dealing with persons with disabilities.

³²³ Adopted 11th December, 2006; entered into force 3rd May, 2008.

³²⁴ [http:// www.who.int/topics/disabilities/en/](http://www.who.int/topics/disabilities/en/).

³²⁵ Ibid.

³²⁶ Act No. 2 of 2006.

³²⁷ Sections 3-12 of the Act.

³²⁸ Ibid, Section 26.

5.13.1 Sexual Abuse of Persons with Disabilities

People with disabilities frequently suffer from sexual abuse. The Zanzibar Penal Act, 2005 protects people with disability by making an offence having carnal knowledge with idiot and imbeciles. The Act provides for severe sentence of imprisonment of not less than fourteen years for a person having carnal knowledge with idiot or imbecile³²⁹

Despite the seriousness of the sentence, the problem is reported to persist in Zanzibar. One case is reported in Mwera Regional Court where one Haji Ameir (18) is accused of having carnal knowledge with imbecile girl of 14 years at Mfenesini Matope, Fuoni Unguja. The event is reported to occur on 28th November, 2009.³³⁰

It is recommended that the law should be strengthened to provide stiffer sentence for persons found guilty of having carnal knowledge with people of disability but also the government should have a national register of such offenders so that officials can track them.

³²⁹ Section 133 of the Act.

³³⁰ Source: Mwera Regional Court Registry.

CHAPTER SIX

HIV/AIDS and Human Rights

6.0 Introduction

HIV is a virus that attacks the body's immune system. After infection, the body defences may continue to work for sometime and the person may remain well. But in the majority of cases, the immune system begins to break down and the person infected becomes prone to minor or major opportunistic infections from which death may result.³³¹ AIDS refers to the later stages of HIV infection.³³² The condition arises from HIV's attack on one type of white blood cell, the T-cell. And a person generally becomes infected when a significant amount of virus enters the blood stream.

HIV positive persons and AIDS victims are often subject to violations of human rights. Examples of those rights are rights related to work, access to health care, right to privacy, freedom of movement etc. People living with HIV and AIDS may be easily discriminated particularly by the society with insufficient knowledge on rights of those people.

Over time, the HIV/AIDS crisis has developed into a human catastrophe.³³³ Within a short span of time, the global number of people who have been, or are, directly affected by this pandemic is close to one hundred million.³³⁴ Specifically, more than sixty million people have contracted HIV at some point over the last twenty five years.³³⁵ More than twenty five million people have died as a result of AIDS-related illness during this time and approximately forty million are currently living with HIV/AIDS globally.³³⁶ HIV/AIDS has become the leading cause of death worldwide for adults aged fifteen to forty-nine, with three million deaths in 2003 alone.³³⁷ The HIV/AIDS pandemic has also ravaged the lives of many children.³³⁸ According to the 2007 United Nations Agency for International Development (UNAID) report, 33.2 million people are infected with HIV and 2.1 million people have already succumbed to AIDS.³³⁹

³³¹ South African Law Commission, Second Interim Report on Aspects of the Law Relating to HIV/AIDS: Pre employment HIV Testing, April, 1998, p. 4.

³³² Ibid.

³³³ See United Nations General Assembly Resolution 60/262, U.N. Doc. A/RES/60/262 (2 June 2006), 2.

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ See Empelen, P. (2005), What is the Impact of HIV on families? p. 9. Available at <http://www.euro.who.int/Documents/E87762.pdf>.

³³⁷ Ibid.

³³⁸ Ibid. According to World Health Organisation Report, as at 2004, fifteen million children had been orphaned by HIV/AIDS and millions more made vulnerable by the death or illness of a parent, guardian or caretaker.

³³⁹ UNAIDS, WHO (December 2007). 2007 AIDS epidemic update. Available at http://www.data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en_pdf,

A number of international documents provide ³⁴⁰ a global framework for guiding various actors on how to address human rights and other welfare of those affected and infected with HIV. ³⁴¹ The following, among these documents, are worth analyzing:

6.1.1 International Guidelines on HIV/AIDS and Human Rights, 1997

This document was intended to benefit States' action in the management of HIV. Its function is to guide policy formulators and implementers (legislators, executive government actors from various ministries and departments, civil society organizations and private sector actors) in the application of international human rights obligations in the context of HIV. It emphasizes the link between public health and human rights and the need to protect against vulnerabilities occasioned by HIV.

6.1.2 United Nations Declaration of Commitment on HIV/AIDS, 2001

In 2001, the United Nations made an initial commitment to the fight against HIV and AIDS. ³⁴² The General Assembly passed a Resolution, known as the Declaration of Commitment on HIV/AIDS. The Declaration listed many ways in which Member States could fulfil their commitments to join this worldwide fight. ³⁴³ According to the Declaration, these efforts should include eliciting active participation of civil society, the business community, and the private sector to develop and implement both action and financing plans, constructively confront stigmas and eliminate discrimination, address the effects of gender and age, and strengthen health, education and legal system capacity to safeguard 'the right to the highest attainable standard of physical and mental health.

6.1.3 ILO Code of Practice on HIV/AIDS and the World of Work, 2001 ³⁴⁴

HIV/AIDS has been viewed as a major threat to the world of work: it can affect the most productive segment of the labour force and reduce earnings. It potentially imposes huge costs on enterprises in all sectors through declining productivity, increased labour costs and loss of skills and experience. Due to this possibility, coupled with the high stigma and lack of proper information on HIV, the workplace has become one of the environments where HIV related discrimination has profoundly manifested itself. The right to work, and the freedom from work-related discrimination and stigmatization for workers affected by HIV but are still productive has been often violated.

³⁴⁰ It is alarming to note that notwithstanding those shocking figures of people who have in one way or the other been affected by HIV/AIDS, not a single international legal instrument exists to date on this pandemic.

³⁴¹ Patterson, D. & London, L., (2002). "International Law, Human Rights and HIV/AIDS" in *Bulletin of the World Health Organization*, WHO Publishers, p. 37.

³⁴² United Nations General Assembly Resolution S-26/2 UN Doc. A/RES/S-26/2, 27 June 2001.

³⁴³ Art 37-103 *ibid*.

6.1.4 United Nations Political Declaration on HIV/AIDS, 2006

The United Nations renewed its commitment to the worldwide struggle against HIV/AIDS vide the Political Declaration on HIV/AIDS, which was passed at a High-Level Meeting on AIDS in New York on 2nd June, 2006.³⁴⁴ The Declaration elaborates the feminisation of HIV/AIDS and the need for efforts to eliminate gender inequalities and discrimination based on gender in order to empower women to protect themselves from HIV infection in an environment free from coercion, abuse, and violence.

6.1.4 Grand Bay (Mauritius) Declaration and Plan of Action, 1999

This Declaration was adopted by the African Union Council of Ministers and it underscores the basic necessity of addressing and observing the rights of HIV/AIDS persons. It affirms the universality, indivisibility and inter-dependence of human rights and urges governments to give parity to economic, social and cultural rights as well as civil and political rights.³⁴⁵ The Declaration acknowledges that the rights of people living with HIV/AIDS have not been observed in Africa and urges state parties to ensure respect for their rights. Further, the conference recognised that the core values on which human rights are founded include respect for the sanctity of life and human dignity, tolerance for differences and fairness.³⁴⁶

6.1.5 The Dakar Declaration

This Declaration which was adopted by the 4th Regional Conference/General Assembly of the Inter-African Committee (IAC) organized jointly by WHO outlines 10 cardinal legal and ethical principles worth observing in the fight against HIV/AIDS. The Document recognizes that the fundamental value of respect for human rights, life and human dignity provides the foundation on which all is built.

6.1.6 Abuja Declaration and Plan of Action on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, 2001³⁴⁸

In this Declaration, the African leaders affirmed their acknowledgement that HIV/AIDS is an emergency in the continent and pledged to place the response to HIV/AIDS at the forefront as the highest priority issue in their respective national development plans. Principally, the leaders committed themselves to mobilise resources from within Africa and beyond, and to enact appropriate legislation and international trade regulations that would ensure availability of drugs at affordable prices to HIV/AIDS persons.³⁴⁹

³⁴⁴ ILO Code of Practice on HIV/AIDS and the World of Work, 2001, ILO-AIDS Code- 2001-05-0165-1.EN.doc/v6.

³⁴⁵ *Grand Bay (Mauritius) Declaration and Plan of Action*, 1999, Article 1.

³⁴⁶ *Ibid*, Article 5.

³⁴⁷ Held in Dakar, Senegal, between 17th and 21st November, 1997.

³⁴⁸ Adopted by African Summit of Heads of states on HIV/ AIDS, Abuja, Nigeria, 26-27 April, 2001. See also the Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases, 2003.

³⁴⁹ Abuja Declaration and Plan of Action on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, 2001, Arts 28-31.

A part from those international documents, there are also general international human rights instruments containing general provisions relating to rights of people with HIV/AIDS. These instruments include Universal Declaration of Human Rights of 1948; International Covenant on Civil and Political Rights of 1966; International Covenant of Economic, Social and Cultural Rights of 1966; Convention on Elimination of Discrimination against Women, 1979; Convention on the Rights of the Child of 1989; and some regional human rights instruments like African Charter on Human and Peoples' Rights of 1981; American Convention on Human Rights of 1969 and European Convention on Fundamental Rights and Freedoms of 1950. These instruments impose obligations to the member states to guarantee all persons all rights contained in each instrument without discrimination. Notwithstanding all these efforts by the international community and the devastating nature of the pandemic to the global population, strangely not a single Convention or binding international legal instruments has emerged addressing the issue of HIV/AIDS.

6.2 Legal Frame Work on HIV/AIDS in Zanzibar

Zanzibar too has been affected by this pandemic. The first three HIV/AIDS cases in Zanzibar were diagnosed in 1986 at Mnazi Mmoja Hospital. Since then, there has been a marked increase in reported cases cumulatively from three in 1986 to 2500 by the end of 2002.³⁵⁰ In 2002, the Ministry of Health and Social Welfare (MOHSW) with support from the UN system conducted an HIV population based survey in both Unguja and Pemba. This study established the HIV prevalence in the general population at 0.6% and that women show infection rates that are four to six times higher than their male counterparts. To date, it is estimated that more than 600 Zanzibaris have died of AIDS related causes since the first case was identified in 1986. To date, 500 AIDS orphans have been registered by NGOs dealing with HIV/AIDS and around 7,200 adults and children are estimated to be living with HIV/AIDS.³⁵¹

Sexual intercourse, especially heterosexual sex, accounts for more than 90% of HIV transmission in Zanzibar. HIV transmission through body fluids and blood products in hospital settings is controlled through standard screening and sterilization procedures of invasive equipments. HIV transmission through piercing and other surgical invasive equipment accounts for approximately 6% of all HIV transmission. Guidelines and directives to ensure aseptic techniques are now in use in all health facilities. Data from Zanzibar AIDS Control Programme (ZACP) estimates that about 4% of HIV transmission is of vertical nature [mother to child transmission] inclusive of breast-feeding period.²¹⁸ It is further reported that the HIV transmission among the injecting drug users counts 15.1%; commercial sex workers 10.1% and men who have sex with men 12.3%.³⁵²

Besides HIV/AIDS prevalence, Zanzibar has no specific legislation dealing with the rights of people living with HIV/AIDS. However the Constitution of Zanzibar guarantees all Zanzibaris without discrimination rights and freedoms. These rights include right to life, equality of all persons, equality before law, right to privacy and personal

³⁵⁰ Source: Zanzibar AIDS Commission, 2009.

³⁵¹ Ibid.

³⁵² ZAC Annual HIV & AIDS Monitoring and Evaluation Report, 2008.

security, freedom of movement, right to work and receive fair remuneration etc. However, the term discrimination as defined in that Constitution does not include people living with HIV/AIDS. It is recommended that the definition needs to be extended to include discrimination of other groups including people living with HIV/AIDS and related health conditions as the most vulnerable group currently.

Zanzibar has enacted other laws to give clarity of such rights. These laws include Employment Act of 2005 which among other things prohibits discrimination in employment. The Act prohibits any employer to discriminate directly or indirectly an employee in any employment policy or practice on any ground including race, gender, colour, religion, social origin, national extraction, political opinion, marital status, pregnancy, disability, and HIV/AIDS.³⁵³

Although this provision prohibits discrimination by an employer to an employee, it is very loose as it confers discretion on the employer by using the word “may”. This implies providing room for discrimination by an employer to certain people including those living with HIV/AIDS. Apart from that defect, the Employment Act also does not include the act of distinguishing, excluding or preferring any person on the inherent requirement of a job to be discrimination. The Act also gives discretion to the employer to order or request test on potential employees. This provides for possibility of an employee being discriminated on the ground of his or her HIV status.

As HIV/AIDS is mostly transmitted, as noted above, though sex, it is pertinent in this part to mention Penal Act of 2004 which prohibits certain sexual acts in which HIV/AIDS may be transmitted. Part XV of the Act criminalizes certain acts such as rape, defilement of idiots and imbeciles, procuring for prostitution, detaining female in brothel, living on earnings of prostitution, adultery, procuring defilement etc. The Act also criminalizes the intentional spread of infectious disease by any person to another.

Beside those laws, the government of Zanzibar has formulated policies and a Strategic Plan. The Zanzibar National HIV/AIDS Strategic Plan is intended to consolidate interventions that will prevent HIV infections and reduce the risk of vulnerability to HIV among the Zanzibar population. Those who are infected and affected will be assisted with measures that will reduce the impact.

6.3 Institutional Framework on HIV/AIDS

The government of Zanzibar has established a separate organ responsible for this pandemic. The Zanzibar AIDS Commission is one of the major players on HIV/AIDS in Zanzibar. Through the Zanzibar Aids Commission Act, 2002,³⁵⁴ the Zanzibar AIDS commission was also established to institutionalize the fight against HIV i.e. to manage and coordinate the National Multi Sectoral Response to HIV/AIDS in Zanzibar and since then, the Commission has led stakeholders from all sectors in developing and implementing various strategic plans including the 2004-2005 and the 2008-2009 Zanzibar Multicultural HIV/AIDS Strategic Plan, formulating the 2006 Zanzibar National Multicultural HIV/AIDS Policy among other key statutory obligations conferred upon it.

³⁵³ Section 10 (5) of the Act.

³⁵⁴ Act No. 3 of 2002.

6.4 Right to Accessible Health Care Services

One of the most important rights to the people living with HIV/AIDS is right to health. Comprehensive treatment, care and support include: antiretroviral and other medicines; diagnostics and related technologies for the care of HIV/AIDS related opportunistic infections and other conditions; good nutrition; and social, spiritual and psychological support; as well as family, community and home-based care. HIV prevention technologies include condoms, lubricants, sterile injection equipment, antiretroviral medicines (e.g. to prevent mother-to-child transmission or as post-exposure prophylaxis) and, once developed, safe and effective microbicides and vaccines. This right as noted above is not provided for in the Zanzibar Constitution of 1984 instead, it is one among the government objective to improve health services to all individuals.

Another law that attempts to guarantee access to health care albeit generally is the Private Hospitals (Regulation) Act, 1994.³⁵⁵ Part VI of the Act generally seeks to control the fees chargeable by private hospitals in respect of medical treatment. Under Section 17(1) of the Act, the Minister may, from time to time, determine and review, in accordance with the provisions of that Act, the price structure of medical treatment rendered by private hospitals either on a national basis or in relation to any particular area or areas and in doing so, is expected to take into consideration *inter-alia*, the need to promote the continued ability of private hospitals to maintain efficiency and expand their services to supplement services rendered by public hospitals; and the need to ensure the availability of adequate medical and health services in rural as well as urban areas.

In Zanzibar, ideally health services are freely provided. However, practically that's not the case. Health services have become a heavy burden to the government particularly to the people living with HIV/AIDS. People with HIV/AIDS are frequently affected by many diseases. In that case they need full medical attention. However, as the majority of them are poor, they can hardly manage medical expenses.

6.5 Right to Information for Public on HIV/AIDS

Guideline 9 of the International Guidelines on HIV/AIDS and Human Rights³⁵⁶ calls on states to promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV to understanding and acceptance.³⁵⁷ Similarly the joint ILO/WHO Guidelines on Health Services and HIV/AIDS recommend that employers should ensure that health-care workers at all levels are provided with the information and training they need to maintain, update and improve their skills and knowledge as required.³⁵⁸

The right to information in Zanzibar is provided for in the Zanzibar Constitution as shown above. This right is not confined solely to people with HIV/AIDS and thus all persons benefit from its constitutional guarantee. The duty to provide information is

³⁵⁵ Act No 4 of 1994.

³⁵⁶ *Supra* part 6.1.1.

³⁵⁷ On the latest consolidated version of 2006 International guidelines on HIV/AIDS and Human Rights see <http://www.unaids>.

³⁵⁸ Joint ILO/WHO guidelines on Health services and HIV/AIDS [http:// www.ilo.org/publns](http://www.ilo.org/publns).

specifically vested in ZAC which is required to disseminate and encourage the dissemination of information on all aspects of HIV and AIDS.³⁵⁹ The Zanzibar Policy on HIV/AIDS also covers the Zanzibar's obligations to educate and inform the public on HIV/AIDS on a number of areas. These include:

1. Working with other private partners to coordinate and ensure access by all people to accurate, relevant and up-to date HIV/AIDS information, education and communication;
2. Collaborating with civil society and community based organisations, to ensure access to effective and appropriate public education on the utilization of pre-marital HIV testing services;
3. To increase and promote public awareness and education on the importance of HIV testing during pregnancy;
4. In collaboration with other partners to ensure that mobile populations such as those engaged in trade, fishing and vending have access to appropriate information on HIV/STI prevention to reduce the risk of infection;
5. Educate the public on the roles and values of traditional Zanzibari culture in the fight against HIV/AIDS infection and in supporting infected and affected population; and
6. Promote culturally sensitive media and the programmes that would promote HIV/AIDS educational campaigns on prevention, care and impact mitigation to the public.

Despite the above provisions, it is reported that in Zanzibar people with HIV/AIDS face stigmatization in the society.³⁶⁰ This situation causes people losing courage to undertake health tests because of the fear of stigma from the society. Of those who decide to test their health, they do so secretly and sometimes outside Zanzibar.³⁶¹ This is caused by ignorance by the society indicating that dissemination of information and education to the society regarding HIV/AIDS is not sufficient.³⁶² It is recommended that the society be more educated particularly in rural areas so that the public become aware on HIV/AIDS. If this is done, stigmatization and discrimination of people with HIV/AIDS will go down and it will also encourage to voluntarily test their health status.

6.6 Right to Privacy for People Living with HIV

Guideline 5 of the International Guidelines on HIV/AIDS and Human Rights³⁶³ calls on States to enact or strengthen laws that ensure privacy and confidentiality and ethics in research involving human rights subjects and this invariably includes the duty to ensure that testing on humans and body tissues and fluids is done in a humane and ethical manner.²³⁰ The Joint ILO/WHO Guidelines on Health Services and HIV/AIDS summarily captures the different facets of HIV testing that "The acceptance of HIV testing

³⁵⁹ Section 4 (g) Act No 4 of 1994.

³⁶⁰ Zanzibar Leo Newspaper, 11th October, 2009, p. 7.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ *Supra*, 6. 1.1.

depends on improved protection from stigma and discrimination as well as assured access to integrated services for prevention, treatment and care.

Confidentiality is very important as far as encouraging people to undergo HIV testing. It inspires faith and confidence in persons infected by the scourge and dilutes the fears of stigma and discrimination. There must be legal and administrative mechanism prohibiting the disclosure of information relating to the one's health status except upon ones consent or legal authorization. Those medical practitioners and those responsible for conducting tests or providing health services to victims must comply with ethics requiring non disclosure of information.

Domestically, the Constitution of Zanzibar of 1984 provides for the confidential and voluntary aspect of HIV by guaranteeing the right of every individual to privacy and personal security albeit in general terms. Article 15(1) thereof states *inter alia* thus:

Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life ...

The Employment Act of 2005 is the only law in Zanzibar that has directly dealt with HIV testing and has even attempted a definition of the same. Section 3(1) of the Act defines "HIV testing" as:

taking a medical test to determine a person's HIV status and includes written or verbal questions inquiring about previous HIV tests, questions related to the assessment of risk behaviour and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.

Section 47 of the Act requires medical examination of employees solely for purposes of determining ability/fitness to work and Section 20 thereof guarantees the confidentiality of employees' medical records and makes it a criminal offence to divulge such information in contravention of the Act.

The Occupational Safety and Health Act, 2005³⁶⁴ also provides for testing and confidentiality of testing by providing thereof for medical examinations by employer for purposes of establishing fitness to work²³¹. Subsection (4) then provides that "any medical practitioner carrying out medical examination and the employer shall maintain the confidentiality of the results of the medical examination." Generally, these provisions do not address comprehensively and satisfactorily the aspects of HIV testing as expected under international standards and guidelines. Indeed as indicated earlier, HIV testing is multifaceted and requires much more concerted legislative attention than is currently available in Zanzibar's statute books. It is interesting to note that even the Employment Act which presents the best legislative effort yet at providing for HIV testing merely deals with a single aspect of the same i.e. confidentiality. Aspects of access to testing, voluntaries for those wishing to take the test, ethics and counselling are not at all mentioned in the Act.

³⁶⁴ Act No. 8 of 2005.

6.7 Discrimination Against People Living with HIV/AIDS

People with HIV/AIDS are often affected by discriminatory acts from the society. UNAIDS defines HIV-related stigma and discrimination as: “any form of arbitrary distinction, exclusion, or restriction affecting a person, usually but not only by virtue of an inherent personal characteristic or perceived belonging to a particular group in the case of HIV and AIDS, a person’s confirmed or suspected HIV-positive status irrespective of whether or not there is any justification for these measures.”

Discrimination follows stigma and is the unfair and unjust treatment of an individual based on his or her real or perceived HIV status. When stigma is acted upon, the result is discrimination. Discrimination consists of actions or omissions that are derived from stigma and directed towards those individuals who are stigmatized.³⁶⁵

Guideline 5 of the International Guidelines on HIV/AIDS and Human Rights³⁶⁶ similarly calls upon states to enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

The Zanzibar Constitution, 1984 in Article 12(1) provides for the equality of all persons before the law and their entitlement without any discrimination to protection and equality before the law. Sub articles (3) and (4) go on to prohibit the making of any law that is discriminative either of itself or in its effect and that no person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions of any state office or by any management of any party and its organs. Finally, the Constitution provides a forum for the protection and determination of any question of discrimination and these include courts of law, state organs and other organs established by law.

There are elements of stigma directed to people living with HIV/AIDS in Zanzibar. Victims are considered different from other members of the public. This is caused by lack of awareness among the public on HIV/AIDS. It is recommended that more education be provided to the public so that people may become aware of that pandemic and reduce stigma to HIV/AIDS victims. On top of that, specific legislation governing HIV/AIDS must be enacted so that the rights of people living with HIV/AIDS are protected.

³⁶⁵ Summary Audit of HIV/AIDS legislation in Zanzibar, November 2009.

³⁶⁶ *Supra*, 6.1.1.

CHAPTER SEVEN

SMZ Special Departments and Human Rights

7.1 Introduction

The Constitution of Zanzibar under Article 121 provides for the establishment of special departments whose functions are specified by their specific laws. The Special Departments established under that article are; Jeshi la Kujenga Uchumi - JKU (Economic Building Brigade)³⁶⁷, *Kikosi Maalum cha Kuzuia Magendo – KMKM* (Special Force for Prevention of Smuggling)³⁶⁸ and *Chuo cha Mafunzo* (Educational Centre for Offenders).³⁶⁹ The President of Zanzibar is empowered under Article 121 (3) of the Constitution of Zanzibar to establish any other departments to be known as special department. Invoking that provision, the President of Zanzibar has established other special departments apart from those established under the Constitution. These departments are Zima Moto (Fire Brigade)³⁷⁰ and *Kikosi cha Valantia* (Volunteers).³⁷¹

Generally, apart from their specific functions as provided by their respective laws, these Special Departments in collaboration with police and defence forces are required to maintain peace and security in the isles.

7.2 SMZ Special Departments and Human Rights

The Constitution of Zanzibar under Article 121 (4) prohibits any person employed in the Special Departments from being involved in any political activities except exercising his/her right to vote. That notwithstanding, the departments are perceived to be in favour of the ruling Party.³⁷² Frequently, Special Departments have been accused of being directly involved in political activities particularly during elections which is contrary to Constitution. The ZEC Report on 2005 elections substantiates this fact by lamenting that ZEC was interfered in its activities by Special Departments particularly during registration of voters during 2005 General Election including registration of some voters without following established laws.³⁷³ The illegal registration of voters is again recently reported in Chokocho registration centre in Pemba.³⁷⁴

³⁶⁷ Regulated under Act No. 6 of 2003.

³⁶⁸ Regulated under Act No. 1 of 2003.

³⁶⁹ Act No. 1 of 1980.

³⁷⁰ Established under Act No 7 of 1999.

³⁷¹ Established under Act No 5 of 2004.

³⁷² *Tanzania Human Rights Report of 2008*, p. 214.

³⁷³ See *ZEC Report on 2005 Zanzibar General Elections*.

³⁷⁴ *Tanzania Daima Newspaper*, 23 December, 2009.

7.3 Educational Centres for Offenders (Prison Centres)

The Zanzibar Educational Centre ³⁷⁵ apart from its general function of maintaining peace and security as noted above has also specific duty of dealing with offenders with the aim of reforming them in order to become law abiding citizens. The law governing that specific aim is the Offenders' Education Act, 1980 as amended in 2007. ³⁷⁶ The educational centre is responsible for keeping offenders and providing them with special treatment ensuring that their rights as provided in different international human rights instruments are well preserved.

The international instruments providing for the rights of prisoners and detainees include the United Nations Standard Minimum Rules for the Treatment of Prisoners ³⁷⁷ United Nations Standard Minimum Rules for Non-Custodian Measure (the Tokyo Rules), ³⁷⁸ the African Charter on Human and Peoples Rights, 1981, Kampala Declaration on Prison Conditions in Africa ³⁷⁹, International Covenant on Civil and Political Rights of 1966 and Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment of 1984.

The Zanzibar Constitution of 1984 as well as the Union Constitution of 1977 provides for human rights provisions to every individual regardless his/ her status. Other laws like Criminal Procedure Act, 2004 and Offenders Education Act, 1980 contain some rights in which prisoners and detainees are entitled to get while they are so detained.

The Report by the Commission for Human Rights and Good Governance (CHRAGG) on inspection of police detaining centres and educational centres in Zanzibar, 2007/2008 shows that prisoners and detainees in Zanzibar educational centres and police detaining centres are not well treated. The Report shows that the buildings in which prisoners and detainees live are not suitable for human habitation. The rooms are old, without sufficient ventilation or toilets. Inmates use *Mitondoo* ³⁸⁰ as toilets in the rooms causing bad smell therein and therefore endangering their health. They only use toilets during day time which are unclean and not sufficient. ³⁸¹ Further more report shows that some of the educational centres are highly congested. For example, Kiinua Miguu educational centre in Zanzibar town has capacity to accommodate only 300 prisoners and remandees but currently the centre accommodates 377 inmates. ³⁸² This brings negative consequences to the health of the inmates who, on top of that claim to be severely beaten by prison officers without any just cause. ³⁸³

³⁷⁵ Educational Centres for Offenders is the term used in reference to normal prisons in Zanzibar.

³⁷⁶ Through Act No 3 of 2007.

³⁷⁷ Adopted by the 1st UN Congress on Prevention of Crime and Treatment of Offenders held in Geneva 1955.

³⁷⁸ Adopted by General Assembly resolution 45/110 of 14th December 1990.

³⁷⁹ Adopted at the Kampala Seminar on Prison Conditions in Africa, September, 1996.

³⁸⁰ Buckets used as toilets in Prison and Detaining Centres.

³⁸¹ *ibid*, Report p. 9.

³⁸² *ibid*, p. 38.

³⁸³ *ibid*, p. 10.

As to the access of health services in those centres, the situation is not conducive. The Report shows that most of the centres have no sufficient medicines a situation which forces inmates to buy medicines for themselves.³⁸⁴ It is further contended that some of the health facilities in educational centres have no doctors except nurses.³⁸⁵ Worse still those who are affected by infectious diseases are not separated from others therefore endangering their health. Those with HIV/AIDS are not well provided with medicines and sufficient nutrition.³⁸⁶

The Report also shows that in some of educational centres, right to information is limited. It is reported that prisoners and detainees have no access to mass media such as TV, Radio and Newspapers.³⁸⁷ However there is development in the aspect of right to freedom of worship and communication in most of the educational centres.³⁸⁸

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Ibid, p. 10.

³⁸⁸ Ibid, p. 9.

CHAPTER EIGHT

Collective Rights

8.1 Introduction

Collective rights sometime known as group rights or peoples' rights are those rights which an individual enjoys as a member of a group. There have been arguments that collective rights are not to be equally equated to human rights as we now understand them.

The Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. But it moves further by declaring entitlement to right for every one under Article 2 that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Collective or groups rights are associated with national attempts to make its people equal or to equally enjoy national resources. Such rights include right to development, clean environment, peace as well as preservation of culture and language.

These rights are also found in various international declarations including more importantly for Zanzibar, the African Charter on Human and Peoples Rights, 1981 which we can easily identify with. Article 22 of the instrument provides that all people have the right to their economic, social and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind. Other rights codified in this Charter include: peace, clean environment right to self determination of people etc.

8.2 Right to Development

The world has moved ahead with various efforts to ensure that humanity is able to access rights that go hand in glove with respect and survival of the human being. These rights as much as it is practical should be fulfilled by all authorities the world over for an individual or collectively.

Collective rights tend to go towards achieving that goal and under it falls the right to development which when attained will allow a people to enjoy their rights accorded to them by the international instruments as well as their own constitutions.

The right of a people has been clearly enshrined in Article 1 of the International Covenant on Economic, Social and Cultural Rights which provides:

All people have right of self determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.³⁸⁹

³⁸⁹ International Covenant on Civil and Political Rights, 1966.

To ensure that development is accorded a deserving status as a right, and a collective right for a people for that matter the United Nations proclaimed the Declaration on the Right to Development in 1986.³⁹⁰ The concept is not easy at all with deferring opinion if it was indeed a right at all but the thrust behind it is to attempt to ensure equality of opportunity and/or equality of outcome.

The Preamble of the Declaration on the Right to Development states:

Development is a comprehensive economic, social, cultural and political process, which aims at 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 benefits resulting therefrom.

Right to development is not provided in the Zanzibar Constitution. However the Revolutionary Government of Zanzibar has taken various measures to ensure that all Zanzibaris enjoy this right. Among the measures taken by the government include the launching of Zanzibar Strategy for Growth and Reduction of Poverty commonly known by its Kiswahili acronym, MKUZA (*Mkakati wa Kukuza Uchumi na Kupunguza Umasikini Zanzibar*). The aim of this program is to eradicate poverty and improve economic standards in Zanzibar. MKUZA derived from Vision 2020 which is a long term strategy in bringing about development to the people. Zanzibar has continued with its struggle to deliver development. The President of Zanzibar Amani Karume has detailed big strides made into provision of clean and safe water, more health facilities closer to the people as well as improvement in communication in the form roads which have in turn a positive effect in the economy.³⁹¹

Various efforts both by the government as in the Jakaya Kikwete and Amani Karume Entrepreneurship Fund as well as by private moves such as the Business Development Gateway more people and groups have accessed funds for their development initiatives although the challenge has been to see the right people getting such support.

However, all these efforts do not auger well with determination to lift more people out of the poverty line of living on less than one US dollar a day. The global economic down turn has not helped the situation when Zanzibar was also hard hit and the government was forced to announce that Zanzibar would also suffer with job loss and decline in income especially to the lead economic sector of tourism.³⁹²

The economy as a whole got a major boost with the formation of the Zanzibar Business Council (ZBC) which brings together both the private and public sectors. ZBC held three sessions in the course of 2009 and in all of them the meetings were chaired by President Karume and whereby various problems tending to stagnate economic progress were solved there and on.

³⁹⁰ Resolution 41/128 which was further strengthened by the Vienna Declaration and Program of Action, 1993.

³⁹¹ In a speech delivered at the Gombani Stadium during the 45th Anniversary of Zanzibar Revolution, January, 2009.

³⁹² A Budget Speech by the State Minister for Finance, Dr. Mwinyihaji Makame , July, 2009.

8.3 Right to a Clean Environment

Right to a clean environment is a very recent phenomenon in human rights but has gained a lot of strength. The first global effort to ensure that people are provided clean environment as a right was made in the Stockholm Conference in 1972 and since then the wheel has never stopped rolling.

All that notwithstanding this right has not been well developed. There is still a lot of discussion going around whether this was a right or even if it was possible to provide it, though everyone sees the need to especially following the up lifting of life standards.

Sabin Nijwah in her paper “A human right to clean environment” explains why right to clean environment has to be made as a right because of its deep implication:

The pollution of the atmosphere and of the seas, the loss of species, the danger of nuclear power, and the corresponding environmental, social and health problems are only a few among the aspects, which influenced the international community in aiming to create a legal and effective system, which at the end protects the human beings from an environmental disaster.

³⁹³

Other commentators have raised a lot of questions which they say have not been answered and they include many practical questions, but for our discussion we would like to observe that the Zanzibar Constitution in Article 13 provides for the right to life and certainly it would also be inclusive of living in a clean environment.

Several other steps including enactment of various laws including Environmental Management for Sustainable Development Act, 1996;³⁹⁴ the Forest Resources Management and Conservation Act, 1996;³⁹⁵ and other regulations as well as creation of a department specifically dealing with environment have been taken to ensure the fulfilment of this right which in a reality requires a huge investment.

It can hardly be said that this area has made a major shift. While refuse collection has improved the amount left to rot in the environs is equally harmful. There has been no significant improvement in ensuring that investment projects strictly follow the Environmental Impact Assessment (EIA) commitments and as such treatment plants for sewerage produced hardly exist.

The government formulated Regulations to ban the use and importation of plastic bags in order to curb the environmental destruction. However, Plastic bags are still used in Zanzibar. They still continue to compound negative consequences to the Zanzibar surroundings.

³⁹³ See www.subin.com

³⁹⁴ Act No 2 of 1996.

³⁹⁵ Act No. 10 of 1966.

The cutting of trees in different places of Zanzibar is ever increasing. The worse still, even the places where they were formerly considered as productive, trees are being increasingly cut. Places like Fuoni, Mwera, Kisauni etc which are very fertile and conducive for agriculture have now been turned to semi deserts or peoples residences.

8.4 Right to Basic Needs

Basic needs are what define a human being. Provision of condition that enables people to get their basic needs is of paramount importance because the government is not supposed to directly provide the same. The fact that still large percentage of the people live under poverty line demonstrates that there is a long way to go in this sector. The phenomenon of living “hand to mouth” still hurts many souls. While the government has increased the minimum salary for its civil servants from Tshs. 60,000 to Tshs. 100,000 per month there has not been any improvement in the earning power of the fishing and farming communities which make the bulk of Zanzibar working population.

The interruption of electricity power supply from 10th December, 2009 which until December 31, 2009 had not resumed, the second in two years, has hit people hard. Various small businesses have suffered and big businesses like hotels have had to lay off their workers with the long-term effect to their basic needs. Some people have been spending a lot of money buying water adding another burden over and above the persistent poverty facing people. In addition, families have spent considerable amounts of money in the purchase of generators and fuel and thus eroding their earnings and savings. This has had a very negative impact on their lives.

8.5 Right to Peace and Security

For peace and security the year 2009 has been very good for Zanzibar. Major negative incidents reported were to do with Permanent Voter Register especially when the exercise was taking place in Pemba where it is alleged that the Civic United Front CUF had instructed its members to desist from registering.

The argument advanced by the CUF was that many of its members were denied Zanzibari Identity Cards and as such they had no right to register as voters. In various confrontations several people were injured and properties set on fire. Police have been reported to have used excessive force against civilians during registration exercise. There is a growing fear that the violence would escalate next year being an election year especially during the campaign, voting and result announcing periods.

CHAPTER NINE

Domestic Initiative in Human Rights Protection

9.1 Introduction

Human rights law is the law in the making. Its purpose is not simply to set the standards and establish the appropriate institutions and procedures for the enforcement. What counts in the end is whether human rights are realized in practice, whether the standards and institutions serve to bring about the changes required in order to make it possible for all to fully enjoy all human rights. Recognizing this fact Revolutionary Government of Zanzibar has taken a number of initiatives to ensure that human rights are well administered and improved to ensure that human rights are properly realized by every Zanzibari. In this part domestic initiatives for the protection of human rights in Zanzibar will be discussed.

9.2 The Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (CHRAGG) was established under Article 129(1) of the Constitution of the United Republic of Tanzania of 1977 as amended by Act No. 3 of 2000. The Constitution has to be read together with CHRAGG's Act No. 7 of 2001 as Amended by Act 16 of 2001. The Commission became operational in June 2001 and was officially inaugurated in March 2002 following the appointment of Commissioners by the President of the United Republic. The Commission was initially only operating on Tanzania Mainland due constitutional and legal problems but now it has extended its mandate to Zanzibar following Legal Notice No. 31 of 2007 declared by the Minister responsible for human rights in Zanzibar.³⁹⁶ However some Zanzibaris are moking that the commission has only extended its operations in Unguja only.

The Commission has established an office in Unguja and is in the process of establishing one in Pemba. Article 130(1) (a) – (h) of the Union Constitution entrusts the Commission for Human Rights and Good Governance with the responsibility of protecting and promoting human rights in the country. Article 130 (2) provides that the Commission is an independent department in discharging its functions. The Commission has also power to investigate any human violation or abuse of power acting *suo moto* or upon receiving complaints from aggrieved persons. It can inspect prison and similar places for detention, review law and follow up government obligations under International Human Rights Instruments.

9.2.1 Independence of the Commission

The Commission is composed of commissioners appointed by the President after receiving recommendations of the Appointment Committee.³⁹⁷ The Committee is com

³⁹⁶ The Commission for Human Rights and Good Governance Extension Act No. 12 of 2003 was enacted to extend the Commission's Jurisdiction in Zanzibar.

³⁹⁷ Ibid, S. 7 (2) of CHRAGG's Act.

prised of the Chief Justice of the Court of Appeal, the Speaker of the National Assembly, Chief Justice of Zanzibar, the Speaker of the House of Representatives and Deputy Attorney General of Tanzania, who is the Secretary of the Committee.³⁹⁸

The appointment procedure starts with advertisement of the positions of Commissioners in the media and once applications are received, the names are released again in the media for the public to give the comments on the suitability of the applicants. Then the applications and the comments by the public are taken to a sub-committee officially appointed by the Minister responsible for human rights and good governance of the United Republic of Tanzania for purposes of short-listing.³⁹⁹ The short listed applicants are then interviewed and thereafter the Committee sends its recommendations to the President.⁴⁰⁰

However, it is reported that the Commission's powers and independence are limited in a number of ways. Firstly, the Commission is prohibited to investigate the President of the United Republic and the President of Zanzibar.⁴⁰¹ Secondly, although the Commission has its own Budget vote, Article 131 (3) provides that the Commission secures its Budget through the Minister responsible for human rights and good governance. Here once cannot avoid financial control. Thirdly, the Commission's decisions are not binding. It can only make recommendations. Later on, human rights violations investigated by the Commission can be taken to courts of law.⁴⁰²

9.2.2 Performance of the Commission

Generally, the Commission has been improving its performance as well as its image in the eyes of the public. The Commission has been receiving complaints and takes different actions to settle them. For example since 2007 when the Commission established its office in Zanzibar until December 2009, it has received 365 complaints relating to violation of Human Rights.⁴⁰³ 144 complaints out of that number were being investigated and now have been closed.⁴⁰⁴ In 2009 alone, 29 complaints were received.⁴⁰⁵ The complaints which were settled in the year 2009 out of 365 were 73.⁴⁰⁶ Besides that the Commission has been conducting prisons and police stations' inspection. By May,

³⁹⁸ Article 129 (4) of URT Constitution of 1977.

³⁹⁹ This sub-committee is made up of independent professional human resource personnel from private sector; Representative from TAWLA, a Representative from the Faculty of Law, University of Dar-es-Salam; a representative from Tanganyika Law Society; a representative from the Legal and Human Rights Centre Dar es Salaam; a representative of the Zanzibar Legal Services Centre; and representative of the United Nations Association of Tanzania. The sub-committee is assisted by the officers of the Ministry and the CHRAGG Secretariat.

⁴⁰⁰ See Rule 6 of CHRAGG (Appointment Procedure for Commissioners) Regulations.

⁴⁰¹ Section 16 (1) of CHRAGG's Act.

⁴⁰² See APRM Report to Tanzania, 2009.

⁴⁰³ CHRAGG's office Zanzibar.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

2008, it had inspected 9 prisons and 26 police stations in the country. It has made many recommendations for the improvement of living standards and human dignity of prisoners and detainees.⁴⁰⁷

Furthermore, the Commission has been carrying out programmes for people's awareness on human rights and good governance, conducting research and issuing Reports with recommendations, monitoring compliance to global and regional instruments on human rights and has been closely collaborating with civil society organisations (CSOs) in monitoring human rights and principles of good governance. The chart below shows various activities conducted by the Commission in 2009.

| Date | Activity | Targeted Groups/ Institution/Place where the activity is conducted |
|---------------------|--|--|
| 13-15 January 2009 | Training on Administration of the implementation of the Rights of the Child. | NGOs |
| | Training on Guidelines in providing Human Rights awareness. | NGOs |
| 7-9 March 2009 | The Commission visited various institutions in order to improve the better implementation of Human Rights Zanzibar | 1. Ministry of State (PO), Constitution, Legal and Good Governance. 2. The House of Representatives. 3. Office of the Commissioner of Police Zanzibar. 4. Ministry of Education and Vocational Trainings. 5. Zanzibar legal Services Centre. |
| 25-30 August 2009 | Investigation of PVR update related complains | Pemba |
| 28-29 October, 2009 | Preparation of National Human Rights Strategic Plan | Judiciary, Ministry of State (PO) Constitutional and Good Governance, MLYDWC, Organization of People with Disabilities Zanzibar, ZLSC. |
| 3-4 Dec, 2009 | Seminar on implementation of Human Rights in Zanzibar | Various Government Institutions, NGOs, MPs, MHRs, Political Parties and Religious Institutions. |
| 10 Dec, 2009 | Organization of Human Rights Day | Attended by the President of Z'bar and other prominent people. |

Source: Commission of Human Rights and Good Governance, Zanzibar Office.

⁴⁰⁷ See Report by CHRAGG on Inspection of Education Centres and Detainees Centres in Zanzibar, 2007/2008. The report was issued in 2009.

9.3 Zanzibar Law Review Commission

The Zanzibar Law Review Commission (LRC) was established by the Law Review Commission Act, 1986.⁴⁰⁸ The Commission is responsible for reviewing laws or branch of laws and proposes measures necessary for bringing law into accord with current circumstances of Zanzibar. This also includes eliminating anomalies or other defects in the law, repealing obsolete or unnecessary laws and reducing the number of separate enactment and the proper modification and simplification of a particular law or branch of laws.⁴⁰⁹

The Commission has other objectives which include:

- To consider and advise on proposal for the adoption of new or more effective methods for the administration of the law and the dispersion of justice;
- To prepare and submit to the government programs for the examination of different branches of law with the view to reforming them;
- To prepare comprehensive programs for the consolidation and revision of laws and undertake the preparation of any draft bill pursuant to any such program approved by the government; and
- To provide for advice and assistance to any Ministry or Department or any public authority or institution by undertaking examination of any particular branch of law and makes recommendation for reform to bring into accord with the current circumstances.

The Commission is composed of a Chairman and not less than four and not more than seven Commissioners appointed by the President. A person may not be appointed to be Commissioner unless:

- a) he holds or has previously held or is qualified for the appointment to high judicial office in Zanzibar;
- b) is a person who has been enrolled as an advocate in Zanzibar for not less than five years;
- c) is a person graduate in law and has experience in the practice of law for not less than five years;
- d) is a person graduate in law and has experience in the practice of law for not less than five years; and
- e) Teacher of law in a University or Institution of similar status for not less than five years or a person who is in the opinion of the President is by reasons of special qualifications, training or experience in the social economic or political affairs of Zanzibar able to contribute properly for the effective discharge of the functions.⁴¹⁰

⁴⁰⁸ Act No. 16 of 1986.

⁴⁰⁹ Section 4 of the Act.

⁴¹⁰ See section 5 of the Act.

As the appointment of the Commissioners is important for the independence and effective performance of the Commission, the last qualification must be carefully exercised. The qualification seems to be subjective leaving the President with wide power to determine the qualifications.

The Commission so far is not active as it has shortage of manpower. The Commission has no Chairman, Commissioners and other staff.⁴¹¹ It is recommended that, the Commission being very important organ in the development of laws in Zanzibar should be improved so that it can fulfil its functions effectively.

9.4 *Muongozo Wa Haki za Binadamu Zanzibar* (Zanzibar Human Rights Guidelines)⁴¹²

Considering the fact that the public is not aware of their rights and duties, the Revolutionary Government of Zanzibar through the Ministry of Constitutional, Legal and Good Governance has issued Human Rights Guidelines.⁴¹³ These guidelines contain detailed subject of the human rights. They define human rights, their origin and scope. They give elaboration of all human rights as provided under different International human rights Instruments such as UDHR, 1948; ICCPR, 1966; and ICE-SCR, 1966.

The Guidelines further epitomize the origin of human rights in Zanzibar and the incorporation of the Bill of Rights in Zanzibar Constitution of 1984. On top of that the Guidelines elaborate fully the rights as provided in Zanzibar Constitution and how to enforce them in case of violations. They furthermore make people aware of their duties as Zanzibaris.

Generally the Guidelines are very useful for inspiring human rights awareness to the public as many people are unaware of their rights and duties and how to enforce them. It is essential that the guidelines are distributed to all parts of the Isles particularly in rural areas where ignorance is higher than urban areas. It should be noted that the Guidelines are not enough to make people aware of their rights as majority are illiterate. More deliberate efforts particularly involving NGOs in the exercise should be taken so that the whole public is reached and made aware of their rights and duties.

9.5 Enforcement of Human Rights in Zanzibar

Among the Constitutional development made during the 8th Constitutional amendments is the inclusion of enforcement mechanism of human rights in Zanzibar. The amendment asserts jurisdiction in the High Court of Zanzibar to entertain cases relating to violation of human rights. The Constitution of Zanzibar under Article 24 provides that:

⁴¹¹ Budget Speech of the Ministry of Constitution, Legal and Good Governance presented to the House of Representatives, June, 2009, p. 15.

⁴¹² *The Paralegal Manual of Zanzibar Legal Services Centre, 2009.*

⁴¹³ See *Muongozo wa Haki za Binadamu kwa Mujibu wa katiba ya Zanzibar 1984*, Ministry of State President office, Constitutional and Good Governance, September, 2008.

Any person who alleging that any provision in this chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in Zanzibar may institute proceedings for redress in the High Court. The High Court shall have the power to declare and order compensation to any concerned person.

Although this is important, there are many problems facing Zanzibar's courts in administering of justice. The ignorance of the law by the public, legal technicalities, proximity of courts and delay of cases are among the problems affecting administration of justice in Zanzibar. In order for public to enforce their rights properly, the government should take serious measures to address those problems.

CHAPTER TEN

Corruption and Abuse of Power

10.1 Introduction

The word corruption has Latin roots. In Latin it began with *corruptus* which is past participle of *corrumpere* and which means to destroy. But when used as an adverb it literally means “utterly broken” which is what the result of corruption is as we know it today. Corruption acts as agent for destroying social, economic and political order.

Corruption is defined as an abuse of public office or any entrusted power for profit or gain. It refers to dishonest or illegal behaviour especially on the part of the part in authority. It also refers to acting with intent to give someone an advantage inconsistent with official duty and the rights of others. Corruption and abuse of power are said to go hand in hand.⁴¹⁴ Corruption is principally a governance issue that is a failure of institutions and lack of capacity to manage society by means of framework of social, judicial, political and economic checks and balances. When these institutions break down, it becomes difficult to implement and enforce laws and policies that ensure accountability and transparency. It always arises when public officials have wide authority little accountability and perverse incentives.

Corruption has negative impacts on the development of any society. Specifically, it tends to reduce economic growth and discourage foreign direct investments, decreases and diverts government revenues and causes the misallocation of resources. Other consequences include the ineffectiveness of government regulations, breeds impunity and diluted public integrity and worse still it violates human rights.

10.2 Legal Framework in Combating Corruption

Internationally, due to the impacts of corruption in the world, a number of efforts have so far been taken in combating corruption. Some of the international instruments governing the area have been adopted. Among those instruments include the United Nations Convention Against Corruption of 2003, the African Union Convention on Preventing and Combating Corruption of 2003, SADC Protocol Against Corruption, 2001, etc. Tanzania is a signatory to all the above instruments.

Domestically, the efforts to fight against corrupt practices have been taken long ago. In 1975 a comprehensive legislative and institutional frame work were created. This was as a result of the existence of Prevention of Corruption Decree, 1975⁴¹⁵ which among other things established two Anti –Corruption Commissions one in Unguja and another in Pemba.⁴¹⁶ The Decree also created a number of offences including obtaining, accepting, soliciting, attempting to obtain any benefit or inducement, reward or other

⁴¹⁴ Tanzania Human Rights Report, 2008, p. 222.

⁴¹⁵ Decree No. 4 of 1975.

⁴¹⁶ Section 3 (2) of the Decree

wise in relation to his official duty. The Decree was later on amended by Decree No. 2 of 1980 which among other things established an Anti-Corruption Unit which was to assist the government and party to prevent corruption and corruption cases.

In 1985, the above Decree was repealed and the anti corruption provisions were included into Penal Decree Chapter 13 of the Laws of Zanzibar where corruption was treated as normal criminal offence investigated by Police under special direction of Attorney General. In 2004, the Penal Decree was repealed by the Penal Act No. 6/2004. The provisions governing corruption offences remain the same. However, they are not so broad to cover the current aspects of corruption as provided by international instruments. So there is a dire need to have specific legislation to cover those aspects.

Other measures introduced by the government include the formation of special Ministry responsible for good governance; the Ministry of Constitution, Legal and Good Governance which is placed under the President's office. The office of Controller and Auditor General which is now under the Ministry of Constitutional, and Good Governance has become more autonomous in performing its functions without interference from any person or organ⁴¹⁷

The prosecution services are currently improved due to the formation of the Office of the Director of Public Prosecutions (DPP) as autonomous prosecution office. The formation of this office has improved prosecution services in Zanzibar as prosecution is presently conducted by civilian professionals. The improvement of prosecution entails important step in combating corruption as offences in Zanzibar penal laws.

The Anti Money Laundering and Proceeds of Crime, 2009 has been enacted which provides for corruption as a predicate offence. The legislation will greatly assist the fight against corruption in Zanzibar.

On financial measures, operational and legislative changes have been undertaken which include Centralized Payment System (CPO) and now an advanced system known as Integrated Financial Management System (IFMS). These systems are aimed at controlling the government expenditure to the extent of available financial resources as important measures to fight against corruption and similar scandals.

Other measures include the improvement of procurement system by enactment of the Public Procurement Act, 2005.⁴¹⁸ Under this Act the procurement system is based on open and competitive procurement of goods and services by the government agencies. The enactment of Public Investment Act of 2002⁴¹⁹ is another step forward in combating corruption in Zanzibar. The Act, among other things, gives more autonomy to public corporations. The employees of public corporations are no longer civil servants. In that case the corporations have greater freedom of hiring and firing.

⁴¹⁷ See The Establishment of the Office of Controller and Auditor General Act No. 11 of 2003.

⁴¹⁸ Act No. 9 of 2005.

⁴¹⁹ Act No. 4 of 2002.

Despite the above efforts taken by the government, there is no specialized anti-corruption agency or organ, policy and strategy in Zanzibar. It is recommended that specific legislation relating to corruption should be enacted so that enforcement of corruption in Zanzibar can be effective. However having legislation is not enough. As corruption normally involves officials in the government, political will to implement that law is necessary.

10.3 Current Situation on Corruption in Zanzibar

The issue of corruption had shocked Tanzania last year. Several high class incidents of grand corruption were reported and authorities were keen to see that the efforts being taken to arrest the situation were known to the public for its support and confidence. However, very little has come out in Zanzibar on both the issue of corruption and abuse of power. It is as if the islands were only inhabited by angels.

No doubt that the government is keen to portray Zanzibar as clean and governable. However, in practice there are several cases of both corruption and abuse of power on the isles.

10.3.1 Corruption in Public Services

Normally corruption is highest in public service. The reason behind this is because in most of the countries, the seat of power is within the government hierarchy and whereby it has role to serve the citizenry, most of whom in Zanzibar are poor.

Only in few advanced countries that the private sector enjoys the same because of its monetary and lobbying skills but even in such situations, it goes back to the public service.

Zanzibar does not have a law dealing with corruption and this has been taken as a major reason for failure to see prosecution and ultimately conviction of corrupt officials which everyone says they exist largely untouched in the public service domain.

10.3.2 Abuse of Power

Abuse of power is also a malady which is strongly prevalent in Zanzibar. Most people suffer in silence because the system has not yet been built to allow for public voices against officials who misuse their power. Officially though the government stand is that Zanzibar is keen in observing the rule of law but has also failed to institute mechanism to which such abuses are checked and punished.

The Head of the Opposition in the House of Representatives, Hon. Abubakar Khamis Bakary took the bull by the horn when he pointed out an accusing finger as an example of abuse of power to the Regional Commissioner of Pemba North, Hon. Faki Dadi. He accused him during the House session of appropriating government land and using prisoners to cultivate for him for personal gains leaving many citizens landless.⁴²⁰

⁴²⁰ See also *supra* 4.4.

Also the Comorian community in Zanzibar has claimed that the order issued by the Immigration Commissioner in Zanzibar, Mr. Mwinchum Hassan Salum ordering members of this community to surrender their Zanzibari status as they have not used the proper procedures to ensure their status as Tanzanians⁴²¹ was illegal. The Comorian community saga goes nearly half 46 years surfacing after lapse of every few years⁴²² but a permanent solution has never been able to be found.

⁴²¹ See <http://www.jamiiforums.com/jukwaa-la-siasa/37346-z-bar-withdraws-passports-of-unregistered-comorians-3.html>

⁴²² On the history of the Comorian Community and its contribution to the development of Zanzibar see ALEY, Juma, *Enduring Links: Twenty One Years of Leadership – Contrasts and Similarities: Zanzibar in the Context*, Dubai: Union Printing Press, 1994, Chapter VI.

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