

Tanzania Human Rights Report 2012

Part One: Tanzania Mainland – Legal and Human Rights Centre (LHRC)

Part Two: Zanzibar – Zanzibar Legal Services Centre (ZLSC)

Tanzania
Human
Rights
Report

2012



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Publishers

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Partners

Embassy of Sweden
Accountability in Tanzania
Foundation for Civil Society

ISBN: 978-9987-432-97-4

Printer

Togo Systematic Investment

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2012

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Acknowledgements

The continued preparation of the Tanzania Human Rights Report for the past ten years now has been possible with the contribution from a number of players. These players have jointly made it possible to come up with the report and signify its validity to its users as a reference book, authority in courts of law and informative depicting the human rights situation in the country for a particular year. As for the 2012 Tanzania Human Rights Report, Legal Human Rights Centre (LHRC) and the Zanzibar Legal Services Centre (ZLSC) would like to acknowledge the following for their tireless dedication and devotion to this work. Of course, the list of the persons who helped in one way or another is too long therefor, we would mention a few individuals and institutions.

Firstly, LHRC and ZLSC, would like to express its sincere gratitude to its researchers and writers of this report, both from Tanzania Mainland and Tanzania Zanzibar. There are Onesmo Olengurumwa and Pasience Mlowe for Tanzania Mainland and Mr. Ali Uki and Ms Frieda Pereira for Tanzania Zanzibar. Their work is highly valued as the community benefit out of their devotion to this work. Secondly, much appreciation should be extended to Mr. Joseph Parsambei for laying foundation to some of the chapters in this work. Thirdly, LHRC and ZLSC feel indebted to Mr. Peter Makoye for his tireless work in making photocopy of newspaper cuttings and Mr. Rodrick Maro for filling the same in relevant files according to chapters and the whole editorial board of the ZLSC.

LHRC and ZLSC benefit abundantly in its continued engagement with human rights monitors and paralegals across Tanzania. The field monitors and paralegals are the primary interveners to human rights violations in all districts and all electoral constituencies. Their monthly and quarterly reports are very informative and reliable source of statistical data used in this report. However, specific appreciation should be extended to Mr. Berensi Alikadi, Anthony Mayunga and Anthony Sollo for availing all us with some of the pictures that have been used in this report. LHRC and ZLSC highly value the input of paralegals and all other individuals who in any manner supported us in preparation of this report.

LHRC and ZLSC enthusiastically acknowledge the contribution from various reports produced by government institutions, private sector, civil societies and the media community and in different was either officially or friendly. We only encourage each institution and individuals to continue without fear or reservation

to share relevant reports in order to enhance transparency and promote right to access information. Moreover, we are grateful to the Parliament of United Republic of Tanzania which has availed us with the information, including that on its website.

Throughout this juncture LHRC and ZLSC owe a lot to its staff - technical and administrative, volunteers and interns for their willingness and cooperation during the entire period of preparation of this work. This goes hand in hand with the internal editorial board which took part in proof reading, altering and modifying the initial manuscript to this useful hand of information. To all we feel indebted and with gratetude we acknoweldge specificaly the continued suport of the LHRC & ZLC'S development partiners; the Embassy of Sweeden, the Embassy of Finald, the foundation of civil socity and Acecentablity Tanzania.

LHRC & ZLSC

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Table of Contents

Acknowledgements.....	v
List of Figures.....	xviii
List of Tables.....	xix
List of Abbreviations.....	xxi
List of Legislation.....	xxv
List of Cases.....	xxviii
Preface.....	xxix
a) Vision.....	xxix
b) Mission.....	xxix
c) LHRC's Values.....	xxix
Introduction.....	xxxii
Chapter One.....	1
General Overview of Tanzania.....	1
1.1 Introduction.....	1
1.2 Geography.....	1
1.3 People.....	3
1.4 Economy.....	4
1.4.1 Economic Situation by 2012.....	5
1.5 Historical Overview: Colonialism to Present.....	5
1.6 Governance System.....	8
1.6.1 The Executive.....	8
1.6.2 The Legislature.....	8
1.6.3 The Judiciary.....	9
Chapter Two.....	12
Civil Rights and Liberties.....	12
2.0 Introduction.....	12
2.1 Right to Life.....	13
2.1.1 Tanzania is Safe without Death Penalty.....	13
2.1.2 Extrajudicial Killings.....	20
2.1.3 Mob Violence.....	26
2.1.4 Killings Related to Witchcraft Beliefs.....	31

2.1.5	Albino Hunt – Discrimination as the Source of Insecurity to PWA.....	34
2.1.6	Road Accidents.....	36
2.2	Equality before the Law: Access to Justice and Fair Trials.....	39
2.2.1	Independence and Impartiality of the Judiciary.....	40
2.2.2	Judicial Infrastructure: Resources and Facilities.....	42
2.2.3	Right to Legal Representation.....	44
2.3	Freedom of Expression in Tanzania.....	46
2.3.1	Right to Information.....	47
2.3.2	Freedom of the Media.....	48
2.3.3	Harassment of Journalists.....	53
2.4	Freedom from Torture.....	57
	Chapter Three.....	61
	Political Rights	61
3.0	Introduction.....	61
3.1	Freedom of Association.....	61
3.1.1	Freedom of Association as Civil Societies.....	62
3.1.2	Freedom of Association as Political Parties.....	67
3.1.3	Freedom of Association as Trade Unions.....	71
3.2	Freedom of Assembly.....	72
3.2.1	The Exercise of Freedom of Assembly and Police Brutality.....	72
3.2.2	The Arrest of 16 Activists.....	73
3.3	Freedom of Worship.....	74
3.3.1	Religious Commotion in Mbagala.....	74
3.3.2	Religion versus the National Census.....	75
3.4	Right to take Part in Governance.....	77
3.4.1	Vote of “No Confidence” to the Premier.....	78
3.4.2	The 2010 General Elections Petitions.....	78
3.4.3	Arumeru-East by-Election 2012.....	81
3.4.4	EAC Legislative Assembly Election.....	87
3.5	Othe aspects affecting Political rights.....	88
3.5.1	Constitutional Review Process.....	88
3.5.2	Tanzania – Malawi Border Crisis.....	90

Chapter Four.....	92
Social Rights.....	92
4.0 Social Rights.....	92
4.1 The Right to Health.....	93
4.1.1 Accessibility to Health Facility.....	95
4.1.2 Child and Maternal Health.....	107
4.2 Right to Education.....	114
4.2.1 Primary and Secondary Education.....	115
4.2.2 Higher Learning Education.....	123
4.3 Right to Water.....	125
Chapter Five.....	128
Economic and Cultural Rights.....	128
5.0. Introduction.....	128
5.1 Economic Rights.....	128
5.2 Labour Right.....	130
5.2.1 The Right to Work.....	131
5.2.2 Fair Remuneration.....	132
5.3 Right to Own Property.....	138
5.3.1 Ruthless Evictions.....	139
5.3.2 Land Grabbing for Investment Purposes.....	142
5.4 Cultural Rights as Human Rights.....	144
Chapter Six.....	148
Rights of Vulnerable Groups.....	148
6.0 Introduction.....	148
6.1 Rights of Women and Girls.....	149
6.1.1 Repugnant Laws and Proposed Women Law.....	152
6.1.2 Inhuman and Degrading Cultural Practices.....	153
6.1.3 Incidences of Gender Based Violence.....	158
6.2 Rights of Children.....	163
6.2.1 Physical Violence and Sexual Abuse against Children 2012... 164	164
6.2.2 Situation of Child Labour Exploitation.....	169
6.2.3 Children Involvement in Politics.....	169
6.3 Rights of Persons Living with Disabilities.....	170
6.3.1 Situation of Persons with Disabilities.....	171
6.4 Rights of Elderly Persons.....	173

6.4.1	International Initiatives towards UN Convention on Aged Persons.....	174
6.4.2	Situation of Aged Persons 2012.....	175
6.4.3	Vulnerability to Witchcraft Killings.....	176
6.4.4	Aged Persons demands to the President.....	176
6.4.5	The Former EAC Employee’s Case – Fifteen Judges, yet no Justice.....	177
6.5	Trafficking in Persons.....	177
6.6	Rights of Indigenous People.....	177
6.6.1	Self-Identification.....	180
6.6.2	Occupation of Ancestral Lands, or at Least Part of Them.....	181
6.6.3	Minority or Indigenous Status.....	182
6.6.4	Experienced Historical Discrimination.....	182
6.6.5	Challenges of Indigenous People in Tanzania.....	183
6.7	Rights of Refugees and Asylum Seekers	185
6.7.1	Refugees Situation.....	186
6.7.2	Asylum Seekers Situation.....	187
	Chapter Seven.....	189
	Collective Rights.....	189
7.0	Introduction.....	189
7.1	Right to Development.....	190
7.1.1	‘Kilimo Kwanza’.....	191
7.1.2	Food Security.....	198
7.2	The Right to Enjoy Natural Resources - At the Cross Road.....	200
7.2.1	National Parks, Protected Areas and Wildlife.....	201
7.2.2	The Mining Industry.....	203
7.2.3	Natural Gas; a New Golden Opportunity -“Business as Usual” ...	205
7.3	Human Rights and Business.....	207
7.3.1	Consumer Rights.....	207
7.3.2	Corporate Social Responsibility.....	210
	Chapter Eight.....	214
	National Protection Mechanisms.....	214
8.0	Introduction.....	214
8.1	Tanzania Commission for Human Rights and Good Governance (CHRAGG).....	215
8.2	Police and Human Rights in Tanzania.....	218

8.2.1	Crime Prevention Capacity and Community Perception.....	219
8.2.2	Challenges Facing Police Service.....	221
8.3	Tanzania Prison Service and Human Rights.....	223
8.3.1	The Prison Staff Welfare.....	224
8.3.3	Treatment of Prisoners.....	225
8.3.4	Vulnerable Groups in Prisons.....	227
Chapter Nine.....		229
Corruption and Abuse of Power.....		229
9.0	Introduction.....	229
9.1	Legal Strategies to Combat and Prevent Corruption.....	230
9.2	Anti-corruption Institutions in the fight against Corruption 2012.....	231
9.2.1	The Prevention and Combating of Corruption Bureau (PCCB).....	232
9.2.2	The Public Procurement Regulatory Authority.....	234
9.2.3	The National Audit Office.....	239
9.2.4	Ethics Secretariat.....	241
9.2.5	Open Government Partnership in Tanzania.....	242
9.3	Contribution of Civil societies, religion and Media engagement in Fight against Corruption.....	243
9.4	The Corruption Perception Index (CPI) and Prevalence of Corruption.....	243
9.4.1	Tax Exemptions are Barriers to Development.....	244
9.5	Situation of Corruption in Tanzanian Politics.....	245
9.5.1	Corruption Allegations in Parliamentary Committee on Energy and Minerals.....	245
9.5.2	Bahi Constituency MP, Badwel Corruption Scandal.....	246
9.5.3	Who owns Billions in Swiss Banks?.....	246
Chapter 10.....		248
International Human Right Law.....		248
10.0	Introduction.....	248
10.1	How International Laws Binds Tanzania Domestically.....	248
10.2	Adoption of International Human Rights Instruments.....	249
10.2.1	International Bill of Human Rights.....	249
10.2.2	Other Binding International Human Rights Treaties.....	250
10.2.4	International Labour Organization Conventions.....	253
10.3	Treaty Reporting Requirements and Tanzania compliance.....	255

Bibliography.....	259
Part II.....	273
Zanzibar Human Rights Report 2012.....	273
List of Tables.....	281
List of Figures.....	281
LIST OF CASES.....	285
LIST OF LEGISLATION.....	287
LIST OF INTERNATIONAL LEGAL INSTRUMENTS.....	288
CHAPTER ONE.....	289
General overview of Zanzibar.....	289
1.0 Introduction.....	289
1.1 History.....	299
1.2 Geography.....	291
1.3 People.....	292
1.4 The Economy.....	292
1.5 Political System.....	295
1.6 Judiciary.....	297
1.7 Historical Background of Human Rights in Zanzibar.....	298
1.8 Conclusion.....	300
CHAPTER TWO.....	301
Civil Rights and Liberties.....	301
2.0 Introduction.....	301
2.1 Right to Life.....	301
2.1.1 Road Accidents.....	304
2.1.2 The Sinking of M.V. Skagit.....	305
2.2 Death Penalty.....	309
2.3 Mob Violence.....	316
2.4 Extra Judicial Killings.....	316
2.5 Freedom from Torture.....	316
2.6 Equality before the Law-Equal Access to Justice for All.....	318
2.6.1 Proximity, Availability and Infrastructure of Courts.....	318
2.6.2 Shortage of Manpower.....	320
2.6.3 Court Fees.....	320
2.6.4 Legal Education.....	328
2.6.5 Legal Aid.....	328

2.6.6	Legal Representation.....	329
2.6.7	Delay of Cases.....	330
2.6.8	Independence and Impartiality of Judiciary.....	331
2.6.9	Challenges facing the Judiciary.....	336
2.7	Freedom of Worship.....	339
2.8	Freedom of Expression.....	341
2.8.1	Censorship of the Media Freedom.....	345
2.8.2	Harassment of Journalists.....	347
2.8.3	Poor Coverage for Public Broadcasting Media.....	347
2.9	Conclusion.....	348
CHAPTER THREE.....		349
Political Rights.....		349
3.0	Introduction.....	349
3.1	Political History.....	349
3.2	Right to Participate in Governance.....	350
3.3	Right to Participate in Governance in Zanzibar.....	350
3.3.1	Legal Framework.....	355
3.3.2	Ordinary Resident Requirement.....	356
3.3.3	Zanzibar Resident Identity Card (ZAN-ID).....	356
3.3.4	Right to Stand for Elections.....	358
3.4	Persons with Disabilities and the Right to Take Part in Governance.....	360
3.5	Institutional Framework.....	361
3.6	Freedom of Association and Assembly.....	361
3.7	Controversy over the Union.....	361
3.8	Conclusion.....	363
CHAPTER FOUR.....		364
Economic and Social Rights.....		364
4.0	Introduction.....	364
4.1	Right to Education.....	364
4.2	Legal Framework Governing the Right to Education in Zanzibar.....	364
4.3	Zanzibar Education Policy.....	365
4.4	Challenges Facing Education sector.....	365
4.4.1	Budgetary Allocation.....	365
4.4.2	Registration of Nursery Schools.....	366
4.4.3	Registration of Primary Schools.....	366
4.4.4	Large Number of Pupils in Classes.....	367

4.4.5	Shortage of Secondary School Science Teachers.....	369
4.4.6	Cost Contribution in Education.....	369
4.4.7	Teachers' Training College.....	370
4.4.8	Early Pregnancies and Marriages.....	370
4.4.9	Lack of Facilities in Schools.....	370
4.4.10	Poor Performance of Secondary School Students.....	370
4.4.11	Shortage of Lecturers in some Higher Learning Institutions.....	371
4.5	Right to Health.....	371
4.5.1	Improvement of Health Services in Zanzibar.....	371
4.5.2	Challenges Facing Health Sector.....	371
4.6	Right to Clean Water.....	371
4.6.1	Legal Framework governing the Right to Water in Zanzibar.....	372
4.6.2	Current Situation in the Enjoyment of Right to Water.....	373
4.6.3	Poor and Old Water Infrastructure System.....	373
4.6.4	Improper Control of Water.....	373
4.6.5	Charging Fees of Water without Services.....	373
4.7	Right to Property.....	374
4.7.1	Destruction of Property.....	374
4.7.2	Limitation to the Right of Property.....	375
4.8	Right to Work.....	375
4.8.1	Salaries and Incentives Packages.....	375
4.8.2	Shortage of Employment Opportunities.....	376
4.8.3	Stigmatization of People with HIV in Employment.....	376
4.8.4	Lack of Social Dialogue between Employer and Employee...376	
4.8.5	Poor System of Social Protection.....	376
4.8.6	The Handling of Labour Disputes.....	377
4.8.7	Re-Employment of the Retired Officers.....	377
4.9	Conclusion.....	377
	CHAPTER FIVE.....	378
	The Rights of Vulnerable Groups.....	378
5.0	Introduction.....	378
5.1	Women and Girls.....	378
5.1.1	Legal Framework for Women Protection in Zanzibar.....	378
5.1.2	Policies on Women's Rights.....	379

5.1.3	Institutional Framework in Protecting Women.....	379
5.1.4	Gender Based Violence.....	379
5.1.5	Domestic Violence.....	383
5.1.6	Women Economic Empowerment and Employment.....	384
5.1.7	Women and Health.....	385
5.1.8	Women and Education.....	385
5.1.9	Women Participation in Decision Making.....	385
5.2	Children Rights.....	386
5.2.1	Legal Framework.....	388
5.2.2	Institutional Framework.....	389
5.2.3	Right to Life.....	389
5.2.4	Right to Grow and Develop.....	390
5.2.5	Right to be Protected.....	393
5.2.6	Child Labour.....	394
5.2.7	Maintenance of Children.....	395
5.3	Rights of the Elderly.....	395
5.4	Rights of Persons with Disabilities.....	396
5.4.1	Legal Framework.....	396
5.4.2	Institutional Framework.....	396
5.4.3	Poverty among People with Disabilities.....	396
5.4.4	Abuse against People with Disabilities.....	397
5.5	Conclusion.....	397
CHAPTER SIX.....		398
HIV/AIDS and Human Rights.....		398
6.0	Introduction.....	398
6.1	HIV/AIDS and Human Rights.....	398
6.2	Legal Framework on HIV/AIDS in Zanzibar.....	398
6.3	Institutional Framework.....	399
6.4	HIV/AIDS Situation in Zanzibar.....	399
6.5	Violation of the Rights of People living with HIV/AIDS in Zanzibar.....	402
6.5.1	The Increasing Stigmatization.....	402
6.5.2	Right to Privacy.....	402
6.5.3	Discrimination against People Living with HIV/AIDS.....	403
6.5.4	Lack of Essential Medicine and Drugs.....	403
6.6	Conclusion.....	403

CHAPTER SEVEN.....	404
SMZ Special Departments and Human Rights.....	404
7.0 Introduction.....	404
7.1 SMZ Special Departments and Human Rights.....	404
a. Kikosi Maalum cha Kuzuia Magendo (KMKM) (the Anti Smuggling Marine Unit).....	405
b. Kikosi cha Valantia (the Volunteers).....	405
c. Educational Centres for Offenders (Prison Centres).....	405
d. The Jeshi la Kujenga Uchumi (JKU) (Economic Building Brigade).....	405
e. Kikosi cha Zimamoto na Uokozi - KZU - (Fire and Rescue Services).....	405
7.2 Legality of Special Department vis-vis the Union Constitution.....	406
7.3 Conclusion.....	407
CHAPTER EIGHT.....	408
Collective Rights.....	408
8.0 Introduction.....	408
8.1 Right to Development.....	408
8.2 Right to Development in Zanzibar.....	408
8.3 Right to Clean Environment.....	409
8.3.1 Human Rights and the Environment.....	410
8.4 The Environment in the Constitution of Zanzibar, 1984.....	410
8.4.1 Duty to Protect Natural Resources.....	410
8.4.2 Waste Disposal and Sanitation.....	411
8.4.3 Solid Waste Disposal Management.....	411
8.4.4 Deforestation.....	412
8.4.5 Natural Resources.....	412
8.4.6 Wide Spread of Plastic Bags Business.....	412
8.5 Right to Peace and Security.....	415
8.6 Conclusion.....	415
CHAPTER NINE.....	416
Domestic Initiative in Human Rights Protection.....	416
9.0 Introduction.....	416
9.1 Incorporation of Bill of Rights in the Constitution of Zanzibar, 1984.....	416
9.2 The Commission for Human Rights and Good Governance.....	416

9.2.1 Independence of the Commission.....	418
9.2.2 Performance of the Commission.....	419
9.3 Law Review Commission of Zanzibar.....	420
9.4 The Establishment of the Office of the Director of Public Prosecution.....	421
9.5 Zanzibar Human Rights Guidelines (<i>Muongozo wa Haki za Binadamu Zanzibar</i>).....	422
9.6 Conclusion.....	422
CHAPTER TEN.....	423
Corruption, Abuse of Power and Human Rights.....	423
10.0 Introduction.....	423
10.1 International Instruments in Combating Corruption.....	423
10.2 Corruption and Human Rights.....	424
10.3 Legal Framework in Combating Corruption in Zanzibar.....	425
10.4 Financial Measures.....	425
10.5 Institutional Framework.....	425
10.6 Codes of Conduct.....	426
10.7 Transparency and Disclosure of Assets by Public Officials.....	427
10.8 Current Situation on Corruption in Zanzibar.....	427
10.8.1 Corruption in Dealing with Administration of Justice.....	427
10.8.2 Abuse of Government Money.....	428
10.8.3 Abuse of Power.....	428
10.9 Conclusion.....	429
SELECTED BIBLIOGRAPHY.....	430
WEBSITES.....	431
ARTICLES AND CHAPTERS IN BOOKS.....	433
REPORTS.....	433
NEWSPAPERS.....	434
BUDGET SPEECHES.....	435
SEMINAR PAPERS.....	435

List of Figures

Figure 1: Validity of Death Penalty: Views from the Research.....	16
Figure 2: Dropping Trend of Primary School Enrolment in Arusha.....	117
Figure 3: Cases Handled by the DPP from the PCCB.....	233
Figure 4: Press Release Issued by the UN Refugee Agency on Voluntary Repatriation of Tanzanian Refugees.....	414

List of Tables

Table 1:	Tanzania National Census Trend.....	3
Table 2:	GDP Trend of Tanzania.....	6
Table 3:	Reported Killings since 2003.....	20
Table 4:	Some incidents of Extrajudicial Killings: January - December 2012.....	21
Table 5:	Some Incidences of Mob Violence.....	27
Table 6:	Some Incidents of Witchcraft Related Killings - 2012.....	32
Table 7:	Healthy Facilities in Tanzania.....	95
Table 8:	Healthy Facilities in Mwanza.....	96
Table 9:	Availability of Hospitals in Arusha.....	96
Table 10:	Estimated Number of People Affected by Doctors' Strike.....	101
Table 11:	Availability of X-ray Machine, Microscope and One Ultra Sound per District.....	104
Table 12:	Estimated Maternal Mortality Ratio between 2000 and 2010....	104
Table 13:	The Trend of Nursery and Primary Student Enrolment in Arusha.....	108
Table 14:	Shortage of Teachers' Houses in Some Selected Regions.....	118
Table 15:	Examples of Inadequacy of Teachers in Some Districts of Kigoma.....	119
Table 16:	Dropping Trend in Primary School Performance.....	121
Table 17:	GDP Trend from 2010 and the estimated 2013.....	128
Table 18:	GDP- Real Growth Rate (%).....	130
Table 19:	An Average Monthly Salary for Security Night Guards in Cities.....	137
Table 20:	Some Brutal Killings Committed by Husbands to their Wives..	161
Table 21:	Summary of LHRC's Media Survey on Physical violence and Sexual abuse against Children 2012.....	165
Table 22:	School Enrolment vs Dropouts in Dodoma Region.....	168
Table 23:	Forecasted Trend of Aged People in the Country: 2010 - 2015.	174
Table 24:	Incidents of Land Grabbing from among Indigenous and Pastoral Communities.....	184
Table 25:	Number of Refugees in Tanzania.....	186
Table 26:	Food Production.....	192
Table 27:	The Number of Tractors Supplied to Farmers between 2010 and 2011.....	194

Table 28:	Shinyanga Regional Tractors Purchase Status.....	195
Table 29:	A List of Regions with Food Insecurity in 2012/2013.....	198
Table 30:	Largest Gold Producers in Africa.....	205
Table 31:	Elements of Tanzania NHRPS.....	215
Table 32:	Cases Handled by the DPP from the PCCB.....	233
Table 33:	Summary of Cases Handled by the PCCB	234
Table 34:	Public Notice on the Public Procurement Audits Reports Carried out by PPRA on the financial year that ended on 30 th June, 2012.....	235
Table 35:	Examples of Poorly Implemented Construction Projects.....	236
Table 36:	Some of the issues exposed in this CAG Report, 2010/2011 includes the following:	239
Table 37:	The CPI scores for Tanzania in 2012.....	243
Table 38:	ILO Conventions that have been ratified by Tanzania.....	253
Table 39:	Breakdown of Statistics of road accidents which occurred in Zanzibar from 2008 to 14th December, 2012 are as follows:.....	305
Table 40:	The workload of High Court Judges in Zanzibar from January to November 2012	321
Table 41:	The Workload of Regional Magistrates in Zanzibar from January to November 2012	321
Table 42:	The Workload of District Magistrates in Zanzibar from January to November 2012	321
Table 43:	The Workload of Primary Magistrate Court in Zanzibar from January to November 2012.	322
Table 44:	Filing of cases in the Court of Appeal of Tanzania, the High Court of Zanzibar and the Regional Magistrate Court and Appellate Kadhi Courts from July, 2011 to March, 2012	323
Table 45:	Tanzania teacher-student ratio in Secondary schools has been reported as follows:	368
Table 46:	Average pupil/teacher ratio in secondary schools by MDG region, circa 2006 as follows:	368
Table 47:	Cases Reported to Tthe One Stop Centre for Unguja for 2011/2012.....	383
Table 48:	List of Full Ministers in the Revolutionary Government of Zanzibar.....	386
Table 49:	List of Deputy Ministers in the Revolutionary Government of Zanzibar	387
Table 50:	Key Programme Data (January—June, 2012)	401

List of Abbreviations

ACHPR	African Charter on Human and People's Rights
ADC	Alliance for Democratic Change
AFP	Tanzania Farmers Party
AGM	Annual General Meeting
ASP	Afro Shirazi Party
BAKWATA	Baraza Kuu la Waislamu Tanzania
BPIJ	Basic Principles of the Independency of Judiciary
CAG	Controller Auditor General
CAT	Convention against Torture
CCK	Chama Cha Kijamii
CCM	Chama cha Mapinduzi
CCT	Christian Council of Tanzania
CD4	Cluster of Differentiation 4
CEDAW	Convention on Elimination of All forms of Discrimination Against women
CHADEMA	Chama cha Demokrasia na Maendeleo
CHRAGG	Commission for Human Rights and Good Governance
CHSBs	Council Health Services Board
CRC	Constitutional Review Commission
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
CUF	Civic United Front
DAWASCO	Dar es Salaam Water Supply Company
DDH	District Designated Hospital
DEFIR	The Dar es Salaam Declaration on Editorial Freedom, Independence and Responsibility
DP	Democratic Party
DRC	Democratic Republic of Congo

EHAHRDP	East and Horn of Africa Human Rights Defenders Project
ELCT	Evangelical Lutheran Church of Tanzania
EOTF	Equal Opportunity for All Trust Fund
EPZ	Economic Processing Zones
ESDP	Education Sector Development Programme
EU	European Union
FCC	Fair Competition Committee
FDI	Foreign Direct Investments
FGM	Female Genital Mutilation
GBV	Gender Based Violence
GDP	Gross Domestic Product
GN	Government Notice
HESLB	Higher Education Students' Loans Board
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
ILO	International Labour Organisation
IMF	International Monetary Fund
JAST	Joint Assistance Strategy for Tanzania
LHRC	Legal and Human Rights Centre
M&E	Monitoring and Evaluation
M4C	Movement for Change
MAT	Medical Association of Tanzania
MCT	Media Council of Tanzania
MDG's	Millennium Development Goals
MENGONET	Meatu Non-Governmental Organization Network
MEWATA	Medical Women Association of Tanzania
MISA-Tan	Media Institute of Southern Africa – Tanzania Chapter
MOCLA	Ministry of Constitution and Legal Affairs
MOHSW	Ministry of Health and Social Welfare

MSD	Medical Stores Department
MSD	Medical Stores Department
NAFCO	National Agricultural and Food Corporation
NAIVS	National Agricultural Input Voucher Scheme
NCCR- <i>Mageuzi</i>	National Convention for Construction and Reform - <i>Mageuzi</i>
NEMC	National Environment Management Council
NGOs	Non Governmental Organisations
NHC	National Housing Corporation
<i>nola</i>	National Organisation for Legal Assistance
NRA	National Reconstruction Alliance
NSGRP	National Strategy for Growth and Reduction of Poverty
PAYE	Pay as You Earn
PCCB	Prevention and Combating of Corruption Bureau
PEDP	Primary Education Development Programme
PFMRP	Public Financial Management Reform Programme
PNVR	Permanent National Voters Registration
PWA	People with Albinism
R.E	Revised Edition
RPC	Regional Police Commander
SAU	Sauti ya Umma
SDA	Seventh Day Adventist
SEDP	Secondary Education Development Programme
SGR	Strategic Grain Reserve
SIKIKI	Health Advocacy NGO in Tanzania
STDs	Sexually Transmitted Diseases
SUMATRA	Surface and Marine Transport Regulatory Authority
TACAIDS	Tanzania Commission for Aids
TACCEO	Tanzania Civil Societies Consortium on Election Observation
TANESCO	Tanzania Electric Supply Company Ltd

TANLET	Tanzania Legal Education Trust
TANU	Tanganyika African National Union
TAWLA	Tanzania Women Lawyers' Association
TBS	Tanzania Bureau of Standards
TCU	Tanzania Commission for Universities
TEC	The Tanzania Episcopal Conference
TFDA	Tanzania Food and Drugs Authority
TGNP	Tanzania Gender Network Programme
THRDC	Tanzania Human Rights Defenders Coalition
TISS	Tanzania Intelligence and Security Services
TISS	Tanzania Intelligence and Security Services
TLP	Tanzania Labour Party
TLS	Tanganyika Law Society
TMAA	Tanzania Mineral Audit Agency
TPI	Tanzania Pharmaceutical Industry
TRA	Tanzania Revenue Authority
TTU	Tanzania Teachers Union
TUCTA	Trade Union Congress of Tanzania
UDHR	Universal Declaration of Human Rights
UDP	United Democratic Party
UDSM	University of Dar es Salaam
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNIDO	United Nations Industrial Development Organization
UPDP	United People's Democratic Party
UTSS	Under the Same Sun
WLAC	Women Legal Aid Centre
ZLSC	Zanzibar Legal Services Centre

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1. The Anti-Trafficking in Persons Act, 2008 (Act No. 6 of 2008)
2. The Broadcasting Services Act, 1993 Cap 306 [R.E 2002]
3. The Citizenship Act, Cap 356 [R.E 2002]
4. The Constitution of the United Republic of Tanzania of 1977 Cap 2 [R.E 2002]
5. The Constitutional Review Act, 2011 Cap 83 [R.E 2012]
6. The Court (Land Disputes Settlements) Act, 2002 (Act No. 2 of 2002)
7. The Criminal Procedure Act, 1985 Cap 20 [R.E 2002]
8. The Education Act, Cap.353 [R.E 2002]
9. The Education Fund Act, 2001 (Act No.8 of 2001)
10. The Employment and Labour Relations, Act 2004 (Act No. 6 of 2004)
11. The Fair Competition Act, 2003 (Act No. 8 of 2003)
12. The Film and Stage Act, 1976 Cap 230 [R.E 2002]
13. The Forest Act, 2002 (Act No. 14 of 2002)
14. The Higher Learning Students Loan's Board Act, 2004 (Act No. 9 of 2004)
15. The Inquest Act, Cap 24 [R.E 2002]
16. The Interpretation of Laws Act, Cap 1 [R.E 2002]
17. The Investment Act, 1997 (Act No. 26 of 1997)
18. The Labour Institutions Act, 2004 (Act No. 7 of 2004)
19. The Land Acquisition Act, 1967 Cap 118 [R.E 2002]
20. The Land Act, 1999 (Act No.4 of 1999)
21. The Law of Persons with Disabilities Act, 2010 (Act No.9 of 2010)
22. The Law of the Child Act, 2009 (Act No. 21 of 2009)
23. The Leadership code Of Ethics Act, 1995 Cap. 398 [R.E 2002]
24. The Legal Aid (Criminal Proceedings) Act, Cap 21 [R.E 2002]
25. The Local Customary Law (Declaration) Orders Cap 358 [R.E 2002]
26. The Local Government (District Authorities) Act, Cap. 287 [R.E. 2002]
27. The Local Government (Elections) Act, Cap.292 [R.E. 2010]

28. The Local Government (Urban Authorities) Act, Cap.288 [R.E. 2002]
29. The Local Government Laws (Miscellaneous Amendments) Act, 1999, (Act No. 6 of 1999)
30. The Local Government Laws (Miscellaneous Amendments) Act, 2006, (Act No. 13 of 2006)
31. The Magistrates Court Act, Cap. 11 [R.E. 2002].
32. The Mining Act, 2010 (Act No. 14 of 2010)
33. The National Defense Act, Cap 192 [R.E 2002]
34. The National Election Act, Cap 343 [R.E of 2010]
35. The National Park Act, Cap 282 [R.E 2002]
36. The National Prosecution Act, 2008 (Act No. 27 of 2008)
37. The National Security Act, 1970, Cap 47 [R.E 2002]
38. The Newspapers Act, 1976 Cap. 229 [R.E 2002]
39. The Ngorongoro Conservation Act, 1959 Cap 284 [R.E 2002]
40. The Non-Governmental Organizations Act, 2002 (Act No. 24 of 2002)
41. The Parole Board Act, 1994, Cap 400 [R.E 2002]
42. The Penal Code, Cap 16 [R.E 2002]
43. The Police Force and Auxiliary Services Act, Cap 232 [R.E 2002]
44. The Political Parties Act, 1992 Cap 258 [R.E 2002]
45. The Prevention and Combating of Corruption Act, 2007 (Act No. 11 of 2007)
46. The Preventive Detection Act, 2004 Cap 549 [R.E 2002]
47. The Prison Act, 1967, Cap 58 [R.E 2002]
48. The Probate and Administration of Estates Act, Cap 445 [R.E 2002]
49. The Public Audit, Act 2008 (Act No. 11 of 2008)
50. The Public Health Act, 2009 (Act No. 1 of 2009)
51. The Public Leaders Code of Ethics Cap 398 [R.E 2002]
52. The Public Private Partnership Act, 2010 (Act No 18 of 2010)
53. The Public Procurement Act, 2004 (Act No. 21 of 2004)
54. The Public Service Act, 2002 (Act No 8 of 2002)
55. The Records and Archives Management Act, Cap 309 [R.E 2002]
56. The Refugees Act, 1998 Cap 37 [R.E 2002]

57. The Regional Administration Act, Cap.97, [R.E. 2002]
58. The Road Traffic Act of 1973 Cap 168 [R.E 2002]
59. The Sexual Offences Special Provisions Act, 1998 Cap 101 [R.E 2002]
60. The Societies Act, Cap 337 [R.E 2002]
61. The Statistical Act, 2002 (Act No. 1 of 2002)
62. The Tanzania Food, Drugs and Cosmetics Act, 2003 (Act No. 1 of 2003)
63. The Tanzania Human Rights and Good Governance Act of 2001, Cap 391 [R.E 2002]
64. The Tanzania News Agency Act of 1976 Cap 149 [R.E 2002]
65. The Tax Revenue Appeals Act, Cap 408 of [R.E 2006]
66. The Transfer of Prisoners Act, 2004 Cap 361 [R.E 2002]
67. The Transportation Licensing Act of 1973 Cap 317 [R.E 2002]
68. The Universities Act of 2005 Cap 346 [R.E of 2002]
69. The Wildlife Conservation Act of 2009 (Cap 5 of 2009)
70. The Witchcraft Act, Cap. 18 [R.E. 2002]

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1. *Fred Tungu Mpendazoe versus Dr.Makongoro Milton Mahanga and others* Misc. Civil Application No. 98 of 2010, In the High Court of Tanzania at Dar es Salaam registry (Unreported).
2. *Gobless Jonathan Lema versus Musa Hamis Mkanga, Agness Gidion Mollel and Happy Emmanuel Kivuyo*, Civil Appeal No.47 of 2012 in the Court of Appeal of Tanzania, at Arusha (Unreported).
3. *Hawa Ng'humbi versus AG, John Mnyika and the Returning officer for Ubungo Parliamentary Constituency*, Misc. Civil Cause No. 107 of 2010 in the High Court of Tanzania at Dar es salaam.
4. *Hubbard V Pitt* [1976] QB 142.
5. *In the Attorney General versus the Malawi Congress Party and another*, Civil Appeal No. 22 of 1996, the Malawian Supreme Court of Appeal.
6. *Jamal A. Tamim versus Felix Mkosamali (MP) and others*; Misc. Civil Cause No. 2 of 2010 in the High Court of Tanzania, at District Registry of Tabora at Kibongo (Unreported).
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8. *Norberty Yamsebo versus Aeshi Hilary and others* Misc. Cause No. 1 of 2010 in the High Court of Tanzania at Sumbawanga (Ureported).
9. *R vs ACP Abdallah Zombe and 12 Other* Criminal Case No. 26 at the High Court of Tanzania in Dar es Salaam.
10. *Republic Vs. Hussein S/O Juma* Criminal Case No. 239 of 2011 at the Resident Magistrate in Kigoma.
11. *Shaban Itandu Salema and Paschal Marcel Hallu V. Tundu Antipas Mughwayi Lissu and others* Misc. Cause No. 37 of 2010 in High Court of Tanzania at Dodoma Registry (Unreported).

Preface

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-governmental, non-partisan and non-profit sharing organization envisioning a just and equitable society. It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country. The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring.

The Legal and Human Rights Centre (LHRC) was established in 1995 out of experiences and lessons generated from The Tanzania Legal Education Trust (TANLET) and the Faculty of Law of the University of Dar es Salaam (UDSM). The founders of the LHRC were young lawyers who had participated in the legal Aid Committee of the Faculty of Law of the University of Dar-es-salaam and its legal aid camps. They were somehow disillusioned by the nature of the State and its policies which were increasingly departing from the interests of majority of the people. They observed increasing human rights violations such as, land evictions of Maasai pastoralists, human rights abuses to the people of Hanang whose land had been acquired by the government and turned into big wheat farms of NAFCO.

There also were alarming numbers of citizens being in conflict with the law mainly due to ignorance of the law. The human rights camps started to build awareness on Human Rights issues as clearly such issues were not known. TANLET founding members who were also public servants working as lecturers with the University of Dar es Salaam (UDSM) thought of the risks involved in challenging the State, hence the idea of setting an independent human rights centre. Its operations are mainly focused in Tanzania mainland with specific interventions in Zanzibar. LHRC is a member of different national, regional, international NGO Networks and human rights bodies. The LHRC has an observer status with the African Commission.

a) Vision

The LHRC envisages a just and equitable society.

A just and equitable society is such a society where - the three arms of the state [parliament, judiciary and the executive] as well as non state actors are practicing accountability, transparency and there is rule of law; and where there is public awareness, respect and engagement for human rights and good governance; where justice and respect for human dignity are reality.

b) Mission

The LHRC is a non-partisan, non-profit sharing, non-governmental organization striving to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advise; monitoring and follow up of human rights violations; and advocacy for reforms of policies, laws and practices in conformity to international human rights standards.

c) LHRC's Values

LHRC has a number of core values that guide the way the members, the board, staff and partners relate and operate. The values in the context of LHRC mean:

i. Integrity

LHRC strives to always uphold quality of being honest; trustworthy; adherence to moral and ethical principles; and being of strong moral uprightness. It means doing the right thing even when no one is watching. LHRC strives to be an organization that is able to be trusted as being honest, safe, and reliable. LHRC will ensure that integrity underlies all of its operations.

ii. Equality

LHRC ensures that individuals or groups of individuals are treated fairly and equally and no less favorably, specific to their needs. LHRC does not discriminate against its clients and employees on the grounds of age, gender, nationality, tribe, place of origin, political opinion, race, colour, disability, occupation, or on any other status. LHRC when focuses on specific marginalized group will not contravene this principle in provision of services to just that group.

iii. Transparency

Save for circumstances where confidence is required, LHRC will ensure that it operates in an honest way of doing things that allows other people/stakeholders to know exactly what LHRC is doing.

iv. Accountability

LHRC always position itself to a situation in which people know who is responsible for something and can ask them to explain its state or quality. LHRC respects and discharges its duties of care. For its accountability is not an afterthought.

v. Professionalism

LHRC professionally handles all of its beneficiaries with competence, respect and courtesy. LHRC strives to provide timely and quality services to the society.

vi. Voluntarism and volunteerism

LHRC staff operates and is guided by the spirit of volunteering by ensuring that it undertake its responsibilities willingly and with dedication not necessarily working for payments but working while believing more on the value of the work rather than the amount of money or material benefit that one gains.

LHRC will live out these values by:

- i) Communicating the values constantly;
- ii) Revisiting and refreshing the values where necessary;
- iii) Confronting contradictory behavior;
- iv) Periodically checking out with feedback.

Therefore, LHRC continues to produce the Tanzania Human Reports and the 2012 report is the eleventh report. The report is relevant to the socio-economic settings of the country thus LHRC commit itself in documenting human rights incidences.

It further, continues producing the report in collaboration with the Zanzibar Legal Services Centre (ZLSC) which is a non-governmental, independent and non-profit organization established to promote access to justice and advocacy for the respect and observance of human rights, popularization of the knowledge of law and production of publications in all areas of legal concern to the people of Zanzibar. The Centre was formally registered in 1992.

The Vision of the ZLSC is Rights and access to justice for all in Zanzibar.

The core objective of the Centre is to render legal aid, legal assistance and other legal services to the public, especially to the vulnerable and disadvantaged sections of the community. The ZLSC also conducts, coordinates and commissions research on legal issues, and carries out consultancies within the relevant mandate of the Centre. At the same time, it works closely and assists other institution and individuals whose objectives are charitable in nature.

The Mission of the ZLSC is dedicated to raising people's awareness on their rights and responsibilities through the provision of legal and Human rights education, and research on legal issues which customarily as has been done from 2006 by ZLSC contributing to part II of this report. It is our sincere hope that the readers of this report will be a change agent towards attaining a just and equitable society.

Bishop Dr. Elinaza Sendoro



**Chairperson,
LHRC Board of Directors**

Introduction

The 2012 Tanzania Human Rights Report is the eleventh ever since the LHRC embarked on the project to research and report on human rights issues in the country. The year 2012 was marred by a serious violation of human rights in various forms in terms of its rise in numbers as well as on types and means. The situation makes it necessary for LHRC to mark 2012 as a tabulent year in human rights violations. It is wise to note however that all violations and issues noted are discussed in respective chapters. Nevertheless, violations related to the right to life have been a major concern in the country ranging from killings by state organs, mob violence, and road as well as marine vessels accidents.

Part one of this report features human rights violations in Tanzania mainland as documented by LHRC while as part two features the situation in Zanzibar documented by ZLSC. Each chapter covers specific human rights aspects such as economic, political, social, abuse of power, governance and vulnerable groups. There were some notable improvements in respect of human rights in every aspect featured in this report. Some of the notable improvements include:

- (a) Reduction of incidences of torture and killings of Persons with Albinism (PWA);
- (b) The government's initiatives to prepare National identity as it guarantees the right to identity and nationality;
- (c) Formation of Constitutional Review Commission which has actually commenced its role to involve citizens in the Constitutional making process;
- (d) LHRC's move to stop early marriage to students who were to be married in Chalinze; and
- (e) Decreased incidences of killings in mining sites compared with the past three years. LHRC has played an important role to report and expose killings of innocent citizens in mining areas.

On the other side in 2012 violations of human rights continued to escalate in the country in the following aspects:

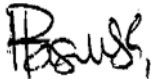
- (a) Extra-Judicial killings where according to police statistics a total of 31 people were brutally murdered in the hands of polic as of December, 2012 such as the brutal killing of Daud Mwangosi in Iringa, killings of an innocent person in Morogoro and an innocent child in Tegeta Dar es salaam;

- (b) Serious incidents of mob violence against law enforcers and as a result (9) police officers were killed by citizens for the year 2012 only;
- (c) An increase in mob violence among civilians especially suspects of theft and witchcraft where they are butchered inhumanely. Police statistics indicate that a total of 1,234 people were killed as of December, 2012.
- (d) Limited freedom of assembly as was for the arrest of 16 human rights activists;
- (e) Infringement of freedom of expression and right to information, such as the banning of Mwanahalisi newspaper;
- (f) Use of abusive language, government resources and use of children as was the case in East Arumeru by-election. The vice hinders the growth of multiparty democracy in the country;
- (g) The deteriorating quality of the education system in the country. The Form four results in 2012 did reflect how the situation of the country's education system is, in terms of its quality and quantity of future citizens that are produced. There was a massive failure of students whereby about 90% of students failed in the four form exams;
- (h) Serious denial of the right to health by both the government and medical providers. In 2012 doctors twice went on strike and caused thousands of deaths. One of the consequences associated with the doctor's strike was the abduction and torture of Dr. Stephen Ulimboka who was in forefront to demand for accountability for the right to health;
- (i) Children and women have remained vulnerable groups and victims of rape and physical torture in households. According to official statistics 6046 cases were reported whereby 567 of them were children as of December, 2012.
- (j) Embezzlement of public funds has been another concern as it was raised by the CAG's office. The central and local government officials were reported to have misused billions of money. For instance, Kishapu is one of the districts where embezzlement was reported to be at its maximum making it necessary for the government to call for a special audit;
- (k) The infringement of the right to own property as provided for in Article 24 of the Constitution of the United Republic of Tanzania. In 2012 several demolition and unjust evictions were carried out in several parts of the country as was in Kilombero and Chunya districts; and
- (l) An increase in road accidents whereby 11,438 were registered in 2012 leading to 431 deaths.

The United Republic of Tanzania conducted its census in 2012. This is an important process towards developmental planning and implementation of various programmes. The whole process is encouraging to LHRC/ ZLSC despite some notable challenges observed during the census.

The demographic statistics is also very useful to the Tanzania Human Rights Report as for the past few years there have been some varied estimates of the country's population. This report is presented not only to inform but also enable concerned authorities to make use of it for the betterment of human rights in the country. LHRC/ZLSC hope to receive feedback from different stakeholders to achieve its goal.

The above cited issues are some of the most pertinent ones in the 2012 Tanzania Human Rights Report. Nevertheless, the report does not only provide for problems but also proposes solutions. The position of LHRC/ZLSC is clearly indicated in each issue raised to ensure that similar issues do not recur in the future. Thus, LHRC/ZLSC has a strong conviction that the report will be a reliable source of information to different users in the government, private sectors and academic institutions for reforms.



Dr. Helen Kijo-Bisimba
Executive Director - LHRC

**Tanzania
Human
Rights
Report**

2012

Chapter One

General Overview of Tanzania

1.1 Introduction

This chapter covers general overview of Tanzania which is useful for readers of this report as it helps them to familiarize with the country's history, geography, and cultural practices of its citizens. It furthermore helps the reader to understand the political set-up, economic situation as well as the composition of State organs as the context under which the human rights reports are discussed. Details of each aspect of human rights are covered in respective subsequent chapters.¹

1.2 Geography

The United Republic of Tanzania is located in East Africa between longitude 29° and 41° East, Latitude 1° and 12° South. In terms of landmass, the country is the largest of all five East African countries of Kenya, Uganda, Rwanda and Burundi.² The country borders the Indian Ocean and has a long coastal plain to the East from Tanga to Mtwara regions. Its territorial oceanic water has magnificent islands of Unguja and Pemba and small islands including Mafia which has long beautiful beaches. The interior part of the country is endowed with the Great Rift Valley that runs from North East Africa through Tanzania to Mozambique.

The country serves as an entry point for land-locked countries of Rwanda, Burundi, Zambia, Malawi, Uganda and Eastern DRC. Therefore, the Dar es Salaam port is a gateway of Eastern and Central Africa countries. Other sea ports in the country include Tanga, Mtwara and Zanzibar making the country a strategic area for investment of all Eastern and Central African countries.

The country experiences long dry season in most of the places from May to October while as rainy season is between November and May. Meanwhile heavy rainfall is experienced between March and May.³ The climatic condition of the country favors growth of both food and cash crops. Cash crops planted in various regions include coffee which is in larger and small scales found in

1 NOTE: Information contained in this chapter has resemblance with previous reports produced by LHRC save for few updates as experienced in 2012.

2 <http://www.tanzania.go.tz/profile1f.html> visited on 20th November, 2012.

3 LHRC (2011) Tanzania Human Rights Report, 2011 page 2.

Kagera, Kilimanjaro, Kigoma and Mbeya. While as tea is planted in larger scale in Mufindi, Lushoto, Njombe and Rungwe districts. On the other hand, cotton is planted in Lake Zone regions.

Tanzania is a tropical country with high temperature which reaches up to 31°C in dry season and 25°C in wet season. However some parts experience low temperature of up to 10°C in wet season especially on Southern Highland and in Northern part of the country. The only snow capped mountain in the tropics is Kilimanjaro located in Northern part where during wet season the temperature is low. In other parts the temperature is very high as is along coast line of Indian Ocean. The area is an attractive tourists' destination that flock when it is winter in their countries of origin.⁴

The country's physical features are made up of mountains ranges such as Usambara, Pare Shengena, Uluguru, Udzungwa and Kipengele respectively. In the Northern part lies the dormant volcanic mountain Kilimanjaro which is also the highest mountain in Africa and the active volcanic Mount Meru and Mount Ol Doinyo Lengai; the only world's active volcanic mountain that produces natrocarbonatite.⁵ On the western part lie the western arm of the Great Rift Valley that passes through Lake Tanganyika and Lake Nyasa with fresh water and the eastern arm which passes through salty Lakes of Manyara, Natron and Eyasi.⁶

The country is also rich in minerals, natural gas and in recent development exploration reveals that there is greater possibility of huge oil and gas deposits along the coast in Southern Eastern Regions of Lindi and Mtwara. The country is also endowed with several types of minerals including precious stones of tanzanite found only in Tanzania also diamond and gold. Other mineral deposits include Uranium, Coal, Iron, Gypsum, and Nickel in Ngara.⁷

The country has been blessed with the world's biggest lakes which include Victoria, Tanganyika and Nyasa. In addition it has other small lakes such as Rukwa, Jipe, Manyara, Amboseli, Babati, Eyasi, Burigi, Kitangiri, Chala, Mdotu, Natron and Sagara. These lakes provide direct employment to citizens who engage in fishing activities. The fishing sector contributes 1.3% to the country's GDP and provides employment to about 4.2 million people in the country.⁸ The fishing sector does not only accrue from lakes and ocean sources but also from rivers that flow in the country. These rivers are big and permanent and include Rufiji, Pangani, Wami, Ruvu, Malagarasi, Kagera, Kilombero, Mara, and Ruaha.

4 Summaria Group; Living in Tanzania, available at http://www.sumaria.biz/living_in_tanzania.pdf visited on 20th November, 2012.

5 R. F. Martin and V. Morogan "Partial Melting of Fertilized crustal xenoliths in Oldoinyo Lengai Carbonatitic Volcano; Tanzania in American Mineralogist Volume 73, 1988 at pages 1471-1988

6 *Ibid.*

7 <http://www.tanzania.go.tz/mining.html> visited on 20th November, 2012.

8 Julius Kunyara, "Sekta ya Uvuvi iimarishwe kuchangia pato la taifa" Tanzania Daima Newspaper, 11th September, 2012.

The country has become a famous destination for tourists due to its endowment in natural attractions. These include wildlife found in national parks and game reserves,⁹ water bodies especially sand beaches and beautiful islands of Zanzibar and Mafia, historical monuments and archives.¹⁰

1.3 People

The 2012 population census has revealed that the country has 44,929,000 people with 43,625,434 being in Mainland Tanzania while as Zanzibar has 1,303,568 respectively. This is the fifth time that the country conducts national census since independence.¹¹ The trend from the first census in 1967 indicates that there is a considerable increase of population. The table below summarizes the population of the United Republic of Tanzania at every census that has been conducted.

Table 1: Tanzania National Census Trend

Population of United Republic of Tanzania: Census Results					
Year	1967	1978	1988	2002	2012
Population	12,313,469	17,512,610	23,095,878	34,569,232	44,929,000

Source: National Bureau of Statistics

Tanzania Mainland (then Tanganyika) gained her independence in 1961. The country is Multilingual having more than 120 tribes. Needless to say, these ethnic groups speak Kiswahili as a language of unity, used also as a medium of instruction in primary schools. Tanzania is one of the most successful countries having had Kiswahili as a national language whereas the rest of countries have English, French or Portuguese as their national languages depending on their former colonial masters. In this way it managed to break the tribal difference due Kiswahili used as a National Language.¹²

9 Serengeti National park covers an area of 14,763 square kilometers, Ruaha National park 10,330 square kilometers, Katavi National park 4,471 square kilometres, Mikumi National Park 3,230 square kilometers, Tarangire National Park 2,850 square kilometers, Udzungwa Mountains National Park 1,990 square kilometers, Mahale Mountains National Park 1,613 square kilometers, Saadani National Parks 1,062 square kilometers, Lake Manyara 644 square kilometers, Kilimanjaro National Park 412.9 square kilometers, Rubondo National Parks 240 square kilometers, Arusha National Park 52 square kilometers, Gombe Stream National Park 52 square kilometers and JozaniChwaka Bay National Park 50 square kilometers in Zanzibar.

10 Isimila Old Stone Age, Bagamoyo historical sites, KilwaMasoko, Zanzibar slave market, MjiMkongwe, Oldvai Gorge in Ngorongoro, Uvinza salt smelting, Amboni caves in Tanga and Mkwawa chiefdom ruins at Kalenga in Iringa.

11 See, http://www.nbs.go.tz/index.php?option=com_content&view=article&id=321:uzinduzi-wa-ma-tokeo-ya-sensa-ya-watu-na-makazi-31-desemba-2012&catid=59:press-releases&Itemid=72 visited on 4th January, 2013.

12 LHRC (2011) Tanzania Human Rights Report, 2011 page 3.

Tanzania is a secular State where its people have a constitutional guarantee to worship in any religion they belong. The constitution provides that; *“Every person has the right to the freedom to have conscience, or faith, and choice in matters of religion, including the freedom to change his religion or faith.”*¹³ The constitutional guarantees on the freedom to worship and provide room for all major religion groups in the country to worship as they deem fit. The country’s major religion groups include Christian, Islam while as other minority are Hinduism and traditionalist.¹⁴

The country practices multiparty democracy. Currently, there are 20 registered political parties making its people enjoy the freedom to form and join any political party of their choice. The multiparty democracy was re-introduced in the country in 1992 vide Constitutional amendment number 4 of 1992 whereby it is provided that; *“(1) The United Republic is a democratic, secular and socialist state which adheres to multi-party democracy.”*¹⁵

1.4 Economy

Tanzania is one of the emerging market and developing economies.¹⁶ Its goal is to increase annual economic growth by 10% in five years time from 2011 to 2016.¹⁷ Thus, a number of initiatives are deployed to ensure that the goal is achieved through attracting foreign direct investment (FDI) through Export Processing Zones (EPZ). One of EPZ’s goals is to promote processing of local raw materials for export.¹⁸ An investor who invests under EPZ designated in various areas can invest in the following sectors; Agriculture and agricultural products, metal products, machinery and transport equipment, electronics and electrical appliances, chemical, paper and plastics, light industries and mining, ceramics as well as gemstones.¹⁹

Therefore, the country came up with the Development Vision 2025 to promote economic development. The vision sets a target to achieve; high quality livelihood including the absence of abject poverty, good governance and the rule of law as well as a strong competitive economy. The country implements various developmental programmes to ensure it has a strong and competitive

13 *Article 19(1) of the Constitution of United Republic of Tanzania, 1977.*

14 LHRC(2011) page 4.

15 *Article 3(1) of the Constitution of United Republic of Tanzania, 1977.*

16 International Monetary Fund (IMF), Global Economic Outlook; World Economic Report and Financial Surveys, October, 2012 page 167.

17 Five years Development Plan of Tanzania (2011-2016).

18 Section 4 of The Export Processing Zone Act, 2016; it provides that; 4. The objects and purposes for which an Export Processing Zone may be established or declared are ; Objects and purposes of establishment of the Export Processing Zones (a) to attract and promote investment for export led industrialization with a view to diversifying and facilitating Tanzania’s exports and promoting international competitiveness; (b) to create and expand foreign exchange earnings; (c) to create and increase employment and the development of skilled labour; (d) to attract and encourage transfer of new technology; (e) To foster linkages of the local economy with the international market (f) to promote processing of local raw materials for export.

19 <http://www.epza.co.tz/Operations.html> visited on 10th December, 2012.

economy. Tanzania is currently implementing the Millennium Development Goals 2015 (MDG's) through National Strategy for Growth and Reduction of Poverty (NSGRP), and it is on its second phase of implementation.²⁰ The NSGRP is supplemented by the Presidential Five Years Development Plan 2011-2016 aiming to increase annual economic growth from 8% to 10%.²¹ Other economic initiatives implemented by the government include the Joint Assistance Strategy for Tanzania (JAST), National Debt Strategy and Public Expenditure Management as well as strengthening Tax Administration.²²

1.4.1 Economic Situation by 2012

The annual government budget for 2012/13 provides for general trend of the country's economy in 2012/13 comparatively with the previous financial year. In the 2012/13 financial year the government plans to spend 15,119.6 billion whereas 10,592 billion is allocated for recurrent expenditure while as 4,528 billion is for development expenditure. The budget allocated for development expenditure focuses on strengthening and developing agriculture, fisheries, and livestock, improving infrastructural facilities in electricity, clean and safe water, ICT, transportation, industrial development, human resources and social services development, tourism and financial services.²³

The inflation rate for the country declined from 19.8% in December, 2011 to 18.7% in April, 2012. The main causes of high inflation rates are high electricity tariff; high prices of oil and food especially rice and sugar. For example, by April, 2012 food contributed to 24.7 percent while electricity and fuel contributed 24.9 percent of the inflation. Core inflation, which includes food and energy prices, is still at single digit of 8.8 percent. Therefore the Government's efforts will be directed towards controlling the escalation of food and energy prices.²⁴

Tanzania is one of the developing countries with a huge national debt. The national external and internal debt stock both reached 20,276.6 billion in 2012 compared to 17,578.9 billion in December, 2011. Thus there was an increase of national debt by 15.4%. The external debt is totaling 15,306.9 billion comprised of public debt of 12,342.5 billion and private debt of 2,964 billion.²⁵ LHRC urges the government to take strong measures to control rapid increase of national debt. The government should take into serious account that an increase of national debt by 15.4% is a threat to the growth of the country's economy.

²⁰ United Republic of Tanzania, Coast Region Socio-Economic Profile, 2007 page 1.

²¹ LHRC (2011) Tanzania Human Rights Report, page 4.

²² Speech by the Minister for Finance Hon. Dr. William Mgemwa (MP), Introducing to the National Assembly the Estimates of Government Revenue and Expenditure for the fiscal year 2012/2013 page 3.

²³ Speech by the Minister for Finance Hon. Dr. William Mgemwa (MP), Introducing to the National Assembly the Estimates of Government Revenue and Expenditure for the fiscal year 2012/2013 pages 8-13.

²⁴ *Ibid* page 25.

²⁵ *Ibid* page 14.

The Gross Domestic Product (GDP) for the country showed an increase from 6.4 in 2011 to 6.8 in 2012. The main cause of GDP instability in the country includes the following; increase of interest rate in a sense that when prices increase and supply remains constant, increased demand for money causes interests rates to rise. Secondly; rise of imports, this principle states that when the price of domestic goods raises, the demand for imports increase, therefore; when net imports rise, then the net exports falls therefore decreases the nominal GDP. Lastly, a fall in purchasing power or sometimes known as wealth effect; provides that when prices of goods rises and the supply of money remains constant, when measured in purchasing power declines.²⁶ Recently there has been price instability in domestic market reducing the purchasing power of its citizens. Thus, in the past five years the country's GDP has never been constant due aforementioned reasons as provided herein in the table below:

Table 2: GDP Trend of Tanzania

Year	2008	2009	2010	2011	2012
GDP	7.4	6.0	6.5	6.4	6.8

1.5 Historical Overview: Colonialism to Present

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

The agreements between Germany, Britain and the Sultan of Zanzibar were opposed by some local inhabitants of Tanganyika. Stiff opposition to colonial rule in Tanganyika was led by Mirambo of the Nyamwezi tribe in the western region, Mkwawa of the Hehe tribe in the southern highlands, and Mangi Meli of the Chagga tribe in the northern region. These pockets of stiff opposition to colonial rule were highlighted by a popular insurgency in the southern and eastern parts of Tanganyika that culminated in the *MajiMaji* resistance of 1905 to 1907. The *MajiMaji* resistance was inspired by Kinjekitile, a spiritual leader in Southern Tanzania whose medicine allegedly prevented the “white man’s bullets” from harming his followers.

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

²⁶ http://www.ehow.com/info_8442473_reasons-decrease-real-gdp.html visited on 12th December, 2012.

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

Examining Tanzania's history from a human rights perspective, there is no doubt that German and British colonialism in Tanzania 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 can justify colonialism. Colonial powers rarely allowed colonized people to enjoy any human rights.²⁷

Tanzania was a multi-party state from 1961 to 1965, before it adopted a single-party political system in 1965. Despite this system, there were two political parties operating in Tanzania between 1965 and 1977, TANU in the Mainland and ASP in Zanzibar. On 5th February 1977, TANU and ASP merged to form Chama Cha Mapinduzi (CCM). CCM was the only party permitted to operate in Tanzania as of 1977 to 1992. After a long struggle by human rights activists, in 1984 a Bill of Rights and Duties was incorporated into the *Constitution of the United Republic of Tanzania of 1977*; through the fifth constitutional amendment. The provision of this Bill is discussed later in this report. Opposition parties were re-introduced in 1992 where Tanzania became a democratic state with a multi-party system again.²⁸

The first independent administration under Julius Nyerere led Tanzania from 1962 to 1985. In 1985, 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, Benjamin William Mkapa of CCM served two terms as president. On October 2010, Mkapa's successor, Dr. Jakaya Mrisho Kikwete, also from CCM, was re-elected for his second term serving as the fourth president in Tanzania's history.

The human rights situation in post-colonial Tanzania, like many other African states, was overshadowed by the need for development. Nationalist leaders conceived the process of economic development as one that did not necessarily promote or respect human rights.²⁹ The adoption of a Bill of Rights designed to protect human rights was denied at first due to nationalistic ideas regarding the need for economic development.

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

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

29 *Ibid*, at pp. 5 to 6.

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, the government, and the Cabinet. The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers. The Vice-President assists the President with all union matters. Zanzibar has a semi-autonomous government that has the power to deal with all non-union matters in the Isles. Details about the Zanzibar government are provided in Part Two of this report. In 2012 the President of United Republic of Tanzania reshuffled his cabinet due to serious mismanagement of public funds as was revealed by the Controller and Auditor General (CAG). The newly cabinet is composed of 30 ministers of whom 9 are women. The cabinet is assisted by 26 deputy ministers whereby 3 are women.

1.6.2 The Legislature

The President of the United Republic of Tanzania and members of the National Assembly are elected for a five year term by direct popular vote.³⁰ The President appoints a Prime Minister who must be approved by the Parliament. The Prime Minister serves as a leader of the government business in the National Assembly.³¹ The President appoints his cabinet from Members of Parliament.³² The President also nominates 10 individuals from non-elected members to be part of the Parliament.³³

The following is a description of the composition of the Tanzanian Parliament. The majority of MPs are elected from their constituencies. However, there are ten MPs nominated by the President and 102 special seat MPs who are nominated by their respective political parties. Additionally, there are 5 MPs who are members of the Zanzibar House of Representatives and the Attorney General of Tanzania, who is a Member of Parliament 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 have been presented to the Zanzibar House of Representatives by the responsible minister.³⁴

³⁰ Tanzania follows the Anglo-Saxon example and allocates Parliamentary seats on the basis of “winner takes all”. Only those who win in their respective constituencies take their seat in Parliament. There is no second vote for a particular political party and its selected candidates.

³¹ Article 51 of the Constitution of United Republic of Tanzania, 1977.

³² Article 55(4) Provides that, “All ministers and Deputy Ministers shall be appointed from among the Members of Parliament.”

³³ Article 66(1) (e) of the Constitution of the United Republic of Tanzania, 1977.

³⁴ Articles 132 (1) and (2) of the *Constitution of the Revolutionary Government of Zanzibar of 1984*.

The Zanzibar House of Representatives has jurisdiction over all non-union matters, that is, matters that do not pertain to foreign affairs, citizenship, higher education, and other matters set out by the Constitution under the power of the entire Union.³⁵ There are currently 70 members in the Zanzibar House of Representatives.³⁶ The House has the ability to 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.

There are also central and local governments that operate pursuant to Article 145 of the *Constitution of the United Republic of Tanzania, 1977* and local government laws that apply to the regional and district levels of the government.³⁷ Today, Tanzania has 29 regions, following the announcement of the new regions of Katavi, Simiyu, Geita and Njombe, declared in 2010.

1.6.3 The Judiciary

The Judiciary is a constitutional organ and an arm of the state vested with powers to interpret the laws of the country.³⁸ Tanzania's legal system is based on English common law. Judicial functions are administered by various courts established in accordance with the law.³⁹ The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following structures: the Court of Appeal is the highest court in the country, followed by the 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, in consultation with the Judicial Service Commission of Tanzania.⁴⁰ Magistrates are appointed directly by the

35 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.

36 Reith, S (2010) Tanzania after the Parliamentary and Presidential Elections of 2010: KAS International Report, at page 115.

37 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.

38 Article 107(A) 1 of the Constitution of United Republic of Tanzania, 1977 provides that "The Authority with final decision in the dispensation of justice in the United Republic shall be the Judiciary."

39 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.

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

Commission.⁴¹ The High Court of Tanzania has three major divisions, dealing with land, labour and commercial matters respectively.

There is also a court martial process meant to deal with cases related to armed forces personnel.⁴² Moreover, there is a special Constitutional Court, which is an *ad hoc* court for resolving disputes related to interpretation of the *Constitution of the United Republic of Tanzania, 1977*.⁴³ The sole function of the special Constitutional Court is to make decisions on disputes about the interpretation or application of the Constitution between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.⁴⁴ 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 are appointed by the Revolutionary Government of Zanzibar. Tribunals have also been established under various laws to adjudicate on other matters, including labour, taxes and land issues.⁴⁵

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 over cases arising in Zanzibar that involve non-union matters.⁴⁶ The High Court of Zanzibar is the highest court 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 may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

LHRC recommends that the judiciary ought to be independent for it to protect and promote human rights. The idea of guaranting judicial independence should be paramount during the constitution process review. The current settings jeopardizes independence of judicial as senior court officers including the Chief Justice is a political appointee by the President. All other judges are also appointed by the same appointing authority; thus its independence is at stake.

41 Article 113(1) of the *Constitution of Tanzania*.

42 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.

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

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

45 The Labour Institutions Act, 2004 provides for establishment of institutions to adjudicate labour disputes in Tanzania, The Tax Revenue Appeals Act, Cap 408 of R.E 2006 of the Laws of Tanzania provides for establishment of Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate taxes issues and Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.

46 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.

The independence of the judiciary means every judge or magistrate, as the case may be, is free to decide matters brought before him in accordance with his assessment of the facts and his understanding of the law without any improper influence, inducements, or pressures direct or indirect from any quarter or for any reason. This is in accordance with the oath of office, which they take to do justice without fear or favour, affection or ill will.⁴⁷

⁴⁷ Peter, Maina (Undated) “A paper on the Independence of the Judiciary in Tanzania: Many Rivers to Cross” at page 2.

Chapter Two

Civil Rights and Liberties

2.0 Introduction

Civil rights and liberties can basically be described as freedoms and individuals rights from undue government interference guaranteed by the Bill of rights. This refers to freedom of press and expression, the right to vote, the right to equal protection under the law and freedom of associations.⁴⁸ There is no clear distinction between civil rights, liberties and human rights. Nevertheless some scholars have attempted to make distinction between the two. However, these two terms are used interchangeably depending on the context. Precisely, the word human rights provide an overall framework of freedoms in which more specific civil liberties can operate. There is therefore, no need to keep on trying making distinction of the two because the point of departure is blurred and can hardly operate in all situations.⁴⁹

The most important point of clarification for readers of this report is that, Civil rights and liberties fall under the category of negative rights which involve the right to be protected from certain conditions including: arbitrary arrest, detention, torture, and death.⁵⁰ Usually, Civil liberties and freedoms are rights that a government is contractually and constitutionally obliged to protect.

Civil rights and liberties were after the Second World War given a global significance and provided with mechanisms by which all states can agree as universal standards to protect such rights. At the international and regional levels, civil rights and liberties are basically protected by the following international instruments; *The Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; the African Charter on Human and People's Rights (ACHPR) of 1981; American Convention on Human Rights of 1969; European Convention on Human Rights and Fundamental Freedoms of 1950; the Optional Protocol to the ICCPR;*⁵¹ *and the Second Optional Protocol to the ICCPR.*⁵² Prior to the above instruments being in place, the *United Nations Charter of 1945* was key and instrumental in protecting civil rights and liberties. The preamble to the Charter and Article 1 states that;⁵³

48 Blacks Law Dictionary (2004) Nine Edition, page 280.

49 Stone Richard (2008) *Civil Liberties and Human Rights*, 7th Edn. Oxford Press: New York, page 4.

50 LHRC (2011) *Tanzania Human Rights Report of 2011*, page 11.

51 UN General Assembly on 16th December, 1966 and entered into force on 23rd March, 1976.

52 United Nations General Assembly resolution 44/128 of 15th December 1989.

53 Feldman, D (2002) *Civil Liberties and Human Rights in England and Wales*, 2nd edn, chapter 1 and 2.

“The peoples of the United Nations reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women” **Article 1** “ One of the purposes of the United Nations is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

In Tanzania, some of civil rights and liberties are guaranteed by the *Constitution of United Republic of Tanzania of 1977* and other national legislations as discussed in this chapter. Such rights include the right to life, freedom from torture, freedom of press and expression, equality before the law and fair trial.

2.1 Right to Life

Internationally, there is no unified single definition of the term “right to life.” Nonetheless, the right to life is variably defined by several international and regional instruments; and court judgments as an inherent right that needs to be protected by law and no one shall be arbitrarily deprived of his *life*⁵⁴. *The African Charter on Human and people’s rights of 1981 defines the right to life as inviolable, respected and no one may be arbitrarily deprived of this right.*⁵⁵ Other international instruments that define and protect the right to life include; *ICCPR, Second Optional Protocol to the ICCPR*,⁵⁶ the *Convention on the Rights of Persons with Disabilities of 2006, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 and Convention on the Rights of the Child of 1990.*

The right to life is guaranteed at the national level by *Article 14 of the Constitution of the United Republic of Tanzania of 1977*. The Constitution states that every human being has the right to live and protection of his life. Despite this Constitutional guarantee, the Right to life in Tanzania continues to be denied through a number of factors including killings due to witchcraft beliefs, gender based violence, mob-violence, extra-judicial killings, child brutality, domestic violence and road accidents.

2.1.1 Tanzania is Safe without Death Penalty

Death penalty is one of the most barbaric, inhuman and brutal mode of punishment that has been and is still practiced in the world. International statistics indicate that the overall use of the death penalty worldwide is declining. The current world wide trend shows that there is significant progress to end death penalty as follows;⁵⁷

54 *Article 6 of the International Covenant on Civil and Political Rights of 1966.*

55 *Article 4.*

56 *United Nations General Assembly resolution 44/128 of 15th December 1989.*

57 *World Coalition Against Death Penalty, Report of 2011, page 8 see also www.worldcoalition.com see also <http://www.amnesty.org/en/death-penalty> visited on 23rd November, 2012.*

- (i) 141 Countries are abolitionist in law or in practice;
- (ii) 97 Countries have abolished death penalty for all crimes;
- (iii) 35 Countries have abolished the death penalty in practice;
- (iv) 7 Countries have abolished the death penalty for ordinary crimes;
- (v) From 31 countries ten years ago, only 21 countries carried executions in 2011;
- (vi) More than 16 countries in Africa have abolished capital punishment for all crimes.

Despite this considerable dropping trend, the retentionist countries continue to execute death sentences at an alarming state. For instance, in 2011 China killed 1,000 people who were convicted to death whileas Iran killed more than 360 people.⁵⁸

In Tanzania death penalty is imposed on capital offences such as murder cases, treason, and military-related offences.⁵⁹ Tanzania has for more than 18 years now abolished death penalty in practice but continues to retain it in its country books.

2.1.1.1 Argument given by Tanzania on retaining Death Penalty in Law

Tanzania has had a *de facto* moratorium on executions since 1994; nevertheless hundreds of people continue to receive death sentences for capital offences committed. Tanzania still retains death penalty in law because of the following reasons analyzed by LHRC:

(i) Deterrence Factor

One major believed principle of penology is that, invoked punishments should be deterrent. That is to say punishment such as death penalty is deterrent because it imposes fear and hence stops further commission of capital offences such as murder and treason. Majority of the people have been made to believe that the use of death sentence is good for reduction of murder cases. State officials believe that death penalty is good for protection to the society. This concept is not practicable in the present civilized world of human rights principles which has shifted to the concept of rehabilitation of offenders.

It is our findings that death penalty does not rehabilitate the person killed nor does it give room for meditation and reform. On top of that, death penalty in Tanzania does not help society because incidents of murder cases and other crimes continue to rise. The penalty is too irrational and expresses the emotion of vengeance.⁶⁰

⁵⁸ <http://www.worldcoalition.org/worldwide-database.html> sees also <http://www.amnesty.org/en/death-penalty> visited on 23rd November, 2012.

⁵⁹ See Section 197 of the Penal Code, Cap 16 of the Laws of Tanzania, Section 39-40 of the Penal Code, Cap 16 of the Laws of Tanzania and the National Defense Act, Cap 192 of the R.E 2002 Laws of Tanzania.

⁶⁰ Kinemo Rose (Undated) "Contemporary Tanzanian Penal Policy: A Critical Analysis" A Paper Presented at The Crime Conference, Organized By The British Institute In East Africa at Naivasha, Kenya, pages 18-24.

“The major cause of murder is not the presence or absence of the death penalty, but social relations leading to tensions preceding the act or strong desires to have someone out of the way”⁶¹

The current crime statistics in Tanzania whether dropping or increasing depicts that crime prevention is a multifaceted task that employs several reforms such as legal and community reforms. Convicting a person to death by hanging may not in any way change the decision of other members of the community from committing similar offences. This is proven by the fact that there has been an alarming rate of murder cases from colonial time to date; despite Tanzania continuing to retain the death penalty. It is our contention that crimes such as murder are better prevented by eliminating the conditions which proliferate them and not through killing by the state. This position is also backed up by an interview conducted to Mr. Michael Lembeli (a former jail bird who was convicted to die and served 14 years in prison before he was acquitted). Mr. Lembeli responded that;

“Lengo la wenye mamlaka kuweka sheria ya adhabu ya kifo kwa watuhumiwa wanaopatikana na makosa ya kuua kwa makusudi ni kuhakikisha kuwa matukio ya mauaji yanapungua kabisa katika jamii yetu na ikiwezekana kwisha kabisa. Lakini kwa bahati mbaya sheria hii imeshindwa kukomesha mauaji katika jamii yetu na kwa kweli sheria hii imekuwa haina faida yoyote kwa taifa letu na kwa jamii pia, ndiyo maana imekuwa siyo jambo la kushangaza kusikia au kusoma kupitia vyombo vya habari vikiripoti matukio mbalimbali ya mauaji. Mara utasikia majambazi wamevamia mahali fulani na kupora mali na kisha kuua, au utasikia majambazi kadhaa wameuawa na polisi katika mapambano ya kurushiana risasi. Au utasikia mtu fulani kauawa kwa kukatwa mapanga kwa imani za kishirikina, au mtu fulani amebakwa na kisha kuuawa au mtu mwenye ulemavu wa ngozi kavamiwa na kakatwa viungo vyake kwa imani potofu za kishirikina, au wananchi wenye hasira kali wamemuua na kumchoma moto mhalifu mahali fulani. Au utasikia kitoto kichanga kimeokotwa jalalani, au chooni baada ya kutupwa na mwanamke asiyejulikana n.k.”

Lawmakers enacted a law on death penalty for those convicted of murder to deter crime in the society and possibly curb it for once and for all. Unfortunately, the law has had no deterrence effect nor is it beneficial to the nation let alone the society. No wonder it is now common to listen or read through the media over various reports on murder. At times you may come across stories of police killing bandits in a shoot out or a person being killed due to witchcraft beliefs, raped and killed or persons with disabilities having their organs mutilated due to the same strange beliefs. It is no longer news also to hear an angry

61 *Ibid.*

mob sets ablaze a criminal or to find a toddler dumped in garbage or inside the toilet by an unknown mother, etc.

(ii) The Public Wants it

For several years now the Government of Tanzania has been reluctant to amend the laws that provide for death penalty on the ground that the society still want it. The government justification on this is invalid. This is because death penalty was never part of penal criminal system in Tanzania as the public was never involved at the time when the country imported such laws in its penal system.

Furthermore, public opinion is at times inaccurate and unrealistic. It is easy to come up with manipulated opinions if not properly guided; and there is no recent public opinion survey carried by the State which subscribes its position. All in all the LHRC's 2012 survey indicates that 61% of the 1500 people who were interviewed and gave response to the question on death penalty have positively supported its abolition as indicated in the table below.

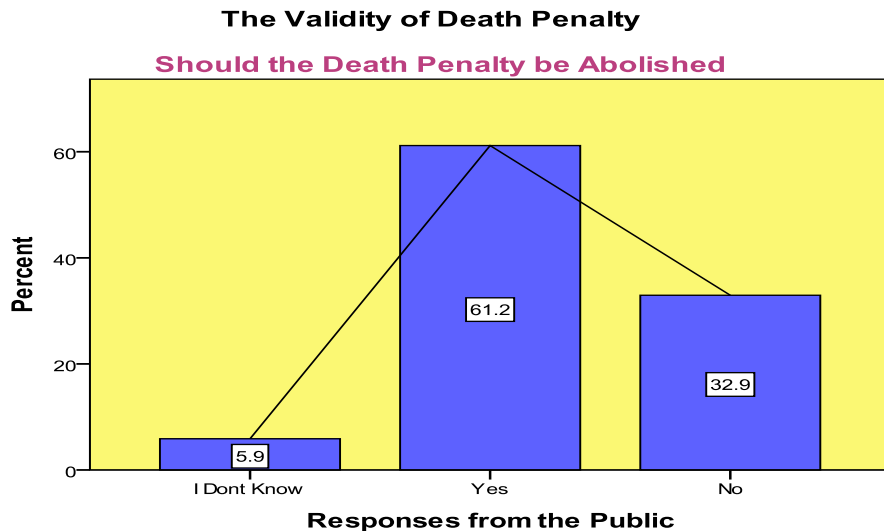


Figure 1: Validity of Death Penalty: Views from the Research

2.1.1.2 Death Row life Experience- A Testimony of Michael Lembeli

Michael Lembeli (38) was born in Kahama Township, Shinyanga. Lembeli attended Azimio primary school in Urambo and there after joined Mihayo Secondary school after he had passed his standard seven national exams. However, his dreams to complete his secondary education were shattered in pieces when he was arrested by the police on September 29th, 1994 on account

that he was found with stolen goods. Efforts to prove him wrong failed and according to Lembeli, police came up with dubious charges implicating him in the murder of a military officer who was said to have been shot by bandits on August 31st, within the very same year of 1994. Michael Lembeli is a survivor of the capital punishment as he spent 14 years from 1994 to 2009 awaiting execution but luckily, he filed for an appeal and was set free.

“Nilikamatwa na polisi kwa kosa la kusingiziwa. Polisi walipoona hawana ushahidi wa kosa la kukamatwa na mali ya wizi walilonikamatia, wakaamua kunibambikia kesi ya mauaji ya ofisa wa jeshi. Kesi hiyo ilinifanya nisote jela miaka kumi na nne, kati ya hiyo, mitano nilitumikia nikiwa mfungwa wa adhabu ya kifo ambapo badaye nilishinda rufaa nikawa huru”

“I was arrested by the police on fabricated charges but the duo decided to implicate me in the murder of a military officer after they realized that they had no sufficient evidence to implicate me on theft, a crime they had arrested me for before. The second charge on murder landed me to 14 years in prison among which five were spent on death row before I was acquitted and was set free.”

“The day I got home my mother cried so much as she could not believe that I had survived the rope. She thanked God the almighty and went as far as performing some traditional rituals to the ancestral,” recalls Lembeli. Currently, Lembeli is employed as a security guard with one Security Company at Keko in Dar es Salaam where he earns a meager 96,000/- an amount he admits is too small to cater for his basic needs. Lembeli has been living with his friend who he says is about to get married making him wonder where he will be living.”

Mr. Lembeli has compiled a small write up explaining his experience while on death row to educate the public and decision makers on the real situation faced by prisoners on death row. The book depicts his experience in prison and on death row as well as the effects of the capital punishment. He calls upon the State to scrap it away on account that maintaining it in the country statutes will see more innocent souls perish as majority of those convicted to die never committed murder; but found themselves there simply because they had no one to defend them legally.

According to Lembeli and several others testimonies from prisoners who had been on death row, the lives of prisoners on death row is extremely inhuman and discouraging. Mr. Lembeli’s death row life experience testimony has made it possible for LHRC to come up with the following observations to be used by the State to reform the legal regime that favors the capital punishment.

(i) Weak Justice System

It is our findings that death penalty cannot be justified in countries like Tanzania where the justice system is weak. This is due to several factors such as corruption, poor investigation machinery and prosecution system, lack of sufficient evidence and fabrication of cases. Mr. Lembeli was wrongly convicted to die because of a case fabricated against him. However, after serving his sentence for five years, the Court of Appeal nullified his conviction due to lack of sufficient evidence. Fabrications of murder cases are very common in Tanzania. Hence maintaining the death sentence in our legal system may always put innocent people such as Mr. Lembeli at risk. Mr. Lembeli justifies this as follows;

“Mtuhumiwa anaweza asiwe muuaji halisi na hii ni kutokana na tabia ya ubambikiwaji kesi unaofanywa na baadhi ya polisi wetu. Magwaride mengi ya utambuzi wanayoyandaa kwenye vituo vyao vya polisi huwa hayana wahalifu halisi. Hilo nina uhakika nalo zaidi ya asilimia mia! Mfano ni mimi, polisi walitutengenezea gwaride la utambuzi kisha hao hao polisi wakawa wanawaelekeza mashahidi wao waje watuguse mabegani pale kwenye mistari walipokuwa wametupanga, kwamba tutambulike kuwa ndiyo tuliohusika na mauaji ya ofisa wa jeshi, wakati walikuwa wametukamata kwa kosa la kukutwa na mali iliyodhaniwa kuwa ya wizi! Kesi hii ya mauaji niliyo bambikiwa na polisi ili niwekwe jela zaidi ya miaka kumi na nne baadaye mwanasheria wa serekali alikuja kukiri mbele ya mahakama ya rufani kwamba sikuhusika na mauaji ya ofisa wa jeshi akaomba niachiliwe nikaachiliwa baada ya kusota zaidi ya miaka kumi na nne.”

“A suspect may not be the real killer but the tendency of identification parade by some of our police officers leaves a little to desire for due to most of those identified being non criminals and I can confirm it by 100 percent. For instance I personally was identified through a parade whereby police officers instructed witnesses to tap us on our shoulders on account that we were involved in a murder of a military officer while as they had arrested us for possession of stolen goods. The case was fabricated against me so that I can spend more than 14 years rotting in jail. Eventually, the State Attorney gave his defense in court saying I never took part in the murder of a military officer and that is when they set me free.”

The Tanzania justice system is unsafe from judicial and police error and it is likely that innocent people like Lembeli will be sentenced to death. It is also unfair because majority of the people sentenced to death are those from marginalized communities, especially the poor.

LHRC observes that the death sentence should not form part of our penal system, because the country legal and criminal system is unfair and ineffective to prove allegations involving capital offences such as murder beyond reasonable doubt.

(ii) It is Discriminatory

Mr. Lembeli experience shows that the life of prisoners on death row is distinct from the rest. The treatments of prisoners on death row isolate them from normal treatment accorded to other prisoners as they have a standalone cell which restricts freedoms and rights. Mr. Lembeli continues to say;

“Ujaribu tu kufikiria kama ungekuwa wewe unasubiria kutekelezwa kwa adhabu yako ya kifo miaka nenda rudi uko gerezani unangojea kufa. Kila siku mawazo yako ni hayo hayo tu, kazi yoyote hufanyi umekaa tu kazi yako ni kula, kuoga, kulala. Kila siku unafunguliwa asubuhi unakunywa uji baadaye chakula cha mchana kisha unaoga maji halafu saa tisa jioni unafungiwa kulala. Maisha yako kila siku ni hayo tu. Mawazo yako ya kuiwazia familia yako mke wako, watoto wazazi wako n.k. ulishawaza sana lakini haikusaidii kitu chochote mwisho unaugua vidonda vya tumbo au presha. Kifungo chako nacho hakibadilishwi kikawa labda adhabu ya maisha au adhabu ya miaka ili na wewe uwe unatoka kufanya kazi kwenye magenge ya nje kama wafungwa wengine wa kawaida. Wewe ratiba yako inajulikana, haibadiliki mwishowe utaona afadhali adhabu yako itekelezwe ili uondoke tu hapa duniani”

“Imagine if it were you waiting to be hanged to death year after year how would you feel? It is evident that the only thing that goes on in your mind would be dying and nothing more. After all, you are dormant as all you do is eat, take a bath, and sleep every single day before you are locked in to go to bed at 3pm. At that point you cease to think of your wife, children and parents as you have thought through for so long before you realize that it doesn't help you in anything as the only thing you end up is suffering from ulcers if not high blood pressure. Worse still there is neither the hope of seeing your sentence commuted into life imprisonment nor years so that you can come out to work and mingle with the rest of the prisoners. At the end of the day you may simply pray for the punishment to be executed so that you can perish from this world.”

This kind of life affects prisoners psychologically because of the dreadful conditions and the long time spent in prison. The life on death row makes prisoners less productive because they do not engage in any productive activities like other prisoners.

(iii) Inhuman Conditions on Death Row

A testimony by Mr. Lembeli reflects a true situation facing prisoners on death row. Death row conditions are below international human rights standards. Prisoners do not enjoy proper food, visits and correspondence, or ventilations.

The LHRC advises the government to reform its legal regime and strike out degrading punishments such as the death penalty from our penal system. Let other non state actors such as human rights organizations be fully involved in case the government wants public opinion on this.

2.1.2 Extrajudicial Killings

Extrajudicial killings refer to killings outside the judicial (court) system, mostly done by those entrusted to maintain peace and security. For the case of this report extrajudicial killing is further defined as the killing of a person by state organs without the sanction of any judicial proceedings or legal processes.⁶²

“Extrajudicial killing is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”⁶³

In Tanzania incidents of extrajudicial judicial killings continue to mount while perpetrators are left unpunished. The Human Rights Council under the Universal Periodic Review, ranked Tanzania among the ten countries that have unprecedented record of the said killings perpetrated by security forces.⁶⁴ The LHRC’s report on extra judicial killings by security forces in Tanzania submitted to the International Criminal Court reveals that a total 246 people died in the hands of security forces between 2003 and 2012.⁶⁵

Table 3: Reported Killings since 2003

Sn	Year	Number of Reported Killings	Average killings per month
1	2003	22	1.83
2	2004	7	0.58
3	2005	36	3
4	2006	37	3.08
5	2007	20	1.66

62 LHRC (2011) Tanzania Human Rights Report of 2011, page 17.

63 <http://definitions.uslegal.com/e/extrajudicial-killing/> visited on 18th November, 2012.

64 UN general assembly of 5th October 2011, Human Rights council working group on the universal periodic review, 12th session.

65 LHRC (2012) Report on Extrajudicial Killings Submitted to ICC, page 8.

6	2008	6	0.5
7	2009	10	0.83
8	2010	52	4.3
9	2011	25	2.08
10	2012	31	2.5
	TOTAL	246	20.26

Statistics above tarnish the image of Tanzania as an island of peace.

Table 4: Some incidents of Extrajudicial Killings: January - December 2012

No	Name of Victim	Date/month	Place	Actor
1	Jackson Bhoke	January	Nyamongo	Police
2	Mgoyo Mgoyo	January	Musoma Rural	Police
3	Mipawa Samweli	February	Musoma Rural	Traditional militia (Sungusungu)
4	Tungura Wansimba	February	Nyamongo	North Mara Mine Security officers
5	Theodat Ngonyani	February	Bombambili Songea	Police
6	Mohamed Saidi	February	Bombambili Songea	Police
7	Ally said	February	Bombambili songea	Police
8	Hasan Mgalu	6 th March	Urambo	Police
9	Saidi Msabaha	March	Mbeya	Police
10	Sanyiwa Ndahya	March	Ulanga-Morogoro	Tanzania People's Defense Force
11	Ng'erebende Nchambi Lukeresha	March	Ulanga-Morogoro	Tanzania People's Defense Force
12	Kashinje Msheshiwa	March	Ulanga-Morogoro	Tanzania People's Defense Force
13	Kulwa Luhende	March	Ulanga-Morogoro	Tanzania People's Defense Force
14	Lutala Ndahya	March	Ulanga-Morogoro	Tanzania People's Defense Force
15	Seleman Mshaweji	March	Ulanga-morogoro	Tanzania People's Defense Force
16	Joseph Chacha	May	Nyamongo	North Mara Mine Security officers
17	Daniel Nsimba	May	Nyamongo	North Mara Mine Security officers
18	Mgosi Magige Chacha	June	Nyamongo	North Mara Mine Security officers

19	JumaSamson	June	Serengeti	TANAPA scouts
20	Kumtange Jusario	July	Arusha	Mwiba Company Security Guards
21	Ally Zona	27 th August	Morogoro	Police
22	Unnamed	29 th April	Arusha-Tengeru	Mito Mwili Estate
23	Unnamed child of standard Six	1 st June	Geita	GGM Security Guards
24	Daud Mwangosi	2 nd September	Nyololo - Iringa	Police
25	Paul Savya		Nyamongo	Police
26	Rodgers Mwita Nyamboga		Nyamongo	Police

Some of incidents of extrajudicial killings are related to political rallies, people living around mining areas and national parks, suspects and demonstrators.

(a) Shooting during Political Rallies

(i) The Shooting of Ally Zona

In 2012 CHADEMA launched a political campaign called “movement for change” (M4C) through public rallies and demonstration. However, the police force resisted it leading to loss of lives and injuries. For instance, on 27th August 2012 CHADEMA organized a political assembly in Morogoro but it was interrupted by the Police Force. Party members were unreasonably barred from proceeding with the rally and as a result, police shot to death an innocent newspapers vendor, Ally Zona. A postmortem report indicated that the deceased was hit by a heavy metal, however it was disputed. Majority of the people present at the scene were convinced beyond reasonable doubt that Ally Zona was shot by the police. As it has always been the case, the IGP formed a committee to probe the incident.⁶⁶ Nevertheless, the impartiality and independence of the committee formed by the accused (Police force) was questioned by many, and the report has never been made public.

⁶⁶ See Mwananchi news paper of 29th August 2012.



Armed Police in Morogoro



The late Ally Zona

(iii) The Bombing of Daudi Mwangosi

On 2nd September 2012, another horrifying incident took place as CHADEMA launched a party branch at Nyololo village in Iringa. Police officers interrupted the event on account that it was an unlawful assembly. The Iringa RPC, Michael Kamuhanda ordered the police to suppress the gathering and eventually beat before they bombarded to death Daudi Mwangosi, a Channel Ten correspondent, and a chairperson of Iringa Press Club.

A public outcry, pressure from human rights bodies and development partners forced the Minister of Home Affairs to form a committee to probe the incident. The impartiality and independence of this committee was denounced by several groups including lawyers, academicians, human rights bodies, politicians, international community and the media. On other hand and because of the huge pressure from diverse forces the killer of Daudi Mwangosi was arrested and charged with murder. The matter is still pending in court with only one accused while as the incident had a chain of events which led to the killing.

(b) Shooting during Non Political Demonstration

On 22nd February, 2012 citizens in Songea conducted a peaceful demonstration towards the Regional Commissioner (RC) offices to register their complaints over unchecked incidents of witchcraft killings in the region. Instead of paying attention and responding to the villagers' complaints, Police Force under the order of Ruvuma Regional Police Commander Michael Kamuhanda suppressed the demonstration and shot to death three innocent people.



Theodat Ngonyani from Bombambili (Songea)

Mohamed Saidi (16) Songea

Perpetrators of the shooting were said to have been arrested and taken before the court of law due to pressure from the LHRC and the media.

Ironically, the Ruvuma RPC was transferred to Iringa where another incident of extrajudicial killing involving the death of a journalist took place in his presence.

(c) Shooting around Mining Centers and Protected Areas

People living in areas with abundant natural resources such as national parks, protected areas, game reserves and mining areas continued to lose their lives in front of park wardens, game rangers and mining company security guards. About 10 people from the list above have been reported to have been killed in areas rich of natural resources such as Selou Game Reserve, North Mara Gold Mine and Serengeti National Park.

2.1.2.1 Reasons for an Alarming Trend of Extrajudicial Killings

A couple of reasons could be mentioned as contributing factors for the growing trend of extrajudicial killings in Tanzania. However, the major contributing factors for the recurrent nature of this problem are a weak criminal justice system and the growing culture of impunity.

(a) Weak Criminal Justice System

The Justice system in Tanzania is composed of various entities. These are the Judiciary whose role is dispensation of justice while as the Police Force maintains peace and people's security as well as their properties. The Police force has got the mandate to arrest, suppress, investigate and finally prosecute alleged offenders. The criminal justice system in place is unsuitable to dispense justice when it comes to extrajudicial killings due to the following grounds;

First it has been perceived to play double standards in case of apprehending the accused persons. Secondly, the prosecution part is not strong enough to handle all cases and provide evidence beyond reasonable doubt. Thirdly, the criminal system is slow in acting when police personnels are involved in crimes such as brutality and extra judicial Killings.

Lack of external and independent oversight body embodied with powers to investigate and prosecute cases involving police brutality lead into police officers involved in crimes go unpunished. This can be supported by an incident of extrajudicial killing involving the Dar es Salaam Regional Crime officer, Assistant Commissioner of Police Abdallah Zombe in *R vs ACP Abdallah Zombe and 12 Other*.⁶⁷ In this case perpetrators were accused of killing three businessmen Ephraim Chigumbi, Sabinus Chigumbi, Mathias Lukombe and a taxi driver Juma Ndugu. The incident took place on January 14, 2006 at Pande forest in Mbezi Luis, Dar es Salaam. However, perpetrators were declared innocent and set free due to poor investigation by the same force. Nevertheless, the state has appealed.

(b) Growing Culture of Impunity

Let it be known that extra-judicial killing is an offence like other offences committed by other normal citizens and punishable under the laws in Tanzania. Such laws include; one, s.196 of the Tanzanian Penal Code which states;

“Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder”.

Two, the *Police Force and Auxiliary Services Act*⁶⁸ stipulates clearly that the use of arms by a police officer should be the last resort and should be applied only when a person attempts to escape from custody or assists another person to do the same.⁶⁹

Three, the *Criminal Procedure Act* states that a police officer can only use force that is proportionate in the circumstances. Specifically, it states that a police officer may use all means necessary to affect an arrest if a person forcibly resists or attempts to evade arrest; however, the arrested individual shall not be subjected to more restraint than necessary to prevent escape.⁷⁰

Four, the *Criminal Procedure Act* further provides that in the course of making an arrest, a police officer should not use more force than is necessary and, more specifically, a police officer shall not, in the course of arresting a person, commit an act likely to cause the death of that person.⁷¹

67 Criminal Case No. 26 at the High Court of Tanzania in Dar es Salaam.

68 Cap. 322.

69 S. 29 of *Police Force and Auxiliary Services Act, 1939*, Cap. 322, R.E. 2002.

70 Tanzania Human Rights Report of 2007, *supra* at p. 14, which cites the Ss. 11 and 12. *Criminal Procedure Act, 1985*, Cap. 20, R.E. 2002.

71 S. 21. of the *Criminal Procedure Act, Cap. 20*.

If a police officer uses lethal force, he or she can be prosecuted under the *Penal Code*. Nevertheless, if a police officer is prosecuted under the *Penal Code*, he or she has the traditional defenses against those charges; such defenses may include a defense that his or her actions were in accordance with the provisions of the *Police Force and Auxiliary Services Act* and the *Criminal Procedure Act*. However, it is not a defense that the police officers' actions were done on the orders of a superior officer. This limitation on the defenses available to a police officer accords with principle 19 of the *United Nations Principles on the*

Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, which states:

...an order from a superior officer or public official may not be invoked as a justification for extralegal, arbitrary or summary executions...⁷²

Five, where the alleged death is contentious or mysterious then the coroner or inquiry commission under the *Inquest Act*⁷³ can be applied. Maliciously, this legal requirement has never been used in any of the acts of extrajudicial killings in Tanzania.

LHRC advises the Government of Tanzania to curb incidents of extrajudicial killings by taking the following measures; firstly to pay compensation to families whose relatives have been killed under such circumstances. Secondly take legal action towards all State organs' officials who have ever been involved in the killing of citizens. Thirdly, to establish an independent judicial Commission of inquiry composed of Court of Appeal Judges to investigate and collect evidence on the killing incidents.⁷⁴

2.1.3 Mob Violence

Mob violence can be defined as a commotion of peace by several persons, assembled and acting as a group with common intent to execute a lawful or an unlawful enterprise in a violent and turbulent manner.⁷⁵ In most cases, mob violence occurs when a group of people or part of the community decides to assume the role of judges by punishing those who are suspected to have committed an offence in the community. In Tanzania, incidents of mob violence have now reached an alarming stage in need of a quick response to contain.

72 UN Economic and Social Council 'Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions' (1989) UN Doc. E/1989/89 Principles 3 and 19.

73 Inquest Act, cap 24 of the laws of Tanzania

74 Hansard: date 23/06/2011, 11th session 4th meeting at P.124-127.

75 <http://legal-dictionary.thefreedictionary.com/Mob+violence> Visited on 5th November 2012.

The LHRC's observation shows that most affected people of this archaic mode of community punishment are pick pocketers, petty thieves, suspected witches and other people believed to be source of problem to the community. Incidents of mob violence have continued to escalate in the country with each coming year. Police reports indicate that 1,234 people were reported to have been killed by angry mob from different parts of the country for the year 2012.⁷⁶ Incidents of Mob violence also involve the growing incidents of political related violence.⁷⁷ The LHRC's 2012 human rights survey reveals that the most affected regions with this unfair and uncivilized kind of punishment are; all Lake Zone regions (Mara, Shinyanga, Geita, Kigoma and Kagera) and busy cities such as Dar es Salaam and Mbeya.

Table 5: Some Incidences of Mob Violence

No.	Name of Victim(s)	Date/Year 2012	Incidents/reasons	Violator	Area
1	Msafiri Mbwambo (32)	April	Killed for Political reasons	Unknown	Arumeru
2	One young man	May	Killed	Mob violence	DUCE campus
3	Student	July	Killed	Angry mob	St. Agrey teachers' College
4	Simon Samson (34)	April	Killed	Angry mob	Mbeya
5	John Raphael Mrema	January	Killed	Angry mob	Arusha
6	Two people	February	Killed	Angry mob	Singida
7	One person	January	Killed due to his involvement in illegal fishing	Angry mob	Along lake Victoria
8	One person	February	Killed	Angry mob	Mikocheni
9	Daudi Kiberenge	March	killed	Angry villagers	Meatu shinyanga

In any unprecedented event, incidents of mob violence in 2012 were extended to public offices and police stations.

The LHRC's observation indicates that in 2012, some public offices including police stations were also invaded by groups of violent people. For instance, in Tandahimba Mtwara, a group of angry farmers invaded and destroyed the District Police Station. During the incident, 8 police officers' living apartments were reduced to ashes. At the same saga the said violent farmers attacked and

⁷⁶ Letter from the Police Force, with reference number, PHQ/84/B/VOL.I/7 of 20th February, 2013.

⁷⁷ LHRC (2012) LHRC Human Right Survey of 2012, LHRC Bi- annual Report of 2012.

destroyed Tandahimba Cooperative Union offices. Speaking to the public, the Mtwara Regional Police Commander (RPC) admitted that violent farmers had invaded public offices and caused some injuries to Tandahimba police officers. The said angry farmers chose to be violent as the only way to register their claims against the government.⁷⁸ In December 2012, an angry mob in Mpwapwa District invaded a police station leading the police to arrest 40 among them.⁷⁹

While in Kigoma, LHRC's researchers managed to talk to victims of mob violence. A clan of 12 families were forcefully evicted and others killed by an angry organized community members in Munyegera village Kasulu. Narrating the ordeal, one of the victims had this to say;⁸⁰

“Nyumba za ukoo wetu ambazo zilikuwa zinakaa familia 12 zimeharibiwa na kuchomwa moto kabisa, ekari 6 mihogo, ekari 3 za mahindi na shamba lote la miwa yamefyekwa na kutetekezwa kabisa. Hivi tunavyoongea watoto wa familia hizi 12 wapatao 21 wapo kituo cha kulelea watoto huko Kabanga kituo cha kanisa. Sisi watu wazima wote tumewekwa kwenye godawn la kijiji cha Nyankintoto baada ya kuhamishwa toka kambi ya wakimbizi Mtabila. kijijini kwetu ukoo wetu una uhasama na ukoo mwingine kutokana na mauaji ya ndugu yetu yaliyofanyika tarehe 11/4/2011 ambapo kaka yangu aliuawa kisha kumchoma moto na huo ukoo mwingine. Baadaye tulipofuatilia tukaambiwa amepigwa na raia wenye hasira kali lakini watu 7 walikamatwa. Toka hapo sasa ndipo tukakimbia kijiji chetu, tulilala kwa D.C siku tatu chini ya bendera ndipo tukapewa laki tano na kupelekwa kambi ya Wakimbizi Mtabila.....hatuwezi kurudi kijijini kwa sababu tutauawa. Suluhisho tupewe viwanja hapa hapa Kasulu mjini la sivyo tutakufa tukirudi Munyegera”

Our family houses used to cater for 12 families. However, it was set ablaze, and not to mention 6 acres of cassava, 3 of maize and the whole sugarcane farm which were slashed and burnt. 21 children from our 12 families have been given shelter at the Kabanga children's centre run by the church as we speak while adults have been sheltered at the Nyankintoto village godown waiting to be shifted to Mtabila refugee camp. Our family has been in antagonism with another clan partly due to an incident that took place in 11/4/2011 where my brother was killed and later on set ablaze by another clan. We managed to follow up the incident but we were told that he had been killed by an angry mob where at least 7 people were arrested as a result. We were forced to flee

78 Abdalah Bakari “Wakulima Wavamia Kituo cha Police Wajeruhi” Mwanachi 15th April, 2012.

79 Jackline Massano “Watu 40 mbaroni kwa kuvamia kituo cha Polisi” Nipashe Newspaper, 19th December, 2012.

80 LHRC (2012) LHRC Human Right Survey of 2012.

the village there after and spent a night at the District Commissioner under a flag before we were given five hundred thousands shillings and sent to Mtabila Refugee camp. There is no way that we can return to the village because doing so will mean getting killed. The only solution is for us to be allocated with plots here at Kasulu. We will indeed perish if we ever attempt to return to Munyegera.”

One of the regions leading in mob violence in the lake zone is Mara. The LHRC’s findings show that an average of 40 people are killed yearly due to mob violence, witchcraft killings and domestic violence in Mara Regions with the leading districts being Bunda, Serengeti and Musoma Rural. On a positive note, killings due to clan’s antagonism and cattle theft are significantly diminishing. The declining of these ethnic clashes is a result of the daily police operations and establishment of the Tarime and Rorya Special Police Zone.

For instance, the LHRC’s human rights survey indicates that on 2nd November 2012 houses for a family of 16 were set ablaze by an angry mob leaving them homeless. A member of this family was suspected to have been involved in the theft of the dispensary’s solar panels.

“Jua, mvua...baridi vyote vyetu pamoja na watoto hawa wadogo hasa huyu wangu wa mwezi mmoja...nyumba na mali zetu zimechomwa moto...kana kwamba haitoshi wamepiga marufuku kwenda kwa jirani na jirani kuja kwetu...hatuna msaada jamani bora wangetuua kuliko mateso makali kama haya...”Anasema Bhoke Samson (19) mkazi wa Mbalibali wilayani Serengeti.

“The sun, rain and the cold weather is all ours with our children especially my one month old baby. They have reduced to ashes all of our houses and not to mention of our properties. To add salt to the wound, they have forbidden us from paying a visit to any neighbor and not to mention of barring our neighbors from paying us a visit. It would have been better if they killed us rather than leave us under this torture,” says Bhoke Samson (19) a resident of Mbalibali, in Serengeti District.

Incidents of mob violence in Mara region are fueled by culture and traditions. The Kurya tribe uses traditional system of holding suspects accountable commonly known as ‘*Ritongo*’. It is LHRC’s observation that mob violence incidents towards a family of 16 people were fueled by the implementation of the ritongo system. One Villager who refuted to implement ‘*ritongo*’ revealed that;

“Walikataa na viongozi wa mila wakaniamuru mimi nichome nyumba mbili za mdogo wangu anazoishi na wake zake wawili...nilikataa kutekeleza unyama huo tena kwa mdogo wangu...nikawaambia kama wana uhakika ni mwizi ana eneo lake la ardhi wauze walipe hiyo sola...walikataa ndipo wakaamua kuteketeza nyumba zote”anasema kwa masikitiko.

“Traditional elders ordered me to burn the two houses where my brother used to live with his two wivesbut I refused to do so to my very own brother and told them that if they were so sure that my brother was a thief then they ought to sell the land which he owns. However, they refused and went ahead to reduce his houses to ashes,” he laments.



Bhoke Samson a victim of mob violence standing in front of a temporary shelter with her baby.

Recently, a new category of mob violence has emerged embraced in politics. While the multiparty democracy expands and spreads throughout the country, we have witnessed incidents of mob violence perpetuated by political differences. These incidents took place in Igunga, Arumeru, Mbozi and Singida.

Other Reasons of Mob violence

- (a) Poor criminal justice system when dealing with death related criminal offences. For instance, Police in Mwanza blame the system as too technical and against the environment where such offences occur. The law requires murder cases to be proven beyond reasonable doubt. Police officers argue that it is hard to execute cases involving killings related to mob violence and witchcraft beliefs in rural set up;⁸¹
- (b) Lack of proper evidence and non appearance witnesses in courts of law;

⁸¹ LHRC Opinion Survey, 2012.

- (c) Ignorance of the law by the public;
- (d) Loss of public trust towards the police force;
- (e) The Police force also lacks sufficient fund to conduct investigation; and follow up of these cases.

2.1.4 Killings Related to Witchcraft Beliefs

Before the colonial rule, witchcraft formed an integral part of the social structure in most traditional African societies.

As such, various tenets of customary law provided sanctions aimed at restitution depending on the harshness of the witchcraft abuses.⁸² *The Tanzania Witchcraft Act, Cap. 18 [R.E.2002], defines witchcraft as;*

“Acts of sorcery, enchantment, bewitching, the use of instrument of witchcraft, the purported exercise of any occult power and purported possession of any occult knowledge.”⁸³

With regard to witchcraft killings against women with red eyes other international instruments such as the *Convention on Elimination of All forms of Discrimination Against women of 1979* and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984* both condemn gender-based discrimination. For instance, CEDAW requires States to adopt legislative and other measures prohibiting discrimination against all women and taking measures to eliminate discrimination against women by any person, organization or enterprise.⁸⁴ At the national level, all acts of witchcraft are punishable under the provisions of *section 131 of the Witchcraft Act* and *section 196 of the Penal Code* only for committed cases of murder.

Statistics compiled by the LHRC and from the police force indicate that there is an increase of violation of the right to life due to witchcraft related killings. For instance, killings due to witchcraft beliefs have taken toll in this year where 630⁸⁵ people were killed from January to December 2012 after they were suspected to be witches.

82 Simeon, Mesaki (2010) Review of Witchcraft and the Law in Tanzania, International Journal of Sociology and Anthropology Vol. 1(8) pp. 132-138.

83 Section 2 of the Witchcraft Act, Cap. 18 [R.E. 2002]

84 Article 2 of the CEDAW, 1979

85 Information from the Police: Ref. No. *Kumb. No.PHQ/84/B/VOL.1/7 of 20th February 2013*

Table 6: Some Incidents of Witchcraft Related Killings - 2012

No	Name of victim(s)	Date	Incident/reasons	Violator	Area
1.	Laurencia Bangili (70)	May	Killed and burnt	Angry villagers	Lwezera Village Geita
2	Kulwa Mashana (65)	May	Killed and burnt	Angry villagers	Lwezera village Geita
3	Ester (55)	May	Killed and burnt	Angry villagers	Lwezera Village Geita
4	Rose Mabeshi (42),	May	Killed and burnt	Angry villagers	Lwezera village Geita
5	William Mwakwama (68)	July	Killed	His children	Itota village Rungwe District Mbeya
6	Mwashi Saida (70)	March	killed	Two steps sons	Mkole village, Nkasi District
7	Fortunata Komba	March	killed	Grandmother	Songea
8	Lustica Kibila (80)	January	Killed and some parts of her body were chopped off	Unknown	Mwuimbi limuli Iringa
9	Gaitani Mgimu(60)	January	Killed and some parts of his body were chopped off	Unknown	Mwuimbi limuli Iringa
10	A woman	February	Killed and some parts of her body were chopped off	Unknown	Geita
11	Consolata Nsokelo (64)	February	Killed and burnt	Mob violence	Usevya Katavi
12	Oluita Pesambili(74)	February	Killed and burnt	Mob violence	Usevya Katavi
13	Nyazingwa (55)	March	Killed	Unknown	Shinyanga

In the same region, one Kabula Nyamurwa with her daughter Pili Nyamurwa from Mcharo Village in Bunda Mara was brutally slashed by a machete on 26/10/2012. According to the LHRC's 2012 human rights survey, this brutal incident was fueled by witchcraft beliefs.



Pili Nyamurwa admitted at Bunda DDH

Reasons for continued incidents of witchcraft killings

- a) Economic conflict of interest from one family, within the family or clan to clan has been a source of killings due to witchcraft and mob violence in all the lake zone regions;
- b) High level of illiteracy and superstitious beliefs;
- c) The use of witchdoctors has been named as a major factor for killings due to witchcraft beliefs. This is because majority of the people opt to go to witchdoctors for treatment and whenever they die, the witch doctor tends to tell relatives that there is someone behind that death.

“Bado wanaamini sana uchawi. Mwanaukoo anafariki na ugonjwa badala ya kupata huduma sahihi wanakwenda kwa mganga wa kienyeji kutibiwa na akifa bahati mbaya wanaambiwa na mganga kuwa amelogwa na kuanza kutafuta mchawi” alisema afisa polisi mmoja huko Magu⁸⁶

86 LHRC (2012) Human Rights Survey.

They still have strong beliefs in witchcraft. More often whenever a relative falls ill they tend to run to a witchdoctor instead of going for a proper treatment. Should it happen by chance that the patient dies, witchdoctors tend to tell them that their relative has been bewitched and thus starts the witch-hunting business,” said one of the police in Magu.

2.1.5 Albino Hunt – Discrimination as the Source of Insecurity to PWA

Albinism is lack of pigmentation to human beings in the hair, skin and eyes, causing vulnerability to sun exposure and bright light because of non-contagious, genetically inherited condition.⁸⁷ The LHRC’s 2010 and 2011 reports indicate that incidents of albino killings in Tanzania have significantly gone down. However, the situation is still not calm in some parts of the country. For instance, it was reported in Arusha that one PWA was brutally butchered by unknown group of people. People with Albinism (PWA) continue to face security challenges because of the high level of discrimination and stigmatization.

“I have a dream that one day in Tanzania, people with albinism will take their rightful place throughout every level of society, and that the days of discrimination against persons with albinism will be a faint memory!”⁸⁸

Discriminating and isolating PWA can basically be the source of their insecurity and attacks. Misunderstanding, misconception and traditional beliefs about their nature maximize community discrimination against PWA. The lake zone regions visited by LHRC indicate that majority of people still believe in traditional myths and superstitions. For instance there is a widespread misconception that persons with albinism are ghosts, that they can never survive for a very long time and that their body parts are a source of success. This remains a major source of discrimination against PWA and endangers the welfare and survival of PWA in Tanzania. For instance, when LHRC visited Shinyanga Children with Disability Centre, its coordinator informed researchers that they still keep children with albinism whose parents have nowhere to be seen even after completing their life time in the center. He was quoted as saying;

87 <http://www.underthesamesun.com/sites/default/files/What-is-Albinism-UTSS.pdf> Visited 11th November, 2012.

88 Peter Ash Founder and Director UTSS.

“Wazazi wa hawa wanawabagua sana watoto albino kwa sababu hapa tuna wengine umri wa kuwepo kituoni umepita lakini hawana pakwenda kwani toka wameletwa hapa wakiwa wadogo sana wazazi wengine wakapotea kabisa bila kujua hali ya mtoto inaendeleaje. Hii ni hatari kwa usalama wao kama wazazi watakuwa hawawajali watoto hawa.”

Parents of children with albinism segregate them no wonder we still have some children who are too old to remain here simply because they have nowhere to go and they were brought here when they were very young. Their parents have disappeared ever since and never take the bother to find their progress. This endangers their lives especially if parents keep ignoring them.



Bwangija Primary School –Children with Special Needs Centre in Shinyanga

Discrimination against PWA may always make them feel isolated and become prone to physical attacks. Some parents do not have time to care for children with albinism; they don't take them to school and treat them as a curse within the family. Furthermore, the community or families sometime prohibit their relatives to marry or to mingle with PWA. Treating equally PWA by allowing them to enjoy other rights like other human beings, guarantees their security. This was also insisted by the EU bill on the rights of PWA in Tanzania. Article 10 of the bill states;⁸⁹

⁸⁹ European Parliament resolution of 4th September 2008 on the killing of albinos in Tanzania.

“Considers that the best way to protect the rights of Tanzanian albinos is to guarantee them equal access to quality education and health care, within the framework of inclusion policies, and to provide them with adequate social and legal protection.”

According to UTSS and LHRC previous Human Reports, a total of 71 PWA were reported to have been killed while 28 PWA were reported as survivors of attempted killings.⁹⁰ Meanwhile, one person with albinism was killed in Arusha in year 2012. This is however not a positive development, as during the year 2011 LHRC recorded no incident of albino killing in the Country. This implies that much has to be done to make security of PWA sustainable.

Issues of discrimination and stigmatization have to be discouraged and allow PWA associate with the community like other human beings. We may sometimes need to go deeper and educate the public that albinism is not a disability but rather a manageable condition.

2.1.6 Road Accidents

Road accidents in Tanzania are the second life threat after Malaria, to thousands of innocent people in the country. Average of 4000 people has been losing their lives because of road accidents ever since 2010.

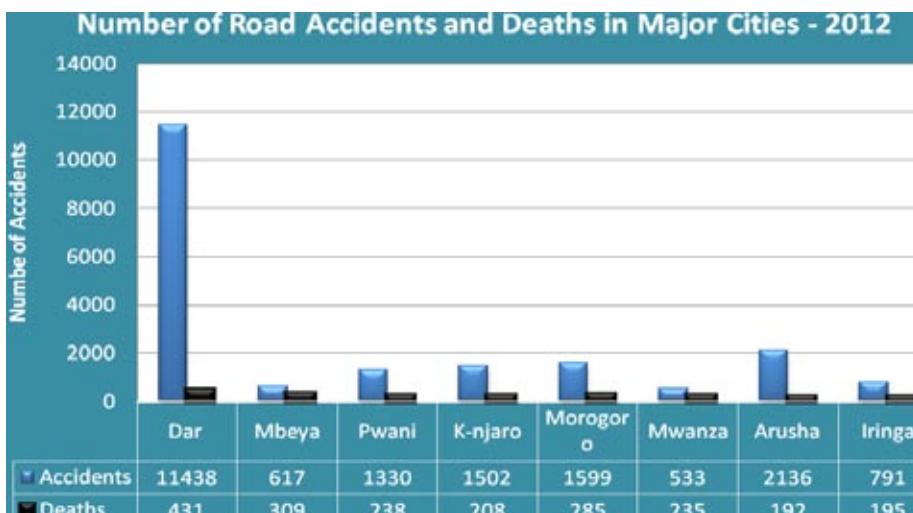
2.1.6.1 Legal and Safety Framework in Tanzania

Road safety in Tanzania is regulated by the *Road Traffic Act of 1973*, *Transportation Licensing Act of 1973*, and the *National Road Safety Policy of 2009*, the Constitution of Tanzania through Article 14 also guarantees the right to life. Institutions responsible for road safety in Tanzania within this legal framework include Central Transportation Licensing Authority (CTLA) which governs the licensing of the public transport services, and the Surface and Marine Transport Authority (SUMATRA).

Despite the legal and institutional framework in place, thousands of innocent people in Tanzania still die from road accidents every year. Incidents of road accidents are fueled by the increase of untrained road users such as motorcyclists (Commonly ‘*Bodaboda drivers*’). Statistics compiled by the Police Force Traffic Department indicates that a total of 4919 people lost their lives due to road accidents in 2012, including those caused by ‘*Boda boda*’. On the other hand, the trend of deaths by motorcycle accidents rose from 695 in 2011 to 930 in 2012. The traffic statics indicates that the presence of ‘*Boda boda*’ in our roads pose a threat on road safety.

90 <http://www.underthesamesun.com/sites/default/files/Albinism%20Related%20Attacks%20-%20Totals.pdf> Visited on 17th November, 2012. See LHRC human rights reports of 2010 and 2011 chapter 2.

The LHRC’s observation indicated that the most affected regions by road accidents are the densely populated ones and those with major highways such as Morogoro, Pwani, Iringa, Kilimanjaro, Mbeya and Dar es Salaam. This observation is supported by statistics from the Traffic Police collected and analyzed by LHRC as indicated below.



Source: Compiled From the Ministry of Home Affairs-Traffic Department 2012.

The graph above indicates the number of road accidents registered in Dar es Salaam in 2012 as the highest in the country followed by Mbeya. Dar es Salaam registered 11438 accidents and 431 deaths due to road accidents without including accidents by ‘bodaboda’ which is 164 for Dar es Salaam alone.

2.1.6.2 Reasons for Road Accidents

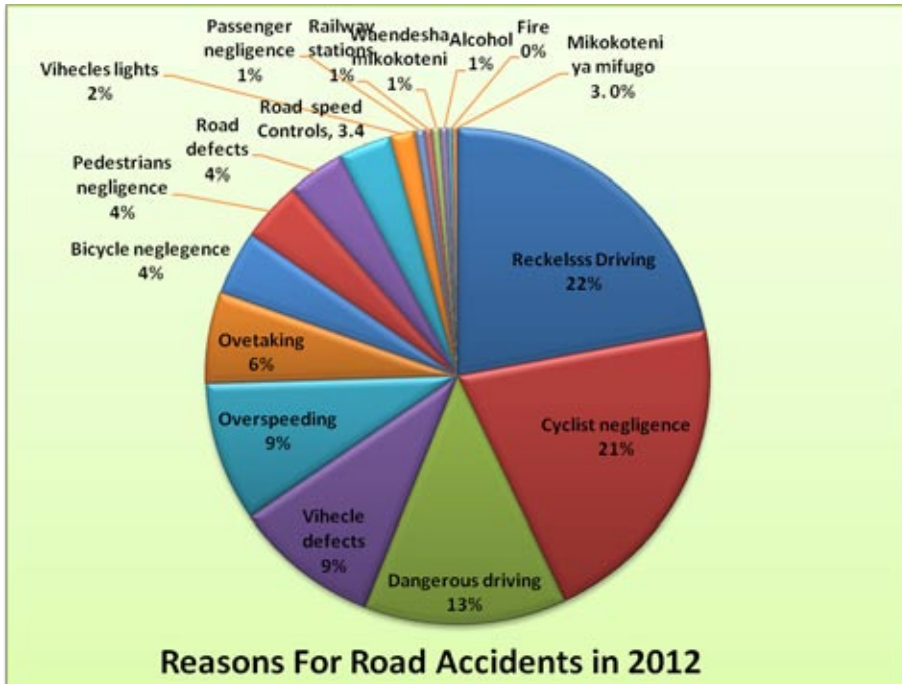
Human error has been mentioned by majority of people interviewed as the major cause of road accidents in Tanzania. The LHRC’s surveys of 2012 indicated that speeding and negligence contribute largely to road accidents in the country. The following are the leading factors for the growing incidents of road accidents in Tanzania: speeding, corruption by traffic police, irresponsibility, poor management, reckless driving while using cell phone and while drunk, driving without training, failure to respect and obey traffic regulations, bad condition of vehicles, age of the vehicles, motorcyclists and other road users, negligence, poor drivers’ remuneration and lack of vehicle maintenance.



One of the wrecked vehicles involved in a road accident in Dar

In 2012, the country witnessed one of the most deadliest road accident in Mbeya where ten people died on the spot, while as 25 were seriously injured. The accident took place when four vehicles and a commuter bus crashed into each other. Brake failure and loss of control by the driver of a speeding fuel tanker were mentioned by eyewitnesses as the major causes of the accident.⁹¹ On the other hand motorcyclist are blamed to be the major cause of road accidents as majority of them get into the road less informed of traffic rules and regulations.

⁹¹ Mobare Matinyi “they will not end road carnage” The Citizen 4th October 2012.



Source: Compiled from the Ministry of Home Affairs Traffic Police Department

Statistics by the Traffic Police above attribute road accidents to dangerous and reckless driving, speeding, vehicle defects and negligence by cyclists. The LHRC advises the government to embark on a program coupled with a political will and priority to reduce road accidents in the country by 50% in 2020. However, this can only be possible if sufficient budgets will be allocated to improve road safety management.

2.2 Equality before the Law: Access to Justice and Fair Trials

Equality before the law can basically be defined as the doctrine that all persons, regardless of wealth, social status, or the political power wielded by them, are to be treated the same before the law.⁹² For sustainability of this principle, judicial officials are obliged to take an oath to administer the law without fear, favour, affection or ill will.⁹³

Tanzania is a signatory to a number of International instruments advocating the principle of equality before the law. Some of these instruments include the

⁹² Is Fundamental in a legal system for the maintenance of justice. Judicial officers must treat all parties fairly regardless of gender, ethnicity, disability, sexuality, age, religious affiliation, socio-economic background, size or nature of family, literacy level or any other such characteristic see An Article Equality before the Law at <http://www.judcom.nsw.gov.au/publications/benchbks/equality/section01.pdf> Accessed on 6th November 2012.

⁹³ Ibid.

*Universal Declaration of Human Rights (UDHR), 1948,*⁹⁴ ICCPR and UDHR. At the national level, Article 13 of the Constitution provides that all people are equal before the law and should be free from any discrimination.⁹⁵ Other laws that guarantee the principle of equality before the law are the *National Prosecution Act, 2008* and *Criminal Procedure Act*.⁹⁶ The following key indicators of the principle of equality before the law will be central point of our discussion. These include the independence and impartiality of the judiciary, the judicial infrastructure and the ability to access legal representation.

Emphasizing on the type of Judiciary required in Tanzania, the Chief Justice of Tanzania in 2012 Tanzania Law Society AGM had this to say;⁹⁷

“in order to properly fulfill its Constitutional mandate, I would be highly inclined to propose that what is required is: (a) an independent, impartial and incorruptible judiciary, (b) one that is competent, efficient, fair and transparent, (c) that enjoys the full confidence of the public and (d) which is reasonable accessible and affordable to those who seek the protection and remedy of the Constitution and law. A judiciary which is available to the poor, the marginalized, the most vulnerable and the unrepresented indigent parties.”

2.2.1 Independence and Impartiality of the Judiciary

Independence can be defined as independence of judges or magistrates to freely decide matters brought before the court. Their decision should be based on the facts and their understanding of the law without any improper influence, inducements, or pressures direct or indirect from any quarter. This definition emphasizes that the independence of the judiciary should not be based on independence of the institution itself but rather on independence of judges from internal and external control.

⁹⁴ Article 7.

⁹⁵ Firstly, *when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned; Secondly, no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence; Thirdly, no person shall be punished for any act which at the time of its commission was not an offence under the law and also no penalty shall be imposed which is heavier than the penalty in force at the time the offence was committed; Fourthly, for the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process; and in any other matters for which a person is restrained or in the execution of a sentence; Fifthly, no person shall be subjected to torture or inhuman or degrading punishment or threats.*

⁹⁶ Cap. 20, R.E. 2002.of 1985,

⁹⁷ Keynote Address by Mohamed Chande Othman, Chief Justice on the occasion of the Annual Conference of the Tanganyika Law Society, 17 February 2012, Arusha, Tanzania, page 3.

*Basic Principles of the Independency of Judiciary (BPIJ)*⁹⁸ insists on adherence to principles of impartiality when dealing with cases brought before judges. Other international instruments such as UDHR, ICCPR require states to respect the principles of equality before the law including the presumption of innocence and the right to a fair trial by a competent, independent and impartial tribunal established by the law. At the national level Article 107 of *The Constitution of Tanzania* guarantees the independence of the judiciary in various ways such as reminding judges the importance of observing constitutional principles while dispensing justice. The LHRC's observation indicates that the independence of the judiciary in Tanzania is undermined by weak procedures of judiciary appointment, inadequate resources and poor remuneration of judicial personnel.

(a) Judicial Appointment

The independence of the judiciary cannot in any way be maintained without proper judicial appointment procedures. In Tanzania, the judicial appointment procedure is almost centralized to a single person as the Constitution of Tanzania⁹⁹ empowers the President of Tanzania to appoint the Chief Justice. Furthermore, article 112 of the Constitution provides that there shall be an Appointments Advisory Commission for Judges and Magistrates in Mainland Tanzania which in this Constitution shall be known as the "Judicial Service Commission."¹⁰⁰ This commission is solely advisory body as it does not have a final say in the judicial appointment system. The LHRC's contention on the modes of judicial appointment is backed up by the way the roles of judicial service commission have been designed. The following functions of the commission indicate that all the powers are vested to the president and the commission remains with only the advisory roles.

Article 113.-(1) provides the following roles to the Commission:

- (a) To advise the President regarding appointments of the Judges of High Court;
- (b) to advise the President on matters relating to discipline of Judges;
- (c) To advise the President in relation to salaries and remuneration of Judges;
- (d) To advise the President in respect of appointment and discipline for Registrar of the Court of Appeal and the Registrar of the High Court;
- (e) To appoint magistrates and control their discipline; and
- (f) To establish various committees for the implementation of its functions.

98 Adopted by UNGA during the 7th United Nations Congress on the Prevention of Crime and Treatment of offenders.

99 Article 108 (2).

100

While the commission is vested with only advisory powers, the president is immensely vested with the following powers; Firstly, to appointment, control of discipline and removal of Judges from office; Secondly, Powers of appointments, confirmation, disciplinary and removal of Registrar of the Court of Appeal and the High Court. With this powerless judicial service commission, the judicial appointment can always be used by state officials to undermine the independence of the judiciary.

2.2.2 Judicial Infrastructure: Resources and Facilities

The judiciary in Tanzania does not effectively and properly discharge its duties of justice dispensation mainly due to lack of facilities, shortage of human resource and poor infrastructures such as court buildings and safer living houses. Poor judicial infrastructures, shortage of human resource and facilities may automatically undermine the independence of the judiciary and access to justice.

Poor allocation of resources in the Judiciary has for ages undermined the independence of the judiciary in Tanzania. The judiciary in Tanzania still depends upon the Ministry of Justice and Constitutional Affairs as its source of its resources. It is obvious that the lack of sufficient financial resources imposes a serious limitation to the judiciary's ability to deliver equal and timely justice. This was also given much weight by the Chief Justice of Tanzania during TLS's AGM in 2012. The CJ reiterated that;¹⁰¹

“One of the major challenges faced in the administration of justice in Tanzania is the adequacy of resources, particularly financial to deliver justice, efficiently and effectively. A facet of judicial independence is financial autonomy. Yet on the other hand, we are aware of the anxiety that over-dependence on financial resources from one source, Government carries a risk: ‘he who pays the piper will attempt to call the tune’ *Wahenga husema: Asokumbuka fadhila si mtu ni hayawani.* “As the old adage goes, he who doesn't remember good deeds is not human but rather a mad man.”

For the first time in the year 2011/2012 the government managed to remit only 6.3 billion to the Judiciary Fund established by *Judicial Administration Act, 2011*¹⁰² to expedite the disposal of cases.¹⁰³ However, this is a small percent of the 20 billion Tanzania shillings allocated to the Judiciary as an effort to speed

101 Keynote Address by Mohamed Chande Othman, Chief Justice on the occasion of the Annual Conference of the Tanganyika Law Society, 17 February 2012, Arusha, Tanzania, page 7.

102 Section 52 (1).

103 Keynote Address by Mohamed Chande Othman, Chief Justice on the occasion of the Annual Conference of the Tanganyika Law Society, 17 February 2012, Arusha, Tanzania, page 7.

up cases in the court of law. The fund from the Government annual budget located to the Judiciary has been always below 1% of the total budget.¹⁰⁴ The LHRC advises the government to make use of the established judiciary fund by allocating enough funds to speed up dispensation of justice in Tanzania.

2.2.2.1 Inadequate, Poor and Dilapidated Judicial Infrastructures

According to the APRM report, the realization of a meaningful rule of law depends on the existence of an independent judiciary which is able to adjudicate without fear, favour or any influence from anybody or any situation such as poor, inadequate infrastructures.¹⁰⁵ Failure by the Government to empower the judiciary is a total failure of the State to adjudicate over legal disputes including breaches of the fundamental rights and basic freedoms of individuals through a formalized legal system. Current statistics show that Tanzania has a serious shortage of court buildings. For instance as of February 2012, Tanzania had only 1,105 court centers for primary courts. The shortage of court centers curtails majority of the people in rural areas to access justice. This forces thousands of people to walk for a long distance in search of justice.

The LHRC's human rights survey of 2012 reveals that the condition of the few available court buildings is unsuitable for dispensation of justice. Many of the primary court buildings are old and dilapidated. Some of the primary court magistrates interviewed complain that they sometime fail to dispense justice because of the difficulty working conditions. For instance, LHRC met a magistrate of the primary court working in a very difficult condition at Nyakitoto village primary court in Kasulu District.



Nyakitoto Primary Court in Kasulu

¹⁰⁴ *Ibid.*

¹⁰⁵ APRM Report of 2011, page.

2.2.2.2 Inadequate Human Resource in the Judiciary

The majority of people in Tanzania do not access justice because of the persisting shortage of human resources in the legal sector. This undermines the dispensation of justice, adherence to the rule of law and human rights principles.

Currently, Tanzania has at the primary court level 732 magistrates presiding over 1,105 primary Courts. On the other hand the Judge Population ratio in Tanzania is less than 2 Judges per 1 million inhabitants. This is not healthy for the dispensation of justice in Tanzania. With this number of human resource in the judiciary the majority of people in the country are automatically barred from accessing justice. Comparatively, while in Tanzania one Judge serves 1 million population in Western Europe 50 judges serve 1 million people.

The shortage of magistrates is critical in rural areas where even the few available court buildings do not have permanent magistrates. According to the current statistics from the judiciary, only 628 primary courts have magistrates' permanently stationed while as 346 primary courts are served by seasonal or visiting Magistrates. For instance, the primary court magistrate stationed in Kigoma town is also responsible for dispensing justice at the Kalya and Uvinza primary courts, situated some 160 kilometers and 116 kilometers away.¹⁰⁶

2.2.3 Right to Legal Representation

Justice is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.¹⁰⁷ All people have equal rights before the law and have rights to legal representation. In this world made of the rich and the poor, the aspect of legal representation and legal aid for the poor becomes crucial. The UDHR sets as a common standard for all nations, that everyone charged with a penal offence should be granted all the guarantees necessary for his or her defense.¹⁰⁸ Other international instruments such as the *United Nations Basic Principles on the Role of Lawyers*,¹⁰⁹ African Commission on Human and Peoples Rights Principles and Guidelines on the Rights to Fair Trial and Legal Assistance in Africa of 2004, The United Nations Principles and Guidelines on Access to legal in Criminal Systems, *Rome Statute* that created International Criminal Court, *The United Nations Standard Minimum Rules for the Treatment of Prisoners* and the ICCPR also

106 Keynote Address by Mohamed Chande Othman, Chief Justice on the occasion of the Annual Conference of the Tanganyika Law Society, 17 February 2012, Arusha, Tanzania, page 9.

107 UN (2011) Handbook on improving access to legal aid in Africa, page 9. http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf Accessed on 7th November.

108 *Ibid.*

109 The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the treatment of offenders.

guarantee access to justice by the poor without payment in any case if they have no sufficient means to pay for it. For instance, the UN principles on the role of lawyers articulate that;

“Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.”

2.2.3.1 Limitations on the Rights to Legal Representations

In Tanzania S. 3 of *the Legal Aid (Criminal Proceeding) Act, Cap 21 [R.E 2002]* provides for the provision of legal aid to individuals of low-income. However, the funded legal aid is only available for very limited circumstances.¹¹⁰ The rights of the poor to access justice through legal aid Tanzania is further complicated by shortage of lawyers, paralegal and legal aid providers. All people in Tanzania are entitled to call upon the assistance of a lawyer to defend them before courts of law.

(a) Legal Limitation

The *Constitution of the United Republic of Tanzania of 1977* provides for this right as it states that all persons are equal before the law and that they are entitled without discrimination to protection and equality.¹¹¹ Together with other instruments at international level this constitutional provision, in general provide that legal assistance is absolute, and is not subject to limitation. However, for the case of Tanzania the government is required to support the poor only when the interest of the justice so require. This is the challenge in the legal system in Tanzania because the provision of legal aid to the poor by the state is limited to only few people under a certain income charged with murder or treason and is not available for any other type of legal case.¹¹²

110 [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.

111 Article 13.

112 S. 3 of *the Legal Aid (Criminal Proceeding) Act Cap. 21 [R.E 2002]*.

(b) Lack of a Well Defined National Framework for Provision of Legal Aid in Tanzania:

In Tanzania legal aid provision is not sustainable even to the few available legal aid providers. Tanzania lacks best practices in legal aid provision because it lacks legal schemes for legal aid. Tanzania legal providers such as LHRC, TAWLA, TLS, WLAC, *nola* have been receiving minimal support while as others receive none for legal aid provision. Despite the lack of a legislation for paralegal services in the country, legal service providers in Tanzania have continued to use the few trained paralegals to provide legal aid in rural set ups.

(c) Inadequate Number of Lawyers in Rural Set up:

Another problem that undermines the rights to legal representation in Tanzania is the shortage of qualified lawyers for legal representation in rural areas. General observation provides that the majority of lawyers or advocates prefer to live in cities and towns where legal business is high. The trend creates legal limitations to millions of people in the country who cannot afford to visit towns and cities to meet lawyers for legal representation. For instance, regions at the margin of the country such as Kigoma, Rukwa, Ruvuma, Mtwara and Lindi do have less number of advocates when compared with others. Out of 2300+ available advocates in the rolls only two advocates are stationed in those marginal regions mentioned above coupled with the dying number of NGOs offering Legal Aid to those regions after the demise of Nola which formerly covered those regions.

2.3 Freedom of Expression in Tanzania

According to several international instruments everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹¹³ These instruments include The *Declaration of Principles on Freedom of Expression in Africa, 2002*, Article 19 of UDHR, the ICCPR and the *African Charter on Human and Peoples Rights (ACHPR) of 1981*.

Freedom of expression is also guaranteed by *Article 18 of the Constitution of the United Republic of Tanzania of 1977*. The *Constitution* provides that everyone has a right to give his or her opinion and receive any information of public interest and pertinent to the welfare of the nation. However, freedom of expression and the right to information in Tanzania are not fully enjoyed because of several reasons such as lack of specific legislation protecting these rights, draconian media related legislation and the misuse of power by state officials.

113 UDHR Article 19.

2.3.1 Right to Information

Effective information systems that allow free flow of information are always a key to enhance democracy, accountability and respect for human rights. The *Declaration of Principles of Freedom of Expression in Africa of 2002* stipulates that *public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law*. Furthermore, Article 18 of the Constitution of Tanzania states that:

“every person has the right to freedom of opinion and expression of his ideas, has a right to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.”

Despite the legal framework above, access to information in Tanzania is still a critical problem. The right to information among other things is curtailed by existing bureaucratic systems, legal systems, poverty, high level of ignorance and existing governance system. The most affected part of the community is those in the rural set up. The LHRC’s findings indicate that majority of people in rural areas do not enjoy the right to access information mainly due to lack of modern information systems such as media outlets as most of them are found in cities; ignorance and the bureaucracy in local government systems.

Access to information is a key to democracy and development because informed citizens can hold those in power accountable in whatever they perform for the public interest.¹¹⁴ For years now, the Tanzania media fraternity and other stakeholders have struggled to convince the State to enact specific legislations on the rights to information and media services. However, to-date, this struggle has not yielded any positive results. The government had prepared two drafts bills, the Freedom of Information Bill in 2006 and the Media Services Bill in 2007, aiming to defend impediments to a free media that holds back the constitutional right of citizens to receive and impart information. The attempt to table the two bills was disputed by the media fraternity in Tanzania because it contained damaging provisions that hold back the constitutional right of citizens to receive and impart information.¹¹⁵

The 2012 MISA-Tan report indicate that access to information is still a major challenge in Tanzania. MISA-Tan surveyed 8 government institutions and measured the levels of openness and secrecy. Selected institutions and

114 MISA-Tan (2012) A Report on the Most Secretive Government Institutions in Tanzania, page 3.

115 See LHRC Tanzania Human Rights Report of 2010, page 74.

Ministries were the Ministry of Finance; The National Housing Corporation (NHC); the Tanzania Electric Supply Company Ltd (TANESCO); Tanzania Revenue Authority (TRA); Ministry of Works; Tanzania Commission for Aids (TACAIDS). Others were Surface and Marine Transport Regulatory Authority (SUMATRA) and the Ministry of Legal and Constitution Affairs.

The report provides that most of the visited web sites do not have current information while others still use English as the only language of communications. However, the report provides that there are some efforts shown to improve flow of information through web sites. The most secretive government institutions in 2012 are the Ministry of Constitution and Legal Affairs (MOCLA). It is amazing because during the 2011 survey the MOCLA scored high points and it was intentionally included in 2012 survey to assess whether government institutions maintain the same standard.¹¹⁶ This indicates that flow of information in government institutions is neither constant nor reliable.

2.3.2 Freedom of the Media

Freedom of the press in particular, has long been considered crucial to democracy, human rights and development because the news media provide a fundamental informational linkage between the government and the mass publics. For media consumers, freedom of the media is defined as freedom to consume information or entertainment from any source without government restrictions.¹¹⁷ Freedom of the media is determined by the type of the government in power. For instance, in any democratic government, the freedom of the media is highly guaranteed while in tyrannical states it is never free from state control.

The freedom of the media in Tanzania is not appropriately guaranteed in the constitution despite the fact that Article 18 protects the freedom of expression. There are many incidents that indicate that not all is well with the freedom of the media in Tanzania as we will elucidate hereunder.

(a) The Indefinite Ban of *MwanaHalisi*

On 30th July, 2012 the *MwanaHalisi* newspaper was indefinitely banned by the Government of United Republic of Tanzania after it was alleged to have violated the *Newspapers Act Cap. 229 of 1976*. The said newspaper has been vocal in informing the public among other issues following the government's silence after public speculations as to naming a person involved in a barbaric incident of abducting Dr. Stephen Ulimboka and his eventual torture and attempt of terminating his life. *MwanaHalisi* was known to have carried investigations whose results were being published in series. The public and NGO community are concerned that the banning is an attempt to block further reportage on the

116 MISA-Tan (2012) Op cit., pages 17&18.

117 LHRC (2011) Tanzania Human Right Report of 2011, page 75.

matter and other sensitive matters of public interest; which the government of the day seems to be uncomfortable with its publicity.

The banning of *Mwanahalisi* newspaper violated not only the freedom of the media but also the right to access information as provided for in Article 19 of the *International Covenant on Civil and Political Rights of 1966 (ICCPR)* the *African Charter on Human and Peoples Rights (ACHPR)* and Article 18 of the *Constitution of United Republic of Tanzania, 1977* which provides for almost absolute freedom of expression.

The Government of the United Republic of Tanzania continues to use the oppressive law such as the *Newspapers Act* to suppress the freedom of the media in Tanzania. This law has for many years been condemned as one of the draconian and unconstitutional law which needs to be repealed from our statutes. The said law gives much power to an individual (Minister) to form an opinion and decide on the so called public interest or in the interest of peace and good order to ban any media outlet thought to publish seditious information. The law permits the Minister to act as a ‘*Chief Editor*’ and the same time act as the complainant, prosecutor and the judge. This is against rules of natural justice and the rule of fair laws. For instance, in the matter of banning *Mwanahalisi* newspaper, the minister violated basic tenets of natural justice such as the right to be heard, the right to appeal, reasons for decision and impartiality principles. We find these laws archaic and that it actually needs review to adapt to serve the best interest of the people of Tanzania basic rights and fundamental freedoms.¹¹⁸

The ban on *Mwanahalisi* has drawn a lot of condemnations domestically and internationally to the diplomatic circles but the government has remained mum on this incident. While recognizing the essence of being obedient to the laws of this country, and to the relevant bodies governing them, we unreservedly condemn the government’s stance on this issue, taking into consideration that various bodies have joined hands in calling for the government to reverse its dictatorial decision that has affected many people inside and outside Tanzania. These are the esteemed readers of the newspaper, employees working for *Mwanahalisi* and for its publisher company in general *Halihalisi*.

Dr. Stephen Ulimboka, through his legal counsel Advocate Nyaronyo Kicheere made a public statement saying that his abduction was conspired by a State Intelligence Officer Ramadhan Ighondu. This is what *Mwanahalisi* had earlier reported and it was the main cause of its subsequent ban.

118 See a Press Release Jointly Issued by Human Rights Organizations and other media stakeholders condemning the ban of *Mwanahalisi* on 2nd July, 2012 at www.humanright.or.tz or at www.thrdcoalition.com

It would have been expected that the government would revisit its decision and unban the newspaper for lack of justification for its closure. It is strange to see that the government is still mum on this issue while at the same time it is still holding *Mwanahalisi* in prison. So far statements of condemnation have come from religious and academic institutions, diplomatic missions through their representatives. In Tanzania bodies like the Media Council of Tanzania (MCT) have also issued statements as a separate entity as well as jointly with other stakeholders.

(b) Existence Repressive laws

In Tanzania there are still a number of laws which have several times caused opposing reactions. For instance, under the 1976 Newspaper Act, Tanzanian authorities can suspend a newspaper at will if they deem that it has published certain materials with a seditious intention as was the case of *Mwanahalisi*. Other laws limiting press freedom in the country include the *Public Service Act*, the *Film and Stage Act No 4 of 1976* and the *Records and Archives Management Act*, *The Tanzania News Agency Act of 1976*, *The National Security Act of 1970*, the *Broadcasting Services Act of 1993* and the *Prisons Act of 1967*.

Experiences indicate that the Tanzanian government's attitude towards the media is characterized by the fact that free media exposes all sort of State abuse to the public. The existence of these laws indicates that they can be utilized anytime to fulfill a certain political ambition.

These laws violate rules of natural justice such as the right to be heard and the right to appeal. For instance, a ban on *Mwanahalisi* was disclosed to Saed Kubenea the managing editor of *Mwanahalisi* without even giving him the right to defend himself.

"I am informing you that the United Republic of Tanzania has banned the publication and circulation of your news paper until further notice, as from today 30th July 2012, Your news paper has been banned indefinitely according to the Newspaper Act of 1976 Section 25 (i)the ban on your news paper has been announced in the Government Gazette of July 27, 2012 by issue No. 258. By this letter you are ordered to stop any further publication."

The tone of this letter just tells it all that the existence of news papers in Tanzania is very much warranted by the interests of the Government supported by existing laws. No wonder there are constant threats to news papers which appear to be tasteless to the existing government and this trend is now shifting from the media to NGOs which are seen to be 'inciting' through their advocacy campaigns on certain issues.

(c) Professional Challenges Facing the Media

Other factors that may also undermine the freedom of the media in Tanzania include professional and financial challenges. In any State, the financial capacity determines the type of the media. The freedom of the two will be at risk if both the media and journalists suffer from poverty and economic hardships. Ironically, majority of journalists in the country work under economic related hardships.

(i) Economic related Challenges:

- (a) Meagre, untimely or no payment for correspondents;
- (b) Failure to report objectively due to fear that by so doing they will offend authorities who support them financially in needy times as owners rarely pay them;
- (c) Media owners and editors demanding stories from the region without paying journalists some for as long as six months leading to the later to survive through sources;
- (d) Lack of employment contracts to journalists; 99.9 percent of journalists in the region have no working contracts let alone offices despite most of them working for the respective media houses as long as 2007;
- (e) Most journalists breach media ethics during elections due to lack of resources from their media houses a situation which forces them to report for whoever funds their trips;
- (f) Most of the journalists in Tanzania are forced to buy their own working tools from the meagre income they earn from their sources due to their media houses failing to cater for that.¹¹⁹

(ii) Professional Challenges:

- (a) Media houses do not invest resources in the profession as journalists from upcountry are never involved in training by their bosses and the only ones entitled to such opportunities are those at the head offices;
- (b) Editors selling their journalists to sources whenever they conduct investigative stories and as such posing threat to their lives;
- (c) Lack of protection mechanism from media owners and editors whenever journalists are in trouble due to the nature of their work;
- (d) Some media owners being passionate with politics forcing journalists to report in their favor;

119 MCT (2012), Training on media ethics and DEFIR to journalists in Tanzania, Report.

- (e) Editors demanding presents such as food stuff, vouchers and cash before they can air or publish the stories due to the wrong perception that upcountry journalists are rich while that is not the case;
- (f) Some journalists creating friendship with leaders revealing professional secrets of their colleagues and as such putting them at risk;
- (g) Some journalists demanding bribes so that they can hide the information that could have otherwise been used as stories of public interest;
- (h) Lack of a trade union that can advocate for journalists as the only reliable media related institutions is the Media Council of Tanzania (MCT) which is however limited by virtue of its Constitution.¹²⁰

On the other hand journalists blame the Tanzania Editors Forum (TEF) saying it has failed to advocate for better working conditions. Nevertheless, it is also hard for them to speak against their bosses as they are afraid of losing their daily bread or being demoted to remote areas as it has been the case in some of the media outlets in the country;

120 The objectives of the council include the following;

- a) To promote, assist, safeguard and defend freedom of the media and allied forms of public communication in the United Republic of Tanzania;
- b) To oversee that journalists, editors, broadcasters, producers, directors, proprietors and all those involved in the media industry in Tanzania adhere to the highest professional and ethical standards;
- c) To receive and conciliate, mediate and or arbitrate upon complaints from the public and amongst the media inter se against alleged infringements of the Code of Ethics;
- d) To encourage development of the media profession in Tanzania by undertaking activities including, but not limited to, training of journalists, overseeing press clubs development, to conduct various media freedom campaigns, seminars, workshops and/or symposia;
- e) To maintain a register of developments likely to restrict the supply of information of public interest and importance, keep a review of the same, and investigate the conduct and attitude of persons, corporations and governmental bodies at all levels, towards the media, and make public reports on such investigations;
- f) To involve members of the public in the work of the Council and constantly and reasonably keep them informed about its operations, views and decisions;
- g) To promote and defend the interests of readers, viewers, and listeners;
- h) To promote gender sensitivity, equality, equity in and balanced reporting and dissemination of information;
- i) To raise funds for the purposes of the Council on such terms as are compatible with the autonomy of the Council and within the spirit of its mission and vision;
- j) To publish papers, journals, newsletters and other materials to achieve these objectives; and
- k) To do such other things as may be in the interest of the Council, the media and the public as may be necessary to achieve these objectives.

- (i) Lack of solidarity within the media fraternity;
- (j) Conflicting interest between business partnership and the media ethics;
- (k) Some of the journalists playing the role of Public Relations Officer for public officials;
- (l) Lack of identities for journalists during public rallies making it hard to identify them once the situation turns chaotic.
- (m) Public officials mistreating journalists in local areas by taking them to the field and refusing to pay any allowance on account that media owners have the duty to do so; and
- (n) Sharing of stories and pictures amongst themselves due to lack of working tools and as such making media houses come out on the street with uniform content and pictures.

2.3.3 Harassment of Journalists

Journalists are not enemies of anyone. They are rather intermediaries who report on behalf of organizations and communities for one particular goal; to influence changes in the country. This year alone Tanzanians have witnessed some nasty incidents ever. Harassment of journalists during investigations or collecting information and news is now a common phenomenon. There may have been several statements from the government over its allegedly support to enhance the freedom and access to information; yet journalists still face challenges which to a large extent affect their work as intermediaries to the public.

(a) Brutal Killing of a TV Journalist; Daudi Mwangosi

It is an undisputed fact that the killing of Daud Mwangosi, a TV journalist with an independent TV station Channel Ten at Nyololo village in Iringa region on September 2; remains one of the most horrific incidents in the country.

The deceased and others were covering the main opposition party *Chadema* party activities in Nyololo. The horrific incident sent waves of shock to the whole region of East and Central Africa. This was not only because it involved a journalist but because he died while on duty and not to mention of the brutal nature of his death.



Various images at the scene.

Various reports reveal that Mwangosi was intentionally killed by police officers when covering an opposition party gathering in Nyololo village. Police attacked Mwangosi after he had confronted them over the assault and arrest of Godfrey Mushi, a reporter with *Nipashe* newspaper.¹²¹ Sadly, it was later reported that despite working for his media outlet for years, Mwangosi had no employment contract and as such died as a correspondent leaving no terminal benefits for his descendants.

The two reports provide that there is tension between the media and police in Iringa. For instance, a report by the Committee formed by the Ministry of Home Affairs provides that the relationship between journalists and the police in Iringa is discouraging.

“Katika mkutano na waandishi wa habari, ilionekana kuwa katika thathmini yao uhusiano kati yao na Polisi hapo mkoani ni mbaya sana. Walieleza matukio kadhaa ya kunyanyaswa waandishi wa habari wakati wapo kazini, ikiwamo kupigwa, kutishiwa kuharibiwa na kuharibiwa vifaa vyao vya kazi na hata kutishiwa maisha ili wasiripoti mambo ambayo Polisi wana maslahi nayo.”

¹²¹ MCT (2012) Ripoti ya Kamati ya kuchunguza Mazingira Yaliyopelekea kuuawa kwa Mwandishi Wa Habari Daudi Mwangosi Septemba 2, 2012 Katika Kijiji Cha Nyololo, Wilaya Ya Mufindi, Mkoani Iringa, page 2.

During a press conference, it was seen evidently that the relationship between the police and the media fraternity in Iringa was very bad. Journalists narrated on several incidents of how they had been harassed while conducting their duties, including being beaten, threatened to have their tools reduced to dust and at times having their tools destroyed, and threats to their lives to bar them from reporting issues which police had interest on.

The report added that mistreatments to journalists in Iringa were so critical that on 6th March 2012 journalists in Iringa staged a demonstration in a bid to streamline the situation.

For instance, a Star Tv. reporter in Iringa was quoted as saying,¹²²

“Waandishi wa habari hawana mahusiano mazuri na Jeshi la Polisi, na hata wanapofika ofisi za Polisi huwa hawapewi ushirikiano. Kutokana na uhusiano mbaya wanahabari walifanya maandamano tarehe 06 Machi 2012 kupinga unyanyasaji wanaofanyiwa na Jeshi la Polisi hapa Iringa.”

“Journalists have no good ties with the police force and whenever we pay a courtesy call to their offices, they never accord us the required cooperation. It is due to the bad blood between us that on March 6, 2012, journalists in Iringa region staged a demonstration to condemn the harassment by the police in the region.”

Moreover, the MCT report provides the same findings that the killing of Mwangosi was just a continuation of a series of events against journalists in Iringa. The report provides that police were fond of deliberately and consciously intimidating Iringa based journalists reporting Chadema activities at Nyololo village.

“There was also impeccable evidence that Daudi Mwangosi was killed in cold blood while in police hands – in fact, while under the close watch of Iringa RPC Michael Kamuhanda.”¹²³

122 Ministry of Home Affairs (2012) Taarifa ya Uchunguzi wa Kifo Cha Mwandishi wa Habari wa Channel Ten Bw. Daud Mwangosi.

123 MCT (2012) Ripoti ya Kamati ya kuchunguza Mazingira Yaliyopelekea kuuawa kwa Mwandishi Wa Habari Daudi Mwangosi Septemba 2, 2012 Katika Kijiji Cha Nyololo, Wilaya Ya Mufindi, Mkoani Iringa, page 2.

The media fraternity staged a countrywide demonstration to condemn the killing. Moreover, civil societies coordinated by the Tanzania Human Rights Defenders Coalition, convened a one day symposium at the Tanzania Gender Networking Programme (TGNP) grounds on September 12 this year to condemn the vice.

- (b) Mwanza RPC Liberatus Barow barred Journalists under the Mwanza Press Club in the region from publicizing findings in regard to the death of their colleague Richard Masatu who was found dead on August 2011.

The RPC had warned them that reporting the issue was tantamount to interfering with police officials who at the time, were still investigating the matter.

Secondly, in mid September 2012 a businessman in Arusha was reported to have harassed journalists when they went to question him over his move to build a fence, blocking a public road to Mbauda.

Thirdly, even as we write this report, the managing editor of *Tanzania Daima*, Absalom Kibanda, a columnist with *Tanzania Daima*, Samson Mwigamba and the *Mwananchi* Communications CEO Teophil Makunga whose company printed the *Tanzania Daima* newspaper; still face charges on sedition. The move comes after Mwigamba had carried an opinion article which the government termed it inciting.

Lastly, another investigative journalist in Kilimanjaro Charles Jacob was intentionally knocked by a car and left seriously injured when covering the illegal exportation of sugar to Kenya via Rombo border.

There are several such cases but these are just a few examples to elucidate that not all is well in Tanzania. However, there is a need for stakeholders to join hands to mitigate the situation.

- (c) New Threat to the Media in Tanzania

In May 2012, the Tanzanian President Jakaya Kikwete appointed five journalists to become district commissioners. The move has been praised by some but has also raised criticism in some circles on the pretext that such appointments could have long term repercussions on the independence of the media.

The message is that overambitious journalists might forget their critical role while at the same time trying to satisfy the political oligarchy so that they may be appointed for certain political posts.

Ownership of the media is also cited as one of the challenges to the freedom of information as some of the media owners tend to block journalists from publishing certain stories that are either detrimental to the parties that these owners are affiliated to. At times certain media owners tend to protect

companies which are the main sources of advertisements to the extent of suppressing the main goal of journalism, namely objective reportage for the best interest of the public.

2.4 Freedom from Torture

The term “torture” can be defined as any intentional acts both physical and mental inflicted on a person for the purposes of obtaining from him or third person information or a confession. These acts according to the *Convention against Torture and other Cruel, Inhuman and Degrading Punishment, 1984* (CAT) may always cause severe pain or suffering at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹²⁴ Other international instruments that prohibit torture include *The African Charter on Human and Peoples’ Rights of 1981* and the *UN International Covenant on Civil and Political Rights (ICCPR) of 1966*.

Tanzania is not a signatory to CAT. However, the *Constitution of the United Republic of Tanzania, 1977* condemns torture and all forms of degrading punishments. Article 13 for instance prohibits torture and any sort of degrading treatment. The first category of torture in Tanzania is accelerated by some pieces of draconian legislations such as *The Prison Act of 1967; Penal Code which allows death penalty by hanging. Death penalty by its nature and its modes of execution is cruel, inhuman and degrading.*

Another form of torture in Tanzania is the one propagated by state agents, police, security and military officers. This kind of torture is mostly conducted during arrest, in prison or during operations conducted by security officers. In 2012 LHRC registered some pressing incidents of torture in the country. Some of these incidents occurred when people or suspects were held under police arrest and systematically pre arranged torture by security officers from January to December 2012.

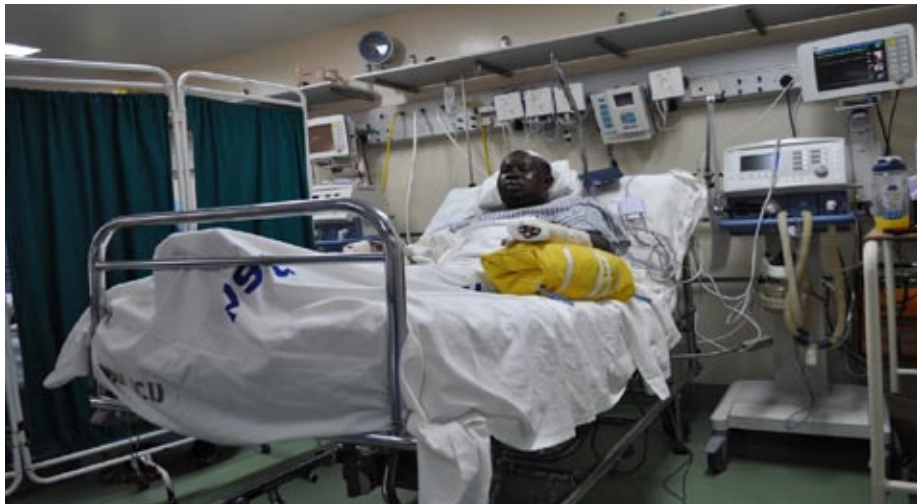
The nastiest incident of torture ever to be witnessed by the public in Tanzania is the brutal and barbaric torture of Dr Stephen Ulimboka the Chairperson of Medical Doctors Association at around mid night in Dar es Salaam. An unknown group of individuals most likely alleged state agents on 26th June 2012 abducted Dr. Ulimboka at the leader’s Club area in Kinondoni and was found to have been abandoned at Mabwepande forest.

124 CAT Article 1.



Dr. Steven Ulimboka, few hours after he was picked up by good Samaritans in Mabwepande Forest

The LHRC would not dispute claims that those who tortured Ulimboka seemed to have been experts in the field. On 17th October, 2012 by Dr. Stephen Ulimboka, through his legal counsel Advocate Nyaronyo Kicheere made a public statement saying that his abduction was conspired by a State Intelligence Officer Ramadhan Ighondu. Now we would have expected two things, either the government to deny that Ighondu is not an employee of the Tanzania Intelligence and Security Services (TISS), or the government to declare publically that it has instituted criminal charges against him.



Dr. Ulimboka lying at MOI's Intensive Care Unit few days before he was taken to South Africa for better treatment



Dr. Ulimboka before his abduction addressing medical doctors in Dar es Salaam

So far one Kenyan Joshua Gitu Mlundi is still held in the remand prison after being implicated in the abduction of Dr. Ulimboka.

This kind of torture should not be accepted in any civilized community. It is obvious that Dr. Ulimboka had no intention to harm poor Tanzanians whom he was trained to serve for a number of years but rather he was championing for the rights of medical doctors and other positive development in the health sector as a leader of fellow doctors.¹²⁵

On another incident, John Shauri was allegedly tortured by police officers in Mwanza. Mr. John can no longer stand or walk without a walking stick. Mr. John said he was taken to tortures chambers and forced to confess by police investigation officers. According to him torture material such as iron were used to coerce him. Mr. John reveals that:¹²⁶

“Wakati huo nilikuwa naumia sana, lakini walikuwa wakinilazimisha nitaje silaha nilizokuwa nazo. Nikiwa kwenye chumba hicho cha mateso chini ya polisi wawili na mkuu wa upepelezi kabla ya kunianza kunisulubu....alikuja kijana mmoja alionekana kuteswa sana.... Yeye walimtundika na kumpiga na virungu... mimi walinipiga na miguu yangu ilikuwa imevunjika na damu nyingi zilinitoka sehemu za magotini na nilikuwa nahisi kufa kwa maumivu niliokuwanayo.”

125 See Chapter 4 of this report.

126 Salum Maige “Polisi wamenivunja miguu kisa jina lake lafananishwa na jambazi waliekuwa wanamsaka” Mwananchi 5th February, 2012.

“At the time, I was in severe pain as they coerced me to name the type of weapons I had. While under interrogation chamber two, police officers and the head of investigation began to crucify me. A young man who seemed to have been tortured severely came in. They hanged and beat him with a club and kept beating me also. They broke my legs and at the time my knees bled profusely. I felt I was going to die from the severe pain.”

Mr. John was mistakenly arrested by police officers who were after John Michael a notorious bandit in Sengerema. The police in Mwanza admitted to have wrongly arrested Mr. John because of a mistaken identity. Acts of torture as a means to obtain information is contrary to human rights principle enshrined in several human rights instruments. For instance, CAT requires States to invoke any statement made as evidence; once established to have been made as a result of torture.¹²⁷

The LHRC advises the State to ratify and domesticate the Convention against Torture (CAT) at this time when incidents of torture are increasingly growing in the country while also taking into consideration of the obligation of States under the UN Charter, in particular Article 55, to promote universal respect for, and observance of human rights and fundamental freedoms.

127 *Article 15 of the Convention against Torture 1984.*

Chapter Three

Political Rights

3.0 Introduction

The Black law's dictionary defines in simple language political rights as “*A right to participate in the establishment or administration of government, such as the right to vote or the right to hold public office.*”¹²⁸ This definition encompasses other civil liberties appended to political rights such as freedom of association, freedom of assembly, democracy, forming and joining political parties, constitution guarantee and protection in the constitutionalism process.

Internationally political rights are protected under *the International Covenant on Civil and Political Rights, 1966 (ICCPR)*. However, the right to take part in governance as sub-component of human rights is provided for by other international human rights instruments. For example, *the Convention on Elimination of All Forms of Discrimination Against, (CEDAW)*¹²⁹ provides the right of women to be involved in key decision making organs and to take part in governance, *the Convention on the Rights of Persons with Disabilities (CRPD)*¹³⁰, is accord persons with disabilities to enjoy political rights without any discrimination.

Therefore, this chapter will examine various political rights and civil liberties connected thereto. Global, regional and national legal instruments that provide for political rights will be considered to comprehend the political and civil liberties.

3.1 Freedom of Association

Freedom of association in post-colonial African countries is enshrined in their Constitutions. It is constitutional's guarantee that cannot be taken away as it was promulgated in a doctrine of Freedom of association advanced by Mr. Justice Harlan in *NAACP V. Alabama ex rel. Patterson*¹³¹ says that;

128 Garner. B. A, Black's Law Dictionary, Ninth Edition page 1437.

129 Articles 2 to 4 of the CEDAW call on State Parties to actively pursue the elimination of discrimination in women's political participation through legal and temporary special measures and affirmative action

130 Articles 3 and 4.

131 357 U.S. 449, 460 (1958)

“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process.”¹³²

The freedom of association as propounded, supplements the position of the Universal Declaration of Human Rights, which provides that; *“Everyone has the right to freedom of peaceful assembly and association.”*¹³³ The freedom of association is further provided in other international conventions. For example in the Freedom of Association is a core value in ILO conventions. For example the *ILO Constitution, 1919* in its preamble provide for freedom of association as the one of its core values. It states that;

“And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; recognition of principle of freedom of association....”

The freedom of association can be denied by the government in one of the following contexts. When the government restricts the conduct of an organisation, entity or community, where the government compels belonging to any association for example party nomination in order to contest for any political post in the country.¹³⁴ Deregistration of any legal registered association without good cause as guaranteed by *the Constitution of United Republic of Tanzania, 1977*.¹³⁵

3.1.1 Freedom of Association as Civil Societies

Richard Holloway defines civil society as a *“citizens, associating neither for power nor for profit, are the third sector of society, complementing government and business, and they are the people who constitute civil society organizations”*.¹³⁶ CSOs can encompass grass-roots organizations, citizen’s movements, cooperatives, and NGOs, and other ways in which citizens associate

132 Emerson. T, “Freedom of Association and Freedom of Expression” in the Yale Law School Journal, Vol. 74. Issue No. 1 November, 1964.

133 Article 20(1).

134 *Articles 21, 39, 47 and 67 of the Constitution of United Republic of Tanzania, 1977*

135 Article 20

136 *Towards Self Reliance : A Handbook for Resource Mobilization for Civil Society Organizations in the South* (Earthscan Publications Ltd London, 2001)

for non-politically partisan and non-profit motives.¹³⁷ The civil societies play watch-dog role against the states governments in order to check and balance arbitrary exercised powers.¹³⁸ For example, the LHRC has difference watches or departments to watch each state organ.¹³⁹

The civil societies in Tanzania are regulated by several laws for example; NGOs are regulated by *Non-Governmental Act, 2002* under the Ministry of social welfare, Societies Act, under the ministry of Home Affairs. However the legal framework on CSOs in Tanzania does not cover other organizations such as Faith Based Organizations and Community Based Organisation. The FBOs and CBOs are registered under the Societies Act. The Act¹⁴⁰ gives mandate to the Registrar of Societies in the ministry of home affairs to register or de-register the society as deems fit to do so. The Act provides that;

“The Registrar may, in his discretion, cancel at any time the registration of any local society effected under section 12 if he is satisfied that it is expedient so to do on the ground that the society concerned—(a) is a branch of or is affiliated to or connected with any organisation or group of a political nature established outside Tanzania; or (b) is being used or is likely to be used for unlawful purposes or for any purpose prejudicial to or incompatible with the maintenance of peace, order and good government; or (c) has altered its objects or pursues objects other than its declared objects; or (d) has failed to comply with an order made under section 22 within the time stated in such order: Provided that, prior to cancelling any registration, the Registrar shall notify his intention to the society concerned and shall give it an opportunity to submit reasons why the registration should not be cancelled.”¹⁴¹

3.1.1.1 Arbitrary Legal Powers in Regulating Civil society’s Activities

The civil societies in Tanzania can be registered either under the Ministry of Home Affairs or under the Ministry of Community development, gender and children. The legal framework of civil societies is regulated by *the Societies Act and Non-governmental Organisation Act* as well as regulations made thereto. For example *the Non-Governmental Organisation Code of Conduct, 2008*.¹⁴²

137 Poverty Eradication Network, “*Enhancing the Competency and Sustainability of High Quality CSOs in Kenya*” Report 2010 page 4.

138 Article 11 of *the Convention on the Protection and Promotion of Diversity of Cultural Expression, 2008*.

139 LHRC(2011) Annual Report, page 3.

140 *Supra*.

141 Section 17.

142 Government Notice No. 363 of 2008.

These laws provide for the conduct of civil societies in the country however the arbitrary provisions which threatens existence and performance of their activities. For example Section 17 of *the Societies Act*, gives power the registrar of societies under the Ministry of Home Affairs to cancel any registered society if it feels it deems fit to do so. *The Non-governmental Act* also has repugnant provisions which limit the freedom of association as civil societies. For example section 36(1) unjustifiably reveals corporate status of the NGO's by imposing liabilities to individual members.¹⁴³

3.1.1.2 Existence of Tension between Civil Societies and the Government

The relationship of government and civil societies, especially advocacy civil societies are not calm as was the case in the previous times. The government at times works under pressure to suppress activities of civil societies accusing them of causing chaos in the country just because they raise issues which the government is not ready to accept. For example during the 2012 Doctor's strikes, the civil societies were accused of engineering the saga. There are times when critics argue that civil societies do not see the good side of the government but rather the dark side of it all.

LHRC is seriously concerned by failure of government officials to understand the role of civil societies which is normally meant to fill the gap that is left by the organs of state. Thus there is a need for people in authority to remember that implementing diligently various development programmes with observance of human rights is a key function of the government.¹⁴⁴ Civil societies play a role of a watchdog to advise, remind and sometimes direct the government to execute its functions diligently. Civil societies should thus continue to play the role of check and balance in the State for things to move in accordance with the required standards.

3.1.1.3 Collaboration of Government and Civil Societies

Tanzania enacted a law on *Public Private Partnership Act, 2010*.¹⁴⁵ The key role of this legislation is to encourage partnership between the two sectors on areas of mutual interest. The government is committed to strengthen global initiatives of Open Government Partnership under which civil societies work with it as partners in development; to cement the cooperation.¹⁴⁶

All in all there are areas where cooperation is still needed despite the tension that might exist on approaches between the government and civil societies. The government has been involving civil societies in policy and legal drafting of

143 LHRC (2010) Tanzania Human Rights Report page 88.

144 This is established under new development strategy as the world moves from Needs Based Approach to Human Rights Based Approach in development whereby the population is empowered to demand from the authorities.

145 Act No 18 of 2010.

146 Tanzania Open Government Partnership Action Plan 2012-2013

various laws. Normally on public hearing of various legislations civil societies are invited. For example, in the budget speech of the Ministry of Community Development, Gender and Children, the minister said;

“Aidha, katika kuhakikisha kuwa taarifa mbalimbali kuhusu sekta ya NGOs Nchini zinapatikana kwa wananchi, Wizara yangu iliendelea kuhuisha Tovuti ya Taifa ya Uratibuwa NGOs na Benki ya Takwimu na taarifa za NGOs ambapo wadau 26,000 kutoka sekta binafsi, serikali, wabia wa maendeleo, taasisi za utafiti na elimu ya juu na Asasi za Kiraia (CSOs) walihudumiwa.”¹⁴⁷

Either my ministry has maintained a live national website on NGOs regulations, reports and statistics bank in a bid to ensure reports on the NGO sector are made available to the public. At least 26,000 private stakeholders, the government, development partners, research higher learning institutions and civil societies were served.”

Other areas of collaboration between government and civil societies include on civic and public empowerment, fighting impunity of bad cultural practices such as Female Genital Mutilation (FGM)¹⁴⁸ and Gender Based Violence (GBV), protection of Children rights¹⁴⁹, women empowerment and capacity building.¹⁵⁰ The Ministry of Community Development in 2012 made an appreciation for continued partnership with civil societies as quoted;

“Peke yetu kama Wizara tusinge fikia mafanikio niliyoyataja. Naomba kupitia Bunge lako tukufu, kutoa shukurani zanguza dhati kwa wafuatao: Asasi ya Wanawake na Maendeleo (WAMA); Mfuko wa Fursa Sawa kwa Wote (EOTF); Mtandao wa Jinsia Tanzania (TGNP); Chama cha Wanasheria Wanawake Tanzania (TAWLA); Chama cha Waandishi wa Habari Wanawake Tanzania (TAMWA); Shirikisho la Vyama vya Wanawake Wafanyabiashara Tanzania (FAWETA); Medical Women Association of Tanzania (MEWATA); White Ribon; Friedrich Ebert Stiftung (FES); Plan International; Save the Children Tanzania na Kituo cha Sheria na Haki za Binadamu;” We wouldn’t have been able to record the success I have mentioned here alone as a ministry.

147 Hon. Sophia Simba (MP), Budget Speech Ministry of Community Development, Gender and Children 2012/13 page 19.

148 Civil Societies on similar mission went to Tarime in December, 2012 to provide education on effects of FGM practices as it was reported that about 4,000 girls were to be mutilated on Initiation ceremonies held every after two years.

149 *Ibid.*

150 LHRC (2012) Training Report: “Anti-FGM workshop” Held in Dar es Salaam, from 7th to 8th February, 2012. The social welfare and community development officers from Man- yara, Mara and Singida participated.

Allow me to relay my sincere gratitude through this parliament to the following, WAMA an institute of women and development, Equal Opportunity Trust Fund (EOTF), Tanzania Gender Networking Program (TGNP), Tanzania Women Lawyers Association (TAWLA), Tanzania Media Women Association (TAMWA), The Tanzania Trade Congress of Business Women (FAWETA), Medical Women Association (MEWATA), White Ribbon; Friedrich Ebert Stiftung (FES); Plan International; Save the Children Tanzania as well as the Legal and Human Rights Centre.

In 2006, the government established the NGO coordination division under the Ministry of Community Development, Gender and Children.¹⁵¹ Additionally in 2012 the government formed the National Council of NGOs.¹⁵² The main role of the National Council of NGOs is to supervise adherence to NGOs Code of Conduct and initiate civil societies per review and self-assessment.¹⁵³

3.1.1.4 Civil Societies Situation in Selected Regions

LHRC conducted a human rights survey in 8 selected regions of Tanzania mainland in 2012. One of the issues considered in the survey was contribution of civil societies in socio-economic development in the particular regions. Overall, civil societies in regions visited have been doing their best to deliver despite working under difficult conditions. For example, civil societies in Kigoma face financial constraints and shortage of qualified personnel to run their organisation. In an interview with the coordinator of Kigoma and Ujiji Non-governmental Organisation (KIUNGO-NET) the later said that;

“CSOs nyingi hapa hazina wataalam hivyo ipo haja kubwa ya kuzijengea uwezo kwa sababu watendaji wengi wana elimu ndogo. Hii itaondoa dhana iliyojijenga miongoni mwao wanaofikiri CSO ni biashara. Zikijengewa uwezo zitaongeza uwajibikaji Na uwazi, Kwa sababu hapa tu walipo Na uwezo mdogo walionao, wanafanya kazi kwa kujituma sana” Most CSOs around here lack experts. There is a need to empower them owing to the low level of education by most of its executives. This will remove the concept built among many thinking CSOs are business entities. Once empowered, they will increase accountability as most of its staff work very hard anyhow even under the current circumstance.

151 http://www.mcdgc.go.tz/index.php/departments/category/ngo_coordination_division/ visited on 28th November, 2012.

152 Hon. Sophia Simba (MP), Budget Speech Ministry of Community Development, Gender and Children 2012/13 page 21.

153 *Ibid.*

Similar situation was experienced in Tabora, Dodoma, Geita, Mara, Shinyanga and Geita.

LHRC recommends that, all NGOs operating in the country should be encouraged to join national and regional networks. Through networks NGOs can partner in implementing various programmes in various areas in the country. It will reduce costs and will improve performance and attain desired changes. For example, the Anti-FGM Coalition has successfully reduced FGM practices in the country due to networking and partnering in implementing activities in different district councils. On the other hand capacity building for small CSOs will be enhanced particular in rural based NGOs.

3.1.2 Freedom of Association as Political Parties

Freedom of Association in Tanzania is a mandatory requirement for any person wishing to take part in governance. The *Constitution of the United Republic of Tanzania, 1977* and the *Elections Act*¹⁵⁴ provides for mandatory requirement party nomination in order to participate in democratic election. Thus an independent candidate is not allowed to contest. So far there are 20 registered political parties ever since the re-introduction of multi-party democracy. In 2012 alone two new political parties obtained permanent registration. These are *Chama Cha Kijamii (CCK)* and Alliance for Democratic Change (ADC). However Tanzania and Rwanda have few political parties compared to their counter party Kenya which had 52 by June, 2012, 37 in Uganda and 36 in Burundi respectively.¹⁵⁵

The few political parties in Tanzania have resulted from the strict procedures in establishing new ones. It is wise to note that the mandatory requirement of soliciting 200 members in ten regions curtails citizens with limited financial resources to register political party.¹⁵⁶

3.1.2.1 CHADEMA Terminated Councilors in Mwanza

The trend of opposition party CHADEMA to sack her members on misconduct allegations continued in 2012. The terminated councilors are Hon. Adam Chagulani (Igoma ward) and Hon. Henry Matata (Kitangiri ward). The two were terminated by the National Executive Committee meeting held in Dar es Salaam.¹⁵⁷

LHRC observes that the trend of sacking political leaders duly elected by citizens simply because of intra party discipline or misunderstanding is denial

154 Cap R.E (2010).

155 <http://www.theeastafrican.co.ke/news/Kategaya-death-brings-political-transition-into-focus/-/2558/1715798/-/12nm5g2z/-/index.html> visited on 23rd November, 2012.

156 LHRC (2010) Tanzania Human Rights Report page 90.

157 AbdalahHamis, "CHADEMA wamsusa Tendwa" Tanzania Daima, 11th September, 2012.

of the citizen's rights to be represented. The law does not allow for private candidature however it is important for the law to allow crossing the floor from one party to another. This will be useful in such cases whereby duly elected leaders are sacked from membership from the nominating party. At the end of the day it's the citizens of Igoma and Kitangiri who are directly affected but not the said councilors in the individual capacity.

Therefore, LHRC opines that, political parties should also consider the public interest at large for them to serve justly. For example, conducting by-elections to fill in such vacant posts is misappropriation of funds as the electoral committees will spend a considerable amount of funds which would have been spend in other development programmes such as improvement of social services in respective wards.

3.1.2.2 The Registrar of Parties vs CHADEMA

The registrar of political parties Hon. John Tendwa has served the office since the re-introduction of multi-party democracy in the country, in 1992. The registrar of political parties is a presidential appointee who serves under the prime minister's office. In 2012 the registrar threatened to deregister Chama cha Demokrasia na Maendeleo (CHADEMA) following a chaos reported in Iringa at Nyololo where a Channel Ten reporter Daudi Mwangosi was brutally murdered. Under *the Political Parties Act*, the Registrar has the power to deregister any registered political party and such decision for cancellation is not subjected to any competent court. The Act provides that;

“Subject to subsection (2) the Registrar may cancel the registration of any political party which has contravened any of the provisions of this Act or which has otherwise ceases to qualify for registration under this Act. (2) The Registrar shall not cancel the registration of any party unless— a) he has, in writing, informed the party concerned of the contravention or the loss of qualification and of the intention to cancel the registration; b) he has received or failed to receive, within the period.¹⁵⁸

In responding to the serious warning against their party, the national executive committee made a resolution that CHADEMA will not work with the registrar of political parties. The chairperson of CHADEMA was quoted saying;

“Kumuendekeza Tendwa kwa kauli zake nikuliandaa taifa na maafa makubwa kwa kuwa anachoongea hakilingani na hadhi yake ya kuwa mlezi wa vyama vya siasa na katika hili tumeamua kutoshirikiana naye kwa namna yoyote mpaka atakapoomba msamaha na awe amejirekebisha.¹⁵⁹

158 Section 19.

159 AbdalahHamis, “CHADEMA wamsusa Tendwa” Tanzania Daima, 11th September, 2012.

Embracing Tendwa's statement is tantamount to plunging the country into a catastrophic state because his utterance doesn't match with his persona as a guardian of political parties. It is due to this that we have decided that we will cease to collaborate with him until he requests for an apology and makes some changes.

The registrar is vested with absolute powers which if abused will hinder the growth of democracy in the country. Thus, LHRC calls upon the need to harmonize the powers of the registrar and mode of appointment. For example the office of Public Service Commission of our counterparts in Kenya is responsible for recruiting the registrar of political parties.¹⁶⁰ The Political Parties Act, 2011 in Kenya provides the qualifications of registrar and one of the requirement in order to be appointed for this post, one must be of good character and integrity.¹⁶¹ Therefore, as we are now in constitutional reform process there is need to maintain political neutrality in appointing political officers. For instance the Chairman of Electoral committee and Registrar of political parties should not be presidential appointee.

3.1.2.3 Political Parties Fail to Submit their Annual Returns to CAG

Political parties are required to maintain proper accounts of and property and submit annual statements of audited accounts to the registrar of political parties.¹⁶² The main source of funds for political parties is subvention. However not all registered political parties qualify to receive it. The Political Parties Act provides qualifications for a party to receive subvention as;

*"No party shall qualify for the grant to it of a subvention in accordance with this Act unless— a) it is a party which is fully registered under this Act; b) it has, in the immediately preceding general or local government election, had any of its candidates elected to be a Member of Parliament or member or a local government authority."*¹⁶³

160 http://www.publicservice.go.ke/index.php?option=com_jdownloads&Itemid=57&view=finish&cid=251&catid=7 visited on 12th December, 2012.

161 Sections 33 and 34 of Political Parties Act, 2011.

162 Section 14(1) provides that;(1) *Every political party which has been fully registered shall— a) maintain proper accounts of the funds and property of the party; b) submit to the Registrar – i) an annual statement of the accounts of the party audited by an auditor registered as an authorized auditor under the Accounts and Auditors (Registration) Act and the auditor's report on those accounts; ii) an annual declaration of all the property owned by the party. (2) The Registrar, after inspecting any accounts or report submitted pursuant to this section may, for the benefit of the members or the public, publish any matter relation to the funds, resources or property of any party or the use of such funds, resources or property. (3) The Registrar shall publish in the official Gazette, an annual report on the audited"*

163 Section 16(3).

Therefore political parties which receive subventions include CCM, CHADEMA, CUF, TLP, NCCR – *Mageuzi* and UDP. Currently, the ruling party receives 70% of the share; CUF receives 20% and CHADEMA 8% whereas the remaining 2 percent is received by TLP, UDP and NCCR-Mageuzi.

The Controller Auditor General (CAG) report 2010/2011 revealed that, political parties have not submitted to the registrar of political parties an audited report of 17, 202,999,991.Tsh. The amount was paid as subventions to various qualified Political Parties during the year under review. However, the audited accounts of the relevant Political Parties were neither published nor confirmed to have been submitted to the Registrar’s Office.¹⁶⁴

LHRC calls upon political parties to comply with the laws of the country as an indication of observance of the rule of law. It is disappointing to find political parties which vie to take part in governance of the country but ignores matters of accountability and transparency. It is also recommended that, the next CAG report should use a “*name and shame*” approach over the parties concerned and the amount owed publically.

3.1.2.4 Use of Police Force to Suppress and Harass Members of Opposition Parties

The Police Force in the country is accused for its direct involvement in politics by suppressing and harassing members of opposition parties especially in rural areas. In 2012 police officers arbitrary arrested 20 members of CHADEMA and destroyed party’s properties in Ruaha village.

“Askari wanaaongoza zoezi Hilo Ni pamoja Na Mkuu wa Kituo cha Polisi msaidizi wa kituo cha Ruhembe na mkuu wa kituo cha Polisi Mikumi wakitumia magari yenye namba za usajili PT 1824, PT 1491 na T 895 ABZ. Mpaka sasa zaidi ya viongozi na wanachama 20 wa CHADEMA wapo Gerezani kwakubambikiwa kesi wakiwa wamenyimwa dhamana na bado Jeshi la polisi linaendelea na vitisho pamoja na vipigo kinyume cha misingi ya Demokrasia na haki za binadamu.”¹⁶⁵

“The assistant police officer of Ruhembe police station and the one for Mikumi led the exercise while using vehicles numbered PT 1824, PT 1491 na T 895 ABZ. At least 20 leaders and members of CHADEMA are under the police custody as we speak charged with fabricated cases and have been denied bail. The police force is still condoning threats and beatings contrary to the principles of democracy and human rights.”

164 Central Government Audit Report, 2010/2011 page 43.

165 Chama cha Demokrasia na Maendeleo, “*Askari Polisi Kuvamia Ofisi na kukamata viongozi wa CHADEMA*” letter No. Ref. C/HQ/ADM/KS/24/99 of 21st November, 2012.

3.1.3 Freedom of Association as Trade Unions

Freedom of Association as trade union is constitutionally guaranteed and protected under the *Employment and labour relations Act, 2004*. The freedom of association has very critical meaning at the work place its development has long history as from time of industrial revolutions in the United Kingdom, continental Europe and United States in the 19th Century.¹⁶⁶ The *Employment and Labour Relations Act*, defines trade unions as “means any number of employees associated together for the purpose, whether by itself or with other purposes, of regulating relations between employees and their employers or the employers’ associations to which the employers belong.”¹⁶⁷

Under this Act, all employees in public and private sectors, are accorded protections save for members of Tanzania People’s Defense Forces, Police force, Prisons force and National Services.¹⁶⁸ It is very difficult for law enforcers to demand for their rights due superior command. However, if these members were to lodge their complaints, members of the police force and prisons, would have complained about poor housing.¹⁶⁹

The freedom of association as trade union uphold the following basic human rights principles, firstly the right of everyone to form and join trade union, secondly the right to form national and international confederations, the right of individual not to be penalized for belonging to a union, right to strike and lockouts and Right of organisation to elect representatives and draw up their own rules and constitutions.

3.1.3.1 Collective Bargaining and Race to Court

The trade unions in the country have continuously made calls for negotiation on better working conditions. For instance the Trade Union Congress of Tanzania (TUCTA) took lead in demand for better working conditions in 2010. Come 2012 each TUCTA members have been advancing their own claims without relying on the Congress. For example in 2012 the Tanzania Teachers Union (TTU)¹⁷⁰ and Medical Association of Tanzania (MAT) at different times called for national strikes. The national strikes were called after failure to reach consensus with the government in negotiating for better working conditions.

Each side took its own conduit while the workers trade unions mobilized for national strikes of their members, the government went to court. The High Court Labour division ordered in favour of the government in each labour disputes referred by TTU and MAT. For example, the TTU strike was declared

166 <http://www.britannica.com/EBchecked/topic/1357701/trade-union> visited on 20th November, 2012.

167 Section 3.

168 Section 2.

169 TLS (2011) Tanzania Prisons Visit Report, 2011 page 24.

170 Civil Misc. Application No. 96 of 2012.

illegal by Hon. Sofia Wambura, J, at the High Court labour division for non-compliance of procedures on modality of legal strikes. The Judge declared the teachers strike as illegal;¹⁷¹ the TTU to compensate students for any inconveniences caused therein and bear the costs of the case.

LHRC feels that, the government's race to courts is just a temporarily measure while calling upon the need for it to improve working conditions of public servants in the country. The Public servants claims include an increase for the minimum wages, improved working conditions such as quality medical facilities, housing, life, health insurances and improved social services.

3.2 Freedom of Assembly

The freedom of assembly was accorded judicial interpretation by Lord Denning in *Hubbard V Pitt* where it was held that; “*Such is the right of assembly. So also is the right to meet together, to go in procession, to demonstrate, and to protest on matters of public concern. As long as all is done peaceably and in good order, without threats or incitement to violence or obstruction to traffic it is not prohibited*”.¹⁷² The freedom of assembly can be implemented in various forms for example, processions and public assemblies.¹⁷³

The freedom of assembly is guaranteed in a number of international conventions, for instance *the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and regional bodies such as the African Charter on Human and People's Rights, 1981.*

In East African sub-region fundamental rights are enshrined in *the East African Community Treaty, 1999*. The treaty provides for the respect of fundamental freedoms as it provides that “*develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.*” Thus the draft of *the EAC Protocol on Good Governance* clearly guarantees freedom of assembly as it obliges member states that;

“*Creating an enabling environment for the exercise of freedom of expression, association and assembly; a free and independent media; robust civil society and a strong private sector*”.¹⁷⁴

3.2.1 The Exercise of Freedom of Assembly and Police Brutality

The exercise of freedom of assembly is constitutionally guaranteed in Tanzania. However, the constitutional guarantee is not an absolute since it's subjected

171 The organised strike contravened section 84(1) and (2) of *the Employment and Labour Relations, Act 2004*.

172 [1976] QB 142 at page 176.

173 Stone, R. *Textbook on Civil Liberties and Human Rights*; 7th Edition, Oxford University Press (2008) page 252.

174 Article 7(3) (0).

to other legislations. For instance the Police Force and Auxiliary Act, makes it mandatory to notify the Commanding officer in-charge 48 hours for any intended public assembly be it political or not. The 48 hours notification as provided for in the Act is interpreted differently by law enforcers. Therefore, misinterpretation is causing unnecessarily loss of life to innocent citizens in the country. For example the following are such serious crimes against humanity committed to civilians as a result of trying to exercise their freedom of assembly;

- (a) The Killing of a prominent journalist in Iringa the late Daudi Mwangosi during a political assembly in Nyololo;
- (b) The killing of an innocent citizen in Morogoro one Ally Zona.

Details of these killings are discussed in chapter two of this report on extra-judicial killings.

3.2.2 The Arrest of 16 Activists

During the doctor's strike 2012, 16 human rights activists were arrested by police at Muhimbili National Hospital on the ground that were about to breach peace by conducting unlawfully assembly. These activists were detained for more than 8 hours at Oysterbay police station whereby they were interrogated and at the end police failed to frame any charges against them. It was a victory on the part of activists and failure to the police force as sometimes the police force act on political demands and not reality. The superior command ordered them to arrest but without justifiable cause and a result was humiliation to the police for failing to establish charges.



Different scenes when Activists were protesting

LHRC, submit that it is important for Police Force to discharge its duties professionally without undue influence from politician. There should be a balance between the reality on the ground and political interests of the rulers. The demand of human rights activists in the doctor's strike was to ensure that health services resume as usual and not otherwise. The voice has to be raised against the government whom citizens has entrusted their sovereignty and not the doctors who are government employees and not citizens' employees.

3.3 Freedom of Worship

The Right to freedom of worship is guaranteed under the *Constitution of United Republic of Tanzania, 1977*.¹⁷⁵ Every person is granted the freedom to worship in their religion of his choice freely without interference from the state or any organ. Thus this position of the non-secular state of Tanzania made it possible for her citizens to prophecy in different religions peaceful. The community interaction is common among believers of different religions. For instance Muslims and Christian interact and cooperate in various social life experiences together such as funeral ceremonies, inter marriages, share the same schools, public services and many more.

However, during the 2010 general elections, religion was used as a political propaganda by some of the political parties. These elements are now incorporated in the country's politics. This is unacceptable as it endangers peace and tranquility in the country.¹⁷⁶ The threat of politicizing religion to the community is very serious as the community will now start to identify each other on religious grounds. The late Mwl. Julius Kambarage Nyerere preached against Tanzanians discriminating each other on religious grounds and ethnicity.

“Sasa hivi katika nchi yetu ya daraja la tatu watu wameanza kuzungumzia udini, tulikuwa hatuzungumzii udini wa mtu, dini ya mtu anajua mwenyewe, tulikuwa hatuulizi dini ya mtu hata kidogo, zamani katika kuhesabu watu wakati wa mkoloni wakati wa sensa kuna swali la udini lilikuwa linaulizwa tukasema sisi hatujengi mahekalu, hatujengi misikiti.....

....”Nyerere 1995 “In our third class country we now have people preach religion. Seldom did we talk on a person's religion as it was a personal matter; we never asked it at all. In the colonial era, the census process involved a question over one's religion and we told them we did not intend to build churches or mosques.

3.3.1 Religious Commotion in Mbagala

Violent attacks by Muslims against Christians and their properties erupted in Mbagala Dar es Salaam two days before the commemoration of Mwalimu

175 Article 19.

176 In the case of Jamal A. Tamim versus Felix Mkosamali (MP) and others; Misc. Civil Cause No. 2 of 2010 in the High Court of Tanzania, at District Registry of Tabora at Kibongo (Unreported); One of the serious issues raised in this election petition however not successful pursued was conducting election campaign in churches and abusing the petitioner that if elected will convert them into Islamic, as quoted; “*Msimchague huyu mwarabu, mkimpa ridhaa ya kuwa mbunge, atawaleta wenzake na itakuja Mahakama ya Kadhi*”. That Pw1, Petitioner, “*Sii mwenzetu katika njia ya msalaba*”. This is very dangerous to the growth of democracy in the country if such acts will be left to continue.

Nyerere Day. The attack was directed at any Christian property including churches which were burnt and smashed by angry mob composed of Muslim believers. The chaos was a result over the police force's delay in handling the allegation that was reported over a Christian boy who abused the Holy Quran book. Thus in retaliation, Muslims decided to take laws into their own hands by destroying Christian's properties. During the chaotic incident, several churches and other properties found in church premises were burnt and smashed. Churches affected in the saga were; TAG Shimo la Mchanga, Kizuiani Seventh Day Adventist (SDA), Church of Christ at Rangitatu, Anglican Kizuiani Agape at Kibondemaji and Evangelical Lutheran Church of Tanzania (ELCT) at Mbagala Zakheim.



One of the vandalised churches Mbagala

LHRC observes that; the Mbagala religious chaos is a result of failure by the authorities to act promptly and properly. The matter was reported to the police station and it was urgent and such needed immediate attention in order to bring peace and tranquility. However, the police did not accord the required weight in handling this issue.

LHRC opines that, there is need for the government to convene regular forum among religious leaders in order to discuss issues which may affect the national unity. For instance currently issues of religion are used as political propaganda yet the government is silent. This is very dangerous to the country's peace as people are now divided not only politically but also religiously.

3.3.2 Religion versus the National Census

The Black Law Dictionary defines census as, *“an official count of people made for the purpose of compiling social and economic data for the political subdivision to which the people belong.”*¹⁷⁷ Elsewhere under the *Statistical Act*,¹⁷⁸ census is defined as *“a census of population and housing”* initially it intends to establish demographic data of every individual in the country by looking into some of the demographic data including gender, level of education, age and occupation for developmental purposes.

177 Black's Law Dictionary, Ninth Edition, 2004 page 253.

178 Cap 351 [R.E 2002].

The *Statistical Act* gives mandate to the National Bureau of Statistics to conduct any type of census in United Republic of Tanzania in collaboration with the Zanzibar Office of Chief Government Statistician. The Act requires that census be conducted at any time in the whole country or part thereof if so the President requires. Tanzania has been conducting its census after every ten years from 2002. Prior to that there was no fixed time taking into consideration the first census was conducted in 1967, the second one 1978 while as the third was in 1988 respectively.

The government successful conducted the 2012 census in the whole country. Preliminary results indicate that the population of the country has now reached 44,929,000 people. However, the exercise was marred with several challenges one being religious issues where some clerics questioned over the forms used to record individual particulars lacking a clause for one to disclose his or her religious status. The issue caused chaos in some of the regions such as Tabora, Kigoma and Tanga as some Muslims refused to take part in the exercise and went as far as camping in mosques. Several Muslims were arrested and charged accordingly for refusal to obey the lawful exercise at the national level. Again Muslims demonstrated at the Ministry of Home affairs demanding unconditional release of all people who were arrested. Henceforth, those who were arrested were immediately released.



People who were protesting from taking part in National Census

LHRC finds it important for the government to provide education to its citizens in a participatory manner to enhance a sense of ownership in each of its development programs. It has now become a common trend for the government to only inform citizens of what is going to take place without involving them. Hurdles faced in the census exercise should serve as a lesson for the government to learn from. The exercise takes place after every ten years thus leaving a long in between to conduct an awareness campaign on its importance rather than doing it at the end. Again, LHRC calls upon religion denominations in the country to put a demarcation between faith and governance as failure to do so, will lag behind development plans after all, each religion has its do and don'ts.

3.4 Right to take Part Governance

The right to take part in the government in the country is exercised through elections. There are two types of elections conducted in the country, the general election and the local government election. The general election features the election of the President of United Republic of Tanzania and the president of Government of National Unity in Zanzibar, members of parliament and councilors.

On the other hand, the local government election is conducted to elect local leaders including the village chairpersons and village council's members. Each type of election is supervised by different bodies. The general election is supervised and coordinated by the National Electoral Commission (NEC) while as the local government election is supervised by the Ministry of States, the prime minister's office, Regional Administration and local government.

In addition there is the third type of election conducted by the National Assembly. The Parliament is mandated to elect representatives of the country in the East Africa Legislative Assembly and any other legislative bodies.¹⁷⁹

Therefore the right to take part in governance is recognized internationally as a right and constitutionally guaranteed right to its citizen. The international legal instruments which safeguard and guarantee this fundamental political rights include; *the International Covenant on Civil Political Rights, 1966, the African Charter on Human and People's Rights, 1981 and the East African Community Treaty, 1999* but to mention a few.

Similarly, the right to take part in governance is guaranteed to other groups considered vulnerable in the community such as women and persons with disabilities. The international legal instruments that protects and promotes for the rights of these groups accords them the right to be involved and given chance in decision making bodies.¹⁸⁰

179 Order 10 of the Parliament Standing Orders, 2007

180 *International Convention on Elimination of All Discrimination against Women, Maputo Protocol and the Convention on the Rights of Persons with Disabilities, 2006*

3.4.1 Vote of “No Confidence” to the Premier

The Constitution of the United Republic of Tanzania, 1977 provides for the impeachment of the Prime Minister as a presidential appointee could be impeached. It provides that; “*Notwithstanding the provisions of Article 51 of this Constitution, the National Assembly may pass a vote of no confidence in the Prime Minister if a motion in that behalf is moved and passed in accordance with the provisions of this Article.*”¹⁸¹ It further provides in the subsequent sub articles condition for which the parliament can exercise power vested unto them. Therefore, in order to implement the Constitutional right of vote of no confidence the parliament is guided by the Permanent Parliament Standing Orders, 2007 part thirteen.¹⁸²

The National Assembly was moved to vote for no confidence to Prime Minister Hon. Mizengo Kayanza Pinda. This was the first time in history for the National Assembly to initiate such move since independence. The said move was not successful due procedural irregularities. Legislators threatened to table a vote of no confidence if the six ministers implicated in the CAG report would not be fired. Deputy Leader of official the opposition, Zitto Kabwe championed the exercise to get seventy signatures needed for the motion to be considered by the Speaker. The exercise saw over 70 MPs signing the petition including a senior CCM lawmaker, Nimrod Mkono of Musoma and Deo Filikunjombe representing Ludewa constituency.¹⁸³

LHRC values the strategy deployed by legislators in order to compel the head of state to take action. Indeed it was a successful move as it was necessary for the President to reshuffle the cabinet of ministers. Therefore unwanted ministers were left out including the Minister of health and his deputy who had taken no initiatives in dealing with the doctor’s strike leading to loss of lives of thousands innocent Tanzanians.

3.4.2 The 2010 General Election Petitions

The *Constitution of the United Republic of Tanzania*, ousters courts jurisdiction to petition the President elect. Once the presidential candidate declared a winner by the National Electoral Commission chairperson no other competent authority can nullify the results.¹⁸⁴ However, election results of any other posts including parliamentary and councilors can be challenged in courts of law. A number of elections petitions were filled in various courts countrywide after the 2010 general elections in relation to the parliamentary seats being disputed.

181 Article 53A (1) of the Constitution of United Republic of Tanzania.

182 Order 133 provides for procedures on how to exercise vote of no confidence to the Prime Minister.

183 www.thecitizen.co.tz/.../article/.../21655-pm-in-the-line-of-fire.html visited on 23rd November, 2012.

184 Article 42 of the Constitution of United Republic of Tanzania, 1977.

Under the law, the electoral petitions are supposed to be determined within 12 months after the election. However the minister responsible is empowered after consultation with the Chief Justice to extend time up to 6 months.¹⁸⁵ In 2012 the following cases were determined at the High Court different registries and others at the Court of Appeal of Tanzania.

Fred Tungu Mpendazoe versus Dr. Makongoro Milton Mahanga and others,¹⁸⁶ this case was filed by the petitioner to challenge election results of the Segerea Constituency. In this case the petitioner lost the case as it was decided in the High Court of Tanzania, at Dar es salaam registry whereby in the case of *Jamal A. Tamim versus Felix Mkosamali and other*,¹⁸⁷ the petitioner in this case prayed for nullification of election results due to serious denial of human rights due to discriminatory language and practices against him during the campaign. The petitioner alleged discrimination based on religion and race made him lose the Muhambwe constituency in Kigoma. The judgement was entered in favor of Respondent as Hon. A. N. M Sumari, J said that, “.....which is nothing but to dismiss the petitioner’s petition entirely with costs and to declare the first respondent a rightful winner of the seat of a Member of Parliament for Muhambwe Constituency. Consequently, the petition is dismissed in its entirety. The 1st Respondent, FELIX FRANCIS MKOSAMALI is hereby certified a lawfully duly elected member of parliament for Muhambwe constituency for 2010-2015 term.” The chief whip from the opposition party wing in Parliament Hon. Tundu Antipas Lissu was equally challenged however the petitioners in the case of *Shaban Itandu Salema and Paschal Marcel Hallu V. Tundu Antipas Mughwayi Lissu and others*¹⁸⁸ lost the application.

In Sumbawanga urban constituency the former MP Hon. Aeshi Hilary lost his seat following a petition in *Norberty Yamsebo versus Aeshi Hilary and others*¹⁸⁹ to challenge irregularities that marred his election in 2010. Hon. Aeshi Hilary lost a case in the High Court, to the Court of Appeal and now has sought leave to appeal to the full bench of six judges of the Court of Appeal of Tanzania in order to exhaust local remedies. In Ubungu constituency Hon. John Mnyika emerged victorious in the petition against him. The case ended at the High Court of Tanzania which affirmatively endorsed him as a duly elected member of parliament for Ubungo Constituency.¹⁹⁰

185 Section 115 (5) of the *National Election Act, Cap 343 R.E* of 2010.

186 Misc. Civil Application No. 98 of 2010, In the High Court of Tanzania at Dar es Salaam registry (Unreported).

187 Misc. Civil Application No. 2 of 2010, In the High Court of Tanzania at Tabora District Registry, Kibondo (Unreported).

188 Misc. Cause No. 37 of 2010 in High Court of Tanzania at Dodoma Registry (Unreported).

189 Misc. Cause No. 1 of 2010 in the High Court of Tanzania at Sumbawanga (Unreported).

190 *Hawa Ng’humbi versus AG, John Mnyika and the Returning officer for Ubungo Parliamentary Constituency*, Misc. Civil Cause No. 107 of 2010 in the High Court of Tanzania at Dar es salaam.

The case that nullified the election of Hon. Godbless Lema from Arusha urban constituency set a new precedent at the Court of Appeal. The Court of Appeal of Tanzania allowed appeal lodged by the appellant Hon. Godbless Lema on the ground that the respondent in the appeal had no *locus standi*¹⁹¹ to sue. The first interested party to sue in any election petition is the candidate him/herself. Therefore, an election petition is not a public interest case whereby anyone in the constituency can challenge election results. Allowing so will open up a Pandora box for everyone to institute a case which is absurdity. A full bench of three judges at the Court of Appeal had this to say;

“Since an election petition is not a public interest litigation we do not read the section to have done away with the rule of locus standi. We think in our view, section 111(1) (a) of the Act gives rights to registered voter whose rights to vote have been interfered with or violated. In case violation affects the candidate it is for the candidate to challenge the election because his rights were violated. To give the section a broader interpretation that he has an absolute right to petition even where his rights were not interfered with is to defeat the well established principle of locus standi and indeed it does not sound well...”¹⁹²

The former MP for Igunga hon. Dalaly Peter Kafumu was elected in by-election that was conducted in 2011. In this election according to Tanzania Civil Societies Consortium on Election Observation (TACCEO) there were several irregularities and human rights abuses as provided for in the Tanzania Human Rights Report, 2011. His opponent one Joseph Mwandu Kashindye petition challenged the validity and outcome of the by-election on account of several malpractices and corruption.¹⁹³ In rendering the Judgement, Judge M.S Shangali had this to say;

191 In the *Attorney General versus the Malawi Congress Party and another*, Civil Appeal No. 22 of 1996, the Malawian Supreme Court of Appeal provided the test for Locus Standi. It said “*Locus standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action*”.

192 *Gobless Jonathan Lema versus Musa Hamis Mkanga, Agness Gidion Mollel and Happy Emmanuel Kivuyo*, Civil Appeal No.47 of 2012 in the Court of Appeal of Tanzania, at Arusha (Unreported).

193 *Joseph Mwandu Kashindye versus Dalaly Peter Kafumu, the Returning Officer Igunga Constituency and the Attorney General*, Misc. Civil Cause No. 10 of 2011 in the High Court of Tanzania at Nzega (Tabora Registry) page 2.

“I am equally satisfied that the proved non-compliances, malpractices, irregularities and misconducts adversely affected the results of the by-election. As I have shown above each proved issue is sufficient to render the whole by election void save for the third additional issue. However, the cumulative of malpractices and irregularities shown above make things worse on the part of the respondents because they sufficiently proved beyond doubt that the by-election was not free and fair”¹⁹⁴

Therefore, LHRC recommends that in the new Constitution, there should be a *provision* which allows for the second runner-up in the general election to be declared a Member of Parliament in case the seat is vacant. Challenging election petitions should be a constitutional right guaranteed and extended as far as to the presidential election.

3.4.3 Arumeru-East by-Election 2012

The Constitution of the United Republic of Tanzania calls for a by-election whenever a seat of an MP becomes vacant.¹⁹⁵ The Arumeru-East constituent became vacant early January, 2012 after the demise of the former MP Hon. Jeremiah Solomon Sumari. Therefore as the laws requires the vacant post had to be filled through a by-election. In this election eight political parties contested, however strong ties in the campaign were *Chama cha Mapinduzi* (CCM) and *Chama cha Demokrasia na Maendeleo* (CHADEMA).¹⁹⁶ According to TACCEO observation report only these two political parties were able to

¹⁹⁴ *Ibid* page 75.

¹⁹⁵ Article 71(1) of the Constitution of United Republic of Tanzania, 1977 provides that; “A Member of Parliament shall cease to be Member of Parliament and shall vacate his seat in the National Assembly upon the occurrence of any of the following matters: (a) where anything happens which, had he not been a Member of Parliament, would have disqualified him from election, or would make him lose the qualifications for election, or would disqualify him from election or appointment in accordance with the provisions of this Constitution; (b) where such Member of Parliament Act No.34 is elected President; (c) where a Member of Parliament fails to attend three consecutive meetings of the National Assembly without the permission of the Speaker; (d) where it is established that he has contravened the provisions of the law concerning the ethics of public leaders; (e) where a Member of Parliament ceases to be a member of the party to which he belonged when he was elected or appointed to be a Member of Parliament; (f) where a Member of Parliament is elected or appointed Vice-President; (g) in the case of a Member of Parliament who is required to submit a formal statement of property in accordance with the provisions of Article 70, if he fails to make such formal statement in accordance with the provisions of that Article within the period prescribed for that purpose by a law enacted by Parliament, but where a Member of Parliament does not cease to be a Member of Parliament on account of any of those matters mentioned and if he does not sooner resign or die, then he shall continue to hold office as Member of Parliament until the next general election.”

¹⁹⁶ Other Political parties participated in Arumeru-East by-election include the following; Tanzania Farmers Party (AFP); Democratic Party (DP); National Reconstruction Alliance (NRA); Sauti ya Umma (SAU); Tanzania Labour Party (TLP); and United People’s Democratic Party (UPDP).

campaign in almost 90% of the whole Constituency due to financial capacity.¹⁹⁷ Thus after a long battle for over a month campaigning, Hon. Joshua Nassari from CHADEMA was duly declared an elected Member of Parliament for the Arumeru-East Constituency.¹⁹⁸

During the whole process there were several violations of human rights. These include killings, use of abusive language, corruption practices, misuse of government resources, use of children in elections campaigns and denial of the right to vote since there was no updated Permanent Voters Registers for the by-election.¹⁹⁹

During the Arumeru-East by election in 2012, CHADEMA Chairperson at USA- River Ward Msafiri Mbwambo was brutally murdered. The suspected murderers were arrested but later on managed to escape in the hands of police. The death of Msafiri Mbwambo is direct linked by the election in Arumeru East because it happened hardly two weeks after the by-election.²⁰⁰ LHRC considers this as a serious violation of human rights as the right to life has been highly denied. In a multiparty democracy political tolerance is very important for political parties failure of which could cause bloodshed and pose threat to the country's peace. We therefore urge all political parties to execute their political activities in a peaceful manner by respecting the right to life of its citizens. Killings related with politics for 2012 occurred also in Singida whereby a CCM supporter was killed due to political chaos caused by CCM and CHADEMA supporters.

Use of abusive language by aspirants of both political parties was a common scenario despite different categories of people including children attending the sessions. *The Electoral Code of Conduct for the Presidential, Parliamentary and Councillor's Elections of 2010* prohibits leaders of political parties, candidates and their supporters to use abusive, defamatory, belittling, ridiculing, and threatening or any other language which can lead to the breaching of the peace in political campaigns.²⁰¹ According to TACCEO report the utterances made by Hon. Livingstone Lusinde (MP) was so disgusting that it abused not only opponents' followers but also women and children.²⁰² In its report, TACCEO translated what he said in a simpler language as the text herein provides;

197 TACCEO (2012) Report on the Arumeru-East Constituency by – election April, 2012 page 28.

198 Final results; AFP 135, UPDP 18, TLP 18, SAU 22, NRA 35, DP 77, CCM 26757 and CHADEMA 32972.

199 TACCEO (2012) Report, page 67

200 *Ibid* page 66.

201 Clause 2(2) (b).

202 TACCEO report page 31.

**Hon. Livingstone Lusinde, Assistant Campaign Manager for
Arumeru East By-Election**

“Spoken His Inner Reflection about CHADEMA”

Honorable chairman of our political wing, comrades and fellow members. I beg to differ with my colleagues over our party remaining silent as they bombard us with insults. We are not here for charity, kudadadeki, (a Kiswahili slang implying whatever happens no problem) should they insult us I will retaliate and in case there are some issues to sort out, I will speak out my mind, to hell with all that.

CCM hureee! Should I speak out or not? Check this out, there are some members of Parliament under CHADEMA that professor Maji Marefu has been pampering, slashing their bums with marks and they are now insulting you. Let me tell our colleagues who think they are experts in trading insults that mine is a wrong number, no wonder I have come here to tear them off. CHADEMA has been going about with some stupid issues which only degrade them. For instance they keep saying that a CCM aspirant has had his ears pierced saying he is gay. Does this imply that Dr. Slaa's father is also gay? I mean he has also pierced his ears, kudadadeki. CCM huree!

I need to tell you one thing dear brothers, let no one con you with the color as the taste of sugar is what makes the tea sweet. Half of CHADEMA members' fathers have had their ears pierced, should we then assume that they are gays? Should I tell you or should I not? -----tell theeem. The Arusha' legislator was recently in remandee prison and I don't real know what they did to him, and we real don't want to get into that. Should we lick them or not------(voice from the audience) lick theeem!

Dear brothers, I want to inform you that we are capable of trading insults make no mistake. We are aware that Lema was in prison and had a man (meaning a boyfriend) in there and we are aware of other men who have been married. We know them. Let me remind you that all we have to do is to dwell on serious elections issues but in case they chip in their foul issues, we will retaliate, kudadadekiiii.

Let me plead with you that none of us in this world is a saint. Dr Slaa has been going around gossiping about others while as he has failed to become a priest. The church sacked him out due to messing around with his female counterparts in the choir making them pregnant. Sioi hureee!-----

I know all of them and I can assure you if we keep smiling and pampering them, time will come when they will pock us in our eyes. We better settle scores. There is also another fool around there calling himself a campaign manager for Chadema. The fool trails from the Nyerere clan, his father's name is Buhito the guy used to pierce his ears also, was he gay? The fool has gone as far as laying insults on himself because he is dumb. Piercing ears is no homosexuality. The Maasai pierce their ears, so does the Wagogo, Wameru too used to do so, let alone the Wakurya and Wakamba. CCM huree--- The guy knows no history and comes here (squeezes his nose before he makes some funny noise ng'wee ng'wee ng'weeee, we also know that they are people who have feasted on him (implying they have sodomized him) but we have not said anything about it.

Let those who love CCM lift up their hands,

(A lady's voice is heard in the back, they are finished)

Let me tell you with your stupid propaganda going around. There are people who have been pulling out some childish numbers going around saying never vote for Sioi because he is not a Tanzanian citizen but rather a Kenyan as he was born there. Whose citizenship does a person born in a plane hold unto? Quit that crap. There is a fine line between one's birth and citizenship. When a woman goes through labor she can never wait but to deliver wherever she can. There are those who were born inside the bus yet we don't call them citizens of that particular bus. You Bushmen! You seem to be taking that as a point to go talking about. There are also those going around saying don't vote for Sioi because his father was a member of parliament when will his father return? When will he?

Let me tell you one thing, fortunately I know where they are. When I strike, will do so wherever they are, kudadeeeeki...

CCM huree!

Dear comrades, let no one deceive you. In our country, there is nothing new over a son trailing behind his father's profession. We have militia officers whose kids are in the force as well, true or not? -----(trueee.) We also have drivers whose offsprings are children as well true of false? ----- (trueeee). There are also some touts whose children are also toots true or not----- (true). Then what is new for Sioi? Clap your hands for him.

Should I ask you or shouldn't I? Ask us! What if the late legislator was to be a doctor with his son in the same profession would CHADEMA

refuse to take the medications (a mockery voice from the backwards goes)..... They wouldn't dare) bushmen!

CCM hureee... Should I lick them or not..... lick them!

We want to tell them that Chama cha Mapinduzi is the only party with real commanders and not fake ones as is their case. , the CCM Chaiperson Jakaya Kikwete himself was once a military officer by profession true or not...Trueee. Captain Komba used to be an army man true or not----- trueee! Yet those bushmen clad into military combats attire while they have not even gone through auxiliary police. CCM hureee!

Speaking of bushmen there is no one like Dr. Slaa, he clads into such a huge combat attire making him look as if he has pooped on himself while walking.(the crowd cheers at him).....**continues**

The inter-party nomination process in Arumeru-East by-election was also marred by corruption practices. There were some serious corruption allegations that made some of the the Prevention and Combating of Corruption Bureau to summon some of the CCM cadres and as a result, previous nomination was nullified and necessitated re-nomination where Siyoi Sumari was nominated to vie for the Parliament post through CCM. Prior to that there had been a stiff competition between Mr. Siyoi Sumari and Mr. William Sarakikya, whereby in the process one aspirant Mr. Elipokea Urrio had to quit the race as he could not withstand the amount of money that were spent by some of the aspirants in the party.²⁰³

LHRC encourages all political aspirants to believe in democracy and people's demand. Corrupt elected leader will always be corrupt to regain back what they spent in the process. Furthermore, party supporters in political parties should bar corrupt aspirants from running for leadership posts. The late Mwl. Julius Nyerere called upon the public to beware of aspirants who use money to buy their way to the State House as they would be to a leprosy patient.²⁰⁴ Thus a candidate who is used to bribe in order to be nominated should equally be feared than Ebola today as it has no cure.

The use of government resources during the Arumeru East campaign continued as it was in the 2011 Igunga by-election. Ministers who were present in the campaign used government vehicles and their powers as senior officials for the government promising to resolve land and water supplies which were burning issues in Arumeru East. For example on land, the deputy minister for lands and housing hon. Ole Medeye was quoted saying;

203 TACCEO report page 25.

204 Nyerere Speech in 1995 May Day held at Sokoine Stadium, Mbeya.

*“Masuala ya umiliki wa ardhi yanasimamiwa na sheria za nchi, kwa hiyo wawekezaji hawa wanaotajwa, wanamiliki maeneo yao kwa mujibu wa sheria. Sasa kama kuna maeneo hayajaendelezwa basi hilo ni suala la kuona jinsi ya kuchukua hatua Ole Medeye at Sing’isi village”.*²⁰⁵

Land ownership issues are governed by the laws of the country and as such investors mentioned here own the land in accordance with the laws of the country. There is then the need to take some measures in case there are areas that are yet to be developed.

Such statements uttered by the deputy minister responsible for land matters during the campaign makes it difficult to clearly differentiate on whether it is a political promise or an activity falling under his ministry. Words of Hon. *Madam Shangali, J. in Joseph Mwandu Kashindye versus Dalaly Peter Kafumu and others*²⁰⁶ are of importance at this point as quoted;

“...I further hold that such conducts affected the attainment of a free and fair election results because it violated section 108(2)(b) of the National Election Act and paragraph 3.3(b)(i)(ii) of the Electoral Code of Conduct 2010. Such conducts amount to misuse of ministerial powers and Government development projects to the detriment of other contesting Political Parties.....That indeed affected the election results”

Lastly there was abuse of the process of the right to take part in governance during the by-election in Arumeru-East Constituent. This can be looked at two sides; one is involvement of school children who are below eighteen years of age in campaign rallies and second denial of the right to vote for adult persons due to irregularities in the Permanent National Voters Registration.

Children were attracted to attend and listen what was going on during meetings of all political parties. In some of the meetings school children were seen with uniforms and none of the political parties dared to ask on why they were there while they should have been in classes let alone order them out. LHRC considers this as denial of the right of the child as in meetings abusive language by unethical politicians was used. Ethically and morally these children as leaders of tomorrow were affected.

Irregularities in Permanent National Voters Registration (PNVR) were also another barrier towards the right to take part in governance in the Arumeru East by-election. The PNVR was not updated prior to the April, 2012 by

205 <http://www.netmedia.co.tz/waziri-amkana-mkapa-arumeru/> visited on 12th November, 2012.

206 *Joseph Mwandu Kashindye versus Dalaly Peter Kafumu, the Returning Officer Igunga Constituency and the Attorney General*, Misc. Civil Cause No. 10 of 2011 in the High Court of Tanzania at Nzega (Tabora Registry) page 27.

election, voters lost their cards. There was also some malpractice by political parties whereby voters' cards were bought and in some of the polling stations voters cards numbers did not tally with the list of the names presented. For instance, Mr. Elia Ernest Shami had in his possession a voter's card with number 45381184 while as the one which appeared in the voters' registry was 45381183.²⁰⁷

3.4.4 EAC Legislative Assembly Election

The East African Community legislative assembly election in Tanzania was conducted in 2012. *The East African Community Treaty, 1999* gives mandate to the National Assembly of each partner state to elect nine members of EAC legislative Assembly but not among themselves. The nine members elected are highly encouraged to observe representation of political parties, gender, and other special groups of interest in the partner states.²⁰⁸ The qualification for one to be elected as member of EAC legislative assembly are enumerated under Article 50(2), that; *"A person shall be qualified to be elected as a member of the Assembly by the National Assembly of a Partner state in accordance with paragraph 1 of this Article if such a person: (a) is a citizen of that Partner State (b) is qualified to be elected as Member of Parliament in that particular Partner State, (c) is not holding an office as Minister in that Partner State, (d) is not an officer in the service of community in that Partner State (e) has proven experience or interest in consolidating and furthering the aims and the objectives of the community"*

Therefore, the laws governing elections of Members of Parliament in Tanzania apply mutatis mutandis with as the EAC treaty recognises similar qualifications in each Partner State. In this regard party nomination for the case of Tanzania is mandatory.²⁰⁹ The following were elected members of EAC legislative Assembly for Tanzania; Hon. Charles Makongoro Nyerere, Hon. Bernard Musomi Murunya, Hon. Shy-Rose Sadrudin Bhanji, Hon. Angela Charles Kizigha, Hon. Maryam Ussi Yahya, Hon. Abdullah Ali Hassan Mwinyi, Hon. Adam Omar Kimbisa (all from CCM), Hon. Twaha Issa Taslima (CUF) and Hon. Nderakindo Kessy (NCCR-Mageuzi).

LHRC pays homage to the government for at least the 50-50 representation based on gender has been attained despite some challenges experienced during the elections in Dodoma. It was surprisingly to citizens whereas some aspirants failed to express themselves fluently in English during the campaign. Nevertheless the case may have not been fatal for that case but seriously others were not well conversant with the East African Community itself. Moreover, LHRC would like to see Kiswahili language become an official language of the East Africa Legislative Assembly to promote it at the region level.

207 TACCEO report page 39.

208 Article 50 of the East African Community Treaty, 1999.

209 Article 67 of the Constitution of United Republic of Tanzania provides for qualifications for Members of Parliament.

3.5 Other Aspects Affecting Political Rights

3.5.1 Constitutional Review Process

The initiatives for Constitution Review process made a significant progress in 2012 as activities of the Constitutional Review Commission (CRC) commenced officially. The CRC which is headed by Hon. Judge Joseph Sinde Warioba and assisted by former Chief Justice Augustino Ramadhan has 30 members.²¹⁰ Members are drawn from various professionals and cadres on equal representation between Zanzibar and Tanzania Mainland.²¹¹ The CRC commenced its ground work to collect public views on 1st July, 2012. It went to five selected wards in each district. However, due to geographical location five wards is still a very minimal number for sampling as on average a small district ought to have a minimum number of 20 wards. Therefore, the sample size of five wards remains to be small.



Ordinary citizens submitting their views to CRC members

The Constitution review process faces several challenges including the following:

- (a) Legal framework does not favour freely for civil societies and other bodies to provide raising awareness campaign.²¹² The *Constitutional Review Act, 2011* makes it an offence for anyone who conducts raising

210 Other members of the CRC include the following; Dr. Sengondo Mvungi, Prof. Palamagamba Kabudi, Mr. Humphrey Polepole, Prof. Mwesiga Baregu, Mr. Joseph Butiku, Mr. Richard Shadrack Lyimo, Mr. John J. Nkolo, Ahaj Said El-Maamry, Jesca Sydney Mkuchu, Mr. Yahya Msulwa, Esther P. Mkwizu, Maria Malingumu Kashonda, Hon. Al-Shaymaa Kwegyir and Mwantumu Jasmine Malale from Tanzania mainland. The following are members of the Commission from Zanzibar; Dr. Salim Ahmed Salim, Fatma Said Ally, Omar Sheha Musa, Raya Suleman Hamad, Awadh Ally Said, Ussi Khamis Haji, Salma Maoulidi, Nassor Khamis Mohammed, Simai Mohamed Said, Muhamed Yussuph Mshamba, Kibibi Mwinyi Hassan, Suleman Omar Ali, Salama Kombo Ahmad, Aboubakary Mohamed Ali and Ally Abdulah Ally Salehe. The Secretariat is headed by Assaa Ahmad Rashid as secretary and Casmir Sumba Kyuki assistant secretary.

211 The Commission is established under Section 5 of *the Constitutional Review Act, 2011* whereby, the president of United Republic of Tanzania in consultation with the President of Zanzibar is vested with powers to appoint the members of the Commission.

212 Jukwaa la Katiba, "*Uharakishwaji wa Mchakato wa Katiba unaanza kuleta fujo na Kuathiri ushiriki wa wananchi katika uundwaji wa Katiba Mpya*" Press Release; 21st December, 2012 page 5.

awareness campaign contrary to the Act. The Act provides mandate to the CRC only and not otherwise therefore this provision contravenes *Article 18 of the Constitution of the United Republic of Tanzania*. As it has been argued prior that, in a district only five wards are selected for the CRC to collect opinions. Allowing other institutions and individuals to collect views or opinion and submit the same to the CRC would have increased the coverage scope;²¹³

- (b) The process is disrupted by local authorities in some of the districts. For instance in Meatu district the Meatu Non-Governmental Organization Network (MENGONET) was denied the right to conduct a public raising awareness campaign by the District Commissioner. The DC instructed MENGONET to discuss other issues but not the constitution review process. In another incident the Monduli District Commissioner as well barred PINGOs Forum to conduct awareness campaign to rural areas;²¹⁴
- (c) In the first round when CRC commenced its activities, its members were advancing leading questions and sometimes intimidating citizens as were providing their views. For instance in one of the meeting LHRC attended in Kisarawe a certain woman was threatened while speaking with regular intervention from the CRC team;
- (d) The CRC denies rights of persons with disabilities as the team members do not have experts who understand sign language and the use of brailles. The LHRC considers it to be denial of rights of persons with disabilities especially in rural areas. Other groups that have been forgotten include prisoners and remandees. The CRC has not collected views in prisons therefore as citizens are denied their rights to participate in public affairs.

Therefore; LHRC suggests that; as the process continues there should be serious Monitoring and Evaluation (M&E) mechanism. The M&E will be useful to assess whether by 2014 the New Constitution will be in place or not. LHRC urges that 2015 general should not be a guide for politicians to rush the process. It proposes that in order to allow for free and fair election there should be some amendment to electoral provisions in the current Constitution of United Republic of Tanzania, 1977 in case the new one will not be in place by 2014. Thereafter, the processes to put in place a better Constitution useful for the coming generation should proceed.

213 Section 21(2)(c)

214 *Ibid.*

3.5.2 Tanzania – Malawi Border Crisis

In 2012 a border conflict between Tanzania and Malawi rose and took a new turn. The tension between the two countries was so high that the two governments had to convene a dialogue. The session meant to enhance a diplomatic way of conflict resolution over the border dispute. The border dispute between Tanzania and Malawi has a long history which dates all way back to the colonial era. In the early 1960's the issue over Lake Nyasa was highly debated so much that it created tension between the former heads of states the late Mwl. Julius Nyerere and Dr. Hasting Kamuzu Banda.

Historically after Malawi had no good diplomatic relation with neighboring countries of Zambia and Tanzania after it had attained her independence on 6th July, 1964. Issues which hindered good diplomatic relation between Tanzania and Malawi were; firstly Malawi was the only country that recognized minority white-regime in South Africa during apartheid policy, secondly, president Banda suspected that Tanzania was aiding attempts by certain prominent Malawians in exiles to topple his regime²¹⁵ and thirdly the dispute over the boundary between the two states along Lake Nyasa.²¹⁶

The colonial legacy in Africa over boundaries demarcation negatively affects the present unresolved dispute over the two countries. The basis of Malawians over Lake Nyasa centers on the *Anglo-German Treaty of 1890* especially Article II.²¹⁷ The colonial administration did not consider historical background and origin of citizens along shores of Lake Nyasa. For instance the foreign minister for Tanzania, Hon. Bernard paid a courtesy visit in Kyela, and during a meeting with elders one of them had this to say in historical perspective;

215 In September 1964 Dr. Banda dismissed three of his cabinet colleagues, and three others resigned in sympathy. Following this crisis the dismissed ministers, and a number of their supporters, crossed as political refugees into Tanzania and Zambia.

216 James Mayall, "The Malawi-Tanzania Boundary Dispute" in the *Journal of Modern African Studies*, Vol 11 No. 4 of 1973 pages 611-628.

217 *To the south by the line that starts on the coast of the northern border of Mozambique Province and follows the course of the Rovuma River to the point where the Masinge flows into the Rovuma. From here the line runs westward on the parallel of latitude to the shore of Lake Nyasa. Turning north, it continues along the eastern, northern, and western shores of the lake until it reaches the northern bank of the mouth of the Songwe River. It then continues up that river to its intersection point with the 33rd degree of east longitude. The line continues along the river until its closest point with the border of the geographical Congo Basin as described in Article I of the Berlin Conference and marked on the map appended to its ninth protocol. From here the line runs directly to the previously described border; follows this to the point of intersection with the 32nd degree of east longitude, turns and continues directly to the meeting point of the northern and southern branches of the Kilambo River. It follows that river until it enters Lake Tanganyika.*

“We the Nyakyusa were not lowlands people but highland dwellers. This place where we now stand was formerly settled by the Konde people. In 1840, there was war between the Nyakyusa and the Konde in which the Konde were defeated and sent across the lake to Malawi where they still live to date. But we are basically the same people and claims that we on this side have no right to the lake because of an 1890 Treaty between the Germans and the British are extremely alien to us.”²¹⁸

While a Prime Minister on 30th November, 1961, Mwalim Julius Nyerere set out policies which Tanganyika would adopt, once independent; towards international treaties concluded by Britain in her capacity first as mandatory power, and then as a trustee, during the colonial period. The central point of this statement was the announcement of a two-year time-limit during which Tanganyika would continue to honour bilateral treaties, ‘unless abrogated or modified by mutual consent’. The new policy was communicated to the Secretary-General of the United Nations in a letter, the relevant paragraph of which reads as follows:²¹⁹

“As regards bilateral treaties validly concluded by the United Kingdom on behalf of the territory of Tanganyika, or validly applied or extended by the former to the territory of the latter, the Government of Tanganyika is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of 2 years from the date of independence [i.e. until 8 December 1963] unless abrogated or modified by mutual consent. At the expiry of that period, the Government of Tanganyika will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.”

LHRC has a strong conviction that, the Pan-Africanism theory is very fundamental as a dialogue over the dispute continues. From the African perspective, citizens of both sides of the countries are relatives. Borders demarcation in Africa is a product of imperialism in European countries as an aftermath of the Berlin Conference. Thus, there is a need for countries to end this crisis on diplomatic ways by adhering to international treaties and bodies. LHRC regards it as a disgrace for people along the shores of Lake Nyasa in Tanzania to be barred from using the water of the lake simply because the Malawian government claims 100% ownership of the same

218 <http://allafrica.com/stories/201212310021.html> visited on 19th December, 2012.

219 E. E. Seaton and S. T. M. Maliti, ‘Treaties and Succession of States and Governments in Tanzania’, African Conference on International Law and African Problems, Lagos, March 1967, pages 76-98.

Chapter Four

Social Rights

4.0 Social Rights

Social rights can be defined as social operation that every fundamental right has the potential to develop and that “is expressed through claims of state-provisions.”²²⁰ Social rights often seem to require social provision and governments have a role to play on this by taking positive steps to assure that rights to shelter, food, education, health and work are privileged.²²¹ Many legal frameworks both at national and international levels are well positioned to protect civil rights but ill-suited to enforce social rights. This implies that, courts cannot formulate effective mechanisms that ensure social rights are provided to citizens. For instance, several international human rights documents, typically declare that;

“Social rights are to be provided to the degree compatible with the state of economic development of each Society; no such qualifications attach to the description of civil rights.”²²²

However, at international level social rights are well articulated in *The International Covenant on Economic, Social and Cultural Rights, (ICESCR) of 1966*. This instrument obligates states to among other things guarantee several fundamental social rights such as the right to education, right to clean and safe water and right to health. Tanzania is a signatory to several international instruments including ICESCR yet the *Constitution of United Republic of Tanzania of 1997* is silent on the enforceability of these rights such as the right to education and the right to health. The fundamental principle of social rights is concept of equal access to such rights such as water, health and education. For the cause of assessing the situation and legal frameworks of social rights in Tanzania, this report revisits the legal framework for provision of social services in Tanzania and the level implementation from the ground.

220 <http://www.enelsyn.gr/papers/w13/Paper%20by%20Vasileios%20G.%20Tzemos.pdf> Accessed on 7th November 2012.

221 See Tushnet Mark (1992) *Civil Rights and Social Rights: The Future of the Reconstruction Amendments*, page 6 at <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1735&context=llr> See also David M. Trubek (2004) *Economic, Social, and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs*, in *Human Rights in International Law: Legal and Policy Issues* 205, 205-33.

222 Johan D. (1991) *Constitutional Options for Post-Apartheid South Africa* at <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1735&context=llr> visited 23rd November, 2012.

Major fundamental rights assessed in 2012 include the right to health, the right to education and the right to clean and safe water.

4.1 The Right to Health

The right to life is a matter of daily importance for the entire lifetime of a human being.

Health is considered to be the most basic and essential asset to all people²²³ regardless of age, gender, socio-economic or ethnic background.

“Ill health, on the other hand, can keep us from going to school or to work, from attending to our family responsibilities or from participating fully in the activities of our community.”²²⁴

The right to health was recognized as a human right in the 1966 *International Covenant on Economic, Social and Cultural Rights*. The Committee on Economic, Social and Cultural Rights provides that the right to health includes a wide range of factors and health determinant such as Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental conditions; Health-related education and information; Gender equality, access to health facilities and health care.²²⁵ Therefore the right to health refers to;²²⁶

“The enjoyment of a variety of goods, facilities, services and conditions necessary for its realization. This is why it is more accurate to describe it as the right to the *highest attainable standard of* physical and mental health, rather than an unconditional right to be healthy”.

The right to health is a human right because without it or violating it may often impair the enjoyment of other human rights, such as the rights to life, education and the right to work. Thus the right to the highest attainable standard of health is a human right recognized in international human rights law.²²⁷ Other

223 The preamble of the Constitution of WHO of 1946.

224 Right to Health Report Fact Sheet No 1 by the Office of the United Nations High Commissioner for Human Rights at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> Accessed on 7th November 2012.

225 The ICESCR Committee adopted by the United Nations General Assembly in 16 December 1966.

226 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> Accessed on 7th November 2012.

227 Art. 12 (1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness

international and regional instruments addressing the rights to health include *Universal Declaration of Human Rights of 1948*, *The 1965 International Convention on the Elimination of All Forms of Racial Discrimination*.²²⁸ *The 1979 Convention on the Elimination of All Forms of Discrimination against Women*,²²⁹ *The 1989 Convention on the Rights of the Child*.²³⁰ *The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*²³¹ *The 2006 Convention on the Rights of Persons with Disabilities*.²³²

Despite the fact that Tanzania is signatory to all these instruments the *Constitution of the United Republic of Tanzania, 1977* does not guarantee the right to health in its Bill of Rights. Comparatively, the *Constitution of South Africa (1996) is some how far better*.²³³ because it specifically addresses the right to health care, food, water and social security as follows;

“(1) Everyone has the right to have access to health-care services, including reproductive health care; sufficient food and water; [...] (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. (3) No one may be refused emergency medical treatment.”

However, Tanzania has a defined legal framework that addresses the right to health, a *National Health Policy, 2007 and the Public Health Act, 2009*. The Policy encourages the State to improve the health and well-being of all Tanzanians with a focus on those most at risk. For better implementation of this policy and law Tanzania has several programs tailored to improve the health of its citizens. These are the Health Sector Development Program (HSDP, 2007-2012), The Health Sector Reform-HR, National AIDS Control Program, National Malaria Control Program, the National Multi-Sector Response to HIV and AIDS Pandemic, Council Health Services Board (CHSBs) and the National Tuberculosis and Leprosy Programme; others are Health Sector Plan of 2009 and other programs in the Ministry of Health and Social Welfare.

In recent years the country has continued to perform poorly in provision of essential social services such as the right to health because of several factors such as unresolved and endless conflict between government and medical doctors as well as misuse of resources. As a result, the Health Sector in Tanzania continues to suffocate without any recognized effort to make it better.

228 Art. 5 (e) (iv).

229 : Arts. 11 (1) (f), 12 and 14 (2) (b).

230 Art 24.

231 Arts. 28, 43 (e) and 45.

232 Art 25.

233 Chapter II, Section 27.

The health sector suffers from insufficient mechanisms and methods for care and rehabilitative treatment services at all levels; shortage of drugs; the use of counterfeited drugs; inadequate health facilities at all levels; inadequate housing as well as low incentives for public health workers. The LHRC uses several indicators in assessing the mechanisms taken by the government to meet international accepted standards. Such indicators are grouped into the structural, process and outcome indicators.

4.1.1 Accessibility to Health Facility

Both international and regional health frameworks and standards require states to ensure that all people regardless of their sex, age or economic status access the right to health. The LHRC's 2012 human rights survey assessed the level in which the right to access health sector have been attained by looking at availability of health facilities; availability of essential drugs; available human resource in the health sector; the supply of essential equipments; resource allocation and health sector management against policy requirement and international standards.

(i) Available Health Facilities vs Policy Requirement

Health facilities include hospitals, health centres, medical stores, medical shops and dispensaries. The Tanzania National Health Policy requires every district to have at least one medical hospital, every ward to have one health centre and each village to have one dispensary. The policy requirement was extended to a requirement of referral hospital at regional level and zone referral hospitals.

The LHRC's 2012 human rights survey indicates that millions of people in rural areas do not access health facilities due to unimaginable shortage of health facilities in rural set up. According to the implementations of MMAM programs Tanzania slightly managed to have at least half of the required health facilities as described in the table below.²³⁴

Table 7: Healthy Facilities in Tanzania

Facility	YEAR 2011/2012		
	Privately Owned	Government	Total
Dispensary	1358	4,322	5,680
Health Centers	244	498	742
Hospitals	129	112	241
Zonal Referrals Hosp	3	3	6
Total	1731	4932	6,669

Source: Compiled From MOHSW

234 Kiambatisho C.7 Page 284.

Statistics above indicate that Tanzania has a total of 6,669 health facilities between 2011 and 2012. This figure is very low compared to country population and available villages, wards, districts and regions. For instance, at the dispensary level the country requires more than 16000 dispensaries. This is because currently, Tanzania has more than 16000 villages and the policy requires each village to have at least one dispensary.

The LHRC's findings from Mwanza region reflect that regional health facility requirement is 3,728; surprisingly the available total number of health facilities in the region is only 262. This reflects that the region has the deficit of 3,466 health facilities equally to 93% deficit. This is a shocking statistic that reflects how the majority of the people in the country fail to access health facilities due to this shortage of health facilities.

Table 8: Healthy Facilities in Mwanza

Description	Requirement	Available	Deficit
Referral Regional Hospital	1	1	0
District Hospitals	7	5	2
Health Centres	167	28	139
Dispensaries	3553	228	3325
Total	3,728	262	3,466

Besides, the LHRC's findings indicate that the few available health facilities are owned by religious institution. For instance, in Arusha almost 90% of the available medical hospitals in Arusha belong to religious institutions. The table below illustrates the availability and providers of medical hospitals in the region;

Table 9: Availability of Hospitals in Arusha

District Council	District Hospitals Providers			
	Government	Religious institution	Public institutions	Total
Arusha Municipal	1	3	1	5
Arusha	0	1	0	1
Karatu	0	1	0	1
Monduli	1	0	0	1
Meru	1	1	0	2
Longido	0	0	0	0
Ngorongoro	0	2	0	2
Total				12

The table above shows that only 2 out of 12 hospitals in Arusha belong to the government. This is to say 4 districts as shown above depend on religious hospitals to meet their medical requirements while Longido District does not even have a religiously owned medical hospital. This was insisted by the Minister of Health and Social Welfare during the 2012 budget sessions in the parliament.

“Hospitali 10 za mashirika yasiyo ya Kiserikali, zilizopandishwa hadhi na kuwa Hospitali za Rufaa ngazi ya Mkoa zilianza kupatiwa dawa. Aidha, Halmashauri ya Wilaya ya Hai, Manispaa ya Shinyanga na Jiji la Arusha ziliingia makubaliano na wamiliki wa Hospitali ya Machame (Hai), Hospitali ya Kolandoto (Manispaa ya Shinyanga) na Hospitali ya St. Elizabeth (Jiji la Arusha) ili hospitali hizo zitoe huduma kwa niaba ya Halmashauri husika.”²³⁵

“Ten non-governmental organizations’ hospitals have been upgraded to the level of regional referral hospitals and have now been availed with medications. Meanwhile, Hai, Shinyanga Municipal Councils and Arusha City Council signed a memorandum of understanding with owners of Machame, (Hai), Kolandoto (Shinyanga Municipality) and St. Elizabeth Hospitals respectively so that they may provide health services to the respective municipalities”

Majority of people in Tanzania especially those living in remote areas are forced to walk between 50-100 kilometres to access health services. This is contrary to ICESR health Committee requirement which obligates States to ensure its citizens access health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups.



Women and children attending clinic outside the hospital

235 Hotuba ya Waziri wa Afya na Ustawi wa Jamii Mhe. Dkt. Hussein Ali Mwinyi (Mb.) Kuhusu Utekelezaji wa Bajeti ya Mwaka 2011/12 na Makadirio ya Mapato na Matumizi ya Fedha, kwa Mwaka 2012/13, Page 58.

(ii) Available Health Staff versus Staffing Level

Inadequate of health staff in Tanzania is another major blow towards the provision of health services in Tanzania. According to the policy staffing level requirement, every health facility must have all qualified medical personnel for service provision. For instance, the policy requires district medical hospitals to have at least one medical doctor in charge and other five specialists. However, the situation from the ground is quite different. In Mwanza for instance for better provision of health services the region requires a total of 10,964 professional health staff and non professional, however as of 2012 the region has a total of 3,964 professional and non professional. In general Tanzania has a deficit of about 70% labour force in the health sector. For instance, Kwimba District has 60% deficit of health staff as alluded by the Kwimba District Health Secretary:

“Idara ya Afya ina Jumla ya watumishi 318 wanaotoa huduma za Afya katika vituo vya Huduma za Tiba Wilayani. Mahitaji halisi ya watumishi ni watumishi 807, hivyo kwa hivi sasa Wilaya ina upungufu wa watumishi 489 ambao ni 60%.

“The health department has 318 staff at the district health centers. The actual demand for staff is 807, and as such currently, the district has a shortage of 489 staff accounting for 60%.

According to health staff officers in visited regions, shortage of trained health personnel in most of the health facilities, lead to an increased workload as well as claims for extra duties allowance. Human resources status is not yet well improved as there is still shortage of trained staffs in many parts of the country. The Critical shortages of trained health staffs is mainly observed in health centers and in dispensaries as most of these facilities are served by medical attendants only. For instance, other regions like Mara have shortage of medical practitioners of all cadres at an average of 50%. Mara requires a total number of 926 health workers to meet policy requirement but regional statistics show that the region has a total number of 535 medical staff.

The shortage of health workers in Mara is very acute at the center and dispensary level. The real situation from the ground shows that 80% of health centers in the respective region have only clinical officers and medical attendants. For instance in Tarime all health centers lack Assistant Medical officers (AMO), and instead clinical officers and medical attendants are therefore forced to be in charge of health centers. This is contrary to the policy requirement which requires every health center to be managed by the AMO.

Despite the country gradually trying to increase the number of graduates from medical schools and colleges, the health sector still faces an acute shortage of labour force. The country has managed to increase 3744 to 5173 graduates

from 2008 to 2011. This was said by the Minister of Health and Social Welfare during the 2012 budget sessions in the parliament.²³⁶

“Mahitaji ya watumishi kama yalivyoainishwa katika MMAM. Katika kipindi cha 2008 hadi 2011, idadi ya wahitimu imeongezeka kutoka wahitimu 3,744 hadi 5,173, kwa ngazi mbalimbali za afya zikiwemo cheti, stahhada na shahada, ongezeko ambalo ni sawa na asilimia 27.6.”

“Demand of servants as outlined by primary health care program-MMAM. The number of graduates has gone up from 3,744 to 5,173 at different health level including certificate, diploma as well as a degree. This increment is equivalent to 27.6 percent.”

The medical doctors’ shortage in the country was triggered when the government deregistered 373 out of 732 available intern medical doctors who were on strike. Tanzania Lost 9.3 Billion used to produce 373 medical doctors who were unreasonably discontinued from practising. This is because in Sub Saharan Countries it may take up to 30 million shillings to train a full qualified medical doctor or a specialist.

(iii) Politics Around Medical Doctors’ Strike

The medical doctors’ community has ever since 2011 presented a list of demands to the Ministry of Health and Social Welfare. Their claims included an increase of their basic salary, various allowances; and improvement of the health service provision in the country. This was also noted by SIKIKA that, medical doctors claims were based on two main issues; firstly, the working conditions of the doctors including infrastructure, drug availability, essential equipments and other medical supplies; secondly, underpayment in terms of salaries and allowances.²³⁷

The above claims were the true demands by the medical doctors. However, the Government reported to the public for the sake of winning public sympathy that the medical doctor’s demands are centered only on huge salaries and allowances. Consequently, the government and medical doctors failed to reach common consensus. Medical doctors therefore resolved to strike on 9th February, 2012 and all health services with exception to essential services in public hospitals were halted. The doctor’s strike was prompted up when the Chairperson of the Medical Doctors Association, Dr. Steven Ulimboka was attacked and tortured in a barbaric incident closely linked with the medical

236 Hotuba ya Waziri wa Afya na Ustawi wa Jamii Mhe. Dkt. Hussein Ali Mwinyi (Mb.) Kuhusu Utekelezaji wa Bajeti ya Mwaka 2011/12 Na Makadirio ya Mapato na Matumizi ya Fedha, kwa Mwaka 2012/13, page 12.

237 SIKIKA (2012) Moral and Ethical Dilemma during Medical Doctors’ Strike in Tanzania in 2012. Brief No. 2/2012, page 5.

doctor's strike.²³⁸

The LHRC's 2012 surveys conducted in 8 regions proved that doctors' requests are genuine and logical. This is because the provision of health services is astonishingly below standards. The State has no reason to shun away from this reality because the government of Tanzania is entrusted with the duty of providing social services to its people. It is the government which has the direct contract with the citizens (Political Contract) for provision of health services and not medical doctors. The government is contractually obliged to put in place sound mechanisms for service delivery; this could include providing sound salaries and allowances to medical doctors (Service contract) for them to offer better service to citizens who have a political contract with the government and as such, improve the condition of health services in Tanzania.

Therefore, the missing point between the government and medical doctors was over the one who had direct service responsibility with the Citizens. According to SIKIKA's analysis, medical doctors have no direct contractual responsibility of service delivery with citizens but rather medical doctors work on behalf of the government with only moral and ethical obligations with patients.²³⁹ The larger community in Tanzania are ignorant of the service delivery systems work in Tanzania, hence majority of them blame medical doctors when things do not work properly in the health sector. To avoid these loopholes that have been used by the State to contradict the public, medical doctors have to invest on public awareness campaigns before embarking in any strike.

The government of Tanzania is hereby advised to stop politicking doctors' claim but instead should take immediate steps to contain the situation. The Government can still work on medical doctor's claims through equal distribution and utilization of available resources for public servants' salary to improve health services as a whole.

(iv) The Impact of Medical Doctors' Strike

The findings by LHRC reveals that most affected hospitals by the medical doctors strike were the major government hospitals in Dar es Salaam, Muhimbili National Hospital (MNH), Muhimbili Othopodoeic Hospital (MOI) some regional hospitals and all zonal referral hospitals in Tanzania such as Mbeya, Bugando, KCMC and Mombo. The said hospitals were affected

²³⁸ The following is the list of the medical doctors demands Risk allowance equivalent to 30% of the basic salary; On-call allowance equivalent to 10% of the basic salary; currently, the on-call allowance amounts to Tsh 10,000 per day. However, the standing orders require paying half of a per-diem rate; Housing allowance equivalent to 30% of the basic salary; The standing orders entitle government officers to be provided with houses. Doctors demand to be paid a housing allowance whenever such houses are not provided; Hardship allowance equivalent to 40% of the basic salary; Transport allowance equivalent to 10% of the basic salary or the offer of vehicle loans.

²³⁹ SIKIKA (2012), *Op cit.*

because the majority of the intern doctors who played key role during the strike were working in those hospitals. The problem was very acute and thousands of people were affected because intern doctors communicate directly with patients and they have a bigger role to play with patients than specialists or senior doctors.

The strike accelerated the problem of inaccessibility of health facilities in Tanzania. The majority of the people failed to access health services from regional and all the referral hospitals in Tanzania. In addition to that, the shortage of health professional personnel was also triggered up to almost 80% from 68%. The LHRC's general observations indicate that about 404, 613 people in the country were affected by the medical doctor's strike. The table below shows the number of people who were affected by the doctors' strike between January and July 2012.²⁴⁰

Table 10: Estimated Number of People Affected by Doctors' Strike

Hospital	Number of Patients Attended	Attended and treated	Attended but not treated
	Between July 2011 and July 2012	July – December 2011	January-July 2012
Muhimbili	205730	1028665	1028665
Bugando	147,091	735455	735455
KCMC	18, 6189	93094	93094
Mbeya	267,285	133642	133642
MOI	60,422	32211	32211
Total	68, 0528	40, 4613	404,613

Source: SIKIKA's Survey, 2012

The table above shows that between July 2011 and July 2012 a total of 68, 0528 patients attended medical treatment. However, almost half of those who attended referral hospitals were affected by the medical doctors' strike, simply because they attended medical hospital at the time when the strike was at peak (January –July 2012). As a result some, especially those with the financial muscles opted for private hospitals inside and outside the country. For instance, statistics from the Ministry of Health and Social Welfare indicate that between 2011 and 2012 the ministry transferred outside the country 502 patients for better treatment outside the country.²⁴¹ The majorities of the poor remained at home waiting for the nature to take its cause.

240 Hotuba ya Waziri wa Afya (2012) Op cit., pages 48-52.

241 Hotuba ya Waziri wa Afya (2012) Op cit., page 62.

(v) Supply of Prescribed Drugs, Medical Equipment and Supplies

Provision of health services is incomplete without supply of essential medical supplies and prescribed drugs. The LHRC's 2012 human rights survey assessed the availability of essential medical equipments and prescribed drugs in visited health facilities in Tanzania. *The National Drug Policy (1991) and Pharmaceutical Master Plan (1992-2002)* are critical in guiding developments in the sub-sector, but these documents are now well out of date and no longer addressing current policy issues. The supply of drugs and essential equipments in Tanzania passes through four different supply chains.²⁴² Three of these are administrated by MSD: Firstly, essential drugs distributed by private wholesalers; Secondly, essential drugs distributed in bulk by MSD; Thirdly, Kit's and indents packs distributed by MSD; Lastly, Vertical programme (VP) items distributed by MSD.

The LHRC assessed the supply of drugs and essential equipment by checking on its availability as the drugs' key indicator of the good supply system in the country. Three indicators were used to measure availability; one evaluated the missing of the common drugs and equipments on the day of the survey, the number of patients who are sent to buy essentials equipments and drugs to pharmacies, the number of essential medical in defect on the day of the survey and the other evaluated the tendency of essential drugs to be out-of-stock over a period of time. Regional and District officials; matrons, nurses and clinical officers on duty and patients were relatively interviewed to reveal the same.

Supply of Prescribed Drugs

The LHRC's observation reveals that all visited health facilities have shortage or miss essential drugs. For instance, in many of the visited female wards LHRC found out that women's essential drugs such as gentamicin ampicilin and cloxacilin were most of the time out of the stock. Majority of health facility officers blamed Medical Store Department (MSD) for being out of stock or in stock of a small quantity of any drug item. The LHRC therefore concluded that in reality MSD is the source of this problem because it has consistently been out of stock of essential drugs and medical facilities in most of the time. MSD's ability to ensure adequate stock levels and supply of essential medical supplies to its customers has been questioned overtime.

In relation to the problem of the shortage of essential supplies and drugs LHRC interlinked the problem with budget constraint and poor management. For instance, funds disbursement from central government never reach the MSD and health facilities as requested and on time henceforth causing some of the activities to delay or fail to be implemented on time. Kwimba can be named as one of the districts whereby other Charges (OC) grant and Health

²⁴² The United Republic of Tanzania Drug Tracking Study Report of 2007, page 29.

Basket funds (HBF) balances were delayed until 25th June 2012 and caused implementation problems to some of MMAM project activities planned to be implemented in the year 2010/2011. LHRC observed it as an on going problem at different levels of implementation in 2012. Automatically, activities that were planned for 2011/2012 were not implemented as funds for those activities have not been released to-date as the country implements its budget for the year 2012/2013. This depicts that health related activities in visited regions for the year 2012/2013 will be implemented in 2013/2014/.

Responses from Medical Store Department

After finding out that MSD is highly blamed for the lack of drugs and essentials equipment, LHRC visited MSD zonal office in Mwanza and Managed to reveal several related problems. The head of MSD lake zone confirmed the frequent missing of essential drugs and supplies in health facilities attributing it to the delay of funds from the government. MSD officials blame the government for its delay to disburse funds. For instance, one MSD official mentioned that the government owed MSD 40 billion TSH between 2011 and 2012. The officer was quoted as saying;

“Tatizo sio sisi ni serikali haitoi pesa kwa wakati na hata zikitoka siyo zote, tunawadai mfano karibu billion 40, na tatizo kubwa ni usambazaji wa madawa MSD inapata shida sana kwani haina uwezo wa kusambaza madawa kila mahali na halmashauri nazo huwa zinashindwa na ndio maana wakati mwingine unakuta tunachoma madawa.”

The problem lies not on us but rather the government as it doesn't disburse funds on time and when it does, the said funds comes in portion. For instance the government owes us 40 billion shillings and the main problem lies on distribution of drugs. The MSD faces a lot of hurdles as it has no capacity to distribute medications in all areas, so do municipalities no wonder you may find us burning drugs every now and then.”

As a result public health facilities have faced difficulties in attending patients since January to June 2012 following the temporary closure of the Medical Stores Department (MSD) that puts the majority of people at risk. This is serious because even common drugs such as malaria medicine “*Dawa ya Mseto*” have gone missing in almost all the health facilities in the country at an average of 80%.²⁴³

Essential Equipments and Medical Supplies

Almost all visited health facilities in Tanzania were found to miss a number of essential hospital supplies such as chemical reagents, syringes, gloves, HIV

243 www.sikika.or.tz/en/publications/read Visited 19th December, 2012.

fluids, beds, bed cover and hygienic equipments. For instance, Mara regional hospital has a good laboratory but it was found missing essential supplies such as HIV fluid for CD4 testing, chemical reagents etc.



Mara Regional Hospital Laboratory: The Best Medical Laboratory in the Lake Zone

Some of the essential medical equipments required to be available in health centers, referral and medical hospitals include Microscope scope machine, X-Ray machines, Ultra sound, CT scan Machines (in Regional and Referral). However this essential requirement is missing in health facilities. Each health facility requires essential health equipment according to the service offered. The LHRC's survey provides that many hospitals visited had a shortage of important health equipments such as those mentioned above. Others are oxygen machines in paediatric ward; the paediatric wards also lack incubation machines²⁴⁴ which are very important for prematurely born babies not to mention lack of neonatal room and well equipped labour rooms.

Table 11: Availability of X-ray Machine, Microscope and One Ultra Sound per District

	COUNCIL/ HOSPITAL	REQUIREMENT			AVAILABLE			DEFICIT		
		U-Sound	X-ray	M-Scope	U-Sound	X-ray	M--Scope	U-Sound	X-ray	M--Scope
1	Regional Hospital	1	1	12	0	1	8	1	1	4
2	Mwanza City	1	1	30	0	0	22	1	2	7
3	Magu	1	1	56	0	0	4	1	2	52
4	Sengerema	1	1	60	0	0	25	1	2	35
5	Kwimba	1	1	50	0	0	14	1	2	36
6	Misungwi	1	1	41	0	1	17	1	1	24
7	Ukerewe	1	1	34	0	0	8	1	2	26
	Total		7	283		2	98		12	185

²⁴⁴ A hospital apparatus, usually a transparent box, in which a premature or babies with abnormality is kept in a controlled environment to protect it from infection and assist its growth and development.

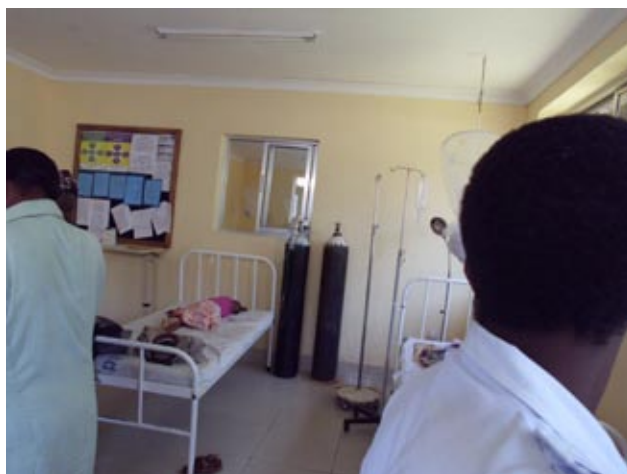
Other challenges on health facilities in Tanzania include poor electricity voltage in mortuaries which results in an increased utilization of diesel for stand by generators. Missing and long time out of function x-ray and ultra sound machines due to failure of maintenance of those equipments. Frequent national grid power outage which has severe implications during operations, minor surgery and laboratory activities.

Of all patients interviewed almost 50% said that they had been sent several time by the health facility staff, to buy medical supplies (blood transfusions set, blood, syringes, gloves, bandages, cotton wool, etc) from the private drug shops for their treatment. In support of this of all health facility staff interviewed the majority mentioned similar medical supplies to be regularly missing in health facilities. One Clinical officer in Magu was quoted as saying;

“Sisi hapa wakati mwinige tunawaangalia tu wagonjwa unakuta mgonjwa anakuja , lakini hatuna gloves za kufanyia kazi tunamwagiza akanunue na kama hana pesa ndio basi tena, mfano kwa muda wa mwezi sasa stock ya sindano imeisha na wagonjwa wanakuja wakitegema huduma, tukiwaambia wakanunue wanasema sis ndio wabaya tunauza vifaa vya hospatali.”

“There are times the only thing we do is to keep staring at patients. A patient may come in need of the service only to find out that we have no gloves to use for the check up. We may order the said patient to buy but in case they have no money there is nothing else that we can do. For instance we have run out of the injection stock for over a month now. Patients tend to come and whenever we order them to buy they tend to accuse us of being evil saying we are selling out hospital equipments.”

Similarly, in Mwanza regional hospital (Sekou Toure) , LHRC’s researchers found similar items to be missing, for instance while in a pediatric ward on 24th August 2012, the LHRC’s researcher found one child suffering on bed while waiting for her mother to be back from a near private drug outlet. The Ward attendant told LHRC that the child needs blood transfusion but they had no blood transfusion set commonly known as canular. The staff lamented that the item was very important and was on demand but more often they sent patients to buy missing items to the nearby private drugs outlets to rescue their lives.



Mwanza Regional Hospital Pediatric Ward - A child lying on bed waiting for her mother who went for a blood transfusion set.

Furthermore, the need for CT scan services in Tanzania has increased considerably. However, all visited referral hospitals in Tanzania lack this important machine. The CT scan machine is very crucial because it makes it possible for doctors to see diseases that, previously, could often be found at surgery or at autopsy. The machine provides a highly detailed look at many different parts of the body. According to SIKIKA by 2004, Tanzania had 8 functional CT scanners, with the common CT examinations being the head investigations (60%), followed by spine (21%), abdomen (9%), chest (5%) and pelvis (2%). The LHRC observation shows that it is only Muhimbili National Hospital which had a CT scan machine as the rest are found in private hospitals at almost thrice the normal costs. However, internal information from MNH tells that even the only one available CT scan machine in MOI is currently out of use due to lack of proper maintenance. Lack of CT scan in the country makes the country to lose large percent of patients who get accidents from different parts of the country.

The missing of CT scan machines in the country was officially announced in the parliament by the Minister of Health when answering a basic question asked by Member of Parliament Getrude Rwakatare (Special Seat CCM) on 8th November 2012. The minister was quoted saying;

“Wizara yangu imeanza kuchukua hatua na imeagiza bima ya afya kutoa fedha kwa ajili ya kununua kipimo kipya, ili kuwaondolea adha wagonjwa..kwa sasa nchi haina fedha za kuwaongezea wagonjwa fedha ili wakatibiwe katika hosipitali binafsi bali inaharakisha mchakato wa kuagiza kipimo hicho kipimo ili huduma irejee kama kawaida.”²⁴⁵

245 Reporter “CT Scan ya Muhimbili Mbovu” Tanzania Daima 9th November, 2012.

“My ministry has begun to take some steps and has instructed the health insurance to provide funds to buy a new machine to spare patients from the hassle. Currently, the country has no funds to give patients to enable them undergo treatment in private hospitals but rather it will speed up the process of buying a new machine so that services can return back to normal.”

4.1.2 Child and Maternal Health

Standard Child and Maternal Health are releable development measure of any country. Children and women are community groups most at risk on health related issues. In Tanzania pregnant women and children are among the community groups who receive free medical care and treatment.

(a) Maternal Care

About half a million of women are annually dying worldwide due to pregnancy and child birth complications.²⁴⁶ Statistics indicate that 99% of maternal births are rampant in third world countries and Tanzania being on the top 20. According to the Ministry of Health and Social Welfare (MOHSW) Maternal Health Care (MHC) is under National Package of Essential Reproductive and Child Health Interventions Package tailored at improving quality of life of women and adolescent mothers.²⁴⁷

Maternal health care services include Antenatal care, Care during Childbirth, Care of Obstetric Emergencies, Newborn care, Postpartum Care, Post abortion Care, Family Planning, HIV/AIDS and Sexually Transmitted Diseases (STDs) Diagnosis and Management, Prevention and Management of Infertility, Prevention and Management of Cancer (Breast cancer, uterine, cervical and ovarian cancers) and Prevention and Management of Childhood illness.²⁴⁸ For better delivery of these services to women and children MOHSW developed The National Road Map Strategic Plan to Accelerate Reduction of Maternal, Newborn and Child Deaths in Tanzania 2008-2015.

Statistics by the National Audit Office indicates that about 9000 women die because of maternal complications while 25000 women become disabled. However the demography survey conducted 2010 by MOHSW provides that rate of Maternal Mortality (MMR) is declining from 578/100,000 to 454/100,000.²⁴⁹

246 www.who.int See also Ministry of Health and Social Welfare (2011) A Performance Audit on the Monitoring, Evaluations and Budget Allocation for Maternal Health Care Activities in Tanzania, page vii.

247 MOHSW (2011) Op cit., page 13.

248 The National Road Map Strategic Plan o Accelerate Reduction of Maternal, Newborn and Child Deaths in Tanzania 2008-2015.

249 MOHSW (2010) Demographic and Health Survey (2010).

Table 12: Estimated Maternal Mortality Ratio between 2000 and 2010

Year	2000	2005	2010
Estimated Maternal Mortality Ratio (WHO)	1500	950	N/F
Estimated Maternal Mortality Ratio (NBS)	529	578	454

Source: MOHSW and NBS 2010 Demographic Health Survey

The table above depicts that maternal death is significantly going down from 2000-2010; However LHRC's surveys and studies indicate that maternal deaths are still rampant in the country.²⁵⁰ With the trend mentioned above, it will basically be impossible for Tanzania to reach Millennium Development Goals target by the 2015. The Tanzania health related MDGs aims to reduce maternal mortality rate to 133 deaths out 100,000 by the year 2015. That is to say if Tanzania spent about 10 years to reduce 124 maternal deaths (578 to 454), would it then be possible for Tanzania to cut maternal deaths from 454 for the remaining three years?, the answer is absolutely no.

The LHRC categorizes causes to MMR into three categories which are direct cause, indirect causes and maternal health care managements related problems. Direct causes may include all martenal chronic diseases such as Obstetric hemorrhages, obstructed labour, Pregnancy induced hypertension, Eclampsia, Sepsis and abortions while direct causes include all problems facing the health sector in Tanzania such as shortage of health facilities, shortage of qualified staff, poor supply of drugs and essential medical equipments such as congestion and poor conditions in labour wards. Maternal health care management contributes to maternal problems. They include poor; monitoring of Maternal Health Care; lack of Maternal Health Education; Poor Evaluation of Maternal Health Activities; and Insufficient Budget allocation to Maternal Health Care activities.²⁵¹

The magnitude of congestion in labour wards is increasingly becoming a serious problem in almost all hospitals visited and surveyed by the LHRC. LHRC encountered a group of 2-4 pregnant women sharing a single bed.

²⁵⁰ See also Ministry of Health and Social Welfare (2011) A Performance Audit on the Monitoring, Evaluations and Budget Allocation for Maternal Health Care Activities in Tanzania, page 17.

²⁵¹ National Audit Office (2011) A Performance Audit Report by the Controller and Auditor General of The United Republic of Tanzania on The Monitoring, Evaluations and Budget Allocation for Maternal Health Care Activities in Tanzania, page 37.



Pregnant women sleeping in pairs at the Mara Regional Hospital Labour Ward

Congestion of pregnant women and sharing of beds can always put pregnant women at risk of contaminating communicable diseases such as HIV, skin infectious diseases and respiratory diseases. This is very possible given the fact that the condition of pregnant women at the delivery stage is always fragile. For instance, pregnant women at the delivery stage tend to bleed excessively and this may put them at risk if they share a single bed. Moreover essential drugs for women in labour wards such as gentamicin, ampicilin and cloxacilin were most of the time missing.

(b) Child Mortality Rate

The fourth target of the Millennium Development Goals requires all States to reduce child deaths to 54 deaths per 1000 live births by 2015. Tanzania has made little progress in child health from a rate of 137 deaths per 1000 live births to 81 deaths per 1000 live births for children fewer than five and from 88 to 51 deaths per 1000 live births for infants.²⁵² To reach MGDs targets Tanzania planned several programs for child related health care such as vaccination services, Integrated Management of Childhood Illnesses (IMCI), malaria control through use of mosquito nets particularly insecticide-treated nets (ITNs), Intermittent Preventive Treatment (IPT) during pregnancy, Vitamin A Supplementation (VAS), Prevention of Mother to Child Transmission (PMCT); promotion of exclusive breastfeeding for the first six months of infancy; and effective management of childhood diarrhea.²⁵³

The direct causes for child mortality in Tanzania include diseases such as malaria, pneumonia, diarrhea and complications of low birth weight as well as HIV and AIDS. Another direct cause affecting child survival is malnutrition

252 NBS (2010) Tanzania Demographic Health Survey Report.

253 http://www.tz.undp.org/mdgs_goal4.html Visited 9th November, 2012.

which causes 50 % cent of child deaths. Indirect causes according to United Nation Development Program (UNDP) and the LHRC's findings include poor education status of the family,²⁵⁴ early pregnancies and marriage,²⁵⁵ lack of child care services, poor child health services in the country and challenges facing the health sector in general such understaffing, lack of essential medical supplies and long distance working to health facilities.

“In rural areas, only 42 per cent of mothers deliver at health facilities compared to 82 per cent in urban areas. Infants born in rural areas have 30 per cent higher probability of dying before completing their first birthday than those born in urban areas.”²⁵⁶

4.1.3 HIV/AIDS and Human Rights

HIV/AIDS is a human rights issue because it denies the right to life to millions of people and leaves millions of children without parental care. Despite the recent development in the effort to combat HIV in Tanzania, the country is still highly affected by this killer disease. This sub-topic examines a few topical issues such as HIV prevalence, treatment and care, vulnerable groups and HIV/AIDS and legal protection framework in line with principles of human rights.

²⁵⁷

At the International level the following instruments and frameworks were developed to address this epidemic disease: *Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases, 2001*, *The Declaration of Commitment on HIV/AIDS (Global Crisis – Global Action)*;²⁵⁸ *The United Nations Millennium Development Goals (MDGs)*, *International Guidelines on HIV/AIDS and Human rights of 2006*, *General Comment 14 of the Committee on Economic, Social and Cultural Rights* and *The Commission on Human Rights Resolutions on the Right to the Highest Attainable Standard of Health*.

The Country effort to fight this epidemic was translated into mult sectoral strategies almost two decades ago. Tanzania's Commission for AIDS (TACAIDS) and National AIDS Control Programme were formed to coordinate

²⁵⁴ 80% of births from the richest quintile were delivered by skilled personnel compare to 30 per cent for the poorest community. Infants from the least educated and poorest mothers had a 25 per cent higher probability of dying before completing one year than infants of mothers from the richest families.

²⁵⁵ http://www.tz.undp.org/mdgs_goal4.html Visited 9th November, 2012.

²⁵⁶ http://www.tz.undp.org/mdgs_goal4.html Visited 9th November, 2012.

²⁵⁷ HIV/AIDS as a human right issue was discussed in the first consultation meeting in Geneva, from 26 to 28 July 1989. Several years later, International Guidelines on HIV/AIDS and Human Rights were adopted by the third International Consultation on HIV/AIDS and Human Rights in 2006. During the 2006 meeting, states agreed to pursue all necessary efforts towards achieving universal access to comprehensive HIV programmes such as prevention programmes, treatment, care and support by 2010.

²⁵⁸ General Assembly Resolution S-26/2 of 27 June 2001.

those strategies and campaigns against HIV/AIDS at the national level. All these programs and strategies are regulated by National Policy on HIV and AIDS and the HIV and AIDS (Prevention and Control) Act, 2008.²⁵⁹

4.1.3.1 HIV/AIDS Prevalence in Tanzania

The latest HIV/AIDS and Malaria Indicator Survey conducted in 2012 (THMIS) by Tanzania Commission for AIDS (TACAIDS) and the Zanzibar AIDS Commission indicates the dropping trend of HIV and AIDS prevalence in Tanzania. The survey covered both the Tanzania Mainland and Zanzibar.²⁶⁰ The current findings indicate that HIV prevalence dropped when compared with the findings of the 2007 survey. The 2007 findings indicated that the HIV/AIDS prevalence in 2007 was 5.7% while the 2012 findings shows that HIV prevalence declined at average of 6%. Five percent of Tanzanian adults age 15-49 are HIV-positive while reveals that five out of every 100 men and women aged between 15 and 49 are infected.²⁶¹ Comparatively, the 2007 and 2012 survey prevalence estimates indicates that HIV prevalence has declined slightly from 5.7 percent to 5.1 percent among adults age 15-49 in 2012.²⁶² However, the same report provides that as of 2011, an estimated 1.6 million people in Tanzania are living with HIV, and among them, about 1.3 million are age 15 and older.²⁶³

The recent report by NBS on the rate of prevalence of HIV in Tanzania is contradictory. This is because other latest reports indicate that about 34 million people worldwide are living with HIV more than ever before. While Sub-Saharan Africa remains the region most heavily affected by HIV. For instance, in 2011, there were about 1.8 million new HIV infections in Sub-Saharan Africa; 69 % of all people living with HIV/AIDS are found in Sub-Saharan Africa, Tanzania inclusive.²⁶⁴

In Tanzania the most affected regions are the populated regions and regions with high level of population interaction such Dar es Salaam, Mwanza, Iringa, Njombe, and Mbeya. The recent HIV/AIDS indicator survey shows that HIV prevalence is highest among those living in the wealthiest households and those in urban areas. Among regions, HIV prevalence ranges from a low of

259 The HIV and AIDS (Prevention and Control) Act, No. 28 of 2008.

260 National Bureau of Statistics (2013) Tanzania HIV/AIDS and Malaria Indicator Survey (THMIS), page xv.

261 Ibid., pages 128-130

262 Ibid., page 130.

263 Ibid., page 20.

264 UNAIDS (2012) Report on the global AIDS epidemic. See also NBS (2013) Tanzania HIV/AIDS and Malaria Indicator Survey report of 2012 at http://www.nbs.go.tz/index.php?option=com_content&view=article&id=353:2011-12-tanzania-hiv-aids-and-malaria-indicator-survey-thmis-report&catid=55:this&Itemid=145. Visited 30th March, 2013

less than 1% in Pemba and 1.2% in Unguja to a high of 14.8% in Njombe.²⁶⁵ Among other reasons culture and traditions, individual behaviour, lack of men circumcision, high rates of prostitution in cities, high level of population and interaction due to business activities in those areas have been named as the main contributing factors for high prevalence in those areas. For instance, there is high level of infection Mbeya Urban, Kinondoni, Igamba, Kyela, Tunduma, Mufindi, Njombe, Karatu and Mbozi because many people travel through or conduct business in those areas. This is mainly contributed by a huge number of mobile populations in those areas such as heavy load truck drivers, petty traders, migrant workers, job seekers, foreigners and sex workers.²⁶⁶

4.1.3.2 HIV/AIDS Treatment and Care

The HIV/AIDS treatment and Care requires a widespread access to antiretroviral, HIV prevention, care, support and treatment. The LHRC's general observation indicates access to HIV/AIDS treatment and care is still a major national challenge despite the fact that a number of people showing up for testing is mounting. For instance, current statistics show that nine in ten women and men know where to get an HIV test. HIV testing and receiving the results among women and men age 15-49 has increased from 37% in 2007-08 to 62% for women and from 27% in 2007-08 to 47% for men.²⁶⁷

Despite the increasing number of people testing for HIV/AIDS the available care and treatment services available do not meet the demand in the country. Majority of people tested for HIV/AIDS cannot be serviced because there are few Counseling and Testing Centres (CTC) in the country. For instance, in Mara the LHRC researchers found out that Mara Referral Hospital lacked reagents for CD4 cell testing. Usually, once a person is diagnosed HIV positive, he/she must receive a second blood test to determine their CD4 cell count, which are the cells attacked by the virus. This blood test is crucial in determining the strength of a persons' immunity system and therefore it is also used to give out proper medication and treatment. The tests should also be done regularly to enable doctors track a patients' progress. The LHRC observation in 2012 indicates that people who are tested and found to be HIV positive have difficulty undergoing CD4 testing because there is a shortage of CD4 testing machines in many of the CTCs.

The number of people tested for HIV is greater than the available services. This situation is further complicated by the fact that the few available centers lack HIV/AIDS trained health workers. In addition, the CTCs centers are not accessible to many people in rural areas. The situation in many visited centers

265 NBS (2013) HIV/AIDS and Malaria Indicator Survey of 2011-2012 Key Findings at page 9.

266 LHRC (2011) Tanzania Human Rights Report of 2011 at page 91. See also Ministry of Health and Social Welfare (2010) Demographic Health Survey of 2010.

267 NBS (2013) HIV/AIDS and Malaria Indicator Survey of 2011-2012 Key Findings at page 5. See also National Bureau of Statistics (2013) Tanzania HIV/AIDS and Malaria Indicator Survey (THMIS) Main Report.

showed that many clients of CTCs do not return due to long distance from home to CTCs.

4.1.3.3 HIV/AIDS and Vulnerable Groups

The United Nations Guideline on HIV/AIDS and human rights requires states to collaborate with the international community to create and promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue. The guideline also requires states to have specially designed social and health services targeted towards HIV/AIDS needs especially among vulnerable groups. States must support community groups attempting to address the issue.²⁶¹

In Tanzania, the most vulnerable groups are women, youths, men having sex with men (msm), drug dealers, prisoners and children. That is to say, women and children are disproportionately affected by HIV in comparison to other groups, as discussed below. This situation can easily be noted by looking the number of women and men who shows up for testing and also the number of those, who are under ARVs dosage. The guidelines further request that States should review and reform criminal laws to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

HIV/AIDS and Women

In Tanzania the most affected group of people by HIV and AIDS are women. Several studies indicate that women comprise large percent of people living with HIV in Tanzania. It is estimated that over 60% of people living with HIV in Tanzania are women. Almost two-thirds of Tanzanian women age 15-49 have ever been tested and received the results while almost half of men age 15-49 have ever been tested for HIV and received the results.²⁶⁸

Reasons for Higher Prevalence

Women are more vulnerable to HIV infection than men due to several reasons such as:

- (i) The tendency of women to have older partners or get married earlier;
- (ii) Difficulty women experience negotiating safer sex because of gender inequality;
- (iii) The widespread culture of ‘sugar daddies’: women will often accept the sexual advances of older men, or ‘sugar daddies’ for a variety of reasons including money, affection and social;
- (iv) Due to their biological morphology;

268 NBS (2013) HIV/AIDS and Malaria Indicator Survey of 2011-2012 Key Findings at page 5

- (v) Women are being forced into sexual acts, putting them at a high risk of contamination; and
- (vi) Women involved in commercial sex and those with multiple partners have a very high risk of being contaminated with HIV.

The LHRC justified these reasons by looking at the number of women and men who attend CTCs and are found HIV positive. Majority of people living with HIV who attend HIV services are women and every group of people going for testing the large number of women will be found affected than men. The LHRC advice the government to address the above mention reasons for the prevalence of HIV among women as the best initiative to reduce HIV prevalence in Tanzania

4.2 Right to Education

Education is defined by Tanzania and Education Policy to be a process by which individuals acquire knowledge and skills necessary for appreciating and adopting to the environment and the ever changing social, political and economic conditions of society as well as a means to realize one's full potential.²⁶⁹ Education is therefore one of the fundamental rights for realization of other rights as it promotes empowerment and freedom. On the other hand Education is treated as a;²⁷⁰

“Strategic agent for mindset transformation and for the creation of a well educated nation, sufficiently equipped with the knowledge needed to competently and competitively solve the development challenges facing the nation.”

Education as a right is guaranteed by several international instruments such as *The International Covenant on Economic, Social and Cultural Rights, 1966*, *The Convention against Discrimination in Education, 1960* and *Convention on Technical and Vocational Education, 1989*. These instruments insist on education for all and discourage inequality in education services.

In Tanzania education is still not well guaranteed by legal documents such the *Constitution of the United Republic of Tanzania of 1977* and the *Education Act of 1978* *Higher Education Policy of 1999* and *Education and Vocational Training Policy of 1995*. The rights to education unlike civil rights is not well protected by the constitution of Tanzania. The Constitution of Tanzania treats the right to education as a privilege and not as a right to be protected by the State. Article 11 of the Constitution of Tanzania specifically requires members of the community to strive on their own for better education. This provision of the Constitution doesn't obligate the government to compulsory offer education to its people as a right. That means education in Tanzania is treated as positive rights that can be provided by the State according to the available resources.

269 Education and Training Policy by Ministry of Education and Vocation Training.

270 LHRC (2010) Tanzania Human Rights Reports of 2010, page 132.

Tanzania has developed several educational programs to improve the education system. Some of the basic education programs include; the Local Government Reform Programme (LGRP), Public Service Reform Programme (PSRP), Higher Education Students Loans Board (HESLB) under *Students Loan's Board Act of 2004*, National Commission for Technical Education (NACTE), Tanzania Commission for Universities (TCU), *Universities Act of 2005* and Public Financial Management Reform Programme (PFMRP). Others are the Education Sector Development Programme (ESDP), Primary Education Development Programme (PEDP) and Secondary Education Development Programme (SEDP), the Tanzania Development Vision 2025, Poverty Alleviation Strategy 2015, Education and Training Policy (1995) and Millennium Development Goals.

The education sector in Tanzania continues to face a couple of challenges regardless of the above structured programs. Such challenges include poor policy and legal framework as mentioned above; poor performance due to several factors such as shortage of teachers, lack of incentives, poor teaching environment, poor infrastructures and inadequate budget allocation.

4.2.1 Primary and Secondary Education

The major aim of primary education is to lay a socio-cultural foundation which ethically and morally characterizes a Tanzanian citizen and nation. Therefore, the primary education prepares a child for a second level of education i.e. secondary, vocational, technical and continuing education;²⁷¹ while as secondary education refers to post-primary formal education offered to persons who have successfully completed seven years of primary school with entry requirements.²⁷²

The LHRC's observation provides that the quality of education in the country is declining due to the fact that various educational programs such as establishment of wards secondary schools seem to be a burden rather than being a solution to the problems. LHRC's researchers visited regional offices and selected districts and interviewed district officials, teachers and villagers. The level of performance in primary and Secondary schools in Tanzania region is not promising due to a number of factors as elaborated in this study.

(a) Enrolment

According to the UN Millennium Development progress report Tanzania seems to be doing the best in achieving primary school enrolment and gender parity in comparison to other countries in Sub Saharan.²⁷³ Regarding the question of enrolment in both primary and secondary education Tanzania is deliberately

271 Tanzania Education Training Policy of 1995. Par 1.2.2.

272 Tanzania Education Training Policy of 1995. Para 1.2.3.

273 LHRC (2010) Tanzania Human Rights Report of 2010, page 134.

making some advancement in this area. It is obvious that the establishment of wards secondary schools in every ward in Tanzania has triggered up the level of enrolment. However, LHRC's 2012 human rights survey reveals that the speed of enrolment is not the same all over the country. The most affected areas with poor enrolment in both primary and secondary schools are areas with economic activities such as pastoralism, fishing, mining and farming. For instance, efforts seemed to be not viable in Arusha, Mwanza and Shinyanga regions because the trend shows that the number of students enrolled at primary schools in those regions drops annually as shown below;

Table 13: The Trend of Nursery and Primary Student Enrolment in Arusha

Year	Qualified children for Enrolment		Enrolled Students	
	Nursery	Primary	Nursery	Primary
2010	40,015	79,301	36,628	52,042
2011	54,658	51,431	35,671	46,582
	51,709	50,123	32,226	43,129

The table above indicates that the number of students enrolled in primary schools dropped from 52,042 in 2010 to 43,129 in 2012. This decline of enrolment at primary level is mainly contributed by the nature of people found in those areas. Grazing, fishing, farming and mining as mode of life, production and the main source of income in some parts of the country has been mentioned as a major obstacle to net enrolment due to its economic nature. Other factors revealed by LHRC's researchers include long walking distance from home to school, poor infrastructure, poor learning environment, lack of food in schools and poverty. The government provides that it is very difficult to trace and enrol children who have reached the age of enrolment in pastoral community because they practice rotational grazing.²⁷⁴

Furthermore, Uwezo East Africa Annual Assessment report shows that primary school enrolment is high but not universal as it varies from country to country and family to family. Twaweza findings indicate that child enrolment is always determined by wealth of the child's family. For instance, the report illustrates that students from poor family were unlikely to be enrolled.²⁷⁵

274 LHRC (2012) Human Rights Survey of 2012.

275 Uwezo (2011) Are our Children Learning? Numeracy and Literacy across East Africa, page 7.

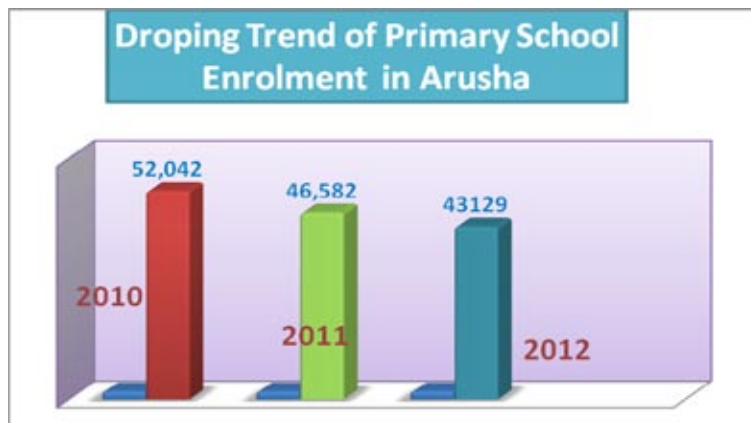


Figure 2: Dropping Trend of Primary School Enrolment in Arusha²⁷⁶

Dropping trend is further complicated by other kinds of factors that affect even those who have been enrolled. The level of drop out in the county is rampant about 80,000 pupils do not finish primary schools due to among other things truancy, nomadic families, early marriages and pregnancy. For instance, in 2011 a total of 76,246 pupils dropped out from schools.²⁷⁷ This was further evidenced in Shinyanga whereby the number of students who were enrolled in 2003 decreased from 10,7716 (enrolled in 2003) to 83,951(completed in 2009).²⁷⁸

(b) Poor Teaching Environment

Poor infrastructures

The majority of government owned schools operate in a very devastating environment due to lack of dormitories, classrooms, and pit latrine and school teachers houses. This situation results into a very poor learning and teaching environment. Putting students in such kind of teaching and learning environments where school infrastructure is very poor may automatically results into poor performance. And this is the point where education inequality in the country is maximized because those who are financially strong will send their children to private schools.

The LHRC’s findings indicate that infrastructure situation is not promising in every visited region. The deficit level is very high at average of 80% in almost all regions in Tanzania while the demand for teacher’s houses, latrines and classrooms is also high. The table below indicates how critical the shortage of teacher’s houses in the country is:

276 Compiled From Arusha Region RCC report of 2012.

277 MoEVT (2011) Best Education Statistics in Tanzania, page 31.

278 LHRC (2012) Human Right Survey.

Table 14: Shortage of Teachers' Houses in Some Selected Regions

Region	Demand	Available	Deficit	Percent
Dodoma	9209	1590	7630	83
Kigoma	8,114	1,412	6702	82.6
Tabora	9711	1523	8188	84.1
Mwanza	4846	1018	3828	79
Shinyanga	7718	1156	6562	80

The shortage of schools' infrastructures such as latrine, classrooms, laboratories is a serious problem in the country that affect the majority of people in the country who cannot afford to send their children in the few available expensive and posh schools in the country. Learning environment with such kind of teaching situation may always accelerate poor performance.

For instance, the situation is amazing at Kerebe primary school in Muleba because there are only three buildings used as classrooms. Standard one and two share one classroom, standard three, four and five share the other room while standard six and seven share the remaining class room.

“Waalimu wa shule hiyo wameliambia Tanzania Daima kuwa wanapoingia madarasani huwataka wanafunzi wa darasa lengwa kukaa mbele ili wasikile kwa ukaribu zaidi, huku wanafunzi wa madarasa wasiohusika na somo hilo wakiwa nyuma”

“Teachers at the said school told Tanzania Daima Newspaper that whenever they get into class they normally request students for the responsible class to sit in the front row to enable them follow the session while as those not involved remain as backbenchers.”

Inadequate Labour Force

Another factor that leads to poor learning environment in majority of schools in rural areas is the acute shortage of teachers. Most of the visited regions by the LHRC in 2012's human rights survey show that there is deficit of teachers almost between 2000 and 4000 teachers in each region visited.

Table 15: Examples of Inadequacy of Teachers in Some Districts of Kigoma

COUNCIL	DEMAND	AVAILABLE	DEFICIT	DEFICIT %
Kigoma Urban	1,063	908	155	14.6
Kigoma rural (Uvinza)	2,859	1,983	876	30.6
Kibondo	2,859	2,353	494	17.3

Shortage of school teachers in schools is another serious problem facing education sector in Tanzania. Shortage of school teachers in schools forces one teacher to attend 60-100 students. Many of the schools visited with students between 400-600 have school teachers between 4-5. The shortage of school teachers is worse in some other schools where there is only one school teacher. For instance, Manda Juu primary school in Chunya Mbeya has only one school teacher teaching 132 students²⁷⁹ while in Igunga Nguvumoja secondary, a school with 219 students is taught by only one teacher.²⁸⁰ Describing the real situation the school master of Nguvumoja complained that the situation was horrible for him as he was forced to attend all students from form one to form four. The head master was quoted as saying;

“Nina kazi ngumu sana kama unavyoona umri wangu umekwenda, nashindwa namna ya kujipanga kuanzia kidato cha kwanza hadi cha nne kwa siku, nalazimika wakati mwingine kuwachanganya wale wa kidato cha tatu na cha nne na wale wa kidato cha kwanza na cha pili kwa ajili ya kuwafundisha”

“I have a daunting task as you probably notice I am aged. I fail to reorganize myself to teach from form one to four per day. I am at times forced to mix form three and four while at the same time doing the same to form one and two so that I can teach them.”

Among other reasons poor infrastructure in schools, lack of incentives for teachers working in remote areas and inadequate opportunities for professional growth contributes greatly to this shortage. This was also insisted by school teachers in Chunya when presenting their claims to the Chunya District Commissioner. The school teacher was quoted saying;²⁸¹

279 Pendo Fundisha “ Mwalimu mmoja afundisha wanafunzi 132” Mtanzania 3rd May 2012.

280 Kulwa karedia “ mwalimu afundisha wanafunzi 219 Igunga” Mtanzania 3rd February, 2012.

281 Pendo Fundisha “ Mwalimu mmoja afundisha wanafunzi 132” Mtanzania 3rd May 2012.

“...kutokana na hali hiyo wanaishauri serikalikuweka motisha katika mazingira ya kazi kwa watumishi ...na kuona uwezekano wa kutoa posho ya mazingira magumu na kuleta watumishi wengine wilayani”

“...it is due to the situation that they suggest that the government should set an incentive for some of the servant environment and possibly provide special allowance for those working under harsh environment while at the same time increase more servants to the district.”

In another discouraging situation more than 50 new teachers were found to have been sharing a single house in Mbozi while waiting for other logistics from the District officials.



Newly appointed Primary School teachers stranded at the Mbozi District Council

“Walimu tuna hali ngumu maisha yetu yamewekwa rehani kwenye maduka na Maafisa watendaji wa Kijiji, ambao wamekuwa wakitikopesha pesa za kujikimu”

“Times are hard for teachers as our lives have been put on bond to shops and village executive officers who have been giving us loans for our survival.”

With all the reasons stated in this sub chapter on education, teaching profession is now days viewed as a profession for those who have no other option in life. If this growing perception is left unattended the future of teaching profession will be at risk.

(c) Poor Performance and Education inequality

As elaborated in previous LHRC’s human rights reports a sound system of education in any country must be tailored to be effective in two ways; Firstly, it must be quantity oriented to ensure access to education and equity in the distribution of resources to the entire society; Secondly, it must be quality

oriented for better production of skills and experts for country economic and development. As time goes by Tanzania is investing much in maximizing the number of students enrolled in both primary and secondary school while losing a focus in achieving best education.

Both primary and secondary schools' results continue to drop in the country annually. The table below indicates that the percentage of pupils passing primary school examination has a declining trend though in 2010 there was a slight progress.²⁸²

Table 16: Dropping Trend in Primary School Performance

Year	2006	2007	2008	2009	2010	2011
Performance	70.5	54.2	52.7	49.4	53.5	58.3

During Mwalimu Nyerere tenure of leadership education was structured to be a tool of unity but as of today education is growing to be a source of disunity in the country. With the current trend of school performance in Tanzania where only few private schools produce better results, this may result in education inequality. Education has to be offered equally to all members of the community regardless of his or her race, colour and economic status. Furthermore, former President of the Republic of South Africa Nelson Mandela insisted on the importance of education as source of development for all. Mandela was quoted saying,²⁸³

"...elimu ni njini kubwa ya maendeleo ya mtu. Ni kupitia elimu ndipo binti wa mkulima mdogo anaweza kuwa dactari bingwa, kwamba mtoto wa kibarua wa mgodini anakuwa mkuu wa mgodi, na mtoto wa kibarua wa mashamba anakuwa Rais wa taifa kubwa"

"Education is a huge engine for human development. It is through education that a peasant's child can become a specialist doctor, a child of a miner becomes a mine manager and a farm labourers' child become a president of a big nation."

Education inequality has always bitter results in any developing country. As it was defined above education is fundamental right for realization of other rights and a tool for competently and competitively solves the development challenges facing individual and the nation. Therefore, the majority of students from poor families in the country cannot freely enjoy other rights because of the poor quality of education produced in public schools. As a result the gap between the poor and the rich expands in the country.

282 MoEVT (2011) Best Education Statistics in Tanzania, page 36.

283 Mandela, 1991 in HakiElimu (2011) Hali ya Elimu Tanzania, page 1.

This is obvious because many students in rural areas can neither read nor write in simple Kiswahili and English. Only 4 out of 10 standard seven students complete standard 2 assessment in Kiswahili, English and numerals.²⁸⁴ Outrageously, the LHRC's findings indicate that more than 5000 form one student who joined secondary schools in 2012 could neither read nor write. Everyone would wonder how come that these students passed their standard seven exams while can't neither read nor write. This is ridiculous and perhaps this can only happen in Tanzania, since no one can satisfactorily provide an answer. For instance, 234 students in Mbeya²⁸⁵ and about 500 students in Mwanza who passed their standard seven exams do not know how to write.

This problem is accelerated by the fact that many students study in shortage and poor quality of classrooms with lack of desks and text books. For instance, in Tabora only students in more than 70 schools lack desks in classrooms hence forcing students to bench on the floor.²⁸⁶

The State is advised to offer remote incentives such as hardship allowance, faster promotion, higher salaries, transport and housing allowances to school teachers posted in remote rural areas. Doing this may drive back the growing system of inequality and stop discriminating the poor who live in remote and marginalized areas. Tanzania should learn from Malawi and Uganda where hardship allowance is paid to school teachers working in remote areas.

(d) *School girl Pregnancy*

The newly established ward schools do not have dormitories for students. Students have to walk for long distance to and from school every day. In principal, this affects negatively to their performance and it is very dangerous for girls' students. Lack of dormitories also contributes to drop out in schools for example one of the challenges in education sector in Kigoma is school dropout.²⁸⁷ When interviewed by the LHRC, the director of an NGO called Africa for Civil Society – Human Rights in Kigoma, said that lack of hostels and dormitories in Kigoma contributes to increased school pregnancy. Girls are engaging in prostitution instead of going to school as he says;

“Kuna vituo vya siri vya ukahaba ambavyo tumevibaini na tunashirikiana na vyombo husika kuvikomesha huku kwetu vinajulikana kama CHEKO LA HELA wamiliki wanawatumia watoto wadogo wa shule na kuwatumikisha kingono ili wapate pesa. Sasa hawa watoto wangekuwa shule ya bweni isingekuwa rahisi”

284 Twaweza (2011) Are our children Learning? Annual Assessment Report, page 16.

285 Jimmy Mfuru “234 waliofaulu darasa la saba hawajui kusoma” Nipashe 20th March 12.

286 Simon Kabendera “Wanafunzi wa Shule 70 Tabora wanakaa sakafuni darasani” Nipashe 2nd March, 2012.

287 Hali ya Elimu Mkoani Kigoma, 2012 page 6.

“They are secret brothels which we have been able to identify. We are working with responsible organs to close them down as around here they are known as Cheko la Hela, literary meaning money laughter. Owners of the said brothels use school children on sex slavery to earn money. Had it been that these children were staying at the school’s hostel, this would have not been possible.”

The report from the Ministry of Education and Vocational Training provides that in 2012 a total of 610 primary school students dropped out of school due to pregnancies.²⁸⁸

4.2.2 Higher Learning Education

In Tanzania higher learning education system currently regulated by the Tanzania Commission for Universities (TCU) which succeed the former Higher Education Accreditation Council since 1995.²⁸⁹TCU regulate university registration and accreditation as well as students admission. Other institution dealing with higher learning institution in Tanzania includes the Tanzania Education Authority (TEA) a body corporate established in 2001 for the purpose of managing the Education Fund.²⁹⁰ Tanzania has 40 Universities and University Colleges distributed throughout the country. A total of 12 institutions are Public Universities and Colleges while 28 are Private Universities and Colleges. This is a commendable progress Tanzania has attained since independence. Allowing establishment of private universities has progressively twisted up the number of students enrolled in and graduating from higher learning institutions in the Country.

Challenges

- (a) Inadequate funding which don’t tally with the massive increase of students in higher learning institution;
- (b) Inadequate labour force particularly teaching staff compared to the increased number of higher learning institutions;
- (c) The aging and retiring skilled academic staff with most Universities having no succession plans;
- (d) Multiple admissions which result in delays in opening of institutions, delays in loans disbursement and non filling of placements in Universities;
- (e) Increasing number of fake certificates and degree awards in order to get University Admissions;

288 MoEVT (2012) Best Education Stastics in Tanzania, page 86.

289 under the Universities Act (Chapter 346 of the Laws of Tanzania).

290 Under Section 5 (1) of the Education Fund Act No.8 of 2001.

- (f) Low ratio of female and disadvantaged students in higher learning institutions;
- (g) More students preferring to study arts and social science programs than life science and technological programs due to better remunerations after graduations and less stress when in Universities;
- (h) Lack of National Qualification Framework to oversee, regulate and control quality higher education;²⁹¹
- (a) Admission and Loan Disbursements.

The TCU continued to use Central Admission System (CAS) to register and admit students to higher learning institutions; and in so doing, set requisite academic criteria for students' admission into universities and approve admissions into institutions of higher education. TCU also coordinates the proper functioning of all university institutions for harmonization of higher education system in the country.

However, development of higher learning institution in Tanzania is skewed because it is only quantity oriented. So many universities and college are established without putting much emphasis on the quality of education produced.

Demonstrations due to loan disbursement problems continued to undermine the quality of education in Tanzania. This year several higher learning institutions marched to the Loan Board's offices demanding HESLB to disburse their loans. Until May 2012 only 3 higher learning institutions had received loans from HESLB. The HESLB Executive Director told students who marched to his office that they have nothing to pay them because HESLB account read zero. The HESLB director said they failed to deposit student's funds because the treasury was yet to release it. The HESLB director reiterated that;²⁹²

"Account yetu ya Bodi bodi ya mikopo haina kitu ndugu wanafunzi kwa kuwa hazina yaani serikali haijatupatia fedha sasa sisi tutawalipa kitu gani hata kama mmekuja hapa kudai fedha hizo".

"Our Loan Board's account has nothing dear students because the Treasury meaning the government is yet to disburse funds to us. You may have come to us but what will we pay you anyways?"

(b) Quality of Education

Majority of the newly established higher learning institutions lack teaching quality. This was openly insisted by TCU Directors. The TCU observation provides that shortage of qualified lecturers in higher learning institutions is a

291 MoVTE (2011) Directorate of Higher Education, page 27-28.

292 Richard Makore "Wanafunzi wa Vyuo wavamia Bodi ya Mikopo, wapigwa mabomu" Nipashe 17th May, 2012.

serious problem in the country. It was revealed that higher learning institutions in Tanzania share few available lecturers which is not healthy for quality assurance.²⁹³ Continuing with this kind of learning environment may always result into poor products. The competence of students graduating from this newly established university has been always questioned overtime in the labour market. The LHRC therefore advises the State to embark into a lot of education reforms to rectify the situation.

4.3 Right to Water

In Tanzania right to the Water is protected by the Water supply and sanitation act Act no. 12 of 2009. Section 4. (1) that the objective of the Act is to promote and ensure the right to sustainable water supply and sanitation services for all purposes.

Water is an integral part of the environment whose quantity and quality determine how it can be used. Safe drinking water and good sanitation practices are basic considerations for human health. Freshwater is a basic natural resource, which sustains life and provides for various social and economic needs.²⁹⁴ This policy document contains three sections addressing three sub-sector issues namely: Water Resources Management, Rural Water Supply, and Urban Water Supply and Sewerage. The LHRC's study focused much on the Rural Water Supply section. The rural water supply sections aims at improving health and alleviating poverty of the rural population through improved access to adequate and safe water.²⁹⁵

In Tanzania water availability is a common problem despite the country being surrounded by waters. Water supply coverage is not satisfactory in some regions in Tanzania despite significant investment in the water Supply services.

The 2002 water policy sets a goal of providing clean and safe water to the population within 400 meters from their households. However, today only about 44% of the population in rural areas and 52% in urban areas have access to a reliable water supply service.²⁹⁶ For instance, water supply accessibility in Mwanza increased from 19% in 1961 up to 64% in 2011. However, only 60% of the population in rural areas has access to safe and clean water. For instance in Magu and Kwimba District water coverage is only 50%. This was precipitated by the colonial and discriminatory laws which provided water services to leaders only. In the old days, section 281 of the *Tanganyika Water Act of 1947* guaranteed water services to only State leaders and colonial masters. Tanzania

293 Mwinyi Sadallah "Vyuo Vikuu vingi Tanzania havina Sifa-TCU" Nipashe 11th March, 2012.

294 National Water Policy of 2002, at page 4.

295 *Loc cit.*, at page 7.

296 Hotuba Ya Waziri wa Maji Mhe. Prof. Jumanne Abdallah Maghembe (Mb), Akiwasilisha Bungeni Mpango na Makadirioya Matumizi ya Fedha ya Wizara ya Maji kwa Mwaka 2012/2013. page 5.

water services were regulated by such laws until 2009 when it enacted water services laws well as the above mentioned water supply and Sanitation Act.

The LHRC's researchers observed that about 30% of the rural water schemes constructed between 1970s, 1990s and 2000s are not functioning properly in Mwanza due to poor operational and maintenance arrangements as well as theft practices. The most affected water programs are HESAWA and tape water programs in rural area. This trend seems to be behind the Tanzania Vision 2025 which aims at providing clear and safe water and high quality livelihood for its people by 90% in rural area and 100% in urban areas by 2025. For instance in Kwimba 800 shallow wells and boreholes have been constructed ever since 1990's and are still used up to date with the increased size of the population. Out of 800 sources of water 200 water wells are not in operation.



Useless boreholes found in Kwimba District

The LHRC's observation shows that more than 60% of the population in visited regions does not access clean and safe water. Available sources of water in rural areas include boreholes, shallow wells, rain water, rivers and waterholes. According to LHRC's findings sources of water were constructed at the time when the population was still low. That is to say, some of the water sources constructed 20 years ago is still used to serve the current population which has grown significantly.

For instance, in Kwimba, some water sources were constructed in 1970s at the time when some of the shallow wells served 5000 people but as of now one borehole serves more than 20000 people. This is contrary to policy standards which require 70 liters per person in urban area but in Kwimba they only get 30 liters; while in rural areas one person can only get 15 liters instead of 25 liters. The situation is similar to all other visited regions by the LHRC in 2012.



Some of the boreholes that are in use serve large part of the community

The LHRC's findings indicate that lack of safe and clean water poses a lot of challenges to children, young girls and females. In rural areas women have primary roles of fetching water, cooking and cleanness. Therefore, the fulfillment of women's roles and duties in rural areas solely depend on availability of water and shortage of water in rural affects millions of women and young girls in Tanzania. Women have to walk long distances searching for water. This may always put them into risks such as sexual harassments, rape acquiring diseases and domestic conflicts.

The LHRC advises the State to invest a lot of resource in water projects in rural areas to allow the majority of people access clean and safe water. This is very possible because Tanzania is a country with abundant water resources in most of its regions.

Chapter Five

Economic and Cultural Rights

5.0. Introduction

Economic and cultural rights are sometimes regarded as programmatic and realized as rights on gradual basis while civil and political rights are considered as absolute and immediate.²⁹⁷ However, all categories of rights are integral in international human rights documents, forming an integral part of the *Universal Declaration of Human Rights, 1948*, the *International Covenant of Economic, Social and Cultural Rights (ICESCR), 1966* and *Optional Protocol to ICESCR, 2008*. This chapter discusses the situation of economic and cultural rights in the year 2012.

5.1 Economic Rights

Economic rights encompass a range of rights, including the right to self determination, the right to work and labor rights; and the right to an adequate standard of living and the right to own property. The purpose of these rights is to ensure that every person has the minimal condition that enables living their lives in dignity. Economic rights are generally enshrined in the *Covenant of Economic, Social and Cultural Rights (ICESCR) of 1966* and international laws such as *ILO Conventions*.

The Tanzania economy depends profoundly on agriculture, which accounts for more than one-quarter of GDP, providing 85% of exports, and employs about 80% of the work force. However, Tanzania remained among the poorest countries in the world. Tanzania is increasingly performing badly economically. The Gross Domestic Product (GDP) for the country showed an increase from 6.4 in 2011 to 6.8 in 2012. There are main causes of GDP instability in the country which include the following; increase of interest rate in a sense that when prices increase and supply remains fixed, increased demand for money causes interests rates to rise. Other reasons include persistent power outages, escalating fuel prices, falling revenue collections, slow or partial donor disbursements and ever-rising public debt.²⁹⁸ The table below shows slight changes of GDP from 2010 to 2012.²⁹⁹

297 <http://www.wcl.american.edu/humright/hracademy/documents/EideClass1-Economicandsocialrightsashumanrights-AsbjornEide.pdf> Accessed on 4th February, 2013

298 1Regional World Book Outlook (2011) World Economic and Financial Survey, page 124.

299 <http://www.africaneconomicoutlook.org/en/countries/east-africa/tanzania/> Accessed on 2nd February 2012.

Table 17: GDP Trend from 2010 and the estimated 2013

2010	2011	2012	2013
6.5	6.4	6.8	6.9

Comparatively, in the region of East Africa Tanzania is one of the blessed countries with vast land, rich of resources, nevertheless other East African countries do better economically than Tanzania. For instance, more than 3 countries in the region such as Kenya, Uganda and Rwanda use every available opportunity such as air transport, construction, exports and industries to transform their economy. For decades now, Tanzania has significantly been failing to utilize resources such as minerals and other natural resources to transform its economy. For instance Tanzania demand for gold in world markets continued to rise with a growth forecast of 10.9% and 9.7% in 2012 and 2013 respectively.

On the other hand the Tanzanian economy continues to suffocate because the national debt rose considerably to an alarming rate. Recent statistics indicate that, the national debt stocks both external and internal debt in 2012 reached 20,276.6 compared to 17,578.9 billion in December, 2011. This implies that the national debt increment was by 15.4%.³⁰⁰ The external debt is adding up by 15,306.9 billion which is comprised of public debt of 12,342.5 billion and private debt of 2,964 billion.

For the year 2012 the inflation rate trickled down slightly from 19.8% in December, 2011 to 18.7% in April, 2012. The main causes of continuing inflation rates include high electricity tariff; high prices of oil and food especially rice and sugar prices. For example, by April, 2012 food contributed 24.7 percent while electricity and fuel contributed 24.9 percent of inflation. With this kind of inflation rate it is straight forwardly easy to tell that majority of people in the country can buy little with money or salaries. This kind of economy may always pose serious economic challenges to ordinary citizens. The inflation rate has other far-reaching implications such as reduced access to capital, fewer investments, less production of goods and services, less employment, less income, less poverty reduction and by extension less economic growth.³⁰¹

According to the Minister for Finance, Tanzania economy was estimated to have attained real GDP growth of 6.4% during year 2011 compared with the growth rate of 7% attained in the year 2010. Annual per capita income increased by 12.8% to TZS 869,436.3 compared to TZS 770,464.3 in 2010.³⁰²

300 Speech by the Minister for Finance Hon. Dr. William Augustao Mginwa (MP), Introducing to the National Assembly the Estimates of Government Revenue and Expenditure for the fiscal year 2012/2013 page 14.

301 LHRC (2013) Tanzania Human Rights Report of 2011, page 113.

302 Highlighted contents of the speech by the Minister of Finance and Economic Affairs on 14th June 2012 when presenting new budget for the financial year 2012-13 in the Parliament.

The minister speech is contradictory to the independence report delivered by the World Bank on assessment for Tanzania economy 2012.

According to the World Bank report of the Tanzania economy, the chart below shows progress of Tanzania inflation rate for the period beginning 2004-2012. The real situation at community level justifies this undisputable reality.

Table 18: GDP- Real Growth Rate (%)

Country	2004	2005	2006	2007	2008	2009	2010	2011	2012
	5.8	6.8	5.8	7.3	7.1	6.0	6.5	6.7	6.8

This entry above gives GDP growth on an annual basis adjusted for inflation and expressed as a percent grasp on 13th November 2012.³⁰³ Despite this slight increase of GDP from 6.7 in 2011 to 6.8 in 2012. Reality from the ground indicates that there is unhealthy economic growth at individual level both in rural areas and urban areas. That is to say, the proclaimed country growing economy does not reflect the practical life reality in rural residents that constitutes more than 80 % of the population. Generally, the populations in rural areas live under appalling conditions, caused by a number of factors such as lack of political willingness to eradicate poverty, poor practical implementations of various national strategies for poverty eradication.

The LHRC advises the country to explore all available opportunities such as presence of abundant natural resources, suitable and strategic geographical location, vast land and human resource to improve the country's economy.

5.2 Labour Rights

Labor right is an entitlement recognized by various international human rights instruments and national legal systems. The concept of labour right is not new, as its first move towards international labour conventions dates back to the beginning of the 19th century. Robert Owen in England, J. A. Blanqui and Villerme in France and Ducepetiaux in Belgium considered precursors to the idea of international regulation of labour matters in the world.³⁰⁴ This idea materialized and received international responds during the birth of International Labour organization ILO, which is largely recognized as a UN specialised agency setting International Labour Standards.

The ILO is specifically mandated to create international labour standards through States' agreements. It has by now adopted more than 180 Conventions and 200 Recommendations geared towards harmonizing and improving national labour rights.

303 World Bank Independent Country independent report of 2012.

304 International labour organization.

Another international instrument at international level which comprehensively address labour rights is the *International Covenant on Economic, Social Cultural Rights (ICESCR) of 1966* which advocates for protection and promotion of labour rights. The Covenant creates a duty for member States to guarantee freedom of work, skill development favorable working conditions, social security, fair wages and both the right to form trade unions and strike.³⁰⁵

5.2.1 The Right to Work

National legislations which guarantee the right to work include the Constitution of the United Republic of Tanzania Article 22, the *Employment and Labour Relations Act No. 11 of 2004* and *Labour Institutions Act No. 1 of 2004*. Tanzania has also other legal documents that guarantee the right to work such as the *Medium Term Pay Policy, Recruitment and Employment Policy, the Public Service Management and Employment Policy, the Public Service Act No.8 of 2002, Labour Institutions (Mediation and Arbitration) Rules 2007*³⁰⁶ and the *Employment and Labour Relations (Code of Good Practice) Rules, 2007*.³⁰⁷

The state of unemployment and the violations of labour rights within these legal frameworks in Tanzania are alarming. A larger part of the population, both educated and none educated is unemployed. The major challenges within this sector include an increasing rate of urban employment pressures with outflow of rural surplus labour to non-agricultural sectors and new entrants in the labour market (estimated between 800,000 – 1,000,000), school and college graduates each year) resulting to high number of unemployed youth.³⁰⁸ The major reasons alluded for the increase rate of unemployment in Tanzania include;³⁰⁹

- a) Imbalance between demand and supply of labour in the labour market;
- b) Low rate of job creation in the general economy (resulting from low rate of investments);
- c) Absence of specific employment stimulus programmes (pro-employment intensive investment policies and programmes) at sectoral and local levels.

Despite the country being said to have attained economic positive change, the so called change has neither helped in poverty reduction nor job creation. This was also reiterated by the World Bank's Director to Tanzania who openly said;³¹⁰

305 See articles 6-9.

306 G.N No. 64 of 2007.

307 G.N No. 42 of 2007.

308 Mcha C.M (2012) A Paper Addressing Employment Challenges In Tanzania: Strategic Policy Options And Actions by Stakeholders.

309 *Ibid.*

310 <http://www.reuters.com/article/2012/11/01/us-holdtanzania-economy-idUSBRE8A00JF20121101> Accessed on 6th February 2013.

“Growth in Tanzania has been concentrated in a few capital-intensive sectors such as mining and telecoms, and soon natural gas - failing to produce widespread job creation, failing to raise incomes of the masses, and failing to reduce poverty,” he said.”

The situation is critical because out of 24million people who serve as labor force, 8.8% of them are unemployed while the majority of them are youths, aged between15-24.³¹¹ Tanzania should therefore learn to use its available capital intensive sectors such as mining, agriculture, telecoms, tourism and natural gas to create job opportunities for its people.

5. 2.2 Right to Fair Remuneration

Remuneration is payment or compensation of services rendered. Fair remuneration can therefore be defined as equal pay for equal work. At the International level Article 7 ICESCR states that, States will undertake to provide favorable conditions at work, including: fair wages and equal remuneration for work of equal value without discrimination of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; A decent living for themselves and their families in accordance with the provisions of the present Covenant; Safe and healthy working conditions; Equal opportunity for everyone to be promoted in the employment to an appropriate higher level, subject to no considerations other than those of seniority and competence, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

In 2011 The LHRC’s human rights report assessed the remuneration of domestic workers and mining workers. For the purpose of this year’s report, the LHRC scrutinizes the welfare of public employees of lower rank such as teachers; night security guards and social security in mining areas.

a) Public Sector - Teacher’s Saga

People employed in public sector; in most cases those of lower rank are poorly paid compared to service rendered and the working condition. School teachers are a very important group of civil servants for the welfare of the country; nevertheless they remain to be the most poorly paid workers in Tanzania. This group of civil servants has been demanding for better wages and salaries; however the State remains mum on this.

In 2012 the Tanzania Teachers Union (TTU) called on a strike to press the government to consider their requests such as increase of salaries by 100%, the payment of debt accumulation, various allowances and over time working

³¹¹ http://www.indexmundi.com/tanzania/economy_profile.html Accessed on 6th February, 2013.

allowance. Teachers who are members of TTU are owed salary increments which are due to them or even in some cases have not been paid anything at all since 2007. Mr Gratian Mukoba TTU national leader was quoted as saying;

312

“The government promised it would make the payments beginning last month, but we now know that it was just a game to put off the planned strike until pupils sat for their final examinations. Now that November has gone and the government has remained silent on our demands and its promise, I hereby announce that when schools reopen in January 2012, we teachers will continue with our leave until the government honors its promise.”

In Tanzania teachers are poorly paid, yet they work under very difficult environment. Majority of teachers in Tanzania earn about \$100 a month, however even this tiny amount is not honored or paid to them properly. Consequently, teachers live a very difficult life that may automatically have a negative impact towards their working performance.

The LHRC’s finding indicates that during the strike the government used excessive power to suppress the strike while harassing and intimidating individual teachers who took part in the strike. In Kahama and Tarime for instance, other teachers were forced to vacate their homes escaping police arrest. This is contrary to the labour laws which allow lawful strike such as this. The LHRC’s survey shows that teachers’ claims were genuine because all teachers in the country were dedicated to fight for their legal rights despite police apprehension and request for statements of self explanations for their involvement within seven days.

Instead of listening and acting on teachers genuine claims the government of Tanzania used the High Court’s Labour Division to declare teachers’ strike illegal.³¹³ Mr. Mkoba was ordered by the Court to issue a press release calling the strike off and allow teachers to continue with their duties. The judge ordered the respondents (Tanzania Teachers’ Union) to pay damages monetarily and, or by compensating the students for the classes missed during the unlawful strike. Judge Wambura ruled out that;

“I hold that the strike which has been going on for three days is unlawful. I order that it should be terminated immediately and all teachers who are on strike to resume their duties forthwith.”

312 <http://www.teachersolidarity.com/blog/tanzanian-teachers-to-strike-2/> Accessed on 5th February, 2013.

313 Abdulwakil Saiboko “Tanzania Court Ruled Teachers Strike Illegal” Daily News 3rd August, 2012.

The court used legal technicalities to suppress teacher's strike. For many years legal technicalities have been used by tyrannical States to suppress genuine claims in the courts of law. The court used the Employment Labour Relations Act of 2004, to declare the strike illegal for lack of 48 hours notice to the employer, prior to the commencement of the strike.



Teaching environment in Tanzania in one of the schools

Well paid and well facilitated school teachers can perform their duties a 100% with high level of efficiency and productivity. Perhaps it is wise to note that education is corner stone of every successful State. If today, the government feels that education is expensive, let them opt for ignorance and see what kind of a nation Tanzania will be in the future. To avoid all these, the government is advised to treat school teachers in a special manner by investing a lot of funds in this sector. If Tanzania wants to achieve better results in the field of education, the welfare of school teachers should always be given full consideration when planning.

b) Medical Officers' Strike

Medical practitioners resolved to strike after the non-response by the government to a number of demands. Medical practitioners in Tanzanian's public health facilities had some unsolved claims that they wanted the government to address immediately. The government medical personnels opted to strike as a legal way to press their employer to provide better salaries, working equipment and improve their working conditions. Strike is a legal approach as a final resolution workers uses to press their employers to solve their needs according to the Employment and labour relation Act No 6 of 2004. Several methods were used as well to suppress the medical doctor's strike. The abduction and

subsequently torture of the Chairperson of the Medical Doctor's Association Dr. Steven Ulimboka is highly associated with his leadership in the medical doctor's strike. He is a victim of these fracas and friction between medical doctors and the government. Majority of medical doctors are poorly paid in rural areas. Medical doctors had genuine claims; however the government used several ways including the court of law to end the strike.

c) The Private Sector - Night Security Guards

Private sector also employs a good number of people in the country. Labour laws and the Constitution of Tanzania require both the private and public sector to respects labor laws and principles. For the purpose of this report of 2012 this sub chapter assesses mining workers social security rights and the urban based Maasai night security guards.

(i) Overview of the Profession

In 2012 the LHRC facilitated a study that assessed the employment standard of night security guards urban areas. The subjects of the study were the Maasai living in Kinondoni District who are still reliant on pastoralism or are still connected to the pastoral way of life through relations or by permanent residence. Individuals are normally transient, living only part of the year in Dar es Salaam and part of the year in their home region, or they send money back to their home region where their family remains. Individuals were selected based on the nature of their livelihoods as migrant individuals belonging to Maasai communities in Dar es Salaam.³¹⁴

The findings of this study shows that many individuals are moving to Dar es Salaam for income generation, leaving situations of drought and famine behind. Most individuals leave their families behind in their home region hoping to make enough money to buy more cows and return home. However, the majority of people are living outside in abandoned buildings or streets, working in low paying and precarious work and facing discrimination. While the ability to make an income remains a draw for many, the standards of living are extremely poor.³¹⁵ The findings of the study shows that majority of the individuals worked as security guards (66%), mostly during the night shift. due to high illiteracy rates, a large number of Maasai men turn to work as security guards in urban areas.

Among other questions framed for the purpose of this study, were specifically designed to reveal employment standards. The question focused to gather information on employment, such as what individuals engage in to make a living and the challenges they face in their employment. Majority of them almost 71% of the interviewee mentioned that they work under poor/bad environment.

314 Riley E, Sangale T, and Olengurumwa, O (2012) A Report on the Demographics, Standards of Living, and Employment Conditions of Migrant Maasai Living in Dar es Salaam, page 9.

315 *Ibid*, page 3.

(ii) Working Conditions

The main answer was the lack of proper tools to protect themselves while on duty as security guards. They are not given proper weapons to deflect from attack or prevent theft. Related to the lack of proper tools is the physical risk associated with their line of work. In light of the physical risk, many believed they should get extra pay and some kind of health security, for when they get injured or sick. Many individuals stated that there is no recourse if they get sick, they simply have to not work and no one will help them. There is also no job security, as the majority of guards did not have a contract and could be fired at any given time. 72% of all people interviewed did not have a written contract. Only 5% of individuals have a written contract for their employment, which were all security guards.³¹⁶

Individuals also stated that they had little recourse when mistreated. 17% of people stated they had been shortchanged on their pay, 30% had been paid late and 15% had been injured at work. Few people did anything when confronted with these challenges, with some individuals simply quitting and none seeking of assistance from the police. One individual did seek advice from a village elder/ traditional leader when they were paid late.³¹⁷



“Life here in the city is very tough, this place we have about 70 people who sleep under the tree in this “olale” fenced area. Many of them fall sick and no one cares for them. We normally call a meeting to assist those who are expelled from work or become seriously sick. This is a tree we use to gather under and discuss our problems.” -Man, aged 45-55 from Manyara Region.³¹⁸

(iii) Unfair Remuneration

The average monthly income was very low among the interviewees with few people making over 150,000 Tanzanian Shillings a month and a substantial portion making less than 100,000. A salary of 100,000/- Tsh. equals approximately 2\$ a day.

316 LHRC, (2012) Human Rights Survey, *OpCit*, page 19.

317 *Ibid*.

318 *Ibid*, page 15.

Table 19: An Average Monthly Salary for Security Night Guards in Cities

Average Monthly Salary in Tanzanian Shillings		
Salary Range	Frequency	Percentage
0-50,000	27	13%
50,000-69,999	16	8%
70,000-99,999	51	25%
100,000-150,000	89	44%
150,000+	10	5%
No Answer	9	4%
TOTAL	202	100%

Source: LHRC Report on the Demographics, Standards of Living, and Employment Conditions of Migrant Maasai Living in Dar es Salaam

To get that salary, 51% of individuals work 12 hours a day or more and 3% are working 24 hours shifts. Those that work 24 hours are security guards and are expected to sleep occasionally at work in small rooms provided.³¹⁹



Night guard cooking at an open space where he lives with 70 others under the trees (Left) and the view of the inside an old container, now a living space for families on an abandoned warehouse site (right).

Despite the little payment, majority of the night guards are mistreated and harassed by their employers. They don't have job security and they may easily be fired at the employer's will. One of them was quoted as saying;

“I was arrested by the white boss because the car was broken and some things worth 13 million were stolen from the inside. I had to pay some money to get out of police custody. Furthermore, my boss wants me to pay back 13 million because of negligence at workplace. I was fired by him and now I just want money for a bus fare to go home”. - Male, aged 35-45 from Manyara.

319 *Ibid*, page 20.

Finally, the findings of this study suggests that there is need to have an agent or human rights representative that acts on behalf of Maasai or any other group of people who want to work as security guards, to ensure there are written contracts and fare wages. Information on labour rights and what to do if those rights are violated could be improved in such communities. There are steps that could be taken to ensure individuals living in the cities get equal footing in regards to income generation and human rights standards. Since these individuals see no other alternative but to come to the city to work, they deserve the same basic human and labour standards guaranteed to everyone and the government could do more to protect these rights.³²⁰

5.3 Right to Own Property

Everyone has got the right to own property individually as well as in association with others. No one shall be arbitrarily deprived of his property.³²¹ Every person to enjoy property rights, including the right to own, use and dispose of property, both individually and jointly with other individuals. This right is guaranteed by several international instruments such as The *Universal Declaration of Human Rights of 1948* which requires member States to respect and promote the right to own property by creating an environment that allows people to freely enjoy their properties and guarantee their protections.³²²

At the National level, the Constitution of Tanzania of 1977 also provides that every individual has the right to own property and use or dispose it at his liberty. However, the protection by the Constitution is too general to guarantee the enjoyment of this right in Tanzania. Article 24 of the Constitution provides that;

“Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law. (2) Subject to the provisions of sub-article (1), it shall be unlawful for any person to be deprived of his property for the purposes of nationalization or any other purposes without the authority of law which makes provision for fair and adequate compensation.”

With this slight Constitution protection, the freedom to enjoy property rights in Tanzania is uncertain. Today, to a larger extent majority of people in Tanzania do not enjoy the use and dispose of their properties especially land property, because of investment activities in the country. This sub chapter assesses how land grabbing and ruthless evictions affects citizen’s right to enjoy the right to own property.

320 Riley, E, Sangale, T & Olengurumwa, O (2012). *Op.Cit.*, page 25.

321 Article 17 (i).

322 Article 17.

5.3.1 Ruthless Evictions

Land acquisition in Tanzania is administered by several legislations with diverse objectives such as the *Land Act No.4 of 1999*, transfer of categories of land under sections 4(7) and 5(7) of the Land Act, 1999; the *Land Acquisition Act of 1967* which provides compulsory acquisition; and section 7(8) of Act No. 4, of the *Wildlife Act of 2008* on hazardous land.

The *Land Acquisition Act* legalizes the confiscation of any private property for public or for investment purposes. Under the Act, if land is taken by the government for public or investment purposes, its owners must be compensated. Furthermore, the law requires the owner to be paid compensation equal to the market value of the land acquired, plus an additional sum on account of the compulsory manner of the acquisition.

However, this law can be challenged in many ways as it provides a room for State officials to manipulate the concept of “For Public Interest” at the expense of individual’s right to own property. Experience from the practice reveals that in most cases, evictions under the name of public interest have been facing constant objections from the victims of these evictions. According to Tanzanian’s laws, legality does not restrict government power in ownership of land. For instance, Tanzania residents are only tenants in their land according to the Tanzanian’s land law.³²³

The mentioned laws give much power to the President to transfer land from one category to another that is from village, conservation and general land. However, the prescribed legal procedures must be followed.³²⁴ In 2012 LHRC registered several evictions conducted because of investment purposes and expansions of protected areas. Some of the registered ruthless evictions in 2012 include Kilombero, Chunya and Kwembe, Madale and Magu respectively. For the purpose of this report Madale and Magu eviction will be discussed below.

(a) Magu Ruthless Eviction

Ruthless evictions are increasingly becoming big threats to the enjoyment of the right to own property in Tanzania. The growing trend of ruthless evictions in Tanzania is driven by investment purposes and expansion of protected or reserved areas. For instance, the case of Magu involved about 50 families who forcefully left their homes for expansion of protected areas in Misungwi, Bugata and Mwalungu villages. The evicted families suffered great loss such as loss of properties and family members. These families remained homeless with no access to social services such as water, health and education. These villagers lived in those areas for years, some of them since 1940. This was proclaimed by one villager Mr Manhe Mayoka (80) who was born and lived in that village all of his life since 1940.

323 Tanzania Land Act No. 4 of 1999 and Village Land Act No. 5 of 1999.

324 *Ibid.*

My family has been here since time immemorial and I do not remember when my elders established the village. My parents and my grandparents have been living here how can the government call us foreigners or trespassers in our ancestral land?, we know that they want to create a park just like Serengeti which we have no benefit on just as we lost a lot of resources during the creation of Serengeti National Park.

The LHRC observations revealed that the evicted villagers lived for years in those villages claimed to be Sakaya Protected area.³²⁵ The photo behind indicates that there were grave yards used to burry the dead in 1960s. In disregard of this, government officials continued with the eviction exercise.



This is one of the graves left after the villagers' were evicted

This ruthless eviction was also accompanied by demolition of houses and other properties. Majority of people lost their properties and found no place to go; instead they opted to secure their lives under trees and in temporary camps. This is a gross growth violation of indigenous community rights. These people have a right to possess and enjoy pieces of land for their survival, culture and development as a whole. This is increasingly becoming a common practice in Tanzania, whereby indigenous communities who have lived for ages in their ancestral lands are now constantly harassed and finally pushed away from their land for the claimed conservation purposes.

³²⁵ <http://www.fullshangweblog.com/wp-content/uploads/2012/08/DS>



Families left homeless and separated from their families in Magu



New life settlement after eviction in Magu Mwanza

(b) Madale Eviction

In August 2012 the government used the police force to evict hundreds of people at Wazo, Mabwepande and Madale in Dar es Salaam. This eviction left over 350 houses, huts and other structures built in those areas demolished. During the operation several people were injured and many of them were arrested. Villages affected by the operation included Madale, Mabwepande, Kazaroho, Kinondo, Mbopo, Boko Magereza and Nakasangwe. Many of these villagers were left homeless with most families being dislocated.



The LHRC questioned this eviction exercise as it was conducted while there were cases in the court of law scheduled to be heard some few days before evictions. These included land cases number 125, 139 and 215 filed on different dates in 2012. Furthermore, this exercise affected even some legally owned houses causing loss of properties and injuries to innocent people. On the other hand evictions procedures were not properly followed. For instance, the government and the police force used excessive force to evict people believed to be encroachers of the area in Wazo without notice was a total violation of human rights and constitutional laws governing this country.

5.3.2 Land Grabbing for Investment Purposes

The right to own land is the right to be enjoyed by every citizen of Tanzania. But as of recent years the right to possess land is increasingly violated by the massive increase of land grabbing through investment purposes. Land-grabbing is a result of spongy policies among African Governments, including Tanzania's, whereby investors are given red carpet treatment at the expense of Tanzania; as a result locals have to struggle on their own to regain their land.

Today foreign companies are increasingly buying vast tracts of land unscrupulously at a very low price. Lawful occupiers and owners of the land are alarmingly displaced and pushed out from their fertile land. For instance, in 2010 the World Economic Forum took place in Dar es Salaam formed the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) and foreign investors were invited to invest in crops production. These companies and large scale investors acquire huge chunks of land leaving Tanzanians with almost nothing. Today, Tanzania has a population of 44 million people and about 1500 villages; however the percentage of people and villages with ownership titles is extremely discouraging.

Land conflict between investors and locals is massively becoming a song of the day in Tanzania. These conflicts are mainly fueled by land grabbing for large scale investors. The problem of land grabbing in Tanzania is extremely high allowed by the country's legislations and policies. The current land laws and land based investments laws such as mining laws and tourisms provide a wider room and loopholes for land grabbers in collaboration with some unscrupulous country leaders to acquire huge chunks of land leaving locals as squatters on their land.

Historically, far back during colonial time laws and policies were internationally enacted to outshine the rights of locals to own land and other resources. For instance the colonial land tenure system in Tanzania affected much local ways of accessing, owning, controlling and disposing of land. With little modifications today the same legislations controlling land and other land based investments are also used to violate the rights of indigenous people and the entire population in general to own and possess their ancestral lands.

Another land grabbing assisting factor is the lack of peoples' participation during policy and laws formation. Views of citizens are disregarded for the interest of investors. On the other hand lack of awareness and knowledge on the laws governing land issues and transfer of land is another reason for the current trend of land grabbing in Tanzania. For instance, research by HAKIARDHI reveals an acute and prevalent lack of awareness of the law and procedures, within rural communities and their leadership regarding land. The report provides that Bio-fuel investment programs have a major implication on security of land tenure in Tanzania.³²⁶ Bio-fuel development in Tanzania put at stake highly strategic national resources such as land, water, and forests.³²⁷ The victims of this huge investment are always the locals who live in those fertile lands thought to be unused or underutilized by some political leaders.

Furthermore, investment activity in rural areas is another source of land grabbing disregarding the rights of villagers to use their land for economic development. A mini research by Tanzania Land Alliance (TALA) indicates that about 5 land conflicts are reported daily by media houses involving villagers and investors. These conflicts are said to be common in areas with resources such National Parks, Mining areas and Protected areas.³²⁸ The press release by TALA is detailed as follows:

“Ukizingatia ukweli kuwa migogoro mingi inatokea katika maeneo ambayo hakuna vyombo vya habari na haitolewi taarifa, ni dhahiri kwamba kiwango cha migogoro ya ardhi kimeongezeka sana kutokana na wimbi hili la uwekezaji. Uwekezaji kwenye sekta ya madini tu peke yake, licha ya kusababisha uporaji wa ardhi kwa wenyeji umesababisha pia umasikini, migogoro baina ya wananchi na dhidi ya wawekezaji kuongezeka na kusababisha uvunjifu wa mara kwa mara wa haki Binadamu, yakiwemo mauaji ya watu wasio na hatia na uharibifu wa Mali.”³²⁹

“It is evident that land disputes have gone up due to the increasing wave of investment taking into consideration that most disputes take place in areas where there are no mass media to report on. Investment in mining areas alone apart from causing land grabbing to the indigenous, has also led to poverty, conflict between natives and investors, frequent violations of human rights, inclusively the killing of innocent civilians as well as reducing to dust properties.”

Villagers and other citizens in Tanzania have the right to own land and other properties. The LHRC advises the government to among other things ensure

326 HAKIARDHI (2009).

327 *Ibid*, page 14.

328 TALA (2011) Taarifa kwa Vyombo vya Habari Kuhusiana na Hali ya Haki za Ardhi Nchini Dar es Salaam, 18 Novemba, 2011.

329 *Ibid*.

that the right to own land is everybody's rights regardless of race or status to do the following:

- (a) Stop huge foreign investment activities on village lands;
- (b) For the purpose of land security, the government is hereby advised to survey and offer certificate of ownerships to all villages in Tanzania;
- (c) Ensure that the new laws address how resources attached to land such as minerals and natural gas can be harvested without affecting villagers and other land occupiers;
- (d) During compulsory land acquisition, all necessary procedures and steps must be followed and adhered with due diligence without affecting owner's rights;
- (e) The government has to put in place policies and laws which give due recognition and protection to pastoral land rights in Tanzania;
- (f) Strict mechanisms should be put in place to avoid ruthless evictions that affect hundreds of people and their properties.

5.4 Cultural Rights as Human Rights

The bearer of cultural rights include: individuals seeking to be protected from State abuse and non-State actors, small States seeking to enjoy cultural rights against larger States; and indigenous people/minorities seeking to be protected against State and investors.³³⁰ Cultural rights emanate from the entire concept of culture which refers to the cumulative deposit of knowledge, experience, beliefs, values, attitudes, meanings, religion, notions of time, roles, spatial relations, concepts of the universe, material objects and possessions acquired by a group of people in the course of generations through individual and group striving.³³¹ Therefore, culture encompasses art, literature, lifestyles, and ways of living together, value systems, traditions and beliefs.³³²

International instruments that advocate for cultural rights include; the *Declaration on the Principles of International Cultural Cooperation*; the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*; the *Declaration on the Right to Development*; the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*; and the *ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples*.

Other instruments include: Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights; the

330 Joanne Bauer (2004) "Why Cultural Rights Now?" Human Rights Initiative Program (1994-2005). A Paper by Dr. Elsa Stamatopoulou and Joanne Bauer.

331 *The Journal of Psychology*, 135(5), 501-517 found at <http://www.tamu.edu/faculty/choudhury/culture.html>

332 Joanne Bauer (2004) "Why Cultural Rights Now?" Human Rights Initiative Program (1994-2005). A Paper by Dr. Elsa Stamatopoulou and Joanne Bauer.

International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities.

The complexity of culture can be summarized into three major definition of culture embedded also in international law. These varying understanding of culture is thus categorized into;³³³

- a) Acquaintance with and taste in fine arts, humanities, and broad aspects of science as distinguished from vocational and technical skills;
- b) The integrated pattern of human behavior that includes thought, speech, action, and artifacts and depends upon man's capacity for learning and transmitting knowledge to succeeding generations;
- c) The customary beliefs, social forms, and material traits of a racial, religious, or social group.

Historically, culture has been associated with the concept of power. It is obvious that any powerful culture dominates the other. Today in the world, cultures with super powers extend to other parts of the world and dominate other cultures. It is necessary to examine industrialization, colonization and the liberation struggles and currently globalization in various parts of the world when discussing cultural rights. It is with that in mind that Tanzania cannot be excluded from this reality. Globalization is significantly posing negative impact on enjoyment of cultural rights in Tanzania.

Cultural rights can therefore be considered as entitlements of the mentioned above cultural attributes that need recognition, promotion, protection and development facilitated by State authorities to create, environment where the mentioned rights are enjoyable.³³⁴ Cultural Rights are rights attached to culture as described above, both understood in a large sense.

The reason for protection of this right is to guarantee that people and communities have an access to culture and can participate in the culture of their own history and choice. Cultural rights are human rights that aim at assuring the enjoyment of unique culture and its components in conditions of equality, human dignity and non-discrimination. These rights are related to themes such as language; cultural and artistic production; participation in cultural life; cultural heritage; intellectual property rights; author's rights; indigenous peoples access to ancestral land and access to cultural sacred places.³³⁵ Among important cultural elements is Language that is a means of communication used to facilitate daily cultural activities for reasons of development.

333 <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module17.html> Accessed on 4th February, 2013

334 *Ibid.*

335 Albert. K.B (2010) Land rights of the indigenous peoples in Africa, International work group for indigenous Affairs, Copenhagen Denmark.

5.4.1 Language

Previously, More than 75 percent of Tanzanians used their vernaculars as their daily means of communication and only 20 percent of the populations who are also in cities used Kiswahili as their daily language of communication while as 5 percent of the entire population in the country use English in communication.³³⁶ With more than 120 ethnic groups representing more than 120 vernaculars, Tanzania may face extinction of these vernaculars in the next 50 years. The present legal system restricts the use of traditional language in public meetings even where the public meeting involves peoples from one ethnic group, this poses a threat for future survival for all traditional languages in the country.³³⁷

5.4.2 Universality of Human Rights

As time pass by, cultural background as a primary source of identity of self-definition, expression, and sense of group belonging is diminished within the modernized world where people's cultures meet and blend. Thus, in this world where cultural diversity is high the concept of universality of human rights would always tend to undermine the cultural relativism³³⁸ to maintain its status. At times and in many countries, universal principle of human rights often collide with the enjoyment of cultural rights.

Cultural relativism negates the concept that human rights are absolutely universal. That is to say human rights are culturally relative but not universal. However, international law emphasizes through United Nations as proclaimed in its Charter, that human rights are "*for all without distinction*". *Human rights are the natural-born rights for every human being, universally. They are not privileges.* On the other hand under international human rights law governments also have an obligation to promote and conserve cultural activities and other facts. This creates a total confusion and poses a great challenge in people's cultures.

The rights to enjoy someone's culture are human rights like any other rights. Unfortunately, Tanzania as a Nation doesn't understand this factor. Cultural rights are slightly protected in in human rights within the realm of the following two concepts. Firstly, the right to practice; this provides that people have the right to practice and continue shared traditions and activities. Secondly, the protection of culture in international law covers the scientific, literary and artistic pursuits of the society.

336 Practical experience.

337 LHRC (2011) Human rights report of 2011, page 108.

338 Cultural relativism is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives. Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, human rights are culturally relative rather than universal.

Several international instruments contain some provisions which protect cultural rights. Some of the cultural rights protected include the right to take part in cultural life; right to enjoy the benefits of scientific progress; right of individuals to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author; and the right to freedom from the interference of the State in scientific or creative pursuits.

But this again doesn't guarantee the enjoyment of cultural rights in some parts of the world, particularly the dominated developing countries like Tanzania. There is a danger of total disappearance for developing countries' cultures and traditions because super powers have been busy every now and then setting some of the international human rights principles endangering the existence of culture in poor countries. For instance, the Vienna Declaration continues to reinforce the universality of human rights, stating:³³⁹

“All human rights are universal, indivisible and interdependent and interrelated”. This means that political, civil, cultural, economic and social human rights are to be seen in their entirety. One cannot pick and choose which rights to promote and protect. They are all of equal value and apply to everyone.”³⁴⁰

This is indeed a serious problem in Tanzania and to other developing countries. As of now, rarely can you see cultural advancement in Tanzania as it is losing its traditional values because of westernized culture and politics. This is contrary to the UNESCO Principles on International Cultural Co-operation³⁴¹ which provides that each culture has a dignity and value which must be respected and preserved and developed. Today Tanzania neither enjoys culture development nor preservation. This is simply because every aspect of life today is dominated by western culture and politics. Today it may be very easy to find poor countries forced by super powers to believe on practices that are taboo in developing nations. The greater challenge is marked when the western world come up with new human rights ideas embraced in western culture and force the developing countries to believe them without considering cultural implications.

It is nowadays not easy to enjoy cultural rights in Tanzania because of the world's economic transformation. International concepts such as privatization and globalization have always posed negative impact on enjoyment of cultural rights. For investment purposes, Tanzania witnesses indigenous community and ordinary citizens being constantly evicted from their traditional land. This has had major and negative implication on enjoyment of cultural rights and culture development. Tanzania should learn that it is a right of every State and every individual to enjoy and develop its culture.

339 Vienna Declaration and Programme of Action, which repeats the same language to reaffirm the status of the Universal Declaration as a “common standard” for everyone. Adopted in June 1993 by the United Nations World Conference on Human Rights in Austria.

340 Published by the United Nations Department of Public Information DPI/1627/HR--March 1995.

341 Art. 1.

Chapter Six

Rights of Vulnerable Groups

6.0 Introduction

This chapter will consider compliance and abuse of human rights to most risk members of the community otherwise known as vulnerable groups. The international principle provides that due to inequalities existing to opportunities, priority is to be given to *those “social groups living in unfavourable conditions by giving them particular consideration”*.³⁴² In such community, attention should be paid to those whose needs are most urgent and whose ability to enjoy all rights is therefore most in peril.³⁴³

These groups include women, children, and people living with disabilities, aged people, refugees, asylum seekers, stateless persons and indigenous people. In the country women are victims of family instability, inheritance, female genital mutilation, gender based violence, unequal opportunities in governance and political life, social discrimination due to traditional and customs and economic exploitation.³⁴⁴ The late Mwl. Julius Kambarage Nyerere once said;

*“The truth is that in the villages women work very hard. At times they work for twelve or fourteen hours. They even work on Sundays and public holidays. Women who live in villages work harder than everybody else in Tanzania, but men who live in villages....are on leave for half of their lives.”*³⁴⁵ (Emphasis mine).

Children are victims of physical violence, sexual exploitation (rape), economic exploitation, child labour, orphanages and they are victims of family instability. On the other hand, people living with disabilities are still marginalized. They lack proper education and economic opportunities. They are also victims of discrimination, physical torture and killings as is the case for people living with albinism (PWA). Most of them live under abject poverty ending up as beggars in cities and towns. Furthermore, aged people in the country lack social protection

342 E. Brems (2008), *Conflicts between Fundamental Rights*, Antwerp – Oxford - Portland page 566.

343 *Ibid.* page 567.

344 Beijing Platform of Action 1995, 12 Critical areas for concern include; 1. Women and Poverty 2. Education and training of women 3. Women and Health 4. Violence against Women 5. Women and Armed conflict 6. Women and the economy 7. Women in power decision making 8. Institutional mechanism for advancement of women 9. Human Rights of women 10. Women and Media 11. Women and the Environment and 12. The Girl Child.

345 J. K. Nyerere, *Freedom and Socialism: A Selection from Writings and Speeches 1965-1967*, Dar es Salam: Oxford University Press, 1998, page 245.

and they are victims of torture especially witchcraft killings. They also lack proper health care and have been forced to succumb into prolonged parental care to their grandchildren who have lost their parents from the HIV/AIDS and other ailments. In the case of refugees and asylum seekers now in the country, it is becoming a history since most of the refugees' camps are being closed down. For example Mtabila refugee camp was closed on the 31st of December, 2012 and the only camp remaining is Nyarugusu which accommodates only a few refugees left in the country. However there is an emerging class of stateless persons who are actually non-nationals in cities and towns. Lastly, under scrutiny is the indigenous communities who are considered as disadvantaged members of the society as they belong to the minority group in the country. These groups are protected by various international and national human rights legal instruments. There are global and national efforts to protect and defend vulnerable groups.³⁴⁶ These initiatives came in place after the realization of inequalities which exist among community members.

At the national level protection of the policy and ministerial protection of vulnerable groups is very unclear. This was evidenced during an opinion survey carried out by LHRC in selected regions where in most cases information regarding vulnerable groups are not available and no specific budget is allocated for these groups. Moreover, under the local government authority at district level, the social welfare department in the districts visited is not budgeted, whereas the community development department is at least funded and has ongoing programs.

6.1 Rights of Women and Girls

Historically women have been victims of discrimination and exploitation in the community based on various factors. Such factors include religion, tradition, customs and cultural practices.³⁴⁷ For example women in most African cultural practices were not allowed to sit with men for a talk irrespective of the agenda under discussion.³⁴⁸ This practice in Africa contravenes the clear wordings

346 That See, The Arusha Declaration 1967 "*Socialism and Self Reliance*" part 1, the TANU creed, the preamble para (a) recognizes all human beings are equal, para (b) that every individual has the right to dignity and respect

347 See Policy on Women in Development in Tanzania, Ministry of Community Development, Women Affairs and Children March, 1992. Para 7 of this policy reads that; "7. In spite of all these efforts, the situation of the majority women is still not satisfactory. This situation is a result of various factors including (i) Customs and traditions which discriminate against women (ii) Lack of a correct interpretation of the concept women in development (iii) Lack of a specific body charged with responsibilities of framing and issuing guidelines and following up implementation of development programmes for women (iv) lack of guidelines on planning and development of women in general (v) inadequate incorporation of women issues in the planning process at all levels, village, district, region and nation (vi) unfair distribution of natural resources (vii) lack of strategies and techniques to women's participation in national development (viii) non-recognition and appreciation by the society of the multiple roles and the heavy workload borne by women.

348 G. A Malekela "*Tanzanian School Women Talking: Are the Traditional Patterns of Thinking Changing?*" In UTAFITI (New Series) Vol. 3 No. 2, 1996 page 135.

of the preamble of *the African Charter on Human and Peoples Rights, 1981* which provides for equality of all people. The preamble reads that, “*Freedom, Equality, Justice and Dignity are essential objectives for the achievement of the legitimate aspirations of the African people.*”

It is difficult to achieve the African aspirations of equality, justice and dignity with a woman living under abject poverty, main producers of farm products but not beneficiary of the same³⁴⁹ victim of rape and sexual harassment, her rights infringed by discriminative laws and lack of formal education. There are global and regional blocks initiatives to liberate women from inhuman and degrading treatment which are in progress. For example, conducting international women conferences and strengthening the implementation of international legal instruments that protects and promotes women rights by individual states.³⁵⁰

In principle the international conventions are well drafted and prohibit substantively most of discriminative practices against women.³⁵¹ For instance, *the African Charter on Human and People’s Rights, 1981* prohibits dominance of men over women as it says;

“*Freedom, Equality, Justice and Dignity are essential objectives for the achievement of the legitimate aspirations of the African people.*”³⁵²

However in practice men tend to assume dominance over women even in decision making of their own affairs such as marriage issues.³⁵³ Women in some communities are sold as commodities for wealth gains through what is called dowry “*mahari*”, early marriages is also common among some tribes in Tanzania, little participation in decision making including taking part in governance of the country.³⁵⁴

Women’s rights are protected and promoted by various international and regional legal human rights instruments. The first one which is non-binding is the *Universal Declaration of Human Rights, 1948 (UDHR)* which is a foundation basis of equality. The general treaties include the *International Covenant on Civil and Political Rights, 1966 (ICCPR)* and *International*

349 C. Tobler, International Legal Instruments for the Protection of Women’s rights; LL.M Dissertation, Europa Institutes of Universities of Basel (Switzerland) and Laiden (Netherlands), 2009 page 2. Is quoted saying, ‘In a world, in which women perform two-thirds of the hourly labor and receive 10 percent of the income and hold barely 1 percent of the property, disempowerment is clearly economic.

350 Berlin Conference 1995.

351 A. Clapham, (2006) Human Rights Obligations of Non-State Actors, Volume XV/1, Oxford University Press UK

352 Article 19.

353 The United Republic of Tanzania, The Law Reform Commission of Tanzania; Discussion Paper on “*Criminal law as Vehicle for protection of the Right to Personal integrity Dignity and Liberty to Women*” Agenda No. 48.8 Presented to the 48th Commission Meeting, page 11.

354 Women representatives in 10th United Republic of Tanzania Parliament are only 30%.

Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). Specific Convention that protects and promotes rights of women is the *Convention on Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)* and the *Convention on the Rights of the Child (1989) CRC* came after the *1967 Declaration by the General Assembly on the Elimination of Discrimination against Women* and the *World Conferences on Women as of 1975 (Mexico)*.

In addition, women have protection on labour matters as the International Labour Organisation (ILO) has drafted a number of treaties as well.³⁵⁵ Some of these instruments include the following, *the Equal Remuneration Convention 1951, Maternity Protection Convention 1952* (revised in 2000), the *Declaration on Equality of Opportunity and Treatment for Women Workers* as well as *1979 and the Convention concerning Workers with Family Responsibilities, 1981*.³⁵⁶

Internationally, these conventions are supplemented by regional initiatives such as *the African Charter on Human and Peoples Rights on the Right of Women in Africa, 2003* for the whole of Africa. There are other initiatives for sub-regional such as the *SADC Protocol on Gender and Development, 2009*, the *East Africa Community: Strategic Plan for Gender, Youth, Children, Social Protection and Community Development 2011-2015*. The strategic plan among other things aims at reducing Gender Based Violence in the East Africa region and economic empowerment to women in the region.³⁵⁷ This strategic plan is the fulfillment of one of the objectives under the East African Community Treaty, 1999 which provides that;

*“ The mainstreaming of gender in all its endeavors and the enhancement of the role of women in cultural, social, political, economic and technological development; ”*³⁵⁸

In the country, the position under *the Constitution of United Republic of Tanzania, 1977 (CURT)* provides clear on equality between women and men.³⁵⁹ The safeguards and guarantee of women rights are also provided for in other legislations as well. For instance *the Employment and Labour Relations Act, 2004* emphasizes on non-discrimination in employment opportunities and right of maternity leave.³⁶⁰ *The Land Act, 1999* and *Village Land Act, 1999*³⁶¹ as well provides for rights to own property to every citizen. However, there is

355 C. Tobler, *International Legal Instruments for the Protection of Women’s rights*; LL.M Dissertation, Europa Institutes of Universities of Basel (Switzerland) and Laiden (Netherlands), 2009 page 8.

356 *Ibid*.

357 http://www.gender.eac.int/index.php?option=com_content&view=article&id=153:eac-strategic-plan-for-gender-youth-children-social-protection-a-community-development-2011-2015&catid=27:newflash visited on 18th November, 2012.

358 Article 5(3)(e).

359 Article 12.

360 Sections 7(4) and 33 of Act No. 6 of 2004.

361 Section 19(1) (Act No. 4 and 5 of 1999)

no comprehensive law of the women in the country despite existence of *Policy on Women in Development* which came into place in 1992.

6.1.1 Repugnant Laws and Proposed Women Law

The Constitution of the *United Republic of Tanzania, 1977* guarantees for equality of all citizens *supra*. However on the other party there are several pieces of legislations which contravene Constitutional *proviso*. These repugnant laws infringe constitutional rights on equality between men and women; jeopardizes power relationship between men and women in the community and propagate gender based violence towards women. It includes provisions in the following laws, *The Citizenship Act*,³⁶² *section 11(1)*, *the Law of Marriage Act*,³⁶³ *Section 114(2)*, *the Local Customary Law (Declaration) Orders*,³⁶⁴ *The Penal Code Section 169A*,³⁶⁵ *The Probate and Administration of Estates Act, section 92(1)*.³⁶⁶

These laws do not guarantee rights and liberties of women. For example the *Law of Marriage Act, Section 13(2)* allows marriage of a girl below 18 years and disallows a male below 18 years from getting married. The law provides that;

“No person shall marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained the apparent age of fifteen years.”

Early marriages in rural areas among pastoral communities are very common. For instance one little girl aged 13 years from Kilindi village was sent for marriage by her parents for an exchange of five cows as dowry.³⁶⁷

The situation is very bad when a female is out of school as legislations on education and penal laws do not rescue her. In 2012, LHRC rescued three school girls from early marriage in Msata Bagamoyo district. The move was successful because they were students and laws protect them. Had it been that they were out of school, they would have been married as was planned as under the *Law of Marriage Act* a girl of above 15 years is allowed to get married.³⁶⁸

362 Cap 356 [R.E. 2002].

363 Cap 29 [R.E. 2002].

364 Cap 358 [R.E. 2002].

365 Cap 16 [R.E. 2002].

366 These laws have been proposed for amendments by LHRC and other stakeholders fighting for the rights of women for the last ten years. Read the Tanzania Human Reports from 2004 to 2011. Furthermore the proposed amendments for this law have been incorporated in shadow reports submitted to different treaty monitoring bodies including the shadow report submitted to CEDAW by civil societies in 2008. Read; the Tanzania Non-governmental Shadow Report to CEDAW, 2008 available at http://www.iwraw.ap.org/resources/pdf/41_shadow_reports/Tanzania visited on 24th November, 2012.

367 Burhani, “*Akimbia nyumbani kwao kukimbia ndoa ya lazima*” Mwana halisi 2nd February, 2012.

368 LHRC (2012), Fact Finding Report on Early Marriages, Msata –Bagamoyo.

LHRC is of the view that had it been that the law was clear on female below 18 not getting married, then early marriages would have been history. The provision of section 13 of the Law of Marriage provides an avenue for anyone who wants to marry off her daughter above 15 to do so. Experience from various rural communities specifically pastoral ones show that a female is normally forced to drop out of school and get married to another family somewhere else. This makes it difficult for authorities to trace her whereabouts and no cooperation from family members is accorded due to cultural practices.

LHRC proposes for enactment of women laws which will provide procedural and substantive rights of women in the country to amend these repugnant laws. A good example of similar laws in the country for vulnerable groups is *the Law of the Child Act, 2009* and *the Law of Persons with Disabilities Act, 2010*.

6.1.2 Inhuman and Degrading Cultural Practices

Aspects of cultural practices and traditional differ from one place to another. Tanzania has more than 120 ethnic groups or tribes with different cultural practices depending on the socio-circumstances of the particular group. Thus, there is no uniformity of cultural and traditional practices in the community. However, there are other cultural practices which are inhuman, degrading and uncivilized against women in the country. Some of the unacceptable cultural and traditional practices include female genital mutilation (FGM), women inheritance and cleansing and “*nyumba ntobu*” which ought to be dealt in isolation.

a) Female Genital Mutilation

Bolokoli, khifad, tohara, tahara, godiin, irua, bondo, kuruna, negekorsigin, and kenekene are few of the terms used in local African languages to denote a set of cultural practices collectively known as female genital mutilation.³⁶⁹ This traditional and cultural practice has for centuries now been in existence in various African countries including Tanzania. In each locality, the practise varies in prevalence, in type of surgery performed and in rituals associated with it.³⁷⁰ FGM is to some of the communities considered as a sign of beautification to women. Thus, female genital mutilation is attached to cultural practices whereby efforts are needed to curb this barbaric, inhuman and torture against women. One of the former mutilator in Gambia once said;

*“Changing traditions and behaviors that have such long histories is not easy. When one does not understand a problem it is not easy to appreciate it. If you do not understand your health, you cannot appreciate the problems of female genital cutting, and if you do not continue to educate people they will not understand. All we are seeking is knowledge. Knowledge will change people’s attitudes.”*³⁷¹

369 R.M.Abusharaf, (2006) *Female Circumcision*; University of Pennsylvania Press, Philadelphia page 1

370 *Ibid.*

371 *Ibid.*

This cultural practice is widespread in African communities. Several countries including Egypt, Sudan, Ethiopia and Kenya but to mention a few have high prevalence of FGM practices in Africa. In Tanzania communities in Mara, Manyara, Arusha, Singida and Dodoma are predominantly practicing FGM.

(i) Reasons for Campaign against FGM

There are various initiatives that are deployed in campaigning against FGM. These include legal initiatives and raising awareness implemented by human rights activists, feminist groups as well as the government. But generally FGM is a serious violation of Human Rights. For instance Proponents who lead in the fight against FGM advance the following arguments;

- (a) Female Genital Mutilation is a form of violence against women indistinguishable with other forms of torture and other physical exploitation like rape;
- (b) Female Genital Mutilation contravenes with human rights international conventions on the women rights thus constitutes a human rights violation; For example, *The Convention on the Rights of the Child, 1989, The Universal Declaration of Human Rights, 1948, The African Charter on the Rights and Welfare of the Child, 1990, CEDAW, The Declaration on Violence Against women, 1993, The World Conference on Human Rights Declaration and Programme of Action, Vienna 1993 and the High Commission on Refugees Statement Against Gender-Based Violence, 1996;*
- (c) The Rights of the Child: FGM is a ghastly form of child abuse since children have no say whatsoever about the practice. For example in Manyoni, Singida infants are mutilated in the first few weeks after they are born. In early 2012, a one year old baby in Kilimanjaro was mutilated and admitted at KCMC hospital after developing medical complications. Her mother alleged that she was advised by a witch doctor that the baby should be circumcised as she took long time before walking;³⁷²
- (d) Denies right to corporeal and sexual integrity, FGM is a form of castration that removes the women's organ of sexual pleasure and in so doing violates their fundamental rights;
- (e) Feminists believe that the practice is a symptom of female victimization by male authority and an attempt to control women's sexuality.

(ii) Incidences of FGM in 2012

Female Genital Mutilation to a girl below 18 years constitutes a criminal offence under the Penal Laws. The Sexual Offences Special Provisions Act, 1998 clearly criminalizes the FGM practices. However since the act is done secretly it is difficult for law enforcers to arrest the perpetrators. Worse enough, members of the community are not ready to provide evidence and support

³⁷² Reporter (Kilimanjaro), Mtoto aliyeketwa aendelea vizuri KCMC, Nipashe 1st August, 2012.

when needed. However, in 2012 at least one Mutilator Bhoke Wambura from Masurura village in Butiama, Mara region was arrested and charged for mutilating two school girls on 10th November, 2012. The mutilator (*Ngariba*) was paid 5,000/= for the job and was arrested after one of the victims went to report to the police station.³⁷³

The female genital mutilation practice is normally associated with ceremonies in several places where it is practiced in Tanzania. The LHRC was informed that the FGM's ceremony was conducted in Kiteto where the councilor of that area was the guest of honor. This shows over the extent of intervention needed to empower the public on effects of FGM practices. It is absurd to see a leader who is more informed and attends district council's sessions to represent the community in decision making, condone outdated traditional practices.

In Mara, the year 2012 was designated for FGM where ceremonies were conducted in almost all districts in the region. All in all, the worst situation was in Tarime district and Butiama especially Ryamisanga, Wegero and Kamugendi wards.³⁷⁴ It was reported that more than four thousand school girls were to be mutilated during long holidays in December.³⁷⁵ The government in collaboration with civil societies made an attempt to intervene. The intervention was intended to stop the ceremony though the situation did not allow, and thus ended up with raising awareness to the community.³⁷⁶ The awareness led to an increase of girls who fled away from their homes escaping the cut and thus sheltered at Masanga Shelter Centre.³⁷⁷



Students hosted at Masanga Shelter Centre in Tarime

373 Anthony Mayunga; "Ngariba Anaswa Baada ya Kuwakeketa Watoto Wawili" Mwananchi Newspaper, 15th November, 2012.

374 *Ibid.*

375 Children Dignity Forum (CDF) (2012) Report on FGM practices survey, 2012.

376 LHRC (2012) Tarime Fact Finding Report, 2012 page 9.

377 *Ibid* page 7.

Trying to stop the ceremony is a very difficult task due to the following major reasons: first, FGM is conducted in secrecy as during procession boys are normally the only ones seen; two the ceremony tends to be marred by violence and physical attack to anyone who tries to intervene and not to mention of the area where FGM is conducted being a no go zone for strangers. Three, members of the community armed with traditional weapons are normally present to protect the area. It is due to the above reasons that the police force have failed to comprehensively curb the practice. A member of SHEHABITA, a CBO in Tarime once said;

“Ki ukweli hata polisi wameshindwa kuzuia hizi sherehe za ukeketaji kwa sababu hizi taarifa za maandalizi wanazifahamu lakini hakuna mkakati mahususi wa kukabiliana na hao watu.”³⁷⁸

The police force has indeed failed to curb FGM ceremonies despite receiving reports on its preparation. This is due to lack of a strategy to deal with the perpetrators.

Lastly the issue of cross borders between Kenya and Tanzania is another challenge due to communities in Mara region particularly Tarime and Rorya districts sharing the very same origins with their counterparts in Kenya. It was revealed that some girls crossed the boarder for FGM ceremony in Kenya thus making it difficult for Tanzania to trace exactly where the ceremony had been organized.³⁷⁹

b) Widow Inheritance and Cleansing

Widow inheritance and cleansing are some of the most harmful traditions practiced by some of the tribes in the country. The act involves a widow being inherited by one of the husband’s relatives, typically a brother or younger brother of the deceased husband. There are also those who are forced to undergo a sexual act with one of the husband’s relatives on account that they have to be cleansed or purified. The practice of widows’ inheritance is common in Makete district in Njombe region while as widow cleansing is prevalent in the Lake Zone regions.³⁸⁰

The above cultural practices put women under the risk of acquiring HIV/AIDS and other sexual transmitted diseases. In Makete district, the *Wakinga* tribesmen are one of the communities in the country with a high prevalence of HIV/AIDS.

378 LHRC (2012) Monitors Report, 2012.

379 Anthony Mayunga, “Ngariba Anaswa Baada ya Kuwakeketa Watoto wawili” Mwananchi Newspaper, 15th November, 2012.

380 Research on Poverty Alleviation (REPOA) (2010), “Widowhood and Vulnerability to HIV/AIDS Related Shocks: Exploring Resilience Avenues” Brief No. 20 of July, 2010 page 3.

LHRC considers widows' inheritance and cleansing as some of the effects of the *Law of Marriage Act* due to its silence on bride price. Negotiation of the bride price in most cases does not involve the bride to be; but rather an agreement between the spouse's relatives and in-laws.³⁸¹ The position of the law has turned a woman into a family property that can be inherited and cleansed without her consent. The control is on the husband's relatives over inheritance after the death of the husband. Therefore, LHRC suggests that there ought to be some amendments of the Law of Marriage Act to safeguards personal liberties of widows in the country.

c) Nyumba Ntobhu

*Nyumba Ntobhu*³⁸² is one of the cultural practices in Mara region among the *Kurya* tribe. It is a traditional act where young girls are sold by their parents, often without their consent, to older widowed women for marriage, to give birth to children who will help older women in their homes. This tradition results in the young girls having greater risk of transmitting HIV/AIDS where they are encouraged to have multiple partners to enable them produce as many children as possible. The young girl is ostracized from the local community, and once the older woman dies, the young girl is left alone to support her children.³⁸³



This picture was taken from Mwananchi Newspaper of Friday, 30th March, 2012. The feature article titled “*Ndoa za jinisia moja zinavyochangia mateso kwa jamii mkoani Mara*” the writer Dina Maringo from Tarime, describes the life of innocent children born out of “*Nyumba Ntobhu*” who end up in streets begging due to lack of parental care.

LHRC considers this as a high denial of women's rights by their counterparts. In this arrangement the woman married under *Nyumba Ntobhu* lacks her own decision on sexual issues. The rich woman (husband) decides who should go with her wife in order to have children on her behalf. Thus, *Nyumba Ntobhu* is one of the most inhuman and degrading treatment cultural practices to women. There is a need for the society to abandon this cultural practice among the *Kurya* kinsmen as it is an outcome of patriacal system which dihumanises women without children.

381 A marriage contract can be concluded without the consent of the bride, on the basis of an agreement reached between the father of the bride and the groom (s.17) of the *Law of Marriage Act*. The Law of Persons Act allows for the payment of a bride price. Upon payment, the wife becomes the “property” of the husband and the husband's family.

382 Cultural practice whereby a woman marries another woman.

383 See, <http://foundationhelp.org/Archive/index.html> visited on 15th November, 2012.

6.1.3 Incidences of Gender Based Violence

Gender Based Violence is violence directed to individuals based on his or her biological sex or gender identity. It includes physical, sexual and physiological abuse, threats, coercion, and abuse, arbitrary deprivation of liberty and economic deprivation.³⁸⁴ Therefore Gender Based Violence is a public issue which has adverse impact to the community. These effects may be psychological, physical or health complications that contribute to increased mortality rate among women. A recent study on GBV and HIV/AIDS Prevalence expressly provides for its effects as follows;

*“Many studies conducted in Tanzania indicate unacceptably high levels of GBC ranging from 30-50 percent that lead to physical, sexual and psychological injury and trauma in all age groups, particularly among children and women. GBV can have fatal outcomes including suicide, HIV infection and maternal morbidity and mortality as well as non-fatal outcomes such as acute and chronic physical, sexual and psychological injuries.....GBV violates the survivor’s human rights and negatively affects family stability, structure and livelihoods which ultimately has negative impact on the overall socio-economic development.”*³⁸⁵

There are some global, regional and national initiatives that have been put in place to combat GBV incidents. Thus the gender-based violence knows no national or cultural borders; it is instead a problem of international proportions.³⁸⁶ The International legal instrument that protects women against GBV includes the following; *The Universal Declaration of Human Rights, 1948* although criticized³⁸⁷ but provides for respect of women as mothers³⁸⁸ and protection of women as the foundation of family unit.³⁸⁹ *The Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)* was the first international human rights instrument to recognize women rights as human rights.³⁹⁰ However the CEDAW does not expressly provides for prohibition against torture. It was not until 1992 when under auspices of CEDAW the United Nations made recommendations regarding gender based violence. The recommendation is known as General Recommendations Number 19 which

384 J. Fleischman in, A report of CSIS (2012) Global Health Policy Centre, *“Gender Based Violence and HIV: Emerging Lessons form PEPFAR Initiative in Tanzania”* July, 2012 page 1.

385 See also; United Republic of Tanzania, Ministry of Health and Social Welfare *“National Management Guidelines for the Health Sector Response to and Prevention of Gender Based Violence (GBV)* page 13.

386 J. Ulrich, *“Confronting Gender Based Violence with International Instruments: Is a solution within Pandemic Reach?”* in *Indiana Journal of Global Legal Studies*, Volume 2 Issue 2, 2000 page 629.

387 One of the criticisms of UDHR, 1948 is the use of word *“Man”* instead *Human Beings* thus it is seen to be gender biased.

388 Article 25.

389 Article 16.

390 *Ibid.* page 635.

states that; “gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of Article 1 of the Convention.”³⁹¹ Further, protection of women against gender based violence was proclaimed at the fourth international women conference held in Beijing in 1995. The UN-Declaration and Platform of Action proclaimed that;

“violence against women” as “any 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 private life.”³⁹²

Other global initiatives to eradicate gender based violence include *the Declaration on the Elimination of Violence against women of 1993* and regional initiatives like the Maputo Protocol of 2007 as well as the East African Community Treaty, 1999. The treaty provides that each member states shall; “take such other measures that shall eliminate prejudices against women and promote the equality of the female gender with that of the male gender in every respect.”³⁹³

In Tanzania the Constitution does expressly provide for the rights of women. However there are policy directives and programmes which address issues of Gender Based Violence. For example, Tanzania’s Poverty Reduction Strategy Papers (PRSP), the National Strategy for Growth and Poverty Reduction, lists violence against women as one of its indicators of poverty; a feature that is rare among PRSPs in other countries.³⁹⁴ In addition, there are some ministerial initiatives. For instance, the Ministry of Community, Gender and Development has established the National Committee on GBV. Moreover, Gender Based Violence is a criminal offence in Tanzania mainly under part XV of the *Penal Code*.³⁹⁵

a) Incidences of Physical Violence Captured in 2012

There were some serious incidences of physical violence reported from different corners of the country within the year 2012. The following are some of the vivid incidences reported by human rights monitors from their respective districts.

391 *Ibid* page 649.

392 *Ibid* page 653.

393 Article 121(e).

394 USAID, (2008) Health Policy Initiatives; Gender Based Violence in Tanzania: An Assessment of Policies, Services and Promising Interventions page V.

395 Offences against Morality.

Mara is one of the leading regions in the country where incidents of Gender Based Violence are reported. For example during a human rights survey in Mara, LHRC paid a visit to one of the victims of GBV who was admitted at Musoma Regional hospital. She was brutally tortured and her hair was pulled out to make her unattractive to other men at Nyakanga village.



Source: LHRC Human Rights Survey, 2012

In another incident a girl below 18 who had been forced into early marriage was brutally tortured and physically incapacitated by her husband.

“Binti miaka 16 aliingizwa kwenye ndoa za utotoni na wazazi wake ili kupata mahari huko kijiji cha Ruhu wilayani Rorya Kitongoji cha Mlimani alipigwa vibaya na mumewe na kukatwa katwa na panga, kichwani na mikononi. Sasa huyu mtoto amepata ulemavu wa kudumu mkono mmoja.” “A girl child of 16 years of age was forced into early marriage. Her husband brutally beat her and slashed her with a machete in her head and hands. She has acquired permanent disabilities in one of her hands.



A-16 years old girl at the hospital bed

Source: Human Rights Monitor – Serengeti District

The LHRC's Media survey in 2012 has recorded a number of incidences on GBV in the country. Some of the brutal killings committed by husbands and reported by the media include the following;

Table 20: Some Brutal Killings Committed by Husbands to their Wives

No	Victim of Violation	Violator	Incidence/Reason	Place
1	Amina Mbwego (35)	Husband	The husband killed his wife using an axe due to jealousy in love.	Handeni –Tanga
2.	Ashura Rashid (28)	Husband	The husband killed her by inflicting a deep cut wound using a sharp knife. It was caused by a family misunderstanding that occurred a day before.	Chunya (Lupa) – Mbeya
3	Neema Ngoko (17)	Husband	Neema Ngoko from Tamukeri village in Tarime was brutally beaten by her husband and locked in for two weeks despite being pregnant.	Tarime – Mara
4	Neisisiri Mokoroo (25)	Husband	Was attacked by her husband with a stick while pregnant and died there after. The husband claimed that he was not responsible for her pregnancy accusing her for being unfaithful.	Longido – Arusha
5	Telophena Machimo (42)	Husband	The husband brutally murdered her with a knife due to love related affairs.	Dodoma
6	Hellen Kitiso (42)	Husband	Family conflict led the husband to kill his wife while asleep	Dodoma
7	Stella Nyakuboi	Husband	Family conflict	Bunda – Mara
8	Fanyeje Ibrahim (22)	Husband	The husband stabbed his wife to death due to jealousy in love.	Kibaha – Pwani

Source: Extracts from Various Newspapers

b) Sexual violence: Reflection on People Living with HIV/AIDS

There are also some incidences of sexual violence that mostly affect People Living with HIV/AIDS (PLHV). The Secretary of State of the United States of America once said; *“We cannot stop the epidemic of HIV unless we also address the epidemic of gender based violence.”*³⁹⁶ There is a connection between Gender Based Violence and prevalence of HIV/AIDS due to sexual abuse to women. Women do not have wider decision on sexual relationships and in families there is marital rape. A study conducted by the National Council of People Living with HIV/AIDS (NACOPHA), revealed that women are mistreated, divorced and deserted after testing HIV positive. For example, woman X gave her testimony in the study as follows;

Y na mumewe T wananisema na kuninyanyapaa kwa kuwa mimi naishi na VVU. Tarehe 08/02/2011 wakaingia ndani mwangu usiku saa tatu wakisema ‘leo tunakutimuwa virusi vyako na huwezi kufanya kitu chochote, wakanipiga mimi na mwanangu tukiwa uchi wa nyama; wakaingia wanaume wawili kutugombelezeya ndipo wakaniambia niende Polisi nilipoenda polisi nikawakuta wao wamefika na kuniweka mimi na mwanangu ndani. Baada ya hapo kesi ikapelekwa mahakamani mpaka sasa kesi inaendelea nami naendelea kutukanwa na kuniambia wataishinda tu, pesa inaongea. Mimi nibaki na virusi vyangu, cha kusikitisha wanawaambia wapangaji wengine wasiongee na mimi nitawaambukiza VVU. Kama sheria ipo naomba nisaidiwe, namba ya kesi ni 315 Mahakama ya mwanzo Mbagala Kizuiani.

Meaning that:

One Y and her husband T talk behind my back uttering stigma statements on my status. I am sure you probably know that I am a PLWHA. On 08/02/2011 these individuals entered into my room at about 9:00 pm vowing to revive my virus saying there was nothing that I could do to stop them. They attacked me and my daughter, stripping us naked before the two men came to our aid and advised us to report the matter to the police. We went to the police only to find our assailants already there where things turned against us as my daughter and I were arrested and detained. The case was filed in court but it is still pending even as we speak. They keep insulting me while relaying mockery statements saying they will win the case because they have the money to pay for as I remain with my virus. Sadly, these assailants are also telling my fellow tenants that they should not talk to us because I would infect them with the HIV virus. I plead for assistance in my case number 315 pending in the primary court at Mbagala Kizuiani; if at all justice will prevail.³⁹⁷ **PLWHA Temeke district.**

396 A report of the CSIS (2012) Global Health Policy Center; Gender Based Violence and HIV: Emerging Lessons from the PEPFAR Initiative in Tanzania page 1.

397 Human Rights Count: Country Assessment 2012 for Tanzania, page 23.

6.2 Rights of Children

Children vulnerability means that children are defenseless to safety threats. A vulnerable child is exposed to behavior, conditions or circumstances that he or she is powerless to manage, whereby vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility and size.³⁹⁸ Children have for centuries continued to remain vulnerable and thus requiring legal and practical protection by community members.

The international legal protection of children rights was concluded by the United Nations in 1989 when *the Convention on the Rights of the Child* was adopted. Thereafter came the first *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* which provides that children must be protected from sexual abuse and exploitation; and *the Second Optional Protocol on Children Affected by Armed Conflict* provides that children under 18 should have no direct part in hostilities, as well as increasing the protection of children during armed conflict. Furthermore in 2012 *the UN Committee on the Rights of the Child*, opened for signature the Third Optional Protocol to the CRC to safeguard and protect rights of Children. The move will enable children submit allegations of violations directly to the Committee.³⁹⁹

In the Africa region Children are protected by the African Charter on the Rights and Welfare of the Child. In East-Africa Sub region, the Bujumbura Declaration on Child Rights and Well Being, 2012 has been concluded. The declaration aims at protecting and safeguarding rights of the children in the region through, ratification and domestication of all international legal instruments for children, enact comprehensive children policy for the region and engage children in public affairs.⁴⁰⁰

The Bujumbura Declaration, 2012 came into existence on recognition of the EAC Treaty under which “*Partner States undertake to closely co-operate amongst themselves in the field of social welfare with respect to the development and adoption of a common approach towards the disadvantaged and marginalized groups, including children and persons with disabilities*”⁴⁰¹

398 http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch02/ch2-assessment-section6.pdf visited on 16th November, 2012.

399 European Parliament; Directorate- General for Internal Policies; Policy Department Citizens Rights and Constitutional Affairs “EU Framework of Law for Children’s Rights”2012 page 40.

400 Article 1(1) a-f of the Bujumbura Declaration, 2012.

401 Article 120(c).

6.2.1 Physical Violence and Sexual Abuse against Children 2012

Defenseless children in the country have continued to be victims of physical violence and sexual abuse with perpetrators continuing to be parents, close relatives and neighbours. The trends of violation of children's rights are increasing despite the *Law of the Child Act, 2009* being in place. Giving reasons over why the trend of violations has continued with the law in place, researchers have these arguments, one the country has high population of children over 20 million people approximately, two; improper ministerial arrangements for instance children affairs are currently handled by three different ministries. These are ministries of Health Social Welfare, Community Development, Gender and Children and Cultural, Youth and Sports. This leads to loss of focus on responsibility.⁴⁰² Three; lack of linkage between these ministries and the ministry of home affairs, the police department especially gender and children desks. These are the reasons over why the law fails to effectively promote and command respect of the rights and welfare of the child in the country.

The following are some of the physical violence incidences inflicted to children in 2012 as reported by various media houses and other sources.

The LHRC's 2012 Human Rights Survey indicates that various regions had a considerable number of brutalities which were captured against children. For example in Mpwapwa a district court convicted a mother to five years imprisonment for deliberately causing bodily harm to her own son. The mother inflicted harm by using razor blade blaming her child to have stolen five hundred shillings. The social welfare officer informed LHRC that;

*"Kuna mama X alimkata mtoto wake kwa wembe maeneo mbali mbali ya mwili. Kisa cha kuchukua uamuzi huo alimtumumu mtoto kuwa ameiba shilingi 500. Kesi hii niliisimamia kuona haki inatendeka na amekutwa na hatia amefungwa miaka mitano."*⁴⁰³

Lady X slashed her kid in various parts of the body using a razor blade on account that she had stolen 500 shillings. I pursued the matter and made sure justice prevailed where the mother was sentenced to five years in prison."

This is one among the many physical violence acts committed by parents to their children. The following table summarizes a media survey on similar incidences in 2012.

402 L. Agosta et.al; CRC (2012) "Costing Critical Child Protection Services in Arusha, Tanzania" Report, May, 2012 page 14.

403 LHRC (2012) Human Rights Survey, 2012 page 16.

Table 21: Summary of LHRC’s Media Survey on Physical violence and Sexual abuse against Children 2012

No	Victim of Violation	Perpetrator	Reason	Place
1	Little girl “X”	Step Mother	She was seriously wounded leading to her limb to suffer a fracture.	Mbeya
2	Six girls between 12-14 years	Parents	These young girls were to be married off where they would drop from schools. CSOs (LHRC & TGNP) made intervention	Lugoba – Pwani
3	Child “X” aged 10 years	Teacher	He was seriously wounded as a result of canning at VERITAS Extended Primary School	Kimara – Dar es Salaam
4	Twin children	Mother	Their mother just left without any care and she is nowhere to be seen.	Tandale Kwa Mtogole –Dar es Salaam
5	Three children aged 15	A gang (mob)	They were raped	Kiluma village – Momba district (Mbeya)
6	Child “X”	Mother	This little child was thrown by his mother	Vingunguti – Dar es Salaam
7	Little girl “X”	Parents	She was forced to be married to a rich man at the village	Kilindi – Tanga
8	Children taking drugs	Irresponsible parents	There is an increase of street children who are drug addicts smoking marijuana especially in major cities	Arusha and Dar es salaam
9	Little girl “X”	U n k n o w n people	A little girl was found dead and some of her private parts had been chopped off.	Mbeya
10	Little girl “X” aged 12 years	Her boss	She was exploited as a domestic worker earning 10,000/= per month and was brutally wounded by a sharp knife because she had failed to prepare food (<i>makande</i>) on time.	Arusha
11	122 school girls	Community	Early pregnancies in Kilimanjaro region forced out of school 122 girls	Kilimanjaro
12	One little boy and 2 little girls	Rapist (name withheld)	These little children were raped several times as they were coming from nursery school. However the DPP dropped the charge for want of prosecution	Chanika (Zingiziwa) – Dar es Salaam

Source: LHRC Bi-Annual Human Rights Report, 2012

There is also an increase of sexual abuse to children especially rape. Some are indicated in the table *supra*. In 1998, the *Sexual Offences Special Provisions Act* was enacted and imposed heavy punishment for rape however such incidences have kept shooting up. One of the weaknesses in implementing this law is conflicting ideas between medical aspects and legal interpretation of the law. The law describes the offence in a way that even a slight penetration amounts to rape.⁴⁰⁴ However, Medical doctors, need to see rapture of hymen, bruises and remaining semen for them to diagnose a raped child. Experience from some of the cases that LHRC has made a follow up indicates failure by medical doctors to prove rape. This is one of the reasons over why the investigation of rape cases is becoming very difficult considering that rape is a criminal offence with a standard of proof being beyond reasonable doubt.

For example, LHRC made a follow up of a case involving 2 little girls and a boy aged between 3 and 5 years. These children are nursery school students at Chanika – Zingiziwa Street in Dar es Salaam. The children were alleged to have been raped and the incident was reported at Ukonga –Sitaki Shari Police Post. It was investigated and the charge was sent to the D.P.P but charges were dropped for want of prosecution despite the medical doctor’s indicating that they had been raped. However on following up the matter, the accused person himself confessed to parents and was willing to settle the matter out of court yet the police failed to take further steps.

LHRC calls upon the need to conduct capacity building for medical doctors and law enforcement agencies to reduce rape cases mounting up day after day. This is due to the slow pace in handling rape cases where collaboration evidences are weakened. For instance, by June 2012 there were 117 rape cases in Kigoma region where 50 were still under investigation; while as 60 were still pending in court with 6 acquittals and only 1 conviction.⁴⁰⁵ This is a case of *Republic vs. Hussein S/O Juma* aged 18 years, who was convicted and sentenced to 30 years imprisonment and 12 strokes after he was found guilty of raping a 13 years old girl for three days consecutively.⁴⁰⁶

6.2.2 Situation of Child Labour Exploitation

The Global Child Labour Conference held in 2010 aimed at eliminating all worst forms of child labour by 2016.⁴⁰⁷ This is due to the fact that around 215 million

404 Section 130(4) (a) and (b) of the Penal Code, provides that; “ *For the purposes of proving the offence of rape—(a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence; and (b) evidence of resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent.* ”

405 LHRC (2012) Human Rights Survey, 2012 page 20.

406 *Criminal Case No. 239 of 2011* at the Resident Magistrate in Kigoma.

407 *The Road Map for achieving the Elimination of Worst form of Child Labour by 2016.*

boys and girls in the world are in some worst forms of child labour.⁴⁰⁸ There is a global increase of worst forms of child labour especially sexual exploitation in developing countries, child trafficking, heavy manual works in mining areas and agricultural plantations. The International Labour Organisation (ILO) drafted a number of International Legal Instruments to curb this problem; such as the *ILO Convention No. 182 on the Worst Forms of Child Labour, 1999* and the *ILO Convention No. 138 on the minimum age for admission to employment and work*.⁴⁰⁹ The Convention No. 138 provides for minimum standard working age in three main categories. These are, Hazardous works with the minimum age being 18 years. Basic Minimum age which is 15 is at times presumed that a child must have completed primary education. Lastly is light work, authorizing a child aged between 13-15 to execute light domestic work.

In Tanzania, employing a child below 14 years is an offence and employing any person below 18 years in an environment that will endanger the life of the child, or will affect upbringing of the child is also an offence. The *Employment and Labour Relations Act* gives power to the resident magistrate or districts courts to impose punishment of one year imprisonment or fine of up to 5 million shillings for any person found guilty under the Act.⁴¹⁰ Child labour is not only prohibited under the *Employment and Labour Relations Act, 2004* alone, but also under the *Law of the Child Act, 2009*.⁴¹¹

The situation of child labour in the country in the year 2012 was still very challenging. During the LHRC's Human Rights Survey, it was revealed that school drop out in some of the regions was very high. The drop out was reportedly caused by many factors amongst being pastoral communities moving from one area to another in search of pasture where children are used in keeping livestock and thus denied their right to education. For instance, in Dodoma, the school dropout ratio for 2011 was 18.9% on average.⁴¹² The following is a table depicting students enrolled in standard one in 2005 versus drop out students who were unable to complete standard 7 in 2011;

408 Child labour is work done by a child who is under the minimum age specified for that kind of work, as defined by national legislation, guided by the ILO Declaration on the Fundamental Principles and Rights at Work (1998) and ILO Convention Nos. 138 and 182.

409 It was adopted in Geneva by the Governing Body of the International Labour Office, its Fifty-eighth Session on 6 June 1973.

410 Section 102(2).

411 Sections 77 to 86 discuss about Children Employment and related condition contained therein.

412 Mkoa wa Dodoma, ofisi ya afisa elimu mkoa, Taarifa ya matokeo ya mtihani wa kumaliza elimu ya msingi mwaka, 2011 at page 5.

Table 22: School Enrolment vs Dropouts in Dodoma Region

District	Students enrolled - 2005			Students who dropped out of school by 2011			
	Male	Female	Total	Male	Female	Total	%
Bahi	2387	2344	4731	685	550	1235	26.1
Chamwino	2838	2925	5763	281	180	461	8.0
Dodoma (U)	5662	9361	11086	1321	1165	2486	22.0
Kondoa	8818	9361	18179	1216	23	1239	6.8
Kongwa	5474	5612	11086	2458	1632	4090	36.9
Mpwapwa	4471	4799	9270	1077	841	1918	20.7
TOTAL	29650	30679	60329	7038	4391	11429	18.9

Source: Extract from *Taarifa ya matokeo ya mtihani wa kumaliza elimu ya msingi mwaka 2011– Dodoma*

The following are the major reasons provided for the high rate of dropout in primary schools in Dodoma in the report; nomadic pastoral activities, lack of feeding programmes in schools, fishing activities especially in Mpwapwa district (*Mtera*), small urban businesses, poor families failing to afford school amenities and some of the families lacking morale to take their children to schools. One respondent from Mpwapwa had this to say;

“Wazazi wengi hawana msukumo wa kuwahamasisha watoto wao kusoma kwa sababu hata wao hawakusoma. Hii ni shida sana hususani huko vijijini, mtoto anategea shule siku ya kwanza, ya pili, wiki mpaka mwezi mzazi haoni shida. Elimu inatakiwa itolewe sana vijijini ndio tatizo hili litakwisha.”⁴¹³”

Most parents lack the morale to send children to school because they never saw the inside of the class in the first place. A kid may skip school for the first, second day and a week, and even a month yet parents don't feel a pinch at all. There is a need to educate those in rural areas to curb the problem.

The worst form of child labour in the country is in mining and agricultural sector. For instance Geita region has more than 61,000 children who were rescued

413 LHRC (2012) Human Rights Survey, 2012 page 6.

from mining activities.⁴¹⁴ Equally, in small mines sites in Chunya Mbeya, children are involved in mining activities. The affected villages in Chunya include, Mkwajuni, Kapalala, Udinge and the small town of Makongorosi.

In Tabora and Kigoma regions, the main producers of tobacco still deploy children in farms. Affected areas include Urambo and Kaliua districts. In Kigoma rural the affected wards include Nguluka, Mtego, Uvinza, Mganza and Ihebula. Children who are supposed to be in school are the main producers in tobacco plantation. One story of a student who dropped out of school and went to work in tobacco plantation in Urambo was narrated by the District Director;

“Mtoto wa ndugu Samweli Baliaka ana umri wa miaka 14, alisafirishwa na mama yake kwenda Urambo kufanya kazi kwenye mashamba ya tumbaku. Mtoto huyu aliachishwa masomo mapema mwaka huu 2012 akiwa darasa la nne katika shule ya msingi kijiji cha Rusaba. Wazazi wa huyu mtoto walikuwa wametengana hivyo mama peke yake alishindwa malezi maisha magumu hivyo akamtorosha mtoto kwenda kufanya kazi huko.”⁴¹⁵

“Samwel Bariaka’s son (14) was trafficked by his own mother to Urambo to work as a laborer in tobacco farms. The child was pulled out of school in early 2012 while in standard 4 at Rusaba village. His parents had been separated and his mother felt she could not afford to take care of him alone and opted to send the kid to the said farms.”

6.2.3 Children Involvement in Politics

The right to participate in elections and votes in the Tanzanian general and local government elections is extended to all persons above 18. It is constitutionally recognized that persons above 18 are eligible to participate in politics and governance of the country save for presidential post which requires a person to have attained the age of 40 years or above. Despite this legal fact, there is an emerging trend whereby children take part in political meetings convened by various political parties. For example during the Arumeru-East Constituency by-election in 2012, children attended campaign meetings by two main political parties and none took initiatives to prohibit them from attending.

LHRC finds it politically unethical due to the nature of the country’s politics. Politicians tend to attack one another; with the use of violent language and gestures, as was the case in the Arumeru-East by election where Hon. Lusinde used abusive language against opposition parties’ leaders with children around (as noted elsewhere in chapter three of this report).

414 Press Release (for immediate Release), Plan International Launches A project which Aims at eradicating the Worst Forms of Child Labour in Geita, 17th April, 2012 page 1.

415 LHRC (2012) Human Rights Survey, 2012 page 9.

6.3 Persons Living with Disabilities

The term “Disability” has been defined by section 3 of *the Law of Persons with Disabilities Act, 2010* (PWDA) as an individual limitation or loss of opportunities to take part in the normal life of the community on an equal level with others due to physical, mental or social factors.⁴¹⁶In connection with the above definition, People with Disabilities can be defined as persons with physical, intellectual, sensory or mental impairment and whose functional capacity is limited by encountering attitudinal, environmental and institutional barriers.⁴¹⁷

One ought to satisfy all these criteria for them to be considered as persons with disabilities; having a physical or mental impairment, which is long term or recurring; and which substantially limits their prospects of entry into, advancement and employment. Persons living with disabilities are protected by various international legal instruments⁴¹⁸ and in the country they are protected by the *Law of Persons with Disabilities Act, 2010*.

The Persons with Disabilities Act, 2010 is one the best legislation that caters for the welfare and rights of persons with disabilities in the country. It reflects what was observed in the *National Disability Policy of 2003* which stipulates that;

“In Tanzania and elsewhere in the Diaspora disability is associated with prejudice and negative attitude. People with disabilities are viewed as worthy of pity, dependent and as such not an integral part of the community they live. This view is contrary to basic human rights.”

The main objective of this law is to provide specific provisions on health care, social support, accessibility, rehabilitation and education. Furthermore, it is meant to provide for vocational training, communication, employment or work protection and Promotion of basic rights for persons with disabilities. The law imposes responsibility to individuals, community and local government at different levels to safeguard rights and welfare of persons with disabilities. For instance part three of the Act, establishes various institutions for effective implementation. These institutions include the National Advisory Council and Village, Ward, District and Regional Committees.

The Act went further to provide responsibilities to the local government to do the following in order to safeguard the well-being of persons with disabilities;

416 Section 3 of the Persons with Disabilities Act, 2010.

417 www.nbs.go.tz visited on 2nd December, 2012.

418 *The UN Conventions on the Rights of Persons with Disabilities, 2006 and its Optional Protocol, the ILO Convention No 159, Concerning Vocational, Rehabilitation and Employment (Disabled Persons), 1983 and the ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation 1958.*

“(a). Safeguard and promote the rights and welfare of a person with disability; (b). Social welfare officer in LGA to exercise his functions in relation to the rights and welfare of a person with disability; (c). Provide counseling (through a social welfare officer) to parents, guardians, relatives and persons with disabilities for the purpose of reducing or removing the degree of stigma among them; (d). Provide assistance to persons with disabilities to enable them develop their potential, empowerment and self-reliance; (e). Keep and maintain a register of people with disabilities and submit particulars therein to the Commissioner for Social Welfare.”⁴¹⁹

However, despite all the clear legal arrangement the Act provides, persons with disabilities are still less informed about it. It is even worse because even responsible people mentioned under the act such as the Village Executive Officers (VEO) and Wards Executive Officers (WEO) are not informed of their duties and responsibilities.

Thus, LHRC observes that persons with disabilities face several challenges despite the good provisions of the law in place. For example, during the LHRC’s Human Rights Survey the social welfare officers at districts level did not have a register of persons with disabilities in their respective districts. Further, it was observed that in some districts have no social welfare officers instead a community development officer handles responsibilities both as a social worker and community development officer. Such district councils include, Urambo, Musoma, Monduli, Arumeru, Kahama, Nzega, and Kaliua.

6.3. 1 Situation of Persons with Disabilities

Persons living with disabilities in Tanzania still face several challenges which have remained unattended for quite sometimes with no proper mechanism to curb them. These challenges include lack of universal access in the structural buildings, persons with disabilities living under extreme poverty, the high unemployment rate among persons with disabilities and poor provisions of education and health services.

Worse enough, universal access that calls for the enabling facilitating movement to persons with disabilities in the country is still a problem. A study initiated by local NGOs that deals with the rights of persons with disabilities, the Information Centre on Disabilities (ICD) reveals that; there are stairs in hospitals and most public and private buildings, inaccessible toilets, open rainwater and/or sewage canals, narrow pathways in a way that is very narrow and a wheelchair cannot pass through, dark and high structural elements at the reception where the window is situated so high that a PWD cannot easily access it and dangerous road crossings sign which are not respected by road users.

⁴¹⁹ Section 20.

The poverty rate to persons with disabilities is at an alarming situation which has turned some of them into beggars in the street. This is accelerated by lack of opportunities for this group. For instance, in one incident in Ukerewe it was observed, a PWD was denied a loan from the bank simply because of his condition. He said;

“.....Mimi nilienda benki ya NMB kule Ukerewe ninakoishi nikaomba mkopo baada ya kuwasilisha vielelezo vyangu vyote vya nyumba. Lakini nilinyimwa mkopo wakati wengine walipeleka hata vielelezo vya viwanja tu wakapata mkopo. Nilipomfuata meneja wa tawi akasema hawawezi kunikopesha kwani nikishindwa kulipa watashindwa waanzie wapi kunidai huo mkopo hivyo nirudi tu nyumbani. Kwa kweli ilinimumiza sana kwa sababu nilikuwa na vigezo vyote vya kupata mkopo kama watu wengine....”⁴²⁰

“I applied for a loan at the NMB bank in Ukerewe and submitted all the requirements including the title deed for my house. Sadly, my colleagues who had only title deeds for the plot were given the loan while as I was denied. I went to the bank manager to seek clarification only to be told that they could never give me a loan saying how would they demand from me in case I failed to repay. He turned me down and ordered me to go home. I felt very bad taking into consideration that I had qualified for it.

Persons with disabilities in Tanzania are also faced with serious stigmatization and torture. In some parts of the country persons with disabilities are locked in the house while as others are tied on trees or other objects as if they are animals. In 2012, such incidences were reported in Tanga, Pwani, Kiteto, Rombo and the most horrific one took place at Iguta Village, Isalavanu Ward in Mufindi District. The horrifying ordeal involved a young lady Stamili who was locked inside the room with her legs tied up. She had neither the care nor support and whoever had done the act had little regard for human dignity.⁴²¹



Source: Information Centre on Disability survey Report, 2012

⁴²⁰ ICD (2012) Lake zone Training on Rights of Persons with Disabilities Report, 2012 page 3.

⁴²¹ *Ibid.*

The cruelty against this young girl is inhuman and degrading that should not be tolerated in our communities. Cruelties against persons with albinism also continued although in small scale compared with the past. In 2012 a decomposed body of a person with albinism with some parts of his body missing was found at Nambala Village in Kikwe ward – Arumeru.⁴²²

Other pertinent problems facing this special group is the education system in the country as it does not provide room for inclusive education to cater for students with disabilities needs. Currently there are only 16 special schools for persons with disabilities and 159 units integrated in ordinary schools in the whole country. There are only two special Teachers College that train persons with disabilities in Tanga and Arusha.⁴²³ The situation in ordinary schools where special units have been integrated is not promising. They lack specialized teachers, interpreters, sign language experts and school equipment to enable persons with disabilities to master their studies. For instance Korogwe Teachers College does not have a typing machine with Braille for the visual impaired.⁴²⁴

LHRC is of the view that, persons with disabilities in Tanzania and in Africa particularly still face challenges which need to be addressed in its entirety. This made it necessary for African governments to extend the African Plan of Action for the African Decades of Persons with Disabilities to 2019 while as prior it was supposed to end in 2009.⁴²⁵ The country through the Ministry of Health and Social Welfare has signed the Action plan and is obliged to implement the same.

6.4 Rights of Elderly Persons

Tanzania is one of the developing countries which have rapid increase of persons over 60 years. The UN demographic estimates forecast the triple of the number of aged persons between 2020 and 2050.⁴²⁶ The population of elderly is on increase due to improved social services and living standards such as health services. However, elderly persons have remained vulnerable in most of the countries including Tanzania.

The projection of persons above 60 years in the country as forecasted by the United Nations Department of Economic and Social Affairs, indicate that by 2015 it will reach 5, 201,000 people.⁴²⁷ The following table indicates the forecasted trend of aged people in the country between 2010 – 2015.

422 Emmanuel Kwitema, “Decomposed body of person with Albinism found in village” The Guardian Newspaper 13th June, 2012.

423 Shia and A. Nilson; Disability Rights in Tanzania, 2011 page 3.

424 *Ibid.*

425 See, <http://www.osisa.org/education/regional/secretariat-african-decade-persons-disabilities> visited on 23rd December, 2012.

426 REPOA (2011), “Social Protection of the Elderly in Tanzania: Current Status and Future Possibilities” Brief No. 24 March, 2011 page 1

427 Help Age International, Tanzania Strategy Outline, 2010-2015 page 3.

Table 23: Forecasted Trend of Aged People in the Country: 2010 - 2015

Tanzania	2010			2015		
	Total	M	F	Total	M	F
Population thousands	45040	22466	22574	52109	22044	26065
Population aged 60 or over (thousands)	2189			2548		
Population aged 65 or over (thousands)	1407			1688		
Population aged 80 or over (thousands)	172			1688		
Percentage all in rural areas %	81.59			60		

Source: Help Age International, Tanzania Strategy Outline, 2010-2015

In Tanzania, majority of aged people are in rural areas. The table above indicates that 81.59% of the aged people live in rural Tanzania; thus it is important for the government to improve health and other basic services in rural areas to reduce their vulnerability. For example, non-availability of law enforcers such as police in villages increases vulnerability of aged people to die in the hands of angry mobs due to witchcraft beliefs.

6.4.1 International Initiatives towards UN Convention on Aged Persons

There are global initiatives and campaign towards ensuring that the UN Convention on the Rights of Aged persons is drafted. The Madrid International Plan of Action on Ageing aimed at “eliminating all forms of discrimination, including age discrimination”. The UN General Secretary’s message on the International World Day, 2008, made a call for the Convention to protect rights of aged persons. He said; *“that persons, as they age, should enjoy a life of fulfillment, health, security and active participation in the economic, social, cultural and political life of their societies”*. And they determined *“to enhance the recognition of the dignity of older persons and to eliminate all forms of neglect, abuse and violence”*.⁴²⁸

428 The 18th Annual Celebration of the International Day of Aged Population; “A Call for Convention on Rights of Older Persons” Thursday, 2nd October, 2008 page 5.

In campaigning for the Convention for Older Persons the following arguments are advanced; Ageism and age discrimination is unacceptable, human rights changes people's life, existing international and regional conventions do not sufficiently safeguard and protect aged, human rights and development go together and human rights provide standards for service delivery.⁴²⁹

6.4.2 Situation of Aged Persons 2012

LHRC met with leaders of *Wazee wa Kigoma Katubuka (WAKKA)*. This is a registered NGO that deals with rights of aged people in Kigoma. They are well organized and coordinated. Several issues were discussed that face senior citizens of this country. Some of the issues discussed include the following;

Poor health services in hospitals: There are no medicines in government hospitals. Furthermore there is use of unfriendly language to elderly persons when they go for treatment for instance; medical personnel in Kigoma were reported to utter things which are of high level of disrespect and unprofessional ethics;

“Wewe mzee unahitaji miwani uzeeni ili ukafanye nini? Utasoma nini sasa umeshakwisha” “why does an old man like you need glasses at your age what for? What can you possibly read when it is all down the hill”?

“Wewe unataka huduma sasa sisi tuache kuwahudumia hawa akina mama wajawazito tukuhudumie wewe uliyekwisha” You actually expect us to stop serving expectant mothers and serve a person whose life is on the edge?

“Na wewe unafuata nini hospitali, muda wako umekwisha” “What exactly do you come for in the hospital while as your time is long overdue?

“Kupewa rufaa hospitali ya mbali bila msaada wowote mfano kuna mwanachama wetu hapa amepewa rufaa kutibiwa miguu Muhimbili – Dar es Salaam, huyu mzee hawezi kufika huko na hajaenda mpaka leo” “there is also an issue of being given a referral. For instance one of our members was referred to Muhimbili hospital in Dar es Salaam to undergo treatment for his limbs but cannot afford to go there and is still around even as we speak.”

In another move, an old man of 83 years was asked to show his birth certificate first before he can receive medical attention at the Maweni Hospital in Kigoma.

429 Strengthening Older People's Rights: Towards UN Convention page 8 available at <http://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf> visited on 12th December, 2012.



Maweni Hospital (l) and certificate of an old man of 83 years which he was asked to show before he was attended

6.4.3 Vulnerability to Witchcraft Killings

Aged persons are still vulnerable to witchcraft killings in the country. There are several incidences of killings related to witchcraft beliefs and normally its victims are aged persons. Reports from the police force indicate that in 2012 alone 630 aged persons have been killed due to witchcraft beliefs.

6.4.4 Aged Persons demands to the President

In 2012 positive steps were taken by representatives of older people from all regions of Tanzania by presenting a request to the President of Tanzania. The elderly requested his Excellency Dr. Jakaya Kikwete to take actions to support their access to rights and entitlement as senior citizens of the country.⁴³⁰ These demands include;

- (a) Combating the killing of older people;
- (b) Representation of older people in decision making bodies;
- (c) Access to free and quality health services;
- (d) Regulation of the National Ageing Policy;
- (e) Formation of Older People's forums;
- (f) Provisions of Universal Pension to all older people; and
- (g) Older People's participation in Constitution making process.

⁴³⁰ *Sauti ya Wazee*, (Help Age International) "Older People in Tanzania presented their demands to the President" Issue No. 43, June 2012 page 2.

LHRC join efforts with aged persons in requesting the President to work on all seven demands as submitted. If the President take serious measures to work on the elder's demands then the situation of aged persons will be improved and rights of aged persons safeguarded. For example on demand number three, on access to health services, LHRC has observed that aged persons consultations rooms in hospital do not offer quality and friendly services to them.

6.4.5 The Former EAC Employee's Case – Fifteen Judges, yet no Justice

The former East African Cooperation workers are still struggling to ensure that justice is done. In 2012 initiatives to unite all the groups of the former EAC employees were deployed. The former EAC workers were able to issue a joint press conference in order for their voice to be heard. These senior citizens of the country have been in court for many years now and justice is being defeated by court technicalities and procedures. Their cases have at different levels up to now been heard by almost fifteen judges but justice is not on their favor.⁴³¹

These elders have been continuously perishing every day to a greater number due to old age. Hundreds are dying every year as a result of poverty and old age sickness. No social security protection is accorded to them and as such they cannot afford food or shelter. Some of them are from upcountry regions and have neither the place to sleep in Dar es Salaam nor clothing. In 2012 some of the groups seeking justice opted to go to the African Court of Human and People's Rights in Arusha.⁴³²

As was in its prior reports, LHRC insists that former EAC employees should be treated as senior citizens who deserve respect and recognition. The government's reluctance to resolve this matter amicably will delay justice to these people. Therefore,

The LHRC requests upon the President of the United Republic of Tanzania to take necessary intervention to see that this issue comes to an end. Justice to former EAC employees should not be dealt with politically but rather on merit of the situation. Human rights and justice is sometimes beyond provisions of the statutes, thus procedural and courts technicality will yield no results to the people who dedicated their time, skills and profession to work for the EAC.

6.5 Trafficking in Persons

*The Anti-Trafficking in Persons Act, 2008*⁴³³ clearly stipulates elements which constitute trafficking in persons. It clearly provides that; *A person commits*

431 Judges who the former EAC cases have ever presided over include the following; Luanda, J, Kimaro, J, Oriyo, J, Nyerere, J, Mwaikugile, J, Utamwa, J, A Agustino Ramadhan, J, A Rutakangwa, J, Luanda, J, Mjasiri, J, Mandia, J, Fauz Twaib, J, Rugaziya, J, Munisi, J, Mwakipesile, J.

432 Application No. OO1/2012 – Karata Ernest and Others V. Attorney General of the United Republic of Tanzania

433 Act No 6 of 2008.

an offence of trafficking in persons if that person; (a) recruits, transports, transfers, harbors, provides or receives a person by any means, including those done under the pretext of domestic or overseas employment, training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage. The Act went further to provide details as introducing a person to a foreign national for marriage for purpose of earning money as an offence. It is also restricted to traffic a person when the victim is a child, a person with disability, facilitating adoption for purpose of prostitution, involvement of public officials and law enforcers in the process. The Act has termed these acts too as severe trafficking in persons. This law makes the country as one among those with the best laws on anti-trafficking in persons in the region.

Internal trafficking in person in Tanzania still remains a critical challenge. However as for external trafficking there are some of the issues which make it difficult for the law enforcers to establish whether there is trafficking in person offence or not. These issues include the following; Prevailing concerns about illegal immigration continue to guide governments' initial responses to potential trafficking victims. Trafficking indicators are missed and victims are wrongly classified as illegal migrants and criminals. Narrow definitions and continued stereotypes of trafficking as a problem confined to women and girls in prostitution result in the mistreatment of other victims of trafficking. Authorities often fail to look beneath the surface for possible indicators of forced labor, debt bondage or sex trafficking.⁴³⁴

Therefore, in 2012 the government adopted the Anti-trafficking action Plan whose preparation commenced in 2011. The action plan will end in 2014 purposely to end incidences of trafficking and provide education to law enforcers. The ministry of home affairs has also established the anti-trafficking committee (ATC) and anti-trafficking secretariat (ATS), whose existence and functioning is mandated by the *Anti-Trafficking Act*.⁴³⁵

In 2012 a businessman in Arusha, Salim Ally (61) was convicted at the Resident magistrate charged with trafficking in person. It was proven beyond reasonable doubt that Ally took part in trafficking two persons to Yemen subjecting them to torture, exploitation and forced labour.⁴³⁶

In May 2012 there were information concerning a person with albinism (PWA) aged three years who was transported to Burkinafaso. The source of information regarding this issue was revealed following a testimony from a Good Samaritan who witnessed the whole scene at the Airport. An email written to the former CEO and founder of Under the Same Sun (UTSS) read as follows;

434 United States of America, Department of States, Trafficking in Persons Report, June 2012 page 17.

435 Section 30.

436 Rehema Mohamed; "*Mfanyabiashara Kesi ya usafirishaji binadamu Jela*" Majira Newspaper 29th November, 2012.

“I saw a three year old African albino in the company of three really disagreeable men who were arguing with the airline attendant about the child’s lack of a passport on April 18th at about noon. They had come from Tanzania and were headed to Ouagadougou, in Burkina Faso. Eventually they were allowed to fly off with the child. Even though I wondered about the whole scene I did nothing and not sure I could have done anything. However, since last week I have been unable to think of much else other than the fate of the little albino boy, a likely sacrifice in witchcraft. I had heard of it before but seeing that child’s innocent face and the three men’s almost palpable sense of evil has brought it into focus for me.”⁴³⁷

In another incident two human traffickers were arrested in Dar es Salaam with one being Mr Jamaluddin Abdul Kahar an Afghanistan citizen. Mr. Jamaluddin was on wanted police list due to his involvement in trafficking in persons business. The other suspect is Ashok Kumar Khadraka from Pakistan. These people were assisted by a Tanzanian and a Kenyan citizen.⁴³⁸

The country is also a transit of thousands of illegal immigrants in search of greener pasture in South Africa. Currently the prisons department has more than 600 foreigners convicted of illegal entry in the country. In 2012, about 45 Ethiopian citizens died leaving 72 others in serious condition due to suffocation from the congestion in the truck where they were packed on transit to South Africa via Tanzania. The said bodies were found at Chitego forest in Kongwa district – Dodoma.

LHRC is seriously concerned with trafficking in persons in the country. It is not easily understood if at all the immigration officers are seriously working at our borders. Dodoma is the central part of the country and it makes one wonder how such a truck could move all along borders to Dodoma without being noticed. The Tanzanians Peoples Defense Force has the mandate to protect the country’s borders. The question is on whether the army executes its duties effectively to ensure no illegal immigrant workers penetrate. LHRC advises the government especially the ministry of home affairs and the ministry of defense to collaborate in ensuring that the country is free from illegal immigrants. This will reduce the vulnerability of Tanzania being a transit to external trafficking in persons.

437 By Correspondent, “Child with albinism feared abducted to Burkina Faso” the Guardian-Newspaper, 22nd May, 2012.

438 <http://www.fikrapevu.com/uhamiaji-tanzania-yakamata-vigogo-wa-biashara-haramu-yabinadamu/> visited on 16th November, 2012.

6.6 Rights of Indigenous People

The concept of indigenous peoples is very complex and varying from one area to another. Different scholars have in different times come up with various definitions for the concepts of indigenous peoples, during and after colonial period. However, the terminology Indigenous comes from a Latin word “*indigena*” which is made up of two words, namely *indi* meaning “within” and *gen or genere* meaning “root”. In other words, the term “indigenous” means, “born in”, or something that comes from the country and cultural life system attached to the environment.⁴³⁹

Primarily it refers to groups with a common historical background that existed in a territory prior to colonization or formation of a nation or state, which normally preserve a degree of cultural and political mainstream culture system whereby land is a primary factor.⁴⁴⁰ The concepts of indigenous peoples received in different times as groups of peoples whose existences are attached to land.

The term indigenous also substituted by natives was applied to all peoples found in a colonial territory. However the Berlin conference blessed the meaning by returning to the original literal meaning of the term.⁴⁴¹ The current meaning of indigenous peoples has gone further to mean, peoples whose survival is directed or connected to the culture that have something to do with the environment, which whenever detached from the same may mean default to survival.⁴⁴²

The world further had managed to come up with the United Nations Declaration for the rights of the Indigenous peoples of 2007 that enriched with common understanding for the concept of indigenous peoples. This declaration set criteria for indigenous peoples to be understood by nations. Among the main criteria is; people must identify themselves as indigenous peoples, their livelihood system must be attached to that specific environment and finally their cultural system and livelihoods should be directly attached to land.⁴⁴³

6.6.1 Self-Identification

Instead of offering a definition, Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples underlines the importance of self-identification, that indigenous peoples themselves define their own identity as indigenous. Article 33 expressively declares that;

439 *Op cit.*

440 http://en.wikipedia.org/wiki/Indigenous_peoples visited on 21st November, 2012.

441 General Act of the Conference of Berlin, February 26 1885 Article 6 of the chapter on freedom of trade in the basin of the Congo as well as several other disposition contained in the Act refers to the populations found on the concerned territories by the colonial powers as native population or tribes.

442 Paul G.(2007) Fighting for Inclusion, Conflicts among Pastoralist in Eastern Africa and the Horn, Nairobi.

443 *Op.cit*

Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. The Indigenous peoples have the right to determine their structures and to select the membership of their institutions in accordance with their own procedures.

The UN declaration was very clear as it is also commonly agreed that every community is indigenous where found, but since many world communities are diverse and cross international border life is possible, that is why the declaration lays down the two commonly agreed principles to let communities identify themselves as indigenous.

Indigenous peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations are commonly accepted as indigenous peoples in a country level. However, there is no absolute marked line between this communities and other.⁴⁴⁴ Tanzania as member to the declaration also adheres with the principles of self-identification where few communities identify themselves as indigenous in the country, among self-identifying communities as indigenous are, Maasai, Barbaig, Hakie, Sandawe, Iraque and Harzabe.⁴⁴⁵

6.6.2 Occupation of Ancestral Lands, or at Least Part of Them

Apart from groups identifying themselves as indigenous peoples they must also be able to establish a historical reality that they occupy the ancestral land or part of it. The mentioned communities regarding the case of Tanzania are already occupying ancestral lands and their cultural, livelihood system attached to land, and survival depends on respectively, livestock keeping, hunting, fruit gathering, forest products dependent and knowledge of medicinal plants and honey.

The indigenous herbal knowledge concern is an important character for absolute depending on the nature in a respective environment; this knowledge is commonly attached to ancestry original occupants of the lands. The mentioned communities had demonstrated their indigenoussness for strongly depending on use of this knowledge to solve persisted problems long and short terms.

Tanzania indigenous peoples have shown the clear evidence of long occupying and absolute dependant to land as their prime source of livelihood. Connection with ancestors' original occupiers of the specific land is an important factor to

444 Article 1.2 of the ILO Convention No. 169 and Article 3 of the UN Declaration on the rights of Indigenous Peoples.

445 The Indigenous World 2012 report of Indigenous peoples.

determine the rights of indigenous generation.⁴⁴⁶

Indigenous peoples in Tanzania practice culture in general specific manifestations, such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood and lifestyle. Indigenous communities have their traditional effectively functioning systems to address the way the community needs to address such as, specifying, connections between one generation to another internal traditional system and self-identifications. The language becomes also a facilitating tool whether used as the only language, as mother tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual.⁴⁴⁷ The recognition, protection and preservation for their rights are a primary duty of the state that signs the declaration to protect them.⁴⁴⁸

Declaration for specific rights of indigenous peoples, these are the entitlements that a community deserves because of its indigenous nature. These rights are enriched in the declaration mentioned above, as part of wider rights mentioned under the Economic Social and Cultural Right Convention of 1966 where Tanzania is also a member.

6.6.3 Minority or Indigenous Status

The Indigenous people are commonly a few in numbers in comparison with other sections of the community. The Hadzabe population in Tanzania has less than 3000 people and is under threat of disappearance and is assimilated by other communities such as Iraq, Sukuma and Barbaig. The Hakiie population is now less than 500 because of increasing assimilation by the Maasai community in Simanjiro.⁴⁴⁹

6.6.4 Experienced Historical Discrimination

The indigenous communities entirely face historical marginalization by other communities as their ways of lives referred to as backward and barbaric. This marginalization has also resulted to loss of many rights such as right to speak out of their interest's right of representation, consideration for their utmost interest at the community level and sometimes at the policy formulation level and results to discrimination. The discrimination results into non-involvement in most of the social-economic activities compared to other groups in the society.⁴⁵⁰

446 Kenney G. (2007) the Impacts of Tanzania's New Land Laws on the Customary Land Rights of Pastoralist a case study of Simanjiro and Bariadi Districts in Tanzania.

447 *Mulbadaw Village Council and 67 others vs National Agricultural and Food Corporation (NAFCO), Misc. Civil Cause No.10 of 1981 in the High Court of Tanzania at Arusha and Yoke Gwaku and 5 others vs National Agricultural and Food Corporation (NAFCO), Misc Civil Cause No.52 of 1988.*

448 LHRC (2010) Tanzania Human Right Report, 2011 page 154.

449 Indigenous people's organizations conference held on 12 February 2012 Arusha.

450 Onesmo .O. N, Pastoralist Land rights and law reformed a paper presented at (pastoralist Week conference in Arusha 2010).

6.6.5 Challenges of Indigenous People in Tanzania

Indigenous peoples experience various challenges threatening them because of their mode of life. These challenges are; internal and external driven, internal driven challenges are those from within the community such as slow learning of the world changes. The external driven factors are; non-recognition, increased grabbed land, in adequate representations at the decision-making levels, threats for assimilation to other communities' loss of identity and current climate changes impacts.

The indigenous communities are slow in learning global changes that are happening and that draw no mean to exclude them from the indirect effects of the global interactions. This community is not prepared to interact with other world or national communities as the effect of globalization are also reaching to their destiny. Lack of recognitions for their special needs, endless land grabbing, lack of legal protection, globalization and climate change are the main external driven challenges for indigenous peoples in Tanzania.

a) Lack of Recognition

Tanzania as a country has managed to sign the Indigenous People's Declaration⁴⁵¹ and the International Covenant on Economic, Social and Cultural Rights, 1966. To-date, there is no clear information of indigenous peoples communities found in Tanzania; nor is there a law that addresses special needs of the indigenous peoples in the country. This poses a great challenge to future existence for the indigenous communities in the country.⁴⁵²

Therefore LHRC calls upon the need for the Constitution of the United Republic of Tanzania to recognize the existence of indigenous communities; as they form part of the cultural heritage that the country needs to be proud of.

b) Land grabbing

Land grabbing, refers to use of excessive energy force and influence to acquire land contrary to the law.⁴⁵³ Indigenous land grabbing has increased very recently, as in the past decade millions of hectares have been grabbed for investment purposes. Regions leading in violating indigenous rights through land grabbing are;

451 *Op.cit*

452 World life Act 2010 and the Game control areas Act of 2010.

453 Land Acquisition Act RE 2002.

Table 24: Incidents of Land Grabbing from among Indigenous and Pastoral Communities

Region	Specific place of eviction	Specific group eviction indigenous people	Estimate number of victims	Current status of victims
Arusha	Ngorongoro conservation areas NCAA	Maasai and Barbaig	2000	Landless dumped in Oldonyosambu
	Monduli	Maasai	1867	Landless scattered to other villages
	Loliondo	Maasai	26000	Encroached to other villages
Morogoro	Kilombero	Sukuma, Barbaig Maasai and Sandawe	27000	Encroached to other villages
	Ulanga	Sukuma, Barbaig Maasai and Sandawe	14000	Encroached to other villages
	Kilosa	Maasai	800	Encroached to other villages
Manyara	Simanjiro	Maasai	4000	Encroached to other villages
	Mbulu	Hardzabe and Barbaig	818	Encroached to other villages
Mbeya	Mbarali	Maasai and Sukuma	14000	Various regions
	Chunya	Barbaig and Sukuma	500	Other villages around

Source: This information has been extracted from various sources

Therefore, LHRC recommends that there should be a policy and legal reforms which will recognize their existence to accommodate basic needs of indigenous community as minority. There are several challenges that indigenous community face such as climatic change which has adversely affected the livelihood of the hunters and gathers. Moreover, livestock are dying of hunger and lack of water. Poor housing and lack of formal education is another issue which needs intervention.

6.7 Refugees and Asylum Seekers Situation

Refugees in Tanzania have been a problem in existence for decades, ever since the attainment of the independence of most African countries. In recent years the number of refugees has been diminishing day after day for which LHRC finds it as a positive trend for countries in the great lakes region. Countries which were previously in war torn territories for years, have now restored their peace and hence a fresh start for its citizens specifically in Rwanda and Burundi. Needless to say, the situation is still not calm in the Democratic Republic of Congo (DRC) one of the countries whose citizens have sought refugee status in Tanzania.

Refugee's issues are governed by various international legal instruments since it's a global phenomenon. The *Convention relating to the Status of Refugees, 1951, the Protocol relating to the Status of Refugees, 1967 and the Convention Governing the Specific Aspects of Refugees in Africa, 1969. The East Africa Community treaty, 1999* again provides for the mechanisms to deal with refugee's problem in East Africa as a region. Article 124(h) provides that;

Under the Treaty the Partner States of the East African Community "agree to enhance cooperation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities" To this end the Partner States undertake to, among other things (a) (b) (c)..... (h) establish common mechanisms for the management of refugees.

Currently the problem of refugees is coming to an end in the East African region countries particularly in Tanzania. However there is a severe influx of asylum seekers in streets especially in major cities. An asylum seeker is a person whose status of refugee is not yet determined by authorities in the destination country.⁴⁵⁴ Currently, there is a serious problem of asylum seekers or sometimes known as urban refugees in Tanzania. There are several non-nationals who at times hide their identity. Those whose identities are revealed seek for asylum at the refugees department but those responsible do not assess them on time. The UNHCR as well does not address the same therefore these people are neither repatriated to their country of origin nor given the right of recognition as refugees and as such, remain stateless persons.⁴⁵⁵

Stateless persons are internationally protected under *the Convention relating to the Status of Stateless Persons, 1954, the Convention on the Reduction of Statelessness, 1961 and the United Nations Declaration on Territorial Asylum,*

454 The Ministry of Home Affairs is mandated to determine the status of asylum seekers under the Refugees Department established by the Refugees Act, 1998.

455 Asylum Access Tanzania (2012), Briefing on the Human Rights of Refugees and Asylum seekers: The United Republic of Tanzania, 2012 page 4.

1967. *The Refugees Act, 1998* governs issues related to refugees and asylum seekers in the country. This law was enacted to safeguard and promote rights of refugees in accordance with the international conventions standards.⁴⁵⁶

6.7.1 Refugees Situation

In 2012 the governments of Tanzania and Burundi in agreement with the United Nations High Commissioner for Refugees (UNHCR) decided to close down the Mtabila refugee camp. The camp was playing host to about 38,050 refugees in Kasulu – Kigoma region. So beginning 1st of August, 2012, the government of Tanzania invoked cessation of refugee status of Burundian refugees at Mtabila camp. The cessation of refugees status were made in accordance to the power provided for under the *Refugees Act, 1998* and the International Convention whereby the government is supposed to issue Cessation Clause.⁴⁵⁷ The government clearly provided that refugees ought to return voluntarily to Burundi by 31st December, 2012, when the camp officially closes down its operations.⁴⁵⁸

The closure of Mtabila camp in Kasulu is a continuation of closing down camps that were hosting Burundian refugees. In 1994 during civil wars in Burundi, there were several refugees' camps in the country. These camps include, Karago, Mtendeli, Kanembwa and Nduta in Kibondo district, Muyovosi in Kasulu district, Kitari in Bihalamuro district and Lukole A and Lukole B in Ngara district. All these, have closed their operations and only Nyarugusu camp continues to operate. This camp hosts refugees from DRC, Rwanda, Burundi, Uganda, and other countries. The camp has also received about 4000 refugees from Mtabila who after assessment, were found that they cannot go back to Burundi.

In general as per April, 2012 Nyarugusu camp hosts 112,645 refugees. These refugees originate from different countries however majority are from the DRC. The following table summarizes the number of refugees and their countries of origin.

Table 25: Number of Refugees in Tanzania

Country	DRC	Burundi	Somali	Others
No. of Refugees	62,632	48,195	1,548	270

Source: Budget speech of the Ministry of Home Affairs: 2012/2013

456 Act No. 9 of 1998.

457 Cessation clause is provided for under Article 1C of the *Convention relating to the Status of Refugees, 1951* and the Guidelines on the Application by UNHCR made in 1999.

458 <http://www.moha.go.tz/index.php/82-news-and-events/181-the-government-of-tanzania-determined-to-close-mtabila-refugee-camp-in-kigoma> visited on 23rd December, 2012.

The LHRC positively encourages the government of Tanzania with the assistance of UNHCR to persuade countries of origin to encourage its people to return. Living in a refugee camp is not a healthy experience for human beings as most of the rights are curtailed. Peace to certain extent is restored in Burundi therefore the government in Burundi should as well encourage its people to go back. The country needs people, experts and producers, therefore enabling environment should be created in their own country to receive back its citizens.

On the other hand, hosting refugees has not been an easy task for a developing country like Tanzania. Refugees have adversely engaged in criminal activities in Kigoma, Kagera and Tabora. Several Tanzanians lost their lives and illegal weapons penetrated to the interior as a result of hosting refugees. Therefore, the ministry of home affairs as well as the ministry of defense should ensure that the country is safe as ever before; now that refugees' camps have been closed down. Citizens should be encouraged to collaborate with law enforcers to ensure that the country is safe.

6.7.2 Asylum Seekers Situation

The Ministry of Home Affairs under the Refugee Department is mandated to determine the asylum seekers if at all they qualify to be granted refugees' status. The normal process includes receiving applications for asylum, interviewing asylum seekers, and convening the National Eligibility Committee to decide refugee claims.⁴⁵⁹ However, the ministry is reluctant to conduct the assessment because the country is no longer receiving refugees. For instance the following vivid cases of asylum seekers were reported to Asylum Access Tanzania offices in 2012;

- On 16 February 2012, a Congolese asylum seeker reported to Asylum Access that he went to the Ministry of Home Affairs and was told that Tanzania was no longer accepting refugees;⁴⁶⁰
- In June 2012, an Angolan asylum seeker with three dependent children reported to the Ministry of Home Affairs to apply for asylum and was also told that the Government of Tanzania was no longer accepting refugees;⁴⁶¹
- The same month, another Congolese asylum seeker went to the Ministry of Home Affairs and reported that he was summarily rejected when he sought to apply for asylum;⁴⁶²
- In August 2012, a Kenyan asylum seeker similarly reported to the Ministry of Home Affairs and was told that Tanzania is no longer accepting refugees.⁴⁶³

459 Read Sections, 5, 9, 12 and 30 of the Refugees Act, 1998.

460 Asylum Access Tanzania Case file 2012/0007.

461 Asylum Access Tanzania Case file 2012/0017.

462 Asylum Access Tanzania Case file 2012/0023.

463 Asylum Access Tanzania Case file 2012/0070.

Therefore, LHRC is seriously concerned about this situation. The refusal to allow refugees to access asylum procedures amounts to *refoulement* – the forcible return of asylum seekers to their countries of origin.⁴⁶⁴ Worse still these people normally go back to the general population for that case and as a result end up being treated as illegal immigrants. LHRC advises the Ministry of Home Affairs to seriously deal with this issue.

464 James C. Hathaway, *The Rights of Refugees under International Law* 284-85 (2005); see also 1969 Convention art. 2(3), which prohibits states from turning persons away from their borders when doing so forces a person to return to or remain in a state where their life, physical integrity or liberty would be threatened.

Chapter Seven

Collective Rights

7.0 Introduction

Collective Rights are rights enjoyed by a group of individuals rather than individual separately. The term “collective rights” denotes a rights claim that belongs to a group, rather than a person or human being.⁴⁶⁵ Collective right is conspicuous yet it is not well defined and understood by the majority. Collective rights protect a group of people, while individual rights protect the individual.⁴⁶⁶ In the case of this report, collective rights are discussed as the right that protects a group of people.

According to *The African Charter on Human and People’s Rights (1981)* collective rights include the right of all peoples to self-determination, equality, and the right to existence, the right to development, the right to national and international peace and the right to safe and clean environment.⁴⁶⁷ This is discussed in line with the concept of “People’s” which means according to Universal Declaration of Human Rights of 1948; “*Any group of persons who have a common reference to a culture and their own historical tradition, developed within a determinate geographical territory or other environments, constitute a people.*”⁴⁶⁸

Other international instruments promoting collectives rights include *Charter of the United Nations of 1945*⁴⁶⁹; Article 2 (1) of the *Convention on the Prevention and Punishment of the Crime of Genocide of 1948* provides protection from genocide to all persons and groups living within a State, as defined by national, ethnic, racial and religious criteria; *Convention on the Elimination of All Forms of Racial Discrimination of 1966*, *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights of 1966* Article 2 of the two provides that peoples have the right to self-determination and the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities of 1992*.

465 McHug, James (Undated) “The Concept of Collective Rights in Quebec”, page 2 at <http://www.sacscanada.org/SJCSv3n1/McHugh.pdf>. Visited on 10th Novembers.

466 Sanders, Douglas (1991) Collective Rights at www.jstor.org. Visited on 10th November.

467 Article 20, Article 19, Article 20, Article 22, Article 23 and Article 24.

468 Article 1.

469 Article 1 (2).

7.1 Right to Development

The rights to development are the right to which both individuals and peoples are entitled as provided by several international instruments.⁴⁷⁰ *UN Declaration on the Right to Development of 1986* provides that ‘the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.’⁴⁷¹ Furthermore ACHPR provides All peoples shall 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.⁴⁷²

The current country development level is still very far behind the Millennium Development Goals –MDGs. Collectively the level of development of majority of the people in the country is still very poor despite the fact that Tanzania is embarking in a number of development programs such as National Poverty Eradication Strategy (NPES), ‘*Kilimo Kwanza*’ Policy and National Strategy for Growth and Reduction of Poverty (NSGRP) commonly known as MKUKUTA: Sectoral Programmes (PEDP, SEDP); Local Government Reform Programme (LGRP), Tanzania Social Fund (TASAF) and Primary Health Sector Development Programme (PHSDP).

Moreover, The United Nations in Tanzania provides development aid and humanitarian assistance to support the country’s efforts to reduce poverty and human suffering. The major aim of UN development programs to Tanzania is to ensure respect for human rights as outlined in international human rights instruments and MGDs. To effect the UN plans to Tanzania, UN developed a single United Nations Development Assistance Plan (UNDAP) to integrate development programs by other agencies and international organization.⁴⁷³ The UNDAP programs started between 2007 to 2010, and the current programs started in 2011 all the way to 2015.

470 *The Convention on the Rights of the Child, 1989, (The World Conference on Human Rights) The Vienna Declaration and Program of Action, 1993, Program of Action: International Conference on Population and Development, 1994, African Charter on Human and People’s Rights, 1981 including the Protocol to the African Charter on Human and Peoples rights on the Rights of Women in Africa, The African Charter for Popular Participation in Development, The African Charter on the Rights and Welfare of the Child, 1990, The Convention on the Elimination of All Forms of Discrimination against Women, 1979, United Nations Convention on the Rights of Persons with Disabilities, 2006, and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 2000.*

471 Article 1(1).

472 Article 22(1).

473 United Nations Development Programme (UNDP), United Nations Fund for Population Activities (UNFPA), United Nations Children’s Fund (UNICEF) and World Food Programme (WFP) — and, particularly, with the country programme actions plans signed by the Government of the United Republic of Tanzania.

However with all these sound initiatives in place the country has a high poverty rate with 16.5% food poverty and 33.4% basic needs poverty,⁴⁷⁴ which was also insisted by United Nations Development (UND). The 2012 APRM report indicates that there were only marginal poverty declines in few parts of the country.⁴⁷⁵ However, the decrease of poverty seems to be equally marginal in all areas. For instance, poverty rates decreased from 38.7 per cent to 37.6 per cent in rural areas and from 17.6 per cent to 16.4 per cent in urban areas such as Dar es Salaam during this same period.⁴⁷⁶

“Despite the progress made, the country still faces huge challenges: economic growth has been neither broad based nor robust enough to lead to a significant reduction in poverty, and indicators for social progress are less than impressive. As a result, the overall human development remains low, with a human development index of 0.398 in 2010, compared to 0.329 in 1990.”⁴⁷⁷

Tanzania has been implementing MDGs for years now. The significance of MDGs to developing countries like Tanzania is in two fold. First, it carries multiple dimensions of poverty and deprivations. Secondly, it is a critical element of the four global challenges namely; development and poverty reduction, democracy and human rights, peace and security, as well as environmental sustainability.

The rights to development in Tanzania have not been given full legal protection by the country laws. The right to development is ill-treated by the Constitution of the Republic of Tanzania of 1977. For instance, Article 9 (1) of the Constitution of Tanzania is not part of Bills of Rights enshrined in the Constitution as it tries to address the right to development as shown below.

“That the use of national resources places emphasis on the development of the people and in particular is geared towards the eradication of poverty, ignorance and disease.”

For Tanzania to achieve MDGs as planned, the country has to undergo legal reforms and expand the scope of legal protection in the country. The Right to development has to be given greater weight like other civil rights because other rights cannot be enjoyed freely without human development. This is because both human rights and development share a common vision and purpose.

474 APRM Report (2011), page 40.

475 APRM Report (2012), page 257.

476 *Ibid.*

477 UNDP Tanzania at http://www.tz.undp.org/mdgs_progress.html. Visited on 10th November, 2012.

7.1.1 ‘Kilimo Kwanza’

The 2012/13 budget speech by the Ministry of Agriculture, Food and Cooperatives provides that agriculture is a key sector for the development of the country because it contributes to the national economic growth (Broad based Growth) by employing 75% of the work force and produces 95% of available food in the country.⁴⁷⁸ The Tanzania economy is heavily dependent on agriculture, which accounts for half of the GDP, providing 85% of exports.

“Sekta ya Kilimo ni moja ya Sekta muhimu katika uchumi na maendeleo ya nchi yetu kwa kuwa inatoa ajira kwa asilimia 75 ya Watanzania na inachangia wastani wa asilimia 95 ya chakula kinachopatikana nchini kwa miaka yenye mvua za kutosha. Katika mwaka 2011 Sekta ya Kilimo ilichangia asilimia 23.7 ya Pato la Taifa.”

“The agriculture sector is one of the most pertinent sectors for the economy as well as the development of the country as it provides employment to 75 percent of Tanzanians while at the same time contributing 95 percent of all the food in the country in years with sufficient rainfalls. In 2011, the agriculture sector made a contribution of 23.7 percent to the national income.”

Despite its investment in agriculture and the introduction of agricultural programs such as “Kilimo Kwanza”, *National Food Reserve Agency – (NFRA)*, *Cooperative Reform and Modernization Program – (CRMP)*, *Value Addition and Rural Finance Program (MIVARF)*, *Marketing Infrastructure District Agricultural Development Plans (DADPs)*, *District Agricultural Sector Investment Project (DASIP)* and *Agricultural Sector Development Programme (ASDP) of 2006*; the Tanzanian’s production in the sector is going down in both agriculture and livestock production. The Ministry of Agriculture, Foods and Cooperatives provides that production for the year 2011 declined when compared with production in 2010.

478 Mheshimiwa Mhandisi Christopher Kajoro Chiza (Mb) (2012) *Hotuba ya Waziri wa Kilimo, Chakula na Ushirika, Kuhusu Makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Kilimo Chakula na Ushirika* kwa Mwaka 2012/2013, page 3. See also Mheshimiwa Profesa Jumanne Abdallah Maghembe (Mb) (2011) *Hotuba ya Waziri wa Kilimo, Chakula na Ushirika, Kuhusu Makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Kilimo Chakula na Ushirika* kwa Mwaka 2011/2012, page 4.

Table 26: Food Production

	Growth by Sector - 2010 and 2011		
Year of Production	2010	2011	Changes
Crops Production Growth	4.2%	3.6%	-0.6%
Livestock Sector Growth	3.4	3.9	+0.5%
Forestry Sector	4.1	3.5	-0.6

Source: Speech by Minister of Agriculture⁴⁷⁹

As illustrated in the table above, growth in the sector of agriculture is still very gradual. This may make it difficult for the country to reach the target of 6% of the Five Development Plan by 2011- 2016.⁴⁸⁰ The *'Kilimo Kwanza'* is an initiative introduced in 2009 with the aim of bringing agricultural revolution in the country. *'Kilimo Kwanza'* among other things aimed at commercializing and modernizing agriculture to reach a production growth of 10% per year.

Furthermore, the ten pillars of the *'Kilimo Kwanza'* are not entirely realized for better implementation of *'Kilimo Kwanza'*.⁴⁸¹ For instance, for *'Kilimo Kwanza'* to be a solution in the sector of agriculture it has to be inclusive and participatory (Pillar 10). That is to say farmers both small and large scale; both private and government institutions; and development partners have to be part of the process. A situation from the ground to a larger extent reveals that small scale farmers and pastoralists/livestock keepers were not fully involved in the process and hence become non beneficiaries of this noble initiative.

The LHRC's field visit survey reveals that *'Kilimo Kwanza'* cannot transform the community because most of its key pillar programs have not been put into reality. Some of these challenges related to pillars of *'Kilimo Kwanza'* are; inadequate labour force in the sector (Pillar 8), the use of hand hoe (Pillar 8), poor budget allocation (Pillar 2), Shortage of land (Pillar 5), poor supply of agricultural incentives (Pillar 6) and disorganized sector management system (Pillar 3).

479 Mheshimiwa Mhandisi Christopher Kajoro Chiza (Mb) (2012) *Hotuba ya Waziri wa Kilimo, Chakula na Ushirika, Kuhusu Makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Kilimo Chakula na Ushirika* kwa Mwaka 2012/2013, page 3.

480 Hotuba ya Waziri wa Kilimo (2012) Loc Cit., page 4.

481 1. Political will to transform agriculture through the creation of a national vision on *"Kilimo Kwanza"*; 2. Financing agriculture; 3. Institutional reorganization and management of agriculture; 4. Paradigm shift to strategic agricultural production; 5. Land availability for agriculture; 6. Incentives to stimulate investments in agriculture; 7. Industrialization for agricultural transformation; 8. Science, technology and human resources to support agricultural transformation; 9. Infrastructure development to support agricultural transformation; 10. Mobilization of Tanzanians to support and participate in the implementation of *"Kilimo Kwanza"*.

(a) Excessive Use of Rudimentary Technology

Findings by the LHRC indicates that production in the agriculture sector never shoots up because the majority of farmers in the country continue to use old and less productive tools such as hand hoe. For instance, in Mwanza reasons attributed to poor production in the region include the use of poor agricultural equipments such as hand hoe (55% use hand hoe), oxen hoe (44%) and the use of tractors (only 1% use these machines).⁴⁸² Moreover, the situation is almost all over the country because 60% of farmers in the country still use hand hoe as a major tool for farming.

The pace taken by the State to address this problem seems to be gradual. For instance the government managed to only increase big tractors from 7,823 in 2010 to 8,466 in 2011.

Table 27: The Number of Tractors Supplied to Farmers between 2010 and 2011

No.	Region	Tractors	Power Tillers
1.	Arusha	1,428	50
2.	Pwani	168	99
3.	Dodoma	781	215
4.	Dar es Salaam	37	7
5.	Iringa	477	306
6.	Kagera	101	72
7.	Kigoma	25	176
8.	Kilimanjaro	661	149
9.	Lindi	79	332
10.	Manyara	1,092	186
11.	Mara	213	64
12.	Mbeya	405	1,073
13.	Morogoro	1,134	327
14.	Mtwara	100	217
15.	Mwanza	346	142
16.	Rukwa	77	242
17.	Ruvuma	140	314
18.	Shinyanga	575	246
19.	Singida	119	101
20.	Tabora	159	70
21.	Tanga	349	183
Total		8,466	4,571

Source: Ministry of Agriculture, Food and Cooperation

⁴⁸² LHRC (2012) Human Rights Survey of 2012.

The above statistics by the Ministry of Agriculture is very contradictory. For instance, Ministry statistics indicates that Shinyanga has 575 tractors while LHRC collected information from Shinyanga indicates that Shinyanga has a target of purchasing 693 and the number of purchased tractors between 2010 and 2011 is only 39. This kind of misleading information itself indicates that the government is not serious in addressing this problem.

Table 28: Shinyanga Regional Tractors Purchase Status

Districts	Regional Targets	Purchase tractor				Estimate	
		2009/2010		2010/2011		2011/2012	
		Big tractors	Small tractors	Big tractors	Small Tractors	Big tractor	Small Tractors
1. Bariadi	211	7	26	1	32	20	30
2. Bukombe	31	9	12	6	4	2	5
3. Kahama	101	1	51	2	27	5	8
4. Kishapu	97						
5. Maswa	138	7	73	2	4	0	2
6. Meatu	61	0	16	1	28	2	4
7. Shinyanga (R)	11	1	9	2	20	2	14
8. Shinyanga (M)	43	0	6	0	6	1	0
TOTAL	693	25	193	14	94	31	63

Source: LHRC 2012 Human Rights Survey

The table above indicates that between 2010 and 2011 Shinyanga, a high populated region which is also among the top regions with high level of agricultural activities has purchased 39 tractors only for its farmers. With this space, the government can neither modernize nor transform the agriculture sector in Tanzania.



A Farm Track in Mara [filed photo]

a. Agriculture Subsidies

Findings by LHRC indicate that the program of ‘*Kilimo Kwanza*’ is not properly implemented because the initiative of supplying agricultural implements and subsidies to farmers is measurably failing poor in Tanzania. Many of the interviewees termed the supply system as weak and corrupt. For instance, in Mara and other regions visited, majority of the people interviewed said they do not access this service because of corruption and lack of funds to buy vouchers. Basically, the procedure for purchasing fertilizer subsidies and other subsidies entails farmers to contribute 50% of the required costs, that is 50% of 180,000/= . With the staggering level of poverty in the country the supply of subsidies program remain to be a deal for only those with money and agents of agricultural subsidies.

“Tatizo mawakala wanawadanganya wakulima wanawapa mbegu tu au sehemu moja package, wanasainisha kwamba ni full package, na wakati mwingine wanasainisha familia ya watu watano na kutoa kwa familia moja tu, hali hii imesababisha wengine kufungiwa na sasa hivi 13 wapo mahakamani hapa Mara baada ya ukaguzi kufanyika.”⁴⁸³

“The problem lies with agents who con peasants by giving them seeds alone or part of the package while telling them to sign as if they have received a full package. There are times when a family of five may sign only to receive a package meant for a single family alone. This has led to several agents to be banned and recently, 13 agents were dragged to court immediately after the inspection was conducted.”

The ‘*Kilimo Kwanza*’ program offers subsidies to farmers such as fertilizer through the National Agricultural Input Voucher Scheme (NAIVS). The grand mistake the State ever made was to engage agents (Private Companies) to supply subsidies to farmers without a well laid management and supervision mechanism. This has resulted into supplied subsidies ending into wrong hands. This was also stressed in the parliament that: ⁴⁸⁴

....”Mheshimiwa Spika, katika mwaka 2011/2012, Wizara ilitoa ruzuku ya pembejeo za kilimo ambapo wakulima 1,781,367 walinufaika. Jumla ya tani 178,136 za mbolea na tani 18,240.34 za mbegu bora za mahindi na mpunga zilitolewa. Changamoto zilizojitokeza katika kutekeleza utaratibu huo ni pamoja na vocha kuchelewa kufika kwa walengwa; uteuzi wa mawakala na wakulima usiozingatia vigezo; na udanganyifu uliofanywa na mawakala kwa kushirikiana na Kamati za Pembejeo katika ngazi mbalimbali za utekelezaji na baadhi ya watumishi wa Serikali.”

483 LHRC (2012) Human Rights Survey.

484 Minister of Agriculture, Food and Cooperation, Hon. Christopher Chiza.

“Honorable Speaker, during the year 2011/2012, the Ministry issued agriculture subsidy benefiting 1781,367 farmers. At least 178,136 tons of fertilizer and 18,240.34 of quality maize and rice seeds were also issued. Challenges encountered during the exercise include delay of the said vouchers in reaching the targeted group, appointment of agents and peasants without the required criteria, deceit by agents in collaboration with committees dealing with implements at all implementation levels as well as some of the civil servants.”

Supplies and agents failed to enter good contracts with the government as a result, unable and less qualified suppliers and agents were selected to implement the program. Out of this major three things were observed; First, suppliers, big farmers and local government leaders formed a chain of exploitation and corruption to diverge the supply; Secondly, large part of supplied subsidies was smuggled; and finally unknowingly villagers paid for both, seed and fertilizer but unfortunately went back with either of the two.

(b) Inadequate Labour Force

Shortage of labour force in almost all sections of life is increasingly becoming a serious economic problem in the country. According to the Ministry, the target of ‘*Kilimo Kwanza*’ is to post extension officers in all villages in the country. The country requires 15,082 extension officers to meet country requirements. However, until now the country has only 7,974 extension officers.⁴⁸⁵

(c) Fluctuation of Cotton Price

Majority of farmers in Tanzania are currently running away from cotton production to other crops such as millet and maize. Price fluctuation has been mentioned as major factor for the decrease of cotton production in Mwanza region and Shinyanga. The world’s cotton price declined from 1660 in 2011 to 660 in 2012. This is a drastic fall that shocked many farmers in Tanzania. Farmers complained that they had incurred a lot of expenses during production and the current market price will not repay the incurred production expenses.

The LHRC advises the government to introduce price stabilization programs to farmers who will be affected by the price fluctuation in the market. The government should also find a way to reduce the middle men between the market and farmer; this will maximize the profit to farmers.

In a nutshell, all ten pillars of ‘*Kilimo Kwanza*’ must be reached to the fullest; for Tanzania to realize and meet its goals towards transformation and modernization of the agriculture sector in the country. Missing either of them may disturb the entire cycle. Therefore, the LHRC advises the State to invest on the above pillars because they are interdependent.

485 Hotuba ya Waziri wa Kilimo, Chakula na Ushirika (2012), page 21.

7.1.2 Food Security

Food security can be defined as a situation “when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life” This includes both physical and economic access to food that meets people’s dietary needs as well as their food preferences. *The Agricultural Inputs Trust Fund Act, 1999, Plant Protection Act, 1997, the Agricultural Resource Management Legislation, the Plant Genetic Resource for Food and Agriculture Legislation, the Cooperative Development Commission Legislation, Cereal and Mixed Crops Regulation, and the Fertilizer Regulations* form part of legal regime dealing with food security in Tanzania.

Apart from the above legal framework addressing food security in the country, Tanzania formulated key programs tailored to maintain food security in the country. Among others these are *the Strategic Grain Reserve (SGR), Food Self-Sufficiency Ratio-SSR and National Food Reserve Agency – (NFRA)*.

7.1.2.1 State of Food Insecurity in the Country

Information gathered by the LHRC from various sources indicates that the state of food insecurity in the country is rampant in some regions. An evaluation on food security in the county carried between November 2011 and March 2012 indicates that about 1,062,516 people within 15 regions are currently experiencing food insecurity. Up to June 2012 a total of 67,131,166 tones were drawn from NFRA and supplied to regions with food shortage.⁴⁸⁶

Table 29: A List of Regions with Food Insecurity in 2012/2013

Sn.	Regions	Districts	Districts by the level of insecurity
1	Shinyanga	7	Bariadi, Kishapu, Meatu, Maswa, Kahama, Shinyanga M, Shinyanga (R)
2	Arusha	7	Karatu, Monduli, Meru, Ngorongoro, Longido, Arusha MC, Arusha DC
3	Kilimanjaro	6	Hai, Mwanga, Moshi DC, Moshi TC, Rombo, Same
4	Tabora	6	Nzega, Igunga, Tabora (M), Uyui, Sikonge, Urambo
5	Dodoma	6	Bahi, Chamwino, Dodoma (M), Kondoa, Kongwa, Mpwapwa
6	Tanga	6	Tanga (M), Mkinga, Pangani, Korogwe(M), Korogwe (R), Handeni
7	Manyara	5	Babati DC, Hanang, Kiteto, Mbulu, Simanjiro,
8	Singida	4	Manyoni, Iramba, Singida (R), Singida (M)

486 Hotuba ya Waziri wa Kilimo (2012) Loc Cit., page 5.

9	Mwanza	3	Magu, Kwimba, Misungwi
10	Pwani	3	Kibaha (M), Mafia, Rufiji
11	Mara	2	Musoma V, Rorya,
12	Lindi	2	Kilwa, Lindi
13	Morogoro	2	Morogoro (R), Mvomero
14	Iringa	1	Kilolo
15	Kagera	1	Chato
16	Mbeya	1	Mbozi
17	Mtwara	1	Masasi
	Total	63	

Source: Ministry of Agriculture, Food and Cooperation

In June 2012 Food and Agriculture Organisation – FAO produced a report showing that food security in the world was high with exception of 36 countries in the developing world. Tanzania may also be most at risk because some neighbouring countries such as Kenya, Malawi, Burundi and Mozambique are listed as countries with high level of food insecurity.

Despite most of the mentioned regions being in critical condition of food insecurity, the situation in Ngorongoro District in Arusha was extremely worse. The most affected people with food insecurity in Ngorongoro District are pastoralists (indigenous) living in Ngorongoro Division. People of Ngorongoro (Pastoralists) living around Ngorongoro Conservation Areas are currently facing an extreme level of food insecurity because of the nature experienced by pastoralists living in Ngorongoro Division. A number of people in most cases children have been reported to have lost their lives due to hunger. This was also insisted by NGOs reports in Ngorongoro. The NGOs reports provides that;

“It is reported that children and adults have died of hunger and malnutrition in the Ngorongoro Conservation Area in the last few years. While the exact number of children and adults who have died has not been ascertained for lack of a systematic survey, it is irrefutable that indeed people have died of hunger in Ngorongoro Conservation Area. According to authoritative information from Endulen Catholic Hospital, 14 children were admitted at the Hospital in November 2012 on the grounds of acute malnutrition. In May 2011, a deadly outbreak of Measles hit the whole of the conservation Area affecting some 1,000 children.”⁴⁸⁷

487 http://www.iwgia.org/iwgia_files_news_files/0732_Hunger_in_a_orld_Heritage_Site.pdf. Accessed on 25th January 2013.

People in Ngorongoro live in the World Heritage Site, an area which generates more than 40 billion per year. The Conservation area was intentionally preserved for the interest of both indigenous people living in that heritage site and the environmental conservation. With vivid examples from the field the state of food insecurity in Ngorongoro is further complicated by the fact that indigenous people in Ngorongoro have been prohibited from conducting even subsistence farming. This shows that the interests of pastoralists in this Ngorongoro Division have been overtaken by event. The balance between human development and environmental conservation is no longer given full attention.

7.2 The Right to Enjoy Natural Resources - At the Cross Road

Natural resources are not made by human beings. Money cannot be used to make natural resources, but money and laws can be used to influence what humans do with natural resources. Therefore, natural resources can be defined as renewable resources, tangible and non tangible, including soil, water, flora and fauna and non renewable resources.⁴⁸⁸

Tanzania is endowed with significant natural resources, which include forests and woodlands, wild animals, rivers, lakes and wetlands, minerals, natural heritage and recently oil and natural gas. In other words, if properly utilized and equally distributed, these resources would have a positive impact to the lives of the people as well as the economy of the country.

There are several instruments at the international level safeguarding the right to own natural resources. Among others, these instruments include *The Convention on the Conservation of Nature and Natural Resources of 1968*, *The African Charter on Human and Peoples Rights of 1981 (The African Charter)*, and *African Convention on The Conservation Of Nature And Natural Resources*.

At the national level the various legislations with the mandate to protect natural resources in the country were enacted. The *Constitution of the United Republic of Tanzania of 1977* provides that national resources shall be used for the development of the people and in particular used for the eradication of poverty, ignorance and diseases. However, this legal statement by the Constitution is not properly reflected in several legislations dealing with natural resources in the country. This legislation among others includes *The Mining Act of 2010*, *The Wildlife Conservation Act of 2009*, *The Forest Act of 2002*, *The National Park Act, Cap. 282*, *The Ngorongoro Conservation Act of 1959* and *the Investment Act of 1997*.

The management of natural resources of any country must be exercised in the interest of their national development and of the well-being of the people of the State concerned; for its people to enjoy the right of permanent sovereignty over it.

488 Article 5 of African Convention on the Conservation of Nature and Natural Resources.

Ironically, in Tanzania things are moving upside down as the natural resources management systems ill-treat community rights in favour of foreign investors and tourists.

These subchapter endeavours to assess how far the rights to own natural resources are enjoyed in Tanzania. This will be looked at individual and State level. i.e. how an individual and the State benefit from major natural resources such as national parks, wild life, game reserves, minerals, natural gas, oil and land.

7.2.1 National Parks, Protected Areas and Wildlife

Tanzania is endowed with a variety of tourism assets, including six World Heritage sites, numerous wildlife parks, beach resorts, marine resources and spectacular mountain scenic views. A total of 30% of the Tanzania total land is on protected land, composed of 15 National Parks, The Ngorongoro Conservation area occupying 49% of Ngorongoro District land, 28 wild animal reserved forests, 802 reserved forest, hunting blocs, 31 game reserves, 38 game controlled areas, several species of animals, and natural heritage.⁴⁸⁹

Previously, the tourism sector was the main contributor of the country's economy. Tourism has been a strong foreign exchange earner, receiving from US\$ 570 million in 1998 to \$ 1,037 million in 2007.⁴⁹⁰ The tourism sector is increasingly losing the requirements for the sector to be considered a growth sector because of several factors such as corruption, poaching, illegal exportation of animals, climate change, poor management, unequal distribution of resources and unregulated investment activities.

(a) Contribution to Country Economy

The tourism sector contributes only 17.5% of the GDP. Furthermore, the tourism sector plays a significant role in foreign exchange after agriculture. However, if well managed, the sector would maximize foreign direct investment for the benefit of the country's economy. For instance, Tanzania tourism industry occupied 13% of the investment activities in the country and 25% of the export earnings since 2010. However various studies indicate that the share of travel and tourism to the Tanzanian economy is likely to drop to 7.9% by 2020.⁴⁹¹

As stated above tourism one decade back was positioned as the second economy growth contributor after Agriculture. But as time goes by, the sector continues to decline annually. Comparatively, despite having fewer tourists' attractions

489 Ministry of Natural Resources and Tourism (2011) Fifty Years of Independence.

490 ESRF (2009) Study On The Identification of Potential Growth Drivers for Tanzania Based on an Analysis of Tanzanians Competitive And Comparative Advantages. Growth Sectors and Growth Drivers: A Situational Analysis Report, page 10.

491 A Report published by the World Travel and Tourism Council (WTTC). See also Mnaku Mbani "Tanzania: tourism share to economy to drop by Y-2020" Bussiness Times 4th March 2011.

sites than Tanzania, Kenya receives more tourists annually. For instance, Tanzania has slightly managed to move from receiving 8947 tourists per year in 1960 to 782,662 in 2010; and generated an income from \$ 13.39 million in 1970 to \$1,159 million in 2010.⁴⁹² The number of tourists and generated income from tourism industry is significantly low compared to the number of available tourists and attractions sites.

The contribution of tourism industry is gradually declining because an industrial sector is increasingly growing as a hub of corruptions and illegal transportation of natural resources. For instance, recently, the Minister responsible for the Ministry of Natural Resources resigned because of a financial scam levelled against the ministry by the Control or Auditor General (CAG) report.

Furthermore, the country continued to experience illegal transportation of live and dead animals to other countries through a clandestine way. For instance, in 2010 130 living wild animals from Tanzania's national parks were illegally exported to Doha, through Kilimanjaro International Airport aboard Qatar military transport plane. The State officials were mum as usual because this deal like other corruptions scandal involved people with higher positions in the country.

To prove that poaching and illegal transportation of the wild animals is on the rise, recently in October 2012 more than 200 elephant tusks hidden in a coffin and in fertilizer bags were seized by police in Dar es Salaam. The seized animal tusks were ready to be transported to the Asian continent. According to the Police statement, the seized 214 tusks were worth 2.1 billion shillings (\$1.32 million) and the destination of this illegal transaction of the elephant tusks smuggled from the East African countries ended up in the Asian continent.⁴⁹³ For instance, it was reported that Hong Kong seized HK\$26.7 million (\$3.5 million) worth of elephant tusks and other ornaments smuggled from Tanzania and Kenya. Other similar incidents were encountered in August 2011 when Tanzanian authorities with high integrity seized more than 1,000 elephant tusks at Zanzibar port. This depicts that poaching is critical in the country, with an average of 30 elephants being slaughtered for their ivory every day.⁴⁹⁴

Like other past corruption scandals in the country, the Tanzanian government State officials are mum on the rise of poaching and illegal transportations of Animals in the country. The growing trend of poaching corruption in tourism industry poses a negative challenge to the growth of tourism industry in Tanzania. The LHRC therefore advises the State to reform the entire ministry responsible for natural resources in the country by firing and arresting State officials and civil servants involved in such scam of this nature.

492 Ministry of Natural Resources and Tourism (2011) Loc Cit., Page 39.

493 <http://www.reuters.com/article/2012/10/31/tanzania-ivory->. Visited on 10th November, 2012.

494 <http://www.reuters.com/article/2012/10/31/tanzania-ivory->. Visited on 10th November, 2012.

(b) Contribution to Poverty Reduction

The Constitution of Tanzania insists on the use of natural resources for poverty eradication. However, millions of its people continue to live in abject poverty. The LHRC's findings indicate that people living around national parks and other tourists' sites in Tanzania do not benefit in any way from natural resources preserved for centuries due to the legal frame work failing to favour them. This is because almost all the laws governing the tourism sector in the country still comprise some colonial elements. For instance, Tanzania with only a slight modification continue to embrace colonial legislation such as the *Ngorongoro Conservation Act of 1959 and the National Park Act of 1959*.

The Tanzania legal regime is one sided. It focuses only on protection of natural resources for investment purposes and tourists while forgetting to put down clear mechanisms on how the community in general will be the direct beneficiaries of the tourism industry. Sadly, employment opportunities are still minimal in the tourism industry despite the country increasing the number of graduates from its tourism colleges.

In recent years, ruthless evictions have been carried in and around the protected areas under the pretext that they preserve environment and expand protected areas. As a result thousands of natives who have lived for ages in protected areas such as Ngorongoro Conservation Areas, Yaeda Chini, Loliondo Game controlled Areas and Ihefu Valley remain property less.

7.2.2 The Mining Industry

Tanzania is among the top five countries in Africa with abundant reserve of natural resources such as mineral and natural gas. For the case of minerals Tanzania is rich of gold, copper, coal, diamonds and various gemstones.⁴⁹⁵ Nevertheless, the slight contribution of the mining industry to the economy of the country remains constant. For instance, in 2010 and 2011 the mining industry contribution to the country economy remained 3.3%. This sub sector in the mining industry failed to benefit the country and its people because of grand corruption, lose legislations, tax exemptions, incentives and lack of strong leadership and management. For instance, between 2007 and 2011, Tanzania lost Tsh. 816 billion because of tax exemptions to several companies under Tanzania Investment Center. These companies include companies investing in

495 Major mines in Tanzania include: the Bulyanhulu gold mine in Kahama; the Buzwagi gold mine in Kahama, the North Mara Gold Mine in Tarime; the Geita Gold mine in Geita; the Golden Pride Mine in Nzega Resolute Gold Mine and the Buhemba Gold mine in Musoma. Other mines include the Kiwira Coal mine at the border of Rungwe-Kyela and Ileje districts; the Liganga iron ore project in Ludewa district; the Mwadui Diamond Mine in Kishapu, the El Hilal minerals and diamond mine in Kishapu; the Tanzania One mine and the Kilimanjaro mine in Mirerani; small gold miners in Rwamgasa; diamond miners in Maganzo and the Songo songo gas and uranium mines in Namtumbo, Manyoni, Babati and Bahi.

mining industry at the benefit of 56% equal to 72 billion dollar.⁴⁹⁶ Until now the trend is uninterrupted.

Furthermore, major gold producers mining companies in the country like African Barrick Gold Company was not even among the best 15 taxpayers companies listed by the Prime Minister. The only company which appeared on the list was Resolute Tanzania Limited a small mining company in the country. This candidly depicts that other companies don't pay tax accordingly.⁴⁹⁷ For instance, it was reported by the Tanzania Mineral Audit Agency (TMAA) that the major six mining companies paid only \$80.6 million in 2008.

It is also disputed that the little tax paid by these companies is largely paid by employees and not the company. For instance in 2008, 65% of the \$86 million paid as tax by the mentioned companies was the Pay as You Earn (PAYE) contribution from employees.⁴⁹⁸ With this small mathematics, the International Monetary Fund (IMF) estimates of \$100 million as tax payment from mining companies in Tanzania, subtracting 65% of the PYE, companies' contribution remains \$35 million per year. The reluctance of mining companies to pay taxes is mainly contributed by excessive incentives, weak legal framework and corruption. Tanzania therefore loses 280 billion every year from the mining industry alleged over claims.⁴⁹⁹

For countries, where about 60% of its people live under one US dollar a day, losing such amount of 280 billion every year is typically natural resource curse that a country will never come out of without blessings from God. Majority of people in the country do not access social services because they are under budgeted and an accessible. Yet state officials open doors for exploiters from abroad under the name of foreign direct investors, embraced and protected by state legislations such *Investment Act of 1997*.

496 CCT, BAKWATA and TEC (2012) "The One Billion Dollar Question" How Can Tanzania Stop Losing So Much Tax Revenue, page 9.

497 Companies listed by the Prime Minister were: Tanzania Breweries Ltd (which paid taxes of TShs 65.4 billion during 2005-2011); National Microfinance Bank (TShs 108.6 billion); Tanzania Cigarette Company (TShs 92.1 billion); National Bank of Commerce (TShs 89.9 billion); CRDB Bank Ltd (TShs 79.2 billion); Tanzania Ports Authority (TShs 76.8 billion); Tanzania Portland Cement (TShs 73.4 billion); Airtel (Tanzania) Ltd (TShs 63.6 billion), Tanga Cement Company Ltd (TShs 43.6 billion) Standard Chartered Bank Ltd (TShs 40 billion); Citibank Tanzania Ltd (TShs 35.7 billion); Resolute Tanzania Ltd (TShs 32.1 billion); Tanzania International Container Terminal Services (TShs 25.9 billion); Tanzania Distillers Ltd (TShs 13.4 billion); Group Five International (PTY) Ltd. (TShs 9.5 billion).

498 CCT, BAKWATA and TEC (2012) "The One Billion Dollar Question" How Can Tanzania Stop Losing So Much Tax Revenue, page.

499 CCT, BAKWATA and TEC (2012) Loc Cit., page 26.

Despite the new mining Act of 2009 introducing new royalty rates, mining companies have continued to use the old royalty rates. Low royalty rates in Tanzania have been found to be another angle used by foreign investors to get super profit and leave the country with almost nothing from this sector. It is due to low royalty rates that Tanzania collected only Tsh. 967.73 billion as a royalty contribution from 2008 to December 2011.⁵⁰⁰

Comparatively, Tanzania continued to be the fourth gold producer in Africa with very poor gold economic contribution to the country. The table below shows the rate of gold production in Africa in 2011.⁵⁰¹

Table 30: Largest Gold Producers in Africa

<i>Countries</i>	<i>South Africa</i>	<i>Ghana</i>	<i>Mali</i>	<i>Tanzania</i>
Gold Ounces Produced in 2011.	6 Million	3 Million	1.4 Million	1.28 Million

7.2.3 Natural Gas; a New Golden Opportunity -“Business as Usual”

While mining companies extracting minerals in the country are nearly closing their mines, they are leaving the country with almost nothing except open pits. On the other hand, Tanzania is increasingly exploring other natural resources such as natural gas, uranium and oil traces. Apart from the Songogongo and Mkuranga gas blocks, Tanzania has a vast reserve of natural gas lying under waters of the Indian Ocean in Mtwara and Lindi. The natural gas reserve increased from 43tcf to 30trcf in Mtwara.

The foreign direct investment (FDI) will be maximized with the recent discovery of natural gas in Tanzania. For instance, Tanzania is expected to receive an FDI of around USD 7bn from only a single company (Ophir Energy and its partners British Gas) in the coming five years. By all these and many more expected discoveries Tanzania is expected to start exporting natural gas by 2020. If this new discovery will be managed and used honestly for the benefit of the nation and its people then 50% of the country GDP will be originating from natural gas sub-sector and make the mining industry the first contributor to the country GDP.⁵⁰² The Minister for Energy and Minerals was quoted as saying;”

“Aidha, mwezi Mei, 2012 Kampuni za BG Group na Ophir zilichoronga visima viwili na kufanikiwa kupata gesi asili kiasi cha futi za ujazo trilioni 3.4 katika kisima cha Jodari-I, na kiasi cha futi za ujazo trilioni 4.6 katika kisima cha Mzia-I.

500 Habari Leo Reporter “Tanzania yapata mrahaba wa madini wa bil. 967/=” Habari Leo 10th /4/2012.

501 Deus Bugawya “Utajiri wa Dhahabu wageuka laana Geita” Raia Mwema 2nd May, 2012.

502 Hotuba ya waziri wa Nishati na Madini

Either on May 2012, BG Group and Ophir companies managed to drill two trenches and managed to get natural gas at equivalent of 3.4 trillion cubic meters at Kisima cha Jodari and 4.6 at Mzia.”

There is doubt on whether this discovery will be of greater advantage to the nation and people living around. Previous experience from the mining industry sub sector and exploitation of gold and other minerals in the country indicates that exploitation of resources is marred by awful practices such as; dubious contract in this sector; corruption; weak legal protection; and poor involvement of people. The above mentioned practices and poor involvement of people in the introduction of natural gas economy can be among the reasons on why majority of the people don't expect anything new from natural gas economy. A lot has already been done in this sector while the majority of people in the country including legislators are less informed. For instance, more than 25 contracts have been entered with more than 18 exploring companies from across the world. This was openly said by the Minister for Energy and Minerals in the parliament;

“Mheshimiwa Spika, shughuli za utafutaji mafuta na gesi asili katika Bahari ya Hindi na nchi kavu zimeendelea kufanyika kwa kasi kubwa. Kwa sasa kuna kampuni 18 za utafutaji mafuta na gesi asili katika nchi kavu, baharini na kwenye maziwa na kuna jumla ya mikataba ya kugawana mapato (Production Sharing Agreements - PSAs) 26 kusainiwa kwa mikataba mitano (5) ya uzalishaji na ugawanaji wa mapato ya mafuta na gesi asili katika maeneo ya Rukwa, Kyela, Kilosa, Pangani na Kitalu Na. 8 kilichopo Mashariki mwa Mafia; kugunduliwa kwa gesi asili katika maeneo ya Mtwara kisima cha Ntorya - I na visima vilivyopo kina kirefu cha bahari vya Zafarani – I, Jodari – I, Mzia – I; na Lavani - I (Lindi); na kuanza kwa utekelezaji wa Mpango wa Uagizaji wa Mafuta wa Pamoja (Bulk Procurement) mwezi Januari, 2012.”⁵⁰³

“Honourable speaker, gas and oil exploration at the Indian Ocean and on the land is moving at a fast pace. Currently, there are 18 oil and gas exploration companies on the dry land, sea as well as in lakes and there are Production Sharing Agreements- PSAs in place 26 are set to be signed for 5 years of production and division of oil and gas in Rukwa, Kyela, Kilosa, Pangani and Plot No 8 along eastern Mafia. The natural gas exploration in Mtwara at Ntorya ditch, one trench and long trenches along Zafarani Sea, – I, Jodari – I, Mzia – I; na Lavani - I (Lindi); and the starting of the implementation of bulk procurement of oil from January 2012.”

503 *Ibid*

LHRC advises the country to come up with a natural gas policy that incorporates the interest of all people including people living around those resources. Mtwara residents don't want the entire program of gas exploitation because it lacks people's legitimacy. The whole process of developing the Natural Gas Policy was neither transparent nor participatory or being inclusive. All stakeholders must be consulted during the development of the policy for it to gain people's legitimacy.

Involving people during this preliminary stage will enable the State to know the amount of gas to be used for domestic consumption and to be exported. Other issues such as royalties, payment of taxes, employment, environment, human rights and corporate social responsibility will be discussed and comprehensively incorporated in the policy. This will help the country to avoid repetition of the same problem facing people living around mining areas in Tarime, Kahama and Geita.

The protest by resident of Mtwara should serve as a lesson for better use of natural resources in the country. They have learned that there is no other means to protect country natural resources apart from waging resistance and movement. The voice of southerners should therefore be taken as a call for changes in the sector of natural resources. The available resources in the country should be used for the benefit of all and people of this nation but not only a few clever people and exploiters from abroad within and outside the country.

7.3 Human Rights and Business

Human rights promotion is the role of every one including business companies operating in Tanzania. After the 1990's economic reforms and trade liberation, Tanzania witnessed a number of business companies increasingly coming from within and outside the country to invest in business sector. With this massive increase of business companies in the country, Tanzania started witnessing human rights violations emanating from companies' operations. This was openly revealed by the LHRC's researchers on human rights and business in Tanzania conducted in 2012. The report provides that the presence of corporate companies in Tanzania is increasingly posing challenges in the field of human rights.⁵⁰⁴ The impact of these companies has been found to be negative on the other side. At times these companies have been using the loopholes of existing legal regime and commit violations such as environmental pollution, land grabbing, violate consumer rights, killings and disregard labour laws and principles.

7.3.1 Consumer Rights

A consumer or "buyer" is defined as the "one who buys, uses, maintains and disposes of products."⁵⁰⁵ Therefore, consumer protection can be named as the

504 LHRC (2012) Human Rights and Business in Tanzania Report of 2012, page 3.

505 <http://www.hg.org/consume.html> Visited on 10th November.

entire process of regulating the business transactions, practices, quality of products and other product standards for the benefit of the buyer of consumer. The entire framework for consumer protection must be guided by well designed laws to ensure fair competition and the free flow of truthful information in the marketplace.

At the international level consumer right is protected and guaranteed by *UN Guidelines for Consumer Protection of 1985*. These guidelines have the following objectives;

“To assist countries in achieving or maintaining adequate protection for their population as consumers; to facilitate production and distribution patterns responsive to the needs and desires of consumers; to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; to facilitate the development of independent consumer groups; to further international cooperation in the field of consumer protection; to encourage the development of market conditions which provide consumers with greater choice at lower prices; and to promote sustainable consumption.”

In Tanzania consumer rights are slightly protected by the following national legislations; *The Fair Competition Act* of 2003⁵⁰⁶ and *The Tanzania Food, Drugs and Cosmetics Act*⁵⁰⁷ that established the Tanzania Food and Drugs Authority (TFDA). Another government institution responsible for consumer protection is Fair Competition Committee (FCC) established by *Fair Competition Act*. Despite this protection framework, much has to be done to inform the public of its existence.

For instance, FCC activities are not well known by consumers. The United Nations Industrial Development Organization (UNIDO) facilitates FCC to carry out public campaigns on its mandated activities in a bid to streamline this situation.⁵⁰⁸ For instance in September 2012 UNIDO organized a workshop with the theme of “*the Role of the Media in Promoting Competition, Consumer Protection and the Fight against Counterfeit Goods.*”

The general public is increasingly falling victim of unhealthy products from business community and service suppliers. For instance, residents of Dar es Salaam are at risk of being contaminated with water borne diseases because of water supply. This was said by one official from Dar es Salaam Water Supply

506 Act No 8 of 2003, Came into force in 2004 and started effective implementation in 2007.

507 Act No. 1 of 2003.

508 Felix Andrew “UNIDO to assist FCC in awareness campaigns on counterfeit goods” The Guardian 28 September.

Company (DAWASCO). The source revealed that Dar es Salaam residents have been consuming untreated water from DAWASCO ever since 2010. It was revealed that the use of weak water treatment chemicals such as Polyaluminium Chloride (*PAC*) and *Aluminum Salphate (ALUM)* is the main source of supply of untreated water in Dar.⁵⁰⁹

On the other hand the supply of counterfeit products in Tanzania is on the rise. The LHRC 2012 business and human rights report indicates that the market estimates of the counterfeit products in Tanzania is about US\$ 525,000,000 per annual.⁵¹⁰ Poverty and lack of proper legal regime that protects consumers are the major reasons for the increase of counterfeit products in Tanzania. Counterfeit products in Tanzania include: building materials, electrical appliances, essentials drugs, batteries, matchboxes, shoe polish, tooth paste, women hygienic materials and many more.⁵¹¹

Among many other counterfeit products in 2012, is the production and supply of fake drugs (ARV) for persons living with HIV. It was a hot issue that shocked almost everyone. In 2012 Tanzania Pharmaceutical Industry (TPI) sold to Medical Store Department fake ARVs (TT-VIR). The Company was only suspended for the supply of fake drugs.⁵¹² It has taken much time for TFDA to



detect the supply of fake ARVs. This is a serious problem in the country if the responsible organs for detecting counterfeit products fail to detect fake products before reaching the consumers. Then one would question over the roles of bodies responsible for protection of consumer's rights in the country? The TFDA has the responsibility to regulate all matters relating to quality and safety

of food, drugs, herbal drugs, medical devices, poison and cosmetics before reaching consumers. And this is mainly done by regulating the importation, manufacture, labelling, marking or identification, storage promotion, selling and distribution of those products.

509 Jabir Idrissa "Maji ya DAWASO hatari" MwanaHALISI 11th April, 2012.

510 LHRC (2012) Human Rights and Business in Tanzania Report of 2012, page 111.

511 *Ibid.* page 113.

512 Ludovik Kuzoka "TFDA says TPI made fake ARVs" Daily News, 31st October, 2013.

The failure of TFDA to detect the supply of fake drugs in the country shows that institutions established for protection of consumer rights in Tanzania are doing almost nothing to protect them. Corruption and the lack of political will to rectify the situation, and make these institutions work for public interest are major causes behind the carelessness and weakness of these institutions.

Fake drugs in Tanzania and other developing countries cost the lives of millions. Despite the Minister for Health and Social Welfare suspending TFDA officials because of fake ARVs scandal, much has to be done to reduce the flood of counterfeit drugs and food related products in the market.

7.3.2 Corporate Social Responsibility

Corporate Social Responsibility (CSR) seems to be a new term in the field of human rights and business in Tanzania. Majority of people and companies in Tanzania do not understand or either ignores the concept of CSR. CSR is defined as a moral responsibility of a corporate body for the impact of its activities on the environment, consumers, employees, communities, and all other members in the public sphere.⁵¹³ The definition itself creates a loophole for companies to decide implement CSR principles or not. The word “*Moral Responsibility*” implies that Companies are at liberty to do so or decide otherwise.

The CSR can't shape the businesses community that promotes the public interest, community growth and development if the CSR concept will continue to be defined as “*Moral Responsibility*.” The CSR principles require companies to consider the potential negative and positive implications of their activities on the human rights of stakeholders, including employees, shareholders, customers and communities, in all aspects of its operations.

The Country has since 1990 experienced the increase of well resourced business companies investing in the country. The presence of these companies in the country posed a great challenge in the field of human rights as majority of them never practice principles of CSR. Very often communities are not always involved in decision making and hence less informed about both positive and negative impacts of company operations. The LHRC's studies and surveys indicate that the concept of CSR is not given much emphasis by companies let alone by State authorities. As a result of this, the corporate sector in Tanzania continues to violate the right of people such as labour, environmental, land and consumer rights respectively as discussed above.⁵¹⁴

According to CSR principles, companies are supposed to give back to communities what they obtain from their resources. Practically, this has never been the case in the field. Companies have used available legal weakness and corruption to abscond this duty. The African Peer Review Mechanism Report

513 LHRC (2010) A booklet on Corporate Social Responsibilities, page 2. See also Guide to Corporate Human Rights Impact Assessment Tools, Aim for human rights.

514 LHRC (2012) Human Rights and Business in Tanzania Report of 2012, page 4.

of 2012 also insists that,⁵¹⁵

“Unfortunately, the general impression is that corporate social responsibility activities are merely *“a marketing gimmick”* for companies who give back to the communities only a drop in the ocean compared to what they take out.”

It is very unfortunate that companies in Tanzania decide on their own what to give and at what time. This is ridiculous because other companies have gone as far as to use CSR as a loophole to tax evasion.

The LHRC’s observation reveals that companies give very little for community development. Some of these companies have been using millions of money to advertise unmonitored little contributions they offer to social services such as education, health sector and water.

This is obvious in most cases when you visit areas with companies investing in natural resources such as minerals and national parks. Majority of the people living in those areas continue to live in extreme level of poverty with the lack of fundamental social services such as water, food, health services, roads and education. This has been possible because there is no policy or legal framework that forces corporate bodies to respect and practice CSR principles and the available few institutions with power to regulate corporate bodies such as the Tanzania Bureau of Standards (TBS), Tanzania Food and Drugs Authority, the Confederation of Industries (CTIA) just to mention a few, have always failed to monitor over the way companies observe principles of CSR.

Corporate bodies in Tanzania as it was earlier mentioned continued to lead in violating labour rights and environmental rights. The LHRC’s surveys indicate that hardworking conditions, poor remunerations and discrimination are the kind of labour rights related human rights violations found among foreign companies in Tanzania. Various big foreign companies operating in Tanzania particularly mining companies employ people without employment contracts and force them to work in difficult conditions. For instance, in Mwanza, Shinyanga and Mara casual labourers have worked for almost five years but the companies they serve do not want to treat them as permanent employees. This is intentionally done to evade payment of social schemes and other benefits.⁵¹⁶

“Kilio chetu ni cha muda mrefu sana ...lakini serikali imekuwa ikipiga chenga kukishughulikia hatujui ni kwa nini ... 2009 watu ,mifugo na mazingira walipata madhara kutoka Mto Tighite mpaka leo ni chenga tu” alisema mjumbe wa serikali ya kijiji jina tunalo”.

515 APRM (2012) Country Review Report No. 6 of 2012, page 227.

516 LHRC (2012) Human Rights and Business in Tanzania Report of 2012, pages 70-85.

“Our concern has been there for sometimes now but the government has been meandering from dealing with it and we don’t know the reasons behind it. In 2009, several people, cattle as well as the environment were affected by river Tighite but to date it has been a meandering ordeal,” said a member of the village government whose name the LHRC has.

Environmental pollution to the environment and the people living around North Mara Gold Mine is a now a common practice but nobody is ready to make the company accountable. When asked to speak, some of the employees of the mine insisted that the problem was critical as it touches lives of people. However, an undisclosed company official was quoted as saying:

“Hili ni tatizo lazima liangaliwe kwa umakini maana linagusa maisha ya viumbe hai...maana kilichokuwa kinafanyika hapa ni kiini macho kwa kampuni kuleta mawe yanayopasuliwa kwa baruti na kumwaga hapa... hayawezi kudhibiti maji yanayovuja” alisema mfanyakazi huyo.”

“The problem must be observed with a keen eye as it touches the lives of living creatures because what is done here is a dubious game by the company. Bringing crushed stones and spreading them here can never control the spillage of the water,” said the staff.

When asked on the role of the government in containing the situation in North Mara Gold Mine, the National Environment Management Council (NEMC) Director responded that the government was informed of the current situation in Nyamongo and an investigative team involving mineral experts will be sent to Nyamongo. The Director was quoted as saying:

“Kwa sasa siwezi kusema hatua gani zimechukuliwa na ofisi...lakini wiki ijayo kikosi kikubwa kitakwenda huko chini ya uenyekiti wa Ofisi ya Makamu wa Rais Mazingira” alisema.

“Currently, I cannot say over the measures taken by the office but next week a delegate will go there under the chairmanship of the Vice President’s office in charge of the environment.”

The LHRC’s observation shows that sending committees or a team of experts to North Mara Gold Mine is now business as usual as several teams of commissions and experts including committees from NGOs and Religious institutions have been going to North Mara ever since 2009; yet nothing has been done so far to contain the situation. The environmental pollution problem in Nyamongo is critical and cannot be contained without a political will. The

company is operating at a very limited environment surrounded by villagers. The company keeps expanding its operational areas with limited chances of expanding factory water barrier. This was also emphasized by an undisclosed NEMC official who said;

“Mgodi umeanza miaka mingi Sana...haukuzingatia upanuzi wake na sasa unazidi kuongezeka bwawa la kuhifadhia majji ya sumu lilichimbwa wakati mradi ukiwa mdogo sasa inakuwa kazi kuhimili maji hayo...lazima yatavuja na yataendelea kuvuja, the big challenges” alisema.

“The Mine began its operations a long time ago but they have not taken heed of expanding it and it now keeps expanding. The special pond made at the time for preservation of poisonous water was built when the project was still at an infancy stage and as such cannot control the said water. It is evidently that the poisonous liquid will spill and will keep spilling and that is a major challenge,” he said.

The government is hereby advised to enact several legislations and develop policies with provisions that require companies to implement CSR principles not as a “Moral Responsibility” but as” a Legal Responsibility”. Having such a legal regime supported by the political will, may then force companies to observe human rights principles during their operations.

Chapter Eight

National Protection Mechanisms

8.0 Introduction

Under International law, States have obligation to promote and protect human rights at national levels. National Human Rights Protection System (NHRPS) is comprised of laws, policies and institutions entrusted with the role of promotion and protection of human rights at national level. The NHRPS can therefore be defined as;⁵¹⁷

“The overall human rights infrastructure comprising of all checks and balances needed to ensure that state institutions are accountable and fulfill their duty to respect, protect and uphold human rights: civil and political rights, as well as economic, social and cultural rights. To obtain this and as a first step international human rights standards need to be fully incorporated and reflected in national laws and policies.”

In Tanzania, national institution forming part of NHRPS includes several remedial bodies with statutory power to protect and promote human rights in the country. These institutions are; the Police Force, Prison Force; the Judiciary; the Commission for Human Rights and Good Governance (CHRAGG); the Tanzania Law Reform Commission and the Prevention and Combating of Corruption Bureau (PCCB).

Situations of human rights in Tanzania depend much on the types and nature of laws, policies and human institutions forming part of NHRPS. As discussed in previous chapters and without even going further to other legislations, the Constitution of Tanzania of 1977 itself doesn't guarantee other rights such as collective and social rights. This chapter assesses the performance and strength of these bodies in human rights protection. This chapter will also assess how laws and policies (Normative Standard) protect human rights and ensures accountability in the country. The following is the structure of national human rights protection system in Tanzania.

517 EU (2009) Strengthening National Human Rights Protection System: A Manua for Embassies of EU Member States, page 21.

Table 31: Elements of Tanzania NHRPS

1. Institutions	National Human Rights Institution - CHRAGG
	Legal institutions such as Judiciary and Legal Reform Commission
	Law enforcement organs such as Police Force, PCCB and the Judiciary
2. Policies and Laws	- Overall integration of international human rights standards
	- Subject-specific laws
	- National action plans on human rights - National Human rights education Policy
	Overall integration of human rights into other policies
3. Civil Societies	- Human Rights Defenders/Human Rights NGOs

8.1 Tanzania Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance (CHRAGG) was established in 2000 as a national focal point institution for the promotion and protection of human rights and duties as well as good governance in Tanzania.⁵¹⁸ The Commission operates both in Zanzibar and Tanzania Mainland. The rights and roles of National Human Rights Institutions (NHRISs) are well defined in the *Vienna Declaration and Program of Action of 1993* and the *Paris Principles Relating to the Status of National Institutions of 1993 (Paris Principles)*. This sub chapter assesses the performance of CHRAGG by looking at its strengths, capacity, independence, interventions and its accessibility to the public.

Normally, NHRIs have the following basic duties; Submitting reports on human rights issues to the government; Monitoring and reporting on human rights violations wherever they occur; Encouraging ratification of international human rights standards; Training, raising awareness and education about human rights; Investigating violations and handling complaints (sometimes recommending compensation); Contributing to the reform of legal, military or law enforcement institutions; Advising the government, especially in legislative procedures; Cooperating with international human rights bodies and following up on their recommendations.

⁵¹⁸ 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.

(a) CHRAGG Capacity

Paris Principles have outlined key conditions and criteria that can be used to assess an effective NHRI such as the Tanzania CHRAGG. For the case of this report, the following indicators will be discussed in line with this assessment; this includes independence of CHRAGG, financial capacity, investigation capacity and intervention capacity.

(b) Independence of the Commission

The Tanzania Commission ever since its establishment has never been seen to be free from political control. This is because its commissioners are appointed by the President after recommendations from the appointment committee. The appointment committee is made of the Chief Justice of the Court of Appeal and Chief Justice of Zanzibar High Court, both Speakers of the National Assembly and the House of Representatives as well as the Deputy Attorney General. The committee is comprised of people who have direct control from the President because these are also presidential appointees. It is therefore very difficult to find CHRAGG be vocal against State related human rights violations.

Furthermore, the independence of the commission is also limited by some statutory provisions such as Article 130(3) of the Constitution which gives the President significant power to do any act as against the commission. For instance, The President can give directions or orders to the CHRAGG on any matter, if the President is satisfied that it is in the public interest to do so.⁵¹⁹ Having such kind of NHRI in African countries where States stand as a number one violator of human rights is like giving a room to an accused person to be a judge of his own case. The Tanzanian CHRAGG has to be free from political control for it to be effective to monitor and investigate human rights violations against the State.

(c) Capacity to investigate

Paris Principles requires States to establish human rights bodies' independent from the government, with such independence guaranteed either by statutory law or constitutional provisions, human rights bodies can freely carry out investigations. However, in Tanzania this independence is statutorily limited by Article 6 of the establishing Act which prohibits the Commission from investigating the President.⁵²⁰

The Act establishing the Commission requires Commission to conduct investigations and submit recommendations to be implemented within three days.⁵²¹ The Commission may initiate judicial proceedings before the courts

519 AFRM Report of 2011 pages 540-542, See also LHRC Tanzania Human Rights Reports of 2010 and 2011 chapter 8.

520 *Tanzania Human Rights and Good Governance Act of 2001*.

521 Section 28(2) and (3).

of law to enforce its recommendations if not implemented timely. The power of CHRAGG to conduct investigation is limited by several factors such as statutory limitation as stated above, financial constraints and political terrain in which the commission operates.

The power to conduct investigations is crucial because it is an additional measure of security that works as complementary mechanism to ensure that the rights of all citizens are protected.⁵²²The CHRAGG is vested with powers to receive complaints and conduct investigations. This complements the work of courts. For instance, CHRAGG did not carry out any investigation on the abduction and barbaric torture of the Chairperson of the Medical Doctors Association Dr. Stephen Ulimboka. The LHRC is suspicious that the saga of Dr. Ulimboka was not intervened by CHRAGG because some State security officials were alleged to have been involved on the incident.

Even so, its power to make interventions and conduct investigations is very selective. Ironically, CHRAGG has been ineffective to carry out investigations on human rights violations leveled against the State and it only intervenes in a few cases of human rights violations by State officials and State organs. For instance, in 2012, the country recorded a number of human rights violations incidents implicating officials from the State such as the abduction of Dr. Ulimboka, the indefinite ban of Mwanahalisi, violation of freedom of assembly and the rising trend of extrajudicial killings incidents. However, the only incident that CHRAGG dared to intervene was the one involving the police bombing of a journalist, one Daudi Mwangosi in Iringa region. CHRAGG conducted its own investigations and came out to the public with what can be historical report that implicates State officials to be involved in the killings. For the very first time ever said to be a majority of people in the country hailed the commission for its quick and independent investigative report.

The LHRC's investigation on the impact of Mwangosi's report to CHRAGG officials including the Chairperson indicates that CHRAGG was divided in this saga. Some CHRAGG officials wanted Mwangosi report edited and to remain unpublished for the interest of their bosses while as others stood firmly and acted according to their statutory roles mandated by the Act establishing CHRAGG. This reveals that much has to be done to set CHRAGG officials free from political control. The Mwangosi celebrated report by CHRAGG implicated negatively those independent CHRAGG officials to the extent that they were scared to continue with this tremendous level of activism shown in the Mwangosi saga.

The LHRC therefore, advices the commission to stop being selective by giving equal weight to all incidents of human rights violations leveled against State

522 Sekaggya Magreth (2008) Value of Human Rights Institutions in Kituo cha Katiba (2008) The Protectors: Human Rights and Accountability in East Africa. Fountain Publishers, Kampala, page 80.

official and their allies. Moreover, Mwangosi's report should be used as a symbol of unity among CHRAGG officials rather than a tool of disunity within it.

(d) Accessibility to CHRAGG

The question of NHRI visibility and accessibility is always very important for effective functional implantations. The Act establishing the CHRAGG requires the commission, where necessary; to establish branch offices away from its headquarters for better performance of its functions.⁵²³ Practically, this has never been done since CHRAGG has only three offices away from its head quarters and these are Unguja office in Zanzibar and other two offices in Lindi and Mwanza. CHRAGG was supposed to open its sub offices in almost every region taking into consideration that Tanzania is geographically a huge country with a population of 44 million people.

Lack of CHRAGG office in rural areas curtails people's right, in especially the poor and the vulnerable groups to access the commission. This is also contrary to Paris Principles which requires NHRI to be accessible to the general public, and particularly to vulnerable groups such as persons with disabilities, women, children and their representative organizations. In Tanzania CHRAGG is not vocal hence diminishes its accessibility and visibility. The LHRC advises the government of Tanzania to allocate sufficient fund for establishment of CHRAGG sub offices in almost every district or region of the country.

8.2 Police and Human Rights in Tanzania

As stated previously, NHRPS is also composed of State organs responsible for security of people and their property. This report assesses how the Police Force in Tanzania plays its role as a body responsible for protection of people's rights. Police as law enforcers are obliged to know and to apply international human rights standards during their operations. Generally, police must respect and protect human dignity, maintain and uphold the human rights of all persons. The Tanzania Police Force (TPF) is statutorily mandated by *the Police Force and Auxiliary Services Act*⁵²⁴ to oversee the work of the preservation of peace; maintenance of law and order; prevention and detection of crime; apprehension and guarding of offenders; and protection of property.

From a human rights perspective, it can be argued that, Police force in Tanzania like in many other countries is always responsible for human rights violations leveled against States. These violations could be administrative detentions, torture, extrajudicial killings and discriminations. However, the Police force can still be right and protect people against violations, fight against impunity, stop being used by politicians and allow innocent citizens to enjoy their rights.

⁵²³ Section 13 (2).

⁵²⁴ Section 5.

This is how professional, responsible and accountable police force is supposed to be as key element of NHRPS in Tanzania.

8.2.1 Crime Prevention Capacity and Community Perception

The relationship between the police and human rights is discussed by at looking how police relate with the community and how they implement their duties without violating the rights of the people. In Tanzania the police force does not portray its capacity to combat crimes due to several reasons one being lack of resources to do so. Moreover, the Police force is negatively perceived by the majority public as a group of people who are well placed to defend the interest of rulers and not the public.

The Capacity of the Police Force in Tanzania to combat property related crimes and new emerging crimes such as human trafficking and cyber crimes is also very low. The Tanzania Police Force is however trying to expand its capacity though gradually. For instance, on 13 November 2012 USA Regional Security Officer MR. Jeremy Yamin presented to Tanzania Police Force (TPF) law enforcement equipment worth 156 million Tanzanian shillings (\$100,000 USD) for cyber crime investigations and evidence collection. MR Jeremy insisted that:⁵²⁵

“In every nation, citizens must have trust in its security institutions, especially in regard to public protection, access to justice, and combating the scourge of human trafficking. We believe these equipments are investments that will enhance strong professional institutions because serving the people of Tanzania, supporting human rights, and strengthening democracy are our shared goals,” Yamin concluded.”

The Tanzanian Police force does not portray professionalism and accountability in its dealings. This may always lower down its capacity to combat crimes and human rights violations. That is to say the capacity of any police force entails a couple of things including Security Sector Reform (SSR), professionalism, integrity and accountability. In Tanzania, the Police Force is still regulated by laws and legislations used during colonial time. To continue using such legislations may always water down the capacity of the TPF since the context in which such legislations were made differ tremendously. Therefore the TPF has to speed up the reform process and operate within a legal framework that guarantees accountability and human rights as expected in a democratic society.

525 http://tanzania.usembassy.gov/pr_09132012.html. Visited on 13th November.

“A professional and accountable security sector is a crucial element of a NHRPS. All security bodies should operate within a legal framework that guarantees human rights, accountability and that sets standards for the use of force. Security sector reform is hence vital, not only for increased security and protection of human rights, but also for a precondition for sustainable development.”⁵²⁶

For TPF to regain its trust from the public and improve its capacity, it has to vigorously embark on reform programs. Police reforms programs are important because they enhance security, increases professionalism and security actors’ accountability. However, the aspects of human rights principles, democracy and community policing should not be ignored for effective and result oriented reform programs.

The TPF has since 2005 began undergoing some internal reforms. Police reforms among other things are aimed at reforming community involment in policing; infrastructures; Systems for Improving Policing Operations; tools/equipment and the use of IT; and legal, regulatory and institutional structure.

Despite these reforms however, the PTF has never been free from human rights violations. It is now very common in the country to see violations committed by police officials being justified by harsh conditions in which police officials often work.⁵²⁷If this behavior continues and is left unattended the capacity of the force will continue to drop and the negative perception towards it will escalate.

The Police Force in Tanzania is condemned on account that it is not free from political control. The structure of the force itself is not free from control because the police at Regional and District levels are still under the command of admistrative and political officers such as District and Regional Commissioners known as the chairperson of the District or Regional Committees of security and order at that level. Under the current political terrain in the country the current TPF structure needs major reforms to make TPF free and autonomous. The TPF is advised to propel and extend the reforms programs to a next level. The structural adjustment programs are crucial to fine tune the mind sets of the community towards the current relationship of the TPF and ruling party in the country.

In some incidents police officers in Tanzania have been ordered or forced to exercise their functions or powers or deploy police resources to promote or undermine political parties or interest group. This can be evidenced by a recent incident involving the bombing of the journalist Daudi Mwangosi in

526 EU (2009) Strengthening National Human Rights Protection System: A Manual for Embassies of EU Member States, page 59.

527 *Ibid.* page 52, See Also Chapter two of this Report on Police Brutality and Extrajucial Killings.

Iringa. This incident can be used as a good reason for TPF to reconsider the need of reforming its structure and modes of appointments. The TPF is hereby advised to uphold the rights of all and afford protection to all political parties, individuals and organizations equally without fear or favor. Acting in this manner will enable TPF to regain public trust and capacity. As an institution responsible for protection of human rights, police officers must always act as follows;⁵²⁸

- ✓ Maintain political independence and impartiality at all times;
- ✓ Carry out all duties impartially and without discrimination on such grounds as race, colour, sex, language, Religion or politics;
- ✓ Protect and respect the human rights of all persons, including rights essential to political processes;
- ✓ Maintain and preserve social order so that democratic political processes can be conducted constitutionally and legally.

8.2.2 Challenges Facing Police Service

The TPF in most cases operates in very difficult working condition. Police officials are not well paid, they work without working tools, and they work under constant pressure from political quarters. For instance, Kishapu Police Post was found to be below standard for it to be named as a District Police Offices. The Kishapu Police Post building was formerly used as a garage by Shinyanga Regional Cooperative Union (SHIRECU). The post is small, old, dilapidated and not worth being used as District Police Post. Usually, any police post at the district level must have a reception, two big rooms for female and male suspects, and three main offices for District Police Commander, Prosecutor and District Crime Investigation Officer. Contrary to that, Kishapu Police Post has only one office space used as the reception at the same time staff office. This was said by one police officer in Kishapu;

“..ofisi za masijala hakuna...chumba kipo kimoja tu ndo tunatumia maofisa watatu, na ndio masijala na ndio chumba cha mawasiliano, chumba cha mahabusu kipo kimoja inabidi wanawake walale hapa charge room office ambayo ndio mapokezi pia.”

“There is no record office as we only have a single room used by three officers and the very same office is used for communication. We also have a single room used as a remandee prison so women remandees are forced to sleep at the charge room office the same place used as a reception desk. .”

528 <http://www.ohchr.org/Documents/Publications/training5Add3en.pdf>. Visited on 13th November, 2012.



An old SHIRECU garage now used as Kishapu District Police Office [Field Photo]

Police officials are not well treated as majority of them mix with civilians due to lack of police buildings. Ethically and professionally, police officers are not supposed to mix with the community for security reasons. Police officers are required to stay in police centers or quarters close to Police Post. In Kishapu and other places visited police officers including the OCD do not have police building hence forced to rent apartments within the community.

Furthermore, in all visited areas police officers work without essential working tools such as cars and motorbikes. Consequently, police officers are circumstantially forced to form an alliance with rich people or business people for assistance. One OCD was quoted as saying;

“Upatikanaji wa magari ni mgumu, na hata ukiwa na gari mafuta ndio kabisa hatupati na kupaswa kutegemea wadau mabalimbali, makampuni ya uwekezaji na wanajamii wenye uwezo... na hii mara nyingine inaondoa uhuru wetu wa kutenda haki na kusababisha kuwapendelea wale wanaotupa ufadhili.”

The availability of motor vehicles is tough and when you have a car you don't get petrol at all. This forces us to depend upon different stakeholders such as investment companies and well to do people in the community. More often, the trend does lead to us selling our autonomy to ensure justice prevails and as such favor those who donate towards our cause.”

Another repetition challenge with Police Force is the low payment and insufficient allowances to its officials. Police officers of lower rank are poorly paid; more often the highest they can earn is Tsh. 200,000/= per month. The nature of police work requires well facilitated officers who can not be victims

of corruption and other professional misconduct. The LHRC believes that poor remunerations and lack of proper welfare services to police officers are the major causes for the corrupt practices within the force.

8.3 Tanzania Prison Service and Human Rights

In Tanzania, Prison Service (TPS) is another key component of the NHRPS. TPS was established in August 25th, 1931 as an independent Government Department. The main objective of TPS lies on humane treatment of offenders and adhering to human rights standards. Therefore, TPS contributes to community safety and rehabilitation of offenders through custodial services.

Key international instruments were established to ensure principles of human rights are maintained in prison services. These instruments include the *Model Treaty on the Transfer and Supervision of Offenders Conditionally Sentenced or Released*,⁵²⁹ the *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*,⁵³⁰ the *Standard Minimum Rules for the Treatment of Offenders and Prisoners*,⁵³¹ the *Basic Principles for the Treatment of Offenders of 1990*, and the *Convention Against Torture, Cruel, Inhumane or Degrading Treatment or Punishments* of 1984.

Tanzania enacted several legislations as the guide to prison services in the country being a signatory to international instruments relating to treatment of offenders

These legislations include; *The Prison Act, 1967*,⁵³² *The Parole Board Act, 1994*,⁵³³ *The Criminal Procedure Act, 1985*,⁵³⁴ *The Penal Code*,⁵³⁵ *The Commission for Human Rights and Good Governance Act, 2001*,⁵³⁶ *Preventive Detection Act, 2004* and *Transfer of Prisoners Act, 2004*.⁵³⁷

Various surveys and studies depicts that the situation of human rights in prison is still discouraging. These challenges include; mistreatment of offenders, harsh living conditions, overcrowding, and an increase of prisoners with fabricated cases, underfeeding, poor treatment of prison officials as well as inadequate treatments of offenders with special needs.⁵³⁸

529 Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29th November, 1985.

530 General Assembly resolution 45/110 of 14th December, 1990.

531 Adopted on 30 August 1955.

532 Cap. 58 [R.E 2002] of the laws of Tanzania.

533 Cap. 400 [R.E 2002] of the Laws of Tanzania.

534 Cap.20 [R.E 2002] of the Laws of Tanzania.

535 Cap. 16 [R.E 2002] of the Laws of Tanzania.

536 Cap. 391 [R.E 2002] of the Laws of Tanzania.

537 549 Cap. 361 [R.E 2002] of the Laws of Tanzania.

538 TLS (2011): Special Report on Human Rights Compliance in Prisons Tanzania Mainland; By Special Inquiry Committee of Legal aid Providers: June –July 2011, page vi.

8.3.1 The Prison Staff Welfare

Every good service delivery requires well trained, professional, ethical and highly motivated staff. The Standard Minimum Rules for Treatment of Prisoners requires prisons management to provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability human rights principles will be respected in prisons.⁵³⁹ Prison officers in Tanzania face several challenges such as poor remuneration, understaffing, lack of living houses, inadequate freedom and lack of modern working tools.

The number of prison staff officers in TPS is inadequate. Majority of them complained that they sometimes become inefficient because they are over worked. Prisons visited in 2011 by CSO prison visit team revealed that majority of prison officers are overworked and the missing some of the key professional staff such as medical professionals.⁵⁴⁰ This is contrary to standard minimum rules for treatment of prisoners which requires prison administration to employ prison staff with added professions. Rules 49 states that;

“(1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors. (2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.”

Other challenges facing Prison staff officers include lack of allowances and low salaries. Lack of staff motivation with good payments and allowances undermines the efficiency of prison officials. In Tanzania, civil servants working with TPS are poorly paid and work with minimal working alliances and benefits. Prison officials complain that they sometimes go for night shifts without being paid nights allowance. The LHRC advises the TPS and the government to improve prison officials’ salaries and allowances for good service delivery. Fair remuneration is a human right like other rights. Therefore, improving the welfare of those entrusted with the duty of protecting the right of prisoners is a good leeway to better treatment of prisoners.

Furthermore, it was also revealed that prison officials stay in poor living conditions due to substandard living premises and lack of housing. Prison officials make their lives in old houses or flats with some houses having been constructed as long as the colonial era. For instance in Loliondo, prisoners and prison official still use an old building used during colonial time. It is believed that the Loliondo Prison was once used by colonialists from Kenya to detain the first president of Kenya late Jomo Kenyatta during *Mau-mau* war. The CSO

539 Rule 46 (1).

540 TLS (2011): Special Report on Human Rights Compliance in Prisons Tanzania Mainland, Op cit., page 42.

prison visit team met prison officers in Nzega and Sengerema sharing a single room.⁵⁴¹

Prison Service reform is crucial for maintaining professionalism and accountability for better service delivery and adherence to human rights principles. Promotion and continuing education for staff professional development within prison service is essential. In Tanzania the opportunity for prison staff periodical learning is minimal. Majority of prison official who proceed with continuing education are self sponsored. The TPS service plays no significant role in this, apart from only retaining their post as TPS staff. The situation becomes very hard for prison officials working in rural areas where provision of social services is substandard. Social amenities such as water, health centers, schools and markets are always missing in prison centers.⁵⁴²

8.3.2 Treatment of Prisoners

Minimum Standard Rules for treatment of offenders insist on the adherence to human rights principles by prison official. *There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*⁵⁴³ That is, prisoners have to be treated without violating their inherent dignity and values as human rights being. The Situation in Tanzania prisons indicates that international and national standard set for better treatment of inmates are not properly followed. Prisons in Tanzania are still overwhelmed by overcrowding, poor living conditions, underfeeding, lack of hygienic services and lack of other crucial social services.

(a) Overcrowding

Prison overcrowding is a serious problem in Tanzania and other East African Countries. Minimum standards for treatment of offenders require prisoners to be provided with good accommodation in well ventilated and separate cells. Tanzania Prisons have the capacity to accommodate only 22,667 inmates; however official's statistics show that prisons are overcrowded with the total number of 45,000 inmates.⁵⁴⁴

The major reasons for overcrowding in prisons include excessive use of pre-trial detention, majority of those detained are awaiting justice;⁵⁴⁵ imposition of short terms of imprisonment; delay of cases; fabrications of cases; inadequate prison buildings and minimal uses of out of prison sentences such as parole and community services sentence.

541 TLS (2011): Special Report on Human Rights Compliance in Prisons Tanzania Mainland, Op cit., page 45.

542 TLS (2011): Special Report on Human Rights Compliance in Prisons Tanzania Mainland, Op cit., page 47

543 Rule 6 (1)

544 LHRC (2011) Tanzania Human Right Report of 2011, page 215.

545 <http://www.penalreform.org/>. Visited on 14th November, 2012.

The LHRC observations indicate that a good number of people, most of them being the downtrodden, are sentenced to prison for a few weeks or even days for petty offences such as using abusive language, failure to participate in public activities, failure to pay community contributions, possession of illicit liquor, being active in politics and operating a small business in prohibited places.

Relatively, the number of available prisoners in Tanzania prisons is not congruent with the number of prison officials employed by the TPS. For instance by December 2011 TPS had 11, 639 prison officials entrusted to protect the rights of prisoners throughout the country.

(b) Lack of social services and poor living conditions

Apart from overcrowding the living condition in Tanzania is not worth living. Prisoners are concentrated in single cells contrary to the standard treatment of prisoners which requires every prisoner to be in a single cell. Furthermore, these concentrated camps lack ventilations and sanitary equipments necessary for general hygiene. In prisons sleeping arrangements don't meet international required standards. Other prisoners at times sleep without sleeping mattresses and other crucial requirements because of congestion. This kind of living in prisons is contrary to the international standard.

The living conditions in prisons are further propelled by inadequate supply of water, lack of toilets and insufficient foods to prisoners. For instance, Minimum Rules for Treatment of Prisoners require;⁵⁴⁶

“Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.¹⁶ In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly”.

According to CSO's 2011 prison visit report, prisoners complain that meals given to them are far from being satisfactory and sufficient with lack of important ingredients such as fruits and vegetables.⁵⁴⁷ In addition to that most prisons have scarcity water. As a result prisoners are forced to travel for a long distance to fetch water for food and hygienic activities. For instance in Ushora, prison prisoners are forced to walk for a long distance searching boreholes water away from prison premises.

⁵⁴⁶ Rules 15 and 16.

⁵⁴⁷ TLS (2011): Special Report on Human Rights Compliance in Prisons Tanzania Mainland, Op cit., page 18.

8.3.3 Vulnerable Groups in Prisons

Vulnerable groups include women, children, people living with HIV/AIDS and people with disability. Human rights treaties all people equally without distinction or discrimination. However, there are certain groups whose rights are highly violated and are unable to stand for them. In prisons there are women, the elderly, and persons with disability as well as persons living with HIV/AIDS.

(a) Women

Prisoners, especially pregnant women or nursing women deserve special treatment when in prison. Internationally, women are protected under the equality and non-discrimination principle. The duty to protect female inmates is also provided by the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol - 2003)*.

“Ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity”.⁵⁴⁸

In Tanzania the number of female prisoners is very low compared with the number of male inmates. Despite the low number of female inmates in prisons, female prisoners are not accorded special treatment as a group with special interest. Women in prisons have to be provided with extra hygienic instruments and related facilities such as sanitary pads. However, this is not the case in Tanzania prisons. The country still depends on charitable organizations to provide women facilities in prisons. For instance, in Kingolwira sanitary pads and women related facilities are provided by charitable organizations. This is not encouraging at all, because these charitable organizations are not sustainable and at any point the service can be cut off. The government and not charitable organizations have a role to provide women facilities in prisons.

(b) Children in Prisons

Various studies reveal that children below the age of 18 are intermingled with adult inmates in some prisons visited in 2012. For instance, a report by the Foreign Affairs Parliamentary Committee released on June 2012 indicates that children under 18 years have been allocated to stay with adult inmates in Segerea Prison.⁵⁴⁹ Several international instruments require children under 18 to be detained in separate cells from adults' inmates.

The Parliamentary committee observation indicates child abuse is a common practice in Segerea prison. Sodomy and other abuses of this nature were found to be common practices against those children in Segerea.

⁵⁴⁸ Article 24.

⁵⁴⁹ Fidelis Butahe “watoto wafanyiwa Unyama” Mwananch 12th June 2012.

“Waligundua mengi sana, walisema kuwa watoto hawa wengi wameharibika sehemu zao za siri. Kutokana hali hiyo wanayowafanyia vitendo hivyo huwa tumia pia kuingia simu, sigara, bangi na dawa za kulivya gerezani.. Wanaingiza vitu hivyo kupitia sehemu zao za siri zilizoharibiwa.”⁵⁵⁰

They came with a lot of findings; they said most of their children had their private parts ruined due to what is done to them. Most inmates use them to bring mobile phones, cigarettes, bhang, and illicit drugs to the prison. They tend to hide the said materials inside the already ruined private parts of the said children.”

The LHRC advises the government to improve the treatment of prisoners by effectively implementing available national and international standards for the treatment of offenders. Vulnerable groups such as women and children require special treatment when in custody or prison.

550 *Ibid.*

Chapter Nine

Corruption and Abuse of Power

9.0 Introduction

Chapter nine in this report normally assesses the level of corruption and abuse of power in the country. Corruption and abuse of power for public officials gets root in the country to the extent that the executive arm of the State is reshuffled and the cabinet dissolved within 6 years. In the first term of President Dr. Jakaya Kikwete dissolved the cabinet following the resignation of the Prime Minister, Hon. Edward Lowassa due to corruption scandal. In 2012, again the President was forced to reshuffle his cabinet due to poor performance and abuse of power among Ministers. The Controller Audit General revealed misappropriation of public funds in various government ministries and departments.⁵⁵¹

Therefore, corruption as the word itself indicates impurity or debasement.⁵⁵² The Black's Law dictionary defines corruption as; "*Depravity, perversion, or taint, an impairment of integrity, virtue or moral principle especially the impairment of a public official's duties by bribery.*" Therefore corruption under ambit of laws is a criminal offence whereby all concerned parties equally stands to face charges.⁵⁵³ The corruption practices are looked at, in the following conditions,⁵⁵⁴

- a. The withholding of a service, information, or goods that, by law, and by right, should have been provided or divulged.
- b. The provision of a service, information, or goods that, by law, and by right, should not have been provided or divulged.
- c. That the withholding or the provision of said service, information, or goods are in the power of the withholder or the provider to withhold or to provide and That the withholding or the provision of the said service, information, or goods constitute an integral and substantial part of the authority or the function of the withholder or the provider.
- d. That the service, information, or goods that are provided or divulged are provided or divulged against a benefit or the promise of a benefit from the recipient and as a result of the receipt of this specific benefit or the promise to receive such benefit.

551 Annual General Report of the *Controller and Auditor General*; On the Audit of Financial Statements of Central Government for the year ended 30th July, 2011.

552 Rollin M. Perkins & Ronald N. Boyce, *Criminal law* 855 (3rd Edition, 1982).

553 Section 15 of the Prevention and Combating of Corruption Act, 2007.

554 Vaknin. S, *Financial Crime and Corruption*, United Press International (1st Edition, 2007).

- e. That the service, information, or goods that are withheld are withheld because no benefit was provided or promised by the recipient.

The corruption has adverse effect to the country's economy, political and social circumstance. For instance poor provisions of social services and increased drugs dealers in the country is a result of prolonged unexposed corrupt practices. Current statistics indicate that there is a considerable amount of drugs which are seized in the country. Between July, 2011 and April, 2012 the following drugs were seized by the police force 397.984kg of Cocaine, 140.547kg of Heroine, 257.437kg of Mandrax.⁵⁵⁵

LHRC observes that, corruption and drugs in the country are interrelated organized crimes. Drug dealers are likely to pay a substantial amount of money to smoothly conduct the illicit drugs business and as such, affect the poor citizens in the country especially youths. There is thus a need upon the PCCB and the drugs control department to work within the very same roof to curb the vice. This will increase efficiency as it will be composed of PCCB officials and police officers all together.

9.1 Legal Strategies to Combat and Prevent Corruption

Corruption exists in all states developed and developing and no country can ignore it.⁵⁵⁶ Global strategies and regional legal strategies are all deployed to combat and prevent corruption in its entirety. The country ratified *the United Nations Conventions against Corruption (UNCAC)* in 2005.⁵⁵⁷ The country commenced self-assessment on the implementation of the Convention in 2011. The assessor on implementation was the Director General of PCCB and submitted the report in 2012. The UN Office on Drugs and Crime is a treaty monitoring body mandated to monitor the UNCAC.

Under the UNCA self-assessment system the country among other issues considered the legal framework. There was a systematic comparison of national legislation and practices with the UNCAC, institutional set up on implementation of UNCAC and identification of reform priorities and technical assistance needs in line with *the National Anti-Corruption Strategy (NACSAP II)*.⁵⁵⁸

The African Union Convention on Combating and Preventing Convention which was adopted in 2003 and came into force in 2006 provides for prevention and combating of corruption practices. Until 2012 about 31 countries have

555 Hon. Dr. Emmanuel Nchimbi, The Ministry of Home affairs budget speech, 2011/12 page 6.

556 Hon. George Mkuchika (MP), Minister of State (President's Office), Good Governance; Introductory Statement, United Nations Office of Drugs and Crime (UNODC), 2012 page 1.

557 The country signed the Convention in 2003.

558 Hon. George Mkuchika (MP), Minister of State (President's Office), Good Governance; Introductory Statement, United Nations Office of Drugs and Crime (UNODC), 2012 page 2.

ratified the Convention.⁵⁵⁹ The Convention core objective is to “*Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.*”⁵⁶⁰

The international and African Union initiatives to prevent and combat corruption are also extended to the East African sub-region where the Constitution of *East African Association of Anti-Corruption Authorities, 2007* provides for anti-corruption measures to be adopted by member states. The objective of this Constitution is to jointly prevent and combat corruption practices in the region. Article 6 of Constitution provides for the objectives of Association as sub article (1) reads; the objectives of the Association are;

“To promote, facilitate and regulate cooperation among Partner States to ensure effectiveness of measures and actions to prevent, detect, investigate, punish and eradicate corruption and other related offences in East Africa.”

Furthermore, there are some well established legal strategies to combat corruption and related offences at the national level. For example in order to prevent and combat corruption to public leaders apart from the law *on Prevention and Combating of Corruption Act, 2007*, it is addressed vide *Public Leaders Code of Ethics*, Prevention and combating of corruption in Public Procurement is governed by *the Public Procurement Act*.

However, legal strategies on the fight against corruption in the country in the past six years were supported by the National Anti - Corruption Strategies and Action Plan (NACSAP). There were two NACSAP phases, whereby the first phase lasted from 2000 to 2004, while as phase two NACSAP II lasted from 2008 to 2011.⁵⁶¹ Through both phases of NACSAP, the country has successfully managed to strengthen the legal and institutional capacity in the fight against corruption. For example, the Prevention and Combating of Corruption Bureau has its offices in almost every district in the mainland Tanzania.

9.2 Anti-corruption Institutions in the fight against Corruption 2012

It is an undisputed fact that joint efforts are needed to successful combat corruption in any country. Each part has to play its role. Individual citizens should avoid and discourage corruption practices, while as law enforcement and statutory mandated bodies in the fight against corruption should equally discharge their duties without fear or favour and without inducement or ill will. This sub-chapter will concentrate in deliberating on the role of statutory bodies in fighting corruption in 2012.

559 http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Convention%2.pdf visited 5th December, 2012.

560 Article 2(1).

561 www.pccb.go.tz visited on 12th December, 2012.

9.2.1 The Prevention and Combating of Corruption Bureau (PCCB)

The Prevention and Combating of Corruption Bureau (PCCB) is a statutory body with the mandate to investigate, regulate, arrest, detect, prevent and eradicate corruption practices in the country.⁵⁶² The PCCB is led by a Director General who is assisted by Bureau officers.⁵⁶³ PCCB as a statutory body is an affiliated member to other regional and international anti-corruption bodies such as the Eastern and South African Anti Money Laundering Group (ESAAMLG), the Financial Intelligence Unit (FIU), and the Egmont Group of FIUs, Southern Africa Forum against Corruption (SAFAC), Business Action against Corruption (BAAC) and the East African Association of Anti-Corruption Authorities (EAAACA).

The PCCB preventive measures include mass education or public education programmes. Such activities include capacity building to law enforcement organs and integrity committees, establishment of anti-corruption clubs in schools and universities as well conducting Tv and radio programmes to the general public as a raising awareness strategy. The PCCB has the mandate to arrest, investigate, initiate proceedings and prosecute with DPP's permission to combat corruption and related offences. The DPP's requirement for the PCCB to be able to prosecute undermines its autonomy. It has also been shown to have evidently hindered the process to take to court some of the most serious allegations on corrupt practices involving senior government officials. Such cases are the Radar case which found BAE Company in the UK liable in corrupt transaction with Tanzania on the sale of radar. The responsible officials in the country have not been brought to justice even as we speak.

The office of Director of public prosecution (DPP) and the office of Director General of the PCCB in several times have been accusing one another for failure to facilitate prosecution of corruption cases. The following chart provides number of cases flow from the two offices from 2010/2011 to 2011/2012.

The DPP on the other party argues that they have worked efficiently and has not hindered the PCCB from working. For example the DPP provided a chart indicating how it has been handling issues from PCCB. See the chart below:

⁵⁶² The Prevention and Combating of Corruption Act, 2007.

⁵⁶³ Section 8.

Table 32: Cases Handled by the DPP from the PCCB

No.	Flow of files	Year	
		2010/11	2011/12
1	Files sent to DPP offices	159	236
2	Files returned to PCCB with Charges	89	111
3	Files returned to PCCB for more investigation	64	94
4	Files closed for lack of sufficient evidence to prosecute	2	1
5	Files in the office of DPP by 30 th June	4	30

Source: The office of Director of Public Prosecution 2013

The PCCB has from 2005 to June, 2012 saved money through assets recovery amounting to 36,775,124,440.36/=. In 2012 it has prosecuted 614 cases with only 30 convictions and 44 acquittals. The table indicates a case statistics summary as from 2005 to June, 2012. It shows that, PCCB prefers administrative measures than prosecution in handling cases. Unfortunately, the law does not define what administrative actions are. Thus, it becomes unclear as to what amounts to administrative actions in handling corruption as a criminal offence. The LHRC recommends that PCCB should clearly stipulate the above aspect.

Figure 3: Cases Handled by the DPP from the PCCB

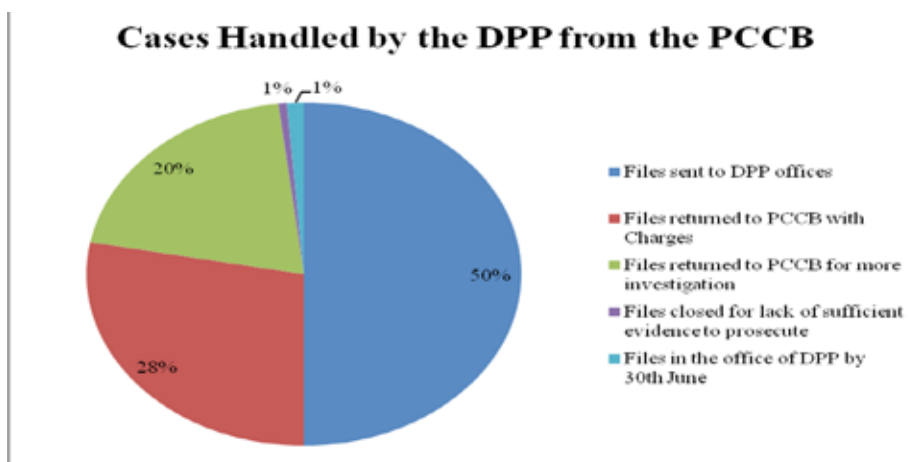


Table 33: Summary of Cases Handled by the PCCB

Year	Allegation received	Cases investigated	Completed Investigation files	Administrative actions taken	Files transferred to other	Files sent to DPP	New Cases in courts	Total cases prosecuted	Conviction cases	Acquittal cases	Saved money asset recovery
2005	3,121	677	540	111	2	20	50	218	6	10	2,500,600,000/=
2006	6,320	1,528	1,688	209	496	22	71	251	18	28	1,301,492,528/=
2007	8,235	1,266	2,015	280	460	38	196	352	35	45	1,580,099,081/=
2008	6,137	928	936	74	184	119	147	416	37	71	13,203,459,357/=
2009	5,930	884	1,175	40	152	156	222	463	46	73	436,132,336/=
2010	5,685	870	862	29	135	112	224	577	56	99	10,123,258,300/=
2011	4,765	819	773	30	84	49	193	466	52	61	4,638,939,558/=
2012 (July)	3,043	723	611	20	54	136	190	614	30	44	2,971,143,280.36/=
TOTAL	43,236	7,695	8,600	793	1,567	652	1,293	-	280	431	36,755,124,440.36/=

Source: PCCB website: www.pccb.go.tz

LHRC is seriously concerned with the two offices of which bears responsibilities. The number of files sent back to PCCB for further action seems to be more but do they involve big fishes?

9.2.2 The Public Procurement Regulatory Authority

The Public Procurement Regulatory Authority (PPRA) has the mandate to regulate Procurement Entities (PE) in the country. It was established by *the Public Procurement Act, 2004* specifically to control public procurement, quality assurance of procured goods and services and control of value for money on goods and services.⁵⁶⁴ The PPRA is a key authority in combating corruption practices in procurement entities in the country. The procurement entities are at greater risks or are vulnerable to corrupt risks compared to other public entities.

The Public Procurement Act, 2004 specifically prohibits for corrupt practices in procurement procedures in any public entity. The law clearly provides for disqualification of any procurement tender that has corrupt elements in it. The law provides that;

⁵⁶⁴ Section 7.

“Where a procuring entity or an approving authority is, after appropriate investigations, satisfied that any person or firm, to which it is proposed that a tender be awarded, has engaged in corrupt or fraudulent practices in competing for the contract in question, the entity or authority may..... (a) Reject a proposal for award of such contract; (b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.”⁵⁶⁵

Therefore, the PPRA has established red flag corrupt indices to establish corruption practices in procuring entities. The indices are used as checklist for corrupt procurement transaction although it is not corruption by itself. The checklist suggests that if PE scores more than 20% of red flag indices, it is likely that there is greater possibility of corrupt transaction to it. The following PE have been identified on higher scale corruption red flags as established by PPRA,⁵⁶⁶ in a Special audit conducted by PPRA to the financial year ending June, 2012.⁵⁶⁷

Table 34: Public Notice on the Public Procurement Audits Reports Carried out by PPRA on the financial year that ended on 30th June, 2012⁵⁶⁸

No	Entity	Red flag score
1	Kyela District Council	28%
2	Makete District Council	27%
3	Mbeya City Council	28%
4	Tabora District Council	20%
5	Bukombe District Council	28%
6	Tanzania Ports Authority	44%
7	Fire and Rescue department under ministry of Home Affairs	41%
8	Ministry of Water and Irrigation (Chalinze Water Project)	40%
9	National Institute of Transport	27%
10	Sumbawanga Municipal Council	23%

The PPRA went further in conducting audit on value for money in 137 construction contracts. The outcome of this audit indicates that, out of the 137 audited contracts, only 63 equivalent to 46% of the audited ones performed

⁵⁶⁵ Section 72 (2).

⁵⁶⁶ PPRA (2012), Public Notice on the Public Procurement Audits Reports Carried out by PPRA on the fiscal year that ended on 30th June, 2012 page 10.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ Source: PPRA

well. 67 contracts equivalent to 49% of the audited performed fairly and 7 contracts equivalent to 5% of the audited ones performed poorly.⁵⁶⁹ The auditing was based on the quality of work and the administration of the project. On quality of the audited work the poorly constructed works had a cost of 13.3 billion while as the poorly administered projects costed 68.1 billion. Examples of such poorly implemented construction projects are as in the table below:

Table 35: Examples of Poorly Implemented Construction Projects

Entity	Project
Mbeya District Council	Completion of the Remaining works of the Dormitory Building at Isuto Secondary School
Pangani District Council	Periodic maintenance, spot improvement and Routine Maintenance on Bweni-Kikokwe-Mwera; Bweni-Mseko-Mwera; Mwera-Gendagenda-Mwera-Ishongo; Mwera – Tungamaa- Sakura-Kipumbwi—Sakura-KipumbwiMtoni-Stahabu-Mtonga; Makorora-Sange and Mji Mpya –Mbulizaga Roads.
Kigoma Municipal Council	Periodic Maintenance work of Livingstone road 0.42 km
	The construction of four classrooms at Kiheba and Bangwe and Toilets (male and female) at Tanganyika Primary School.
Ministry of Water and Irrigation	Consultancy services for design and supervision of construction of Chalinze Water Supply project of Lots 1-6
Urambo district Council	Construction of Abattoir at Kaliua
National Security Social Fund	Construction of Affordable houses at Mtoni Kijichi Dar es Salaam

LHRC paid homage to PPRA for its initiatives to conduct the mentioned audits and making public its audited reports. The reports went further to disclose public entities that abuse public procurement standards. It also enumerates main weaknesses of Procuring entities during the audits. The weaknesses that PE needs to take into contemplation in order to spend well public funds include, inappropriate established procurement units, inappropriate preparation of annual procurement plan, poor quality assurance and control mechanisms, poor records keeping, weak contracts management and failure to publish contracts awards.⁵⁷⁰

⁵⁶⁹ Ibid page 6

⁵⁷⁰ Ibid page 5.

9.2.2.1 Conflict of Interest in Procurement: Case study TANESCO

The Public Procurement Act, 2004 prohibits conducting and awarding tenders without declaring any interest, the position of the law very clearly states that;

“Any member of an approving authority or a member of its staff or of a procuring entity or member of staff of a procuring entity shall declare any interest that he may have in any supplier, contractor or consultant, and shall take no part, nor seek to influence in any way, procurement proceedings in which that supplier, contractor or consultant is involved or liable to become involved.”⁵⁷¹

In 2012, the former Managing Director of Tanesco, one Mhando William was dismissed by Board of Directors. He was serious involved in business transaction of the Tanzania Electricity Supply Company (TANESCO) and supplier to whom had interest thereto. For example in one of the contract entered between TANESCO and MC DONALD LIVELINE TECHNOLOGY, the TANESCO boss was a partner in business with the MC DONALD LIVELIN TECHNOGY. In the contract signed, the TANESCO boss described himself as a Businessman and in executing the document he signed the contract as Managing Director of TANESCO.

SECRET

JOINT VENTURE AGREEMENT

This Joint Venture Agreement is made this 17 day of JULY 2008 by and BETWEEN:

DONALD GEORGE MWAKAMELE, a business man of P.O. Box 9207, Dar es Salaam, (herein referred to as the 1st Party, which expression shall when the context so admits includes its assignees in title) of the one part;

AND

WILLIAM GEOFFREY MHANDO of a business man P.O. Box 9024, Dar es Salaam, (herein referred to as the 2nd Party, which expression shall when the context so admits includes its assignees in title) of the other part.

WHEREAS the parties herein are desirous to venture into a Joint Venture Agreement (herein referred as the Agreement) for mutual benefits and advantages of the parties.

AND WHEREAS both parties take cognisance of the duties, obligations and existing assignments undertaken and to be undertaken severally by each party.

AND WHEREAS the 1st part is the owner and director of a registered Company by the name MC DONALD LIVELINE TECHNOLOGY, mainly dealing with all operation and construction on live lines technology.

AND WHEREAS in consideration hereof, the 2nd part undertakes to advance the amount of Tshs 10,000,000/= for renovation, maintenance and rehabilitation of the machines and vehicles of the said Company and which are mainly for the performance of the intended projects.

NOW THEREFORE this Agreement WITNESSETH the following:

- That by this Agreement the parties herein do herein undertake to enter into a Joint Venture Agreement to search, tender, procure and undertake construction, maintenance, and perform all works and projects in relation or connected with electricity projects and any work related to, to different clients and customers, from any party within and outside the country (herein the assignments).
- That the 2nd party herein will be responsible for search of projects and assignment from various customers, and the 1st party will be responsible for due performance of the projects.
- That the intended assignments will be closely supervised, financed and performed by the 1st party herein.
- That the parties herein further agree that all monies and cheques payable by the intended clients in respect of the assignments hereof should be made in favour of MC DONALD LIVELINE TECHNOLOGY and who shall diligently use the same in due performance of the said assignment and projects.
- That upon deduction of all costs expended in completion of the assignment, the remaining monies or profit shall be divided by the following mode.

SECRET

SECRET

- 30% will be paid to the 1st party
- 30% to be paid to the 2nd party
- the remaining 40 % to be remitted to the said performing Company, MC DONALD LIVELINE TECHNOLOGY

6. That this Agreement is made on mutual understanding and any disputes regarding execution and or interpretation of any of the terms herein shall be resolved amicably by an arbitrator to be appointed by both and or in the event of non consensus, by either party as required under the Arbitration laws, then applicable.

IN WITNESS WHEREOF the parties hereof have set their hands in the year of the God as herein appearing.

SEALED by the said DONALD GEORGE MWAKAMELE in my presence this 17 day of JULY 2008.

Name: D. G. Mwakamele
Signature: [Signature]
Postal Address: [Address]
Qualification: [Qualification]

SEALED by the WILLIAM GEOFFREY MHANDO in my presence this/day of 17 day of JULY 2008.

Name: W. G. Mhando
Signature: [Signature]
Postal Address: [Address]
Qualification: [Qualification]

Drawn by:
MSK Law Partners (Advocates)
Appt. No.001/Block 2346/4
Ufikoni Road/Sea View
Opp: The Aga Khan University
P.O. Box 9642
DAR ES SALAAM

SECRET

The TANESCO boss was to get 30% in the joint venture entered with a fellow businessman one Donald George Mwakamele who also gets 30% and 40% to the Mc. DONALD LIVELIN TECHNOGY.

571 Section 73(5)

Secondly, the same boss was accused to have offered a tender to supply stationeries, printing and computer consumable for the year 2011/12. The boss entered into contract with a company called Ms. SANTA CLARA SUPPLIES COMPANY LIMITED, which is co-owned by family members of the boss.



Due to this serious misconduct of the former TANESCO boss, the Board of directors decided to dismiss the boss on 29th October, 2012.

“hatua hiyo imechukuliwa baada ya bodi kujiridhisha kuwa Mhando alifanya makosa yanayohusiana na kuingia kwenye mikataba yenye mgongano wa kimaslahi kinyume cha taratibu za shirika. Hivyo, basi kufuatia makosa hayo, Bodi ya Wakurugenzi ya Tanesco imeamua kumwachisha kazi Mhandisi William Geofrey Mhando kuanzia tarehe 29.10.2012.”

The said measures were taken having been fully satisfied that Mhando committed an error in regard to a contract which had conflicting interests contrary to the organization. It is due to the said reasons that Tanesco’s Board of Directors has decided to terminate from office Engineer William Godfrey Mhando with effective from October 29th, 2012.

LHRC seriously condemns such a high level of abuse of office for which any reasonable person could have not done. If the reasonable test were to be applicable here, then it only befits to say that the boss unreasonably failed to diligently analyze and comprehend the “conflict of interest doctrine”. He has showed a high degree of unreasonable decision making in management

of public entity like TANESCO. The price of electricity units every day goes high to consumers due to the money being channeled to individuals with no production costs. For example only 40% of the proceeds went to the company while as 60% went to individuals in the joint venture entered between the TANESCO boss and the co-businessman of Mc. DONALD LIVELINE.

LHRC calls upon the law enforcement organs particularly the PCCB and the DPP to take the matter to the court of law. The CAG and PPRA should conduct special audits to the company in order for justice to be done.

9.2.3 The National Audit Office

The National Audit Office (NAO) is established under *the Public Audit, Act 2008*. The office derives its mandate from the Constitution of the United Republic of Tanzania, 1977, Article 143. It is clearly provided that there will be an office of the Controller Auditor General (CAG). The national audit office produces the annual general audited reports. The CAG conducts auditing in ministries departments, central government, local government, parastatals, institutes and public agencies. The CAG report is a barometer that measures expenditures of public funds in compliance with standard financial regulations and expenditures. Therefore, the CAG's office is a very important agency in preventing and combating of corruption in public services.

The CAG general report for 2010/2011 financial year was released early 2012. The report revealed a lot of financial mismanagement and embezzlement of public funds and resources. The report openly indicated financial loss and poor management of funds from the central government to local government's authorities. The CAG report for 2010/2011 is one of the reports which were seriously debated in parliament as a result it led to the reshuffling of the cabinet ministers.⁵⁷²

Table 36: Some of the issues exposed in this CAG Report, 2010/2011 includes the following;⁵⁷³

- a. *Salaries paid to retirees, absentees, and ineligible officers amounting 142,715,827.99/= shillings;*
- b. *Outstanding Commodity Import Support JPY 17,589,570,021.16/=;*
- c. *Motor vehicles repair works involving a total amount of Shs.77,318,833 not routed to TEMESA;*
- d. *Expenditure not properly supported amounting to Shs.8,076,574,791.42/=;*

572 Also read the following reports; Public Authorities and other Bodies Report, 2010/11, Performance and Forensic Report, 2010/11, Donor Funded Projects Report, 2010/11, Tanzania Embassies Report, 2010/11 and the Local Government Audit Report, 2010/11 available online at <http://www.nao.go.tz/?p=560> visited on 30th December, 2012.

573 Central Government Audit Report, 2010/2011.

- e. *Goods not delivered Shs.31,027,797,820/=;*
- f. *Payments charged to wrong expenditure codes;*
- g. *Questionable costs, three (3) MDAs incurred payments of Shs.1,471,933,333/=.* However, the payments lacked relevant and sufficient information to establish their validity to be treated as proper charge against the public funds;
- h. *Increasing trend of allowances payments percentage of allowances to total expenditure rose from 41% (2009/10) to 57% (2010/11) without any measure being taken to abate the situation;*
- i. *Audited accounts of Political Parties not submitted to the Office of the Registrar of Political Parties contrary to Section 14 (1) to (3) of the Political Parties Act;*
- j. *Unclaimed salaries not remitted to Treasury Shs.110,100,451.12/=;*
- k. *Assets not recorded in the Fixed Assets Register Scrutiny of the financial statements submitted for audit revealed that assets worth Shs.70,854,983,288/= were not recorded in the assets register by various MDAs;*
- l. *Liabilities and Commitments; Section 17 (3) of the Public Finance Act, 2001 (revised 2004) prohibits MDAs and RAS to make payments, accepting a charge in account, commit or incur expenditure without a warrant authorizing them to do so. However, for the period ended 30th June 2011 most MDAs and RASs had a total liabilities and commitments amounting to Shs.1,327,139,369,086.11 without authorizing warrants as evidenced by cash balances in their recurrent and development accounts.*

LHRC positively commends the CAG's office for the job well done. Thus law enforcers should take strong measures to individuals and unfaithful public officials who deliberately misuse public funds for private gains; to compliment efforts by the CAG's office. The role of PCCB in combating and preventing corruption should critically deal with each financial irregularity as revealed in the CAG report.

The CAG reports as well went further to expose embezzlement and mismanagement of public funds in Local governments.⁵⁷⁴ The CAG was directed to conduct special audit in Kishapu districts where millions of tax payers' money were squandered. The report indicates a huge sum of money that is not accounted in books of accounts. For example the report shows that, false bank reconciliation was produced to indicate that Shs.235,057,185.64/=, fake

⁵⁷⁴ The Local Government Audit Report, 2010/11.

payment voucher amounting, 502,155,820/=, unauthorized transfer of public funds from one account to another amounting 1,676,246,259 and several other financial irregularities.⁵⁷⁵

Kishapu district is an example although the problem is still serious in most of the districts councils. Failure by the central government to take strong measures to combat the problem encourages the trend to prevail.

For instance no District Executive Director has been taken to court for embezzlement but instead the government has been issuing them a transfer from one district to another. LHRC regards this trend as a serious weakness on the party of the government.

The embezzled public funds were located in various developmental programmes, but few public officials misdirected the budgeted fund for private gain. LHRC calls upon citizen's representatives in districts councils to track public expenditures. The PCCB and the office of CAG should empower ward councilors to track budget expenditures in respective district councils. Otherwise failure by the government to provide social service is inhuman and a violation of social-economic rights to ordinary citizens. For example in Kishapu district the water programme which was supposed to be implemented did not work out because Shs. 286,092,000 was squandered.⁵⁷⁶ Therefore its citizens were denied their basic rights to clean and safe water.

9.2.4 Ethics Secretariat

The Ethics Secretariat is constitutionally established to foresee the ethics and public leader's etiquette. The constitution provides that; *"There is hereby established a Public Leaders' Ethics Secretariat which shall have power to inquire into the behavior and conduct of any public leader for the purpose of ensuring that the provisions of the law concerning the ethics of public leaders are duly complied with."*⁵⁷⁷ The country's initiatives on public leader's ethics have been in existence ever since the colonial era. Prior to the independence, they were narrowly dealt under the Penal Code, and the Prevention of Corruption Ordinance. Soon after independence the same were addressed in the Interim Constitution, 1965 and the Permanent Commission of Inquiry, 1966. Thereafter the TANU leadership Code 1967 was drafted.

The recent development on legal perspective supplemented it with existing initiatives by enacting the following legislations; *The Committee for the Enforcement of the Leadership code Act, 1973, The Leadership code Of Ethics Act, Cap. 398 [1995], Local Government codes Of Conduct [2000] and the Public Service Act, 2002*⁵⁷⁸ and the *Public Sector Regulation, 2003 that provides for*

575 *Jamhuri ya Muugano wa Tanzania, Ofisi ya Mkaguzi Mkuu "Taarifa ya Ukaguzi maalum uliofanyika katika Halmashauri ya wilaya Kishapu"* pages 1-16.

576 *Ibid* page 7.

577 Article 132(1).

578 Act No. 8 of 2002.

*code of conduct for public servants.*⁵⁷⁹

In 2012, the ethics secretariat received 8,282 forms from public officials submitted as per requirement of the *Public Services Act, 1995*. The submitted forms are equivalent to 92.3% of all public officials covered under the law. It also received 215 public official's complaints which upon analysis 125 complaints were admissible under the law while as 90 complaints were inadmissible under the Act.⁵⁸⁰

The ethics secretariat faces a number of challenges which include the following; firstly the ethics tribunal decision are not binding, as it only provides for warnings to public officials who do not comply with the legal requirements but does not provide punitive damages. Secondly, there is budget constraints as most of the budget allocated to the secretariat is used to pay rent for the head office thus lack of funds to build capacity for its staff.⁵⁸¹

9.2.5 Open Government Partnership in Tanzania

The government of Tanzania, has endeavored to join in a new multilateral initiative to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen good governance was launched on 20th September, 2011 in New York.

The country prepared a one year action plan, 2012-2013 to enhance its commitment to global initiatives. In its draft plan, the government commits to establish data disclosure and establish *www.data.go.tz* website that will contain a substantial number of governments held data set by December 2012.⁵⁸²

LHRC strongly supports the government initiatives to join global initiatives for OGP. The move will enhance easy access to government data for different use and immediate intervention. The current situation is not promising at all since there is unnecessary bureaucracy in accessing government data. The situation is even worse when a civil society requests for certain information as it becomes very difficult for the government to disclose the same. The OGP will also enhance performance of the government to provide updated information lest its partners question on why there are non-availability of data.

579 <http://www.scribd.com/doc/33211128/The-Legal-Framework-for-Regulation-of-Public-Ethics-in-Tanzania-A-Review-Ethics-Commission-Parliamentary-C-tee-Workshop-Morogoro-April-2010> visited on 12th December, 2012.

580 <http://www.dailynews.co.tz/index.php/local-news/5827-ethics-secretariat-demands-punitive-status> visited on 13th December, 2012.

581 *Ibid.*

582 Tanzania Open Government Partnership Action Plan 2012-2013 para 3.4 on innovation and technology.

9.3 Contribution of Civil societies, religion and Media engagement in Fight against Corruption

Civil Societies and the media engagement in the prevention and combating of corruption strategies are very vital. In NACSAP II greater emphasis was put to non-state actor’s involvement in the fight against corruption. The current civil society’s engagement on the fight against corruption is enthusiastically dealing with Extractive Industries. Mining is one of the fastest growing sectors in the country. It is as well the most vulnerable sector to be hit by grand international corruption practices.⁵⁸³

Thus, civil societies are fully engaged in global initiatives such as Publish What You Pay (PWYP) and Tanzania Extractive Industries Transparency Initiatives (TEITI). The aim of these global initiatives is to enhance transparency and accountability in the mining sector. The Interfaith Committee released its report on how much the country loses from the mining sector. The report titled “*One Billion Dollar Question; How Can Tanzania Stop Losing So Much Tax Revenue*” revealed substantially that the mining sector does not contribute as it should to the country’s economy.⁵⁸⁴ The revenue loss is a result of corrupt transaction and mis-pricing tax incentives.

9.4 The Corruption Perception Index (CPI) and Prevalence of Corruption

The country’s corruption prevalence is measured in terms of Perception Index. The Corruption Perception Index ranks countries in accordance to the extent to which corruption is believed to exist. The corruption perception index was created in 1995 by Transparency International. It ranks almost 200 countries on a scale of zero to 10, with zero indicating high levels of corruption and 10 indicating low levels. Other CPI studies such the MO Ibrahim Index and the East Africa Bribery Index. The scored is presented in percent.

Table 37: The CPI scores for Tanzania in 2012

2012 CPI Scores		
Transparency International	Mo Ibrahim Corruption Index	East African Bribery Index
43%	59 position	39.1%

Source: Transparency International, Mo Ibrahim Corruption Index and East African Bribery Index

583 Interfaith Standing Committee (2012) *One Billion Dollar Question; How Can Tanzania Stop Losing So Much Tax Revenue*, Report 2012 page 12.

584 The Interfaith Standing Committee on Economic Justice and the Integrity of Creation (ISCJIC) is a faith-based committee comprising of religious leaders from Christian Council of Tanzania (CCT), Tanzania Episcopal Conference (TEC), and The National Muslim Council of Tanzania (BAKWATA).

9.4.1 Tax Exemptions are Barriers to Development

Tax is defined as a charge usually monetary imposed by the government on persons, entities, transactions, or property to yield public revenue.⁵⁸⁵ Others have defined as the enforced proportional contributions from persons and property levied by the state by virtue of its sovereignty for the support of government and for all public needs.⁵⁸⁶ Tax is an important source of internal government income. The government must collect tax from all sources to be able to provide social services, run the states responsibilities in all its organs and bring development. For example, the government has been able to collect Tsh 6,775.9 billion in the financial year 2011/12.⁵⁸⁷

Tax exemption is a reduction or elimination of the taxes normally imposed on individuals and organizations by the State. Usually, tax exemption is an accorded entity part of a sector of the economy which the government wants to promote economically. Tax exemptions can also serve the purpose of reducing taxes borne by a particular segment of the society, in the interest of fairness. For example in 2012/13 the tax threshold has gone up to 170,000/= below that are exempted from paying income tax.⁵⁸⁸

In the 2012/13 budget the government reduced tax exemptions. For instance it has abolished the following exemptions:

“(a) Abolish exemption of Excise Duty on imported non-utility motor vehicles for all beneficiaries (b) Abolish exemption currently provided under “sec. 54(2) of the Income Tax Act” to a resident corporation which holds 25 per cent shares or more so that dividends of the corporation will now be taxed at a reduced rate of 5 percent. This measure is aimed at creating fairness and equity to all dividend earners.”⁵⁸⁹

Tax exemption is the main causes of revenue loss in the country. In the financial year 2011/12, the tax exemption amounted to Tshs 1,016,320,000 about 18% of total tax revenue collected.⁵⁹⁰ The country provides a wide range of tax incentives, for example in Export Processing Zones (EPZs) and Special Economic Zones (SEZs), companies are exempted for the first 10 years from paying income tax and all taxes and levies imposed by Local Government Authorities (LGAs) and other tax incentives.⁵⁹¹

585 Garner. B. A, Black’s Law Dictionary, Ninth Edition page 1594.

586 *Ibid.*

587 Speech by the Minister for Finance Hon. Dr. William Augustao Mgemwa (MP.), Introducing to the National Assembly, The Estimates of Government Revenue and Expenditure for the Fiscal Year/2013 page 6

588 *Ibid* page 31.

589 *Ibid* page 33.

590 Policy Forum and Action Aid (2012), Tax Competition in East Africa, A race to the bottom? “Tax Incentives and Revenue Losses in Tanzania, page IV.

591 *Ibid* page V.

LHRC seriously argue the government to maximize revenue collections. Unnecessary tax exemptions especially on Foreign Direct Investments should be abolished. The government should prepare auspicious environment that will attract FDIs in terms of ensured availability of basic social services such as electricity, water, well established roads infrastructure, airports and harbors. Tax exemptions deny citizens the right to development.

9.5 Situation of Corruption in Tanzanian Politics

Corruption in Tanzanian politics is now taking a new turn. The MPs who are mandated to supervise and foresee day to day activities of the government are now falling into corruption traps. LHRC's findings reveal that increasing corruption allegations to elected MPs is a result of being corruptly nominated by their political parties. In nomination process within parties there is serious corruption inducement to the eligible voters. For instance, in the Arumeru-East by-election, the ruling party CCM was forced to repeat its candidate's nomination due to corruption allegations.⁵⁹² One of the aspirants withdrew from the race, lamenting that there was serious corruption and massive use of money in search of party's nomination. One of the aspirants went door to door, house to house to woo members to vote on his favour in nomination.⁵⁹³

9.5.1 Corruption Allegations in Parliamentary Committee on Energy and Minerals

In 2012, the speaker of the National Assembly disbanded the parliamentary committee on energy and minerals. The power to dissolve or disband any parliamentary committee is confined to the speaker by *the Parliament Standing Orders, 2007, Order 113(3)* read together with section 48(1)(a) of *the Interpretation of Laws Act*, which defines power to appoint, means power to dismiss and suspend. The cited order and provision of the law *supra* gives mandate to the speaker of the National Assembly to appoint Members of Parliament to form different Parliamentary Committees.⁵⁹⁴

The speaker disbanded this committee, invoking her powers and the serious allegation of corruption to the parliamentary members of the energy and minerals committee. The allegations were reported to the office of the Speaker by the Permanent Secretary, Eliachim Maswi that some MPs were soliciting bribes from the ministry in order to approve the ministry's budget. Other allegations of misconduct included, members of the committee having a conflict of interest with TANESCO and other members of the committee being involved in corrupt practices with oil companies.⁵⁹⁵

592 TACCEO (2012) Report on the Arumeru-East Constituency By-Election of April, 2012 page 12.

593 *Ibid* page 13.

594 Read, Eighth Schedule of the Parliament Standing Orders, 2007.

595 Jamhuri ya Muungano wa Tanzania, Bunge la Tanzania, "*Uamuzi wa Spika kuhusu: Tuhuma kwamba baadhi ya wabunge na wajumbe wa kamati ya nishati na madini walijihusha na vitendo vya rushwa katika kutekeleza kazi zao za Bunge*, 9th November, 2012 page 2.

Following the disbandment of the energy and minerals parliamentary committee, the matter was referred to the sub-committee on rights, immunities and powers in order to advise the speaker on proper measures to be taken against any MP involved. The sub-committee did not prove the corrupt allegations against MPs.⁵⁹⁶

LHRC is of the view that, law enforcers ought to take this matter for further scrutiny despite the sub-committee failing to prove corruption allegations to MPs as reports indicate. The, sub-committee was composed by MPs and was mandated to conduct inquiry of corrupt practices of fellow MPs. There is a need for the PCCB to intervene due to the nature and seriousness of the allegations which were leveled against the Minister and the permanent secretary of the ministry of energy and minerals. As for this case MPs have been judges of their own case which is, a serious violation of the principle of natural justice. “*You cannot be judge of your own case.*”

9.5.2 Bahi Constituency MP, Badwel Corruption Scandal

In 2011 the opposition Member of Parliament from Kigoma South Hon. David Kafulila informed the parliament that, some members of the Local Government Accounts Committee were involved in corruption practices.⁵⁹⁷ The message was received politically by other MPs. The parliament and law enforcers especially the PCCB did not labour much in conducting investigation over the allegations.

In 2012 the allegations became vivid following the Bahi Constituency Member of Parliament hon. Omary Badwel’s arrest for allegedly soliciting a bribe from Kisarawe District Executive Director (DED).⁵⁹⁸ The case is still pending at the Kisutu Resident Magistrates Court, in Dar es Salaam.

Therefore, LHRC calls for the PCCB and the office of the Speaker of the National Assembly to take necessary initiatives to end corruption in parliament. The parliament is mandated to supervise and monitor activities of the government. Corruption scandals in parliament as one of the arms of states would jeopardize its duties and responsibilities. Equally citizens should be empowered not to vote for corrupt political aspirants. The political reality on the ground during party nomination process is marred by corrupt practices. If corruptly obtained candidates become Members of Parliament, they are likely to continue accepting corruption as a way of life.

9.5.3 Who owns Billions in Swiss Banks?

The Swiss Central Bank in June, 2012 released its annual reports whereby it was indicated that USD 196 million which is equivalent to Tsh. 314 billion

⁵⁹⁶ *Ibid.*

⁵⁹⁷ LHRC (2011) Tanzania Human Rights Report, 2011 page 211.

⁵⁹⁸ <http://www.pccb.go.tz/index.php/72-what-newspaper-says/190-takukuru-yaeleza-ilivyo-mnasa-mbunge> visited on 23rd December, 2012.

from Tanzania or by individual Tanzanian were held its accounts. The amount stipulated is very huge for individuals to deposit abroad. *The Foreign Exchange Act, 1992*, clearly stipulates that it is prohibited to transfer any notes or coins (money) to a foreign country in any circumstances taking into consideration that the same at any point in time it has been a legal tender in the country. The provisio reads that;

“Subject to sub section (2), except with the permission of the Governor no person shall export from or cause to be exported; from the United Republic-(a) any notes or coins which are or have been at any time legal tender in the United Republic, or (b) any gold.”

LHRC is seriously concerned with greedy leaders whom export proceeds derived from the country to abroad from any sources legal or illegal without prior permission of the governor. It is a greater weakness on part of the government, particulary the Bank of Tanzania (BOT) for failing to discharge its duties accordingly. LHRC is concerned with the act itself of exporting proceeds of abroad contravenes the law but the law enforcement agencies do not take any initiatives. The matter taken in parliament as a private motion by Hon. Zitto Zuberi Kabwe but little attention was given to this motion.⁵⁹⁹ The government on their part simple answers were given which a sign of unwillingness to pursue the matter. With this regard LHRC calls the World Bank through Assets Recovery Unit to deal with this matter *suo motto* in order to rescue public finances to be used for development programmes. The bosses whom have exported the said amount should also be exposed and taken to courts for proper remedies.

Furthermore, in the current technological advancement, whereby e-banking is widely used there is need to amend the Foreign Exchange Act, 1992 in order to suit the purpose. Furthermore the investigative machineries such as PCCB and Police force should be capacitated to master e-banking transaction for insance one can operate an account in foreign country without even visiting to a state, visit <http://www.swiss-privacy.com>

⁵⁹⁹ The Parliament of United Republic of Tanzania (Hansard), *Majadiliano ya Bunge, Mkutano wa Tisa*, 8th November, 2012 pages 105 - 109

Chapter 10

International Human Right Law

10.0 Introduction

Chapter ten of the Tanzania human rights report discusses how the country complies with international human rights treaties. It provides for the ratification and domestication status, how the country complies with reporting implementation of various treaties in respective treaty bodies. The United Republic of Tanzania is a member of the United Nation and had ratified a number of human rights instruments that set international recognized standards to enable recognition, promotion, protection, respect and preservation for human dignity and respect of inherent rights.⁶⁰⁰ Human rights are international norms that help to protect people everywhere from severe political, economical and social abuses. The applicability or practice for the same varies from one place to another, however; UN standards therefore must be complied by member states.⁶⁰¹

10.1 How International Laws Binds Tanzania Domestically

Tanzania is active member in adopting, implementing various international human rights instruments both binding and non-binding. Normally the declarations are non-binding documents however persuasive. The conventions, covenant, charter, protocols; treaties are all used interchangeably to connote binding nature of international legal agreements.⁶⁰² Tanzania is a dualist state that necessitates domestication of international legal instruments for it to be enforceable.

A treaty is an express agreement under international Law entered into by actors in international level, namely sovereign states and international organizations. A convention is a set of agreed stipulated or generally accepted standards, social norms, or criteria, often taking the form of a customs. Certain types of rules or customs may become law and regulatory legislation be introduced to formalize or enforce the convention⁶⁰³.

600 N, James, "Human Rights", The Stanford Encyclopedia of Philosophy (Fall 2010 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2010/entries/rights-human/> First published Fri Feb 7, 2003; substantive revision Tue Aug 24, 2010. Visited on 16th November, 2012.

601 Universal Declaration of human rights of 1948.

602 <http://en.wikipedia.org/wiki/Treaty> visited on 16th November, 2012.

603 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14.

According to the definition above the treaties are agreements enriched by the contents that constitutes standards, nations have to comply in implementation for the agreement of the parties. Since international law sets only standards, members states takes a step ahead to in cooperate the provisions within national legal systems to enable its operation, done through ratification at country level. In Tanzania, ratification done by the parliament of Tanzania according to the *Constitution of the United Republic of Tanzania, 1977*, Article 63 that provides;

“the National Assembly (the Parliament) shall deliberate upon and ratify all treaties and agreements to which Tanzania is a party and the provisions of which require ratification by ‘Yes’ or ‘No’ votes of the Members of Parliament.

Most of international human rights documents are legally non-binding as the principles of non-interference is concerned. States may declare their reservations and the reasons for the reservations.⁶⁰⁴ However, non-binding instruments have no enforcement *mechanisms*, but the States that sign commit themselves to adhere to those instruments and have diplomatic and political implications.⁶⁰⁵

International law mechanisms of enforcement requires nations to comply with international standards in domestic legal system to enable them practice at domestic level, this always have direct connections with international principles of good governance and fare treatment of human beings in the spirit of brotherhoods and preservation of human dignity.⁶⁰⁶ The common mechanisms is through *reporting* according to instruments requirements and reviewing mechanism depending with instruments requirements, a good example is Universal periodic review for human rights commonly known as UPR process. Nations received comments from members on floor and required to react accordingly.

10.2 Adoption of International Human Rights Instruments

10.2.1 International Bill of Human Rights

The international bill of human rights is the bedrock foundations for establishment of various international laws enforce to recognize, promote, preserve, defend and put standards on how member states should comply in enacting laws to focus on culture of human rights. The bill of human rights is enshrined in a number of international legal instruments which includes the following;

604 United Nation Charter of 1948.

605 Compendium of international standards for elections, Third edition, printed by Albe De Coker, Belgium

606 Universal Declaration of Human Rights of 1948.

1. *The United Nations Charter, 1945;*
2. *The Universal Declaration of Human Rights, 1948;*
3. *The International Covenant on Economic, Social and Cultural Rights, 1966;*
4. *The International Covenant on Civil and Political Rights, 1966;*
5. *The Optional Protocol to the International Covenant on Civil and Political Rights, 1966;*
6. *The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989;*
7. *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984);*
8. *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990);*
9. *The United Nations Convention on Corruption, (2005);*
10. *United Nations Convention on the Status of Refugees, (1951);*
11. *African Charter on Human and Peoples' Rights (1981) (ACHPR) Banjul Charter, ratified in 1984.*

Tanzania signed and ratified most of the above mentioned international laws. On the other hand the government has signed the Conventions but did not sign the subsequent optional protocols made to supplement it. For instance *The International Covenant on Civil and Political Rights, 1966*, the government has signed it but so far has not signed the second optional protocol part of this instrument that requires member's starts to abolish death penalty. The protocol also establishes mechanisms for individuals to file complaint against the state whenever human rights abuses are reported. Failure to sign these optional protocols attracts doubt in effectiveness of the mechanism for the entire instruments.

Therefore, LHRC recommends the government to sign the protocol. The protocol that abolishes death penalty is in support of Article 14 of the Constitution of United Republic of Tanzania, 1977 that provides for the right to life; however penal laws still recognize death penalty as one of the punishment to be imposed in murder and treason cases.

10.2.2 Other Binding International Human Rights Treaties

There are a number of legally binding instruments that Tanzania is a party to these instruments including;

The Convention on the Right of the Child, 1989 which was signed in July 1990 and ratified in 1991, *International Convention on the elimination of all forms of*

Racial Discrimination of 1966, signed by Tanzania June 2009. *The Convention on the Elimination of All forms of Discrimination against Women of 1979*, the *International Convention on the Protection of Rights of All Migrant Workers and Members of their families of 1990*. Other instrument includes *International Convention for the Protection of All Persons from Enforced Disappearance 2006*, and the *Convention on the Rights of Persons with Disabilities 2006*.⁶⁰⁷

The Convention on the Status of Refugees of 1951 together with its *Optional Protocol* defines the term “refugee” and sets the minimum standards for the treatment of any persons with status description within the borders of that country. This conventions bound member states to accord all security needed to the refugees, provides all basic needs, and ensure their security. Tanzania has been very active regarding this convention. *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990)* protects people working in a foreign country against any inhuman treatment possible just because of one being in a foreigners, classified as migrant workers from discrimination, slavery, exploitation and oppression, while also guaranteeing them their human rights⁶⁰⁸. Tanzania enacted *The Refugees Act of 1998 RE 2002*.

The United Nations Convention on Corruption 1996, this Convention on Corruption binds States to prevent corruption in both the public and private sectors, disciplining corrupt government officials, promoting transparency in the use of public finances, strengthening the integrity of the judiciary, and enhancing auditing in the private sector. Tanzania ratify various regional treaties related to fight against corruption such as *African Union Convention on Preventing and Combating Corruption, July 11, 2003*⁶⁰⁹ that its Article 16 requires States Parties to confiscate proceeds of corruption as outlined in the Convention.

Apart from Tanzania being a member to various international treaties, it is also active in regional treaties implementations. Tanzania is a member to various treaties, such as the African Union (AU). *African Charter on Human and Peoples’ Rights (1981) (ACHPR)* commonly refered to as to the Banjul Charter, ratified in 1984, the *Protocol to the African Charter on Human and Peoples’ Rights and It optional protocol on the Rights of Women in Africa, (2003)*.

607 It was domesticated in 2010 followed enactment of the *Law of Persons with Disabilities Act, 2010*.

608 <http://www.icmc.net/pubs/strengthening-protection-migrant-workers-and-their-families-with-international-human-rights-tre> visited on 17th November, 2012.

609 *African Union Convention on Preventing and Combating Corruption, July 11, 2003*, entered into force August 8, 2006, available at http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption visited on 21st November, 2012.

Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 Entry into force 2 September 1990, Tanzania is also a party to the, *African Charter on the Rights and Welfare of the Child (1990) (ACRWC)*, ratified in 2003 are all binding Tanzania regionally. Tanzania in passing the new Child Act in 2009 has respond to the international efforts.⁶¹⁰10.2.3

Non-Binding International Human Rights Instruments

It is therefore a commonly agreed principle that, most of international human rights instrument are not binding to member states. However, this is a misconception impliedly all-international human rights instruments are binding to member's states whichever legally or diplomatically.

Declarations adopted by the General Assembly are not legally binding rather are expressions of political commitment by States that vote in their favour. States may express their opinions through voting or by making official statements. Those Declarations that Tanzania voted in their favour attracts approval and commitment from the government. The international human rights laws are very persuasive in nature. For instance one important Declaration voted for by Tanzania and 142 other nations was the *United Nations Declaration on the Rights of Indigenous Peoples (2007)*. Most of the countries that voted against or abstained have since declared their positions. Voting in favor of the Declaration, Tanzania expressed its commitment to “*emphasize the rights of indigenous peoples*” to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations⁶¹¹. This convention prohibits discrimination against indigenous people and promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development in a manner that does not endanger their cultural respect.⁶¹²

Tanzania also ratified, *United Nations Declaration on Human Rights Defenders adopted by the General Assembly* in 1999. While the United Nations Declaration on Human Rights Defenders is not a legally binding document, it contains a series of principles and rights that based on human rights standards enshrined in other international instruments that are legally binding, however, this convention have a number of diplomatic and political implications whenever violated.

The 3rd Optional Protocol to the Convention on the Right of the Child is a new protocol which provides for convenient procedures whereby children can bring to the Human Rights Committee against member States upon violation of children's rights. The Optional Protocol is yet to come into force and Tanzania has yet to ratify it.

610 *Op.cit*

611 *Op.cit*

612 Tanzania position during the assignation for the convention in early 2006.

10.2.4 International Labour Organization Conventions

The International Labour Organization is a very active UN specialized agency and effective in international law. Tanzania ratified a number of ILO, conventions in various time with specific focus areas in Labour rights. There are many Human Rights mechanisms through various International Labour Organization (ILO) commonly ratified by Tanzania to facilitate its efforts in elimination any kind of exploitation and violation of rights. It is the only Agency with many mechanisms to enable employers, employees and workers representatives in order to have a comprehensive debate with equal representation on labour practices and policy all over the world. The work of the ILO activities is related to human rights standards as it works to ensure individuals working in member states are not exploited.

ILO conventions focus on various thematic areas which include health, families or economic advancements of the employees putting legal liabilities to employers to restrict exploitation. The Labour standards imply protection from discrimination, guaranteeing proper wages regardless of ethnicity or gender. Eight ILO Conventions have identified identified by the ILO's governing body as being fundamental to the rights of people regarding employment.

Table 38: ILO Conventions that have been ratified by Tanzania

Sn.	Name of the convention	Year ratified
8.	<i>Right of Association (Agriculture) Convention, 1921 (No. 11)</i>	1962
9.	<i>Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)</i>	1962
10.	<i>Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)</i>	1962
11.	<i>Workmen's Compensation (Accidents) Convention, 1925 (No. 17)</i>	1962
12.	<i>Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)</i>	1962
13.	<i>Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)</i>	1962
14.	<i>Forced Labour Convention, 1930 (No. 29)</i>	1962
15.	<i>Recruiting of Indigenous Workers Convention, 1936 (No. 50)</i>	1962
16.	<i>Minimum Age (Industry) Convention (Revised), 1937 (No. 59)</i>	1962
17.	<i>Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)</i>	1962
18.	<i>Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)</i>	1962
19.	<i>Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)</i>	1962
20.	<i>Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)</i>	1962

21.	<i>Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</i>	1962
22.	<i>Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</i>	1962
23.	<i>Equal Remuneration Convention, 1951 (No. 100)</i>	1962
24.	<i>Abolition of Forced Labour Convention, 1957 (No. 105)</i>	1962
25.	<i>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</i>	2002
26.	<i>Minimum Age Convention, 1973 (No. 138) Minimum age specified: 14 years</i>	1993
27.	<i>Human Resources Development Convention, 1975 (No. 142)</i>	1983
28.	<i>Tripartite Consultation (International Labour Standards) Convention of 1976. (No. (144)</i>	1983
29.	<i>Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)</i> <i>Has accepted the obligations of the Convention in respect of air pollution only</i>	1983
30.	<i>Worst Forms of Child Labour Convention, 1999 (No. 182)</i>	2001
31.	<i>Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)</i>	1983

Source: extracted from various published sources

Most of the ILO conventions were ratified immediately after independence; this shows Tanzania's willingness right from the beginning to take care and consider workers rights. Tanzania had also enacted various Labour laws like *Employment and labour relation Act of 2004*.

Tanzania has enacted a number of laws domestically to accommodate and enable practical implementations of the Conventions. However, Tanzania has some pending conventions not yet ratified, among this convention includes; The ILO *Recruiting of Indigenous Workers Convention, 1936* and the ILO *Indigenous and Tribal Peoples Convention, 1989*. The non-ratification of the above documents is a threat to recognition to indigenous people special needs within their land regarding employment.

The conventions above is very important to be ratified by Tanzania because the conventions targets the tribal peoples in countries whose social, cultural and economic conditions distinguish them from other sections of the community and whose status are regulated wholly or partially by their own customs, traditions, special laws or regulations.⁶¹³

The LHRC recommends the government to sign and ratify pending Conventions, such as the Convention against Torture, the 2nd Optional Protocol to the ICCPR and work diligently to implement its principles for the development of indigenous and tribal peoples in Country.

613 *Op.cit*

10.3 Treaty Reporting Requirements and Tanzania compliance

Tanzania is a member to various international instruments. International treaty mechanism is a tool use by international bodies to assess member's compliance to the requirements of the Instruments that committed themselves to respect. States are responsible to respect their decision after signing and ratifying the international human rights instrument. Tanzania is required to submit periodic reports on all covenants ratified to the Treaty monitoring Bodies. These reports force a State to keep track of progress to international community that all necessary steps taken to uphold the human rights standards contained in that treaty and that the State takes the matter seriously.⁶¹⁴

Tanzania is not doing good progress in fulfilling its reporting obligation to the treaty bodies' requirements. The reporting requirements are quite demanding and not all States have the resources to be able to complete them in time⁶¹⁵. Reporting needs significant coordination, dedication of both human and financial resources, and expertise, some of which may not be available in some States. However, that does not stand as justification for non-compliance. The government of Tanzania has not displayed a serious commitment to complete reports or even show any indication that reporting on human rights is a priority.

Some of the delays on submitting the reports to the Human Rights Commission are registered⁶¹⁶ and remained the same. These delays are still ongoing as no reports records for reports submitting in time and there is no progress made despite the pressure from the LHRC and other organizations in and out of Tanzania.⁶¹⁷

The International Convention on the Elimination of All Forms of Racial Discrimination, 1966, requires member states to submit a report after every two years. Tanzania submitted its eighth to sixteenth reports to the Committee on 2nd August 2005. However, it is yet to submit its seventeenth and eighteenth reports, which were due on 26 November 2007 this is not yet done a period of six years since expiry date.⁶¹⁸

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. Tanzania however responded in protecting women rights by putting in place policy to address special concern for women development.⁶¹⁹

614 *Op.cit*

615 *Op.cit*

616 Tanzania Human Right Report 2008.

617 *Op.cit*

618 *Op.cit*

619 United Republic of Tanzania, *Policy on Women in development in Tanzania*, 1992.

The committee on the Right of the Child established under the Convention on the right of the child⁶²⁰ is a treaty monitoring body given a task to receive and review reports from member states, under this system the committee encourage member's states to submit reports for constructive dialogue.⁶²¹ These results in concluding observations and comments Tanzania as a State party is expected to act upon and report on the submission of the next report. The cycle therefore repeats according to the convention and the mechanism whereby states parties to this convention suppose to follow, Tanzania is required to submit a report every five years. The last time Tanzania submitted its report to this Committee was on 20th October 2004. The report was approximately six years late. Tanzania's next report was due on 9th January 2012.⁶²²

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, which was also more than a year later. The country responded to this Convention by putting in Place, the **Law of the Child Act**, No. 21 of 20 November 2009.

*International Convention on the Rights of Persons with Disabilities, of 2006*⁶²³ Tanzania is member to this convention and had ratified it. Its preamble recalls member's states to recognize that disability is an evolving concept. Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society an equal basis with others.⁶²⁴

The country therefore shows good progress in recognizing special needs by enacting Peoples living with disability Act⁶²⁵ however; Tanzania is not doing well in reporting according to the convention requirement.

*The Tanzania government being a member of UN shares the concerns raised in the Convention and it has create some enabling environment for actions to support PWDs. This has been done through encouraging formations of DPOs to accelerate participation of the PWDs in various political-economic and social spheres of life.*⁶²⁶

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

620 *Op.cit*

621 *AHRAJ CASEBOOK SERIES VOLUME 2: 2007 Human Rights Litigation and the domestication of human rights standards in Sub Sahara Africa page 146.*

622 *Op.cit*

623 <http://www.un.org/disabilities/convention/pdfs/factsheet.pdf> visited on 22nd November, 2012.

624 *The convention on the right of persons with disabilities.*

625 **Persons with Disabilities Act**, 20110.

626 Alvin Abel Uronu 2008 MUCCoBS - ICCDE – Dodoma Centre

initial, first, second, third and fourth periodic reports' on August 2009, which again was over 33 years late. Tanzania Review by the Committee on Economic, Social, and Cultural Rights was during its 49th Session.⁶²⁷

International Covenant on Civil and Political Right,⁶²⁸ This convention enriched a number of rights that member's states are bound to comply, Tanzania put in place various laws to enable equal enjoyment of the mention rights by peoples in the country. This among others is, *The Constitution of the United Republic of Tanzania of 1977* that was amended in 1992 to accommodate multi-party system and the *Tanzania Election Act*.⁶²⁹

The United Nations Declaration on the Rights of Indigenous Peoples; The united nation efforts in recognizing special need for indigenous peoples of the world has put forward a declaration for their rights and call members' states to identify recognize and protect their special needs⁶³⁰. The declaration recalls member states to discourage any form of discrimination and sense of superiority by one group of person over indigenous communities, it provide that,

*Affirming that, all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind. Affirming further that, all doctrines, policies and practices based on, advocating superiority of peoples or individuals based on national origin, or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust. Reaffirming those indigenous peoples, in the exercise of their rights should be free from discrimination of any kind, Concerned that indigenous peoples have suffered from historic injustices a result of, inter alia, their colonization and dispossession of their lands, territories and resources. Preventing them from exercising, in particular, their right to development in accordance with their own needs and interests, recognizing the urgent need to respect and promote the inherent rights of indigenous peoples, which derive, from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.*⁶³¹

Unfortunately, regardless of Tanzania signing for the declaration, there is no Law enacted to recognize indigenous peoples and put forward their special

627 http://www2.ohchr.org/english/bodies/cescr/docs/ngos/CRR-TAWLA_Tanzania_CE-SCR49.pdf visited on 3rd December, 2012.

628 *Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976.*

629 Cap 348 of 1982 RE 2002.

630 *The UN declaration on the rights of indigenous peoples resolution 61/178 of 20 December 2006.*

631 *Ibid*

needs protection.⁶³² Instead, the country enacts laws to end indigenous survival⁶³³ and laws that restrict traditional movement are in place⁶³⁴ this threat is obvious⁶³⁵ unclear is also a problem in future; this provides;

The LHRC would like to repeat a previous recommendation that the government of Tanzania should establish a specific Inter-Agency Committee(s) taskforce to advice government regarding her treaties obligations. It could be coordinated under the Human Rights Department within the Ministry of Justice and Constitutional Affairs. The proposed agency will deal with treaty monitoring obligations that the Country is committed to implement.

632 Shadrack K. (2010) Indigenous Peoples' Rights Ignored as Tanzanian Government Protects Foreign Investors Dar es salaam page 126.

633 National wildlife policy of 2007 and Tanzania Wildlife Conservation Act 2009.

634 Ngorongoro Conservation Authority Act R.E 2002 and The Grazing Zones Act No. 6 2010.

635 National Livestock Policy 1997.

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**Tanzania
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Rights
Report**

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Part II

Zanzibar Human Rights Report 2012

Part II

Zanzibar
Human
Rights
Report

2012



Part II

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Rights
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2012

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Prepared under the Auspices of the

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Table of Contents

Part II.....	273
Zanzibar Human Rights Report 2012.....	273
List of Tables.....	281
List of Figures.....	281
LIST OF CASES.....	285
LIST OF LEGISLATION.....	287
LIST OF INTERNATIONAL LEGAL INSTRUMENTS.....	288
CHAPTER ONE.....	289
General overview of Zanzibar.....	289
1.0 Introduction.....	289
1.1 History.....	299
1.2 Geography.....	291
1.3 People.....	292
1.4 The Economy.....	292
1.5 Political System.....	295
1.6 Judiciary.....	297
1.7 Historical Background of Human Rights in Zanzibar.....	298
1.8 Conclusion.....	300
CHAPTER TWO.....	301
Civil Rights and Liberties.....	301
2.0 Introduction.....	301
2.1 Right to Life.....	301
2.1.1 Road Accidents.....	304
2.1.2 The Sinking of M.V. Skagit.....	305
2.2 Death Penalty.....	309
2.3 Mob Violence.....	316
2.4 Extra Judicial Killings.....	316
2.5 Freedom from Torture.....	316
2.6 Equality before the Law-Equal Access to Justice for All.....	318
2.6.1 Proximity, Availability and Infrastructure of Courts.....	318
2.6.2 Shortage of Manpower.....	320

Part II

Zanzibar
Human
Rights
Report

2012

2.6.3	Court Fees.....	320
2.6.4	Legal Education.....	328
2.6.5	Legal Aid.....	328
2.6.6	Legal Representation.....	329
2.6.7	Delay of Cases.....	330
2.6.8	Independence and Impartiality of Judiciary.....	331
2.6.9	Challenges facing the Judiciary.....	336
2.7	Freedom of Worship.....	339
2.8	Freedom of Expression.....	341
2.8.1	Censorship of the Media Freedom.....	345
2.8.2	Harassment of Journalists.....	347
2.8.3	Poor Coverage for Public Broadcasting Media.....	347
2.9	Conclusion.....	348
	CHAPTER THREE.....	349
	Political Rights.....	349
3.0	Introduction.....	349
3.1	Political History.....	349
3.2	Right to Participate in Governance.....	350
3.3	Right to Participate in Governance in Zanzibar.....	350
3.3.1	Legal Framework.....	355
3.3.2	Ordinary Resident Requirement.....	356
3.3.3	Zanzibar Resident Identity Card (ZAN-ID).....	356
3.3.4	Right to Stand for Elections.....	358
3.4	Persons with Disabilities and the Right to Take Part in Governance.....	360
3.5	Institutional Framework.....	361
3.6	Freedom of Association and Assembly.....	361
3.7	Controversy over the Union.....	361
3.8	Conclusion.....	363
	CHAPTER FOUR.....	364
	Economic and Social Rights.....	364
4.0	Introduction.....	364
4.1	Right to Education.....	364
4.2	Legal Framework Governing the Right to Education in Zanzibar.....	364
4.3	Zanzibar Education Policy.....	365
4.4	Challenges Facing Education sector.....	365

4.4.1	Budgetary Allocation.....	365
4.4.2	Registration of Nursery Schools.....	366
4.4.3	Registration of Primary Schools.....	366
4.4.4	Large Number of Pupils in Classes.....	367
4.4.5	Shortage of Secondary School Science Teachers.....	369
4.4.6	Cost Contribution in Education.....	369
4.4.7	Teachers' Training College.....	370
4.4.8	Early Pregnancies and Marriages.....	370
4.4.9	Lack of Facilities in Schools.....	370
4.4.10	Poor Performance of Secondary School Students.....	370
4.4.11	Shortage of Lecturers in some Higher Learning Institutions.....	371
4.5	Right to Health.....	371
4.5.1	Improvement of Health Services in Zanzibar.....	371
4.5.2	Challenges Facing Health Sector.....	371
4.6	Right to Clean Water.....	371
4.6.1	Legal Framework governing the Right to Water in Zanzibar.....	372
4.6.2	Current Situation in the Enjoyment of Right to Water.....	373
4.6.3	Poor and Old Water Infrastructure System.....	373
4.6.4	Improper Control of Water.....	373
4.6.5	Charging Fees of Water without Services.....	373
4.7	Right to Property.....	374
4.7.1	Destruction of Property.....	374
4.7.2	Limitation to the Right of Property.....	375
4.8	Right to Work.....	375
4.8.1	Salaries and Incentives Packages.....	375
4.8.2	Shortage of Employment Opportunities.....	376
4.8.3	Stigmatization of People with HIV in Employment.....	376
4.8.4	Lack of Social Dialogue between Employer and Employee.....	376
4.8.5	Poor System of Social Protection.....	376
4.8.6	The Handling of Labour Disputes.....	377
4.8.7	Re-Employment of the Retired Officers.....	377
4.9	Conclusion.....	377
	CHAPTER FIVE.....	378
	The Rights of Vulnerable Groups.....	378
5.0	Introduction.....	378

5.1	Women and Girls.....	378
5.1.1	Legal Framework for Women Protection in Zanzibar.....	378
5.1.2	Policies on Women’s Rights.....	379
5.1.3	Institutional Framework in Protecting Women.....	379
5.1.4	Gender Based Violence.....	379
5.1.5	Domestic Violence.....	383
5.1.6	Women Economic Empowerment and Employment.....	384
5.1.7	Women and Health.....	385
5.1.8	Women and Education.....	385
5.1.9	Women Participation in Decision Making.....	385
5.2	Children Rights.....	386
5.2.1	Legal Framework.....	388
5.2.2	Institutional Framework.....	389
5.2.3	Right to Life.....	389
5.2.4	Right to Grow and Develop.....	390
5.2.5	Right to be Protected.....	393
5.2.6	Child Labour.....	394
5.2.7	Maintenance of Children.....	395
5.3	Rights of the Elderly.....	395
5.4	Rights of Persons with Disabilities.....	396
5.4.1	Legal Framework.....	396
5.4.2	Institutional Framework.....	396
5.4.3	Poverty among People with Disabilities.....	396
5.4.4	Abuse against People with Disabilities.....	397
5.5	Conclusion.....	397
	CHAPTER SIX.....	398
	HIV/AIDS and Human Rights.....	398
6.0	Introduction.....	398
6.1	HIV/AIDS and Human Rights.....	398
6.2	Legal Framework on HIV/AIDS in Zanzibar.....	398
6.3	Institutional Framework.....	399
6.4	HIV/AIDS Situation in Zanzibar.....	399
6.5	Violation of the Rights of People living with HIV/AIDS in Zanzibar.....	402
6.5.1	The Increasing Stigmatization.....	402
6.5.2	Right to Privacy.....	402

6.5.3	Discrimination against People Living with HIV/AIDS.....	403
6.5.4	Lack of Essential Medicine and Drugs.....	403
6.6	Conclusion.....	403
CHAPTER SEVEN.....		404
SMZ Special Departments and Human Rights.....		404
7.0	Introduction.....	404
7.1	SMZ Special Departments and Human Rights.....	404
a.	Kikosi Maalum cha Kuzuia Magendo (KMKM) (the Anti Smuggling Marine Unit).....	405
b.	Kikosi cha Valantia (the Volunteers).....	405
c.	Educational Centres for Offenders (Prison Centres).....	405
d.	The Jeshi la Kujenga Uchumi (JKU) (Economic Building Brigade).....	405
e.	Kikosi cha Zimamoto na Uokozi - KZU - (Fire and Rescue Services).....	405
7.2	Legality of Special Department vis-vis the Union Constitution.....	406
7.3	Conclusion.....	407
CHAPTER EIGHT.....		408
Collective Rights.....		408
8.0	Introduction.....	408
8.1	Right to Development.....	408
8.2	Right to Development in Zanzibar.....	408
8.3	Right to Clean Environment.....	409
8.3.1	Human Rights and the Environment.....	410
8.4	The Environment in the Constitution of Zanzibar, 1984.....	410
8.4.1	Duty to Protect Natural Resources.....	410
8.4.2	Waste Disposal and Sanitation.....	411
8.4.3	Solid Waste Disposal Management.....	411
8.4.4	Deforestation.....	412
8.4.5	Natural Resources.....	412
8.4.6	Wide Spread of Plastic Bags Business.....	412
8.5	Right to Peace and Security.....	415
8.6	Conclusion.....	415
CHAPTER NINE.....		416
Domestic Initiative in Human Rights Protection.....		416

9.0	Introduction.....	416
9.1	Incorporation of Bill of Rights in the Constitution of Zanzibar, 1984.....	416
9.2	The Commission for Human Rights and Good Governance.....	416
	9.2.1 Independence of the Commission.....	418
	9.2.2 Performance of the Commission.....	419
9.3	Law Review Commission of Zanzibar.....	420
9.4	The Establishment of the Office of the Director of Public Prosecution.....	421
9.5	Zanzibar Human Rights Guidelines (<i>Muongozo wa Haki za Binadamu Zanzibar</i>).....	422
9.6	Conclusion.....	422
	CHAPTER TEN.....	423
	Corruption, Abuse of Power and Human Rights.....	423
10.0	Introduction.....	423
10.1	International Instruments in Combating Corruption.....	423
10.2	Corruption and Human Rights.....	424
10.3	Legal Framework in Combating Corruption in Zanzibar.....	425
10.4	Financial Measures.....	425
10.5	Institutional Framework.....	425
10.6	Codes of Conduct.....	426
10.7	Transparency and Disclosure of Assets by Public Officials.....	427
10.8	Current Situation on Corruption in Zanzibar.....	427
	10.8.1 Corruption in Dealing with Administration of Justice.....	427
	10.8.2 Abuse of Government Money.....	428
	10.8.3 Abuse of Power.....	428
10.9	Conclusion.....	429
	SELECTED BIBLIOGRAPHY.....	430
	WEBSITES.....	431
	ARTICLES AND CHAPTERS IN BOOKS.....	433
	REPORTS.....	433
	NEWSPAPERS.....	434
	BUDGET SPEECHES.....	435
	SEMINAR PAPERS.....	435

List of Tables

Table 39: Breakdown of Statistics of road accidents which occurred in Zanzibar from 2008 to 14th December, 2012 are as follows:.....	305
Table 40: The workload of High Court Judges in Zanzibar from January to November 2012	321
Table 41: The Workload of Regional Magistrates in Zanzibar from January to November 2012	321
Table 42: The Workload of District Magistrates in Zanzibar from January to November 2012	321
Table 43: The Workload of Primary Magistrate Court in Zanzibar from January to November 2012.	322
Table 44: Filing of cases in the Court of Appeal of Tanzania, the High Court of Zanzibar and the Regional Magistrate Court and Appellate Kadhi Courts from July, 2011 to March, 2012	323
Table 45: Tanzania teacher-student ratio in Secondary schools has been reported as follows:	368
Table 46: Average pupil/teacher ratio in secondary schools by MDG region, circa 2006 as follows:	368
Table 47: Cases Reported to Tthe One Stop Centre for Unguja for 2011/2012.....	383
Table 48: List of Full Ministers in the Revolutionary Government of Zanzibar.....	386
Table 49: List of Deputy Ministers in the Revolutionary Government of Zanzibar	387
Table 50: Key Programme Data (January—June, 2012)	401

List of Figures

Figure 1: Press Release Issued by the UN Refugee Agency on Voluntary Repatriation of Tanzanian Refugees.....	414
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ABBREVIATIONS

AAPAM	African Association of Public Administration and Management
AC	Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights (ACHPR)
ADR	Alternative Dispute Resolution
AG	Attorney General
AIR	All India Law Report
ASP	Afro Shirazy Party
CAG	Controller and Auditor General
CCM	<i>Chama Cha Mapinduzi</i>
CHADEMA	<i>Chama Cha Demokrasia na Maendeleo</i>
CHRAGG	Commission for Human Rights and Good Governance
CJ	Chief Justice
CUF	Civic United Front
DNA	Deoxyribo Nucleic Acid
DPP	Director of Public Prosecutions
GAPCO	Gulf Africa Petroleum Corporation
GBV	Gender Based Violence
GDP	Gross Domestic Product
GNU	Government of National Unity
GSO	Government Security Office
HC	High Court
HCD	High Court Digest
ICCPR	International Covenant on Civil and Political Rights
ICE	Institute of Continuing Education
ICSEC	International Covenant on Social Economic and Cultural Rights

ICU	Intensive Care Unit
JSC	Judicial Service Commission
JUMIKI	<i>Jumuiya ya Uamsho na Mihadhara ya Kiislamu</i>
KB	King Bench
LRC	Law Review Commission
LRCZ	Law Review Commission of Zanzibar
LRT	Law Report of Tanzania
MBM	<i>Mjumbe wa Baraza la Mapinduzi</i>
MCT	Media Council of Tanzania
MKUZA	<i>Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar</i>
MV	Marine Vessel
NGO	Non Governmental Organization
NWLR	News Weekly Law Report
OAU	Organization of African Union
OUT	Open University of Tanzania
PC	Privy Council
SACCOS	Saving and Credits Cooperatives Societies
SC	Supreme Court
SMOLE	Sustainable Management of Land and Environment
STZ	<i>Sauti Ya Tanzania Zanzibar</i>
TADEA	Tanzania Democratic Alliance
TANU	Tanganyika African National Union
TLR	Tanzania Law Report
TMA	Tanzania Meteorology Agency
ToR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations

Part II

**Zanzibar
Human
Rights
Report**

2012

US	United State
ZACECA	Zanzibar Anti-Corruption and Economic Crimes Act
ZACPO	Zanzibar Clove Producers Organization
ZAN-ID	Zanzibar Identity Card
ZAWA	Zanzibar Water Authority
ZBC	Zanzibar Broadcasting Corporation
ZEC	Zanzibar Electoral Commission
ZLR	Zanzibar Law Report
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre
ZSSF	Zanzibar Social Security Fund

Part II

**Zanzibar
Human
Rights
Report**

2012

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- AG v. Edmund s/o Lawrence* [1985] LRC (Const) 921.
- AG v. Lachma Devi* [1986] LRC (Const) 1.
- AG v. Lesinoi s/o Ndeinai* [1980] TLR 214.
- AG v. Morgan* [1985] LRC (Const) 770.
- Attorney General & Two Others v. Amani Walid Kabourou* (1997) TLR 156.
- Bachan Singh v. State of Punjab* [1983] 1 SCR 154.
- Bello v. AG of Oyo State* [1986] 5 NWLR 88828.
- C B Ndege v. E O Ayila and A G* (1988) TLR 91 (HC).
- Catholic Commission for Justice and Peace v. AG and Others* [1993] (1) ZLR 242.
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- Estelle v. Gamble* (1976) 429 US 97.
- Francis Carolie Mullin v. Administrator Union Territory of Delhi* [1981] 3 SCC 161.
- Furman v. Georgia* (1972) 408 US 238.
- Javed Ahmed v. The State of Maharashtra*, AIR 1985 SC 251.

Part II

Zanzibar
Human
Rights
Report

2012

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Madhu Mehta v. Union of India [1989] 3 SCR 775.

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Criminal Procedure Act, 2004 (Act No. 7 of 2004).

Election Act, 1984 (Act No. 11 of 1984).

Elections Act, 1985 (Act No. 1 of 1985).

High Court Act, 1985 (Act No. 2 of 1985).

Katiba ya Jamhuri ya Muungano wa Tanzania, 1977.

Katiba ya Zanzibar, 1984.

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Nationality Law of 1911.

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Registration Law of 1954 (Chapter 42).

Registration of News Agents, Newspapers, and Books Act, 1988 (Act No. 5 of 1988).

Registration of Zanzibari Resident Act, 2005 (Act No. 7 of 2005).

Registration Voluntary Law, No. 2 of 1963.

Zanzibar Anti-Corruption and Economic Crimes Act, 2011 (Act No. 2 of 2011).

Zanzibar Broadcasting Commission Act, 1997 (Act No. 7 of 1997).

Part II

Zanzibar
Human
Rights
Report

2012

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International Covenant on Economic, Social and Cultural Rights, 1966.

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, 1983.

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in all Circumstances, 2002.

Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 1990.

Second Optional Protocol to the International Covenant on Civil and Political Rights, 1987.

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Part II

**Zanzibar
Human
Rights
Report**

2012

CHAPTER ONE

General overview of Zanzibar

1.0 Introduction

The word Zanzibar is of Persian or Arabic origin. Located in the Indian Ocean 6° South of the Equator, Zanzibar is a complex place historically, culturally and politically because of many different influences and sudden turns of history. It has been the turning point of many cultures.⁶³⁶

Before the partition of East Africa, Zanzibar was strong empire consisting of islands and coastal settlements of varying sizes the best known of which were Mozambique, Kilwa island, Zanzibar, Pemba, Mombasa (Fort Jesus), Malindi, Sofala and the Lamu Archipelago.⁶³⁷ This chapter briefly outlines the history of Zanzibar, its people, geography, economy, its political background, the judiciary together with the historical background of human rights in Zanzibar.

1.1 History

Although people have lived in Zanzibar for centuries, its proper recorded history began when the islands became a base for traders voyaging between Arabia, India and Africa and mention of Zanzibar can be found in the Periplus of the Erythraean Sea⁶³⁸ which is the earliest surviving document written between the 1st and 3rd Century AD.

The Portuguese Empire was the first European power to gain control of Zanzibar from 1503 to 1698. During the 18th century the Omani Arab gained foothold along the East African coast. By 1806 Sultan Seyyid Said formed an alliance with Great Britain and was able to assert his influence along the East African coast while other European continued to show interest in Zanzibar.

In 1832 Seyyid Said moved his capital from Oman to Zanzibar. By the mid 19th century Zanzibar had become the world's leading clove producer establishing a plantation economy which created the need for slaves. The clove crop, and

636 SUHONEN, Riikka Mapinduzi *Daima – Revolution forever: Using the 1964 Revolution in Nationalistic Political Discourses in Zanzibar* – University of Helsinki – July 2009 (unpublished article), p. 1.

637 AYANY, S.G, *A History of Zanzibar: A Study in Constitutional Development 1934-64*, Nairobi: East Africa Literature Bureau, 1970, p. 7.

638 According to information retrieved from Wikipedia, the free encyclopaedia, the Periplus refers to the first written document by a Greek author, on trading around the islands around the Indian Ocean.

trade in slaves and ivory made Zanzibar rich and powerful.⁶³⁹

Britain gained control over Zanzibar during the 19th century to bring about the abolition of the slave trade which was eventually abolished in 1897. In 1890 Zanzibar became a protectorate where the Sultan continued as the official head while the British appointed Viziers and Residents for indirect rule. A new constitution, introduced in 1960, provided for a legislative assembly with the emerging political parties split largely on ethnic lines and internal self-government was granted in June 1963.⁶⁴⁰

On 10th December, 1963 Zanzibar gained independence from Britain, as a constitutional monarchy and as a member of the Commonwealth. On 12th January, 1964 the post-independent-government was overthrown by an internal revolution allowing members of the opposition Afro-Shirazi Party (ASP) their first chance to hold political power;⁶⁴¹ and the Government of Zanzibar proclaimed a Revolutionary Government and a democratic rule.⁶⁴²

A People's Republic was proclaimed and a thirty-man Revolutionary Council established with Sheikh Abeid Amani Karume as the first President of Zanzibar and Chairman of the Revolutionary Council⁶⁴³ until his assassination on 7th April, 1972.

Zanzibar united with Tanganyika into one sovereign State. A special session of the Tanganyika National Assembly approved the Articles of the Union on 25th April 1964 with no substantive discussion and the Revolutionary Government also ratified them.⁶⁴⁴ The United Republic of Tanganyika and Zanzibar was officially proclaimed on 26th April, 1964 and in October it was renamed the United Republic of Tanzania, a name derived from a competition.⁶⁴⁵

There were to be two governments. Mwalimu Julius Kambarage Nyerere became the first President of the United Republic of Tanzania while Sheikh Abeid Amani Karume became the First Vice President of the country in addition to his position as the President of Zanzibar and the Chairman of the Zanzibar Revolutionary Council. The government of Tanganyika ceased to exist while the Revolutionary Government of Zanzibar remained intact. The union between Tanganyika and Zanzibar had, at the time, been regarded as

639 Several articles have been written on the history of Zanzibar. They include the work of Ayany and Riikka *op.cit*, Bailey Martin, *The Union of Tanganyika and Zanzibar - A Study in Political Integration*, (Eastern African Studies IX), New York, Syracuse University, 1973 ; Michael F. Lofchie, *Zanzibar: Background to Revolution*, Princeton University Press, 1965.

640 <http://en.wikiversity.org> and <http://www.historyworld.net> visited on 20th June, 2012.

641 *Ibid*.

642 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report 2011*, p. 258.

643 Bailey, *Op.cit*. p. 23.

644 *Ibid*.

645 *Ibid*.

a successful example of political integration in Africa and was an important historical landmark in the annals of the two countries.⁶⁴⁶

The Union Government has exclusive jurisdiction on the mainland as well as dealing with certain specified ‘union matters’ for both the Mainland and Zanzibar. The Zanzibar government has jurisdiction over all matters which are non-union and pertaining to Zanzibar.⁶⁴⁷

At that time, there were 11 issues which were considered as Union Matters and the Tanzanian President was empowered to add new union subjects by issuing a decree – in practice with full agreement of the Zanzibar Government. This has been done on several occasions⁶⁴⁸ and over time; the Union matters had increased from the original 11 to 22.

These matters are now listed in the First Schedule to the Constitution of the United Republic of Tanzania, 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.

Zanzibar has her own Executive headed by the President of Zanzibar who is also the Chairman of the Revolutionary Council and who may not serve more than two consecutive terms of five years each. There are two Vice Presidents.⁶⁴⁹ There shall be the Revolutionary Council of Zanzibar which includes the President, the First Vice President, the Second Vice President, the Ministers and other members the President deems fit.⁶⁵⁰

There shall be a House of Representatives which shall consist of two parts, the President of Zanzibar on one part and the House of Representatives on the other.⁶⁵¹ The High Court of Zanzibar shall comprise the Chief Justice and other Judges not less than two who shall be referred to as High Court Judges.⁶⁵²

1.2 Geography

Zanzibar consists of the two main islands of Unguja and Pemba and several smaller adjacent islets and islands with a total area of 2643 km². Unguja Island occupies a greater proportion of this land area.

646 AYANY, Op.cit p. 245.

647 BAILEY, Op.cit p. 245.

648 Ibid.

649 Section 39 of the Constitution of Zanzibar, 1984.

650 Ibid, Section 43 (1).

651 Ibid, section 63 (1).

652 Ibid, Section 93 (2).

Zanzibar is separated from the mainland of East Africa by a channel 25km at its narrowest. Unguja is 35 km off the mainland coast while Pemba is about 56km from the mainland. Most of Unguja is low-lying unlike Pemba which is more hilly. There are no rivers of any significant size but the islands are crossed by a number of streams that drain into the sea or disappear into the porous coralline rock.

1.3 People

Zanzibar is densely populated and its current population according to data from the population census released on 31st December, 2012, stands at 1,303,568⁶⁵³ with a steady annual growth rate of 3.1%.

The population census was carried out on August 2012 and was not the simple straightforward exercise as envisaged but viewed with mistrust and misgiving in many areas. A serious campaign for people not to be counted through stickers placed on doors to their houses. Despite that, the exercise was successfully completed. The proportion of females has marginally increased to 51.4%.⁶⁵⁴

Where the population of Zanzibar once comprised of people of diverse cultural and racial backgrounds, a result of its historical integration brought about by the monsoon winds and trade, migration and inter-marriages. Zanzibar is now mostly populated by African people of Swahili origin together with a fair number of Arabs and a minority Asian population⁶⁵⁵. About two-thirds of the population lives on Unguja Island.

About 95% of Zanzibaris are Muslims, the predominant Muslim sect being Sunni. There are a few Hindus and a good number of Christian denominations.

The country's national language is Kiswahili; however the official language is both Kiswahili and English. The language of the court system is either Kiswahili or English.

1.4 The Economy

Zanzibar's economy, which includes agriculture and tourism, is very dependent on the climate, and a large proportion of Gross Domestic Product (GDP), employment and livelihoods are associated with climate sensitive activities. There have been higher temperatures, unpredictable rainfall patterns and high tide levels which have led to droughts and flood that have had a major effect

653 *Hotuba ya Mh. Jakaya Mrisho Kikwete, Rais wa Jamhuri ya Muungano wa Tanzania katika uzinduzi wa matokeo ya awali ya Sensa ya Watu na Wakaazi ya Mwaka 2012, Viwanja vya Mnazi Mmoja, Dar es Salaam, tarehe 31-12-2012 iliyotangazwa na Redio ya Shirika la Utangazaji Tanzania.*

654 Household Budget Survey 2009/2010 – final report May 2012 – Office of Chief Government Statistician.

655 http://en.wikipedia.org/wiki/Tanzania_population visited on 31st December, 2012.

on the economy, affecting the GDP.⁶⁵⁶

The most important section and mainstay of the Zanzibar economy is clove production. Cloves were introduced in Zanzibar by the Omani Arabs in the first half of the 19th century and have been a major foreign exchange earner in Zanzibar for over a hundred and fifty years.

Zanzibar, mainly Pemba Island was once the world's leading clove producer, but annual clove sales have dropped drastically since the 1970s because of a fast-moving global market and international competition, climatic variations, insecurity of the three-acre land tenure system, diseases, poor management, limited replacement, ageing of clove trees and state monopoly in clove marketing systems that put off private sector investment and participation in clove industry.⁶⁵⁷

However, the Government still intends to make cloves contribute largely to the economy of Zanzibar. The global demand for high quality cloves and the increasing global price for clove oil has opened new markets for development and put Zanzibar once again on the clove market scene.

The government has, in 2012, distributed, free of charge, clove seedlings in a bid to boost the clove industry. The efforts taken by the government to raise the price of cloves from 5,000/- in 2010 to 12,500/- first grade, 11,500/- second grade and 10,500/- third grade in August 2011⁶⁵⁸ still remain in place. The government has also enhanced its efforts in the fight against the smuggling of cloves from Zanzibar.

Seaweed farming is an important activity for Zanzibar, supporting livelihoods. It is also a source of major foreign currency, and helps to reduce the degradation of the marine environment. Seaweed farming in Zanzibar has empowered the women from their long time dependent on their husbands in controlling the family's socio-economic needs, problems in seaweed climatic changes and its impact.⁶⁵⁹

The decline of the clove industry during the mid/late 1980s forced Zanzibar to diversify her economy and shift from cloves to tourism, making tourism an important and growing contributor to the economy of Zanzibar, especially when indirect economic activity linked to tourism are included, such as supplying goods and service as well as being a significant source of employment on the islands.

656 Sustainable Management of Land and Environments (SMOLE) in its final Mid Term Review (MTR) report of September, 2012 highlights the problems facing coastal areas from climatic change.

657 ZANZIBAR CLOVE PRODUCERS ORGANIZATION (ZACPO) final clove advocacy report – July 2010, p.8.

658 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report 2011*, p.261.

659 SMOLE , Op.cit.

The number of annual international tourist arrivals has been increasing in recent years. Most of these are from Europe (with the highest numbers from Italy). The number of tourists who visit Zanzibar has been increasing from 134,954 (5.1 %) in 2009/2010 to 175, 067 in 2011 which the highest number recorded for the last 20 years.⁶⁶⁰ The number of tourists who visited Zanzibar in 2012 was 168,223, a drop of 6844 compared to 2011.⁶⁶¹

However 2012 has witnessed some unpleasant incidents that have had a negative impact on the tourist industry. The tourism sector makes a substantial contribution to government revenues through the wide range of fees, licenses and taxes levied on the sector. While precise figures are not yet available, it is estimated that by 2012, this contribution could increase to Tshs 21 billion.⁶⁶²

While there exists no official data on the employment generated by the tourism sector, it is estimated that currently some there are 11,500 people⁶⁶³ are directly employed by tourism industry in Zanzibar, many of whom employed in the hotel/guest houses sub-sector or in tourist restaurants, tourist shops, ground tour operators, airlines (state-owned and private), the Commission for Tourism and other tourism-related government departments or as tour guides.

In addition to those directly employed in the tourism sector, there are many more-perhaps, who are self-employed deriving part or all of their employment from supplying goods or services to hotels, restaurants, etc, or who otherwise benefit from the spending of persons who are directly or indirectly employed in tourism . Zanzibar Vision 2020 envisages that as much as 50% of all jobs in the modern sector could be provided in tourism and the free zones by 2020.⁶⁶⁴

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 II (*Mkakati wa Kukuza Uchumi na Kupunguza Umasikini Zanzibar*) was launched in 2010 as a tool for implementation of Vision 2020 for the period 2011-2015.

The Zanzibar GDP ranges between averages of 6.5 % and 6.7%. The National Income of Zanzibar has decreased to 6.5% in 2010/2011 as compared to 6.7 % in 2009/2010. This is due to low growth rate of industrial and services sector..

660 <http://www.zati.org/news> visited on 4th August, 2012.

661 UNITED REPUBLIC of TANZANIA, *Indicative Tourism Master Plan for Zanzibar and Pemba, Final Report*, p. 10.

662 Ibid, p. 11

663 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report 2011*, p. 260.

664 Ibid.

Zanzibari per capital income is pegged at 782,370/= which is equivalent to USD 561.⁶⁶⁵

1.5 Political System

The 1964 Revolution not only abolished the Sultanate but also did away with the separation of the legislature, the executive and the judiciary, all their functions being placed into a Revolutionary Council.

The Afro Shirazy Party (ASP) remained the only political party. On 5th February, 1977, ASP and the Tanganyika African National Union (TANU) formed a single political party, the '*Chama Cha Mapinduzi*' (CCM). In order to enhance democracy, the multiparty system was re-introduced in Zanzibar in 1992 with the first multiparty election held in 1995.

The promulgation of Zanzibar's first post revolution constitution in 1979, paved the way for Zanzibar's House of Representatives which first came into being in 1980.⁶⁶⁶ The power to legislate is invested in the House of Representatives.⁶⁶⁷

The re-introduction of multi-party politics in 1992 meant that the public had direct influence in electing their representatives. A representative is elected from each constituency through elections held every five year.

Zanzibar has a total of 50 constituencies meaning that 50 representatives are directly elected by universal suffrage. The President also has the mandate to elect 10 persons to be members of the House.⁶⁶⁸ In addition, there shall be female members of the House of Representatives forty percent.⁶⁶⁹

The Attorney General is also a member of the House.⁶⁷⁰ The Speaker if he/she has contested for that post while he/she was not a member of the House.⁶⁷¹ Since 1995 CCM had been ruling the country with CUF forming the opposition within the House.

Following the constitutional amendment, a result of the referendum, Zanzibar has a government with a structure of a Government of National Unity (GNU) where both major parties, CCM and CUF have representation in the government. Five members of the House of Representatives are then elected to represent Zanzibar in the National Assembly of Tanzania.⁶⁷² In addition to representatives to the House, Local Councillors are also elected during the general elections.

665 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report 2011*, 261.

666 The Zanzibar House of Representatives was officially opened on 14th January, 1984.

667 Section 78 (1) of the Constitution of Zanzibar, 1984.

668 Ibid, Section 66.

669 Ibid, Section 67 (1).

670 Ibid, Section 64 (e).

671 Ibid, Section 64 (d).

672 Article 66 (1) c of the Constitution of the United Republic of Tanzania, 1977.

The tenth constitutional amendment has introduced power sharing government between the party that emerges the winner in every general election and opposition parties. The amendment has introduced two positions which are; the first Vice President and the Second Vice President. Under that structure, the President of Zanzibar is from the party that wins the election. The First Vice President is appointed by the president in consultation by the party that holds second position during election.⁶⁷³

The second vice President is nominated from the party from which the President is elected. The cabinet is composed of members from parties which have representation in the House of Representatives depending on the number of seats each party holds from constituencies.⁶⁷⁴

The new structure was implemented soon after the general election of 2010. Basing on the election results, The President and the Second Vice president are from CCM while the first Vice president is from the Civic United Front CUF.

With dissatisfaction being expressed over the constitution, Tanzanians have been calling for a Constitutional Reform. On 6th April, 2012 President Jakaya Kikwete appointed the Commission that would collect public opinions on the new constitution and draft a constitution.

The Constitutional Review chairman is the former Prime Minister and Chairperson of the Anti-corruption Enquiry Commission Honourable Judge Joseph Warioba, Mr Justice Augustino Ramadhan – the former Chief Justice of Tanzania as the Vice Chairperson, as well as 30 other members – 15 from the mainland and 15 from Zanzibar.

The Commission started its work on 1st May, 2012 and will wind up after 18 months, at the end of October, 2013. The Commission will prepare a draft document to be tabled in a Constituent Assembly for deliberation, before being taken back to the people, who will then decide on it through a referendum.⁶⁷⁵

Zanzibar is divided into five administrative regions, three in Unguja and two in Pemba. 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 subdivided into two districts making seven Districts in Unguja Island and four in Pemba Island. The districts are subdivided into 50 constituencies, 32 in Unguja and 18 in Pemba. The lowest government administrative structure at the community is the Shehias administered by Sheha appointed by Regional Commissioner after consultation with District Commissioner. The whole of Zanzibar has 335 shehias.⁶⁷⁶

673 Constitution of Zanzibar, Op.cit, Section 39 (3).

674 Ibid, Section 39 (4)

675 Constitutional Review Act, 2011, (Act No. 8 of 2011).

676 www.ctc.health.org.cn/file visited on 30th November, 2012.

1.6 Judiciary

Apart from sharing the Court of Appeal of the United Republic with Mainland Tanzania, Zanzibar has a distinct and separate legal system. The Constitution of the United Republic of Tanzania, 1977 makes it clear that the High Court of Zanzibar is not a Union matter.

Article 114 of the Constitution of the United Republic of Tanzania, 1977 expressly reserves the continuance of the High Court of Zanzibar institutions with their jurisdiction.

Similarly, the Attorney General's Chambers of Zanzibar falls outside the purview of Union matters, and it is a department of Revolutionary Government of Zanzibar. The Attorney General's Chambers falls under the Ministry of Justice and Constitutional Affairs.

The Court system in Zanzibar has a High Court, Kadhis Courts and the Magistrates Courts, in other words, there is a dual court system in Zanzibar, namely, a common law system based on the English legal system and that of the Kadhi's Courts dealing with Muslim personal matters like marriage, divorce, maintenance and inheritance in accordance with Muslim law (*Sharia*).

In accordance with the Constitution of Zanzibar, 1984, the interpretation of the Constitution of Zanzibar, matters of Islamic law which begins in Kadhi's Courts shall be final and conclusive to the High Court of Zanzibar. In addition to, all matters in Chapter Three of the Constitution of Zanzibar, 1984 ends at the High Court of Zanzibar.

The hierarchy of common law courts is the Court of Appeal of Tanzania⁶⁷⁷, the High Court of Zanzibar, the Regional Magistrate Courts, the District Magistrate Courts⁶⁷⁸ and Primary Magistrate Courts⁶⁷⁹. The hierarchy of Kadhis Courts includes District Kadhis Court which is the lowest court, the Appellate Kadhis Court, and the High Court of Zanzibar where a Judge sits with a panel of *Ulamaa*.⁶⁸⁰

The judiciary in Zanzibar is headed by Chief Justice appointed by the President of Zanzibar⁶⁸¹. High Court is presided by a Judge who is appointed by the President upon recommendation by Judicial Services Commission (JSC)⁶⁸². Subordinate Courts are presided over by Magistrates who are appointed by the JSC.⁶⁸³

677 Article 117 of the Constitution of the United Republic of Tanzania, 1977.

678 Magistrates' Court Act, 1985 (Act No. 6 of 1985).

679 Section 93 of the Constitution of Zanzibar, 1984; see also High Court Act, 1985 (Act No. 2 of 1985).

680 These are Islamic scholars well-versed in Islamic matters.

681 Section 94 of the Constitution of Zanzibar, 1984.

682 Ibid, Section 94 (1).

683 Section 10 (1), Magistrate Courts Act, 1985, (Act No. 6 of 1985).

There are other quasi-judicial organs dealing with specific legal matters. These tribunals include land tribunal and industrial court which are explained in chapter two of this report.

1.7 Historical Background of Human Rights in Zanzibar

The history of human rights in Zanzibar can be traced back to 1963 when Zanzibar got its independence. 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.⁶⁸⁴

However, that Constitution lasted only one month following the January 12th Revolution of 1964 which overthrew the government of 1963. Immediately after the revolution the constitution was abrogated and Zanzibar began to be ruled under Presidential Decrees.⁶⁸⁵ This meant the end of the Bill of Rights as enshrined under 1963 Constitution. The most prominent being Decree No. 5/1964 entitled *Constitutional Government and the Rule of Law*⁶⁸⁶ entitled *Equality, Reconciliation and Unity of Zanzibar People*⁶⁸⁷. The Constitutional Government and Rule of Law Decree vested legislative power in the Revolutionary Council. The concept of separation of powers was abolished and, in its place, the Revolutionary Council, which had legislative and executive powers, was introduced.⁶⁸⁸

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 had interest of staying further in Zanzibar.⁶⁸⁹

From period 1964-1979 the Revolutionary Council was the legislative, main decision and policy making body and heralded 15 years of autocratic leadership with neither a written Constitution nor elections.⁶⁹⁰

On 5th February, 1977 the Afro Shirazi Party (ASP) merged with the Tanganyika African National Union (TANU) of Tanzania Mainland to form a new party, CCM as a sole political party in Tanzania and declared to be supreme over

684 Zanzibar unlike Tanganyika has opted to have a Bill of Rights enshrined in her Constitution while receiving independent instruments from the British.

685 Presidential Decree No. 1 of 1964.

686 (No. 6 of 1964).

687 PETER, Chris Maina, *The Protectors: Human Rights Commission and Accountability in East Africa* (2008), p. 193.

688 SERIKALI YA MAPINDUZI YA ZANZIBAR, *Muongozo wa Haki za Binadamu kwa Mujibu wa Katiba ya Zanzibar ya 1984*, Zanzibar: Wizara ya Nchi Afisi ya Rais Katiba na Utawala Bora, 2004, pg 1.

689 Ibid, p. 4.

690 Ibid.

all institutions of state⁶⁹¹. It was in the same year of 1977 the permanent Constitution of United Republic of Tanzania was adopted to replace the Interim constitution of 1965.⁶⁹²

The first post revolution Constitution of Zanzibar was adopted in 1979 which laid the foundations for the establishment of legislative body, Executive and the Judiciary⁶⁹³. It was modeled after the Constitution of United Republic of Tanzania providing the same format and organization for government, dividing into executive, legislative and judicial branches and also endorsed all provisions in the Union Constitution relating to Zanzibar, with only modest modifications where appropriate.⁶⁹⁴

The 1979 Zanzibar Constitution was then repealed⁶⁹⁵ and replaced by new Constitution adopted under one party system entitled the *Constitution of Zanzibar, 1984*.⁶⁹⁶ The Constitution of Zanzibar, 1984 came into operation on the 12th January, 1985.⁶⁹⁷

Zanzibar without legal human rights constitutional safeguards continued up to 1984 when the second post-revolution constitution incorporated a Bill of Rights and the third after independence was introduced. The Constitution of Zanzibar, 1984 differed very much from the 1979 one, for it had a Bill of Rights.⁶⁹⁸

This chapter provided an overview about Zanzibar. The year 2012 saw people standing up to be counted in the National Population census and for the first time witnessed people from different walks of life voicing their view on what they want to see in their constitution, following the Constitution Review Bill of March 2011. The economy suffered from the violence that took place in May and October 2012. The increase of the price of cloves affected in 2011 and the availability of free clove seedlings to boost clove production are achievements worth noting in the year 2012. The change of the government structure from winner takes all to power sharing government under GNU has also brought in its wake some form of political stability.

691 MOHAMMED, Ali A., *Kuzaliwa Kwa Chama Chama cha Mapinduzi*, Dar es Salaam, Tanzania Publishing House, 1979, p 4.

692 East African Centre for Constitutional Development available at: <http://www.kituoachakatiba.co.ug/tz%20const.htm> (visited on 21st December, 2011)

693 *The Many Faces of Human Security: Case Studies of seven African Countries in Southern Africa*, 2005, p. 54.

694 Eastern African Centre for Constitutional Development Available at: <http://www.kituoachakatiba.co.ug/zanz%20const.htm> (visited on 21st December, 2011).

695 Section 134A of the Constitution of Zanzibar, 1984.

696 Ibid, Section 135 (1).

697 Ibid, Section 135 (2).

698 Ibid, Chapter Three, Protection of Fundamental Rights and Individual Freedoms.

1.8 Conclusion

A large number of analysts from inside and outside Zanzibar have high hopes on GNU in strengthening the human rights, good governance and democracy. Unlike in the past, the record of human rights has improved in Zanzibar apparently due to increased people's awareness and the operation of GNU.

Part II

**Zanzibar
Human
Rights
Report**

2012

CHAPTER TWO

Civil Rights and Liberties

2.0 Introduction

Civil Rights and liberties can be described to mean a class of rights that protect individuals' freedom from unwarranted infringement by government.⁶⁹⁹ The right to life has been put on test. There have been reports of innocent people losing their lives in different circumstances. In some cases, government coercive apparatus have been linked to the deaths. However, in some cases individuals are responsible for the deaths in different situations including mob justice, witchcraft beliefs, road accidents, infanticide, child concealment and politics. There are a number of murder cases had been filed in the High Court of Zanzibar. The legal process takes too long or moving at a snail pace. Lack of proper records of murder cases in the Court and the Office of Director of Public Prosecutions remains a headache. It has not been easy to establish the exactly number of people charged with murder cases.

2.1 Right to Life

The right to life is one of the fundamental rights for human beings. All people have the right to enjoy this right, not because it has been incorporated in almost all the International and Regional Human Rights documents or the supreme law of the countries, but it is because inherent right. A human being enjoys the right to life and other basic human rights just because is a human. In the case of *Rev. Mtikila v. Attorney General*⁷⁰⁰ Judge Lugakingira, who was a High Court judge at the time observed that;

Fundamental rights are not gifts from the State. They inhere in a person by reason of his birth and are therefore prior to the State and the law.... Modern constitutions like our own have enacted fundamental rights in their provisions. This does not mean that the rights are thereby created; rather it is evidence of their recognition and the intention that they should be enforceable in a court of law.

It has been noted that the right to life which is one of fundamental rights is violated more individuals rather than the government through the courts or its institutions. A practical example is of a one-month old baby girl, Arafa Haji Silima of Mtipweke village in Weshia Shehia in Chake Chake District was

699 http://en.wikipedia.org/wiki/Civil_rights_and_liberties visited on 12th December, 2012.

700 [1995] TLR 31.

killed for what had been described as witchcraft beliefs.⁷⁰¹ An unknown person is alleged to have entered into the house in which the late Arafa was sleeping and chopped her nose and ran away.⁷⁰² The Zanzibar Legal Centre (ZLSC) had unreservedly condemned the outrage attack on the late Arafa and wanted that law to take its course.

There has been report in the electronic and print media that a Zanzibari businessman identified as Mohamed Ameir was killed by unknown bandits on 28th June, 2012 at Bububu.⁷⁰³ Police reports released through mass media based in Zanzibar had indicated that there has been more than 10 cases of people found killed in different places of Zanzibar. This includes the killing of policeman at Bububu area in connection with the religious and political related violence occurred in Zanzibar.

The right to life is recognized and protected in the Universal Declaration of Human Rights⁷⁰⁴ says that;

Everyone has the right to life, liberty and security of person.

The International Covenant on Civil and Political Rights (ICCPR) says in Article 6 (1) that⁷⁰⁵

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 African Charter on Human and Peoples Rights (ACHPR) provides in Article 4 that⁷⁰⁶

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

At the national level in Tanzania, the right to life is also protected by the Constitution⁷⁰⁷ which says that;

701 *SHERIA NA HAKI, Mtoto Mchanga Akatwa Pua Pemba*, issue No. 010, April-June, 2012, a quarterly newsletter published by the Zanzibar Legal Services Centre, p. 1.

702 Ibid.

703 Zanzibar Broadcasting Corporation-Radio Zanzibar, *Wanaodaiwa Majambazi Wamuua Mfanyabiashara Bububu*, News bulletin, at 7.00 am on 29th June, 2012.

704 Article 3 of the Universal Declaration of Human Rights, 1948.

705 ICCPR is a multilateral treaty adopted by the United Nations General Assembly on 16th December, 1966, and in force from 23rd March, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of March 2012, the Covenant had 74 signatories and 167 parties.

706 The African Charter on Human and Peoples' Rights that was unanimously approved at the OAU's 1981 Assembly in Nairobi, Kenya.

707 Article 14 of the Constitution of the United Republic of Tanzania, 1977.

Every person has the right to live and to the protection of his life by the society in accordance with the law.

At the domestic level in Zanzibar, the right to life is safeguarded by the Constitution⁷⁰⁸ which says that;

Every person has the right to the preservation of his life.

In addition, the same Constitution states that;

Every person has the right to live and to the protection of his life by the society in accordance with the law.⁷⁰⁹

Notwithstanding the International, Regional and municipal documents guaranteeing the right to life, the Zanzibar Criminal Procedure Act⁷¹⁰ authorizes the death punishment. So far, five people have been convicted on offences related to capital punishment and had been sentenced by the High Court of Zanzibar to be hanged by the neck until they die.⁷¹¹

The Deputy Registrar of the High Court of Zanzibar, Mr. Ali Ameir Haji was quoted in the newspaper as saying that the execution of the five condemned persons is subject to the order of the President of Zanzibar.

The Zanzibar Criminal Procedure Act, 2004⁷¹² reads that;

As soon as it conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if such appeal is preferred and the sentence is affirmed, then as soon as conveniently may be after such affirmation, the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

The Act⁷¹³ further says that;

The court shall, on receiving the order of confirmation of sentence or other order by President, as the case may be, issue a warrant or take such other steps as may be necessary to carry such order or orders into effect.

708 Section 13 (1) of the Constitution of Zanzibar, 1984.

709 Ibid, Section 13 (2).

710 Section 7 and Section 304 of the Criminal Procedure Act, 2004 (Act No. 7 of 2004) give the power to the High Court of Zanzibar to pass any sentence or make any other order authorized by law. First Schedule Part VII of the Criminal Procedure Act, 2004 (Act No. 7 of 2004) listed down a number of offences the death punishment may be passed, for example, entering Zanzibar with intent to organize a counter-revolution and instigating foreign invasion. In addition, Section 197 of the Zanzibar Penal Act, 2004 (Act No. 6 of 2004) says that any person convicted of murder shall be sentenced to death.

711 *Zanzibar Leo*, issue No. 3842, Sunday, 12th August, 2012, pp. 1-2.

712 Section 310 (1) of the Zanzibar Criminal Procedure Act, 2004 (Act No. 7 of 2004).

713 Ibid Section 310 (2).

The non-execution of the death punishment on the condemned persons is by and large a psychological torture and creates tension in them. In view of human rights, torture is forbidden.⁷¹⁴

The continuation of passing of the death sentence on convicted persons on murder related offences by the High Court of Zanzibar is an antithesis to the efforts of local and international organizations calling for the abolition of the death penalty as it is inhuman and barbaric. The Zanzibar Legal Services Centre (ZLSC) is one of the local non-governmental organizations which have been in the forefront campaigning against the death penalty for a long time. It seems however that its efforts fall on deaf ears.

However, the Zanzibar Penal Law still insists that sentence of death shall not be pronounced on or recorded against some people who include

- (a) a woman found to be pregnant in accordance with the provisions of Section 306 of this Act, but in lieu thereof the court shall sentence such a woman to imprisonment for life;⁷¹⁵
- (b) any person who in the opinion of the court was, at the time when the offence was committed, under eighteen years of age, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whiles so detained shall be deemed to be in legal custody.⁷¹⁶

According to the Registrar of the High Court of Zanzibar, a total of eight murder cases were filed from January to November, 2012. All the cases are still pending.

2.1.1 Road Accidents

Road accidents are one the areas that have been taking the lead in claiming lives of innocent people in Zanzibar every year. The table below gives the picture of road accidents including the number of deaths and injuries in road accidents from 2008 to December, 2012.

714 Article 5 of the Universal Declaration of Human Rights, 1948, says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

715 Section 305 (2) (a) of the Zanzibar Criminal Procedure Act, 2004 (Act No. 7 of 2004).

716 Ibid Section 305 (2) (b).

Table 39: Breakdown of Statistics of road accidents which occurred in Zanzibar from 2008 to 14th December, 2012 are as follows:

YEAR	Number of Accidents	Deaths	Injuries	Escaped unhurt
2008	536	48	409	79
2009	583	54	428	101
2010	692	52	524	116
2011	615	50	440	125
2012	486	39	344	127
Total	2,912	243	2,145	548

Source: The Zanzibar Traffic Office, Malindi.

The Zanzibar Road Transport Act⁷¹⁷ has been specifically enacted to check traffic offence and improve road safety. However, it seems that the enforcement of the Act is a problem. There are a large number of contributing factors to the increase of road accidents in Zanzibar.

Some of the problems include ignorance to the law by a large number of traffic officers, corrupt practices by traffic officers and vehicle inspectors, favoritism in the implementation of the law and absence of the regulations to facilitate the enforcement. In addition, the number of police officers allocated to the traffic division is not enough (about 52) to cater for an increase of motor cars, poor road conditions, reckless driving, improper inspection of vehicles, mixed traffic between motorcars, bicycles and pedestrians and poor designs of some roads.⁷¹⁸

Under whatever yard stick, the picture which emerges from the above mentioned table action taken against offender is not rosy. It leaves much to be desired. Concrete plans must be put in place to check the trend of road accidents otherwise the people will continue losing their beloved ones, bread earners and increase the number of people living with disabilities.

2.1.2 The Sinking of M.V. Skagit

In less than a year, Zanzibaris and Tanzanians in general were exposed to a painful experience of a series of marine accidents in the Indian Ocean Island. In the afternoon of 18th July, 2012, the passenger-cum-cargo ship with over 290 passengers on board including 31 children sank a few nautical miles from Chumbe Island causing the death of 139 people.⁷¹⁹

717 The Road Transport Act, 2003 (Act No. 7 of 2003).

718 Zanzibar Traffic Office. The traffic officer who gave this information opted for anonymity.

719 *Zanzibar Leo*, issue No.3841, Saturday, 11th August, 2012, pp 1-2.

A total of 144 people in the ill-fated ship which was heading to Zanzibar Malindi port from the Dar es Salaam port were rescued but lost their properties worth millions of shillings. In addition, more than 73 people went missing.⁷²⁰ Efforts to refloat the ill-fated ship proved futile. Local and international divers were not able to refloat the ship. The depth of the ship was too far and the divers lacked modern equipment to reach to it.

ZLSC issued a statement on the marine accident involving *M.V. Skagit* requesting the government to take extra care to ensure the marine transport sector is safe and conduct an independent Commission which should involve marine and other experts from the United Republic of Tanzania to establish the source of the accident.⁷²¹

A part from demanding the formation of an independent Commission to investigate into the *M.V. Skagit* marine accident, the ZLSC raised a number of key questions relating to the accident.

Among the questions, the ZLSC demanded to know whether the Tanzania Meteorology Agency (TMA) gave the weather forecast information to the concerned authorities, the seaworthiness of the ill-fated ship before it whether the ship was insured, whether there was enough rescue equipment on the ship, whether it was given a certificate by the concerned authority, whether the volume of cargo was strictly adhered to and as to whether there was a passenger manifesto.



720 Ibid.

721 *SHERIA NA HAKI, Taarifa ya Kituo cha Huduma za Sheria Zanzibar kwa Vyombo vya Habari Kufuatia Kuzama Meli ya M.V. Skagit Tarehe 18-07-2012, Issue No. 011, July-September, 2012, p.18.*

MV. Skagit is at the Zanzibar Port before the accident which occurred in the Indian Ocean on 18th July, 2012 and claimed lives of more than 200 people.

In addition, the ZLSC requested the government to act seriously and without fear or favour on the report to be drawn by the independent Commission relating to the marine accident.

Criminal offences were instituted against three people who had been connected to the marine accident.⁷²² They were the ship captain Mussa Makame Mussa (49) resident of Kazole in Zanzibar, Said Abdulrahman Juma (46) resident of Mwembetanga in Zanzibar who is the Director of Seagull Company and the company's Dar es Salaam Branch Manager Omar Hassan.⁷²³

The accused were charged with manslaughter contrary to Sections 195 and 198.⁷²⁴ All of them are out of 5m/- bond each plus two sureties of the same amount. It had been ordered that one of the sureties must be civil servants.

However, the case will not be mentioned in the court pending completion of the report to be submitted by the Commission of Enquiry. The President of Zanzibar had formed the Commission to conduct a fact finding mission on the cause of the accident.

Section 51 of the Constitution of Zanzibar, 1984 says that;

The authority of the Government of Zanzibar shall be vested in the President pursuant to this Constitution the President himself may exercise the authority of the Government directly or by delegating that authority to other leaders subordinate to himself. It is hereby declared that without prejudice to the provisions of this Article, it shall be lawful for any legislation to provide for delegation of authority to discharge duties and functions of any public entity to any other person who is not the president of Zanzibar.

There was a debate as to whether there were adequate legal grounds for the Court as independent institution of the government with constitutional powers to wait for a report from the administrative organ taking into consideration of the separation of power enshrined in the Constitution.

The President had re-appointed the same Enquiry Commission which had investigated the sinking of *M.V. Spice Islander 1*, to look into the cause of the accident of *M.V. Skagit*. The composition of the Commission was similar to the one charged with the duty to investigate the sinking of *M.V. Spice Islander 1*.

The Commission had been composed of Zanzibar High Court Judge Abdulhakim Ameir Issa (Chairman) and members were Major General Said

⁷²² *Zanzibar Leo*, issue No. 3841, Op.cit.

⁷²³ Ibid.

⁷²⁴ The Zanzibar Criminal Procedure Act, 2004 (Act No. 7 of 2004).

Shaaban Omar, Commodore Hassan Mussa Mzee, Captain Abdalla Yussuf Jumbe, Captain Abdalla Juma Abdalla, Mr Salum Toufiq Ali, Captain Hatibu Mustapha Katandula, Ms. Mkakili Fauster Ngowi, Mr Ali Omar Chengo and Mr Shaaban Ramadhan Abdalla (Secretary).

Following the sinking of *M.V. Skagit*, the then Minister for Transport and Communication, Honourable Hamad Masoud of the opposition Civic United Front (CUF) tendered a letter to the President of Zanzibar seeking resignation from the post. Mr Hamad's resignation was regarded as a sign of political accountability.

The Second Vice President of Zanzibar, Ambassador Seif Ali Iddi had showered praise on Honourable Hamad for the resignation saying although he was not directly involved to the accident but it was an indication of political accountability.⁷²⁵ There are unconfirmed reports saying that Mr Hamad had been pressurized by his political party leaders to resign.

However, what is a strange is that Mr Hamad Masoud did not resign from the post when the *M.V. Spice Islander I*, sank.

The Enquiry Commission on the M.V. Skagit presented its report to the President of Zanzibar and Chairman of the Revolutionary Council Dr. Ali Mohamed Shein on 11th October, 2012 at the Zanzibar State House.⁷²⁶ The Commission began the work on 1st August, 2012 and wound up the assignment on 15th September, 2012.⁷²⁷

Briefing the president on the report, the Commission's chairman, Judge Abdulhakim Ameir Issa, said the ill-fated ship had a total of 447 passengers and general cargo. The judge said 212 people went missing, 154 survived and 81 people including 75 Tanzanians, three Kenyans, two nationals from the Netherlands and one person from Burundi had died.⁷²⁸

A web-relates search on *M.V. Skagit* said that the *M.V. Skagit* was designed to carry a maximum of 230 passengers.⁷²⁹ The passenger-only ferry and a sister, the *M.V. Kalama* were constructed in 1989 at Halter Marine in New Orleans, Louisiana. The original design of the boats was based on vessels that serviced off-shore oil rigs in the Gulf of Mexico. An extra deck of superstructure was added to accommodate additional passengers. The boxy design of the cabin decks and the low twin funnels on either side gave the ferries a rather ungainly appearance.⁷³⁰

725 The Speech of the Second Vice President of Zanzibar, Ambassador Seif Ali Iddi he had delivered during the closing ceremony of the Eight Meeting of the House of Representatives on 10th August, 2012, p. 2.

726 <http://zanzibariyetu.wordpress.com/2012/10/11/ripoti-ya-mv-skagit-akabidhiwa-rais/>

727 Ibid.

728 Ibid.

729 <http://maritimematters.com/mv-skagit> visited on 20th July, 2012.

730 Ibid.

The M.V. Skagit went by the official number: D949140, call sign: WAA6309 and had a length of 112 feet, beam of 25 feet and a draft of 8 feet. The pair was ordered for service on Puget Sound but was laid up on arrival when there were no funds available to operate them. With the Loma Prieta earthquake in the San Francisco Bay area, the twins were loaned to that city to ferry passengers while the Bay Bridge was temporarily closed.⁷³¹

After returning north, the 25 knot ferries entered service but met with complaints regarding erosion caused by their large wakes and their propensity to roll in the waves. They ultimately met with success when the route was transferred between Vashon Island and downtown Seattle.⁷³²

Washington State Ferries decided to discontinue their passenger-only service after the summer of 2009 with the *M.V. Skagit* and M.V. Kalama being declared surplus. In an interesting move, the state tried unsuccessfully to sell them on eBay. They were finally sold in 2011 and taken to Tanzania where they operated for the Seagull Company between the mainland and Zanzibar.⁷³³

In a previous incident of 10th September, 2011, the privately owned passenger-cum-cargo ship called “*M.V. Spice Islander I*” sank in the Nungwi channel in the Northern part of Unguja island causing the death of 203 people whose bodies were recovered and buried at different places, 941 people were rescued and a large number of people went missing.⁷³⁴ The ship was heading to Wete port, Pemba from Dar es Salaam via Zanzibar Malindi Port. A Commission of Enquiry has been appointed by the President⁷³⁵

2.2 Death Penalty

The Death penalty can be defined to mean that it entails taking away of the life of convicted person. There are different methods of executing death penalty. They include hanging by the neck until the convict is dead; using gas chamber; use of lethal injection; using electrical chair and stoning to death.

The International and Regional Organization have launched an aggressive campaign against the Death Penalty. It is a long term struggle and is said that tangible process is made worldwide every year.

731 Ibid.

732 Ibid.

733 Ibid.

734 SERIKALI ya MAPINDUZI ya ZANZIBAR, *A Report of the Enquiry Commission of MV Spice Islander which sank in Nungwi channel which had been submitted to the Government, 2012.*

735 This is the same team that has later appointed to investigate the *M.V. Skagit* accident.

Article 3 UDHR provides that;

Everyone has the right to life, liberty and security of person.

Article 6 (2)⁷³⁶ provides that;

For the countries which have not abolished death penalty, it may be imposed only for most serious crimes in accordance with the law.

Article 1 of the Second Optional Protocol⁷³⁷ requires that;

All States to abolish death penalty in their jurisdiction.

While the UN Resolution No. 50/1984 says that;

States are urged not to execute death penalty to persons below 18; pregnant women or insane people and the punishment only be carried out after legal process with all possible safeguard of fair trial including legal assistance.

The Second Optional Protocol to the ICCPR, aimed at the abolition of the death penalty, adopted by the UN General Assembly in 1989, is of worldwide scope.

It provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state which is a party to the International Covenant on Civil and Political Rights can become a party to the Protocol.

So far, Europe is today the only region in the world where the death penalty is no longer applied. All the Council of Europe's 47 member states have either abolished capital punishment or instituted a moratorium on executions.

The Council of Europe played a leading role in the battle for abolition, believing that the death penalty has no place in democratic societies.

The determination to eradicate the death penalty was reflected in Protocol No. 6 to the European Convention on Human Rights. It followed an initiative from the Parliamentary Assembly to abolish the death penalty in peacetime and was adopted in April, 1983. In 2002, another important step was taken with the adoption of Protocol No. 13 on the abolition of capital punishment in all circumstances, even for acts committed in time of war. The Council has made abolition of the death penalty a prerequisite for membership. As a result, no execution has taken place on the territory of the organization's member states since 1997.

736 The International Covenant on Civil and Political Rights, 1966.

737 The Second Optional Protocol to the International Convention on Civil and Political Rights, 1987.

The *Protocol to the American Convention on Human Rights to Abolish the Death Penalty*, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state party to the American Convention on Human Rights can become a party to the Protocol.

More than two-thirds of the countries in the world have now abolished the death penalty in law or practice.⁷³⁸

The list of the countries which have abolished the death penalty for all crimes.⁷³⁹ The second list is of the countries whose laws do not provide for the death penalty for any crime.⁷⁴⁰ The third list is of the countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.⁷⁴¹ The fourth list is of the countries and territories that retains the death penalty for ordinary crimes.⁷⁴²

738 www.amnesty.org/en./deathpenaltynumber visited on 12th October, 2012.

739 Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bosnia-Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cape Verde, Colombia, Cook Islands, Costa Rica, Cote D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome And Principe, Senegal, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela.

740 Bolivia, Brazil, Chile, El Salvador, Fiji, Israel, Kazakstan and Peru.

741 Algeria, Benin, Brunei, Burkina Faso, Cameroon, Central African Republic, Congo (Republic of), Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, Sierra Leone, South Korea, Sri Lanka, Suriname, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia.

742 Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad And Tobago, Uganda, United Arab Emirates, United States Of America, Viet Nam, Yemen, Zimbabwe.



Some of the participants who attended the one day seminar to mark the International Death Penalty Day which was organized by the Zanzibar Legal Services Centre (ZLSC) on 10th October, 2012. The seminar was opened by Honourable Zahor Khamis, a Commissioner to the Tanzania Commission for Human Rights and Good Governance. The seminar was held at ZLSC hall at Migombani.

The Death Penalty Day is worldwide marked on 10th October, every year. The first World Day against the Death Penalty took place in 2003. This event was launched by the World Coalition against the Death Penalty, which gathers international non-governmental organizations (NGOs), bar associations, unions and local governments from all over the world.

At the National level, Tanzania is a signatory to the UDHR and to the ICCPR. However, the ratification of the international instruments is not enough. Tanzania should now think of abolishing the death penalty.⁷⁴³

During the Universal Periodic Review meeting held in 2011, according to Honourable Zahor Khamis, Tanzania was put under intensive pressure to abolish the death penalty. However, he said Tanzania's position on the death penalty would be explained in the new Constitution.

The implementation of death penalty is premised on the principle of tit-for-tat, an eye for an eye, a tooth for a tooth and not reconciliation.

⁷⁴³ A Commissioner to the Commission of Human Rights and Good Governance, Honourable Zahor Khamis said at his opening address to commemorate the World Day against the Death Penalty at the Zanzibar Legal Services Centre (ZLSC) hall on 10th October, 2012.

The Revolutionary Government of Zanzibar made no statement to mark the anniversary out of the World Day against the Death Penalty on 10th October, 2012 and speaks out the official government position of possibility of inclusion of the prohibition of the death penalty in the Constitution.

Section 26 of the Penal Act, 2004 (Act No. 6 of 2004) provides for different types of penalties that can be imposed by the Court. The most serious punishment is death. The death penalty is imposed on most serious offences such as murder, treason, entering Zanzibar with intent to organize a counter revolution, instigating invasion and child destruction.

In this connection, analysts are not in position to say whether there has been positive development in the fight against the Death Penalty or not in Zanzibar.

In another development, Section 59 of the Constitution of Zanzibar, 1984 gives power to the President of Zanzibar to change the death penalty awarded by the Court. The Section says that the president may;

- (a) pardon any person convicted of any offence and may grant such pardon unconditionally or on conditions;
- (b) grant temporary or permanent suspension of execution of any sentence handed down by any court in respect of any person for any offence committed by that person;
- (c) change any sentence handed down to any person in respect of any offence and make it less than what is originally was;
- (d) Absolutely or partially pardon any person sentenced in respect of any offence, or in the case of decree for confiscation decided upon by the Government against that person.

However, at Non-governmental organization level, ZLSC marks the Abolition of Death Penalty Day every year. The position of ZLSC is clear that it wants abolition of the Death Penalty.

It is on record that the last execution was carried out before the Revolution of the 12th January, 1964. This means Zanzibar has been observing de facto moratorium, for almost 50 decades. This statement was backed up by a paper presented in the World Day against the Death Penalty⁷⁴⁴ who said that the records show that no court judgment ordering death penalty has been carried out in Zanzibar since 1964.

744 HASSAN, ALI, A., *The Death Penalty in Zanzibar*, a paper presented to mark the Abolition of the Death Penalty Day on 10th October, 2012 at the Zanzibar Legal Services Centre (ZLSC) Hall.

Other reading or learning materials⁷⁴⁵ and useful links⁷⁴⁶ about the right to life are available at several links as mentioned in the footnotes.

A number of convicted persons had since 1964 been sentenced to death by the High Court of Zanzibar and are languishing in jail waiting for the execution of the death penalty.

The position of the United Republic of Tanzania, the High Court of Tanzania in the case of *Republic v. Mbushuu alias Dominic Mnyaroje and Kalai Sangula*,⁷⁴⁷ Judge Mwalusanya ruled that;

- (i) Death penalty offends the right to the dignity of a person in the way the sentence is executed and therefore it offends article 13(6) (d) of the Constitution of the United Republic of Tanzania;
- (ii) Death penalty is inherently cruel, inhuman and a degrading punishment and the process of execution by hanging is particularly gruesome, generally sordid, debasing and generally brutalizing, and it offends Article 13 (6) (e) of the Constitution of the United Republic of Tanzania;
- (iii) From the wording of Article 14 on the right to life in the Swahili version of the Constitution of the United Republic of Tanzania, which is the controlling version, both the right to life and the right to protection of one's life by society is subject to the claw-back clause and is therefore not absolute;
- (iv) The petitioners have managed to prove on a balance of probabilities that hanging, as the way of carrying out the death penalty, is a cruel, inhuman and degrading punishment;
- (v) The petitioners have only evidential burden to show that a right has been infringed and once they have succeeded to show that then it is for the state to prove on a balance of probabilities that the law being attacked as unconstitutional is lawful law and that it is saved by Article 30 (2) of the Constitution of the United Republic of Tanzania and therefore it is in the public interest;

745 A Study Guide on the Right to Life; Death Penalty Curricula for High School; Educational Guide: World Day 2009; International Standards on the Death Penalty; International treaties to abolish the Death Penalty: Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (1989); Protocol No. 6 to the European Convention on Human Rights (1983); Protocol No. 13 to the European Convention on Human Rights (2002); Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990).

746 World Coalition Against the Death Penalty; Council of Europe Theme File on Death Penalty; Amnesty International Website Against the death Penalty; Amnesty International-USA's Programme to Abolish the Death Penalty; Death Penalty Information Centre (USA) and European Day against the Death Penalty.

747 (1994) TLR 146 (HC).

- (vi) The Republic has failed to prove on a balance of probabilities that the death penalty is in the public interest;
- (vii) For a law to be lawful it should meet the proportionality test and it should not be arbitrary; the Government in this case has failed to prove on balance of probabilities that the present law restricting the right to life is proportionate and the carrying out of the sentence is not arbitrary;
- (viii) The provisions of the Penal Code on the death penalty do not have adequate safeguards against arbitrary decisions and do not provide effective control against abuse of power by those in authority when using the law;
- (ix) Death penalty is contrary to article 13 (6) (a) of the Constitution of the United Republic of Tanzania because there is no appeal against the decision of the President not to commute the sentence even if it is unreasonable or discriminatory;
- (x) In construction of provisions of the Constitution and in particular that part of it which protects and entrenches fundamental rights and freedoms, a generous and purposive method should be applied.

In supporting the argument that Death penalty is unconstitutional, Judge Mwalusanya referred to a number of cases inside and outside Tanzania.⁷⁴⁸ The cases referred were as following:

Despite the fact that the position of the High Court of Tanzania is clear on the death penalty but Judiciary in not part of the matters falling under the union list and that particular decision has a persuasive force and not binding force to the High Court of Zanzibar.

⁷⁴⁸ *AG of the Gambia v. Momodue Jobe* [1984] PC 689, *Minister of Home Affairs v. Fisher* [1980] AC 319, *Minister of Home Affairs v. Fisher* [1980] AC 319, *Kukutia Ole Pumbun and Another v. AG* [1993] TLR, *AG v. Lesinai s/o Ndeinai* [1980] TLR 214, *Riley and Others v. AG of Jamaica* [1982] 3 All ER 469, *Catholic Commission for Justice and Peace v. AG and Others* [1993] (1) ZLR 242, *AG v. Morgan* [1985] LRC (Const) 770, *The State v. Petrus* [1985] LRC (Const) 699, *AG v. Edmund s/o Lawrence* [1985] LRC (Const) 921, *Kahekeya Buzoya v. R* (1976) LRT No. 16, *Ndlovu v. The State* [1988] LRC (Const) 442, *Trop v. Dulles*, 356 US 86, *Estelle v. Gamble* 429 US 97, *Chileya v. State*, Criminal Appeal No 64/1990, *Soering Case* [1989] 11 EHRR 439, *Furman v. Georgia*, 408 US 238, *Javed Ahmed v. The State of Maharashtra*, AIR 1985 SC 251, *Madhu Mehta v. Union of India* [1989] 3 SCR 775, *De Freitas v. Benny* [1976] AC 239 (PC), *Bello v. AG of Oyo State* [1986] 5 NWLR 88828, *Omwuka v. The state* [1988] 1 NWLR 529, *Dhlamini and Others v. Carter* [1968] 1 RLR 136, *AG v. Lachma Devi* [1986] LRC (Const) 1, *Bachan Singh v. State of Punjab* [1983] 1 SCR 154, *Director of Public Prosecution v. Daudi Pete*, [1993] TLR 22, *Said s/o Mwamwindi v. R* [1972] HCD 212, *R v. Asha Mkwizu Hauli*, Dar es Salaam, High Court Criminal Sessions Case No. 3 of 1984 (unreported), *Director of Public Prosecutions v. Leganzo Nyanje*, Criminal appeal No. 68 of 1980 (unreported), *R v. Agnes Doris Liundi* [1980] TLR 46 and *Conjwayo v. Minister of Justice and Director of Prisons* [1991] 1 ZLR 105 (SC).

According to the Registrar of the High Court of Zanzibar, there was no death sentence that was passed from January to November, 2012.

2.3 Mob Violence

Mob violence can be described to mean a disturbance of the peace by several persons, assembled and acting with a common intent in executing a lawful or unlawful enterprise in a violent and turbulent manner.⁷⁴⁹ There are a number of contributing factors to the mob violence. The mob violence and looting is equated with protest and are motivated by a quest for social change.⁷⁵⁰

Mob violence is not a new phenomenon in Zanzibar. It has been happened now and then. Efforts to get data from the police authorities on mob violence in Zanzibar proved futile. It is understood however that there has been a number of cases of people suspected of theft who had suffered from mob violence. Mob violence is against the spirit of the Good Governance.

2.4 Extra Judicial Killings

Extrajudicial punishment is punishment by the state or some other official authority without the permission of a court or legal authority.⁷⁵¹ There have been unconfirmed reports that the Zanzibar Security Forces⁷⁵² shot dead one person identified as Salum Hassan Muhoja in dubious circumstance at Amaan area. It is claimed that the deceased was shot dead when he was passing close to a bar situated at Mbawala at Amaan area. It is claimed that the deceased was buried at Regeza Mwendo in the Unguja Central District.⁷⁵³

2.5 Freedom from Torture

Torture can be described as the practice or act of deliberately inflicting severe physical pain and possibly injure on a person.⁷⁵⁴ The 1984 United Nations Convention Against Torture defines as an 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 is suspected of having 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 an official capacity.

749 <http://legal-dictionary.thefreedictionary.com/Mob+violence> visited on 25th October, 2012.

750 <http://abcnews.go.com/Health/londo-riots-2011-psychological-myths-facts-solutions/story?id=14276532>.

751 <http://en.wikipedia.org/wiki/extrajudicial-punishment> visited on 20th December, 2012.

752 Section 121 (1) of the Constitution of Zanzibar recognizes the Zanzibar Security Forces as Special Departments of Zanzibar whose duties and functions shall be as prescribed in relevant laws.

753 <http://zanzibaryetu.wordpress.com/2012/10/19/kvz-wadaiwa-kuuwa-mmoja>

754 [Wikipedia/torture](http://en.wikipedia.org/wiki/torture).

Torture has been carried out or sanctioned by individuals, groups and states throughout history from ancient times to modern day⁷⁵⁵ Forms of torture can vary greatly in duration from only a few minutes to several days or even longer.⁷⁵⁶

Reasons for torture can include punishment, revenge, political re-education, deterrence, interrogation or coercion of the victim or a third party or simply the sadistic gratification of those carrying out or observing torture.⁷⁵⁷

Torture is prohibited under the International Law and the domestic laws of most countries. It is considered to be a violation of human rights and is declared to be unacceptable by Article 5 of UDHR.⁷⁵⁸ The Article provides that;

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Amnesty International estimates that at least 81 world governments currently practice torture, some of the openly.⁷⁵⁹

Imprisonment without trial, mock executions, hostage taking, or any other form of violent deprivation of liberty, also fall under the heading of organized violence.⁷⁶⁰

On its part, Section 13 (3) of the Constitution of Zanzibar, 1984 says that:

It is prohibited for a person to be tortured, inhumanly punished or to be given punishment which are degrading and humiliating.

There have been allegations of torture in Zanzibar especially at the police stations. Suspected criminals are tortured to give information as a way to collect evidence to support criminal cases they are facing. Some children are also subjected to torture by their parents, relatives, school teachers and members of the society.

The Zanzibar Educational Centres (jails) officers had been accused of torturing the *JUMIKI (UAMSHO)* members who are kept in remand.⁷⁶¹ It has been alleged that the *UAMSHO* members were denied of the right to worship, to change clothes for more than two weeks and were put in solitary confinements. It was also alleged that they were denied the right to meet their relatives and family members.

755 Ibid.

756 Ibid.

757 <http://www.amnestinternational.org>

758 Ibid.

759 http://en.wikipedia.org/wiki/Torture#_noteAmnesty08-4 visited on 3rd October, 2012.

760 Ibid.

761 Zanzinet. 8th December, 2012.

The UAMSHO members were Sheikh Farid Hadi, (41) Mselem Ali Mselem (52) Mussa Juma Issa, (37) Azzan Khalid Hamdan, (48) Suleiman Juma Suleiman, (66) Khamis Ali Suleiman, (59) Hassan Bakari Suleiman, (39) and Gharib Ahmada Omar (39).

2.6 Equality before the Law-Equal Access to Justice for All

The principle of Equality before the Law is also included in the International Human Rights instruments and the Constitution of Zanzibar, 1984.

Article 7 of the UDHR says that;

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Section 12 of the Constitution of Zanzibar, 1984 insists about the Equality before the law.

The courts of law are no doubt open to all so be the justice guaranteed to all, but true as it may be the underprivileged and other marginalized groups of population practically continue to crave that the instant promise and guarantee namely “justice for all” was true both in word and spirit. As such the latter continue to long for genuine access to the Institutions namely courts and tribunals trusted with formal dispensation of justice.

Poverty level in Zanzibar remains a stumbling block to access to justice. Paralegals⁷⁶² are one of the options to make access to justice a reality for all in Zanzibar. The ZLSC had for the last four years launched a paralegal programme in all 50 electoral constituencies in Zanzibar. The purpose of launching paralegals programme is to provide legal aid, legal assistance and other legal services in all 50 constituencies and from the Zanzibar Government Special Departments (*vikosi*) especially to the vulnerable and disadvantaged sections of the society including women, children and people with disabilities.

The civic rights, duties and interests of every person shall be protected and determined by the courts of law, state organs and other organs established by the law.

2.6.1 Proximity, Availability and Infrastructure of Courts

Unlike Tanzania Mainland, Zanzibar has a dual court system namely the Common Law System being governed by man-made laws and the Kadhis Court system being governed by the Islamic Sharia.

⁷⁶² Paralegals are non-lawyers who offer legal services to the poor without consideration of money. The paralegals are extensively covered in the Legal Aid section.

The Courts falling under the Common Law system include the Tanzania Court of Appeal⁷⁶³, the High Court of Zanzibar⁷⁶⁴, the Regional Magistrate Courts,⁷⁶⁵ the District Magistrate Courts and Primary Courts.⁷⁶⁶

The functions of the Court of Appeal of Tanzania shall be to hear and determine every appeal brought before it arising from the judgment or other decision of the High Court or a magistrate of extended jurisdiction.⁷⁶⁷

However, Section 99 (1) of the Constitution of Zanzibar, 1984 limits the power of the Appellate Court of the United Republic of Tanzania. The Section states that;

The Appellate Court of the United Republic of Tanzania shall have the power of hearing of appeal from the High Court of Zanzibar except in cases relating to:

- (a) Interpretation of this Constitution (the Constitution of Zanzibar, 1984-**emphasize is ours**);
- (b) Matters of Islamic law which begun at the Kadhi's Court;
- (c) Any other matter mentioned in this Constitution or by any other law enacted by the House of Representatives.

In addition, the Tenth Amendment of the Constitution of Zanzibar, 1984 has curtailed the power of the Court of Appeal of Tanzania.

Section 24 (3) of the Constitution of Zanzibar, 1984 (after the Tenth Amendment) says:

Rufaa dhidi ya masharti ya Sura hii ya Katiba yatasikilizwa na Mahkama Kuu mbele ya majaji watatu bila kumjumuisha Jaji aliyeamua shauri hilo mara ya kwanza. Majaji hao watatu watateuliwa na Jaji Mkuu na uamuzi wao utakuwa ni wa mwisho na hautokatiwa rufaa kwenye Mahkama ya Rufaa ya Tanzania.

While the second part of the Zanzibar Judicial System is under the Islamic Law. Given the administrative boundaries, there must a Primary Magistrate and District Magistrate Court in every Administrative District of Zanzibar. So far, Zanzibar has ten administrative Districts, six in Unguja and four in Pemba. The Chief Justice of Zanzibar has the power to establish additional Primary Magistrate and District Magistrate Courts in Zanzibar.

763 Article 117 (1) of the Constitution of the United Republic of Tanzania, 1977 says that there shall be a Court of Appeal of the United Republic of Tanzania.

764 High Court Act, 1985 (Act No. 2 of 1985).

765 Magistrate Courts Act, 1985 (Act No. 6 of 1985).

766 Ibid.

767 Article 117 (3) Constitution of the United Republic of Tanzania, Op.cit.

Regional Magistrate Courts are located in every Regional administrative. There are five administrative regions in Zanzibar – two in Pemba and three in Unguja the main island.

Again, the Primary Magistrate Court is located within the District. In Many cases, there is one Primary Court in the District. This means that the people have to travel a long distance to get to the court building, whether Regional, District or Primary.

The situation is worst when it comes to the Land Tribunal and Industrial Court. These courts are located in Zanzibar town and litigants must travel wherever they are to get to the court buildings. It means people are forced to spend money to get justice. In other words, they are buying justice.

The infrastructures of the Courts in Zanzibar are poor⁷⁶⁸. Not much has been done in one year. Some buildings have been painted but no internal modifications have been done to widen the space. Court buildings are not enough. The High Court of Zanzibar lacks enough space to even accommodate judges of the Court of Appeal of Tanzania who conduct session once in a year.

An observation has revealed that some judges of High Courts of Zanzibar use to leave their offices to enable judges of the Court of Appeal of Tanzania to use the offices during the sessions of the Appellate Court.

In an interview with the Registrar of the High Court of Zanzibar, Honourable George Kazi it was informed that there are problems facing the judiciary including the budget allocated for the judiciary which is extremely insufficient and affects the administration of justice. He added that all court buildings are in a state of disrepair, lack of enough spaces forcing magistrates to share offices, lack of furniture, modern technologies, lack of a law library and lack of Zanzibar Law Reports.

2.6.2 Shortage of Manpower

There has been an improvement in the judiciary including an increase of judges and magistrates but a shortage of manpower remains a problem in the Judiciary in Zanzibar and indicates that there is a slow dispensation of justice in the court. The Records show that there is a pile up of cases waiting for judgment.⁷⁶⁹

768 LEGAL HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report 2011*, p 274.

769 *Hotuba ya Waziri wa Katiba na Sheria Mhe. Abubakar Khamis Bakary katika Baraza la Wawakilishi kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2012/13*, p. 12.

The minister explained that appropriate measures were taken to check the pile up of cases including encouraging pre-bargaining.⁷⁷⁰

The tables below show the effect of manpower in the administration of justice in the Zanzibar Courts.

Table 40: The workload of High Court Judges in Zanzibar from January to November 2012

Total Number of Cases from Jan-Nov. 2012	Civil Cases	Criminal Cases	Workload of a Judge	Total Number of Judges
88	62	26	14.6	6

Source: Registrar of the High Court of Zanzibar, Honourable George Kazi on 28th December, 2012.

Table 41: The Workload of Regional Magistrates in Zanzibar from January to November 2012

Total Number of Cases from Jan-Nov. 2012	Total Number of Regional Court Magistrates	Average Number of Cases for a Regional Court Magistrate for 2012
474	8	59.3

Source: Registrar of the High Court of Zanzibar, Honourable George Kazi on 28th December, 2012.

Table 42: The Workload of District Magistrates in Zanzibar from January to November 2012

Total Number of Cases from Jan-Nov. 2012	Total Number of District Court Magistrates	Average Number of Cases for District Court Magistrate for 2012
2504	14	178.9

Source: Registrar of the High Court of Zanzibar, Honourable George Kazi on 28th December, 2012.

⁷⁷⁰ Pre-bargaining or plea-bargain (pre-trial meeting) means the crown prosecutor and the lawyer for the accused (defense counsel) will meet before the trial date to discuss the case. The crown prosecutor and defense counsel may negotiate a plea bargain. This is an agreement that the accused will plead guilty to the crime. In exchange for the guilty plea, the crown may agree to withdraw some of the charges, reduce the charge to a lesser offence, ask the court for a lighter sentence. If the prosecutor and defense counsel can agree on certain facts about the case, it will make the trial shorter, the victim will not have to testify at court, the government does not have to pay for a long and expensive trial and the accused can start serving the sentence right away.

Table 43: The Workload of Primary Magistrate Court in Zanzibar from January to November 2012.

Total Number of Cases from Jan-Nov. 2012	Total Number of Primary Court Magistrates	Average Number of Cases for Primary Court Magistrate for 2012
1353	13	104.1

Source:Registrar of the High Court of Zanzibar, Honourable George Kazi on 28th December, 2012.

The table below shows the effect of manpower in the administration of justice in the Zanzibar Courts from July 2011 to March, 2012.

Part II

**Zanzibar
Human
Rights
Report**

2012

Table 44: Filing of cases in the Court of Appeal of Tanzania, the High Court of Zanzibar and the Regional Magistrate Court and Appellate Kadhi Courts from July, 2011 to March, 2012

Mahkama ya	Kesi zilizofunguliwa						Rufaa						
	Jumla zilizofunguliwa	Madai			Jinai			Madai			Jinai		
		Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizotolewa uamuzi
Rufaa	2	0	2	0	0	0	0	0	0	0	0	0	
Mahkama Kuu Vuga	83	0	48	0	12	0	14	0	9	0	4	0	
Mahkama Kuu Pemba	24	0	1	0	1	1	21	0	1	0	1	0	
Mahkama ya Kazi	16	1	16	0	0	0	0	0	0	0	0	0	
Mahkama ya Kadhi Rufaa Unguja	44	4	44	0	0	0	0	0	0	0	0	0	
Mahkama ya Kadhi Rufaa Pemba	4	0	0	0	0	0	4	1	0	0	0	0	
Mahkama Mkoa Vuga	136	3	28	92	13	11	0	5	0	0	0	0	
Mahkama Mkoa Mfenesini	77	0	4	72	6	1	0	0	0	0	0	0	
Mahkama Mkoa Mwera	72	6	6	57	49	4	4	4	5	2	0	0	
Mahkama Mkoa Wete	63	0	4	55	35	1	0	0	3	0	0	0	
Mahkama Mkoa ChakeChake	59	0	2	55	2	2	0	0	0	0	0	0	

	Kesi zilizofunguliwa						Rufaa		
	Jumla zilizo funguliwa	Madai		Jinai		Jinai	Madai		Jinai
		Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizo tolewa uamuzi		Zilizo funguliwa	Zilizo tolewa uamuzi	
Mahkama ya Mahkama Wilaya Mwanakwerekwe	532	44	3	488	245	0	0	0	0
Mahkama Wilaya Mwera	405	4	4	400	228	1	1	0	0
Mahkama Wilaya Mkokofoni	505	8	4	497	393	0	0	0	0
Mahkama Wilaya Mfenesini	218	2	0	211	115	2	2	3	0
Mahkama Wilaya Makunduchi	80	0	0	79	26	1	0	0	0
Mahkama Wilaya Mkoani	66	1	0	65	41	0	0	0	0
Mahkama Wilaya ChakeChake	74	4	0	64	41	0	0	0	0
Mahkama Wilaya Wete	98	0	0	98	27	0	0	0	0
Mahkama Wilaya Konde	92	0	0	92	35	0	0	0	0
Mahkama ya Watoto Vuga	19	0	0	19	19	0	0	0	0
Mahkama ya Watoto Mwera	20	0	0	7	7	0	0	5	1
Mahkama ya Watoto Mfenesini	20	0	0	20	7	0	0	0	0
Mahkama ya Watoto ChakeChake	6	0	0	6	0	0	0	0	0
Mahkama ya Watoto Wete	7	0	0	7	0	0	0	0	0
Jumla	2714	218	25	2397	1255	64	8	35	8

Mahkama ya Mwanzo	Ufunguaji wa kesi Mahkama za Mwanzo na Kadhi									
	Kesi za madai			Kesi za jinai		Mahkama ya Kadhi Wilaya	Mahkama ya Kadhi	Kesi za Madai		
	Jumla	Zilizo funguliwa	Zilizotolewa uamuzi	Zilizo funguliwa	Zilizotolewa uamuzi					
Manispaa Malindi	419	0	0	0	0	Mjini	644	Zilizotolewa uamuzi	131	
Mwanakwerekwe	159	20	3	139	37	Mwera	23		11	
Mwera	260	8	8	252	114	Mfenesini	40		20	
Makunduchi	131	10	4	121	64	Mkokotoni	46		21	
Chwaka	79	5	4	74	49	Makunduchi	20		0	
Mfenesini	178	0	0	178	160	Chwaka	2		0	
Mkokotoni	188	38	10	150	100	Mkoani	41		10	
Mkoani	79	8	1	71	22	Kengeja	6		0	
Kengeja	11	1	1	10	6	ChakeChake	48		9	
ChakeChake	94	11	2	83	35	Wete	50		2	
Konde	114	10	1	104	86	Konde	50		6	
Jumla	1793	120	34	1673	1057	Jumla	970		217	

Source: Hotuba ya Waziri wa Katiba na Sheria, Mhe. Abubakar Khamis Bakary Katika Baraza la Wawakilishi Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2012/2013.

2.6.3 Court Fees

Court fees structure can be divided into two parts. The first part covers the amount of money being charged in filing cases to the court. This depends on the subject matter under dispute.

The second court fee structure which drew serious attention from practicing advocates is the one which the courts had imposed for practicing advocates. The figure went too high. The decision to raise the figure is claimed to have been unilateral without consulting the practicing advocates and is turning access to justice as part of a business and not services.

It is argued that increased court fees structure will correspond to the increase of instruction fees to be charged to litigants in need of advocates' services. At the end of the day, this makes access to justice a distant dream in Zanzibar. Below is the new court fees structure. The spokesman of the ZLS, Mr Said Salim Said informed that ZLS seeks an appointment to meet the CJ to discuss the new fees structure. In addition, one of the veteran practicing advocates, Mr Ajar Patel wrote a letter to the CJ protesting the upward adjustment of the court fees.



LEGAL NOTICE:

**LEGAL PRACTITIONERS DECREE CAP. 28
LAWS OF ZANZIBAR**

**INCREASING OF FEES
(Made Under Rules 14)**

IN THE EXERCISE of the powers conferred upon me under Rules 14 of The Legal Practitioners Decree (subsidiary) Cap. 28, Laws of Zanzibar, I, **OMAR OTHMAN MAKUNGU**, Chief Justice of Zanzibar do hereby increase the fees payable on admission to practice as prescribed hereunder with effect from 1st December, 2012.

- | | | |
|---|---|-----------------|
| 1. Admission fee for Advocate | - | Tshs. 300,000/= |
| 2. Renewal of Practicing/Advocate
Annual Certificate | - | Tshs. 250,000/= |
| 3. Admission to practice on Special Case | - | Tshs. 100,000/= |
| 4. Admission for Vakil | - | Tshs. 150,000/= |
| 5. Renewal of Certificate for Vakil | - | Tshs. 100,000/. |

Legal Notice No. 33 of 1995 is hereby repealed.

SIGNED on this 21st day of November, 2012.

**(OMAR O. MAKUNGU)
CHIEF JUSTICE
ZANZIBAR.**

Part II

Zanzibar
Human
Rights
Report

2012

2.6.4 Legal Education

Unlike in the past, there are now a few institutions offering legal education in Zanzibar. These institutions provide the best opportunities to locals to advance academically in the legal profession. Previously, those who developed an interest to advance themselves academically in the legal profession had to dig deeper in their pockets to pay for distant education or to travel to Dar es Salaam.

In fact, the number of law schools in Zanzibar has not grown although the number of law graduates has increased, faster than the number of law schools. In addition, the number of law teachers not increased sharply and the law teachers/ratio is incredible.

The Zanzibar University offers first and master degrees in law. In addition, the Institute of Continuing Education (ICE) of the Zanzibar University has branches in Unguja and Pemba offering a Diploma course in Criminal Justice.

In addition, the Open University of Tanzania (OUT) offers a Certificate in Law course, a Diploma course and a Degree and Post graduate courses in law. OUT have branches in Unguja and Pemba. ZLSC also offers legal education to its paralegals. It is a two year course covering eight basic legal subjects namely in the First year, Legal Method, Legal System and Constitution, Law of Contract and Criminal Law and Procedure and during the second year, the Law of Evidence, Civil Procedure, Administrative Law and Torts.

2.6.5 Legal Aid

In the first place, the use of the words legal aid is outdated and the right to be represented in courts should now be recognized by law.⁷⁷¹ It appears that the former Chief Justice of Tanzania made the statement to put a special emphasis on the rights of helping the disadvantaged people in the society in defense of the legal rights.

Legal aid has become necessary in Zanzibar to help people access to justice. The government seems to have given less attention to provide legal aid to the needy. Instead, Non Governmental Organizations (NGOs) have taken the lead in provision of legal aid to save the situation. There are a few NGOs dedicated to giving legal aid in Zanzibar.

However, there are some NGOs in Zanzibar trying to provide legal aid but their operations especially the question of independence are doubtful taking into consideration that more than 97 per cent of its members are government employees. These types of organizations may find it hard to make serious decisions in cases involving government agencies. In fact, there is a question of conflict of interest.

⁷⁷¹ *Hotuba iliyotolewa na Mhe. Jaji Mkuu Mstaafu wa Tanzania, Barnabas A. Samatta wakati wakifungua kongamano la Kituo cha Huduma za Sheria Zanzibar; tarehe 30 Novemba, 2012. p. 3.*

One of the most active and leading NGOs in giving legal aid is the ZLSC. It has 19 staff of which handles cases on account of professionalism. It operates under the support of foreign agencies which provide financial backup. ZLSC coverage is wide extending to all constituencies in rural and urban areas of Unguja and Pemba. ZLSC launched a paralegal programme to assist in giving legal aid. There are different types of legal aid provided by ZLSC. These include to advice clients on their rights and options, help with negotiations and paper work, representing clients in court on strategic litigation, help with family mediation and helping accused. A total of 729 clients, were served in 2012, out of whom 269 from Unguja, 260 from Pemba and 22 children, 11 from Unguja and 11 from Pemba.

Others are Land Disputes; Labour Matters – Unlawful Dismissals, Wages Disputes; Family Disputes – Divorce, Division of Matrimonial Property, inheritance, Custody of Children, Early Marriages, Early Pregnancy, Child Abuse, and Domestic Violence; Sexual Offences – Defilement, Rape, and Sodomy etc

ZLSC also raises public awareness through it's a quarterly newsletter "*Sheria Na Haki*" containing a number of well researched articles and radio and television programmes.

ZLSC publishes a total of 3,000 copies of newsletters by September, 2012. The newsletters have been widely distributed in Unguja and Pemba.

In giving legal aid, ZLSC has recruited paralegals. The paralegals are trained in basic legal subjects for two years. The basic subjects for first year are Legal Method, Legal System and Constitutional, Criminal Law and Procedure and Law of Contract. During the second year, the paralegals are trained in Torts, Law of Evidence, Civil Procedure and Administrative Law.

2.6.6 Legal Representation

Legal representation in court remains a problem in Zanzibar. There are a number of contributing factors to the problem. The problems include a lack of enough practicing advocates and the ability to pay for advocate services. The number of enrolled advocates is 85⁷⁷² of whom 16 are female and 69 are male.⁷⁷³ These statistics give us a picture of women's lack of enthusiasm in practicing law.

However, he said the number of practicing advocates in Zanzibar is less than 20. Zanzibar's estimated population stands at 1.3 million and if the estimated number of the total population is divided by the number of enrolled advocates which is 85, that is approximately 15,294 people for an advocate in Zanzibar which is fifty times higher than the American lawyers ratio.

⁷⁷² Administrative Officer and Programme Officer of the Zanzibar Law Society, Mr. Said Salim Said told the researchers on 21st December, 2012. <http://www.americanbar.org> visited on 21st December, 2012.

⁷⁷³ Ibid.

According to the American Bar Association, there are currently 1, 116,967 lawyers practicing in the United States.⁷⁷⁴ That is approximately one for every 300 people, or approximately 0.36% of the total population of America.

In Tanzania's population which is presently estimated about 42 million, there are only 3,000 enrolled advocates.⁷⁷⁵ By whatever yardstick, the presence of advocate is too low in Zanzibar.

In addition, the distribution of advocates between Unguja, and Pemba is largely unbalanced let alone that some regions in Unguja and Pemba do not have a single advocate.

Demographic information in Zanzibar informs that about two percent of the enrolled advocates own their chambers while the greatest numbers operate brief case offices.

It seems that some lawyers petitioned for certificate of practice as a prestige and to add qualifications to their curriculum vitae. Delay of justice defeats the whole purpose of the good spirit of good governance. Justice needs to be done as quickly as possible.

The Bill of Costs seems as the main problem to the disadvantaged sections of the society to engage advocates to represent them in the court of law. A part from the logistic costs, the instruction fee being charged by practicing advocates is too high. After all, there is no specific rule providing the principle of charging the instruction fee. It looks an agreement between the parties.

Although, there was time it was ruled in the Bill of Costs in the case of *C. B Ndege v. E. O Ayila and AG*⁷⁷⁶ that limitation as to costs – 'reasonable' amount depending on circumstances of each case – Rule 9 of 3rd Schedule, Court of Appeal Rules, 1979. In practice that it seems advocates give it less attention and several excuses are advanced.

2.6.7 Delay of Cases

A back-log of undecided criminal and civil cases in the courts in Zanzibar remains a thorn in the flesh. Presenting the 2012/2013 budget estimates in the House of Representatives for the Ministry of Justice and Constitutional Affairs, Honourable Abubakar Khamis Bakary admitted that the pile up of cases is a problem.⁷⁷⁷ However, he hinted that appropriate measures were being taken to solve the issue including encouraging pre-bargaining.

⁷⁷⁴ <http://www.Lawyers/ratio-visited> on 13th September, 2012.

⁷⁷⁵ Speech by the Hon, Mr. Justice Mohamed Chande Othman, the Chief Justice of Tanzania, at the ceremony for admission of new advocates on 17th December, 2012, Dar es Salaam, p.5.

⁷⁷⁶ (1988) TLR 91 (HC).

⁷⁷⁷ *Hotuba ya Waziri wa Katiba na Sheria, Mhe. Abubakary Khamis Bakary Katika Baraza la Wawakilishi Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2012/2013*, p. 12.

In addition, he said the Ministry had initiated a fast track process of enabling the prisoners wanting to make an appeal to do so as soon as practicable. This means the case files of the concerned prisoners would be given top priority.⁷⁷⁸

Giving a breakdown of civil and criminal cases, the minister explained that a total of 5,477 had been instituted in different courts in Zanzibar, a drop of 2,894 cases compared to 8,371 cases opened in the previous year.⁷⁷⁹

Out of the total number of 5,477 cases opened in the courts during the period, 1,308 were of civil suits and the rest 4,070 were criminal cases. Only 2,604 cases which is equivalent to 48 per cent were disposed.⁷⁸⁰

The delay of cases was also echoed by prisoners at the Kilimani Central Educational Centres during a visit of magistrates.⁷⁸¹ They said delay of cases affects the concept of justice.⁷⁸²

When asked for comment on delay of cases, the Registrar of the High Court of Zanzibar said there are a number of contributing factors to the delay of cases which includes a shortage of magistrates at all levels, inadequate funds to pay for witnesses, incompleteness of evidence by the office of DPP, insufficient number of state attorneys and lack of seriousness by practicing advocates causing them to seek adjournment of cases.

The Registrar further explained the reasons causing delay in production of judgments from the courts include lack of enough computers and printers and other stationery and lack of funds to service the machine.

Whatever the yardstick, the settlement pace of the cases is low and justice delayed is justice denied. Additional efforts must be taken to solve the backlog of cases. This study supports a proposal made in the last year's human rights report⁷⁸³ that people should go for the Alternative Dispute Resolution (ADR), a practice which may help in solving a lot of disputes of civil nature outside the court and reduce the load.

2.6.8 Independence and Impartiality of Judiciary

The principle of the independence of the Judiciary has its origins in the doctrine of Separation of Powers, which basically states that the three arms of the government, that is the Executive, Legislature and the Judiciary must be independent of each other and separate from one another. The doctrine was most famously expounded by Montesquieu, a French Jurist.

778 Ibid.

779 Ibid.

780 Ibid.

781 *Zanzibar Leo*, issue No. 3842, Sunday, 12th August, 2012, p. 2.

782 Ibid.

783 LEGAL AND HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Centre*, 2011, Op.cit p. 283.

One of the Tanzania philosophers; Nyerere⁷⁸⁴ says that;

Our judiciary at every level must be independent of the executive arm of the State. Real freedom requires that any citizen feels confident that his case will be impartially judged, even if it is a case against the Prime Minister himself.

Professor Peter in the above mentioned paper went on to mention the guiding principles which can be taken as standard norms. We feel it appropriate to highlight the guiding principles as we can measure them to the local environment in a bid to test the independence of the judiciary.

These are, the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country, the judiciary shall decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

In addition, the judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

The guiding principles further include that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected and it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.⁷⁸⁵

At the local level, Section 94 (1)⁷⁸⁶ says that the Chief Justice shall be appointed

784 Professor Chris Main Peter in his paper "Independence of the Judiciary in Tanzania: Many Rivers to Cross" in Frederick W. Jjuuko in the *Independence of the Judiciary and the Rule of Law: Strengthening Constitutional Activism in East Africa*, Kituo cha Katiba, 2005 is quoting NYERERE, Julius K., *Freedom and Unity: A Selection from writings and Speeches 1952-1965*, Dar es Salaam: Oxford Press, 1966, p. 131.

785 These principles were adopted by the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan, Italy from 26th to 6th September, 1985 and endorsed by the United Nations General Assembly vide Resolution 40/32 of 29th November, 1985 and 40/146 of 13th December, 1985.

786 The Constitution of Zanzibar, 1984.

by the President from amongst judges of the High Court and after consultation with the Judicial Service Commission while Section 94 (1)⁷⁸⁷ says that judges of the High Court shall be appointed by the President on the recommendation of the Judicial Service Commission.

Since taking over the highest office in Zanzibar after the 2010 general elections, President Ali Mohamed Shein, in attempt to off-set a shortage of judges, had at one time appointed four new judges to the High Court. The new judges were Honourable Fatma Hamid Mahmoud, Honourable Rabia Hussein, Honourable Abdulhakim Ameri Issa and Honourable Mkusa Sepetu.

The appointment of new judges was hotly disputed by the Zanzibar Law Society (ZLS), a non-governmental organization, filing a petition (a protest letter) to the President explaining its dissatisfaction over the appointment of some of the new judges of the High Court of Zanzibar.

According to the ZLS's letter dated 30th November, 2010, Ref. ZLS/IKULU/001, it was requested that the president stop the appointment of some judges due to what was termed as "lack of additional qualifications" to be appointed as High Court judges.

The letter argued that the constitutional requirements stipulated in Section 94 (3) of the Constitution of Zanzibar, 1984 are not enough and that additional qualifications must be considered. Section 94 (3) provides;

a person shall not be appointed Judge or Acting Judge of the High Court unless (a) he holds a law degree from a recognized university or from a similar institution (b) he is or was a judge of a similar court to this court with civil and criminal jurisdiction in Tanzania or any other place in the Commonwealth or a court with appellate jurisdiction from those courts or he is an advocate of Zanzibar or Tanzania for a period of not less than seven years or a combined experience of not less than seven years.

But, the ZLS was of the opinion that the following additional qualifications must be considered: vast experience, clear records, seriousness of judges, competence, confidence, honesty, the way he/she handles court proceedings and the writing of judgments.

To support the ZLS position, this report quotes the late Honourable Mr. Justice Kahwa Lugakingira in his paper, *Corruption and the Erosion of Judicial Independence in Tanzania: Some Tentative Observations*,⁷⁸⁸ mentioning a number of factors undermining the independence of the judiciary which include

787 Ibid.

788 Paper presented at the Judges and Magistrates Seminar on Corruption held in Dar es Salaam between 16th and 17th December, 1996 -----quoted from PETER, C. M, *Human Rights in Tanzania: Selected Cases and Materials*, Rudiger Verlag Koln, 1997, p 484.

protection of incompetent personnel. He noted that this usually occurs where there is a powerful “Godfather” in a strategic position within the department or within the Government.

In addition, in the case of the *Republic v. Iddi Mtegule*⁷⁸⁹ Chipeta, J. stated that the judiciary must be free from political, executive or emotional pressures if it is going to work with the smoothness and integrity expected of it under the supreme law of the land, the Constitution.

The President of Zanzibar, based on the Constitution provision, had gone ahead with the appointment notwithstanding the protests and had actually in fact acted in accordance with Section 52 of the Constitution of Zanzibar, 1984 which says that;

The President of Zanzibar, subject to directions of the law, shall not be obliged to take the advice given to him by any person in the performance of his functions.

The late Tanzania President Nyerere had this to say on personal integrity of judges and magistrates:

There are jobs in our society which can be done by undisciplined people and people, whose personal integrity can be called into question, being a judge or magistrate is not among them.⁷⁹⁰

The Constitution of Zanzibar, 1984, gives reasonable protection to the High Court judges. A judge of the High Court enjoys this cover once he/she takes up the office and the Constitution says that the judge will hold the office until he reaches the age of sixty-five where he shall be bound to retire.

The removal of the Chief Justice or a judge of the High Court needs the establishment of a special commission to conduct the investigation and recommends to the President that the judge should be removed from office due to inability to discharge his function or due to grounds of misbehavior.

Impartiality is one of the most fundamental requirements in the determination of cases in courts. Justice must not be done, but must manifestly and undoubtedly be seen to be done. The famous dictum by Lord Hewart, C.J, in *R v. Sussex Justices ex parte McCarthy*⁷⁹¹ succinctly expresses one of the key requirements for accountability of the Judiciary. The requirement that justice must not only be done, but must be seen to be done, encompasses the requirement for impartiality of judges and the need for trials to be held in open court.

789 High Court of Tanzania, at Dodoma, (PC) Crim. Rev. No 1 of 1979 (unreported).

790 NYERERE, Julius K, Speech to the meeting of Judges and Magistrates held in Arusha, on 15th March, 1984

791 (1924) 1 KB 256 at 259.

In her paper, Monica⁷⁹² outlined requirements for the impartiality that include bias, trial in open court, discipline of judges and terms and conditions of service of the lower bench (magistrates).

The Chief Justice (CJ) of Zanzibar enjoys absolute freedom in allocation of cases to judges of the High Court of Zanzibar and there was no guiding principle to this end.⁷⁹³ The most important thing the CJ is looking is that there was no interest of whatsoever nature to a judge who is a given case.⁷⁹⁴

Corruption is a problem in the independence of the Judiciary in Zanzibar. It seems corruption discouraging many people from seeking legal remedy from the court. In a way, they have lost faith with the courts. The Minister of Constitutional Affairs and Justice Honourable Abubakar Khamis Bakary admitted in his budget proposals speech for 2012/2013 he had tabled before the House of Representatives that corruption is one the problems facing the Judiciary.

The Registrar of the High Court of Zanzibar told the research team on 28th December, 2012 that one Kadhi was alleged to have involved himself in corrupt practices and his case was reported to the Police for investigation. The Registrar did not disclose any further information on whether the Kadhi is still in office or has been suspended pending investigation report.

The President of the Zanzibar Law Society (ZLS), Honourable Awadh Ali Said that the Judiciary is not corruption free and affects the administration of justice corruption.⁷⁹⁵ The ZLS president has cautioned the appointing authority to exercise extra care in the appointment of key officers saying it was an appropriate step to thrash out corruption.⁷⁹⁶

The ZLSC president substantiated his argument by quoting the words of the First Attorney General of Singapore Lee Kuan Yew in his book titled “From Third World to First at page 245 that;

Selecting the right man for a key constitutional position, like the Chief Justice.....is vital. A wrong choice could mean years of public embarrassments and endless problems.

792 KIRYA, Twesilime, Monica, “The Independence and Accountability of the Judiciary in Uganda: Opportunities and Challenges” in Frederick W. Jjuuko in the *Independence of the Judiciary and the Rule of Law: Strengthening Constitutional Activism in East Africa*, Kituo cha Katiba, 2055. p. 50.

793 Registrar of the High Court of Zanzibar, Honourable George Kazi, told research team on 28th December, 2012.

794 Ibid.

795 *Hotuba ya Rais wa Chama cha Wanasheria Zanzibar, Honourable Awadh Ali Said, katika maadhimisho ya Siku ya Sheria Zanzibar tarehe 07-02-2012 katika viwanja vya Victoria Garden, Zanzibar, p 4.*

796 Ibid, p.7.

He showered praise on the government on enactment ofanti corruption act but cautioned that;

It is easy to start off with high moral standards, strong convictions and determination to beat down corruption. But it is difficult to live up to these good intentions unless the leaders are strong and determined enough to deal with all transgressors and without exceptions. p. 189 (Lee Kuan Yew).

The people must be made to believe that the administration of justice in Zanzibar is free from corruption. As it was correctly put up by the former Chief Justice of Nigeria Oputa's speech had delivered in 1981 in the newsletter titled "*The Law and the Twin Pillars of Justice*" Oweri Government Printer at page 71 that;

Justice should be pure, visibly pure, and unadulterated. It should be fair, equitable and impartial. It should be no respecter of person, personalities, or establishments. It should not be commercialized, nor should it be bought and sold, for nothing is as hateful as venal justice. It should be quick, for delay is certain denial. Legal justice should as closely as possible, resemble the virtue whose name it bears – virtue by which we give to everyone his due.

2.6.9 Challenges facing the Judiciary

There are a number of challenges facing the Judiciary. The challenges includes that most judicial officers are perceived by the public as being corrupt.⁷⁹⁷ Indicators of corruption include court decisions which are delivered contrary to available evidence, some degree of incompetence on the part of judges and magistrates, lack of knowledge of the law and arbitrary exercise of discretionary powers.⁷⁹⁸

It has been mentioned that types of corruption referred to by stakeholders includes money, sex and nepotism.⁷⁹⁹ Cases are postponed without going into full trial, offenders are unjustifiably acquitted or complaints are sometimes threatened.⁸⁰⁰

There are no sufficient residential houses for magistrates of all cadres⁸⁰¹ especially those deployed in remote areas and courts building in Pemba are

797 RESEARCH on POVERTY ALLEVIATION, *Zero Draft Report: Capacity and Needs Assessment of Legal Sector Actors in Zanzibar* funded by the United Nations Development Programme, August, 2012. p. 21.

798 Ibid.

799 Ibid.

800 Ibid.

801 Ibid.

inadequate and those available are in bad shape.⁸⁰² There is an insufficient number of magistrates at all levels. For example, Chake Chake District Court has not had a magistrate for almost half a year⁸⁰³ and most of the court clerks and assessors do not seem to possess the requisite qualifications required of them.⁸⁰⁴ The appointment criteria are not known or available for public scrutiny.⁸⁰⁵ The Judiciary is generally underfunded⁸⁰⁶

2.6.9.1 The Industrial Court

The Industrial Court was established under the Labour Relations Act⁸⁰⁷ and in 2011 there were promulgated regulations under Legal Notice No. 107 of 2011 putting in place mechanism for mediation and arbitration of labour disputes.

It has been explained in the research document that the Industrial Court does not have its own budget, staff, office premises nor working facilities.⁸⁰⁸ The Court is presided over by a Chairman who is also a serving judge handling cases of the High Court. It does not have an office in Pemba.⁸⁰⁹

The good news is that the Industrial Court had 270 cases since its inception but the number went down to 60 at the time of the study⁸¹⁰.

During a discussion of the Zero Draft of Capacity and Needs Assessment of Legal Sector Actors in Zanzibar held on 14th September, 2012 at the Mazsons Hotel, the Registrar of the High Court of Zanzibar, Honourable George Kazi came out in defense of the facts presented insisting that he is the competent spokesman of the Court blaming the Research team for failure to contact him.

2.6.9.2 The Regional Magistrate Court

There is a Regional Magistrate Court in each of the Zanzibar's five administrative regions being presided over by a magistrate with a Law degree from a recognized University. The Magistrate's Court Act⁸¹¹ says that;

A person shall be qualified to be appointed as Regional Magistrate if, and shall not be so qualified unless he holds a degree in law and has an experience of not less than three years.

802 Ibid.

803 Ibid, p. 22.

804 Ibid.

805 Ibid.

806 Ibid.

807 (Act No 1 of 2005).

808 RESEARCH on POVERTY ALLEVIATION, *Zero Draft, Capacity and Needs Assessment of Legal Sector Actors In Zanzibar*, Op.cit, p. 20.

809 Ibid.

810 Ibid, p. 21.

811 Section 19 (3) of Magistrate's Court Act, 1985 (Act No. 6 of 1985).

A Regional Magistrate entertains criminal and civil cases. A Regional Magistrate Court has the appellate jurisdiction over cases originating from the subordinate courts.

In some cases, the Chief Justice (CJ) extends the powers of the Regional Magistrate to handle cases of High Court. The extended jurisdiction being awarded by the CJ shows whether that Regional Magistrate is given the power to handle a certain case or for a certain period. It is necessary to the extended jurisdiction to indicate that element. Lack of transport and a pile of cases are part of the challenges facing the Regional Magistrates.

2.6.9.3 The District Magistrate Court

There is a District Magistrate Court in each of Zanzibar's ten administrative districts presided over by a person holding either a Degree in law or Diploma in Law. It entertains criminal and civil cases. A District Magistrate Court has the appellate jurisdiction of cases originating from a Primary Magistrate Court. District Magistrates have a high number of cases. This makes it difficult the magistrates to get enough time to do researches relating to the cases.

2.6.9.4 The Primary Magistrate Court

There is a Primary Magistrate Court in each District. The CJ has the power to establish more than one Primary Court in a District. The District Magistrate Court has the power to entertain civil and criminal cases. The number of magistrates is low and does not correspond with the number of cases.

Advocates are not allowed to appear before a District Primary Magistrate Court. However, a Vakil is only allowed to appear before a District Kadhi's Court and a Primary Magistrate Court. Interestingly, a Vakil⁸¹² is allowed to pursue a case to the High Court of Zanzibar in the form of review or appeal.

2.6.9.5 The Kadhis Court

Section 100 of the Constitution of Zanzibar, 1984 empowers the House of Representatives to establish other subordinate courts to the High Court. The Section says;

The House of Representatives may establish other courts subordinate to the High Court and without prejudice to the provisions of the Constitution, those courts so established shall be vested with power and jurisdiction as shall be provided.

812 Vakil is person with basic legal education (is not a lawyer) is allowed by the Chief Justice to represent parties in the Primary Magistrate Court and Kadhi Courts only. However, a Vakil is allowed to appear before a High Court in the event of an appeal of case originating from Kadhi Court.

Based on the foregoing facts, the Kadhis Court⁸¹³ was established in each district. The jurisdiction of the Kadhi's court is restricted to the determination of Muslim issues in relation to inheritance, maintenance and marriage. The President appoints the Chief Kadhi and Deputy Chief Kadhi.

Appeals originating from the District Kadhi's Courts are filed to the Appellate Kadhi and if a party to the case feels dissatisfied with the decision of the Appellate Kadhi is allowed to file an appeal to the High Court which is final and conclusive. There is no enough offices to accommodate the Kadhis. It is understood that some NGOs put pressure on the government to allow female Kadhis to preside over. However, this suggestion is facing serious opposition from different corners.

2.7 Freedom of Worship

The principle of Freedom of Worship is explained in the International and regional instruments.

Article 18 of the UDHR provides that;

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest, worship and observance.

Article 19 (1) of the Constitution of the United Republic of Tanzania, 1977 says that;

Every person has the right to the freedom to have conscience, or faith, and choice in matters of religion, including the freedom to change his religion or faith.

Section 19 (1) of the Constitution of Zanzibar, 1984 explains that;

Every person has the right to freedom of thought or conscience, belief or faith and choice in matters of religion, including the freedom to change his religion or faith.

The situational analysis of the right of freedom of worship in Zanzibar needs further improvement especially to educate the people to respect this principle. There has been a sort of violation of this principle. A total of three churches; had been partly set on fire between 26th May and 28th May, 2012 allegedly by some members of the Association for Islamic Mobilization and Propagation famously known here as *UAMSHO*.⁸¹⁴ The churches which were partly set on

813 Kadhi's Courts Act, 1985 (Act No. 3 of 1985).

814 *ZLSC Ripoti ya Kutembelea Makanisa Yaliyochomwa Moto Zanzibar iliyotayarishwa tarehe 04/06/2012, p.1.* *UAMSHO* was officially registered as *JUMIKI (Jumuiya ya Uamsho na Mihadhara ya Kiislam in Swahili language)* in 2001 with the Registration no.149 under the Zanzibar government Society Act, 2005 (Act No. 6 of 1995) concerning the registration of civil society organization (Non Governmental Organization).

Part II

Zanzibar
Human
Rights
Report

2012

fire were named as Tanzania Assemblies of God (TAG) at Kariakoo in Unguja Urban District, Porokia ya Kanisa la Katoliki at Mpendae in the Urban District and a St Theresia at Beit el Ras in the Zanzibar West District.⁸¹⁵ A few months later, the priest of Mpendae was shot by unknown people on 25th December, 2012.



Tanzania Assemblies of God (TAG) church at Kariakoo in Unguja Urban District which was partly damaged after unknown arsonists set it on fire during the political riots occurred between 26th May and 28th May, 2012.



Some furniture belonging to the Mpendae Catholic Church which were set on fire following a two day riots in the Zanzibar Municipality between 26th May and 28th May, 2012.

815 Ibid.

The churches which were partly set on fire were named as Tanzania Assemblies of God (TAG) at Kariakoo in Unguja Urban District, Porokia ya Kanisa la Katoliki at Mpendae in the Urban District and and a St Theresia at Beit el Ras in the Zanzibar West District.⁸¹⁶ A few months later, the priest of Mpendae was shot by unknown people on 25th December, 2012.



A vehicle belonging to Bishop Dickson Kaganga of the Tanzania Assemblies of God which was badly damaged after it was set on fire by unknown arsonist during two days riots in the Zanzibar Municipality on 26th May, 2012.

At the same time it had been alleged that some members of the police had attacked Muslims in the Mahonda and Mbuyuni mosques.

In an unprecedented move, one of the outspoken clerics against the Union, Sheikh Farid Hadi was claimed to have been kidnapped by unknown persons. The disappearance of the cleric caused serious disturbances in the Zanzibar Municipality and more than 50 people have been arrested following the two days of riots.

However, the Zanzibar Police Commissioner had categorically rejected claims that security organs were responsible of the disappearance of Sheikh Farid arguing that it was a well calculated plan by Sheikh Farid and his colleagues to further their hidden agendas.

816 Ibid.

2.8 Freedom of Expression

The international and regional instruments of human rights recognize the right of freedom of expression.

Article 19 of the UDHR says that;

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 18 of the Constitution of United Republic of Tanzania of 1977 says that

- (a) Every person has a freedom of opinion and expression of his ideas;
- (b) has outright to seek, receive and, or disseminate information regardless of national boundaries;
- (c) has the freedom to communicate and a freedom with protection from interference from his communication;
- (d) has a 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.

Section 18 (1) of the Constitution of Zanzibar, 1984 states that;

Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.

In addition, Section 18 (2) of the Constitution of Zanzibar, 1984 states that;

Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.

Surprisingly though, the human rights stated in the Constitution of Zanzibar, 1984 are curtailed by a Section 24.

The Section 24 (1) which state that;

The human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a

person in manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest and can be limited by the law enacted by the House of Representatives if that limitations is necessary and agreeable in the democratic system.

At several local platforms, practicing journalists have been voicing their opposition over the way the Right to Information is denied in Zanzibar notwithstanding the inclusion of provisions in international and regional treaties and the municipal laws.

Journalists have been complaining that it has been difficult to get the information they need from different sources. It has been said that several leaders from the grassroots to the national level have been reluctant to release information even if it is important to the public.⁸¹⁷

Zanzibari journalists through the support of the Media Council of Tanzania (MCT) have been launching an aggressive campaign to push for the Media Bills; one is the Right to Information and the second one is the Media.

The MCT Zanzibar Office Programme Officer, Ms. Shifaa Said complained that many leaders in District and Regional Offices, Ministries and Executive think it is their right to deny people and reporters information.

She said the MCT has been campaigning for the two proposed Bills right from 2009 and so far the campaign seems to have gained support from the policy makers in Zanzibar. The Right to Information in Zanzibar remains questionable.

In an effort to ensure the right to information, the Media Council of Tanzania (MCT) has organized and sponsored a special five day trip of nine legislators; seven from the National Assembly and two from the House of Representatives to India to familiarize with benefits of the right to information.⁸¹⁸

The trip is part of the well calculated lobbying mechanism by the MCT to influence for enactment of the right to information Act in Tanzania as well as in Zanzibar.⁸¹⁹ The effort to ensure the right to information Act is premised on the principle of right to information as stipulated in Section 18 of the Constitution of Zanzibar, 1984.

The two proposed bills do not aim at creating opportunity to release national secret information but aim at increasing transparency in the government and benefit the people in terms of information.

817 *Daily News*, issue No 10,738, Wednesday, 19th September, 2012, p. 10.

818 Shifaa Said, Programme Officer of the Media Council of Tanzania (MCT) Zanzibar Office, said in an interview with one of the authors of this report, on 23rd September, 2012 in Zanzibar.

819 *Ibid.*

There are a number of Acts which hinder the freedom of press and conflict of media laws and other laws. For example, the Zanzibar Newspapers Act⁸²⁰ which has a lot of sections that needs to be amended in order to strengthen the Press Freedom in Zanzibar. Either some sections are outdated, some need to be deleted and new sections should be added to enable the Act to conform to time, the rule of law and good governance in which Tanzania and Zanzibar have embarked on.

The Broadcasting Commission Act⁸²¹ has numerous shortcomings. For example, the Commission is headed by a chairman⁸²² who shall be appointed by the president. However, the law has not set any qualification for the appointment of the chairman.

In addition, the chairman⁸²³ shall hold the office at the pleasure of the president. This is not fair as it casts doubt that the president may dictate terms and at the same time the chairman will not work independently. This is a weakness that may affect the performance of the function of the chairman.

Section 42 (5) of the Election Act⁸²⁴ says that;

“any person or institution which shall declare the election results of the president before being announced by the Commission shall be liable and if found guilty shall be liable to pay a fine of not less than 500,000/- or be imprisoned of not less five years or both punishments.”

This Section was particularly passed as a result of one private television based in Tanzania Mainland announcing the Zanzibar presidential results in the 1995 elections. The current trend shows that media use to inform the public of the counting exercise of votes and to even predict the winner pending the final official announcement by the Electoral Commission.

The MCT Programme Officer insisted that one of the major proposals which emerged from the consultation with various stakeholders in Tanzania Mainland and Zanzibar on the need to have two separate laws was one which would be an omnibus law to deal essentially with issues of Right to Information, access to information and freedom of expression.

The other law would deal mostly with the administration and regulation of the media and media practitioners.

Freedom of expression is not only for journalists. Other people in the society should also enjoy the right to freedom of expression. However, some people

820 The Registration of News Agents, Newspapers, and Books Act, 1985 (Act No. 5 of 1988).

821 The Zanzibar Broadcasting Commission Act, 1997 (Act No. 7 of 1997).

822 Ibid Section 6 (1).

823 Ibid 6 (6).

824 The Election Act, 1984 (Act No. 11 of 1984).

who had expressed their thoughts found themselves in trouble. A practical example is that of famous Isles cleric Sheikh Fadhil Soraga who was on 6th November, 2012 injured after an unknown person threw at his face, liquid believed to be acid. He suffered severe injuries and travelled to India for further medical attention.



Zanzibar's well known cleric, Secretary to the Mufti of Zanzibar Sheikh Fadhil Soraga is taken out of the Mnazi Mmoja referral hospital to the Aga Khan Hospital in Dar es Salaam for further medical attention. An unknown person had thrown acid on his face. It has been reported that the cleric was transported to India for further medical attention.

It is believed that the cleric was attacked because to his government's inclination and allegations that he gave radical remarks against those who used Islamic religion as a camouflage to further their hidden agenda.

2.8.1 Censorship of the Media Freedom

Journalists from both private and public media have raised concern over the censorship of stories by the editors.⁸²⁵ They claimed that some stories of public interests got spiked on grounds of editorial policies or fear of carrying unpleasant pieces to the government. Most of the stories, according to the journalists, got spiked during the religion related violence alleged to be masterminded by *UAMSHO* and during the Bububu by-election.

In addition, the Zanzibar Broadcasting Commission issued a letter to all radios in Zanzibar to stop announcing any about the *UAMSHO* broadcasts during the two day riots in the Zanzibar Municipality.

⁸²⁵ The journalists interviewed opted for anonymity to avoid losing their jobs.

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TANZANIA

TUZ/SGL.2/VOL2/42

19/10/2012

MKURUGENZI MTENDAJI
ZENJ FM RADIO
ZANZIBAR

KUH: KUSITISHA MATANGAZO YA VIPINDI VYA UAMSHO

Kwa heshima naomba uhusike na mada ya hapo juu.

Kutokana na kukabiliwa na machafuko ndani ya Nchi, kumejitokeza baadhi ya vikundi vya watu wanaojitua Uamsho na kusababisha vurugu ndani ya Nchi, Tume ya Utangazaji Zanzibar inasimamisha Matangazo yote yanayohusiana na vurugu hizo kwa vituo vyote vya Utangazaji ikiwemo TV na Radio.

Hivyo basi kituo chochote kitakachokwenda kinyume na agizo hili bila ya idhini ya Tume ya Utangazaji Zanzibar hatua zinazofaa zitachukuliwa dhidi yake.

Nategemea kupata ushirikiano mwema ili kuendeleza Taifa mbele.

Ahsante,

MTUMWA B. MZEE
/KATIBU MTENDAJI
TUME YA UTANGAZAJI
ZANZIBAR

Part II

Zanzibar
Human
Rights
Report

2012

2.8.2 Harassment of Journalists

A Zanzibar based correspondent of Deutsche Welle and *Mwananchi Newspaper* complained that in the course of performing her professional duties she was stabbed in the leg by some youths believed to be members of *UAMSHO* at Mbuyuni mosque.⁸²⁶ Another journalist of *Channel Ten*, Mr. Munir Zakaria was slapped on his face when he was about to record the *UAMSHO* activities at the Mbuyuni mosque.⁸²⁷

The journalist for the *Guardian* and *Nipashe* Newspapers, Mr. Mwinyi Sadalla who was charged for sedition contract to Section 47 (1) (a), 48 (1) (c) and Section 37 of the Registration of Newspaper Act, 1988 (Act No. 5 of 1988) had had his case stated in 2010 and was dismissed by the Vuga Regional Magistrate Court in 2012 after the prosecution failed to give evidence.⁸²⁸

Mr Sadalla claimed that it all started when he reported that the Gapco Oil Company had built a Petrol Station at Chwaka by the order of President of Zanzibar and that the President of Zanzibar had received shares of 30%. The case against Mr. Sadalla was opened in 2010.⁸²⁹

It has also been alleged by some journalists who opted for anonymity that the police used to stop them from entering the Vuga Regional Magistrate court to cover the proceedings of the criminal case facing eight *UAMSHO* leaders.

Some journalists had accused many government officials for failing to cooperate with journalists and denying them to give information on fundamental issues relating to the life of the people. A Zanzibar based correspondent of the *Guardian* and *Nipashe* newspapers, Mr. Mwinyi Sadalla told the researchers that he was denied access to talk to the Director of Public Prosecutions (DPP) in Zanzibar several times.

Mr. Sadalla wanted to ask the DPP the main legal arguments that led his office to block the granting of bail to eight men believed to be key leaders of the *UAMSHO*. The *UAMSHO* leaders were charged with inciting violence and causing chaos in the Zanzibar Municipality.⁸³⁰

2.8.3 Poor Coverage for Public Broadcasting Media

The coverage of the Public Broadcasting Media in the competitive broadcasting age has been received with a mixed feeling. Findings show that listeners and viewers were generally of the opinion that the Zanzibar Broadcasting Corporation (ZBC) performance has improved since the proliferation of

826 Salma Said blog on 22nd October, 2012.

827 Ibid.

828 Mr. Mwinyi Sadalla told the researchers in an interview which conducted at his office on 11th December, 2012.

829 Ibid.

830 *The Citizen*, 09th November, 2012.

broadcasting outlets in Zanzibar.⁸³¹ It has been recorded that a total of 257 (52.4 per cent) of the respondents said the performance of ZBC has improved while 220 (45 per cent) said it has declined.⁸³²

However, 69 (89 per cent) of ZBC employees said the performance of the public broadcaster has declined over the years and only nine (11.5 per cent) said it has improved.⁸³³

Mwaffis's research report quoted one *Sauti ya Tanzania Zanzibar* (STZ) employee said "the government has abandoned the organization and we feel rejected and ignored. The government is not serious with STZ because it uses STZ for its own political purposes or otherwise. Unfortunately, it does not want to invest in it."

The research report further quoted another employee as saying that "for instance, we have to buy pens and notebooks for our daily official duties and pay internet cafes for searching for material for our programmes."

The findings show that the ZBC remains the station of choice for many Zanzibaris, followed by Zenji FM and Spice FM, respectively.⁸³⁴ Data indicated that 324 (42 per cent) of the respondents listened to STZ and 211 (27.30 per cent) listened to Zenji FM while 128 (17 per cent) listened to Spice FM.⁸³⁵ Television Zanzibar (TVZ) was the one watched by most Zanzibaris (44 per cent).⁸³⁶

It is understood however that foreign radio and television stations including those from the Tanzania Mainland overshadowed ZBC. Listeners and viewers like to tune to their radios and televisions to foreign electronic media to get up to date information. It is largely believed that ZBC editorial policy is not independent and most news covered by the media are in favour of the government in power.

2.9 Conclusion

There is the need of further improvement of freedom of expression and media to enable the people to make well informed decision about their lives. The government should phase out its hand in controlling the public and private media as this does not augur well in the democratic society. A media house or a person acting irresponsibly should be taken to court instead of government's interference.

831 MWAFFISI, Samwilu, *Performance of Public Broadcasting in Zanzibar in Age of Stiff Competition*, Research Report November 2011, but was launched in Zanzibar in early 2012.

832 Ibid, p. 29.

833 Ibid.

834 Ibid, p.31.

835 Ibid.

836 Ibid.

CHAPTER THREE

Political Rights

3.0 Introduction

Zanzibar has a long political history. A number of books by prominent national and international scholars covered the political aspect. It seems some sections of the population in Zanzibar are not aware of the fact that political rights are part of human rights and denial of political rights which falls under the first generation of human rights is also violation of human rights.

International, regional and national legal instruments protect the political rights. However, political rights is one of the human rights the people do not have access to enjoy as part of the democratic demands especially to those countries which are governed directly or indirectly by dictatorship.

3.1 Political History

Zanzibar's political history can be traced way back to the Omani presence in Zanzibar, when Zanzibar was under the British Protectorate, the struggle for independence of Zanzibar, the fall of Independent Zanzibar, the Revolution, the post revolution era under the leadership of the first Zanzibar President Sheikh Abeid Amani Karume from 1964 to 7th April, 1972 when he was assassinated.

In addition, Zanzibar's political history includes the leadership of Alhaj President Aboud Jumbe from 1972 to 1984, the merger of the Afro Shirazy Party and Tanganyika National Union (TANU) to create the *Chama Cha Mapinduzi* (CCM), the leadership of third Zanzibar President Ali Hassan Mwinyi, the leadership of the late President Idris Abdul Wakil, from 1985 to 1990, the leadership of the President Salmin Amour from 1990 to 2000 – a period that saw the revival of the multi party system in Tanzania in 1992, the leadership of President Amani Abeid Karume who facilitated the formation of the Government of National Unity (GNU) and the leadership of the Dr Ali Mohamed Shein.

Each of the foregoing leadership had its ups and downs. In fact, in some cases the political road was bumpy, some people were jailed, killed, persecuted, intimidated, dismissed from public jobs and some people fled the island to a neighbouring country for fear of political persecution. There is a lot to be written in terms of Zanzibar's political history.

3.2 Right to Participate in Governance

The word Governance can be described to mean that the act of governing.⁸³⁷ It relates to decisions that define expectation, grant power, or verify performance.⁸³⁸ It consists of either a separate process or part of decision making or leadership process.⁸³⁹

Article 21 of the UDHR says 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 government; this shall be expressed in periodic and genuine elections which be held by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 25 of the ICCPR says 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 the 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.

Based on the above and democratic demands, Zanzibar has been holding elections periodically, after every five years. Qualified voters enrolled in the Permanent Voters Register (PVR) get the opportunity to exercise their constitutional right to elect leaders of their own choice. However, in some cases there have been allegations of irregularities and the use of excessive force during the voting days, something which is claimed to be against democratic principles.

3.3 Right to Participate in Governance in Zanzibar

The Constitution of Zanzibar, 1984 and the Constitution of the United Republic of Tanzania, 1977 confer a right to the people to take part in the country's elections, the elections for Zanzibar under the Zanzibar Electoral Laws as well

⁸³⁷ <http://en.wikipedia/wiki/governance> visited on 19th November, 2012.

⁸³⁸ Ibid.

⁸³⁹ Ibid.

as the elections for the Union under the Union National Electoral Laws.⁸⁴⁰

In this context, this part of the report will concentrate on Zanzibar elections held in 2012 only. This is because there was no union elections held in Zanzibar in 2012, the year in which this report is supposed to concentrate. Elections is one part of participation in the governance

The Zanzibaris of the age of majority are entitled to take part in the Zanzibar president elections, members of the House of Representatives and councilors elections. The elections are exercised pursuant to other laws of the land.

The Zanzibar Electoral Commission famously known here as ZEC is established by Section 119 (1) of the Constitution of Zanzibar, 1984 which says that;

There shall be a Zanzibar Electoral Commission.

ZEC activities are governed by the Act⁸⁴¹ which is the responsible organ of management and supervision of the elections of the President of Zanzibar, members of the House of Representatives and councilors.⁸⁴² The ZEC chairman is appointed by the president in the manner deems fit.⁸⁴³ Other members are also appointed by the president though in consultation with the Leader of Government business in the House of Representatives and two members are appointed by the president on recommendation of the Opposition Leader in the House of the House of Representatives or if there is no opposition leader by consultation with the political parties.

There is an argument that the appointment of the chairman of the Electoral Commission by the president who is also a leader of political party reflects a sort of intervention in the management of the electoral process. However, this argument was countered in the case of *Mabere Marando and Edwin Mtei v. Attorney General*.⁸⁴⁴ It was decided that the appointment of the Commissioners to be done by the president who is also a political party leader alone is not the reason to make the Commission not to perform its duties independently.

Another argument emerged that ZEC has been given more power in the exercise of its functions as it is stipulated in the Constitution ⁸⁴⁵ which says that;

No court shall have jurisdiction to enquire into anything done by the Zanzibar Electoral Commission in the performance of its functions in accordance with the provisions of this Constitution.

840 Elections Act, 1985 (Act No. 1 of 1985).

841 Elections Act, 1984 (Act No. 11 of 1984).

842 Ibid Section 5 (a).

843 Section 119 (1) (a) of the Constitution of Zanzibar, 1984.

844 High Court of Tanzania, Civil Case No. 168 of 1993.

845 Section 119 (13) of the Constitution of Zanzibar, 1984.

However, the decision of the Electoral Commission can be brought into question if the decision contravenes the Constitution or the law of the land.⁸⁴⁶ In the original case was whether regulations prepared by the Electoral Commission and signed by the Vice Chairman or the Director of Elections were valid.

The Court said Article 74 (12) of the Constitution of the United Republic of Tanzania, 1977 which is *mutatis mutandi* of Section 119 (13) of the Constitution of Zanzibar, 1984 but the Court has the authority because the Constitution itself has given power to the court and clearly stipulates that every person is bound to respect the Constitution and the laws of the land.

The interest of the people of Zanzibar in matters relating to elections has increased exponentially over the last decade and especially in this era of the Government of National Unity (GNU).

The specific interests in the election matters is the composition of the Zanzibar Electoral Commission (ZEC), the management of the elections, the honest and seriousness of the Commission in running elections, operations of security forces falling under the Union and Zanzibar Governments, the validation of the results, the response of donor communities and the reaction of the electorates based on the elections outcome.

Zanzibar conducts periodical elections, after every five years. The last election was held in 2010. Giving the general assessment of ZEC to journalists on 27th December, 2012, the ZEC chairman Khatibu Mwinyi Chande said they have done their best to run the democratic elections citing the 2012 elections as the showcase of their performance.⁸⁴⁷ The ZEC was expected to wind up its terms of office on 1st January, 2013.⁸⁴⁸

However, there have been two by-elections in 2012. All the elections were of the House of Representatives. The first by-election was for the Uzini seat in Unguja Central District and the second one was for Bububu seat in Unguja West District following the deaths of the former holders of the two seats.

There is very little to write home on the Uzini constituency. CCM recaptured the seat, after its candidate Mr. Mohammed Razza obtained 5,377 votes out of 5,903 the total valid vote which is equivalent to 91.1 per cent defeating CHADEMA candidate Mr. Ali Mbarouk Mshimba who got 281 votes which is equivalent to 4.8 per cent.⁸⁴⁹

846 *Attorney General & Two Others v. Amani Walid Kabourou* (1997) TLR 156.

847 Zanzibar Broadcasting Commission-Radio Zanzibar news bulletin on 28th December, 2012 at 7.00am.

848 *Ibid.*

849 A copy of the Uzini by-election results was released by the Zanzibar Electoral Commission Head Office at Maisara on request by the Zanzibar Legal Services Centre on 20th September, 2012.

Other candidates were Ms. Salma Hussein of CUF who polled 223 votes which is equivalent to 3.8 per cent, Mr. Khamis Khatib Vuai of TADEA who scored 14 votes which is equivalent to 0.2 per cent and Mr. Rashid Yussuf Mchenga of AFP who collected eight votes which is equivalent to 0.1 per cent.⁸⁵⁰

The Uzini by-election results indicated that it is the CCM stronghold and other political parties took part as a matter of formality.

The Bububu by-elections was a closely contested and was marred by what has been described as riots and in some cases warning shots had been fired to disperse the unwanted crowd at polling stations especially the Beit el Ras voting station where and the Field Force Unit had to trigger teargas canisters. Unlike the general elections, the Bububu by-elections had left an indelible mark on the Government of National Unity (GNU).

The Returning Officer of the Bububu by-elections, Mr. Suluhu Ali Rashid declared the ruling CCM candidate Mr. Hussein Ibrahim Makungu the winner, scoring 3,371 votes which is equivalent to 50.7 per cent out of 6,720 total votes cast defeating his main rival Mr. Issa Khamis Yussuf by a slim margin. The CUF candidate got 3,204 votes which is equivalent to 48.2 per cent. The CUF candidate did not recognize the election outcome claiming a lot of irregularities in the voting process. He refused to sign a form accepting the results.

It was alleged that the Second Vice President of Zanzibar Ambassador Seif Ali Iddi to have been behind the election problems by the CUF Deputy Secretary General as the person behind the election problems. However, the Minister of State in the President's Office Mr. Mohammed Aboud refuted the allegations as baseless and aimed at lowering the reputation of the second vice president of Zanzibar.⁸⁵¹

The First Vice President of Zanzibar who is also the Secretary General of CUF Mr. Seif Shariff Hamad⁸⁵² made a statement condemning the use of excessive force by armed security forces against his party supporters during the Bububu by elections.

He accused some leaders of the Government of National Unity (GNU) and *Chama Cha Mapinduzi* (CCM) for causing the unrest during the voting day of the Bububu by-elections saying some youths holding guns and hiding their faces were in the forefront in beating people.⁸⁵³

The allegations were however dismissed as baseless by the CCM Deputy Secretary General (Zanzibar) Mr. Ali Vuai saying the CUF youths were to blame for the unrest as they were blocking others from going to vote.

850 Ibid.

851 Zanzibar Broadcasting Corporation (ZBC) through Television Zanzibar news bulletin on 19th September, 2012 at 8.15 pm.

852 Zanzibar Broadcasting Corporation (ZBC) through Radio Zanzibar news bulletin on 22nd September, 2012 at 7.00 am.

853 Ibid.

CUF had filed an election petition No 22/2012 to the High Court of Zanzibar disputing the Bububu by-elections claiming irregularities and election violence as the main cause that led the party to lose the election race.⁸⁵⁴ The Registrar of the High Court of Zanzibar, Mr. George Kazi was quoted as saying that the election petition would be heard by Judge Abdulhakim Ameir Issa.⁸⁵⁵

Other parties that had taken part in the Bububu by-elections with their respective candidates and votes in the brackets were ADC (45 votes – Ms. Zuhra Bakari Mohammed), AFP (eight votes-Abubakar Hamad Said), Jahazi Asilia (three votes-Mtumweni Jabir Seif), NCCR MAGEUZI (three votes-Haroun Abdallah Said), NRA (one vote-Suleiman M. Abdalla), SAU (four votes-Juma Metu Domo) and TADEA (three votes-Seif Salim Seif).

Simple analysis based on the results of the Bububu by-elections and accusations and counter accusations on election irregularities and sporadic election violence among the two main political parties here – CCM and CUF shows that there is problem in the election management involving ZEC as supervisory body on one side and other election stakeholders on the other hand.

One could not expect election related violence especially in this era of the Government of National Unity (GNU) involving the two major parties. In this state of affairs a quick question sinks in the mind of a person is the survival of the GNU itself. It seems the parties concerned are now trying to hold back tempers but with time the parties may come in with their true colours and anything may happen any may even endanger the life of GNU.

Whatever the criteria, the Bububu by-elections again goes down in history that the Zanzibar elections are far from free of controversy regardless of the fact that whether the country is or not in the Government of National Unity. It also cast doubt that suspicious and divisions among the people gather momentum whenever Zanzibar approaches elections.

The operation of GNU government remains a conundrum with senior government officials issuing contradictory remarks. As the Second Vice President of Zanzibar who is also the head of government business in the House of Representatives Ambassador Seif Ali Iddi said the GNU was enjoying a smooth running.⁸⁵⁶

On the other hand, the First Vice President of Zanzibar made the accusations against some officials in the GNU government of interfering with the operations of the government with the objective wrecking the GNU government.⁸⁵⁷

854 *Zanzibar Leo*, issue No. 3897, Saturday, 6th October, 2012, p. 1.

855 Ibid.

856 The Speech of the Second Vice President of Zanzibar, Ambassador Seif Ali Iddi he had delivered during the closing ceremony of the Eight Meeting of the House of Representatives on 10th August, 2012, p. 3.

857 The First Vice President of Zanzibar, Maalim Seif Shariff Hamad made the accusations in his speech to journalists he delivered on 6th October, 2012 at the Grand Palace Hotel at Malindi to explain the achievements and problems of his ministry, p. 2.

However, Mr. Hamad had categorically insisted that the government would take deliberate efforts to educate such people on the importance of GNU government.⁸⁵⁸

3.3.1 Legal Framework

The issue of Ordinary Resident in Zanzibar is a legal one, having its genesis. However, it has now been linked to politics especially the election issue. The legal framework of the issue can be explained from two regimes, namely when Zanzibar was under the British Protectorate and the post-revolution era.

The applicable laws passed when Zanzibar was under the British Protectorate about the Zanzibaris were:

- (1) The Nationality Law of 1911;⁸⁵⁹
- (2) The Nationality Law of 1952 (Chapter 39);⁸⁶⁰
- (3) The Registration Law of 1954 (Chapter 42);⁸⁶¹
- (4) The Registration Voluntary Law, No. 2 of 1963;⁸⁶²
- (5) The Constitution Act No. 10 of 1963;⁸⁶³
- (6) The Electoral Law of the Legislative Council of 1957 (Chapter 89).

The applicable laws passed after the formation of the Union of 1964

The Union of the then Tanganyika and Zanzibar which was formed on 26th April 1964, the sovereign of Zanzibar and Tanganyika ceased. This can be described to mean that the question of citizenship was only of Tanzania. A number of applicable laws were passed after the formation of the Union.⁸⁶⁴

The Applicable Laws passed when Zanzibar was under British Protectorate and after the formation of the Union of 1964 were:

858 Ibid p. 2.

859 PANDU, Iddi Hassan, *Uzanzibari na Ukaazi, Msingi wake Kikatiba na Kisheria: Mtazamo wa Ndani, ZANZIBAR TUITAKAYO: UJENZI WA UVUMILIVU WA KISIASA, Mpango wa Utafiti na Elimu ya Demokrasia Tanzania* (REDET) 2011, p. 17.

860 Ibid, p. 18.

861 Ibid, p. 19.

862 Ibid, p. 20.

863 Ibid.

864 The Union Act of Tanganyika and Zanzibar of 1964, The Resident Registration Act No. 11 of 1966, The Constitution of the United Republic of Tanzania, 1977, The Citizenship Act (Chapter 357), The Zanzibari Act, 1985 (Act No. 5 of 1985), The Constitution of Zanzibar, 1984, The Elections Act, 1984 (Act No. 11 of 1984), The Registration of Zanzibari Resident Act, 2005 (Act No. 7 of 2005).

3.3.2 Ordinary Resident Requirement

There are two different issues in this part; firstly, the Chapter explains a Zanzibari as governed by the Zanzibar Act⁸⁶⁵ and secondly as Ordinary Resident Requirement.

As per Section 3 (1) of the Act a Zanzibari in this context is explained as;

Any person who is a citizen of Tanzania in accordance with the laws relating to Citizenship, and who has been residing in Zanzibar before and up to 12th January, 1964 shall be a Zanzibari.

While Section 3 (2) of the same Act says that;

Any person who, as from the 26th Day of April is a Citizen of Tanzania and who was born in Zanzibar shall be a Zanzibari if both of his parents or his father or his mother as Zanzibari in accordance with this Act.

Section 3 (3) of the same Act says that;

Any person who is a citizen, and who before the 26th Day of April, 1964 was a Zanzibari shall be a Zanzibari if he has not lost his Tanzanian citizenship.

3.3.3 Zanzibar Resident Identity Card (ZAN-ID)

The issue of ZAN-ID is governed by the Act⁸⁶⁶ that was passed by the House of Representatives. A Zanzibari means a citizen of Tanzania resident in Zanzibar as defined in the Zanzibari Act, 1985 (Act No. 5 of 1985).⁸⁶⁷

The President shall appoint a Director of Registration for the purpose of this Act. Duties of the Director of Registration in accordance with Section 6 of this Act are;

- (i) register every Zanzibari resident in Zanzibar who has attained the age of eighteen years and above;
- (ii) issue identity cards to every registered Zanzibari resident in Zanzibar;
- (iii) Maintain a record of all Zanzibaris resident in Zanzibar to whom this Act applies.

Registration of Zanzibari resident is a compulsory as explained in Section 7 (1) of this Act says that;

⁸⁶⁵ Zanzibari Act, 1985 (Act No. 5 of 1985).

⁸⁶⁶ The Registration of Zanzibaris Resident Act, 2005 (Act No. 7 of 2005).

⁸⁶⁷ Ibid Section 2.

The Director may be notice in the Gazette or in such other manner as he may think best fitted to bring the contents thereof to the notice of the persons affected thereby require any person in any particular area of Zanzibar to attend before a registration officer at such place and between such dates as may be specified in such notice for the purpose of registering under the provisions of this Act.

The Act gives the power to the Director to refuse to issue, withdraw or cancel identity cards as Section 12 of this Act says that;

The Director may refuse to issue or may cancel an identity card issued to any person who is not a Zanzibari resident in Zanzibar.

Interestingly though and it is legal absurd that, any person feels aggrieved by the decision of the registration officer may appeal to the Director as Section 13 (1) says that;

Any person aggrieved by a decision of a registration officer may appeal to the Director against such decision.

While the same Section 13 (2) says however that;

Any person aggrieved by a decision of the Director may appeal against such decision to the Minister whose decision shall be final.

The question comes with regards to the finality clause that the decision of the Minister is final and denies a chance to the Court of Law to entertain the matter and gives its position. Under the good governance system, the finality clause of this nature is unacceptable.

There have been complaints over the way the ZAN-IDs are issued and some government officers in authorities responsible of issuing the identity cards have been accused of frustrating the people in getting the cards.⁸⁶⁸

By law, a Zanzibari who attains 18 years is qualified to get the cards but the situation is different. The President of Zanzibar and chairman of the Revolutionary Council, Dr Ali Mohamed Shein is quoted to have urged all the officers responsible of issuing ZAN-ID to work on the complaints.

There have been unconfirmed reports that some non-Zanzibaris and even not Tanzanians from neighbouring countries have managed to get ZAN-ID contrary to the existing Laws. This goes on to explain why that those foreigners with the ZAN-ID enjoy the rights and benefits equally offered to Zanzibaris.

868 The First Vice President of Zanzibar, Maalim Seif Shariff Hamad made the accusations in his speech to journalists he delivered on 6th October, 2012 at the Grand Palace Hotel at Malindi to explain the achievements and problems of his ministry.

It is understood that some sections of Zanzibaris in Unguja and Pemba Islands had refused to participate in the recent National Population Census arguing among other things that they did not see it fit to be counted, for what had been described as denial to be given the ZAN-IDs. This move can also be interpreted that some people had taken an advantage of the ZAN-IDs to frustrate the country's socio-economic development programmes.

The government moved for an Act to amend the registration of Zanzibaris Resident Act, 2005 (Act No. 7 of 2005) and other related matters.

According to the bill, the main objective of the amendment is to identify all non-Zanzibari residents living in Zanzibar. Further to their identification, the process will also contain incidences of fraudulent registration under the current process of registration of only one category of persons resident in Zanzibar.

Another objective of the amendment is that the registration of non-Zanzibari resident will enable the government to plan and monitor even better not only social and economic activities, but also policy and legal interventions required to improve economic development and social well being in Zanzibar.

3.3.4 Right to Stand for Elections

The right to stand of Elections in Zanzibar is grouped into two parts; one is of those qualifying to stand for the Zanzibar Elections which are, the Presidential elections, members of the House of Representatives, councilors and the Union President election and members of the National Assembly.

The second group is of those who are only qualified to stand for the Union elections which are the Union presidential elections and members of the National Assembly. The Union elections are governed by the Elections Act, 1985 (Act No.1 of 1985) which is supervised by the National Electoral Commission.

This part will focus on those qualifying to stand for the Zanzibar elections excluding the Union elections as this part falls under the Annual Human Rights Report for the Tanzania Mainland.

In the Zanzibar Presidential elections, any person wishing to compete for the highest office must be nominated by a political party as there is no right to independent candidate. Section 31 of the Elections Act⁸⁶⁹ says that;

Whenever a presidential election is to be held, each registered political party intending to participate in the Presidential election shall submit to the Commission a name of a presidential candidate for that party.

According to Section 26 (2) of the Constitution of Zanzibar, 1984, any person may be eligible for election as President if that person;

⁸⁶⁹ The Elections Act, 1984 (Act No. 11 of 1984).

- (a) is a Zanzibari by birth;
- (b) has attained the age of forty years;
- (c) has qualifications that enable him to be elected as member of the House of Representatives;
- (d) is a member of and a candidate by a political party duly registered in accordance with Political Parties Act.

In the House of Representatives elections, any person wishing to take part in the election must be nominated by his/her party as Section 46 (1) of the same Zanzibar Elections Act says that;

In order to be validly nominated to stand as a candidate for a constituency a person must be nominated in writing by not less than twenty five voters registered in the polling districts within the constituency for which he is a candidate.

According to Section 68 of the Constitution of Zanzibar, 1984 the qualifications for election of the House of Representatives are;

- (a) is a Zanzibari aged twenty one years;
- (b) is a registered or is qualified in an election constituency as a voter in an election for members of the House of Representatives;
- (c) can read, but if he has an impaired vision or other physical infirmity is capable of speaking Kiswahili;
- (d) is a member and candidate proposed by a political party that has permanent registration in accordance with Political Parties Registration Act, 1992;
- (e) is a person who is not qualified to contest elections pursuant to the provisions of this Article or pursuant to any law enacted by the House of Representatives.

In the Local Authority Elections, there are certain requirements must be met as explained in Section 58 (1) of the same Act that says;

A person shall be elected as a member of a Local Authority or stand as a candidate at an election for Local Authority if he is qualified for election;

Section 58 (2) of the same Act says that;

A person shall be qualified for election as a member of a Local Authority if he satisfies the following conditions that is to say:

- (i) he is a Zanzibari who has attained the age of twenty one years;
- (ii) he is registered as a voter and is not disqualified from voting under the provisions of the Act or any other law;

- (iii) he is the ordinary resident within the area of jurisdiction of the Local Authority;
- (iv) he can read and write in *Kiswahili* or English;
- (v) he is a member sponsored by a political party registered as such by the Political Parties Act, 1992; and
- (vi) he is engaged in lawful business.

3.4 Persons with Disabilities and the Right to Take Part in Governance

There is no discrimination in the Constitution or Law about the right to take part in Governance. All the people are treated on an equally footing. However it appears that persons with disabilities are reluctant to come forward to contest for political posts through registered political parties or their respective organizations for a number of reasons including cultural and historical factors and lack of education.

The question of Persons with Disabilities and the Right to take part in Governance needs a special impetus to ensure the vulnerable groups are treated fairly and squarely in the society.

In his closing address to the Eight Meeting of the Zanzibar House of Representatives on 10th August, 2012, the Second Vice President of Zanzibar, Ambassador Seif Ali Iddi admitted that people with disabilities are faced with numerous challenges including humiliation and stigmatization.

He said the Government was in the process put in place directives and policies to promote the welfare of the people with disabilities. In addition, all persons living with children with disabilities have been urged to send them to schools and to other social facilities available.

In another move, the Zanzibar Government has launched a special exercise to register all persons with disabilities in Zanzibar⁸⁷⁰ through Shehas.⁸⁷¹

So far, a total of 6,445 persons with disabilities have been registered in two Administrative Regions in Pemba and 3,002 persons were registered in Unguja North Region.⁸⁷² The exercise to register persons with disabilities continues.

In an effort to develop matters of people with disabilities, the Office of the First Vice President of Zanzibar had included all activities relating to disabilities in the government's institutions with the appointment of special officers in each institution to deal with the issues.

870 First Vice President of Zanzibar Maalim Seif Shariff Hamad said in his speech to journalists to explain the performance of his Ministry in the three months period from July, 2012. The First Vice President gave the speech at Malindi Grand Hotel on 6th October, 2012.

871 Sheha means a government leader at the lowest administrative unit.

872 First Vice President of Zanzibar Maalim Seif Shariff Hamad, Op.cit.

So far, 16 coordinating officers responsible for matters with disabilities have been allocated in different Ministries and given special training to strengthen their capacities in order to execute their responsibilities efficiently.⁸⁷³

The government's meagre financial resources have been singled out as the main hitch frustrating efforts to develop people with disabilities in the Isles.⁸⁷⁴ The government had on 29th September, 2012 launched a special Development Fund for Persons with Disabilities. The launching of the Fund was in line with the Persons with Disabilities Act, 2006 (Act No. 9 of 2006). During the launching ceremony which was officiated by the President of Zanzibar, Dr Ali Mohamed Shein, a total of 285m/- had been collected.

3.5 Institutional Framework

The power to conduct and supervise elections in Zanzibar is under ZEC. It has the power to conduct five Zanzibar elections excluding the union elections which are conducted by the National Electoral Commission.

Unlike in the past, there have been fewer criticisms leveled against ZEC and for the first time in history the opposition political parties to concede defeat publicly in 2010. The current ZEC composition includes two members from the opposition CUF. ZEC ended its five terms in office on 31st December, 2012 and is now up to the president to exercise his constitutional powers to appoint the chairman and commissioners.

3.6 Freedom of Association and Assembly

Although the Constitution of Zanzibar, 1984 provides the right to freedom of association and assembly but in reality this right is not enjoyed all the time. There have been cases in 2012 when the police had stopped the people from enjoying these rights in what had been termed as security reasons.

Many people believe that the police force do not act in the interest of peace but on political wishes. It seems that the police do not stand on neutral grounds and most of the time its influenced by politicians.

It is on record that highly respected judges in Tanzania had voiced concern over the way the police exercise its power to stop the people from enjoying the right of association and assembly.

3.7 Controversy over the Union

The controversy over the Union between the then Tanganyika and Zanzibar which was formed on 26th April, 1964 has been an issue in Zanzibar with some people demanding the three government system to iron the Union administrative and constitutional snags, while other people want the survival

873 Ibid.

874 Ibid.

of the two governments set up in the Union. A quick mechanism should be put in place to remove union problems.

The union problems between the two sides have been emerging periodically in Zanzibar. However, this time around it had taken a different dimension. Some government ministers, the Attorney General of Zanzibar Government and some members of the House of Representatives had taken the positions explaining the magnitude of the Union problems.

The Second Vice President of Zanzibar, Ambassador Seif Ali Iddi admitted in his closing speech of the Eight Meeting of the House of Representatives on 10th August, 2012 that Union problem had featured prominently in the proceedings of the budget sessions of the House of Representatives.

In fact, the Zanzibar House of Representatives organized a special seminar on Education of the Constitution to the legislators. In the seminar the key speakers were the Zanzibar Attorney General Honourable Othman Masoud Othman, the Director of Public Prosecutions in Zanzibar, Honourable Ibrahim Mzee Ibrahim, the Principal Secretary in the Ministry of State responsible of Finance Mr. Khamis Mussa, the Zanzibar Minister of Justice and Constitutional Affairs Honourable Abubakar Khamis Bakary and the old politician Mr. Hassan Nassor Moyo, Mr. Moyo served in the cabinet of the First President of Zanzibar, the late Abeid Amani Karume.

In principle, all of the key speakers were trying to explain the constitutional and administrative shortcomings in the Union.

The salient dominated in the proceedings of the seminar was that the legislators were seen to be divided along their political party ideological grounds and their personal positions about the Union.

There were those who wanted the Union, the only shining example in Africa to be reviewed and have a new outlook. There were those who spoke their ideas but did not want to cross their party line ideologies. The ruling party *Chama cha Mapinduzi* (CCM) ideology is two governments system and the Civic United Front (CUF) ideology is three government systems. The CUF Secretary General Honourable Seif Shariff Hamad was quoted as saying that key economic problems facing Zanzibar cannot be solved under the current format of two governments that has been in existence since 1964 saying he is the strong believer in a contract union.⁸⁷⁵

A series of seminars have been organized to educate the people on the Union and rationalization of the people to come out in a large number to give their opinions on the Union before the Commission responsible of collecting views on the best form of the Union Constitution.

⁸⁷⁵ zirpp@googlegroups.com on behalf of Muhammad) 10th October, 2012

The debate on the Union had gone too far in Zanzibar. Some religious related groups had taken part putting pressure on the Union set up and claimed the two sovereign states within the United Republic of Tanzania.

The *Jumuiyaya Uamsho na Mihadharaya Kiislamu (JUMIKI)* (The Association for Islamic Mobilisation and Propagation) went round the whole of Zanzibar explaining about the demerits of the Union saying it was in fact the Union favour of the Tanzania Mainland.

However, the mainlanders did not fold their arms on the Union claiming that the Articles of the Union and the Acts of the Union that legally created Tanzania were systematically undermined and the autonomy of Zanzibar subverted using the political guise of consolidating the Union.⁸⁷⁶

Generally, the newspaper's article by Honourable Lissu was directly citing the Tenth Amendment of the Constitution of Zanzibar, 1984 which among other things, boldly declares that Zanzibar is among the two countries that form the United Republic of Tanzania.⁸⁷⁷

There are a number of issues that are raised by both sides of the Union. However, the new Constitution is expected to show the way forward.

3.8 Conclusion

In the year 2012 the debate on the Union of Tanzania has occupied the central position in Zanzibar. There are people who want to have three government systems feeling that the current structure of the union does not benefit Zanzibar. There are also people who want the current structure of the union to continue as it is except the constitutional and administrative snags should be ironed out.

People are eagerly waiting for the draft of the new constitution of the union to see whether their opinions will find their way in the new supreme document.

876 LISSU, Tundu A.M., "Will the New Constitution Save our 'ailing' Union?", *The Guardian* on Sunday, 7th October, 2012, issue No. 0280, p. 10.

877 Ibid.

CHAPTER FOUR

Economic and Social Rights

4.0 Introduction

The rights to economic and social are not enforceable. The government may implement these rights if the financial situation improves. From this context, there have been serious complaints over the performance of the social sector especially provision of health and education services. In some cases, budgetary allocation to the ministry responsible for provision of economic and social services leaves much to be desired.

4.1 Right to Education

This part covers the education sector in Zanzibar including the government and private sector contribution towards the sector, school and university enrolment and key areas to the sector's success.

4.2 Legal Framework Governing the Right to Education in Zanzibar

In the legal framework of this part, the report will cover the international instruments which is the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, the African Charter on Human and People's Rights, 1981, the Constitution of the United Republic of Tanzania, 1977 and the Constitution of Zanzibar, 1984 to support our arguments. All these, international and domestic instruments, aim at protecting and promoting the human rights.

However, the report will make a situational analysis of what is described at the international and regional level and what is take place in Zanzibar to see whether the situation conform to the international instruments.

Article 26 (1)⁸⁷⁸ of the Global Human Rights instrument says that;

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

In addition, the Article 26 (2)⁸⁷⁹ says;

878 The Universal Declaration of Human Rights, 1948.

879 Ibid.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Further the Article 26 (3)⁸⁸⁰ says that;

Parents have a prior right to choose the kind of education that shall be given to their children.

4.3 Zanzibar Education Policy

There have arguments that the Education Policy of Zanzibar needs to be reviewed to conform to time and meet the expectations of the people. It is said the Ministry is operating on narrow budget and cannot meet the target of the policy.

4.4. Challenges Facing Education sector

There are a number of challenges facing the education sector. Most of the challenges are linked to the narrow budget allocation given to the ministry and as result plans cannot be turned out as a success story.

4.4.1 Budgetary Allocation

There has been slight development in the education sector of government's budgetary allocation and an increase of school buildings in 2012. A total of 110,091,291,000/- has been earmarked for the 2012/2013 financial year⁸⁸¹ covering the recurrent expenditure and development votes.

This year's budgetary allocation had gone up by about 7bn/- from 102,618,054,000/-⁸⁸² the amount of funds allocated for the 2011/2012 financial year. This amount covers different institutions falling under the Ministry of Education and Vocational Training and includes recurrent expenditure.

Taking into consideration of the inflation of double digits facing Zanzibar, it appears that the budget set aside for the education sector for 2012 may be affected in actual sense.

880 Ibid.

881 *Hotuba ya Waziri wa Elimu na Mafunzo ya Amali, Mheshimiwa Ali Juma Shamuhuna, Kuhusu Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka wa Fedha 2012/2013*, p. 83.

882 *Hotuba ya Waziri wa Elimu na Mafunzo ya Amali, Mheshimiwa Ramadhan Abdalla Shaaban, Katika Baraza la Wawakilishi Kuhusu Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka wa Fedha 2011/2012*, p. 78.

4.4.2 Registration of Nursery Schools

There has been slight improvement in the registration of nursery (preparatory) schools. Nine schools had been registered in 2012 bringing the total number of registered schools to 253⁸⁸³ from 244 schools in 2011⁸⁸⁴ and 238⁸⁸⁵ in 2010. Out of the registered 253 nursery schools in 2012, only 30 are government owned up from 29 in 2011 and 223 up from 215 are privately owned.

What is important to note is that the government had registered one nursery school throughout the year. In addition, the figures indicate that more nursery school pupils are sent to the private schools. This can be attributed to a number of reasons including the quality of education being offered between government and private run schools and capacity to accommodate the number of pupils.

The total number of pupils in nursery schools in 2012 is 31,583⁸⁸⁶ of whom 16,132⁸⁸⁷ are girls and 15,451⁸⁸⁸ are boys up from 26,400 pupils in 2011, an increase of 5,183 pupils.

4.4.3 Registration of Primary Schools

At primary school level, there has been an increase of 4,539 pupils in primary schools in 2012 compared to 2011. There are 242,229 in 2012 up from 237,690 in 2011 which is equivalent to 121.5 per cent compared to 118.15 per cent last year. The government primary schools enrolled all 34,155 pupils in 2012 of which 16,951 are girls and 17,204 are boys. The boys outnumbered the girls. No pupil had been left out.⁸⁸⁹ However, the Ministry's government speech did not explain about the congestion in classes.

At the nursery school level, the number of privately owned primary schools had dropped significantly. There is no apparent reason advanced so far account for the drop in number of primary schools. However, it may lead to a conclusion that the soaring operational cost is the main reason behind the decrease.

By 2012, there were 155⁸⁹⁰ government schools and 39⁸⁹¹ private schools making the total number of primary schools in Zanzibar 194. There is a drop in number of primary schools from 321 in 2011 of which 249 are government run and 72 are privately owned. So far, no reason had been put forward as regards the fall in number of primary schools.

883 *Hotuba ya Waziri wa Elimu na Mafunzo ya Amali, Mheshimiwa Ramadhan Abdalla Shaaban Katika Baraza la Wawakilishi*, Op.cit, p. 33.

884 Ibid. p. 28.

885 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, op.cit. *Tanzania Human Rights Report 2011*, p. 306.

886 *Hotuba ya Waziri wa Elimu na Mafunzo ya Amali, Mheshimiwa Ali Juma Shamuhuna Katika Baraza la Wawakilishi*, Op.cit, p. 1.

887 Ibid.

888 Ibid.

889 Ibid.

890 Ibid.

891 Ibid.

Similarly, the number of government secondary schools exceeded the private ones in 2012. Out of 271⁸⁹² secondary schools, an increase of 33 schools, by 2012, the government has 220⁸⁹³ up from 201 the previous year and 52⁸⁹⁴ up from 37 the previous belong to the private sector. The total number of students at secondary level, beginning Form One to Form Six is 81,667 of whom 38,122 are male and 43,545 are female.

The number of students at Compulsory Basic Lower Secondary Schools, from Form One to Form Two is 51,108⁸⁹⁵ which is equivalent to 86.6 per cent of students aged 14-15 and students in Upper Secondary Schools from Form Three to Form Six and Technical schools are 30,559.

4.4.4 Large Number of Pupils in Classes

There is a boom in the number of students in Zanzibar right from the nursery to secondary schools. In fact, in terms of number not quality, government schools have a bumper harvest. However, the teachers-students ratio⁸⁹⁶ at nursery, primary and secondary schools in Zanzibar. It is understood that Tanzania has the lowest GDP per capita. The Human Rights Report of 2011 has indicated about pupil-teacher ratio but the figure cast doubt in the real situation. In addition, the Zanzibar Educational System is constructed the school is free and every child has the right to attend.

It has been established however the pupil-ratio in Zanzibar especially at primary and secondary levels is 1:120⁸⁹⁷ that

In the United States, some states have enacted legislation mandating a maximum student-teacher ratio for specific grade levels.⁸⁹⁸ For example, figures may be biased as follows; if one classroom has a 30:1 ratio and another has a 10:1 ratio, the school could thus claim to have a 20:1 ratio overall.⁸⁹⁹

The pupil teacher-ratio is an indicator of education quality. In crowded classrooms with a high number of pupils per teacher, the quality of education suffers.⁹⁰⁰

The standard teacher-pupil ratio in Tanzania is 1:45 (one teacher to 45 pupils). Data from UNESCO on the pupil/teacher ratio in primary school show that

892 Ibid.

893 Ibid.

894 Ibid.

895 Ibid.

896 Student-Teacher ratio is the number of teachers in a school or university divided by the number of students who attend the institution.

897 An Officer with the Ministry of Education and Vocational Training, who opted for anonymity confirmed on 30th August, 2012 at 12.30 pm.

898 <http://www.org.on live.com> visited on 16th September, 2012.

899 Ibid.

900 Available at http://www.unescor.org/education.wef...rapport_2_2_1_0html-France visited on 16th September, 2012.

crowded classrooms are more common in Sub-Saharan Africa and Southern Asia than in other parts of the world.⁹⁰¹ In Secondary School, pupil/teacher ratio is lower than in primary school.⁹⁰²

Table 45: Tanzania teacher-student ratio in Secondary schools has been reported as follows:

Year	Per cent
2005	1:22
2006	1:29
2007	1:34
2008	1:37
2009	1:43

Source: lenana.net/blog

The pupil teacher/ratio in primary schools in Tanzania was last reported at 52.39 in 2008, 53.70 in 2009 and 50.76 in 2010, according to a World Bank released in 2011.⁹⁰³

Table 46: Average pupil/teacher ratio in secondary schools by MDG region, circa 2006 as follows:

MDG REGION	PUPIL/TEACHER RATIO
Developed countries	11.4
Commonwealth Independent States	10.9
Eastern Asia	19.0
South-Eastern Asia	22.8
Western Asia	15.3
Oceania	14.8
Southern Asia	26.4
Northern Africa	19.0
Sub-Saharan	25.8
Latin America and the Caribbean	16.6
World	18.0

Data Source: UNESCO Institute for Statistics, Data Centre, May, 2008.

901 HUEBLER, Friedrich, *International Education Statistics Analysis* on 16th November, 2008.

902 Ibid.

903 Available at <http://www.tradingeconomics.com/Tanzania/p> (<http://www.oregonlive.com>) visited on 16th September, 2012.

4.4.5 Shortage of Secondary School Science Teachers

The acute shortage of secondary school science teachers remains a problem in Zanzibar. Despite an increase in number of secondary schools, extremely insufficient of science teachers is a headache to the Ministry. In attempt to minimize the problem, the Zanzibar Ministry of Education and Vocational Training had requested Nigeria to assist in the issue.

Preparations were under way to send fifteen Secondary School science teachers to Zanzibar. The Principal Secretary in the Ministry of Education and Vocational Training was quoted in local newspapers⁹⁰⁴ as saying that initial plan was to send in 10 science teachers. However, five more teachers would be sent in.

Ms. Mwanaidi was quoted as saying that the Nigerian science teachers are volunteers and would be in Zanzibar on a two year contract.⁹⁰⁵ Zanzibar will not pay salaries but would be required to provide accommodation, transport and health facilities.

The idea of bringing in foreign science school teachers does not sink in the mind of reasonable persons. It is more important is to train more local teachers to enable them to handle science subjects.

It is on record that Zanzibar had in 1998 under the administration of retired President Dr. Salmin Amour employed Nigerian judges to ease an acute shortage of judges in the High Court. The judges, one of whom was given the post of the Deputy Chief Justice of Zanzibar, were working on contractual basis.

In addition, Nigerian judge Garba Tumaka was assigned to handle a treason case that faced 18 members of the opposition Civic United Front (CUF). They were charged to plot to remove from power and overthrow the government of the then President of Zanzibar, Dr. Salmin Amour.

4.4.6 Cost Contribution in Education

Basically, provision of education in primary and secondary schools is free as part of the fruits of the 12th January, 1964 Revolution. However, it has been proved that it is difficult the government to continue covering education expenses single handedly. In this regard, parents are asked to make a nominal contribution to public schools. However too, there is a government directive to all head teachers that no students should be expelled for failure to pay the nominal contributions.

904 *Daily News Online Tanzania*, Friday, 14th September, 2012, a story was written by Issa Yussuf.

905 *Ibid.* Available at <http://www.unescor.org/education.wef...rapport> visited on 14th September, 2012.

Generally, the government has phased out its financial support to University education especially in art subjects. There are a small number of students who enjoy government financial assistance in higher education. It is informed that the government supports those students who take higher students in science fields.

A number of students with sound academic qualifications cannot join universities for lack of financial support. This has forced students either to take loans from different lending institutions or opt out of higher studies.

4.4.7 Teachers' Training College

Three Teachers' Training Colleges have been established which are Muslim Academy at Mazizini in Unguja, Muslim Academy in Micheweni District and the Benjamin William Mkapa in Wete District in Pemba. The total numbers of trainees in the colleges are 516 of which 161 are male and 355 are female. A new curriculum is underway for the Teachers' Training Colleges biased in Competency Based Education and Information Communication Technology (ICT).

4.4.8 Early Pregnancies and Marriages

During 2011/2012, 28 cases of early pregnancies had been recorded from schools of these, three were among themselves, according to the budget speech of the Minister for Education and Vocational Training, Honourable Ali Juma Shamuhuna.

In addition, the Minister informed that a total of 15 cases of pregnancies had been reported during the period.

4.4.9 Lack of Facilities in Schools

Shortage of furniture, especially desks and chairs remains a problem especially in primary school levels in rural areas and lack of laboratory apparatus in some secondary schools. Some students are forced to squat on the floor. With financial support from private and foreign institutions, the Ministry continues to provide the facilities to offset the shortage.

4.4.10 Poor Performance of Secondary School Students

A total of 23,798 students sat for standard VII examinations in November 2011 out of whom 927 were admitted and passed in special secondary schools biased in business and science subjects which is equivalent to 4.0 per cent and the rest continue in ordinary secondary schools, according to the budget speech of the Ministry of Education and Vocational training for 2011/2012.

The budget speech also explained that a total of 19,666 students sat for Form II examinations of whom 11,041 which is equivalent to 56.1 per cent down from 58.2 per cent in the previous year had passed.

It has further been reported in the budget speech that a total of 11,877 candidates from government and private schools sat for Form IV National Examinations in October, 2011 and 9,020 passed which is equivalent to 75.9 per cent. A total of 1,813 candidates sat for Form VI National Examinations in February 2012 of whom 1,341 which is equivalent to 74.0 per cent passed down from 77.4 per cent in the previous year.

4.4.11 Shortage of Lecturers in some Higher Learning Institutions

There is a shortage of local qualified lecturers in Higher Learning Institutions. It is understood that some of the Higher Learning Institutions depend on part timers and foreign lecturers from neighbouring East and Central African countries. It is understood that some Higher Learning Institutions have sent their local lecturers for post-graduate studies in an attempt to off-set the shortage.

4.5 Right to Health

As other social services, the right to health is not an enforceable right. It depends upon the size of the financiers of the government to as buy essential drugs and send some patients abroad. A large number of patients in Zanzibar are given medical consultation from government hospitals and later are given a check list of medicines to be purchased at private pharmacies. The government does not have enough money to meet expenses of buying all the essential drugs. Some patients have to travel outside Zanzibar for further medical attention.

Some qualified Zanzibari specialists continue to leave Zanzibar in search of greener pastures.

4.5.1 Improvement of Health Services in Zanzibar

Some improvements have been recorded in different health sector⁹⁰⁶. Several units and departments have done well.⁹⁰⁷ More impressive performance are expected to be recorded in 2012/2013, according to the Health Minister.

4.5.2 Challenges Facing Health Sector

The Health Sector is faced with a host of challenges.⁹⁰⁸ The challenges includes extremely shortage of specialists,⁹⁰⁹ lack of medical experts due to lack of funds to train them⁹¹⁰, poor working conditions⁹¹¹, lack of equipment,⁹¹² low

906 *Hotuba ya Waziri wa Afya Mheshimiwa Juma Duni Haji Kuhusu Makadirio na Matumizi ya Wizara ya Afya kwa Mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi, Zanzibar*, p. 3.

907 Ibid.

908 Ibid, p. 91.

909 Ibid.

910 Ibid.

911 Ibid.

912 Ibid.

pay to medical personnel⁹¹³, lack of staff development programme,⁹¹⁴ lack of accommodation for medical personnel,⁹¹⁵ lack of capacity to run increased health centres,⁹¹⁶ increased rate of communicable and non-communicable diseases.⁹¹⁷ In addition, there is a shortage of equipment in public hospitals. For example, there is no Intensive Care Unit (ICU) in Pemba and the one in Unguja Island has a capacity of accommodating less than 10 people.

Moreover, medical personnel are under fire for being insensitive to help the premature children. A case at Kivunge Cottage Hospital in North Unguja region has been cited as an example of negligence of the highest order at the government hospital. One Daudi Pili Daudi complained that he had sent his wife to the hospital for delivery.

Delay in attendance by the medical personnel claimed to have resulted into the death of the infant. He claimed that his wife was left unattended for two days resulting in the death of the infant shortly after the delivery. The doctor incharge, Tamimu Hamad Said refuted the allegations saying it was a normal medical case which resulted into the death as a result of delivery complications.⁹¹⁸

4.6 Right to Clean Water

The international human rights law requires states to ensure everyone's access to a sufficient amount of safe drinking clean water for personal and domestic use uses.⁹¹⁹ The concept of basic water requirements to meet fundamental human needs was first established at the 1977 United Nations Water Conference in Mar del Plata, Argentina.⁹²⁰ Its Action Plan asserted that all peoples, whatever their stage of development and their social and economic conditions, had the right to have access to drinking water in quantities and of a quality equal to their basic needs.⁹²¹

Several international human rights conventions, including CRC and CEDAW, state on the right to safe and clean drinking water for the people.

4.6.1 Legal Framework governing the Right to Water in Zanzibar

Provision of clean and safe water to Zanzibar's 1.3 population falls under the government executing agency, the Zanzibar Water Authority (ZAWA). ZAWA is responsible for formulating water policies, supply of clean water and collection of nominal charges from water recipients. ZAWA is also charged

913 Ibid.

914 Ibid.

915 Ibid.

916 Ibid, p. 92.

917 Ibid.

918 *Zanzibar Leo*, issue no. 3860, Friday, 31st August, 2012, pp 1-2.

919 Ohchr.org.

920 Ibid.

921 Ibid.

with duty to contact international organizations on improvement of water. The water sector has not been privatized. Zanzibar had taken too long to introduce water charges purely for political reasons. However, there was time it was stated that supply of clean water to the people should be free as part of the fruits of the January 12th, 1964, revolution.

4.6.2 Current Situation in the Enjoyment of Right to Water

Currently those who enjoy the right of water is slightly above 50 per cent. The general picture that emerges is that most of the urban centres of Unguja and Pemba get clean and safe water. There is water rationing in some urban and rural areas to enable the people enjoy the precious liquid.

However, some people have decided to dig wells around their residential areas to get water. This has been necessitated due to the fact that the government could not supply water for a long time. A survey indicates most of residents of the Zanzibar suburbs are forced to line up for water.

Some of the rural areas get water on daily basis. There are some areas however do not get water. Residents of these areas have to walk long distances in search of water and balance buckets on their heads to their respective homes. A project of drilling 30 deep wells in the rural areas, laying of fresh water supplying pipes of between three and four inches and construction of water reservoir continues is underway.⁹²²

4.6.3 Poor and Old Water Infrastructure System

The African development Bank (ADB) is assisting in carrying out a major overhaul of water infrastructure system in Zanzibar.⁹²³ About 21 million US dollars has been set aside for the project.⁹²⁴ A feasibility study on social and economic of water network has also been carried out.⁹²⁵ One of the contributing factors to poor water supply in Zanzibar is the old water supplying system laid several years.

4.6.4 Improper Control of Water

There are cases of illegal connections of water in rural and urban areas. It appears that ZAWA has insufficient water inspectors to check illegal water connections. Worst of all, the people do not volunteer information to ZAWA leading to the arrest of those who connect water illegally. In some cases, leakages of water are reported. Local leaders take long to report the leakages to the authorities concerned.

922 *Hotuba ya Waziri wa Ardhi Makaazi Maji na Nishati, Mheshimiwa Ramadhan Abdalla Shaaban, Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa fedha 2012/2013 Katika Baraza la Wawakilishi*, p. 48.

923 *Ibid*, p. 46.

924 *Ibid*.

925 *Ibid*.

4.6.5 Charging Fees of Water without Services

The water authorities denied allegations of charging fees of water without services. Instead, the water authorities complain of low outcome of people to contribution for water charges.⁹²⁶ Consultants have been hired to review the ZAWA organizational structure and the water tariffs.

4.7 Right to Property

The right to property, also known as the right to protection of property, is a human right and is understood to establish an entitlement to private property.⁹²⁷ The right to property is not absolute and states have a wide degree of discretion to limit the rights.⁹²⁸

The right to property is enshrined in a number of International instruments like the UDHR but is not recognized in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Section 17 of the Constitution of Zanzibar, 1984 gives protection from deprivation of property. The Section says that;

No person shall be deprived of his property interest or right interest or right in that property except and upon compliance with the following conclusions;

- (a) that the acquisition and occupancy of the property is of utmost importance for defense and security of the 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 important to the extent that it legalizes its acquisition even if it be to the detriment of its owner;
- (c) that there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.

However, the resulting in the situation is not all the simple. At individual level, people deprive other of their property through different ways including the use of the court technicalities to defeat the interest of the opposing side.

In addition, some people properties have been destroyed including a vehicle of one priest which was set on fire.

There are accusations leveled against the government and the government officials on deprivation of people property especially land and houses.

926 Ibid, p. 47

927 <http://www.independent.org> visited on 4th October, 2012.

928 Ibid.

4.7.1 Destruction of Property

The government has been accused of demolition of residential houses around the Zanzibar Airport. It has been claimed that the extension of the airport for public interests has necessitated demolition of the houses. Surprisingly, compensation had been paid to the victims. Other people on political and religion reasons are accused of destroying some people properties especially during *UAMSHO* crisis.

4.7.2 Limitation to the Right of Property

Taking an advantage of the fact that the right to property is not absolute and states have a wide degree of discretion to limit the rights,⁹²⁹ the government sometimes forces house owners in town to pay land tax property or setting of cumbersome land transfer procedures. Other people complain of taxation system on their properties prevents them from enjoy the property.

4.8 Right to Work

The right to work is granted in the Constitution of Zanzibar, 1984. It is part of human rights enshrined in the Constitution. Section 22 (1) of the Constitution of Zanzibar says that;

Work alone creates material wealth in society, and is the source of well-being of the people and the measure of human dignity, every person has the duty to:

- (a) participate voluntarily and honestly in lawful and productive work; and
- (b) observe work discipline and strive to attain the individual and group productive targets desired or set by law.

In addition the Constitution of Zanzibar, 1984 says that there shall be no forced labour in Zanzibar.

4.8.1 Salaries and Incentives Packages

Salary scales are low in Zanzibar. This is evidenced by the fact that a large number of qualified and competent workers such as doctors and engineers have left Zanzibar in search of greener pastures. In 2012/2013 budget speech of the Minister of Health Honourable Juma Duni Haji had explained clearly that many doctors leave for outside the country to look for better paid jobs.

It is understood that a large number of civil servants use to work half a day and then go out in several to look for other opportunities or run their income generating projects or to supplement their monthly income.

929 <http://www.independent.org>. visited on 4th October 2012.

Incentive packages to government employees leaves much to be desired. A few senior officials enjoy incentives in different forms but low level staff are generally left out.

4.8.2 Shortage of Employment Opportunities

A large per cent of university leavers and institutions of higher learning get fail to an employment. Some university graduates move outside Zanzibar in search of employment. It appears that public and private sectors cannot absorb the increased number of job seekers.

Favouritism seems the order of the day in getting employment especially in public sector. It is believed that interviews are made a mere formality but is not a determining factor to get a job.

There have been complaints in government employment directed at the Government Security Office (GSO). There is no harm in establishing such vetting offices but lack of guiding principles in the determining and recommending persons to be employed in the public sector is the main problem.

It is alleged that GSO officers raised a number of unprofessional and private questions to job seekers in the public sector. Analysts think that a restructuring of GSO is necessary to make it operate fad professionally.

4.8.3 Stigmatization of People with HIV in Employment

Employers and employees are accused of stigmatizing of people with HIV in employment. Some HIV persons are not given assignments. Some of them are called bad names. It is reported that contracts of HIV persons in employment are not renewed. They are not given scholarships for further studies on grounds that their days are numbered.

4.8.4 Lack of Social Dialogue between Employer and Employee

There is the need to have a dialogue between employer and employee in case of labour disputes or industrial unrests. Non - existent Act allows a social dialogue as a proper mechanism to solve disputes.

4.8.5 Poor System of Social Protection

Zanzibar Social Security Fund (ZSSF) has been established to cater for senior citizens in the retirement age. It was observed that most of the retired officers are exposed to a painful experience in retirement life. ZSSF is so far going on well and there is less complaints from the beneficiaries.

Employers are required to contribute 10 per cent of their worker's salary and employees must contribute five per cent of their salaries making the contribution to 15 per cent on per month.

However, the ZSSF does not cover members of the Zanzibar Special Departments (Isles Security Forces). Some of the members are worried on they reach retirement age.

4.8.6 The Handling of Labour Disputes

As per the Employment Act, 2005 (Act No. 11 of 2005) and Labour Relations Act, 2005 (Act No. 1 of 2005), the structure of the handling of labour disputes is well established through having in place the Industrial Court, the Labour Commission with offices almost in every District of Zanzibar.

It appears however that many people do not have trust with personnel manning the offices.

4.8.7 Re-Employment of the Retired Officers

Some civil servants do seem not redundant to retire. Informed sources and that some civil servants especially those holding senior ranks such as used to send applications to the Central Establishment to be given contracts after reaching the retirement age. The main argument seeking for contracts after attaining the retirement age is that they needed more time to prepare themselves for after retirement life.

What is disturbing to note is that the Central Establishment keeps on entertaining such types of applications. This is a contributing factor to job scarcity. There are no valid and concurring reasons to reinstate retired officers taking into consideration that there are qualified persons to take over the jobs in this sciences techno of computer world.

4.9 Conclusion

More emphasis should be placed on improvement of economic and social rights. Lack of enforcement is the main problem. These rights are not enforceable it seems countries deal with these rights as they see fit. There is the need to ensure legal mechanisms are put in place to enable the people to enjoy these rights. The facts stated above indicate that the people do not enjoy these rights fully.

CHAPTER FIVE

The Rights of Vulnerable Groups

5.0 Introduction

The word vulnerability can be described to mean the inability to withstand the effects of a hostile environment.⁹³⁰ In relation to hazards and disasters, vulnerability is a concept that links the relationship that people have with their environment to social forces and institutions and the cultural values that sustain and contest them.⁹³¹ Vulnerable groups can be described to mean those groups that experience a higher risk of poverty and social exclusion than the general population.⁹³² Examples of vulnerable groups include ethnic minorities, migrants, disabled people, the homeless; those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment.⁹³³ In this context the rights of vulnerable groups include the rights women, girls, persons with disabilities and the aged.

5.1 Women and Girls

The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) has been given top priority by the government. Presenting the 2012/13 budget proposals in the House of Representatives, the Minister of Social Welfare, Children and Women Development, Honourable Zainab Omar Mohammed said that the seventh report on enforcement of CEDAW of 2007-2010 has been prepared and discussed by stakeholders in Unguja and Pemba.

The Minister said the report would be included in the Tanzania National Report which would include the Tanzania Mainland and be submitted to the United Nations.

5.1.1 Legal Framework for Women Protection in Zanzibar

The Constitution of Zanzibar, 1984 has guaranteed equal rights for all the people regardless of their different social, economic and cultural backgrounds. A number of legislation both the criminal and civil, had given protection to women. Examples of the legislation included the Penal Act, 2004 (Act No. 6 of 2004), the Criminal Procedure Act, 2004 (Act No. 7 of 2004), the Employment

930 <http://www.en.wikipedia/wiki/vulnerability> visited on 26th October, 2012.

931 Ibid.

932 <http://www.en.wikipedia/wiki/vulnerability> visited on 26th October 2012.

933 Ibid.

Act, 2005 (Act No. 11 of 2005) and the Spinster and Single Parents Children Protection, 2005 (Act No. 4 of 2005). All of these laws give protection to women in their respective jurisdictions.

5.1.2 Policies on Women's Rights

The Ministry responsible for Women Affairs had prepared a Guideline/Policy on the question of Gender issues.⁹³⁴ This document will soon be discussed by the stakeholders before coming in effect. Other policies in place on Women's Rights include the Zanzibar Employment Policy of 2009⁹³⁵, Zanzibar Food Security and Nutrition Policy of 2008⁹³⁶, Zanzibar Small and Medium Enterprises Development Policy of 2006⁹³⁷ and the Education Policy of 2007.⁹³⁸

5.1.3 Institutional Framework in Protecting Women

The formation of the Ministry of Social Welfare, Children and Women Development as focal point on women affairs and protection has facilitated a lot of key development issues for women including projects and a review of outdated law. For example, the Ministry has facilitated the review of the Kadhi's Act, 1985 (Act No. 3 of 1985) to conform to changes taking place in the society.⁹³⁹ A bill for the amendment of the Kadhi's Act, 1985 (Act No. 3 of 1985) has been prepared and is expected to be presented to the relevant organs, as explained by the Minister in the budget speech for 2012/2013. Latest information indicates that the draft of regulations for the Kadhi's Court has been prepared. It is almost 27 years since the enactment of the Kadhi's Act, 1985 (Act No. 3 of 1985) but the authorities concerned never developed the regulations. As a result, Kadhis have been compelled to use the Civil Procedure in the administration of cases. This has raised a lot of complaints from the people taking into consideration almost all Kadhis were trained in Islamic Sharia and not Common Law.

A part from the Ministry responsible for Women Affairs, there are a number of nongovernmental organizations dealing with women is protection in Zanzibar under the financial assistance of donors.

5.1.4 Gender Based Violence

Gender Based Violence (GBV) can be described to mean any act of gender-based violence that results in, or is likely to result in physical, sexual or

934 *Hotuba ya Waziri wa Ustawi wa Jamii na Maendeleo ya Vijana, Wanawake na Watoto, Mhe. Zainab Omar Mohammed, Kuhusu Makadirio ya Mapato na matumizi kwa mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi Zanzibar*, p.12.

935 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report of 2011*, p. 327.

936 Ibid.

937 Ibid.

938 Ibid.

939 Ibid, p. 9.

psychological harm or suffering to women in particular, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁹⁴⁰

Traffic of women and girls for prostitution, forced marriage, sexual harassment and intimidation at work are additional examples of violence against women. GBV is a global problem. Many countries are trying to stop this evil. Zanzibar has not been spared of GBV. However, serious efforts are in place to check the vice.

5.1.4.1 Gaps in Laws Relating to GBV

Previous human rights have mentioned the existing gap in law in addressing GBV. The Zanzibar Ministry responsible for Women has participated in national and international forums on the fight against GBV. More efforts are still needed to eliminate the GBV. So far, information hinted that there is no study on women has yet assessed gender-based violence as a risk factor for HIV here.

5.1.4.2 Current Situation on GBV in Zanzibar

Reports indicated that the GBV remains a problem and cases have been filed to the Ministry responsible for Women seeking the support to get rid of the problem.

⁹⁴⁰ Article 1 of the UN Declaration on the Elimination of Violence against Women (DEVW), proclaimed by the UN General Assembly in its resolution 48/104 of 20th December, 1993.

The table below shows the situation of GBV for 2011/2012.

Wilaya	Kuteke Iezwa	Udhalili shaji	Kubakwa	Madai	Huduma Ya Makazi	Mgawanyo Wa Mali	Mimba Nje Ya Ndoa	Migogoro Ndani Ya Ndoa	Kupigwa	Shambulio la Vitisho	Shambulio la Matusi	Kukashifu	Jumla
Magharibi	8	-	-	-	7	3	11	6	-	-	-	-	35
Mjini	6	-	-	-	-	-	-	-	-	-	-	-	6
Kaskazini 'A'	-	-	-	-	-	-	-	3	-	-	3	1	7
Kaskazini 'B'	2	-	-	-	-	-	-	1	1	1	2	1	7
Kusini	2	-	-	-	-	-	-	1	-	-	-	-	3
Kati	2	-	-	-	-	-	-	-	-	-	-	-	2
Wete	1	2	1	3	-	-	4	4	4	-	-	-	15
Micheweni	2	1	-	2	-	-	1	3	-	-	-	-	15
Mkoani	-	-	-	-	-	-	3	-	-	-	-	-	3
Chachehake	8	-	-	8	1	-	24	2	2	-	-	-	45
Jumla	31	3	1	13	1	7	43	20	20	1	5	2	132

Source: Hotuba ya Waziri wa Ustawi wa Jamii na Maendeleo ya Vijana, Wanawake na Watoto, Mhe. Zainab Omar Mohammed Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi – Zanzibar.

5.1.4.3 Enforcement of Sexual Violence Cases

It has been claimed that a number of cases are reported to the Police station. However, some cases are dropped at the police station for lack of evidence to win a conviction in a court of law. There are some cases filed to the Court but it is not easy to win a conviction for lack of enough evidence to convince the court. This has caused serious complaints from the public in general. Some people believe that corruption is one of the contributing factors not to get conviction. It is understood however that these cases need strong evidence to win conviction and the court has to caution itself before admitting evidence on sexual violence cases.

5.1.4.3.1 Poor Investigation

The process on the right to investigation in sexual violence cases is far from the satisfactory. State attorneys with the Office of the Director of Public Prosecutions blame the police for failure to collect strong evidence and as a result they stand in an awkward situation to win conviction especially when the accused are represented by competent advocates. In addition, the victims in some cases do not cooperate with the state attorneys. In some cases, police corruption is blamed as the main reason not to collect strong evidence to adduce before the courts of law.

5.1.4.3.2 Deoxyribo Nucleic Acid (DNA) Test

DNA is an informational molecule encoding the genetic instructions used in the development and functioning of all known living organisms and many viruses.⁹⁴¹ The Revolutionary Government of Zanzibar has failed to buy DNA test equipment and install it at the Mnazi Mmoja Referral hospital. As a result, those wishing to get the DNA test had to dig deeper into their pockets and travel to Dar es Salaam and line up for the services.

Lack of DNA acts a stumbling block to some criminal cases in the evidence collection. It has been on the news that the government has been asked several times to allocate funds for the purchase of DNA but nothing has been done so far.

5.1.4.3.3 Shortage of Medical Experts

There have been serious efforts to increase the number of medical personnel to handle cases of sexual violence in Zanzibar. The shortage still exists but what is encouraging is that a special centre known as ‘One Stop Centre’ called “*Mkono kwa Mkono*” has been launched and has been functioning. A total of 215 cases had been presented to the One Stop Centre for 2012/2013, according to the speech of the Minister responsible for Children.

941 <http://en.wikipedia.org/wiki/DNA> visited on 2nd December, 2012.

Table 47: Cases Reported to Tthe One Stop Centre for Unguja for 2011/2012

(TYPES OF SEXUAL HARASSMENT)	(BOYS)	(GIRLS)	(TOTAL)
(Rape)	0	287	287
(Impregnancy)	0	82	82
(Sodomy)	61	0	61
(Indecent Assault)	4	247	251
Total	62	627	689

Source: *Hotuba ya Waziri wa Ustawi wa Jamii na Maendeleo ya Vijana, Wanawake na Watoto, Mhe. Zainab Omar Mohammed, Kuhusu Makadirio ya Mapato na Matumizi kwa mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi – Zanzibar.*

5.1.4.3.4 Ignorance of the People in Handling GBV Incidents

Lack of awareness appears a malady that has no remedy in Zanzibar. Cultural problem coupled with other social factors such as friendship stand in the way. Victims are not brought before the legal machineries. Some cases are settled at family level or at some police posts. Victims are paid compensation not to disclose the information. There is a need for an aggressive campaign to educate the people to report cases of that nature to the police stations or police posts without delay. The Ministry responsible for Women and Children must team up with active NGOs such as the ZLSC to raise awareness to the people.

5.1.5 Domestic Violence

Domestic violence, also known as domestic abuse, spousal abuse, battering, family violence and Intimate Partner Violence (IPV), is defined as a pattern of abusive behaviours by one partner against another in an intimate relationship such as marriage, dating, family, or cohabitation.⁹⁴²

Cases of domestic violence have been on the increase. It seems though there is no proper records keeping by the institutions concerned with the issue but based on what had been presented in national seminars and forums conducted by the government institutions and nongovernmental organizations and the speech of the Minister responsible for Women Affairs, the problem continues to show its mighty.

There are different forms of domestic violence. They include physical aggression or assault, (hitting, kicking, biting, shoving, restraining, slapping, throwing objects) or threats⁹⁴³

942 <http://en.wikipedia.org/wiki/DomesticViolence> visited on 20th December, 2012.

943 Ibid.

This matter should now be treated as a cross cutting issue. Raising awareness of the public should be given top priority including the need that the victims be advised to report as soon as possible to the police for legal action.

5.1.5.1 Legal Framework in Combating Domestic Violence in Zanzibar

There are laws aimed at checking domestic violence in Zanzibar. There is the Penal Act, 2004 (Act No. 6 of 2004) which is against domestic violence in Zanzibar. However, it seems a few cases are reported to the police for legal action. This are a number of factors attributed to the low number of cases for domestic violence reported. For example, cultural and historical reasons, lack of awareness and fear of divorce. Some cases of domestic violence are reported to the Kadhi's Courts or to the Ministry responsible for Women for a solution. It is reported that some cases are solved amicably and some cases fail to reach conclusion for lack of cooperation from the victims.

5.1.5.2 Enforcement of Domestic Violence Cases

The enforcement of Domestic Violence Cases falls under the normal criminal cases and procedures. The law applicable is the Penal Act No 6 of 2004, the Criminal Procedure Act No 7 of 2004 and the Evidence Law. It is up to the prosecution sides to adduce enough evidence before the court to win conviction short of those cases of nature are dismissed. There is no special court dealing with the Domestic Violence Cases and hence these are not given the priority. Cases of such nature are subjected to the normal court procedure.

Cases which are reported to the Kadhis court are subjected to normal practice of Civil Procedure. Some cases are take long depending on the evidence and cooperation from the litigants.

5.1.5.3 Current Situation on Domestic Violence in Zanzibar

As explained earlier, the situation is not encouraging. Judging from the figures given by the Ministry responsible for Women Affairs and other non governmental organizations offering legal assistance to women it appears that the problem in on the increase. The increase of the Domestic Violence Cases is a result of lack of serious punishment to deter other from committing similar mistakes.

5.1.6 Women Economic Empowerment and Employment

In an effort to empower women economically, the Ministry responsible for Women is working closely with a consultant to do a feasibility study to start a special Women Bank in Zanzibar⁹⁴⁴ with a view of offering credit and other facilities. Business consultancy has been offered to saving and Credit

944 *Hotuba ya Waziri wa Ustawi wa Jamii na Maendeleo ya Vijana, Wanawake na Watoto, Mhe. Zainab Omar Mohammed Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa fedha 2012/2013 Katika Baraza la Wawakilishi, Zanzibar.*

Cooperatives (SACCOS) to strengthen their economic activities and enable them have the capacity to access credits from commercial banks and other lending institutions. SACCOS is highly considered as one of the economic options to enable the people especially women to launch self help projects.

There are a number of non-governmental organizations that offer credit facilities to women including the government revolving fund.

Women employment is given a high priority. However, there is no specific legislation as a guiding principle to offer employment to women as opposed to male. It is a question of merits. It is understood however that some offices try to take into consideration gender balance in employment opportunities as a way to get rid of male domination.

5.1.7 Women and Health

Health is not enforceable right that is enshrined in the Constitution of Zanzibar. It is a constitutional right falling under Fundamental Objectives and Directive Principles of the Revolutionary Government of Zanzibar.

Section 10 (6) of the Constitution of Zanzibar, 1984 says that;

Shall direct its policy toward ensuring that every person has access to adequate health care, equal opportunity to adequate education for all and that Zanzibar culture is protected, enhanced and promoted.

The government has established the Ministry of Health which is responsible to take care of the health of the people including women. There is a special unit which has been established in the Ministry of Health to pay special attention on women health cases. Generally, the medical services are offered free of charge or at nominal fees. The fees which are charged is just a contribution to the services but does not reflect the actual costs of the medical services.

Some people including women are not happy with the medical services being offered in Zanzibar. They either feel that medical experts are not competent enough to handle their cases or lack of modern equipment for diagnosis. Alternatively, they travel outside Zanzibar for further medical attention.

5.1.8 Women and Education

As is the case of health, education is also not enforceable right under the Constitution of Zanzibar, 1984. It is part of the Fundamental Objectives and Directive Principles of the Revolutionary Government of Zanzibar.

It is understood that women are given priority in education especially for those who pursue higher education and those seeking loans to pay for higher education. There is different treatment in the issuance of loans to students

pursuing higher education. Women with the right qualifications are given a priority.

5.1.9 Women Participation in Decision Making

The participation of women in the decision making process in Zanzibar remains at a low level much to the disappointment of many people here. The main reason being attributed to the low participation of women is lack of education, cultural and historical factors including the religious beliefs and lack of exposure.⁹⁴⁵

So far only two women have been appointed to hold the post of District Commissioners in Zanzibar at District Administrative level and the remaining eight are held by men. The District Commissioners are appointed by the President of Zanzibar.⁹⁴⁶ There is no woman holding the post of Regional Commissioner. All the five persons holding the post of regional commissioners are men.

Woman participation at the government lowest administrative unit famously known here as Shehia is very low. Out of 335 shehas (local leaders), 23 are women which is equivalent to seven per cent while the remaining are men.⁹⁴⁷

The TAMWA research says that the women participation in the rural is worse compared to the urban centres. The International Treaties call for a 50-50 participation between men and women in the decision making bodies.⁹⁴⁸ The reason of harmonizing men and women participation is to alleviate male domination in the decision making bodies.

The number of women holding the ministerial posts in the Government of Zanzibar is as follows:

Table 48: List of Full Ministers in the Revolutionary Government of Zanzibar

Honourable Ramadhan Abdalla Shaaban–	Minister of Land, Human Settlements, Water and Energy
Honourable Ali Juma Shamuhuna	Minister of Education and Vocational Training
Honourable Dr. Mwinyi Haji Makame	Minister of State (President’s Office and Revolutionary Council)
Honourable Abubakar Khamis Bakary	Ministry of Constitutional Affairs and Justice

945 The recent research conducted by the Tanzania Media Women Association (TAMWA) was quoted in the feature article prepared by journalist Salma Said and published in the *Mwananchi* newspaper, issue No 04469, Wednesday, 19th September, 2012, p. 11.

946 Section 61 (2) of the Constitution of Zanzibar, 1984.

947 TAMWA report, Op.cit.

948 Ibid.

Honourable Haroun Ali Suleiman	Minister of Labour, Economic Empowerment and Co-operatives
Honourable Suleiman Othman Nyanga	Minister of Agriculture and Natural Resources
Honourable Mohammed Aboud Mohammed	Minister of State (Office of the Second Vice President)
Honourable Shawana Bukheti Hassan	Minister without Portfolio
Honourable Zainab Omar Mohammed	Minister of Social Welfare, Children and Women Development
Honourable Machano Othman Said	Minister without Portfolio
Honourable Omar Yussuf Mzee	Minister of State (President's Office) Finance, the Economy and Development Programmes
Honourable Haji Omar Kheri	Minister of State, Office of the President Civil Service and Good Governance
Honourable Juma Duni Haji	Minister of Health
Honourable Said Ali Mbarouk	Minister of Information, Culture, Tourism and Sports
Honourable Fatma Abdulhabib Fereji	Minister of State (Office of the First Vice President)
Honourable Nassor Ahmed Mazrui	Minister of Trade, Industries and Marketing
Honourable Haji Faki Shaali	Minister without Portfolio
Honourable Abdillahi Jihad Hassan	Minister of Livestock and Fisheries
Honourable Rashid Seif Suleiman	Minister of Infrastructure and Communication
Honourable Othman Masoud Othman	The Attorney General of Revolutionary Government of Zanzibar

Table 49: List of Deputy Ministers in the Revolutionary Government of Zanzibar

Honourable Thuwaiba Edington Kisasi	Deputy Minister of Trade, Industries and Marketing
Honourable Bihindi Hamad Khamis	Deputy Minister of Information, Culture, Tourism and Sports
Honourable Zahra Ali Hamad	Deputy Minister of Education and Vocational Training

Honourable Dr Sira Ubwa Mwamboya	Deputy Minister of Health
Honourable Issa Haji Ussi	Deputy Minister of Infrastructure and Communication
Honourable Haji Mwadini Makame	Deputy Minister of Land, Information, Culture, Tourism and Sports
Honourable Mohammed Said Mohammed	Deputy Minister of Livestock and Fisheries
Honourable Mtumwa Kheri Mbaraka	Deputy Minister of Agriculture and Natural Resources

Source: Cabinet Posters.

There is an imbalance of male and female holding ministerial posts and deputy ministers' posts. There are 14 male Principal Secretaries and three female Principal Secretaries⁹⁴⁹ out of 17 Principal Secretaries. There are 93 Directors⁹⁵⁰ out of whom 69 male and 24 female.⁹⁵¹ There are 50 elected members of the House of Representatives of whom 47 are male and three are female⁹⁵². The House of Representatives has a total of 82 legislators out of whom 26 are female.

The study reveals that a large number of women do not hold key posts in the Revolutionary Government of Zanzibar. In addition, most women use to work as clerks and not as technocrats.

5.2 Children Rights

Children rights are governed by the key instruments – the Convention of the Rights of the Child (CRC) of 1989, the African Charter on the Rights and Welfare of the Child of 1990, the Optional Protocol on the Involvement of Children in Armed Conflicts of 2000, Optional Protocol on the Sale of Children of 2000, the Child Prostitution and Child Pornography of 2000, the Constitution of the United Republic of Tanzania, 1977, the Constitution of Zanzibar, 1984 and the Children's Act, 2011 (Act No. 6 of 2011).

Interestingly though, the Revolutionary Government of Zanzibar is now in the final stage of preparing a set of regulations to facilitate the Children's Act on the following categories – (i) Adoption (ii) Child Care and Protection (iii) Foster Care (iv) Parentage Custodial and Guardianship (v) Special Protection Measures and (vi) Residential Establishment and Day Care Centre Regulations.

949 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, *Tanzania Human Rights Report, 2011*, p. 337.

950 Ibid.

951 Ibid.

952 Ibid.

5.2.1 Legal Framework

The Constitution of Zanzibar, 1984 provides for the frame work of right to life. It should be borne in mind that the human rights enshrined the Constitution are also the Children rights. It is not possible to draw a line of distinction between the human rights and children rights. The International and regional instruments as well as the Children’s Act No 6 of 2011 aim at giving more enforcement to children rights.

What is interesting to note that in this year is that there have been numerous meetings held in Zanzibar to discuss the draft of a set of regulations to facilitate the Children’s Act on the following categories – (i) Adoption (ii) Child Care and Protection (iii) Foster Care (iv) Parentage Custodial and Guardianship (v) Special Protection Measures and (vi) Residential Establishment and Day Care Centre Regulations.

5.2.2 Institutional Framework

The Revolutionary Government of Zanzibar has formed a special Ministry responsible for Children. The Ministry is the focal point of all matters relating to children at national and international levels. There are a number of NGOs dealing with Children affairs including the ZLSC, Zanzibar Female Lawyers Association and other organizations with people of disabilities in Zanzibar.

5.2.3 Right to Life

The right to life for children includes everything and all that makes life enjoyable, meaningful and pleasant.⁹⁵³ The Supreme Court of India on different occasions elaborated that the right to life includes the right to live with human dignity and this includes having bare necessities of life such as adequate nutrition, clothing, shelter and food.⁹⁵⁴

In the context of Zanzibar, the right to life is also interpreted for the sake of protection of the child, right from zygote, child destruction, infanticide, murder and provision of social and economic necessities to the children which include education and health.

The government through the Ministry of Health takes a number of measures for child life protection including giving periodic immunization against diseases such as measles, polio, tetanus, tuberculosis, meningitis, whooping cough and recently pre and post HIV check to safeguard the life of the child.

In addition, the government encourages being partners to under voluntary pre-marital HIV/AIDS check up with the main purpose of protecting the interest of the new unborn. In fact, Kadhis and priests do not conduct marriage ceremonies

953 SAQLAIN, G, Masoudi, Muhammed Hamida and Sabur Katija, *Legal Landscape of Zanzibar and the Child: Contradictions and Commitments*, unpublished, p. 17.

954 *Francis Carolie Mullin v. Administrator Union Territory of Delhi* [1981] 3SCC 161 and 163.

unless they are shown an HIV testing certificate. However, this measure does not mean the HIV/AIDS positive are not allowed to marry. Far from it except that necessary precautions is taken in the delivery process to ensure the safety of the child.

5.2.4 Right to Grow and Develop

As explained earlier, the right to life includes the right to grow and develop. In the growth process of the child, the government has spoken against any form of cruelty to the child including psychological torture. The basic purpose of the right to grow and develop is show seriousness of the growth of intellectual capacity of the child. However, the problem of school drop outs and early marriages frustrate the principle to grow and develop. There are reports that some parents especially in remote areas agree to put their children in the family way before they finish school. School children are also impregnated thus affecting their studies. Some of the impregnated students go back to school some they do not. It should be understood that the right to grow and develop is fundamental for the child life in the future.

5.2.4.1 Right to Education for the Child

The right to Education for the child is highly considered a basic human right and the foundation for society. It is a fundamental human right for all,⁹⁵⁵ men, women and children including children with disabilities. The right to education is universal,⁹⁵⁶ and importantly, education is also treated as a basic need.⁹⁵⁷

Article 28 of the CRC contains the provision of the education as the right of every child, (including the children with disabilities). Article 28 (1) which includes free and compulsory primary education (Article 28 (1) (a) and 'available and accessible' secondary education, both 'general and vocational' Article 28 (1) (b). Higher education is to be made 'accessible to all on the basis of capacity' (Article 28 (1) (c)).

The right to education for the child is stipulated under the Fundamental Objectives and Directive Principles and Policies of the Revolutionary Government of Zanzibar. Unfortunately, this is not enforceable right. It depends upon the government financial muscles to do it or not. Some human rights activists view this as a camouflage the government does not to put enough funds for health, educational and cultural objectives.

955 Article 26 of the UDHR, 1948 recognizes education along with other necessities such as food, shelter and water as a fundamental human right. The CRC affirms the right of all children to free, relevant and quality education. In addition to that, at the World Education Forum in Dakar (2000) participants from 164 countries pledged to provide education for all by 2015.

956 Asquith S, & Hill M, '*Justice for Children*', Boston/London, 1994. p 87.

957 Freeman M, '*Children Rights. A Comparative Perspective*', University College, London 1996, p 33.

The Zanzibar Education Act, 1982 (Act No. 6 of 1982) provides for the right to education for the child. Universal primary and middle secondary school is a compulsory. All parents are required to send their children to schools. To advance to the next education stage is not compulsory. It depends upon the intellectual capacity of the child.

Some parents send their children to private schools in consideration that they get quality education rather than in public schools. It seems however those children in public schools are of low income earners.

There is also an Inclusive Education Project going on. The project was facilitated by the Norwegian Association for People with Development Disabilities and Operation Day Work. The project is an attempt to acknowledge the fact that all children can learn irrespective differences in children age, gender, ethnicity, language and disability.

The number of school enrolment keeps growing annually, forcing the government to build more classrooms to meet the demand.

5.2.4.2 Right to Play

The right to play for children is a part of human rights. It is also covered in the Constitution of Zanzibar, 1984. It falls under the Fundamental Objectives and Directive Principles and Policies of the Revolutionary Government of Zanzibar. There are few official places for children to play in Unguja and Pemba. Zanzibar used to have Child Amusement Parks at Kariakoo in Unguja and Tibirinzi in Pemba. It seems however that the facilities had been ignored and are in a state of disrepair. The facilities have been closed for a long time.

There are two privately managed alternative Child Amusements in Zanzibar town at Jamhuri Garden adjacent the famously known area as Wireless and at Forodhani. One has to pay to access to the facilities installed therein. Those who cannot pay are left out.

It has been established that children used to play to open spaces and streets in their respective residential areas in rural and urban centres which is a dangerous practice as somehow endangers their live. However, the open spaces are now allocated for construction purposes.

5.2.4.3 Children in Conflict with Law

In the first place, there is a contradiction of the age of the child between the Penal Act, 2004 (Act No. 6 of 2004) and the Children's Act, 2011 (Act No. 6 of 2011). Section 14 (2) of the Penal Act says that;

A person under the age of fourteen years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

Section 14 (3) of the same Act says that;

A male person under the age of fourteen years is presumed to be incapable of having carnal knowledge.

However, Section 2 of the Children's Act, 2011 (Act No. 6 of 2011) defines a child as;

A person under the age of 18 years.

While Section 35 (3) says that;

The Children's Court may, on its own accord, or upon the request of the Director of Public Prosecution or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (2) of this Section by a suitably qualified person, which shall include all include assessment of the cognitive, emotional, psychological and social development of the child.

Section 37 (2) says that;

A child shall not be arrested by using handcuffs unless there are compelling reasons justifying the use of such handcuffs.

Generally, the Children's Act works in the best interest of the child in conflict with law. For example the Act explains about arrests of the child, the diversion by police cautioning and bail of children apprehended by the Police, the custody of children not discharged on bail after apprehension, the Assessment of Child Offenders and Procedure in Children's Court which include;

In addition, the Court shall sit as often as necessary and in a different building or room or at different times, from time there in which sittings of courts proceedings are held; proceedings shall be held in camera and proceedings shall be as informal as friendly to be the child as possible and made by enquiry without exposing the child to adversarial procedures, in so far as this is compatible with the child having this rights.

Moreover, child's parent or guardians or a family member of the child can take part in the representation of the child unless the court determines that this is not the in the best interest of the child and the court shall explain to the child in language that child can understand.

The existing problem of children in conflict with law is in the Reformatory Schools (jails). At least the management of the Reformatory Schools had unlike in the past accepted to separate rooms of children with adults. It is understood that all the inmates meet in the day time. This can be the best opportunity for the children to learn bad criminal practices.

5.2.5 Right to be Protected

There are a number of legislations which are in place for protection of the rights of the Child. The Constitution of Zanzibar, 1984 protects the right of the child including the right to life, the right to privacy, the freedom of expression and the right to property. In addition, the right to be protected includes in the Penal Act, 2004 (Act No. 6 of 2004), the Education Act, 1982 (Act No. 6 of 1982), the Employment Act, 2005 (Act No. 11 of 2005) and the Children's Act, 2011 (Act No. 6 of 2011) which covers extensively about the best interests of the child, the Children Court and Children in conflict with Law. In addition to, The Zanzibar University offers a Diploma in Child Protection Rights with the aim of familiarizing students with the knowledge of children's rights; demonstrate the concept of childhood and the different stages of child development. Part of the students' fees of this Diploma is funded by the London based Save the Children Organization- Zanzibar Office.

5.2.5.1 Violence against Children

Violence against children has been a long time problem. There are different forms of violence to children including sexual violence and physical violence from family members and the society at large. There has been attempt to check the violence against children through the Ministry responsible for Children. A number of NGOs at national and international levels have offered assistance to check the vice. An aggressive awareness campaign is conducted to change the mindset of the people to value the rights of children and to avoid violence to children.

(a) Sexual Violence

There have been complaints of 215 children who have allegedly been raped between July, 2011 and March, 2012 in Unguja and Pemba. This figure excludes cases that have been reported at to the One Stop centre. It appears that cases of sexual violence are on the increase in Zanzibar.

(b) Physical Violence

The term physical violence should be understood to include neglect and all types of physical, sexual and psychological abuse, as well as suicide and other self-abusive.⁹⁵⁸ Violence should not be mistakenly to mean an action that result in injury or death. Some school teachers continue to inflict corporal punishment. At family level, some parents use to flog their children as correctional means or what it can be sometimes described as "African psychology" to make children behave responsibly.

958 http://www.workfamily.sas.upenn.edu/grassroot/P/physical_violence visited on 22nd December, 2012.

(c) Emotional Violence

Emotional violence is behaviour which does not give equal importance and respect to another person's feelings and experiences.⁹⁵⁹ Emotional violence includes the refusal to listen to, or denial of, another person's feelings, telling people what they do or do not feel and ridiculing or shaming of their feelings.⁹⁶⁰ It happens when one person believes they have a right to control or dominate another person.⁹⁶¹

A large number of children in Zanzibar are subjected to the emotional violence either in schools, at home, or in the street. It is a long time habit where most adults here think they have control of children and can do anything they want. Some parents use to hurl insults to their children for their mistakes.

5.2.5.2 Current Situation on Child Abuse

The situation on child abuse in Zanzibar is still not encouraging. A number of reports presented in different seminars and workshops indicate that children are subjected to different forms of abuse starting from sexual abuse to emotional abuse.

As earlier indicated, complaints have been on the increase on child abuse. In some case, family members and school teachers are responsible for child abuse. Some cases of children abuse are reported to police stations for legal action and some of the abuses are settled at family levels.

More efforts are needed to control children abuse. Child abuse should be treated as a cross cutting issue instead of leaving it with the Ministry responsible for Children. It is worsen to note that children suffering from HIV/AIDS are subjected to stigmatization.

5.2.6 Child Labour

Unlike in the past, children are now legally allowed to work. What is prohibited is that the type of work to be done by children should not expose the children to harmful practice that will affect their health, education, mental, physical or moral development, according to the Children Act, 2011 (Act No. 6 of 2011).

Section 98 (1) of the Children's Act, 2011 (Act No. 6 of 2011) says that;

A child shall have the right to work, subject to the need to promote and safeguard his best interest.

959 <http://www.education.qld.gov.au.actmar+besafe/violence/emotion> visited on 22nd December, 2012.

960 Ibid.

961 Ibid.

The minimum age for employment or engagement in work of a child shall be 15 years and above but may only do light work. In this context light work is that which not likely to be harmful to the health or development of the child and does not prevent or affect the child's attendance at school, participation on vocational orientation or training programmes or the capacity of the child to benefit from school work. It is also prohibited to engage a child in exploitative work and should exceed six hour a day.

This is a positive development provided that a child's work does not affect his/her health and his/her development. What is important in this development is monitoring process. Having a law in place is one thing and implementation of the law is another thing.

5.2.7 Maintenance of Children

The right to maintenance of children is one of the basic requirements of a family. In Islam, it is up to the father to maintain the family. A wife can assist but is not compulsory. There is a serious problem of maintenance of a child nowadays especially with break up of marriages.

Cases are reported to the Kadhi's court and the Ministry responsible for Children seeking remedy on fathers who do not want to perform this work. It is understood that in some cases the Kadhi's court had ordered a cut to fathers' salary for maintenance purposes.

Some children are forced to work to raise money to meet basic family needs. This is one of the contributing factors to school drop outs.

5.3 Rights of the Elderly

Several Articles of UDHR has underlined the importance of protection of elders. For example, Article 22 of UDHR says that;

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of the personality.

In respect of the UDHR, the Isles government has abolished special elders' homes in Unguja and Pemba. The government pays monthly stipends to the elders (senior citizens). There are 108 elders in the two houses out of whom 50 are female and 58 are male. The monthly stipend has been increased from 25,000/- to 40,000/-, according to the budget speech of 2012/2013 of Minister of Social Welfare, Children and Women Development, Ms Zainab Omar Mohammed.

5.4 Rights of Persons with Disabilities

There is a number of International and regional instruments taking care of the rights of people with disabilities. Disability may be physical, cognitive, mental, sensory, emotional, and developmental or come combination of these.⁹⁶² A disability may be present from birth, or occur during a person's life time.⁹⁶³

Disability can be divided into different categories such as deaf and hard of hearing, vision impairments, mobility disabilities, psychiatric disabilities, learning disabilities, attention deficit disorder, brain injuries and systemic disabilities.

Article 1 of UDHR says that;

All human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

5.4.1 Legal Framework

There is a Zanzibar Policy of People with Disabilities with the main objective to promoting people with disabilities. In addition, the House of Representatives passed Disabilities (Rights and Privileges) Act, 2006 (Act No. 9 of 2006) with the purpose of promotion of rights of people with disabilities in Zanzibar. Under the Act, it is stressed that public buildings and services should be accessible to all including persons with disabilities. However, the situation is different. A large number of public buildings are not accessible to people with disabilities.

5.4.2 Institutional Framework

The Office of First Vice President of Zanzibar is responsible of dealing with matters relating to people with disabilities. There are also a number of NGOs are dealing with the promotion of interests of people with disabilities of different types. There are more than six non-governmental organizations dealing with people of different disabilities. For example there is the Zanzibar Association of the Blind (ZANAB), there is the Zanzibar Association for People with Developmental Disabilities (ZAPDD) and there is an Organization of People with Disabilities in Zanzibar (UWZ).

All these institutions are guided by the international instruments and the Act of People with Disabilities in Zanzibar.

5.4.3 Poverty among People with Disabilities

So far there is no official figure of the people with disabilities in Zanzibar. it is estimated that the number of people with disabilities in Zanzibar is less than 15,000 people out of the total Zanzibar's population of about 1.3 million.

962 <http://en.wikipedia.org/wiki/Disability> visited on 26th December, 2012.

963 Ibid.

Most of the families with people with disabilities are under poverty line and hardly meet the basic needs of life. There is a problem of some families with people of disabilities trying to hid them. Generally, people with disabilities are underdeveloped.

5.4.4 Abuse against People with Disabilities

Unofficial statistics indicate that people with disabilities are subjected to sexual violence and some of them are impregnated. Officials of People with Intellectual Disability said there were more than 15 cases of girls with developmental disability subjected to sexual violence. Worst of it, the officials said, no legal action had been taken against the culprits.

5.5 Conclusion

There is a positive story of development of people with disabilities compared to the past years. However, a lot needs to be done to promote the rights of people with disabilities. It is up to the government to allocate enough budgets to support activities of people with disabilities. Aggressive awareness campaign needs to be done to help the promotion of the interest of people with disabilities.

CHAPTER SIX

HIV/AIDS and Human Rights

6.0 Introduction

The Revolutionary Government of Zanzibar under the financial assistance from national and international organizations has been a tireless advocate of campaigns that promote education and care for HIV/AIDS. Reports from the Ministry of Health indicate that HIV/AIDS is on the increase mainly for lack of adequate health education and a few numbers of people who undergo voluntary HIV/AIDS test. A large number of people who volunteer for HIV/AIDS test are those who are about to go for marital life or in case someone is in doubt of health conditions. This in turns increase the infection rate of HIV/AIDS in Zanzibar.

6.1 HIV/AIDS and Human Rights

It is an open secret that people living with HIV/AIDS are not given fair treatment by a large number of the members of society. In fact, the right of privacy which is part of the human rights is not respected. Generally, the society seems to look down at the people living with HIV/AIDS. Many employers do not offer employment opportunities to people living with HIV/AIDS. They are discriminated. It has been learnt that people pursuing higher education are required to fill forms with a plenty of questions, some of which touch the health status of scholarship seekers. Although, there is no evidence, it appears that those living with HIV/AIDS are not given fair consideration in the selections.

Stigmatization is another problem. People living with HIV/AIDS are rarely mixed with the general population for fear of stigmatization. Although, medical experts continue to educate the public on the need of social mix-up with people living with HIV/AIDS but it appear a difficult exercise to change the mindset of the society.

6.2 Legal Framework on HIV/AIDS in Zanzibar

Information from the Ministry of Health has hinted that a process to get legislation dealing with the rights of people living with HIV/AIDS has started. A document regarding the legislation is about to be moved to the special committee of Principal Secretaries for technical input before it is being moved to the cabinet. There is no time frame set for enactment of the legislation. Lack of the legislation acts frustrates the rights of people living with HIV/AIDS.

6.3 Institutional Framework

HIV/AIDS is treated as a cross cutting issue. However, the Ministry of Health has the greater responsibility of dealing with the disease. There is a Zanzibar AIDS Commission office falling under the First Vice President of Zanzibar which is responsible for implementing the HIV/AIDS policy in Zanzibar. There is another union in the Ministry of Health which is known as the Zanzibar Aids Control Programme which is responsible of dealing with HIV/AIDS. There are many NGOs dealing with HIV/AIDS as an attempt to contain the disease from spreading further into the society.

6.4 HIV/AIDS Situation in Zanzibar

The picture that emerges on HIV/AIDS shows that Zanzibar has been able to maintain HIV/AIDS prevalence rate at 0.6 per cent for a decade⁹⁶⁴ but cautioned that Zanzibar should not get complacent and additional efforts are needed to combat the scourge.

The number of people living with HIV/AIDS in Zanzibar is 7,900 by September, 2012⁹⁶⁵ up from three cases diagnosed in 1986 when it was first reported.

However, Minister Juma Duni Haji thinks that Zanzibar can eliminate spread of HIV/AIDS under the new global programme to stop new cases, but calls for homosexual freedom spreading in almost all regions of the world, poses a grave threat to war on HIV/AIDS.⁹⁶⁶

“Zanzibar’s permissive culture does not allow homosexual and commercial sex, but call to governments to guarantee freedom of people interested in the behaviours is now a great challenge,” the Minister was quoted.⁹⁶⁷

Equally, the Penal Laws in Zanzibar are very strict in the Union of person of the same sex and a person found and convicted in so doing risks a jail term not exceeding seven years. Interestingly so and despite wide spread reports of homosexual activities, there has been no person reported to have been arrested, charged and convicted.

Section 157⁹⁶⁸ says that;

- (a) enter or arrange a union whether amounting to marriage or not of the person of the same sex;

964 The Zanzibar Minister for Health, Mr Juma Duni Haji said in his opening speech on Stakeholders’ Meeting of HIV held on 6th September, 2012 at the Ocean View Hotel., p. 3.

965 Ibid.

966 *The Daily News* of Wednesday, 19th September, 2012, issue No 10,738, p. 10 has quoted the Zanzibar Minister for Health, Honourable Juma Duni Haji.

967 Ibid.

968 Zanzibar Penal Act, 2004 (Act No. 7 of 2004).

- (b) celebrate a union with another person of the same sex whether amounting to marriage or not;
- (c) Lives as husband and wife with another person of the same sex.

Shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding seven years.

It has been reported in the “*Daily News*” that homosexuality, having sex with multiple people and using or sharing syringe for drugs, increases chances of contracting HIV and hepatitis. In this era of human rights it is difficult to control these unacceptable behaviors.⁹⁶⁹

In this regards, the Minister told the seminar participants organized by the International Centre for AIDS Care and Treatment Programmes (ICAP) in collaboration with the Zanzibar AIDS Control Programme (ZACP) that the government can no longer force people out of homosexuality, commercial sex and using drugs, but can win the war through workable awareness programmes.

Presenting a paper titled “Zanzibar Aids Control Programme: Overview, official of ZACP Ms. Farhat Khalid said potential challenges facing them were coverage of HIV testing. Poor ART Adherence and Key Populations (KPs).

She explained that Prevention of Mother to Child Transmission (PMTCT) of HIV continues well with 111 sites including 44 in Pemba while access to Anti-Retroviral Drugs (ARD) by June this year, 6,425 had enrolled at the treatment centres including 2,531 patients on ARV.⁹⁷⁰

Interestingly however that ZACP has managed to promote the use of condoms which in the past few years was a taboo to even mention.⁹⁷¹ Studies have found out that use of condoms is now accepted among risk groups.⁹⁷²

Sixty sites of HIV Counseling and Testing have been started, out of which 40 sites are in Unguja and 17 in Pemba.

969 *Daily News*, 19th September, 2012, Op.cit.

970 Ibid.

971 Ibid.

972 Ibid.

Table 50: Key Programme Data (January—June, 2012)

	MALE		FEMALE	
	TESTED	POSITIVE	TESTED	POSITIVE
Voluntary Counseling and Testing (VCT)	17,884	220 (1.2%)	16,327	345 (2.1%)
Prevention of Mother to Child Transmission (PMTCT)	1,918	46 (2.4 %)	3,173	82 (2.6%)
OUTREACH	924	2 (0.2%)	373	9 (2.4%)
TOTAL	20,726	268 (1.3%)	19,873	436 (2.2%)

SOURCE: ZANZIBAR AIDS CONTROL PROGRAMME 6th September, 2012.

KEY PROGRAMME DATA (January-June 2012)

DATA ELEMENT	JAN-JUNE, 2012
Pregnant women counseled & tested in ANC, L & D	20,904
Preg women HIV positive	149 (0.7%)
HIV positive women delivered in hospital	85 (57%)
HIV positive women given ARV prophylaxis/ART	122 (82%)
Infants given ARV prophylaxis	77
HIV exposed infants tested for HIV	74
HIV exposed infants tested HIV positive	4 (5%)
Partners tested for HIV	799
Partners tested HIV positive	9 (1.1%)

SOURCE: ZANZIBAR AIDS CONTROL PROGRAMME 6TH September, 2012.

In an effort to contain the spread of HIV/AIDS, the Zanzibar Aids Commission (ZAC) under the Joint United Nations HIV Support Programme for Zanzibar plans to develop resource mobilization strategy for the Zanzibar National HIV response.⁹⁷³

⁹⁷³ *Zanzibar Leo*, issue No. 3886, Wednesday, 26th September, 2012, p. 11.

The strategy is intended to enhance resource mobilization efforts that would assist in filling the current and HIV response gap in the islands.⁹⁷⁴

6.5 Violation of the Rights of People living with HIV/AIDS in Zanzibar

The violation of the rights of people living with HIV/AIDS is still a problem in Zanzibar. The general population is reluctant to accept the reality that there is nothing wrong to mix with HIV/AIDS people. There are different forms of violation on the rights of people living with HIV/AIDS.

6.5.1 The Increasing Stigmatization

Stigmatization of people living with HIV/AIDS remains a problem in Zanzibar.⁹⁷⁵ The stigmatization has caused a problem in that members of the public are not ready to come out for voluntary tests. The manager of ICAP, Frida Redugunda had called for the people to change their mindset and treat the people living with HIV/AIDS fairly.⁹⁷⁶ The ARV is in short supply,⁹⁷⁷ a situation making it difficult the affected persons to survive.

6.5.2 Right to Privacy

A large number of people are afraid to go for voluntary HIV testing for lack of privacy. Some HIV/AIDS people are reported to travel outside Zanzibar to get medical assistance. It is claimed medical personnel in government and public hospital laboratories do not adhere to the professional code of conduct especially on confidentiality of medical information. It is alleged that the medical personnel leak the information to the public on persons found HIV positive. It is unethical.

However, in some cases there are justifications of leaking the information to the public. Some of the HIV/AIDS persons are reported to spread the diseases to their sexual partners. As a result, this causes an increase of the disease.

6.5.3 Discrimination against People Living with HIV/AIDS

There is no doubt that discrimination against people living with HIV/AIDS is the main problem. This problem keeps growing due to lack of adequate health education. People living with HIV/AIDS are exposed to a painful experience of discrimination in the society.

974 Ibid.

975 *Zanzibar Leo*, No. issue 3885, Tuesday, 25th September, 2012, p. 6.

976 Ibid.

977 The First Vice President of Zanzibar, Maalim Seif Shariff Hamad made the accusations in his speech to journalists he delivered on 6th October, at the Grand Palace Hotel at Malindi to explain the achievements and problems of his ministry.

6.5.4 Lack of Essential Medicine and Drugs

Government hospitals and clinics use to offer essential medicine and drugs to people living with HIV/AIDS especially for those women who use to attend clinics before and after giving birth. A shortage of the essential medicine and drugs still persists. The government budget allocation is too limited and cannot meet the demand. Foreign organizations use to supply the essential medicine and drugs.

6.6 Conclusion

People living with HIV/AIDS experience a number of social and medical difficulties. Provision of health services in general is not one of the enforceable constitutional rights. The government does not seem to put much weight on the rights of people living with HIV/AIDS. It is trying to help the situation but a lot of excuses are advanced. There is the need to speed up the process to get a legislation dealing with the rights of people living with HIV/AIDS in a bid to help them as well as control from the further spreading the disease.

Part II

**Zanzibar
Human
Rights
Report**

2012

CHAPTER SEVEN

SMZ Special Departments and Human Rights

7.0 Introduction

There are five Special Departments of the Revolutionary Government of Zanzibar. As per Section 122 of the Constitution of Zanzibar, 1984, the powers, authority, functions and regulations of their procedures shall as so provided for in a law enacted by the House of Representatives. Each Special Department has been established by its own Act which was passed in the House of Representatives. The Special Departments are Economic Development Force which in Kiswahili is referred as Jeshi la Kujenga Uchumi (JKU); the Special Force for Prevention of Smuggling which in Kiswahili is referred as Kikosi Maalum cha Kuzuia Magendo (KMKM); the Educational Centre for Offenders which in Kiswahili is referred as Chuo Cha Mafunzo; the Fire Brigade and Rescue Services which in Kiswahili is referred as Kikosi Cha Zimamoto Na Uokozi (KZU) and the Volunteers which in Kiswahili is referred as Kikosi Cha Valantia. These Special Departments exist parallel with the Armed Forces but are derived from different Constitutions, the former from the Constitution of Zanzibar, 1984 and the latter from the Constitution of the United Republic of Tanzania. There is a contradiction over the existence of the Special Departments.

7.1 SMZ Special Departments and Human Rights

There have been complaints leveled against the Special Departments in relation to the Human Rights. These Departments are most of the time are accused of involvement in furthering political interests of the government in power.

One of the Departments has been accused in involvement of the Bububu by-elections. Although there was a time in point the government denied the allegations of involvement of the Department in the Bububu by-elections, but the main opposition CUF came in the open pointing an accusing finger to one of the Department over its involvement in the Bububu by-elections.

Some people have been complaining that procedures of recruitment to the special Departments are not open to the public. It is unclear what types of procedures are in place. It seems some people are interested to join to the Departments but are never given the opportunity.

a. Kikosi Maalum cha Kuzuia Magendo (KMKM) (the Anti Smuggling Marine Unit)

The KMKM has been established by Act⁹⁷⁸ with the purposes to check smuggling activities in the Zanzibar waters. The marine force had managed to intercept 14 incidents of smuggling activities for 2011/2012.⁹⁷⁹

b. Kikosi cha Valantia (the Volunteers)

This Department has been established by Act⁹⁸⁰ with the main purposes to assist in matters relating to defense.

c. Educational Centres for Offenders (Prison Centres)

The Educational Centres has been established by Act⁹⁸¹ with the main purposes to reform inmates. For 2011/2012 financial year, the Educational Centres had received a total of 479 students out of whom 462 are male and 17 are female.⁹⁸² During the same period, the Educational Centres had received a total of 2,620 remandees out of whom 2,510 are male and 110 are female.⁹⁸³ Most of the remandees are charged with murder, theft, armed robbery, rape, housebreaking and stealing.⁹⁸⁴

Some people, for example, *UAMSHO* members are complaining over mistreatment in the Educational Centres arguing that they had spent more than two weeks without being allowed to change clothes.

d. The Jeshi la Kujenga Uchumi (JKU) (Economic Building Brigade)

JKU has been established by Act⁹⁸⁵ with the purpose to train young men and women in economic, agriculture, small scale industries, fisheries and vocational training.

e. Kikosi cha Zimamoto na Uokozi - KZU - (Fire and Rescue Services)

The KZU has been established by Act⁹⁸⁶ with the purposes fire fighting activities and rescue services

978 (Act No. 1 of 2003).

979 *Hotuba ya Waziri wa Nchi Ofisi ya Rais na Mwenyekiti wa Baraza la Mapinduzi, Mheshimiwa Dkt. Mwinyihaji Makame Kuhusu Makadirio ya Mapato na Matumizi ya Fedha ya Rais na Mwenyekiti wa Baraza la Mapinduzi kwa Mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi, Zanzibar*, p. 76.

980 Act No. 5 of 2004.

981 (Act No. 1 of 1980).

982 Educational Centres, Op.cit footnote, p 81.

983 Ibid.

984 Ibid.

985 (Act No. 6 of 2003).

986 (Act No. 7 of 1999).

7.2 Legality of Special Department *vis-vis* the Union Constitution

The establishment of the Special Departments of the Revolutionary Government of Zanzibar famously known here as Security Forces of Zanzibar parallel with Armed Forces falling under the Union Government occupies the mind of many people and is one of hot issues that may feature prominently in the new Constitutional Process of Tanzania.

The big question mark is the contradiction between the Constitution of Zanzibar, 1984 and the Constitution of the United Republic of Tanzania, 1977 over the establishment of the Zanzibar Special Departments (Security Forces) taking into consideration that Defense and Security falls under the Union matters⁹⁸⁷ which are referred to Article 4 of the Constitution of the United Republic of Tanzania, 1977.

In addition, as per Article 64 (3) of the Constitution of the United Republic of Tanzania, 1977 stipulates clearly that;

Where any law enacted by the House of Representatives concerns any matter in Tanzania Zanzibar which is within the legislative jurisdiction of Parliament, that law shall be null and void, and likewise if any law enacted by Parliament concerns any matter which is within the legislative jurisdiction of the House of Representatives that law shall be null and void.

Article 147 (1) of the Constitution of the United Republic of Tanzania, 1977 states that;

It is hereby prohibited for any person or any organization or any group of persons except the Government to raise or maintain in Tanzania an armed force of any kind;

While Article 147 (2) of the same Constitution states that;

The Government of the United Republic may, in accordance with law, raise and maintain in Tanzania armed forces of various types for the purposes of the defense and security of the territory and the people of Tanzania.

In connection to the above cited Article it means the establishment of the Zanzibar Special Department is a contradiction to the Constitution of the United Republic of Tanzania, 1977. Section 121 (1) of the Constitution of Zanzibar, 1984 says that;

There shall be Special Departments of the Revolutionary Government of Zanzibar whose duties and functions shall be as prescribed in relevant laws.

⁹⁸⁷ See item three of the First Schedule

Article 148 (1) of the Constitution of the United Republic of Tanzania, 1977 says that;

Without prejudice-to the provisions of any law enacted by Parliament, among the powers of the President as Commander-in-Chief of the Armed Forces is to command the Armed Forces to engage in military operations connected with the defense of the United Republic, rescue operations to save life and property in times of emergency and other matters which the Commander-in-

Chief shall deem necessary, and to that end the Commander-in –Chief may command the Armed Forces to engage in those operations in or outside Tanzania.

Another vividly contradiction is the Power of the President of Zanzibar in respect of the Special Departments. Section 123 (1) says that;

The President shall be the Commander-in-Chief of the Special Departments and shall have the powers to **do anything he sees fit so to in the interest of the Nation.**

Two fundamental questions emerging connection of the aforementioned paragraphs are; the first question is who the Commander-in-chief in Tanzania? And the second question is whether the Union President who is the commander-in-chief in Tanzania has commanding power over the Special Departments of the Revolutionary Government of Zanzibar whose commander-in-chief is the President of Zanzibar

7.3 Conclusion

The Five Departments are treated as Isles security Forces and most of the time are used in peace keeping especially during elections time. In some cases, the Departments are accused of involvement in political activities contrary to the laid down laws towards their establishments. However, the Zanzibar authorities defended the position of the force saying they were used as reinforcement in peace-keeping.

The legality of the Departments vis-à-vis the Union, remains a question that needs more elaboration as some people maintain that the establishment of the Departments are against the Constitution of the United Republic of Tanzania, 1977.

It is expected that the new Constitution of the Union will come up with a solution over this legal wrangle between the two sides of the union.

CHAPTER EIGHT

Collective Rights

8.0 Introduction

There has been a debate going on in human rights between the collective rights and individual rights. Some people use to say that there is no line of distinction between the two. However, collective rights protect a group of people while individual rights protect the individual. The international and regional human rights instruments explained about the collective rights. The Revolutionary Government of Zanzibar has been trying to meet the needs of collective or group rights.

8.1 Right to Development

Right to development was first recognized in 1981 in Article 22 of the African Charter on Human and People's Rights as a definitive individual and collective right.⁹⁸⁸

Article 22 (1) provides that;

All peoples shall 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.

The right to development was subsequently proclaimed by the United Nations in 1986 in the Declaration on the Right to Development which was adopted by the United Nations General Assembly resolution 41/128.⁹⁸⁹

The right to development is a group right of peoples as opposed to an individual right and was reaffirmed by the 1993 Vienna Declaration Programme of Action.⁹⁹⁰

8.2 Right to Development in Zanzibar

Legally, the right to Development in Zanzibar is not covered. It has been included in the Fundamental Objectives and Directive Principles and Policies of the Revolutionary Government of Zanzibar. The right to Development as part of the collective right is made part of the annual Zanzibar Government

988 http://en.wikipedia.org/wiki/Right_to_Development visited on 26th December, 2012.

989 Ibid.

990 Ibid.

Plan which is tabled in the House of Representatives for deliberation and approval.

Through the representative democracy of their respective legislators in the House of Representatives, the people of Zanzibar are given a chance to discuss what is in the government Plan annually including all projects such as the Zanzibar Strategy for Growth and Reduction of Poverty famously known in *Kiswahili MKUZA—Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar-*.

Other development projects are covered at the Ministerial levels. Each Minister is given time to explain the development plan of a ministry under his/her portfolio and the representatives get the opportunity to question the viability of a development project. Some projects are revisited as a result of the technical and political input of the representatives. In some cases, the representatives question even the list of priority of the projects.

There is an argument that the Annual Government Development Plan is influenced by the Party Election Manifesto of the ruling CCM. The basic question is whether the Development projects are tailored for all the people regardless of their political party affiliations or not. After all, there is a point that all Election Manifestos of all registered political parties propagate common things.

8.3 Right to Clean Environment

There is a Department of Environment falling under the Office of the First Vice President of Zanzibar. Among the key duties of this Department is to collect information on environment, to disseminate environmental information to the public, to help implementation of development projects, to raise awareness on the importance of environment, to draw a climatic change strategy and take appropriate actions to conserve the environment.⁹⁹¹

The Department has carried out Environmental Impact Assessment on 12 development projects and approved the projects.⁹⁹² Correspondingly, Environmental Impact and Social Assessment Regulations have been reviewed in 2012.⁹⁹³

It has been reported that the Department of Environment is now preparing regulations on the Integrated Coastal Zone Management and later on the draft copy would be submitted to the Office of the Attorney General for approval.

991 *Hotuba ya Waziri wa Nchi Ofisi ya Makamu wa Kwanza wa Rais, Mheshimiwa Fatma Abdulhabib Ferej, Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi Zanzibar*; p. 16.

992 Ibid, p. 19

993 Ibid.

8.3.1 Human Rights and the Environment

The protection of human rights and environment are treated seriously. The Revolutionary Government of Zanzibar had taken measures to conserve the environment to enable the people to live comfortably.

Unlike in the past, the Zanzibar Stone Town is kept clean. Land Development Projects are carried out in line with the environment. For example, there are projects of National Spatial Development Strategy, Sustainable Urban Development and Management. Special areas outside the Zanzibar Municipality have been set aside for dump purposes. Under the supervision of the Zanzibar Municipal Council, garbage is collected from different points in town to the special areas for disposal.

Unlike in Tanzania Mainland or other countries, there is no serious case on the environment that has been brought to the attention of the Courts of Records in Zanzibar. It has been reported in the budget speech that A New Environment Policy is underway. The new policy has taken long due to some technicalities which will replace the old National Environmental Policy of 1992.

8.4 The Environment in the Constitution of Zanzibar, 1984

The Constitution of Zanzibar, 1984 has not included a direct or specific provision of environment. However, Section 10 (6) of the Constitution provides some indications on the environment to the Government. The Section says that;

Shall direct its policy toward ensuring that every person has access to adequate health care, equal opportunity to adequate education for all and that Zanzibar culture is protected, enhanced and promoted.

8.4.1 Duty to Protect Natural Resources

Natural resources occur naturally within environments that exist relatively undisturbed by mankind, in a natural form.⁹⁹⁴ A natural resource is often characterized by amounts of biodiversity and geo-diversity existent in various ecosystems.⁹⁹⁵

The survival of the people of Zanzibar largely depends on natural resources taking into consideration that Zanzibar is not an industrial country. Natural resources available in Zanzibar include sea, rivers, land and wind. There is a story about oil exploration in Zanzibar.

It is claimed that some researches indicate that there is the possibility of oil around the Zanzibar waters.

⁹⁹⁴ http://en.wikipedia.org/wiki/Natural_resource visited on 19th December, 2012.

⁹⁹⁵ Ibid.

The oil exploration is a sensitive issue and has brought a lot of complaints between Zanzibar and the Union government. The main problem is the best equitable formula to be used between the two parts. There was time the Zanzibar authorities through the House of Representatives wanted to take out of the union list oil exploration. The plan failed and it was explained that the National Assembly is the only place to decide about exclusion of oil exploration from the union list.

The protection of natural resources is a constitutional duty. Section 23 (2) of the Constitution of Zanzibar, 1984 says that;

Every person has the duty to protect the natural resources of Zanzibar, the property of the state Authority, all property collectively owned by the people and also to protect another person's property.

8.4.2 Waste Disposal and Sanitation

The main duty of waste disposal and sanitation fall under the Zanzibar Municipal Council which is attached to the Office of President and Chairman of the Revolutionary Council and a Land Survey Department which is attached to the Ministry responsible for Construction.

The Municipal Council collects garbage and manages the sewerage system in the Zanzibar Municipality. The capacity of performing this task efficiently is low. The untreated wastes from the town are administered to the sea for disposal, a factor which contributes to sea pollution.

The Land Survey Department approves architectural drawings. It is claimed that either some of the drawings get approval without putting serious consideration on waste disposal or there is no close follow up of construction activities to know whether the drawings are strictly followed or not.

8.4.3 Solid Waste Disposal Management

The management of solid waste disposal is a chronic problem. The institution responsible for solid waste disposal management lacks the capacity to perform the work as per the people's expectations. The institution is also underfunded and lacks enough modern equipment.

The Zanzibar Municipal Council has managed to collect 25,920 tones of solid waste from towns which are equivalent to 45 per cent of all the waste in town.⁹⁹⁶ The question comes of what is the fate of the 55 per cent of the uncollected waste.

⁹⁹⁶ *Bajeti ya Ofisi ya Rais na Mwenyekiti wa Baraza la Mapinduzi ya Mwaka wa Fedha 2012/2013*, p. 57.

There was a time when the Zanzibar government wanted to privatize the solid waste disposal. There is so far no clear information of development of the privatization plan. The dumping sites keep changing and in some cases the solid waste are dumped in agriculture fields as manure.

8.4.4 Deforestation

There is a Department of Forestry within the Ministry of Agriculture and Natural Resources. The Department is among other things responsible to check wanton destruction of natural resources and cutting down of trees for charcoal and construction poles.

Cutting down of trees is allowed. However, one needs to get a permit from the Forestry Department. There are forest guards who have been distributed in every district responsible to check unaccepted forest activities. A lot of cases were brought before the court and the culprits were fined.

8.4.5 Natural Resources

The main problem of natural resources management is illegal fishing using prohibited fishing activities such as dynamite in the Zanzibar waters. There are also foreign trawlers in the deep sea working without fishing licenses hence denying the government revenue. It is understood that the government lacks modern patrol speed boats to check against unauthorized fishing activities around the Zanzibar Waters.

8.4.6 Wide Spread of Plastic Bags Business

Unlike in the past, the spread of plastic bags has gone down drastically as a result of the Government ban on the bags. There are still cases of come unscrupulous businessmen who continue to import plastic bags.

A total of 192 persons out of whom five were female and 187 were male were arrested with illegal possession of plastic bags from July 2011 up to May 2012, according to the budget speech of the Ministry responsible of the Environment. All of the arrested persons were taken to the Court and ordered to pay a fine. A total of 7,650,000 has been collected from the fine, out of the total, 6,350,000 is from Unguja and 1,300,000 in Pemba, according to the budget speech of the Minister responsible for Environment.

Under whatever yardsticks, the anti plastic bag operation has turned out to be a success story and the use of plastic bags had dropped drastically in Zanzibar, according to the budget.

8.5 Right to Peace and Security

The right to peace and security is covered in international and regional instruments. It is up to government to provide for the right to peace and security to its people as prerequisite for the nation's economic, political, social and

culture interests.

Section 9 (2) (b) of the Constitution of Zanzibar, 1984 says that;

Security for people and their welfare shall be the primary objective of the Government.

Unlike in the past and by whatever standard, peace and security has improved significantly although there were sporadic cases of violence and skirmishes catapulted politically or religiously.

The improved peaceful and security situations in Zanzibar has been confirmed by a press release issued by the UN Refugee Agency on Voluntary Repatriation of Tanzanian refugees.

The circumstances that prompted the Tanzanian refugees to voluntarily repatriate to their country of origin were that; two main reasons motivated their return. On one hand, due to Somalia's complex political and economic situation, the Tanzanian refugees could enjoy there the national protection and social welfare that they needed. On the other hand, the circumstances that caused their flight from their country of origin no longer exist today, thus allowing them to come back.

More than 2000 refugees left the Tanzanian island of Pemba in January, 2001 following political riots and civil strife linked to election in October, 2000. The clashes arose when police broke up demonstrators by supporters of CUF against what they considered were unfair elections, won by CCM.

Figure 4: Press Release Issued by the UN Refugee Agency on Voluntary Repatriation of Tanzanian Refugees



Voluntary Repatriation of Tanzanian refugees

**originating from the island of Pemba (Zanzibar)
currently residing in Mogadishu, Somalia
Media Guide**

When did Tanzanian Refugees flee the country and what was the reason for their fleeing?

More than 2000 refugees left the Tanzanian island of Pemba in January 2001 following political riots and civil strife linked to the elections in October 2000. The clashes arose when police broke up demonstrations by supporters of the opposition Civic United Front (CUF) against what they considered were unfair elections, won by the ruling Chama Cha Mapinduzi (CCM) party.

What happened to these Tanzanians from Zanzibar after they left Tanzania?

They travelled to Kenya where they were recognized as refugees by UNHCR and transferred to the Dadaab refugee camp. However, in 2001, some of them voluntarily repatriated back to Pemba Island while others had spontaneously left the camp after refusing to return back home, and decided to go elsewhere, notably Somalia and Yemen.

In which conditions did the Tanzanian refugees who went to Somalia live in?

When they arrived in Somalia in November 2001, the country was in the middle of a grinding civil conflict. Somalia has been through war for the past decades and all the economic infrastructures collapsed along with the collapse of the national Somali government in 1991. Many refugees could not sustain themselves and their families in Mogadishu, nor could they get sufficient support from local or international agencies, therefore some went to other regions to seek jobs (Puntland or Somaliland) while others have been struggling financially and doing some precarious or underpaid jobs.

Despite the daily violence and the harsh living conditions, there is little evidence of the Tanzanians being discriminated against in Mogadishu. Some of them reported in 2009 to the media that they are well received and eventually some managed to get married with Somali.

What circumstances prompted the Tanzanian refugees to voluntarily repatriate to their country of origin?

Two main reasons motivated their return. On one hand, due to Somalia's complex political and economic situation, the Tanzanian refugees could not enjoy there the national protection and social welfare that they needed. On the other hand, the circumstances that caused their flight from their country of origin no longer exist today, thus allowing them to come back.

How many Tanzanian refugees are returning and how is UNHCR helping them in this process?

Towards the end of 2010, a group of Tanzanian refugees from Zanzibar residing in Mogadishu approached UNHCR with an interest to voluntarily repatriate back to Tanzania. UNHCR has been working all the necessary arrangements for their return and reintegration in collaboration with the Governments of Somalia and Tanzania. A total number of 12 families (44 people among whom 11 are Somali family members) will be officially welcomed in Tanzania on 6th July 2012. They will return to 6 different places of origin in Zanzibar and Pemba region.

What kind of assistance will be offered to the returnees?

UNHCR has prepared a comprehensive reintegration package for both adults and children. They will receive financial support including a repatriation cash grant, funds for their initial integration process, and funds for food (4 months' supply) and non-food items.

Additional Practical Information on the return:

The returnees will arrive in Tanzania (Zanzibar) on the 06th of July 2012, accompanied by a UNHCR team from Somalia, including UNHCR Representative in Somalia Mr. Bruno Geddo. They will be officially welcomed by local and national authorities from Tanzania and a team from UNHCR Tanzania led by Ms. Linnei LJ Senior Protection Officer. They will spend a night in Zanzibar and travel to Pemba on the 07th of July where another welcome from local authorities is planned. From there, they will finally proceed to their different areas of return.

How many Tanzanian refugees are returning and how is UNHCR helping them in this process?

This is a copy of the letter of the United Nations High Commission for Refugees during repatriation of Tanzania refugees originated from the island of Pemba (Zanzibar) currently residing in Mogadishu Somalia Media Guide

In addition to the formation of Government of National Unity in Zanzibar which had facilitated improvement of peace and security, there have been reports of living hardships and choking inflation that propel poverty.

8.6 Conclusion

Generally, there have been positive achievements of collective rights in Zanzibar during 2012. What is needed to be put in place are more strategies to boost the performance and strike out hardships that stand in the way. It appears that there is a possibility of that people to enjoy more if the collective rights are properly implemented.

Part II

**Zanzibar
Human
Rights
Report**

2012

CHAPTER NINE

Domestic Initiative in Human Rights Protection

9.0 Introduction

Pursuant to the International and Regional instruments of human rights, Tanzania adopted measures to show respect and protection of human rights. In this context, there were measures were taken by Tanzania as a whole (Zanzibar inclusive) and there were measures were taken by Zanzibar as semi autonomous and not as part of the United Republic of Tanzania. This Chapter focuses on Zanzibar's efforts to respect, protect and promote human rights.

9.1 Incorporation of Bill of Rights in the Constitution of Zanzibar, 1984

In the first place, Zanzibar had its first Constitution of 1963 that came in force on 10th December, 1963. This supreme law was short-lived and survived hardly a month before the 12th January, 1964 when it was abolished; it had incorporated a Bill of Rights.

Zanzibar went without a Constitution for 15 years and there was nothing about the Bill of Rights. Zanzibar was ruled by the Presidential Decrees through the Revolutionary Council. The first-post revolution constitution of 1979 contained no Bill of Rights.

The Constitution of Zanzibar, 1984 incorporated a Bill of Rights. The Constitution devotes Chapter Three as Protection of Fundamental Rights and Individual Freedoms. All fundamental rights are covered in this Chapter.

Sadly, the Chapter Three of the Constitution of Zanzibar, 1984 had a shaky experience. The Tenth Amendment of the Constitution of Zanzibar, 1984 that was carried out in 2010 had two main issues that directly touched the interest of Bill of Rights.

Firstly, Section 24 (3) had been amended and that the Court of Appeal of Tanzania has no appellate jurisdiction in relation to the Bill of Rights. The High Court of Zanzibar is final and conclusive.

The research team is not sure whether or not the Court of Appeal of Tanzania or the Union government was consulted before the amendment and whether there was such a law binding Zanzibar to consult the Union authorities in the amendment of the Constitution of Zanzibar.

Prior to the amendment, the Section 24 (3) reads that;

The application against the decision of the High Court in the suit instituted against the provisions of this Chapter of the Constitution shall be heard by the High Court before three judges without including the judge who has decided the question on the first occasion. Those three judges shall be appointed by the Chief Justice.

After the amendment, the Section 24 (3) reads that;

Appeal against the decision of the High Court in the suit instituted against the provisions of this Chapter of the Constitution shall be heard by the High Court before three judges without including the judge who has decided the question in the first occasion. Those three judges shall be appointed by the Chief Justice and **their** decision shall be final and conclusive and shall not be appealable to the Court of Appeal of Tanzania. **(This is not official translation).**⁹⁹⁷

Secondly, the Tenth Constitutional Amendment had entrenched new Section 80A which among things said that the House of Representatives shall have no power to amend, inter alia; all provisions of Chapter Three (Bill of Rights) unless that amendment(s) are first accepted by the people through a referendum.

9.2 The Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (CHRAGG) is an independent government department, established as the national focal point institution for the promotion and protection of human rights and duties as well as good governance in Tanzania.⁹⁹⁸

CHRAGG was established under Article 129 (1) of the Constitution of the United Republic of Tanzania, 1977 as amended by Act No. 3 of 2000. The Commission became operational on the 1st July, 2001⁹⁹⁹ after the coming into force of the Commission the Human Rights and Good Governance Act, 2001 (Act No. 7 of 2001) as amended by Act No. 16 of 2001 and Government Notice No. 311 of 8th June, 2001. The Commission was officially inaugurated in March, 2002 following the appointment of Commissioners by the President

997 For avoidance of doubt, the Swahili version, which is the controlling version -- Section 24 (3) reads that: *Rufaa dhidi ya uamuzi wa Mahkama Kuu katika shauri lililofunguliwa dhidi ya masharti ya Sura hii ya Katiba yatasikilizwa na Mahkama Kuu mbele ya Majaji watatu bila ya kumjumisha Jaji aliyeamua shauri hilo mara ya kwanza. Majaji hao watatu watateuliwa na Jaji Mkuu na uamuzi wao utakuwa ni wa mwisho na hautokatiwa rufaa kwenye Mahkama ya Rufaa ya Tanzania.*

998 <http://chragg.go.tz/> visited on 17th December, 2012.

999 Ibid.

of the United Republic of Tanzania¹⁰⁰⁰

In order to go closer to the people, CHRAGG has opened offices in Tanzania Mainland and Zanzibar as well. Zanzibar Office is led by a Commissioner. Zanzibar Office started its operation on 30th April, 2007 and covers Pemba as well.

The CHRGG plays the dual role of an ombudsman and a human rights commission.¹⁰⁰¹ Although this legislation authorized it to operate in both the mainland and Zanzibar, Zanzibar authorities prevented it from doing so until a parliamentary amendment was enacted.¹⁰⁰² In May, 2006, Union government authorities and Zanzibar officials agreed that the quasi governmental CHRGG would be permitted to operate in Zanzibar.¹⁰⁰³ It is understood that human rights is falling under the list of the union matters.

9.2.1 Independence of the Commission

The independence of the CHRAGG remains questionable. The public perception is that the commission operated independently without government interference.¹⁰⁰⁴ However, several members of the public argue that the commission has weaknesses, including the violation of the Paris principles on the independence of national human rights institutions.¹⁰⁰⁵ Firstly, the CHRGG is barred from investigating the President.¹⁰⁰⁶ Secondly, the President can direct the commission to discontinue an investigation, although he must provide a reason,¹⁰⁰⁷ “if he considers that there is a real and substantial risk that the investigation would prejudice matters of national defense or security”. Thus far, the President has not interfered with the work of the commission.¹⁰⁰⁸

Thirdly, the commission has not yet developed its capacity to serve the whole country.¹⁰⁰⁹ There is a need to ensure closer coordination between the commission’s operations and other related organs, such as the Good Governance Coordination Unit in the President’s office, the Prevention of Corruption Bureau, the police, and civil society (Bureau of Democracy, Human Rights and Labor 2007).

1000 Ibid.

1001 EISA Tanzania Commission.

1002 Ibid.

1003 Ibid.

1004 Ibid.

1005 Ibid.

1006 Ibid.

1007 Ibid.

1008 Ibid.

1009 Ibid.

The Commission was scored as “weak” by the 2006 Global Integrity Index on several accounts (Global Integrity 2006).¹⁰¹⁰ However, it noted that there had been too few cases since its establishment to tell whether government acts on the findings of the agency.¹⁰¹¹

Generally, the agency did not respond to citizen complaints within a reasonable time period but the response period depended on the importance of the case and the status of the complaint.¹⁰¹² The law does not spell out whether reports of the agency should be accessible but in practice they are reasonably accessible.¹⁰¹³ The reports have to be tabled before the National Assembly before the public can access them.¹⁰¹⁴

9.2.2 Performance of the Commission

The part of the performance of the Commission concentrates on Zanzibar Office only. The Commission’s performance in Tanzania Mainland has been covered in the Tanzania Mainland report. Hence there is no reason of duplication of the report.

The performance of the Commission on Zanzibar is far from satisfactory. A number of projects planned to be carried out for 2012 could not be implemented. The budget allocated to the Zanzibar Office is extremely insufficient to perform the activities lined up and is far from the budgeted activities¹⁰¹⁵. In other words, this is the frustration to the Office.

In addition to that, the staffing position is too low and the staff are overloaded with duties.¹⁰¹⁶ The small number of the staffs are forced to do research and documentation, to run the Human rights Department, to manage the Good Governance Department, to offer legal services and to raise public awareness.¹⁰¹⁷ Given the amount of the money they have received from the headquarters, it is difficult to implement the Annual Plan of Action for the Zanzibar Office.

Some of the activities that had been expected to be done in 2012 were visits to Sober Houses, visits to People with Developmental Disabilities, visits to the Mental Hospital, visits to schools to raise awareness to the students on human rights and the principles of good governance.¹⁰¹⁸

Notwithstanding the problems, the Commission’s Office in Zanzibar has something to show on the ground. The Office handled 29 complaints from

1010 Ibid.

1011 Ibid.

1012 Ibid.

1013 Ibid.

1014 Ibid.

1015 CHRAGG officers in Zanzibar Office said in an interview with the research team.

1016 Ibid.

1017 Ibid.

1018 Ibid.

the people ranging from land disputes, police abuse and violation of political and civil rights including cases of *UAMSHO*.¹⁰¹⁹ Some of the land disputes involved the government and its officials.¹⁰²⁰

The main hindrance in the lack of cooperation from complainants and poor response from the authorities on allegations of human rights violations leveled against them.¹⁰²¹

The Commission has drawn a list of recommendations for improvement of human rights here. The recommendations include that increased land disputes is a result of non-adherence to the laid down procedure by some land officers, lack of transparency, some government officials are ignorant of the laws and procedure, the Revolutionary Government of Zanzibar should take appropriate actions to iron out corrupt practices in the Isles Judiciary, delay of cases and issuance of receipts to all those who had paid fines.¹⁰²²

In addition to, the Commission has recommended that the government through its respective Ministry of Health to popularize the Health Policy,¹⁰²³ the Education Policy¹⁰²⁴ and the stakeholders to cooperate with the Commission.

9.3 Law Review Commission of Zanzibar

The Law Review Commission of Zanzibar (LRCZ) was established as the result of the Msekwa Commission which recommended among other things the establishment of a permanent law review commission to conduct a wide range review of the legal system and recommend changes in the administration of justice.¹⁰²⁵

Taking advantage of the Msekwa Commission's recommendations, the government enacted the LRCZ of Zanzibar Act No. 16 of 1986. For a long time, the LRCZ was neglected and was underfunded with inadequate staff.

In the recent past, the government has reactivated the LRCZ. It is the first time since the commission's establishment it has five part time commissioners to work closely with the chairman and the secretary.

The LRCZ is now performing though at a slow pace. It is however faced with a number of challenges.¹⁰²⁶ They include underfunding, lack of permanent home, insufficient working facilities, lack of transport and the organizational structure

1019 Ibid.

1020 Ibid.

1021 Ibid.

1022 Ibid.

1023 Ibid.

1024 Ibid.

1025 UNITED NATIONS DEVELOPMENT PROGRAMME, *Zero Draft Report, Capacity and Needs Assessment of Legal Sector Actors in Zanzibar*, funded by the United Nations Development Programme, Tanzania, p.g 36.

1026 Ibid, 38.

is not fully developed.¹⁰²⁷

Of late, the LRCZ has been reviewing the Law of Evidence and the People with Disabilities Act, 2009 (Act No. 9 of 2006) to conform the legislation to time.

9.4 The Establishment of the Office of the Director of Public Prosecution

The report of the Reforms of Legal Sector prepared by Judge Mark Bomani and the 8th Constitutional Amendment was the result of the formation of the Office of Director of Public Prosecutions (DPP) in Zanzibar.

The DPP has the constitutional powers and will hold the office for a term of five years. The DPP has the power to decide on prosecution matters and shall not be interfered with any person or organ.

The DPP has taken over all criminal cases in the High Court, Regional and some District Courts.¹⁰²⁸ There still remain eight districts in Unguja and Pemba where the DPP has yet to take over the prosecution services.¹⁰²⁹ It is understood that in the absence of the DPP, police take charge of prosecution services.

The DPP office is faced with several challenges. The office is underfunded and cannot meet the financial demands of criminal justice system. The budget allocation is extremely insufficient to meet the demands.

Lack of enough staff to handle criminal cases is another problem to the DPP Office. Numerous requests have been made to the Central Establishment to allow the DPP to recruit more personnel. The government seems reluctant to heed to the DPP demands thus affecting the prosecution services.

The general awareness of the public on the criminal justice system is low.¹⁰³⁰ Production of evidence has paralyzed.¹⁰³¹ The environment for evidence production is hostile.¹⁰³² Witnesses are treated like accused persons and there is no witness protection.¹⁰³³

The recent reports from some staff of the Office of DPP indicate that there is exodus of some senior and competent staff pending in search of greener pasture. Several requests forwarded to the DPP seeking the secondment to other public offices have been rejected.

It has been informed that the Statistics Unit of the DPP Office needs to be strengthened.

1027 Ibid.

1028 Ibid, 25.

1029 Ibid.

1030 Ibid.

1031 Ibid.

1032 Ibid.

1033 Ibid.

9.5 Zanzibar Human Rights Guidelines (*Muongozo wa Haki za Binadamu Zanzibar*)

The Ministry of Justice and Constitutional Affairs had distributed Human Rights Guidelines in an effort to raise the public awareness of human rights issues. Reports informed that there has been follow up of the Guideline to get a feedback from the people. There is a need of doing monitoring exercise to see the level of understanding of the people and practice of human rights. It is almost four years since the distribution of the Guideline but there is no updating of information contained therein taking into account that the UN issues resolutions.

9.6 Conclusion

The road to Domestic Initiative in Human Rights Protection is still bumpy. There are administrative and technical hitches frustrating the initiative in human rights protection. In fact, the human rights protection initiatives need the government commitment and political will. What the government promise does not correspond to the reality. A lot of sweet promises are made. Implementation leaves much to be desired.

Part II

**Zanzibar
Human
Rights
Report**

2012

CHAPTER TEN

Corruption, Abuse of Power and Human Rights

10.0 Introduction

Corruption remains a challenge and it grows roots. Government ministries, institutions and the Judiciary in Zanzibar are linked to corrupt practices which largely affect the Good Governance. It appears the Revolutionary Government of Zanzibar understood of corrupt practices and it started taking measures to fight the problem. The Ministry of State in the President's Office responsible for Public Service and Good Governance has been formed, The Zanzibar Anti-Corruption and Economic Crimes Act has been passed by the House of Representatives (HoR), Administrative changes have been undertaken which include the Centralized Payment System (CPS) and the Integrated Financial Management System (IFMS) Apparently, the efforts aimed at controlling corrupt practices and corrupt related activities.

Meaning of Corruption

The meaning of corruption differs from place to place, country to country and even culture to culture. Corruption takes different forms.

There are different types of corruption¹⁰³⁴ They include secret inducement for advice; deceiving principal; fail to disclose conflict of interests; improper benefits to trustees for appointment; bid rigging misappropriation of property and revenue; misappropriation of assets; tax evasion; smuggling, hoarding, anti-trust and syndication, wrongful use of official information, money laundering, drug trafficking, counterfeiting goods and currency, scheme intended to unlawfully manipulate exchange rate, abuse of office, transfer of proceeds of corruption, corruption in election; bribery of foreign official; sexual favours and abetment.

10.1 International Instruments in Combating Corruption

The United Nations has taken efforts to combat corruption. In its resolution 55/61 of 4th December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized (resolution 55/25 Annex 1) was desirable and decided to establish ad hoc committee for the negotiation

1034 THE REVOLUTIONARY GOVERNMENT OF ZANZIBAR, *Draft Report of the Base-line Assessment of Anti-Corruption Activities in Zanzibar*, September 2012, pg 6. 09TH September, 2012, p. 2.

of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime.¹⁰³⁵

The Convention approved by the Ad hoc Committee was adopted by the General Assembly by resolution 58/4 of 31st October, 2003.¹⁰³⁶ The General Assembly, in its resolution 57/169 of 18th December, 2002, accepted the offer of the Government of Mexico to host a high level signing conference in Merida for the purpose of signing the United Nations Convention against Corruption.¹⁰³⁷

In accordance with Article 68 (1) of resolution 58/4, the United Nations Convention against corruption entered into force on 14th December 2005¹⁰³⁸

10.2 Corruption and Human Rights

A human rights approach may help to minimize opportunities for corrupt behavior and make it more likely that those who are corrupt are caught and appropriately sanctioned.¹⁰³⁹ A human rights approach also focuses attention on people who are particularly at risk, provides a gender perspective, and offers elements of guidance for the design and implementation of anti-corruption policies.¹⁰⁴⁰ If corruption is shown to violate human rights, this will influence public attitudes.¹⁰⁴¹

When people become more aware of the damage corruption does to public and individual interests, and the harm that even minor corruption can cause, they are more likely to support campaigns and programmes to prevent it.¹⁰⁴²

This is important because, despite strong rhetoric, the political impact of most anticorruption. Corruption may persuade key actors – public officials, parliamentarians, judges, prosecutors, lawyers, business people, bankers, accountants, the media and public in general to take a strong stand against corruption.¹⁰⁴³

A clear understanding of the practical connections between acts of corruption and human rights may empower those who have legitimate claims to demand their rights in relation to corruption, and may assist states and other public authorities to respect, protect and fulfill their human rights responsibilities at every level.¹⁰⁴⁴

1035 International Instruments on Corruption – Google Search.

1036 Ibid.

1037 Ibid.

1038 Ibid.

1039 Ibid.

1040 Ibid.

1041 Ibid.

1042 Ibid.

1043 Ibid.

1044 Ibid.

10.3 Legal Framework in Combating Corruption in Zanzibar

Section 10 (b) of the Constitution of Zanzibar, 1984 talks about corruption and abuse of office against the public by any person holding public office is totally eradicated. There is a legislation of the Zanzibar Anti Corruption and Economic Crimes Act, 2012 (Act No. 1 of 2012).

It has taken too long Zanzibar to enact this law for lack of political will thanks to the GNU government. The Office is falling under President's Office Public Service and Good Governance.

Under the law, ZACECA is responsible of conducting investigations of the complaints concerned corruption practices, breach of ethics or economic crimes against any public or private body

(a) The Anti-Corruption Legislation

Unlike in the past, there is legislation on corruption in Zanzibar. According to the ZACECA, the functions of the Anti Corruption Institutions include; investigation of the complaints concerned corruption practices, breach of ethics or economic crimes, against any public or private body.

In addition, ZACECA advise any public or private entity on corruption occurrence issues and assist any law enforcement agency of the government in investigation of the corruption or economic crimes offences, examine the practices and procedures of public or private bodies in order to facilitate discovery of corruption practices and secure mechanisms of reversing the situation, educate the public on the dangers of corruption and economic crimes.

Section 10 (b) of the ZACECA says that the government is committed itself in eradication of all forms of corruption and abuse of powers.

10.4 Financial Measures

The government continues to use the Centralized Payment System as a step in the right direction to check ghost workers and control government spending. It is understood that the government uses quarterly payment system to check corrupt practices. Reports hinted that there is a positive development in the use of the system. Unlike in the past, government expenditure is strictly controlled.

10.5 Institutional Framework

Zanzibar is part of the implementation of the United Nations Convention against Corruption of 2003¹⁰⁴⁵, the African Union Convention on Preventing

1045 THE REVOLUTIONARY GOVERNMENT OF ZANZIBAR, *Draft Report, the Baseline Assessment of Anti-Corruption Activities in Zanzibar*, Op.cit p. 7.

and Combating Corruption of 2003,¹⁰⁴⁶ the SADC Protocol against Corruption of 2001 and so many other similar treaties which Tanzania is a signatory.¹⁰⁴⁷

The institutional framework of dealing with corruption comprises of at least 18 pieces of legislation¹⁰⁴⁸ passed over the years covering such matters as criminal fraud, money laundering, public procurement, public financial control and audit, smuggling of goods, the trafficking in narcotics and recruitment and deployment of public service employees.¹⁰⁴⁹

The core anti-corruption institutions are ZACECA, the Auditor General (CAG), the Office of DPP, the Ministry of Justice and Constitutional Affairs, the Judiciary, the Police, the KMKM and mechanisms under the Money Laundering Act. Proudly, the President of Zanzibar has recently appointed the Director General of Zanzibar Anti Corruption Authority.

The main problem of ZACECA is that it has no prosecutorial powers and the right to authorize prosecution is vested in the Office of the DPP. The ZACECA is underfunded. Only 220,946,000 have been set aside for the Institution for 2012/2013, according the budget speech of the Ministry of State, the President's Office Public Service and Good Governance for 2012-2013.

10.6 Codes of Conduct

On 14th November, 2012, Zanzibar hosted the 6th African Association of Public Administration and Management (Aapam) Awards. It is hoped that the Aapam was a curtain raiser to Zanzibar to improve the Codes of Conduct in the Civil Service. It is understood that many public offices here do not have codes of conduct.¹⁰⁵⁰ This negates the spirit of Good Governance Zanzibar had embarked on.

Last Year, Zanzibar enacted the Public Services Act, 2011 (Act No. 2 of 2011) as part of the efforts to improve accountability and set the behavioural standards of the civil servants. Moreover, Zanzibar established the Civil Service Commission in September, 2011 as per Section 116 of the Constitution of Zanzibar, 1984.

The Commission shall, among other things, have the power to appoint persons to responsible positions in the Government, power to punish in disciplined officer in their positions and the power to remove them from their responsibilities. The Commission has launched its five year Strategic Plan 2011/2016.

1046 Ibid.

1047 Ibid.

1048 Ibid.

1049 Ibid.

1050 LEGAL and HUMAN RIGHTS CENTRE and ZANZIBAR LEGAL SERVICES CENTRE, Tanzania Human Rights Report 2011, p. 389.

10.7 Transparency and Disclosure of Assets by Public Officials

To promote transparency and disclosure of assets by public officials, Zanzibar has been advised to enact a freedom of Information Law. That law will raise the level of public knowledge and awareness about government policies and laws and widen availability of government information.¹⁰⁵¹ Secrecy breeds impunity, the spawning ground¹⁰⁵² for institutionalized corruption.

If the information is hidden, both civil society's and media watchdog roles are blunted thereby jeopardizing the public interest and democracy.¹⁰⁵³ It is understood that MCT had drafted a Bill for the right to information with the main objective to enable the people to access to information. However, attempts to persuade the government to take into consideration that particular bill proved futile.

It seems transparency especially in public service in Zanzibar is not a matter of priority. It needs a political will.

10.8 Current Situation on Corruption in Zanzibar

The current situation on corruption in Zanzibar is not encouraging. Corruption in Zanzibar goes into different dimension including perceived corruption which is serious problem in the Judiciary. Perceived corruption means that a difficult situation to believe that justice will be fairly done if one person in the case seems to be sitting with a bench holder in his/her office for long hours while the opposing party is denied of the same opportunity.

Other driving factors of corruption in Zanzibar, according to the Draft Report, the Baseline Assessment of Anti Corruption Activities in Zanzibar, are social cohesion, low salaries and poor conditions of work, complex government procedures breeding delays and a temptation to jump the queue.

Others are Court complications, lack of demonstrative leadership from government of willingness and ability to fight corruption, excessive business regulations, low levels of public knowledge, insufficient legal framework, laxity in implementation of financial controls and ineffective complaints.

10.8.1 Corruption in Dealing with Administration of Justice

It is an open secret that institutions dealing with administration of justice are not spared with corrupt practices. It might not be easy to prove corruption in the institutions. The prevailing circumstances of the institutions lead one to conclude that there is corruption.

1051 THE REVOLUTIONARY GOVERNMENT OF ZANZIBAR, *Draft Report, the Baseline Assessment of Anti Corruption Activities in Zanzibar*, Op.cit, p. 42.

1052 Ibid.

1053 Ibid.

It is on record that the Mr Justice Omar Makungu, the Chief Justice of Zanzibar said it openly during the Law Day Ceremony on February 7, 2012 the Victoria Garden that judiciary is corrupt free, promising to take serious action against any person involved in the vice.

10.8.2 Abuse of Government Money

This is one of the chronic problems in the Civil Service. Officers involved in the financial control seem reluctant to adhere to financial regulations and procedure.

It has been reported that common abuse include making unsupported payments,¹⁰⁵⁴ splitting of the ceiling (Tshs 10 million) into pieces in order to avoid procurement processes,¹⁰⁵⁵ missing documents,¹⁰⁵⁶ the 10% practice between procurement officers and suppliers¹⁰⁵⁷ and overestimation of the amount of compensation to be paid.¹⁰⁵⁸

What is disturbing is that the Office of the Controller and Auditor General (CAG) is not independent.¹⁰⁵⁹ CAG is accountable to the president,¹⁰⁶⁰ his annual report is tabled to the House of Representatives through the Ministry acting for the President.¹⁰⁶¹ CAG does not have powers to enforce CAG's recommendations.¹⁰⁶²

10.8.3 Abuse of Power

Abuse of power can be described to mean that act of using one's position of power in an abusive way.¹⁰⁶³ This take many forms, such as taking advantage of someone, gaining access to information that should not be accessible to the public or just manipulating someone with ability to punish them if they do not comply.¹⁰⁶⁴

A number of government officials have been linked to the abuse of power including in the police force and land officers. Police officers are alleged to have been leading in the abuse of power for the interests of the executive. Some government officials holding key posts use bad language to their subordinates and other people who in need of their services.

1054 Ibid, p. 40.

1055 Ibid.

1056 Ibid.

1057 Ibid.

1058 Ibid.

1059 Ibid.

1060 Ibid.

1061 Ibid.

1062 Ibid.

1063 http://www.businessdictionary.com/definition/abuse_of_power visited on 25th December, 2012.

1064 Ibid.

10.9 Conclusion

The picture that emerges on this chapter is not rosy at all. It seems people take it lightly the question of corruption, abuse of power and human rights. There are reasons to believe that there are god-fathers to cover them from legal actions. There are also reasons to believe that these weaknesses will continue unless there is a political will.

Lack of political will to enforce the laws; regulations and policies stand out as the main hitches. There is the need the executive and other people in general to change their mindset and team up to improve the good governance in Zanzibar as part of democratic demands.

Part II

**Zanzibar
Human
Rights
Report**

2012

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Part II

Zanzibar Human Rights Report

2012

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A Commissioner to the Commission of Human Rights and Good Governance, Mr Zahor Khamis said at his opening address to commemorate the World Day against the Death Penalty at the Zanzibar Legal Services Centre (ZLSC) Hall on 10th October, 2012.

Hotuba iliyotolewa na Mhe. Jaji Mkuu Mstaafu wa Tanzania, Barnabas A. Samatta wakati wakifungua kongamano la Wasaidizi wa Sheria wa Kituo cha Huduma za Sheria Zanzibar, tarehe 30 Novemba, 2012.

Hotuba ya Rais wa Chama cha Wanasheria Zanzibar, Mhe. Awadh Ali Said, katika maadhimisho ya Siku ya Sheria Zanzibar tarehe 07-02-2012 katika viwanja vya Victoria Garden, Zanzibar.

Part II

Zanzibar
Human
Rights
Report

2012

NYERERE, Julius K., Speech to the meeting of Judges and Magistrates held in Arusha, on 15th March, 1984.

Speech by the Hon. Mr. Justice Mohamed Chande Othman, the Chief Justice of Tanzania, at the ceremony for admission of new advocates on 17th December 2012, Dar es Salaam.

Speech of the Second Vice President of Zanzibar, Ambassador Seif Ali Iddi he had delivered during the closing ceremony of the Eighth Meeting of the Zanzibar House of Representatives on 10th August, 2012.

SEMINAR PAPERS

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LUGAKINGIRA, K., “Magistrates Seminar on Corruption on the Erosion of Judicial Independence in Tanzania: Some Tentative Observations,” presented at the Judges and Magistrates Seminar on Corruption held in Dar es Salaam between 16th and 17th December, 1996 quoted from PETER, C.M, *Human Rights in Tanzania: Selected Cases and Materials*, Rudiger Verlag Koln, Koln, 1997, pg 484.

Part II

Zanzibar
Human
Rights
Report

2012