



**HUMAN RIGHTS PROTECTION AND THE
THREAT POSED BY COVID19 IN TANZANIA**

TANZANIA HUMAN RIGHTS REPORT 2020



For a Just and Equitable Society





“When the fundamental principles of human rights are not protected, the center of our institution no longer holds. It is they that promote development that is sustainable; peace that is secure; and lives of dignity.”

**Former UN High Commissioner for Human Rights
Zeid Ra’ad Al Hussein**



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Norwegian Embassy



Ministry for Foreign
Affairs of Finland

ISBN: 978-9987-740-57-4

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February 2021



THRR 2020



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ACKNOWLEDGEMENT

LHRC would like to extend sincere gratitude to all the individuals and institutions, both government and non-government, who and which, in one way or another, participated in the process of preparation and publishing of this report. LHRC is grateful to its network of paralegals and human rights monitors which provided valuable information used in preparing this report. Special thanks are extended to LHRC's legal aid clinics, based in Dar es Salaam and Arusha for providing key information that helped to shape this research in the area of access to justice. LHRC further acknowledges the contribution made by human rights monitors and paralegals, who provided valuable information through their monthly and quarterly reports, and more importantly assessment of human rights situation in their respective areas. With immense gratitude, LHRC acknowledges the contribution and support of her staff and other stakeholders who participated in the validation of this report. LHRC is especially thankful to the researchers and writers of this report, Mr. Fundikila Wazambi and Ms. Victoria Lugendo (Advocate). Special thanks go to all LHRC partners who shared inputs and participated in validating this report.



LHRC is grateful for the continued financial support from her core partners: The Embassy of Sweden, The Royal Norwegian Embassy, Irish Embassy, Finland Embassy, and Ford Foundation. Their support to LHRC in deepening the understanding and respect of human rights in Tanzania is highly appreciated!

Lastly, but not in order to importance, LHRC thanks her following partners, whose financial support enabled monitoring and generation of data relating to political rights, including the right to take part in governance: the Embassy of Switzerland, the Royal Norwegian Embassy, Embassy of Finland, Embassy of Ireland and the Embassy of Denmark.

Adv. Anna Aloys Henga
LHRC Executive Director



ABOUT LHRC

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. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar. It has four offices, two in Dar-es-Salaam, one in Arusha and another in Dodoma. The Head Office is located at the Justice Lugakingira House in Kijitonyama Area Dar-es-Salaam.

Vision:

LHRC envisages a just and equitable society, in which the three arms of the State, as well as non-state actors, practice accountability, transparency and there is the 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 a reality.

Mission:

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 advice; monitoring and following-up on human rights violations; and advocacy for reforms of policies, laws and practices in conformity with international human rights standards.

LHRC's Values:

Integrity; Equality; Transparency; Accountability; Professionalism; and Voluntarism and Volunteerism.



INTRODUCTION

Major Developments in 2020

The plight of the Covid19 pandemic, threatening human rights promotion and protection around the globe.
A boost for the right to development as Tanzania becomes a middle-income country.
Amendment of the Basic Rights and Duties Enforcement Act, a threat to public interest litigation and human rights protection.
Development of guidelines for reporting and communicating violence against women and children by the Ministry of Constitution and Legal Affairs.
Introduction of the new Online Content Regulations of 2020
The African Court on Human and Peoples' Rights' decision on challenging presidential election results
Realisation of the right to vote and stand for election as Tanzania conducted General Elections of 2020
Alarming rate of sexual violence against children
Significant reduction of death row inmates as H.E. President Magufuli commutes sentences of more than 500 inmates
Establishment of gender desks in Tanzania Prison Services and PCCB
Establishment of Police Gender and Children Desks in Kondoa and Bahi Districts
Calls for an independent electoral body by opposition parties, stakeholders
Government plan to translate all laws from English to Swahili to enable wider section of public to understand the laws
The Court of Appeal decision in the Dickson Sanga Right to Bail Case, declaring section 148(5) of the Criminal Procedure Act not unconstitutional.



Scope and Nature of the Report

This is a human rights situational report that looks at key rights in the three generations of human rights, namely the first generation of human rights, which focuses on civil and political rights; the second generation of human rights, which focuses on economic, social and cultural rights; and the third generation of human rights, which are collective rights. The rights covered in this report are: right to life; freedom of expression; rights to equality before the law and effective remedy; right to liberty and personal security; freedoms of assembly and association; right to take part in governance; right to education; right to health; right to water; right to work; right to own property; right to development; right to enjoy and benefit from natural resources; freedom from discrimination; freedom from torture; and freedom from violence. Moreover, the rights of specific groups and issues that affect effective realization and enjoyment of their rights are also discussed in this report. Specific groups covered are: women; children; persons with disabilities; the elderly; persons living with HIV/AIDS; and refugees.

Objectives of the report

The main objective of this report is to highlight some key issues that affected human rights, whether positively or negatively, in Tanzania for the year 2020. Another objective is to make comparisons between the situation in 2020 and previous years to determine whether improvements have been made in safeguarding human rights. The report can also be used as an advocacy tool to inform the public of relevant human rights standards, remind state actors of their human rights obligations, promote behaviour change in the society and provide key data on human rights issues to inform interventions by government and non-governmental actors. This report is also a tool for raising awareness and promoting understanding of human rights and human rights issues and act as a starting point in human rights-related researches.

Methodology

Information and data used to prepare this report was obtained from primary and secondary sources. Primary data was mainly obtained through human rights survey, LHRC's engagement with beneficiaries of its programmes, and human rights monitoring. The human rights survey was perception based and targeted LHRC's network of paralegals and human rights monitors as experts of human rights issues in their areas of residence and operation. A total of 164 participants (102 male,



62 female) were engaged across seven zones of Tanzania Mainland. Majority of the participants had attained secondary level education (37.97%), followed by primary education (32.28%), and university level (27.22%). Only one participant had not attained formal education. The participants possessed sufficient knowledge to enable them to critically assess the state of human rights in their respective areas. The survey probed on issues of right to life (mob violence, witchcraft-related killings, extrajudicial killings, violence against PWAs); freedom from violence; right to liberty and personal security (fabrication of cases, denial of bail, arbitrary arrest); right to equality before the law (access to justice); rights of the elderly; rights of PWDs; and community awareness about legal and human rights issues.

Secondary data was obtained through review of various credible sources, including reports and statements by government and non-government actors. In terms of this type of data, the report is mainly informed by government reports, including parliamentary reports; budget speeches; ministry reports; reports by law enforcement organs; reports and speeches by the Judiciary; and police data. Further, the reported benefited a lot from previous LHRC reports; reports by local and international CSOs; domestic, regional and international human rights instruments; and decisions of regional and international human rights bodies. LHRC's media survey¹ has provided an important source of data for this report, particularly on issues around socio-economic rights and violence against women and children. It also enabled triangulation of data and laid a foundation for further research.

Report Structure

Chapter 1: Contextual Overview	Provides a short introduction to Tanzania, constitutional and human rights developments and government structure.
Chapter 2: Civil and Political Rights	Covers situation of key civil and political rights, including freedoms of association, assembly and expression; rights to equality before the law and effective remedy; and right to life.
Chapter 3: Economic, Social & Cultural Rights	Covers economic, social and cultural rights, including right to work, right to education, right to health, right to water, and right to property.

¹ Survey of eight (8) print newspapers: Mwananchi; HABARILEO; Mwanania; Majira; The Citizen; Nipashe; The Guardian; and Daily News. A total of 2,880 newspapers surveyed.





Chapter 4: Collective Rights	Looks at and discusses realisation of rights to development and right to benefit from natural resources.
Chapter 5: Rights of Vulnerable Groups	Covers rights of women, children, PWDs, the elderly, PLHIVs and refugees
Chapter 6: Human Rights Mechanisms	Looks at human rights mechanisms at domestic, regional and international levels and discusses their role in human rights protection.
Chapter 7: Implementation of Previous Recommendations	Assesses the status of implementation of the recommendations made in the previous human rights reports (2015 to 2019).
Chapter 8: Conclusion Recommendations	Provides general conclusion and recommendations to enhance promotion and protection of human rights in Tanzania.



LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
CAG	Controller and Auditor General
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCM	Chama cha Mapinduzi
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CHRAGG	Commission for Human Rights and Good Governance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
DC	District Commissioner
DPP	Director of Public Prosecutions
FGM	Female Genital Mutilation
H.E.	His Excellency
HIV	Human Immunodeficiency Virus
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
LGAs	Local Government Authorities
LHRC	Legal and Human Rights Centre
MDG	Millennium Development Goal
MoHCDEC	Ministry of Health, Community Development, Elderly, Gender and Children



MPs	Members of Parliament
MWTC	Ministry of Works, Transport and Communication
NBS	National Bureau of Statistics
NEA	National Elections Act
NEC	National Electoral Commission
NEMC	National Environmental Management Council
NFRA	National Food Reserve Agency
PCB	Prevention of Corruption Bureau
PCCA	Prevention and Combating of Corruption Act
PLHIV	Persons living with HIV/AIDS
PWAs	Persons with Albinism
PWDs	Persons with Disabilities
RC	Regional Commissioner
SDG	Sustainable Development Goal
TANROADS	Tanzania Roads Agency
TARURA	Tanzania Rural and Urban Roads Agency
THIS	Tanzania HIV Impact Survey
THRDC	Tanzania Human Rights Defenders Coalition
TLS	Tanganyika Law Society
TPS	Tanzania Prisons Services
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
URT	United Republic of Tanzania
UTSS	Under the Same Sun
VAW	Violence against Women



EXECUTIVE SUMMARY

Introduction

LHRC has been preparing the human rights report, covering the situation of human rights in Tanzania Mainland, since 2002. The 2020 report is the 19th report to be produced by LHRC and looks at some key issues that either positively or negatively impacted human rights in Tanzania Mainland in the year 2020. The focus of the report is civil and political rights; economic, social and cultural rights; collective rights; rights of vulnerable groups; and human rights mechanisms.

The Tanzania Human Rights Report 2020 is divided into eight chapters. Chapter One provides a contextual overview of Tanzania, while Chapter Two touches on civil and political rights. Chapter Three is on economic, social and cultural rights, which are to be realised progressively depending on availability of resources, in line with the International Covenant on Civil and Political Rights of 1966. Chapter Four covers collective rights, particularly right to development and right to enjoy and benefit from natural resources; Chapter Five is on rights of vulnerable groups, which are women, children, PWDs, the elderly, PLHIVs, and refugees. Chapter Six examines human rights mechanisms at national, regional and international levels. Chapter Seven covers status of implementation made in previous reports. Lastly, Chapter Eight provides conclusion and overall recommendations to improve human rights situation in Tanzania.

Methodology

Information and data used to prepare this report was obtained from primary and secondary sources. Primary data was mainly obtained through human rights survey, LHRC's engagement with beneficiaries of its programmes, and human rights monitoring. The human rights survey was mainly perception-based and targeted LHRC's network of paralegals and human rights monitors as experts of human rights issues in their areas of residence and operation. Secondary data was obtained through review of various credible sources, including reports and statements by government and non-government actors. LHRC's media survey also provided an important data source for this report, enabled triangulation of data, and laid a foundation for further research.



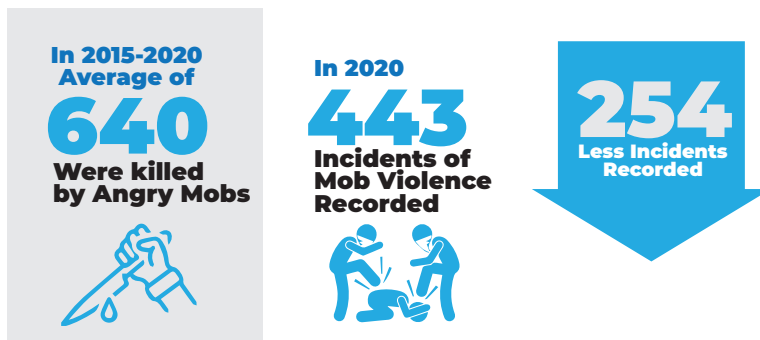
Key Findings

1. Civil and Political Rights

Right to life

Right to life continued to be threatened by incidents of mob violence, extrajudicial killings, violence against law enforcement officers, witchcraft-related killings, attacks of PWAs, death penalty, road accidents, killings motivated by belief in witchcraft and gender-related jealousy motivated killings.

Mob violence and killings: Despite a declining trend of mob violence, police data shows that since 2015 an average of 640 people have been killed by angry mobs each year. In 2020, a total of 443 mob violence incidents were recorded by the police force, 254 less incidents than those reported in 2019. During this reporting period, LHRC was also able to document 21 incidents of mob violence and killings reported in Shinyanga, Katavi, Mwanza, Mbeya, Singida, Tabora, Simiyu, Mbeya, Kilimanjaro, Dar es Salaam, and Pwani Regions. These are 13 more incidents than those documented by LHRC in 2019. During the human rights survey, 27.2% and 8.2% of survey participants agreed and strongly agreed respectively that in their areas of residence and operation mob justice/violence is a big problem.



Extrajudicial killings and violence against law enforcement officers:

Excessive use of force by law enforcement officers continued to be a concern in 2020. During this reporting period, LHRC documented four incidents of extrajudicial killings, which are one more than those



documented in 2019. The incidents were reported in Tabora, Dar es Salaam, and Mbeya Regions. LHRC also documented one incident of violence against law enforcement officers. The incident occurred in Ruvuma Region, whereby a group of pastoralists in Machema Village, Tunduru District, reportedly attacked and killed a people's militia officer.

Witchcraft-related killings and violence against PWAs: While the number of killings motivated by beliefs in witchcraft have declined in recent years, owing to police operations and judicial action, the rate of such incidents is still high. Police data indicates that in 2019, a total of 189 such incidents were reported to the police. In 2020, the incidents reported at police stations were 112, a decrease of 77 incidents compared to the previous year.

In 2020, LHRC documented thirteen incidents of witchcraft-related killings, reported in Geita, Rukwa, Katavi, Tanga, Mbeya, Njombe, and Kigoma Regions, including the brutal killing of four family members in Kasulu District in Kigoma Region, who were attacked and killed on witchcraft suspicion. In Geita, a special police operation in the Lake Zone, conducted in February 2020, saw arrest of 504 people accused of different crimes, including witchdoctors implicated in the killing of 32 people, killings which were motivated by belief in witchcraft. During the human rights survey, 19.2% and 7.6% of survey participants agreed and strongly agreed that in their areas of residence and operation witchcraft-related killings are a big challenge. 26.5% of the survey participants also mentioned that they had not witnessed or heard of any incident of witchcraft-related killing in 2020.

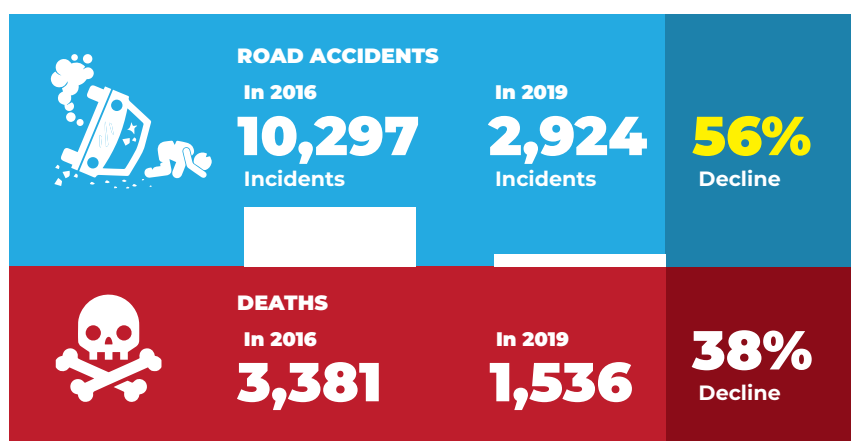
For Persons with albinism (PWAs), coordinated efforts made by the police, CSOs and the Commission for Human Rights and Good Governance (CHRAGG) in recent years, have significantly contributed to enhancing their protection. However, as Tanzania headed towards the General Elections of 2020, fear of being attacked for witchcraft purposes continued to hinder effective realisation of their rights, as such incidents occurred most during such period in the past. But no incidents of killings of PWAs were reported in 2020, as has been the case since the year 2015.

Death penalty: In 2020, LHRC documented 30 death sentences in the period of January to December. The sentences were imposed by High Courts in Kigoma, Kilimanjaro, Mara, Rukwa, Kagera, and Dar es Salaam.



These are 12 more than those documented in 2019. However, Tanzania continues to be an abolitionist state as no execution has been made since the second phase administration of President Ali Hassan Mwinyi. In 2020, H.E President John Pombe Magufuli reiterated his anti-death penalty execution stance as he commuted sentences of more than 500 death row inmates to life imprisonment.

Road accidents: As was the case in 2019, the number of road accidents and resulting deaths continued to decline in 2020. Efforts by the Police Force and other stakeholders have seen the number of road accidents decline from 10,297 incidents in 2016 to 2,924 in 2019, equal to a 56% decline. Resulting deaths number has also declined from 3,381 in 2016 to 1,536 in 2019, equal to a 38% decline. In 2020, road accidents and resulting deaths further declined to 1,714 and 1,260 respectively.



However, more efforts need to be made to reduce road accidents and safeguard right to life as the rate of such accidents is still high. Most of these accidents are caused by high speed, alcoholism, substance abuse, not wearing headgear for motorcycles and not wearing a seat belt. The tendency of overworking bus and truck drivers also contributes to road accidents, as do damaged road infrastructure.

Killings of women motivated by jealousy (intimate partner femicides):

Recent trends show an increase of incidents of killings of women, perpetrated by their spouses, mainly motivated by jealousy. In 2019, LHRC documented 12 killings of women by their spouses, of which 8 were motivated by jealousy. In 2020, LHRC documented 32 killings of women by their spouses, 23 of which were motivated by jealousy. These



incidents, which constitute violations of women's freedom from violence and right to life, are more than double compared to those documented in 2019.

Freedom of Expression: Freedom of expression further deteriorated in 2020, mainly due to existence and implementation of restrictive laws. This reporting year saw bans, suspensions and/or fine punishments for at least ten media outlets, through implementation of the Online Content Regulations 2018, which have been faulted for not meeting international human rights standards, particularly those relating to freedoms of expression, assembly and association. According to the Tanzania Human Rights Defenders Coalition (THRDC), in the period of January to April 2020, at least thirteen people, including seven journalists and bloggers, were prosecuted for contravening the Online Content Regulations of 2018, including failure to register websites and YouTube pages. These Regulations were replaced by the Online Content Regulations of 2020, which also fall short of international human rights standards. Deterioration of this fundamental human right is reflected in the World Press Index 2020, which shows that Tanzania further dropped 6 places in the world rankings (124th position), having dropped 25 places in 2019 (118th position).

Further, one year on since the East African Court of Justice (EACJ) declared sixteen sections of Tanzania's Media Services Act of 2016 to be in violation of freedom of expression and Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community, and consequently directing amendment of the law to bring it in line with the Treaty and international human rights standards, the law is yet to be amended by the Parliament.

The year 2020 was also characterized by decline in internet freedom, which was largely contributed by existence and implementation of restrictive laws such as the Cybercrimes Act 2015 and the Online Content Regulations 2018 (and later 2020). There were also reported disruptions of internet in different parts of Tanzania, affecting civil, political, and economic rights of internet users.

Freedom of Assembly and Association

Like freedom of expression, freedoms of assembly and association deteriorated in 2020. Major issues affecting these freedoms included implementation of laws restricting such freedoms and amendment



of the Basic Rights and Duties Enforcement Act (BRADEA). Recent amendments of the Political Parties Act (as amended in 2019), the Non-Governmental Organisations Act 2002 (as amended in 2018), and the Tanganyika Law Society Act 1954, have faced criticism for failure to adhere to international standards on freedoms of assembly and association, and thus have served to arbitrarily hinder effective realization of these fundamental human rights. The amendments have been faulted for failure to meet the three-part test under the International Covenant on Civil and Political Rights (ICCPR) of 1966 and other key human rights standards such as the African Charter on Human and Peoples' Rights of 1981 and the Guidelines on Freedom of Association and Assembly in Africa, published by the African Commission on Human and Peoples' Rights on 10th November 2017. Regarding political assemblies, as Tanzania headed towards the general elections, opposition political parties continued to lament arbitrary restrictions on such assemblies, which are not in line with international standards on freedom of assembly. These parties included ACT-Wazalendo and CHADEMA, which also lamented arbitrary arrests for unlawful assembly.

Amendment of the Basic Rights and Duties Enforcement Act (BRADEA) in 2020 raised eyebrows in Tanzania and beyond, given its ramifications for human rights protection, including its curtailment of freedom of association. The amendments prevent CSOs from conducting public interest litigation, which is part of freedom of association, gravely limiting their ability to defend the rights of vulnerable individuals, groups, and communities, in violation of Article 22 of ICCPR. The amendments have also been criticized for the manner in which they were made, characterized by minimum consultation of CSOs and other stakeholders, in contravention of international human rights standards, including the principle of meaningful consultation of civil society enunciated in the Guidelines on Freedom of Association and Assembly in Africa.

In terms of freedom of association of NGOs, the year 2020 witnessed freezing of bank accounts of the Tanzania Human Rights Defenders Coalition (THRDC), which is not in line with international standards on freedom of association. The freezing of the bank accounts is an example of negative impact of restrictive laws governing NGOs, which reduce civic space.



Rights to Equality before the Law and Effective Remedy

Rights to equality before the law and effective remedy include right to access to justice, right to legal representation, right to presumption of innocence, right to fair trial and right to effective remedy. In 2020, key issues affecting the rights to equality before the law and effective remedy included: amendment of the Basic Rights and Duties Enforcement Act (BRADEA); lengthy detention of remandees in prisons; violation of the right to be presented before the court promptly; and delays in conducting police investigations and constant adjournment of cases.

Amendment of BRADEA in June 2020 was met with criticism within and beyond Tanzania for failure to meet international human rights standards. Analysis of the amendments shows that the law practically prohibits filing public interest litigation, as they direct that only those who have personally suffered harm should seek redress for human rights violations. By doing this, they contravene Article 26(2) of the Constitution of Tanzania and key constitutional principles, such as equality before the law, supremacy of the constitution, rule of law, solidarity, and natural justice. In July 2020, UN human rights experts expressed concerns over amendment of BRADEA, noting that it gravely limits the ability of CSOs and individuals to defend vulnerable groups and other community members and constitutes violation of freedom of association.

In terms of access to justice, Government and Judiciary action boosted access to justice amid the Covid19 pandemic. Measures taken include construction and renovation of court buildings; using ICT to deliver court services; and fast-tracking dispensation of justice, including for cases involving members of vulnerable groups. However, several challenges persist and hinder meaningful access to justice. These include: shortage of judicial staff; limited access to justice; concentration of lawyers in urban and semi-urban areas; delays in granting copies of judgements; and corruption, especially in lower courts and tribunals. Shortage of judicial staff stands at 4,404 workers, which equals to shortage of 42.5%. Slow pace of investigation and contravention of the principle of presumption of innocence continue to be major factors contributing to lengthy pre-trial detention and prison congestion/overcrowding. Currently over 56% of persons in prisons are remandees, meaning they have not been convicted by courts of law.



Right to Liberty and Personal Security

Right to liberty and personal security is an essential human right, and includes freedom from arbitrary arrest and detention, right to personal security and right to bail. During this reporting period, right to liberty and personal security continued to be affected by arbitrary arrests and detentions; attacks and killings of bodaboda drivers; denial of bail; trumped-up charges; delays in conducting and completing investigations; and human trafficking.

In 2020, LHRC documented at least seven reported incidents of arbitrary arrests and detention. Nevertheless, it is worth noting that most of these incidents go unreported. Violations of the right to bail also persisted in 2020. During the human rights survey, 9.5% and 12.7% of survey participants indicated that it is likely and very likely respectively to pay bribe for police bail. LHRC documented at least eight reported incidents of denial of bail.

Concerns over slow pace of investigation and trumped-up charges were raised by top government officials, including the President and the Minister of Home Affairs. It was also reported that 1,422 remandees had been released by the Director of Public Prosecutions (DPP) after it was revealed that they had been remanded on trumped-up charges. During this reporting period, LHRC also documented five incidents of attack and killing of bodaboda drivers for their motorcycles, reported in Mbeya, Tabora, and Lindi Regions, a concern for their right to personal security. In March 2020, Police impounded 130 stolen vehicles during a nationwide special operation on stolen vehicles following growing cases of such theft in the country. 128 suspects were in custody.

During this reporting period, there was also a judgement of the Court of Appeal of Tanzania on the decision of the High Court on the petition filed to challenge constitutionality of section 148(5) of the Criminal Procedure Act which the High Court had declared unconstitutional. Having considered the grounds of appeal, however, the Court of Appeal found most of the grounds of appeal to have merit and reversed the decision of the High Court. This comes in the wake of recent proposition of the Chief Justice, Prof. Ibrahim Juma, that all offences should be made bailable, as is the case in Kenya, with the Judiciary having the final say on bail.



Right to Take Part in Governance

Right to take part in governance is also known as a right to take part in public affairs or right to participate in the government. It includes citizens' right to vote and be voted for public office and the right to participate in political life. The year 2020 was vital for realisation of this right as Tanzania held its sixth multiparty elections. Key issues relating to the right to take part in governance that emerged and were subject to public debate included: allegations of corruption among political aspirants; voter and civic education; election observation; disqualification of political aspirants; opportunity to challenge presidential election results; and independence of the electoral body. LHRC documented four incidents involving 24 political aspirants implicated in corruption to secure nominations or influence votes, including at party level. These incidents were reported in Pwani, Mtwara, Arusha, and Kigoma Regions.

In July 2020, the African Court on Human and Peoples' Rights (the African Court) delivered its judgement in the case of *Jebra Kambole v United Republic of Tanzania*, in which the applicant was contesting the provisions of Article 41(7) of the Constitution Tanzania, which bars any court from inquiring into the election of a presidential candidate after the Electoral Commission has declared a winner. The Court found the provision to be in violation of Articles 2 and 7(1) (a) of the African Charter on Human and Peoples' Rights and ordered amendment.

The build up to the 2020 General Elections was characterized by complaints of unfair disqualification of political aspirants by returning officers, concerns over the Political Parties Act (as amended in 2019), concerns over voter turn-out, and questions over the independence of electoral body, NEC. In mid-September 2020, NEC revealed that by 17th September 2020, it had received a total of 616 political aspirant nomination appeals, of which 160 were from aspirants of parliamentary seats, and 456 were from councillorship aspirants. LHRC was able to document complaints of at least 52 political aspirants, majority of which were on unfair disqualification by returning officers. Regarding the independence of NEC, key concerns raised by some of the opposition parties and other stakeholders included the structure of electoral body and its members being strictly presidential appointees.

During the Tanzania General Elections of 2020, key stakeholders and associations which have traditionally observed elections, including LHRC, were not given accreditation, hence could not observe the



elections despite having the resources to do so. Consequently, there was lack of adequate observation, which dented the credibility of the elections, as opposition political parties cried foul play before and during the elections.

Achieving SDG 5, which entails ensuring equal opportunities for women for leadership positions at all levels of decision making was also dented during the General Elections of 2020, as out of the 264 constituency parliamentary seats, women candidates only scooped less than 10% of the seats. Special seats MPs helped to increase the number of women MPs but still fell behind in terms of proportion with male MPs. Overall, only 9% of candidates nominated by political parties in all positions (presidential, parliamentary and councillorship) were women. Women aspirants and candidates also suffered various forms of violence, especially psychological violence in the form of abusive language.

Voter apathy manifested during the 2020 General Elections as nearly half of registered voters did not cast their votes. Percentage of registered voters who turned up to vote declined from 67.34% during the General Elections of 2015 to 50.7% during the General Elections of 2020. There was also less inclusion of persons with disabilities at party level and less media coverage for female political aspirants and candidates. The right to participate in elections was also affected by the Covid19 pandemic. During the second updating of voter register, some people did not participate in the exercise for fear of the pandemic.

Freedom from torture

Freedom from torture is a basic human right protected under the regional and international human rights treaties. According to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, unnecessary, excessive or otherwise arbitrary use of force by law enforcement officials to intentionally and purposefully inflict pain or suffering on an individual who is powerless and unable to escape or resist arrest amounts to torture. In 2020, LHRC documented at least six incidents of torture and inhuman or degrading treatment. These incidents were reported in Kilimanjaro, Mbeya, Morogoro, Dar es Salaam, and Mara Regions. There were also several reported incidents of child torture. During the human rights survey, 8.8% and 33.5% of survey participants indicated that it is likely and very likely respectively to be subjected to ill-treatment/physical abuse while under police custody.



2. Economic, Social and Cultural Rights

Right to Education

While the Government continued to take various measures to ensure progressive realisation of the right to education, including implementation of the fee-free education policy, various challenges continued to hinder effective realisation of this fundamental right in 2020. These challenges included: insufficient budget for the education sector; delayed disbursement of funds; shortages of toilet holes, classrooms and desks; shortage of teachers, including female teachers; acts of violence against children, especially sexual violence; and child pregnancy, which forces girls to drop out of school. While these challenges also existed in previous years, in 2020 they were compounded by the Covid19 pandemic, which severely disrupted learning programmes at all levels of formal education, as pupils and students were forced to take leave to prevent spread of the virus.

- Education stakeholders continued to raise concerns over budget allocated for education, which continued to fall short of international standards, particularly the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4.
- LHRC documented incidents of shortages of toilet holes, classrooms and desks reported in Kagera, Dar es Salaam, Mwanza, Mara, Shinyanga, and Mbeya Regions.
- Shortage of classrooms is mainly attributed to increased enrolment, while the number of teachers has been decreasing. Recent NBS report, Tanzania in Figures 2019, shows that the number of teachers has decreased by 5%, from 191,772 in 2016 to 182,002 in 2019, while the number of pupils/students has increased by 25%. Shortage of female teachers was found to be a challenge in terms of provision of reproductive and sexual health education to girls at school.

RECENT NBS REPORT, TANZANIA IN FIGURES 2019



Number of Teachers
191,772
In 2016

Number of Teachers
182,002
In 2019



Has
Decreased
5%



The number of
pupils/students
has increased by



25%



- Proximity to school continued to be a challenge for children's access to education. Long distance to school puts children at greater risk of violence, especially girls, and is among factors contributing to child pregnancy and dropping out of school.
- While home-schooling using ICT was a good option to ensure children continued realizing their right to education while on Covid19 leave, there was a risk of exacerbating inequalities, as majority of pupils and students in Tanzania do not have access to a computer and/or internet at home, especially in rural areas.
- Acts of violence against children, especially sexual violence (rape and sodomy), continue to be among the main factors hindering effective realisation of children's right to education, especially girls.
- The predicament of child pregnancy also continued to be a big challenge for girls' right to education, as reports of girls dropping out of school due to pregnancy continued to increase in 2020.

Right to Health

In 2020, the Government continued to take various measures to ensure progressive realisation of the right to health, in line with its regional and international commitments. Measures taken included provision and distribution of essential drugs, medicines, and medical supplies, as well as construction and renovation of health facilities. However, realisation of this fundamental human right was faced with various challenges, including inadequate budget allocation and partial and delayed disbursements, as well as shortage of healthcare workers.

- While the WHO guidelines indicate that one doctor should attend 10,000 patients per year, one doctor in Tanzania attends up to 25,000 patients per year, as revealed by the Tanzania Doctors' Association (MAT), in February 2020. For instance, in Dodoma, it was revealed that there is a shortage of 406 healthcare workers in the city, equal to 47.7%.
- Low coverage of health insurance emerged as a health issue in 2020. In January 2020, NHIF revealed that 66% of Tanzanians are not covered by health insurance.
- Suicide rates also continued to jeopardize right to health in the year 2020. During this reporting period, LHRC documented at least 22



incidents of suicides, reported in Ruvuma, Mwanza, Mtwara, Kagera, Shinyanga, Tanga, and Songwe Regions. Reasons for committing suicide included jealousy, family dispute, and life hardships.

- Right to health was affected the most by the Covid19 pandemic, as resources were stretched to attend Covid19 patients and prevent the spread. Healthcare provision was severely disrupted as members of the public struggled to obtain medical services.

Right to Water

Right to water is a key socio-economic right that needs to be realised daily. It entails the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses. In 2020, the Government reported taking measures to support progressive realisation of the right to water. However, challenges such as inadequate budgetary allocation and delayed disbursement of funds, continued to hinder effective realisation of this fundamental human right. Other challenges included destruction/contamination of water sources caused by human activities; lack of sustainability of water projects; water leakages and loss; and inability to effectively implement water projects and failure to complete projects in time. In 2020, water was essential in preventing the spread of Covid19.

Right to Work

Right to work includes right to gain living by work and right to just and favourable working conditions. In 2020, right to work was affected by issues such as shortage of workers in key sectors such as health, water and education; excessive deductions; and violations of labour rights, especially for workers in private companies and industries. Businesses were hit hard by Covid19, leading to laying-off of workers, unfair termination, non-payment of wages, payment of reduced wages, and failure to repay bank loans on time.

For healthcare workers, shortage of workers was compounded by the Covid19 pandemic, as they were stretched to the limit to fight the disease at all fronts, pushed to work for many hours a day. Women workers, including those in the health, tourism, hospitality, and informal sectors, were more affected by Covid19.

Right to Own Property

Right to own property is a fundamental economic and social right, protected in regional and international instruments, the Constitution



of Tanzania, and the land laws of Tanzania. In 2020, the Government continued to take steps to ensure realisation of this right, including fast-tracking the procedure for securing right of occupancy. However, various challenges continue to hinder effective enjoyment and realisation of this right, including land acquisition for investment without adequate compensation, land conflicts, border disputes, and denial of enjoyment of this right for women and widows, especially in rural areas.

Right to Adequate Standard of Living

Right to adequate standard of living includes the right to food and right to shelter/adequate housing. These rights are essential for realization of other human rights. Food security was generally not an issue of major concern in 2020, save for access to nutritious food/balanced diet. However, right to shelter/adequate housing continues to be a challenge for many Tanzanians, most of them living in houses which are not adequate.

- Government action to safeguard right to adequate standard of living in 2020 included implementation of the TASAF programme for poor households.

3. Collective Rights

Right to Development

Right to development includes participation in contribution to and enjoyment of economic, social, cultural and political development. Rule of law, good governance, participation of people and respect for human rights are key for realization of the right to development, which is essential in enjoyment of other fundamental human rights guaranteed under the ICCPR and the ICESCR. While the country continued to make strides in terms of economic development, highlighted by achieving middle-income country status in July 2020, it did not fare very well in in terms of human, political, and social developments, as translating economic growth into poverty reduction continued to be a challenge and political development stalled due to restrictions on participation rights (freedoms of expression, assembly and association). Like it was the case for most other human rights, Covid19 pandemic also had a huge impact on personal and national development, affecting key sectors and industries such as health sector, education sector, tourism industry, business sector, and hospitality industry.



Right to Enjoy and Benefit from Natural Resources

In 2020, the Government continued to take action to safeguard the right to enjoy and benefit from natural resources including through implementation of relevant laws, regulations, and policies, and review of investment contracts. However, various challenges affected effective realisation of this right, including the Covid19, corruption, tax evasion, and tax avoidance.

4. Rights of Vulnerable Groups

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. In Tanzania, vulnerable groups include women, children, persons with disabilities (PWDs), the elderly, persons living with HIV/AIDS, and refugees.

VIOLENCE AGAINST WOMEN RECORDED BY POLICE FORCE



Women's Rights

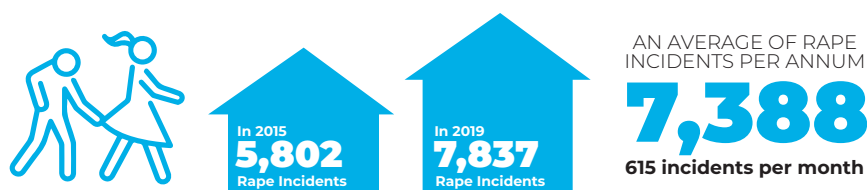
In 2020, key issues affecting women's rights included: physical violence; sexual violence in the form of rape and sodomy; psychological violence and sexual corruption.

- Incidents of violence against women recorded by the police force increased from 23,685 in 2019 to 26,544 in 2020. This is equivalent to an increase by 5.7%.
- Physical violence contributed to continued killings of women by their spouses, motivated by jealousy. In 2019, LHRC recorded at least 12 incidents of killing of women, of which 8 were motivated by jealousy. In 2020, through human rights monitoring and media survey, LHRC recorded 32 incidents of killings of wives by their spouses, of which 23 were motivated by jealousy. This is more than double the incidents reported in 2019.



- Intimate partner violence saw women suffer other consequences, including severe or permanent injuries and disability. For instance, in September 2020, Veronica Kidemi, a teacher at Kiranyi Secondary School in Arusha was reportedly subjected to a brutal act of violence by her husband, who chopped-off part of her arm due to jealousy. During the human rights survey, 48.7% and 26.5% of the survey participants agreed and strongly agreed respectively that jealousy is the main cause of intimate partner violence.
- In terms of sexual violence, acts of rape and sodomy continued to be a major threat for women and girls. Incidents of rape have increased from 5,802 in 2015 to 7,837 in 2019, an average of 7,388 rape incidents per annum, or 615 incidents per month, and this is for the reported cases alone, considering many cases of GBV, including sexual violence, go unreported.

SEXUAL VIOLENCE, ACTS OF RAPE AND SODOMY



- In 2020, LHRC was able to document incidents of sexual violence against women reported in various regions of Tanzania Mainland, including Rukwa, Kilimanjaro, Arusha, Pwani, Geita, Shinyanga, Katavi, Mwanza, and Dar es Salaam. These are just a few incidents among the **7,263 rape incidents** recorded by police from **January to December 2020**, a decrease of **574 incidents** compared to **2019**.
- Based on the 2019 police data, regions which are most notorious for rape are Dar es Salaam, Kilimanjaro, Tanga, Mbeya, Dodoma, Kigoma, Morogoro, Pwani, Arusha, and Kagera.
- Sexual corruption at higher learning institutions was also highlighted as one of the major human rights concerns for women in 2020. The vice was reported to be prevalent at the University of Dar es Salaam (UDSM), the University of Dodoma (UDOM), and St. Augustine University of Tanzania (SAUT). PCCB study at UDSM and UDOM revealed sexual corruption as a big problem at the institutions, is acknowledged by more than 50% of the study participants. Lack of ethics/professional ethics was cited as the leading causes of sexual



corruption, with other caused being abuse of position of authority, lack of friendly and confidential reporting mechanisms, lack of effective institutional controls, and discretionary powers of lecturers to award marks and grades. Study participants cited awarding lower marks/grades to students as one of the main methods used by lecturers to solicit sex bribe from students. Other methods include threats of failing students; promise of marriage, position, scholarship, hostel room, leadership position, and increase of marks; coercion; lecturers summoning students at informal settings 'to assist them with assignment or inspect research proposal or dissertation;' and lecturer joining students' WhatsApp groups.

- Economic violence against women also continued to be an obstacle in effective realization of women's rights. In 2020, LHRC recorded at least 27 reported incidents of economic violence against women through human rights monitoring, including denial of inheritance and being kicked out of matrimonial home
- Insufficient budget allocated for implementation of NPA-VAWC continued to present a challenge in terms of addressing VAWC.

Children's Rights

For the year 2020, key issues affecting children's rights included: sexual violence; physical and psychological violence; child labour and exploitation; child marriage; and predicament of child pregnancy.

- Trends in the past five years show that incidents of rape and sodomy, perpetrated against children, have been on the rise. For the period of 2015 to 2019, a total of 36,940 rape incidents, inclusive of children, were recorded by police, equal to an average of 7,388 per annum.
- Reported rape incidents increased from 5,802 in 2015 to 7,837 in 2019, with children the major victims of these acts of violence.
- In 2020, sexual violence, especially rape, presented the biggest threat to children's rights. Incidents of rape and sodomy of children were widely reported. LHRC's Media Survey 2020 showed that 87% of reported incidents of VAC were sexual, while 13% constituted physical and other forms of violence against children. Most of these incidents were reported in Dar es Salaam, Kilimanjaro, Katavi, Tabora, and the Lake Zone. During the human rights survey, 36.7% and 18.4% of the survey participants agreed and strongly agreed respectively that incidents of violence against children increased during the Covid19 school closure/leave.
- In 2020 there were also concerns over child-on-child sexual abuse,



especially cases of child sodomy in primary and secondary schools. These concerns over child-on-child sexual abuse and incidents of child sodomy were mainly reported in Pwani, Simiyu, and Tabora Regions, where older children were reportedly perpetrating such acts against younger schoolchildren.

- On a positive note, the Judiciary continued to take action against perpetrators of sexual violence against children. In 2020, LHRC was able to document 45 convictions of persons accused of perpetrating sexual violence against children. These convictions were reported in Mara, Songwe, Njombe, Ruvuma, Dar es Salaam, Lindi, Kilimanjaro, Singida, Mwanza, Geita, Kigoma, Katavi, and Tabora Regions.
- In 2020, physical violence was the second most common form of violence against children. LHRC's Media Survey revealed that 13% of reported incidents of violence against children were physical. Children in different parts of Tanzania Mainland were subjected to physical abuse by parents or guardians, teachers, and close relatives for reasons such as stealing money, secure marriage, jealousy, wetting on bed, discipline, and returning home late. Some of these incidents amounted to child torture.
- **Child labour and exploitation:** Despite efforts to combat child labour and exploitation in Tanzania, child labour persists in its various forms, denying children the fundamental rights, including right to education and protection from harmful employment.
- **Child neglect:** In recent years, incidents of child neglect have been rising in Tanzania Mainland, with more cases received and documented each year by the social welfare departments. In 2020, cases of child neglect, including abandonment, were reported in regions such as Tanga and Katavi. During this reporting period, LHRC documented at least 30 reported cases of child neglect, reported in regions such as Kigoma, Pwani, Katavi, Mwanza, and Mbeya Regions. But these are just a few cases reported by media, hence do not reflect a reality on the ground.
- **Child marriage:** Despite its international commitment to prohibit child marriage and Court of Appeal decision against child marriage, Tanzania still retains child marriage in its Law of Marriage of Act of 1971, which allows girls aged 14 and 15 to get married. In 2020, incidents of child marriage were reported in different parts of Tanzania Mainland. LHRC documented at least 35 such incidents, most of them reported in Shinyanga, Arusha, and Katavi Regions.
- **Child pregnancy:** Child pregnancy or teenage pregnancy is a serious health and human rights concern in Tanzania. From 2018 to 2020,



LHRC documented more than 2,991 child pregnancy incidents. In 2020, LHRC documented 448 child pregnancy incidents reported in fifteen regions of Tanzania in the period of January to December, most of them involving girls aged 13 to 17 years. These children are forced to drop out of school, denying them their right to education. Pregnant schoolgirls continued to face expulsion, discrimination and exclusion. During the human rights survey, 40.5% and 21.5% of the survey participants agreed and strongly agreed respectively that child pregnancy is a big challenge where they live.

Rights of Persons with Disabilities

- Discrimination, characterized by lack of equal opportunities, continued to be a major challenge in realisation of fundamental rights of PWDs, including the right to education, right to work, and freedom from violence. During the human rights survey, only 20.3% and 8.9% of the survey participants agreed and strongly agreed respectively that PWDs get opportunities equally with others in terms of education, employment, and leadership positions.
- Realization of the right to education for children with disability in Tanzania has not been easy due to the various challenges they face, including lack of adequate and friendly infrastructure. Shortage of teachers, schools, tools, and equipment to facilitate education for children with special needs has also been a big challenge in effective realisation of the right to education for children with disability. In 2020, however, there was a boost for the right to education for children with disability, as the Government announced that it had procured equipment and tools to aid children with disability in their learning process worth Tshs. 2.3 billion, including a Braille writing machine, braille papers, spelling tools, and sunglasses for children with albinism.
- For PWAs, there were no reported incidents of attacks against them and killings. However, they continue to live in relative fear and extreme precautions as they remain vulnerable to physical violence, threatening their right to life and right to liberty and personal security. During the human rights survey, 34.2% and 12.7% of the survey participants agreed and strongly agreed respectively that PWAs live peacefully and freely participate in social, economic, and political activities where they live.



Rights of the Elderly

Violence against the elderly was found to be a major challenge in realisation of the rights of the elderly in 2020. LHRC documented at least eight incidents of violence against the elderly, including physical violence and sexual violence. They also continue to be among the major victims of witchcraft-related killings.

Rights of Persons Living with HIV/AIDS

A UNAIDS report released in 2020 showed that Tanzania had made good progress in achieving its 90-90-90 targets. For instance, 83% out of 90% of people living with HIV know their HIV status, compared to 61% in 2016/17. However, despite improvement in terms of access to medical services, stigma and discrimination continue to be a challenge for PLHIVs. Women and girls are disproportionately affected by the stigma and discrimination associated with HIV infection, facing discrimination in settings such as family, community, school and workplace. Women and girls also continue to be at higher risks of being infected with HIV owing to an increase of rate of sexual violence, especially in the form of rape. Increased rate of child pregnancy is also indicative of the risk girls face in contracting HIV as they engage in unprotected safe.

5. Human Rights Mechanisms

National Human Rights Mechanisms

In 2020, national human rights mechanisms, including the Commission for Human Rights and Good Governance (CHRAGG), the Prevention and Combating of Corruption Bureau (PCCB), the Judiciary, the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS), continued to play their roles to promote and protect human rights. However, delivery of their mandate continued to be affected by various challenges, including; delays in investigation and prosecution of cases; poor working environment due to shortage of equipment; shortage of law enforcement officers and judicial officers; overcrowding in prisons; budgetary constraints; shortage of facilities; poor knowledge about human rights and essence of procedural safeguards; and corruption and unethical conduct.



Regional and International Human Rights Mechanisms

Enforcement of decisions/judgements of the regional and international human rights mechanisms in domestic jurisdictions continued to be a challenge in 2020. Such decisions/judgements which were awaiting action by the Government include the decision of the East African Court of Justice (EACJ) on the Media Services Act 2016 and decisions of the African Court on Human and Peoples Rights, both of which are situated in Arusha - Tanzania.

Key Recommendations

1. Civil and Political Rights

State Actors

- Being a de facto abolitionist state, the Government, through the Ministry of Constitutional and Legal Affairs, should move to declare a state of moratorium and improve death row conditions and prepare to abolish death penalty.
- The Ministry of Constitutional and Legal Affairs to spearhead amendments of restrictive laws restricting freedoms of expression, association and assembly, including the Online Content Regulations 2020.
- The Government to amend the Online Content Regulations to bring them in line with international human rights standards, particularly those relating to freedoms of expression, association, and assembly.
- The Government to amend Media Services Act of 2016 in line with the decision of the East African Court of Justice of 2019.
- The Police Force to speed up investigation of cases in order to safeguard rights to liberty and personal security and right to equality before the law.
- Police to use their powers under the Police Force and Auxiliary Services Act in relation to freedom of assembly objectively, ensuring that any denial of assembly is lawful, reasonable and necessary.
- The Government, through the Ministry of Constitutional and Legal Affairs, to create a police oversight body to ensure and promote accountability in law enforcement.
- Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general to address



extrajudicial killings and other human rights violations.

- The Police Force should ensure police officers refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them court within a specified period (24 hours) as required by the law, in order to the right to liberty. Police officers implicated in this behaviour should be held accountable.
- The Police Force to ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
- The Government, through the Ministry of Constitutional and Legal Affairs, to take legal and administrative measures to safeguard the right to take part in governance, including allowing independent candidates and creation of an independent and inclusive electoral body.
- The Government to allow all CSOs, especially those dealing with human rights, to observe elections in order to enhance credibility of such elections.
- The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) to safeguard freedom from torture.

Non-state actors

- CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as encouraging community members to obey the law and respect human rights of others to preserve right to life. In case of mob violence, for example, members of the public should be made aware of offences which are bailable.
- CSOs and FBOs to use their platforms to speak against and raise awareness about mob violence, death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their overall impact on human rights.
- CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance their knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.

Members of the public

- To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system where they are not



happy with the outcome of a case.

- Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially right to life, freedom of expression and freedom from torture, as a way of promoting these rights.
- Community members to expose and report violations of human rights, especially right to life, and ensure the perpetrators are brought to justice.

2. Economic, Social and Cultural Rights

State actors

- The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for education, water and health sectors in line with international standards and ensure full and timely disbursement of funds for these sectors.
- The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the agriculture sector, which is the leading employer, to boost the right to development and right to work. It should also increase investment in irrigation farming to boost food production and improve accessibility.
- The Ministry of Education, Science and Technology should address challenges faced by teachers to ensure they work in favourable conditions, as a key measure in improving quality of education and achieving key targets under SDG 4 and the Tanzania Development Vision 2025.
- The Ministry of Education, Science and Technology to devise strategies of preventing VAC perpetrated by teachers in schools, especially male teachers.
- The Ministry of Water should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of monies.
- Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions.
- Ministry of Education, Science and Technology to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.



Non-state actors

- CSOs should work with relevant government ministries, such as the ministry responsible for women and ministry responsible for land, to promote and protect economic rights, including conducting awareness-raising sessions and campaigns.
- CSOs should collaborate with the Prime Minister's Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties.
- The private sector should collaborate with the Government to invest in water projects to increase access to water services. This could also be done as part of corporate social responsibility.
- CSOs, the media and other stakeholders should collaborate with the Government to promote and protect social and cultural rights, including through awareness-raising of the public.

Members of the public

- Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work and right to own property, including popular versions on laws relating to these rights prepared by government and no-government actors.
- Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission on Human Rights and Good Governance.
- Parents should strive to understand their duties and responsibilities towards their children under the Law of the Child Act of 2009 and make efforts to ensure children enjoy and realise their rights, including right to education and freedom from violence.
- Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.
- Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.



3. Collective Rights

State actors

- The Ministry of Natural Resources should ensure effective implementation of natural resources laws.
- The Government to ensure respect of human rights while attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable.

Non-state actors

- CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on right to development and right to benefit from natural resources.
- CSOs should identify gaps in realization of the right to benefit from natural resources and engage and advise the government accordingly.
- CSOs should collaborate with the government to ensure companies comply with their corporate social responsibilities. CSOs can also advocate for CSR to be mandatory for other companies, following amendments to the Mining Act of 2010, which have made CSR a legal requirement for companies in the mining sector.

Members of the public

- Community members are encouraged to preserve and protect natural resources, which is their constitutional duty.
- Community members are also encouraged to pay their taxes, since these are key in realization of social and economic rights.

4. Rights of Vulnerable Groups

State actors

- The Government, through the Ministry of Constitutional and Legal Affairs, to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues.
- The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of



human rights as provided for in various regional and international conventions ratified by Tanzania.

- The Government through the Ministry of Education, Science and Technology to integrate gender education in learning curriculums from elementary to higher learning.
- The Government, through the Ministry of Finance and Planning and Ministry of Home Affairs, should increase funding for the police gender desk to enable it to effectively address gender-based violence and violence against children.
- The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971.
- The Government, through the Ministry of Constitutional and Legal Affairs, to facilitate amendment of the Law of Marriage Act of 1971 in line with the Court of Appeal decision of 2019 in the Rebeca Gyumi case.
- The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children and women.
- The Government, through the Ministry of Constitution and Legal Affairs, to table a bill in Parliament to propose enactment of a specific law to cater for the promotion and protection of the elderly.
- The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy.
- The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly.
- The Government, through the Ministry of Finance and Planning, to increase budget for implementation of the NPA-VAWC to address VAC and VAW, which have reached alarming levels.
- The Ministry of Health, Community Development, Gender, Elderly and Children to ensure allocation of adequate budget for community development and social welfare departments to effectively perform their duties in relations to violence against women and children, including making follow-ups on the incidents and providing relevant assistance to victims. There is also need to recruit more social welfare officers.
- The Government to take deliberate measures to increase the number of social welfare officers to enhance provision of relevant services to the vulnerable groups.



Non-state actors

- CSOs and social welfare departments within local governments to increase awareness on violence against women and children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.
- CSOs should collaborate with the Government to ensure effective implementation of the UN Convention on the Rights of the Child of 1989 to safeguard rights of all children, including street children and children with disabilities.
- CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.
- Stakeholders should strengthen mechanisms to enable women to report abuse instantly as they happen, especially women in remote areas of Tanzania.

Members of the public

- Community members to perform their duties of protecting and safeguarding children's rights refraining from conducting acts of abuse to children.
- Community members should refrain from discriminating all children, including street children and children with disabilities.
- Community members to refrain from protecting perpetrators of violence against children simply because they need 'to conceal family shame.'
- Women and children are encouraged to come forward and report acts of violence against them to receive relevant assistance, including legal and health services. They are also encouraged to cooperate with the Prosecution and social welfare officers, including testifying in court, to ensure perpetrators of violence are held accountable and justice is achieved.

5. Human Rights Mechanisms

State actors

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights. Adequate budget should be allocated for CHRAGG as the national human rights institution, to enable it to effectively carry out their mandate.
- The Government, through the Prevention and Combating of



Corruption Bureau (PCCB), should intensify efforts to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.

- The Government to reconsider its decision to withdraw access to the African Court on Human and Peoples' Rights for NGOs and individuals.
- The Government should enforce decisions of the African Court on Human and Peoples' Rights on mandatory death sentence and that of the East African Court of Justice on the Media Services Act of 2016.

Non-state actors

- CSOs must collaborate with CHRAGG build capacity for law enforcement officials to apply a rights-based approach in their work
- CSOs could also collaborate with CHRAGG to prepare rights-based approach guides for law enforcement officials.
- CSOs to engage human rights mechanisms at national, regional, continental and international levels as a way of promoting and protecting human rights. CSOs should apply for observer status at some of the human rights mechanisms, such as the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights.
- CSOs should engage regional and international human rights mechanisms as part of their regional and international level advocacy and influencing the Government to improve its human rights record and ratifying key human rights treaties that it is yet to ratify.
- The Media should report about different human rights mechanisms and how they can be engaged.
- CSOs should sensitize the public about different national, regional and international human rights mechanisms.

Members of the public

- Members of the public are encouraged to engage different levels of human rights mechanisms, either individually, or with assistance of CSOs when their human rights are violated, as a way of seeking remedy.





CHAPTER 1: CONTEXTUAL OVERVIEW

1.1. Historical Overview

By the 10th Century, Tanganyika (now known as Tanzania Mainland), had interacted with other parts of the world. The Bantu-speaking people of Tanganyika were then living with traders from Asia and the Arab world, before the Portuguese came in the 15th Century. In 1880s there was scramble for and partition of Africa in Berlin, Germany. Following this scramble and partition, Tanganyika was placed under the German colonial rule in 1885 but was later taken over by the British after the First World War. After the Second World War, Tanganyika was declared by the United Nations as a trust territory, with the British maintaining control until 1961 when Tanganyika gained its independence. It was the British who named the territory Tanganyika in 1920. It was during the interaction between the natives of Tanganyika (especially along the coast) and Zanzibar with the Arab traders who settled among the natives of the coast that the Swahili culture was developed. Slave trade, to cater for workers in Sultan's plantations in Zanzibar and labour in Europe and America, was prevalent during the reigns and presence of the Arabs and the Portuguese, most notably the East African Long-Distance Trade.

The German colonial rule, which blatantly disregarded human rights of the natives, was met with stiff resistance, leading to uprisings, most notably from the chiefdoms under Chief Mirambo of the Nyamwezi Tribe, Chief Mkwawa of the Hehe, Mangi Meli of the Chagga and Abushiri of Pangani. In 1905, the German colonial administration faced another uprising, popularly known as the Majimaji Uprising which continued for two years up to 1907. The uprising was led by a traditional and spiritual leader called Kinjekitile Ngwale. The uprising involved different tribes in southern and eastern Tanganyika. It was believed that Kinjekitile Ngwale could turn bullets into water, hence the phrase "Majimaji Uprising" (maji is a Swahili word meaning water).

The British did not fare much better in terms of protection and respect of human rights of the natives, hence the struggle for independence began, seeking to realize the right to self-determination. Struggle for independence was led by the Tanganyika African National Union



(TANU) party, born in 1954; and formerly known as Tanganyika African Association (TAA), established in 1929. The struggle intensified in 1950s and during this time there were other parties, such as the United Tanganyika Party (UTP) and the African National Congress (ANC). TANU's Julius Kambarage Nyerere, who became the father of the nation, peacefully led Tanganyika to independence in 1961, and he became the first Prime Minister. The Independence Constitution was adopted and it was thus the first constitution of Tanganyika. The Governor General was still representing the Queen of England as Head of State until 1962 when Tanganyika became a republic and Nyerere its first president. The second constitution, the Republican Constitution, was adopted, making the President the head of state, head of government, commander in chief of the army and part of parliament, without whose assent a bill could not become law. In 1964, Tanganyika merged with the neighboring Zanzibar to form Tanzania. Zanzibar had gained its independence from Britain in 1963 and overthrown the Sultan of Zanzibar (from Oman) in January 1964.

The third constitution, the Union Constitution, was born, establishing a two-government union led by TANU in Tanzania Mainland (Tanganyika) and Afro-Shirazi Party (ASP) in Zanzibar. In 1965, the Interim Constitution was adopted, bringing an end to multipartyism and declaring TANU as the sole political party in Tanzania Mainland and ASP for Zanzibar. The Constitution was enacted by an ordinary Act of Parliament, contrary to principles of constitutionalism and people participation. In 1977, TANU and ASP merged to form Chama cha Mapinduzi (CCM), which proposed and enacted the Permanent Constitution, which is still in use to date, the Constitution of the United Republic of Tanzania 1977. Tanzania remained a one-party state until 1992 when multi-party-political system was re-introduced through constitutional amendments.

Like many African States, post-colonial Tanzania did not prioritize human rights, seeing them as 'delaying' economic development. Process of economic development was considered to be one that did not necessarily promote or respect human rights. But the constitutional amendments of 1984, which saw incorporation of the Bill of Rights into the Constitution of Tanzania, gave a new hope of human right-based approach to development and increased protection of human rights in Tanzania. This was a remarkable achievement, a long struggle demanding for its inclusion.



1.2. Geography and Population

Tanzania is in the Eastern part of Africa between longitudes 29° and 41° East, and Latitude 1° and 12° South.² Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest freestanding mountain in the world and the highest mountain in Africa (referred as the roof of Africa). It is also blessed with availability of beautiful national parks and game reserves that are the most tourists' attractions. Plenty of animals and different types of birds are said to be found in the parks. Tanzania has more than 15 national parks, including Ruaha National Park, Serengeti National Park, Katavi National Park, Mikumi National Park, Saadani National Park and Lake Manyara National Park. It is also blessed with several natural water sources. On the Western part there is Lake Tanganyika (the deepest lake in Africa), bordering Zambia, Democratic Republic of Congo (DRC) and Burundi; while Lake Victoria (the largest lake in Africa and the source of the Great Nile River) lies in the northern part of the country, bordering Uganda and Kenya. In the West South lies Lake Nyasa, bordering Zambia, Malawi and Mozambique. There are also plenty of rivers running across the country including the major rivers Rufiji, Ruvuma, Malagarasi, Kagera, Pangani, Wami, Ruvu, Ruaha, Kilombero and Mara.

The Indian Ocean forms the Eastern border of the country with four major ports of Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area). These ports have been vital in boosting the country's economic growth as well as those of the landlocked neighbouring countries which depend on Tanzania for exportation and importation of goods.³ In 2016, Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga Port.⁴ The pipeline will be vital in transporting oil from landlocked Uganda to overseas through the Tanga port. Tanzania is also planning to construct a standard gauge railway line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.⁵ Tanzania has a tropical climatic condition with the highland temperatures ranging between 10°C to 20°C during the cold and hot seasons respectively. The temperature around the rest of the country

2 LHRC & ZLSC (2013), Tanzania Human Rights Report 2012, p. 1.

3 These countries include Uganda, Rwanda, Burundi, DRC, Zambia and Malawi.

4 See <http://af.reuters.com/article/investingNews/idAFKBN1360KP>, accessed on 11th November, 2016.

5 See <http://www.tanzaniainvest.com/transport/central-corridor-railway-construction>, accessed on 20th January, 2017.



does not fall below 20°C. Normally, it is hot around the months of October to February especially in the coastal regions of Dar es Salaam, Pwani, Tanga, Lindi and Mtwara. Cooler temperature is experienced between the months of May and August, particularly in the highlands areas where temperatures may fall below 10°C.

Rainfall distribution is divided into unimodal and bimodal areas.⁶ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.⁷ The bi-modal regions experience short rainfall (vuli) in the months of October to December and heavy rainfall season starts around the end of March to early June.⁸ Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of enough rainfall, food security and availability have been satisfactory in recent years. Food crops produced in Tanzania are sold to the neighbouring countries as the internal market cannot absorb all available food crops.

The country's climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley, in the highland plains and along the coast of the Indian Ocean.⁹ However, there is minimum investment conducted in these areas to further tourism, agriculture and semi-processing industries especially in much needed rural Tanzania.

Further, Tanzania is endowed with abundant natural resources (living and non-living), with minerals such as Tanzanite (this is found in Tanzania only), Gold, Diamond, Copper and Iron are found in abundant. Large reserves of natural gas have been discovered in southern regions of Mtwara and Lindi. It is estimated that there is a reserve of 1 trillion Cubic metres of natural gas in coastal regions.¹⁰

The Population of the country is rapidly growing, at the rate of 2.7

⁶ See www.meteo.go.tz, accessed on 10th December, 2017.

⁷ Unimodal areas include the following localities: Western regions (Rukwa, Katavi, Tabora and Kigoma); Central regions (Dodoma and Singida); Southern highlands (Mbeya, Iringa, Njombe and Southern Morogoro); and Southern regions and Southern Coast regions (Ruvuma, Mtwara and Lindi). The bi-modal areas include the following: Lake Victoria basin (Kagera, Mara, Mwanza, Geita, Simiyu and Shinyanga); Northern coast and hinterlands (Dar es Salaam, Tanga, Coast, Extreme Northern Morogoro areas, and isles of Unguja and Pemba); and North-eastern highlands (Kilimanjaro, Arusha and Manyara).

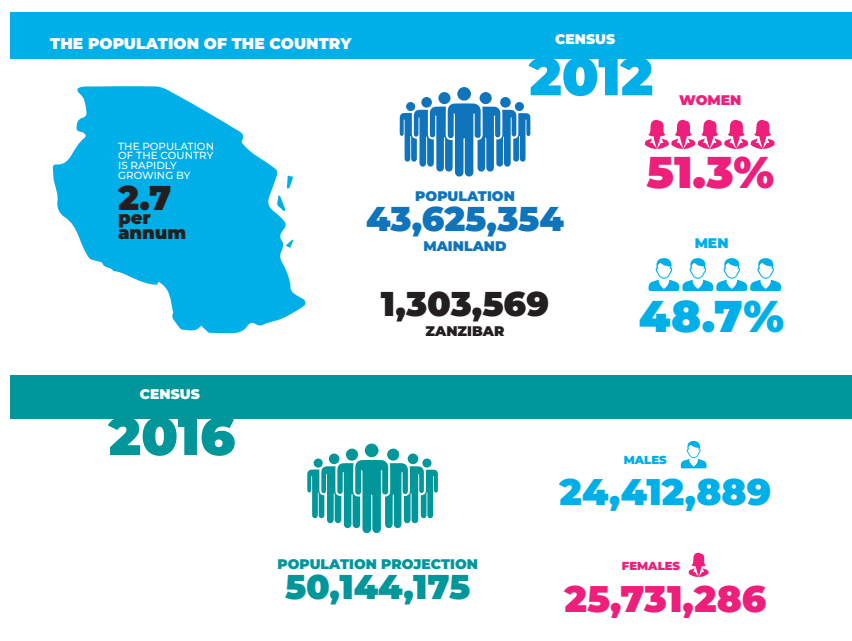
⁸ Ibid.

⁹ German Federal Ministry of Economics and Technology (2009), Target Market Analysis: Tanzania's Wind Energy Market, p. 1, available at <http://docslide.us/documents/gtz2010-en-target-market-analysis-wind-tanzania.html>, accessed on 1st December 2015.

¹⁰ United Republic of Tanzania, The National Natural Gas Policy of Tanzania 2013, p. 2.



per annum. Estimation of the population according to the National Population and Housing Census of 2012 is 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, whereupon women making the majority at 51.3% and male at 48.7%.¹¹ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹² Majority of the country's population resides in rural areas, where the number of households found is high compared to urban areas. The number of households in rural areas is 6,192,303, which is equivalent to 66.6 percent of the total number of households, and that in urban areas is 3,098,792 households, which is only 33.4 percent. The average household is occupied by 4.7 persons.



There are estimated 662,287 non-citizens living and working in Tanzania.¹³ The number has grown as a result of an increased foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.¹⁴

¹¹ URT 2012, the National Population and Housing Census.

¹² See National Bureau of Statistics (NBS), Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and Housing Census, available at http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf, accessed 18th December 2017.

¹³ Ibid.

¹⁴ Ibid.



The country's literacy rate is 71 percent, which suggests that education has improved in terms of provision and accessibility in line with the Millennium Development Goals (MDG) on education and the Development Vision 2025. The country has attained gross enrolment in Primary Schools, 94.6 percent, whereby the number of girls enrolled in primary schools has vastly increased compared to the situation in early 1960s up to 1990s.

1.3. Economic Situation

The Gross Domestic Product (GDP) in Tanzania has expanded to 6.80% in the third quarter of 2018 over the same quarter of the previous year. Annually, GDP annual growth rate in Tanzania is averaged at 6.76% from 2012 up to 2018, reaching an all-time high of 11.90% within the first quarter of 2007 and has recorded a low percentage of 2.60 in the third quarter of 2009.¹⁵ Services sector account for 40% of GDP, while primary sector (agriculture) accounts for 30% of GDP

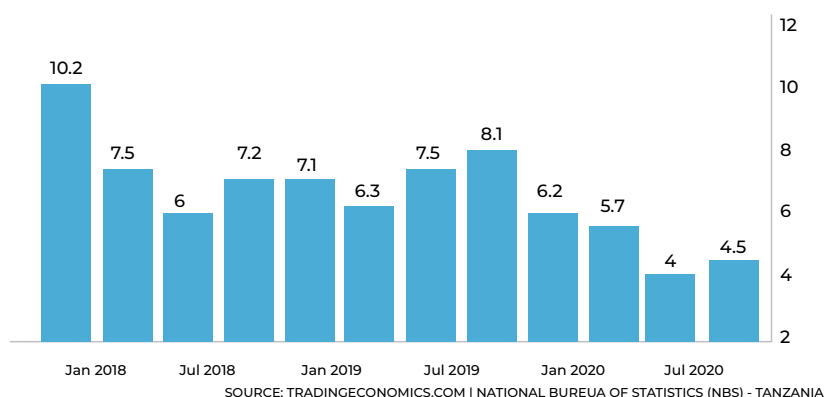


Figure 1: GDP annual growth rate

Economic growth in Tanzania is affected by both internal and external factors. Internal factors include inadequate funds; land ownership conflicts; inadequate participation of the private sector; high rate of population growth; environmental degradation and climate change. External factors that were mentioned to be the reason behind deterioration of the economy and the GDP included regional and global economic and political shocks; natural calamities and spatial politics

¹⁵ See Tanzania GDP Annual Growth Rate available at <https://tradingeconomics.com/tanzania/gdp-growth-annual>, accessed on 10th March, 2019





that can breed wars and conflicts.¹⁶ In July 2020, the World Bank (WB) declared Tanzania to be a middle-income country, categorizing it as a lower-middle income country.¹⁷ This was made possible after the Gross National Income (GNI) increased from \$1,020 in 2018 to \$1,080 in 2019.¹⁸

1.4. Political and Governance Systems

Political Background

Since 1962, Tanzania has been governed by five presidents, namely: the late Julius Kambarage Nyerere (1962-1985), Ali Hassan Mwinyi (1985-1995), the late Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and Dr. John Pombe Magufuli (2015-to date).

Governance System

The Tanzanian governing structure comprises of the Executive, the Legislature and the Judiciary, established under Article 4 of the Constitution of the United Republic of Tanzania of 1977.

The Executive: The Executive arm of the state is composed of the President, who is the Head of State, Head of Government and the Commander in Chief of the Armed Forces and the cabinet.¹⁹ The Government of the United Republic of Tanzania is in charge of all union matters and all matters of Tanzania Mainland.²⁰ 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 over non-union matters in the Isles. Details on Zanzibar are provided in Part Two of this report.

¹⁶ See Samuel Kamdaya "Eight major risks to Tanzania's economic growth in 2018/19" The Citizen Newspaper, 14 June 2018 [online], at <https://www.thecitizen.co.tz/News/1840340-4612022-10008rz/index.html> accessed 13th March 2019.

¹⁷ See Umar Serajuddin & Nada Hamadeh "New World Bank country classifications by income level: 2020-2021" World Bank Blogs, 01 July 2020 at <https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021>, accessed 29 October 2020; FURTHER AFRICA "World Bank promotes Tanzania to middle income status" 3 July 2020 at <https://furtherafrica.com/2020/07/03/world-bank-promotes-tanzania-to-middle-income-status/>, accessed 29 October 2020;

¹⁸ Ibid.

¹⁹ Article 33 of the Constitution of the United Republic of Tanzania 1977.

²⁰ Ibid, Article 34.



The Legislature: The Parliament of the United Republic of Tanzania consists of two parts: the President and the National Assembly. The National Assembly consists of Members of Parliament (MPs). The President as part of the Parliament performs his authority for that purpose as vested by the Constitution of the United Republic of Tanzania. The National Assembly is the principle organ of the United Republic with the authority to oversee and advise the Government and all its institutions/agencies in discharging their respective duties or responsibilities.

The Parliament is vested with legislative powers in relation to all Union Matters and in relation to all other matters concerning Mainland Tanzania. Legislative powers on matters which are not Union Matters are vested in the House of Representative (please refer to Part Two of this report for detailed information on Zanzibar). The laws passed by the National Assembly shall apply also in Zanzibar if they address specifically designated union matters and have been presented to the Zanzibar House of Representatives by the responsible minister.²¹

The majority of MPs are elected members from their constituencies.²² Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.²³ The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.²⁴ The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.²⁵ The term of office for members of Parliament is five (5) years.

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 as under the power of the entire Union.²⁶ The House of representative has powers to enact laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and the Mainland Tanzania is a relatively unique system of

21 Ibid, Article 64; and Article 132 (1) and (2) of the Constitution of the Revolutionary Government of Zanzibar 1984,

22 Article 68(1) (a) of the Constitution of the United Republic of Tanzania 1977.

23 Ibid, Article 68 (1) (b).

24 Ibid, Article 68(1) (c).

25 Ibid, Article 68(1) (d).

26 The House of Representatives is established under Section 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 the 1st Schedule.



government. More information about Zanzibar can be found in Part Two of this report.

The Judiciary: The Judiciary is a constitutional organ and an arm of the State. The Judiciary is the authority with final decision in dispensation of justice in the United Republic of Tanzania.²⁷ Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.²⁸ The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following courts: the Court of Appeal, which is the highest court in the country; the High Court of Tanzania; Resident Magistrates Courts; District Courts; and Primary Courts. The adjudicators in the Court of Appeal and High Court are Judges while in other courts are magistrates.

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania.²⁹ Magistrates are appointed directly by the Commission.³⁰ The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the Corruption and Economic and Organised Crime Control Act of 1984 was amended to establish the Corruption and Economic Crimes Court Division of the High Court (Mahakama ya Mafisadi).³¹

Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.³² There is also a special Constitutional Court, which is an ad hoc court with a sole function of interpretation of the Constitution of the United Republic of Tanzania, 1977, over dispute between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.³³ The Constitutional Court is composed of members, half of which appointed by the Government of the United Republic of Tanzania and the other half 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.³⁴

27 Article 107(A) of the Constitution of United Republic of Tanzania, 1977

28 See Articles 108, 114 and 117 of the Constitution of the United Republic of Tanzania of 1977; provisions of the Magistrates Court Act, Cap 11, [R.E. 2002].

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

30 Ibid, Article 113(1).

31 Section 3 of the Economic and Organized Crimes Control Act, 1984

32 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].

33 Article 125 and 126 of the Constitution of the United Republic of Tanzania, 1977

34 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] provides for establishment of Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate tax issues. Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.



Zanzibar 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.³⁵ 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 some of the cases may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

1.5. Covid19 and its Human Rights Dimensions

Origin of Covid19

Covid19, infectious disease caused by a new coronavirus, was declared as an outbreak and a global pandemic by the World Health Organization (WHO) on 11 March 2020, originating from Wuhan in China, where it was identified in December 2019. Due to this status, there was need for global and national efforts to stop the spread of the virus in order to safeguard rights to health and life. Despite efforts to get a cure, to date there is neither a vaccine to prevent the virus nor specific treatment. The only remedy available is to manage the symptoms. In Tanzania, people resorted to different measures to combat the virus, apart from the conventional measures such as washing hands, wearing masks, and isolation. These measures included using local herbs and steam treatment.

By March 2020, Covid19 had claimed more than 7,000 lives worldwide, majority of them from Europe and America as numbers continued to rise at an alarming rate.

Applicable International Standards

Intentionally, international standards applicable to Covid19 include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Siracusa Principles of 1984. ICESCR recognizes the right of everyone to the highest attainable standard of physical and mental health.³⁶ It requires States Parties, including Tanzania, to take steps to

³⁵ There are 22 union matters, originally there were only 11 union matters. The Court of Appeal is one of the union matters listed in the First Schedule of the Constitution of Tanzania 1977. Other union matters include foreign affairs, security, police, citizenship, immigration, foreign trade, higher education, aviation and statistics.

³⁶ See Article 12(1) of ICESCR.



achieve full realization of this fundamental right, including through prevention, treatment and control of epidemic, endemic, occupational and other diseases.³⁷

According to the UN Committee on Economic, Social and Cultural Rights, the right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.³⁸

Apart from guaranteeing the fundamental right to health, regional and international human rights law recognizes restrictions of the right in case of serious public health threats and public emergencies.³⁹ However, these restrictions must meet the three-part test under international human rights law. Siracusa Principles outline six key conditions for restricting human rights. These are:

- Provided for & carried out in accordance with the law
 - Directed toward a legitimate objective of general interest
 - Strictly necessary in a democratic society to achieve the objective
 - The least intrusive & restrictive available to reach the objective
 - Based on scientific evidence and neither arbitrary nor discriminatory in application
 - Of limited duration, respectful of human dignity, & subject to review
- Article 30(2) of the Constitution of Tanzania also allows restrictions on human rights for reasons of public health or national emergency. While these restrictions are allowed, they should not be used to target particular groups or as a cover for repressive action under the guise of protection health.⁴⁰

Human Rights Concerns

Human rights concerns posed by the Covid19 pandemic include restrictions on fundamental rights such as right to health and rights of health workers; domestic violence; freedom of movement; children's right to education; violence against children; freedom of expression; labour and workers' rights; and right to non-discrimination, particularly discrimination and stigma against Covid19 patients and their families as

³⁷ Ibid, Article 12(2).

³⁸ See Human Rights Watch, Human Rights Dimensions of Covid19 Response, 19 March 2020 at <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>, accessed 5 November 2020.

³⁹ Ibid.

⁴⁰ Ibid.





well as against foreigners. Other concerns include access to health and accurate information relating to the virus for the marginalised groups and right to water and sanitation. Vulnerable groups such as women, children, PWDs, and the elderly were disproportionately affected by Covid19. During this pandemic there has also been a concern over imposition of arbitrary restrictions on fundamental rights such as freedom of expression. The ideal strategy to combat Covid19 is to employ a human rights-based approach to response.



CHAPTER 2: CIVIL AND POLITICAL RIGHTS

2.1. Overview

Civil and political rights are rights that protect peoples' freedoms from infringement by governments, institutions and private individuals. These rights involve citizens' participation in the establishment of a government and participation in political life; and protect individuals' freedoms from interference by state actors, promote participation in civil society and are essential component of democracy. They belong to what is said to be the first generation of human rights, and are codified under international/UN instruments such as the International Covenant on Civil and Political Rights (ICCPR) of 1966, the Universal Declaration of Human Rights (UDHR) of 1948, the UN Convention on the Rights of Persons with Disabilities (CRPD) of 2006, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979, the UN Convention on the Rights of the Child of 1989, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.

Regionally, civil and political rights are protected under the African Charter on Human and Peoples' Rights (ACHPR/Banjul Charter) of 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) of 2003; the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; African Charter on Democracy, Elections and Governance of 2007; SADC Protocol on Gender and Development of 2008; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.

Examples of civil and political rights protected under the human rights instruments above are right to life, right to self-determination, freedom from torture, freedom from violence, right to liberty and personal security, right to equality before the law, right to social security, freedom from discrimination, right to take part in governance, freedom of expression, freedom of assembly and freedom of association. At domestic level, these rights were included in the Bill of Rights incorporated in the Constitution of the United of Tanzania of 1977 following the constitutional amendments of 1984.

This chapter discusses key issues affecting Right to Life, Freedom of Expression, Right to Equality before the Law and Effective Remedy,



Right to Liberty and Personal Security, Freedoms of Assembly and Association, Right to Take Part in Governance, and Freedom from Torture and Inhuman or Degrading Treatment.

2.2. Right to Life

2.2.1. Introduction

Right to life is fundamental for the enjoyment of other human rights, and that is why it is the most important human right and guaranteed and protected in all major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) of 1966, Convention on the Rights of Persons with Disabilities (CRPD) of 2006, Convention on the Rights of the Child (CRC) of 1989, the African Charter on Human and Peoples' Rights (ACHPR) of 1981, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003, and SADC Protocol on Gender and Development of 2008.⁴¹ This right is also provided under the Universal Declaration of Human Rights (UDHR) of 1948.⁴² Domestically, right to life is also guaranteed and protected under Article 14 of the United Republic of Tanzania Constitution of 1977.

For the year 2020, key issues affecting right to life included mob violence, extrajudicial killings, violence against law enforcement officers, witchcraft-related killings, death penalty, road accidents and jealousy-motivated killings of women by their spouses.

2.2.2. Mob Violence

For the past five years (2015 to 2019), the rate of mob violence has been very high. During this period, police data show that more than 3,200 people have been killed by angry mobs for various reasons, mostly theft. This equals to an average of 640 people killed each year due to mob violence or 53 people each month. Most of these incidents occur in urban and semi-urban areas. For the year 2020, police statistics showed that a total of 443 incidents of mob violence and killings were reported, a decrease of 254 incidents compared to the year 2019. The figure below shows the trend of mob violence and killings incidents recorded by the police from 2015 to 2020.

⁴¹ See Article 6 of ICCPR; Article 10 of CRPD; Article 6(1) of CRC; Article 4 of ACHPR; Article 5(1) of ACRWC; Article 4(1) of Maputo Protocol; Article 4(2) of the SADC Protocol on Gender and Development.

⁴² Article 3 of UDHR.



■ Number of Mob Violence Incidents

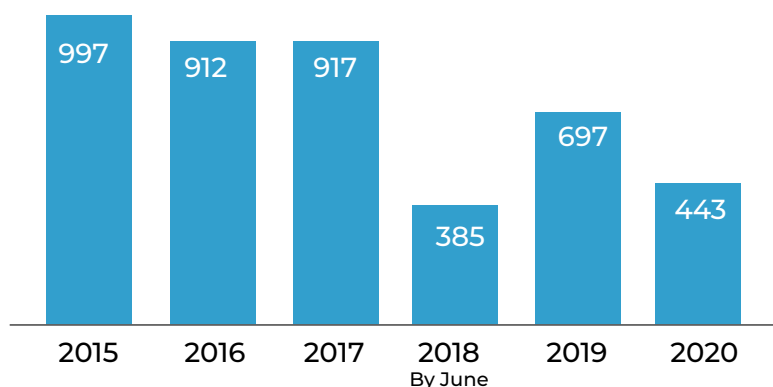


Figure 2: #Mob violence killings, 2015 to 2020

Source: Tanzania Police Force Data

For the year 2020, LHRC was able to document 21 incidents of mob violence and killings reported in Shinyanga, Katavi, Mwanza, Mbeya, Singida, Tabora, Simiyu, Mbeya, Kilimanjaro, Dar es Salaam, and Pwani Regions. These incidents are highlighted in table below.

Table 1: Incidents of mob violence and killings documented by LHRC – January to December 2020

Incident	Report Date
Shinyanga: Jamesz Mhoja (36), resident of Ndala area in Shinyanga Municipality, was attacked and killed by an angry mob moments after he had attacked with a machete and slaughtered his 4-year-old nephew, Emmanuel John.	11 Jun 2020
Katavi: Omary Sudi (28), resident of Ilembu in Katavi Region, was attacked and killed by an angry mob after accusing him of stealing a goat.	30 Mar 2020
Mwanza: Two prisoners of Butimba Prison in Mwanza City were killed by an angry mob after they attempted to escape from prison. The victims are Yusuph Benard (34) and Selimani Sif (28).	16 Apr 2020





Incident	Report Date
Shinyanga: Two people, suspected to be robbers and rapists, were attacked and killed by an angry mob in Kahama District on 19 th April 2020. The two individuals, known as Kelvin and Chafu, were accused of repeatedly breaking into homes, raping wives in front of their husbands and then rob them. It was also reported that they would also sodomize husbands in front of their wives.	21 Apr 2020
Pwani: Residents of Kwazoka Village in Chalinze District attacked and killed a domestic worker, Yasin Abdallah (35), for killing two children of his employers and attacking their mother with a machete.	10 Jul 2020
Shinyanga: An angry mob in Busoka Ward, Kahama District, attacked and killed two suspected bandits, after accusing them of robbing an M-PESA shop.	11 Sep 2020
Mwanza: An angry mob in Nyamagana Ward in Ukerewe District attacked and killed by 54-year-old Andrew Chimwana on 25 th August 2020. He was a bodaboda driver who had been hired by two men to take them to a house of a man called Magesa Samson, who upon their arrival yelled for help from neighbours after they had forced their way into his house. When the neighbours came the two other men escaped but the driver was caught and killed.	Aug 2020
Simiyu: An angry mob in Nege Village in Busega District attacked and killed 20-year-old Nyanda Kitoyela, accused of stealing a chicken. Five of the perpetrators were arrested by police.	Jul 2020
Shinyanga: An angry mob in Malunga Ward in Kahama District attacked and killed two men, Kelvin Kidubo and Benedicto Chafu, aged 20 and 25 years respectively, for stealing. The incident occurred on 19 th April 2020.	Apr 2020
Mbeya: An angry mob in Mbeya killed a 29-year old bodaboda driver, Erasto Mwaliego, after accusing him of theft. The perpetrators were arrested by police.	Jun 2020
Katavi: A man aged between 25 and 30 years, resident of Kazima Ward in Mpanda District, was killed by an angry mob for allegedly stealing maize. The incident occurred on 18 th March 2020.	Mar 2020
Katavi: An angry mob in Tanganyika District attacked and killed Seleman Makonya, aged 50 years, for allegedly stealing four sacks of maize. The incident occurred on 16 th May 2020.	May 2020



Incident	Report Date
Mbeya: An angry mob in Iwindi Village in Mbeya Rural attacked and killed 20-year-old Erasto Nsekeya, for allegedly stealing chicken. The incident occurred on 3 rd September 2020.	Sep 2020
Singida: 44-year-old Mariam Ntandu, resident of Iseke Ward in Ikungi District was killed by an angry mob on 5 th September 2020. He was accused of stealing vegetables in a farm.	Sep 2020
Tabora: A 34-year-old man, a suspected thief and resident of Kawawa Village in Kaliua District, was killed by an angry mob and dumped in the bush. The incident occurred on 11 th September 2020.	Sep 2020
Mbeya: An angry mob in Mbeya Urban attacked and killed Wilfred John, aged 28 years, for stealing. One of the perpetrators was arrested by police. The incident occurred on 19 th September 2020.	Sep 2020
Kilimanjaro: An angry mob in Maore Ward in Same District beat and torched to death 25-year-old Orige Emmanuel for stealing a cow. The incident occurred on 28 th June 2020.	Jun 2020
Dar es Salaam: An angry mob in Ubungo District beat to death a 22-year-old man called Shomari Mrisho, after a man he owed Tshs. 5000 yelled that he was a thief. The incident occurred on 13 th September 2020.	Sep 2020
Katavi: An angry mob in Kwalakacha Vilalge in Mpanda District attacked and burned to death Athuman Kalongo (30) on 20 th August 2020 after catching him breaking into the village shop.	Aug 2020
Mwanza: An angry mob in Ukerewe District attacked and killed Andrew Mlukwa (54), a bodaboda driver, after accusing him of colluding with other two people to break into a house of a fellow villager. The incident occurred on 25 th August 2020.	Aug 2020
Mbeya: An angry mob in Mbeya District attacked and killed Erasto Mwaliego (29) on 20 th June 2020 for allegedly stealing. Police arrested the perpetrators.	Jul 2020

Source: Human Rights Monitoring & Media Survey 2020

The incidents documented by LHRC are only a small fraction of incidents recorded by the Police Force as indicated in the police statistics above. This practice violates key human rights principles, including the principle of presumption of innocence, and the most fundamental human right, right to life.



■ Mob-violence/justice is a big problem at my area of residence/operation

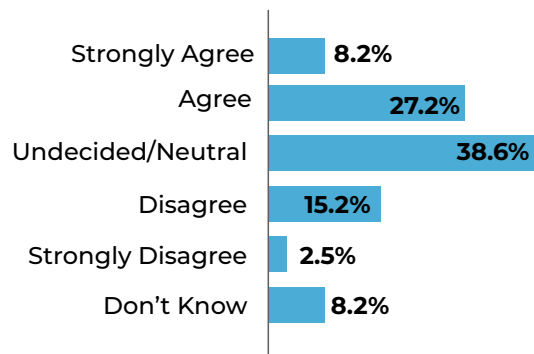


Figure 3: Human rights survey participants' perceptions on mob violence

During the human rights survey, 27.2% and 8.2% of survey participants agreed and strongly agreed that in their areas of residence and operation mob violence/justice is a big problem. In 2020, the Police Force also revealed that killings caused by mob violence were among the incidents which took centre stage in 2020.⁴³

LHRC's Call: Members of the public need to refrain from mob violence and let the criminal justice system to take its course. Awareness on the dangers and impact of this practice needs to be enhanced, and this sort of behaviour must be discouraged.

2.2.3. Extrajudicial Killings and Violence against Law Enforcement Officers

The primary duty of law enforcement officials is to protect and safeguard the lives of people. These obligations are well stipulated in regional and international human rights instruments, which also call for police use of force to be necessary, proportional and lawful. These principles of necessity, proportionality and legality are echoed in the United Nations Code of Conduct for Law Enforcement Officials, which provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.⁴⁴ When law enforcement officials fail to adhere to the three key principles highlighted above, resulting into deaths of civilians or suspected

⁴³ LHRC Media Survey 2020.

⁴⁴ See Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in resolution 34/169 of 17 December 1979 at New York, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>, accessed 10th December 2017.



criminals, they commit extrajudicial killings. The principles emphasize on reasonable use of force.

In 2020, LHRC documented four incidents of extrajudicial killings, which are one more than those documented in 2019. The table below shows the documented incidents of extrajudicial killings, which were reported in Tabora, Dar es Salaam, and Mbeya Regions.

Table 2: Incidents of extrajudicial killings documented by LHRC – January to December 2020

Incident	Report Date
Tabora: People`s militia (mgambo) in Mgambo Village in Kaliua District were accused of killing a resident of the village, Juma Rajabu (40), for failing to pay Tshs. 1000 – contribution for construction of a toilet at Ushokola Primary School.	12 Apr 2020
Mbeya: TANAPA officers reportedly shot and killed Ulandi Dotto (28), resident of Mwavala Village in Mbarali District for trespassing into the Ruaha National Park with cattle.	5 Aug 2020
Dar es Salaam: A man aged 34 years, Walker William Muhame, was reportedly severely beaten while under police custody, leading to his death. The incident occurred on 21 st February 2020.	February 2020
Dar es Salaam: Salumu Sefu, aged 30 years and resident of Manzese Ward in Ubungo District, was reportedly severely beaten by people` militia officer under the orders of the street chairperson, causing his death. The incident occurred on 21 st January 2020.	January 2020

Source: Media Survey & Human Rights Monitoring 2020

LHRC’s call: Law enforcement officers to refrain from using excessive force when apprehending criminal suspects and when such suspects are under thier custody, in line with domestic and international standards, including Police General Orders and the United Nations Code of Conduct for Law Enforcement Officials.

During this reporting period, LHRC also documented one incident of violence against law enforcement officers. The incident occurred in Ruvuma Region, whereby a group of pastoralists in Machema Village, Tunduru District, reportedly attacked and killed a people`s militia officer, Said Kitimbe (46) during a conflict between pastoralists and farmers.



The incident occurred on 28th August 2020. The group had reported crashed a wedding ceremony and started attacking people (farming community), accusing them of stealing their cattle.⁴⁵

LHRC's call: Community members must refrain from attacking law enforcement officers, as this behaviour is illegal and violates their rights as human beings. When attacked, law enforcement officers are allowed to use reasonable and proportional force to protect themselves.

2.2.4. Witchcraft-related Killings & Violence against Persons with Albinism (PWAs)

Witchcraft-related killings are killings committed by community members, motivated by their beliefs in witchcraft. Tanzania is one of the countries in Africa in which belief in witchcraft is very high. In the past five years, from 2015 to 2019, more than 1,380 incidents of such killings were reported. This equals to an average of 276 killings each year or 23 killings each month. For the year 2020, a total of 112 incidents of killings motivated by belief in witchcraft were reported to police stations, 77 less than those reported in 2019.

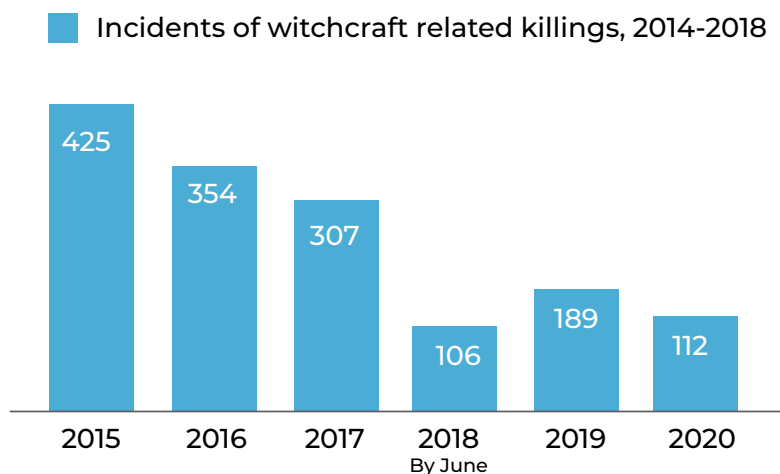


Figure 4: #Incidents of killings motivated by belief in witchcraft, 2015 to 2020

Source: Police Force Data

⁴⁵ Media Survey & Human Rights Monitoring 2020.



Efforts by the Police Force and other law enforcement officials have contributed to the decline in the number of incidents of witchcraft-related killings from 425 in the year 2015 to 112 in the year 2020. However, the number of people killed is still high. In the year 2020, LHRC documented fifteen incidents of witchcraft-related killings through media survey and human rights monitoring, reported in Geita, Rukwa, Katavi, Tanga, Mbeya, Njombe, Lindi, and Kigoma Regions.

Table 3: Incidents of killings motivated by belief in witchcraft documented by LHRC – January to December 2020

Incidents	Report Date
<p>Geita: Police in Geita arrested three people in connection with the killing of Celina James, resident of Nungwe Village in Geita District, on suspicion of witchcraft. Amos Charles (44) was accused of coordinating and ordering the killing, after accusing the victim of using witchcraft to kill his five-month-old baby following a land dispute between them. The incident occurred in March 2020.</p>	15 Mar 2020
<p>Rukwa: Two residents of Ilanga fishing village in Sumbawanga District, Rukwa Region, were hacked to death by unknown assailants armed with crude weapons, including machetes.</p> <p>During the gruesome incident, another resident who was seriously wounded fled from the scene. Impeccable reports from the scene of incident had it that the source of the killings was described as revenge based on superstitious beliefs on the part of the assailants. The deceased were identified as Galus Masele (50) and Mabula Mwandu (37), while Masalu Mwandu (38) was said to have been seriously injured.</p>	8 Feb 2020
<p>Kigoma: Four family members in Kasulu District were brutally attacked and killed on witchcraft suspicion. Petro Sagalika, a witchdoctor, along with his pregnant wife and children, were killed by an angry mob, who accused them of practicing witchcraft.</p>	6 Jan 2020
<p>Katavi: A 2-year-old child, resident of Katambika Village in Nsimbo District, was brutally killed on 11th August 2020 by the child's father, Mrembe Kambona, aged 35 years. It was reported that the killing was motivated by witchcraft belief and was instructed by a witchdoctor. The father and the witchdoctor were both arrested by the police.</p>	August 2020



Incidents	Report Date
Tanga: 48-year-old Haruni Myombe was accused of killing 62-year-old Juma Mwilenga, resident of Iyula Village in Mombo District, for allegedly bewitching him. He attacked and killed the victim with a machete before absconding on 28 th July 2020.	July 2020
Mbeya: A 6-year-old child, Gladness Mwambopo, resident of Mbeya Urban, was allegedly brutally killed on 25 th April 2020 by her mother, Joyce Kajisi. The killing was reportedly motivated by belief in witchcraft.	April 2020
Mbeya: A 2-year-old child called Tamali Saimon, was reportedly killed for purposes of witchcraft on 4 th May 2020 in Mbalizi District. Three people, including a witchdoctor, were arrested in connection with the killing.	May 2020
Njombe: 33-year-old Hebert Ndelwa was arrested by police for killing a 70-year-old woman, Felista Msemwa, after accusing her of practicing witchcraft. The incident occurred on 19 th September 2020.	September 2020
Geita: A special police operation in the Lake Zone, conducted in February 2020, saw the arrest of 504 people accused of different crimes, including witchdoctors implicated in the killing of 32 people, the killings which were motivated by belief in witchcraft. Among the 32 victims were two police officers and one JKT army officer – whose private body parts were removed. It is believed that the body parts are used by witchdoctors to help people 'succeed in their endeavours' or 'become rich.' Police revealed that the arrested witchdoctors were responsible for encouraging their clients to rape or kill a total of 50 women so that they would become rich. In Kagera Region, police arrested five people who carried orders of attacking with machetes and killing people suspected of practicing witchcraft.	15 Feb 2020
Lindi: Lindi Regional Police Commander, Ntatiro Kitinkwi, reported that on 27 th November 2020, Sophia Mkutenda, resident of Ruangwa District, was brutally killed with a sharp object for witchcraft-purposes. The crime was orchestrated and carried out by her husband, who was assisted by two other people. According to the husband, he was told by his boss at a mine in Namungo Village that if he wants to become rich, he has to kill his wife. He stated that after killing his wife they took her head to his boss.	1 Dec 2020
Geita: Visconsela Mengane (30), resident of Geita District, reportedly killed his stepmother by attacking her with a machete for allegedly bewitching and causing him to get epilepsy.	8 Dec 2020

Source: LHRC Media Survey & Human Rights Monitoring 2020



Coordinated efforts made by the police, CSOs and the Commission for Human Rights and Good Governance (CHRAGG), have significantly contributed to enhancing protection of persons with albinism (PWAs). Consequently, no incidents of killings of PWAs were reported in 2020, as has been the case since the year 2015.

During the human rights survey, 19.2% and 7.6% of survey participants agreed and strongly agreed that in their areas of residence and operation witchcraft-related killings are a big challenge. 26.5% of the survey participants also mentioned that they had witnessed or heard of any incident of witchcraft-related killing in 2020.

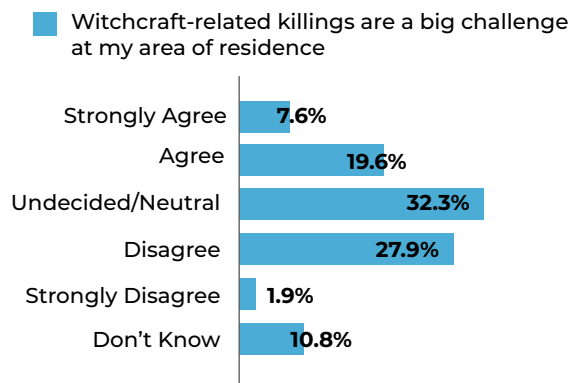


Figure 5: Survey participants' perceptions on killings motivated by belief in witchcraft

LHRC's Call: While there have been no reported killings of PWAs since 2015, PWAs continue to live in fear, especially when elections draw closer. Increased protection of PWAs is thus needed to ensure that they enjoy and realize their human rights equally with other people. Government and CSO actors should raise community awareness on superstitious beliefs and myths that result in the victimization of persons with albinism.

2.2.5. Death Penalty: More Death Sentences Imposed in 2020

Death sentence is stipulated as one of the sentences for criminal convicts under Tanzania's Penal Code, Cap 16. Death penalty violates the most fundamental human right, the right to life, which is guaranteed and protected under international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the

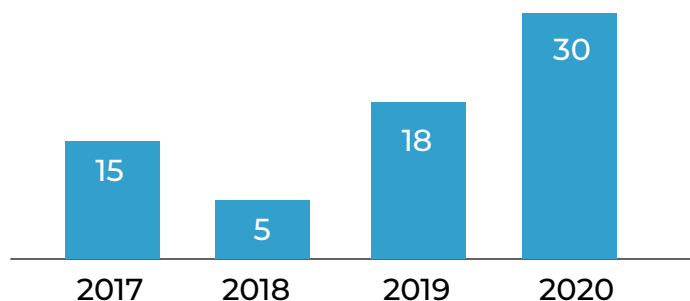


African Charter on Human and Peoples' Rights (ACHPR). Despite the existence of death penalty in Tanzania's law books, the last recorded execution was during the administration of President Ali Hassan Mwinyi in 1990s, more than 25 years ago. No executions were ordered by his successors, Hon. President Benjamin William Mkapa and Hon. President Jakaya Mrisho Kikwete. In recent years, H.E. President John Pombe Magufuli has also made it clear that he is not willing to sign any death warrant to order execution of death row inmates.

In November 2019, the African Court on Human and Peoples' Rights delivered its judgement on mandatory death sentence, declaring mandatory death penalty a violation of the African Charter on Human and People's Rights (ACHPR) of 1981 and ordering the Government of Tanzania to take necessary measures within one year from the date the judgement was notified to remove mandatory death sentence because it removes the discretion of the judicial officer.⁴⁶ This landmark judgement was made in the case of ***Ally Rajabu and Others v. United Republic of Tanzania***.⁴⁷

In 2020, LHRC documented 30 death sentences in the period of January to December. The sentences were imposed by High Courts in Kigoma, Kilimanjaro, Mara, Rukwa, Kagera, and Dar es Salaam. These are 12 more than those documented in 2018.

■ Death sentences



⁴⁶ See "AFRICAN COURT DIRECTS TANZANIA TO DROP THE MANDATORY DEATH PENALTY" DailyNews Newspaper, 29 November 2019 at <http://www.handsoffcain.info/notizia/african-court-directs-tanzania-to-drop-the-mandatory-death-penalty-50313274>, accessed 5th March 2020; Faustine Kapama "Tanzania: African Court Directs Tanzania to Drop the Death Penalty" DailyNews Newspaper, 29 November 2019 at, <https://allafrica.com/stories/201911290333.htm>, accessed 5th March 2020.

⁴⁷ APPLICATION No. 007/2015.



Figure 6: #Death sentences documented by LHRC – 2017 to 2020

**Table 4: Death sentences documented by LHRC
– January to December 2020**

Incident	Report Date
Kigoma: The High Court in Kigoma sentenced to death by hanging Yohana Filipino (28), resident of Rungwe Village in Kasulu District, after convicting him of murdering his ex-wife, Scolastica James. He stabbed her to death in October 2017.	5 May 2020
Kilimanjaro: The High Court in Moshi sentenced to death by hanging a resident of Hai District, Januari Mallya (55), after convicting him of killing his mother, Felister Mallya. He killed his mother in January 2015 after accusing her of 'bewitching' his son and hindering his development.	30 May 2020
Mara: A resident of Nyakonga Village, Tarime District, Chausiku Magoiga (34), was sentenced to death by hanging for killing her husband, Nchama Mwita (40). She committed the offence in June 2020, killing her husband using a hammer after accusing him of being a drunkard and mistreating her.	9 Jun 2020
Mara: Matiko Chanduru (20), resident of Maburi Village in Serengeti District, was sentenced to death by hanging by the High Court, after he was convicted of raping and subsequently killing his 7-year-old niece. The incident occurred in June 2018.	25 Mar 2020
Kilimanjaro: The High Court in Moshi imposed a death sentence by hanging to resident of Rombo District, Priva Shirima (28), after finding him guilty of killing Remmy Massawe. The killing incident occurred in June 2015.	19 Apr 2020
Rukwa: The High Court of Tanzania in Sumbawanga District sentenced Shuka Balahaya (53) to death by hanging after convicting him of murdering his wife. The resident of Mlele District had been accused of brutally killing his wife with a knife, after claims that she had used witchcraft to kill the child of his other wife.	3 Jul 2020
Mara: The High Court of Tanzania imposed a death by hanging sentence on resident of Tarime District, Mwita Philipo, after finding him guilty of participating in the killings of two women of the same family.	5 Jul 2020
Rukwa: The High Court of Tanzania in Sumbawanga District imposed a death by hanging sentence on Yustine Robert (35), after finding him guilty of killing his wife and children. He committed the offence in Mlele District in April 2013.	14 Jul 2020



Incident	Report Date
The High Court of Tanzania sentenced two pastoralists to death by hanging, after finding them guilty of killing their fellow pastoralist, Mwingeti Rometi, in 2014 during the local government elections.	20 Aug 2020
<p>Kagera: The High Court of Tanzania in Bukoba convicted Esther Amani (36) from Kalenge Village in Biharamulo District of murder after she was found guilty of killing six family members and was sentenced death by hanging.</p> <p>State Attorney Chema Maswi told the High Court during the hearing of the case that on October 20, 2011 Amani willfully administered poison in water container that the unsuspecting family members drunk and died.</p>	21 Aug 2020
<p>Kagera: The High Court of Tanzania in Bukoba convicted and sentenced to death three people accused of murders, committed in May 2015 in Bukoba Municipality.</p>	14 Aug 2020
<p>Dar es Salaam: The High Court of Tanzania in Dar es Salaam sentenced to death five out of six people accused of killing one of the former members of the Constitutional Review Commission, the late Dr. Sengondo Mvungi, after finding them guilty of committing the offence in 2013.</p>	19 Sep 2020
<p>Mara: Five people, including two from the same family, residents of Tarime and Rorya Districts in Mara Region, were sentenced to death by hanging after the High Court found them guilty of murder. The convicts are Chacha Nyaitati, Wolder Kaler, Ongoro Onyango, Bwana Onyando and Denis Ondigo. Nyaitati was found guilty of killing Chacha Makuri following a land dispute, while Kaler, Onyando and Onyango were convicted of the crime of murdering Joshua Okumu whom they had accused of stealing cattle. Denis Ondigo was found guilty of killing his stepchild, Mass Daniel by hitting him with a stick on the head.</p>	12 Nov 2020
<p>Mtwara: The High Court of Tanzania in Mtwara imposed a death by hanging sentence on resident of Ruangwa District in Lindi Region, Mahamud Mbavu, after finding him guilty of murder.</p>	2 Nov 2020
<p>Mara: A sitting of the High Court in Musoma sentenced a resident of Mbirikiri Village in Tarime District to death by hanging after finding him guilty of killing a village chairman with a poisoned arrow.</p>	24 Oct 2020





Incident	Report Date
Geita: Four people accused of killing former CHADEMA political party chairperson of Geita Region, Alphonse Mawazo, were sentenced to death by hanging after the court found them guilty.	10 Oct 2020

Source: Media Survey & Human Rights Monitoring 2020

LHRC’s view: Death penalty violates the right to life and amounts to a cruel, degrading and inhuman punishment under the Convention against Torture (CAT). Imposition of this kind of punishment has not made much impact in terms of deterrence of crime, which is why there is a global movement towards the abolition of the death penalty. There have also been cases in various parts of the world whereby death row inmates were executed only to be determined later that they were wrongly convicted, but then the execution cannot be reversed.

LHRC’s Call: Being an abolitionist state in practice, Tanzania should join a global movement against death penalty and abolish it altogether. Only about 53 countries in the world have retained death penalty and execute death row inmates, while 29 are abolitionist in practice,⁴⁸ including Tanzania. Neighbouring countries like Rwanda and Mozambique are among the 106 countries in the world that have abolished death penalty, and Tanzania can take a step further and do the same.

2.2.6. Death Penalty: Presidential Pardon for 512 Death Row Inmates

In 2019, there were more than 480 death row inmates. However, in April 2020, H.E. President John Pombe Magufuli pardoned 3,973 prisoners and commuted the sentences of 256 prisoners from death to life imprisonment, as part of the commemoration of 56 years of union between Tanganyika and Zanzibar.⁴⁹ As Tanzania celebrated her 59 years of independence on 9th December 2020, H.E. President John Pombe Magufuli pardoned another 256 death row inmates, making a total of 512 inmates whose sentences were commuted to life imprisonment.

⁴⁸ See Death Penalty Information Center “Abolitionist and Retentionist Countries” at <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries>.

⁴⁹ Media Survey and Human Rights Monitoring 2020.



President Magufuli's anti-death penalty execution stance

In 2020, H.E. Magufuli made history by pardoning a total of 512 death row inmates. This follows his stance since he came into power of not signing warrants to execute death row inmates. The President's stance solidifies Tanzania's place in the category of countries which do not execute death penalty (abolitionist state). This is a critical step towards abolition of death penalty, as this type of punishment is inconsistent with the notion of human dignity and constitutes torture and an inhuman and degrading punishment.

LHRC Recognition



2.2.7. Road Accidents: Less Accidents and Resulting Deaths

Road accidents become a human rights issue when negligence is involved in terms of drivers of vehicles and quality of roads. Road safety is an essential human right linked to the right to life. Because of these accidents, communities bear the burden after losing their loved ones, including breadwinners and children, and the poorer section of the community is more vulnerable as passengers of public transport and pedestrians.

Those who survive the accidents, including *bodaboda* drivers, are left with permanent disability and injuries, hence becoming less productive. Families of the victims of road accidents become more vulnerable to poverty, and this also affects poverty reduction initiatives.

Efforts by the Police Force and other stakeholders have seen road accidents decrease from 10,297 incidents in 2016 to 2,924 in 2019, equal to a 56% decline. Resulting deaths have also decreased from 3,381 in 2016 to 1,536 in 2019, equal to a 38% decline. Further, the number of injured persons has also declined from 9,993 in 2015 to 3,123 in 2019.⁵⁰ In November 2020, the Traffic Police lawyer, Assistant Superintendent of Police (ASP) Deus Sokoni, revealed that the period of January to June 2019, 247 passengers lost their lives due to road accidents, while 229 passengers lost their lives in the period of January to July 2020. For motorcycle accidents, the number of drivers who lost their lives

⁵⁰ See Tanzania in Figures 2019, at <https://www.nbs.go.tz/index.php/en/tanzania-in-figures/533-tanzania-in-figures-2019>, accessed 28th September 2020.



decreased from 157 in the period of January to June 2019 to 124 in the same period in 2020.⁵¹ He added that accidents involving tricycles (guta) claimed 57 lives of drivers in the period of January to June 2019 and 28 lives in the same period in 2020. On the part of pedestrians, 191 lives were lost in the period of January 2019, while 159 lives were lost in the same period in 2020.⁵² In December 2020, Commissioner of Police (Operations and Training) Liberatus Sabas revealed that compared to 2019, road accidents in 2020 had decreased by 33%, resulting deaths by 16.3%, and resulting injuries by 23.1%. In January 2021, IGP Simon Sirro revealed that in 2020 road accidents had decreased by 34%. The figure below shows the status of road accidents and resulting deaths in Tanzania from 2016 to 2020.

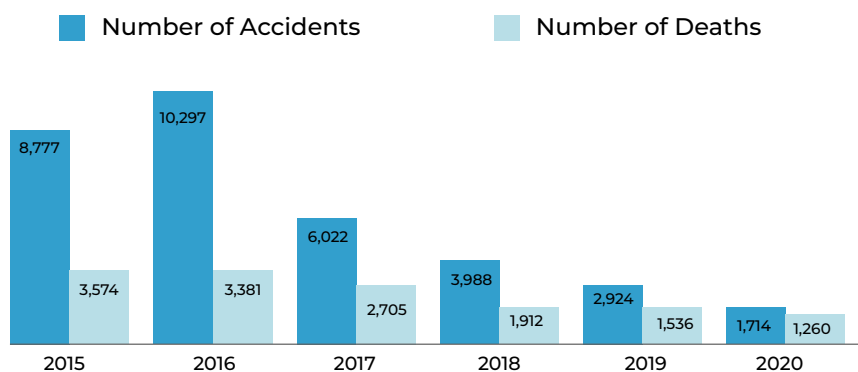


Figure 7: #Road accidents and resulting deaths, 2015 to 2020
Source: Tanzania in Figures 2019 & Police Force Data 2020

In 2020, the outbreak of the Coronavirus meant restricted movements of people within the country and economic activities as people stayed at home to prevent spread of the virus. This may have contributed to reduced number of road accidents. LHRC was able to document road accidents reported in different parts of the country, including Shinyanga, Ruvuma, Morogoro, Dar es Salaam, Dodoma, Songwe, Dar es Salaam, Dodoma, Mbeya, Manyara, Kagera, Singida, and Arusha. Below are some of the reported incidents of road accidents and resulting deaths and injuries that were documented by LHRC, most of them involving lorries.

⁵¹ LHRC Media Survey 2020.
⁵² Ibid.



Table 5: Incidents of road accidents documented by LHRC, January to December 2020

Incident	Report Date
Shinyanga: A driver died during a car accident in Kahama District.	3 Jun 2020
Ruvuma: Three people in Mbinga District were killed by a motorcycle accident. The accident occurred in Klamili Village as the motorcycle carrying the victims hit a car parked on the roadside.	25 Mar 2020
Morogoro: Police in Morogoro were looking for a lorry driver, Saidi Kifaila (30), accused of causing an accident that led to deaths of five people and injuries of six others.	25 Mar 2020
Dar es Salaam: A resident of Gongo la Mboto, Yahya Maneno (50), was killed and three other people injured following an accident involving a bus they were travelling in, after it overturned.	1 May 2020
Dodoma: In May 2020, the Government revealed that in the period of June 2018 to April 2020, a total of 3,500 accidents occurred, resulting into deaths of 1,772 people and injuries to 4,906.	21 May 2020
Songwe: Two people died and twenty-two others were injured after a bus collided with a lorry in Mbozi District.	3 Jun 2020
Mbeya: One person died, and three others were injured following a road accident that occurred in Mbeya, involving a tricycle and a lorry.	9 Jun 2020
Mwanza: Four people were killed, and five others injured during a road accident, which involved a lorry, a saloon car and a tractor in Magu District, Mwanza Region.	12 Jun 2020
Dar es Salaam: In March 2020, the DCI at Police Headquarters revealed that in the period of January to February 2020, road accidents decreased by 3.2% compared to same period in 2019. He noted that 533 road accidents occurred in that period in 2019, while in 2020 there were 425 accidents.	29 Mar 2020
Mbeya: One person was reportedly killed, and four others injured after a passenger bus from Dar to Mbeya overturned.	18 Jul 2020
Dodoma: An accident involving a lorry and a small car occurred in Kibaigwa area, claiming 5 lives. The lorry driver was reportedly at fault and ran away after the accident.	4 Jul 2020
Manyara: Two secondary students in Babati Town were killed after a car hit them while on school marching.	20 Jul 2020



Incident	Report Date
Shinyanga: Five people were killed in an accident involving a saloon car and a bus in Kishapu District. The drivers of the two cars were said to be at fault for overspending.	29 Aug 2020
Kagera: Seven people were killed, and 27 others injured after a passenger bus was involved in a accident in Muleba District.	22 Aug 2020
Arusha: Three secondary school students were killed, and two others injured after a car hit them at Olmoti area in Arusha District.	6 Aug 2020
Singida: 15 people who were going to attend a wedding in Itigi District were killed in a road accident after their minivan collided with a lorry.	12 Dec 2020
Shinyanga: 24 people were killed in a road accident involving a passenger bus (Kahama to Musoma).	24 Dec 2020
Dar es Salaam: Five people were killed and ten others injured after a bus (daladala) they were in collided with a lorry at Chang'ombe traffic lights area.	6 Dec 2020

Source: Media Survey & Human Rights Monitoring 2020

LHRC's View: While the number of road accidents and the resulting deaths have been on the decline since 2016, the death toll is still high and has a huge impact on the community and the national economy. In the period of 2015 to 2019, an average of 2,621 people lost their lives on the roads per annum. Drivers of lorries/trucks and passenger buses which travel to different parts of Tanzania Mainland have usually been implicated in contributing to road accidents. LHRC study on transportation of 2015 and recent studies on business and human rights, have shown that these drivers face a number of challenges which in one way or another may contribute to road accidents. The biggest challenge they face is being overworked and underpaid. In most parts of the world, bus and truck drivers have been said to be responsible for most of the road accidents, and this is because they are pushed to work long hours by their employers and given tight deadlines, leaving them to be nearly asleep when driving.⁵³

⁵³ See Harihar Singh Rathore "Overworked drivers the main cause behind increasing road accidents" The Kathmandu Post, 25 August 2019 at <https://kathmandupost.com/province-no-3/2019/08/25/overworked-drivers-the-main-cause-behind-increasing-road-accidents>, accessed 29 October 2020; Shota Kincha "State Audit: Tbilisi's bus drivers 'illegally overworked, underpaid'" OC Media, 13 February 2020 at <https://oc-media.org/state-audit-tbilisis-bus-drivers-illegally-overworked-underpaid/>, accessed 29 October 2020; Michael Belzer "Truck drivers are overtired, overworked and underpaid" The Conversation, 25 July 2018 at <https://theconversation.com/truck-drivers-are-overtired-overworked-and-underpaid-100218>, accessed 29 October 2020.



2,621

Average number of people killed in road accidents per annum from 2015 to 2019.

LHRC's Call: The Police Force and other stakeholders such as road agencies to intensify efforts to ensure road safety and prevent road accidents. This includes proper and regular inspection of vehicles, especially lorries and passenger buses. Road agencies, including TANROADS, must also ensure roads are safe and in good condition to prevent and reduce road accidents. Owners of transportation vehicles, especially lorries and buses, should not put the drivers under unnecessary pressure and respect their labour rights. Community members are also encouraged to abide by the road use laws and regulations and refrain from practices and behaviour that cause road accidents, such as drink-driving, speeding, reckless overtaking and not wearing seat belt.

Police efforts to reduce road accidents

In 2020, the Inspector General of Police (IGP) Simon Sirro revealed that road accidents in Tanzania had decreased by 34%. This is due to efforts of the traffic police to intensify implementation of traffic laws and ensure road safety. He also commended drivers and other road users for respecting road signs, which has also been contributed by public sensitization of road safety. These efforts have contributed to decrease of road accidents from 8,777 in 2015 to 2,924 in 2020. Resulting deaths have also decreased by more than 50% during this period.

LHRC Recognition



2.2.8. Killings of women motivated by jealousy (intimate partner femicides)

Intimate partner femicide (IPF) refers to killing of women by their intimate or former intimate partners, including former or current boyfriends and husbands. Recent trends show an increase of incidents of killings of women, perpetrated by their spouses, mainly motivated by jealousy.





There were many incidents of killings motivated by jealousy in 2020.

The Commissioner of Police in charge of Operation and Training, Liberatus Sabas

In 2019, LHRC documented 12 killings of women by their spouses, of which 8 were motivated by jealousy. In 2020, through human rights monitoring and media survey, LHRC recorded 32 incidents of killings of wives by their spouses, of which 23 were motivated by jealousy. These incidents, which constitute violations of women's freedom from violence and right to life, are discussed in detail under sub-chapter on women's rights (5.2) below.

2.3. Freedom of Expression

2.3.1. Introduction

Freedom of expression is guaranteed and protected under all major human rights instruments, including the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the UN Convention on the Rights of the Child (CRC) of 1989, Convention on the Rights of Persons with Disabilities (CRPD) of 2006 the African Charter on Human and Peoples' Rights (ACHPR) of 1981, and African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. Tanzania has ratified ICCPR, CRC, CRPD, ACRWC, and ACHPR, thus bound by them; and is obligated to protect rights which constitute customary international law under the UDHR. This right is defined as **freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.**⁵⁴ Domestically, it is guaranteed and protected under the United Republic of Tanzania Constitution of 1977.

Freedom of expression is one of the participation rights - rights essential for enjoyment of the right to participate in governance - others being freedom of assembly and freedom of association. According to the Human Rights Committee, this right 'is a **necessary condition for the**

⁵⁴ Article 19 of UDHR and Article 19(2) of ICCPR.



realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.⁵⁵ Freedom of expression includes press/media freedom, right to information and freedom of opinion. This freedom may only be curtailed if restrictions are provided by law and necessary for “respect of the rights or reputation of others” and “for protection of national security or of public order (ordre public), or of public health or morals.”⁵⁶ If restrictions do not pass this three-part test, then they are arbitrary.

Respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy.

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Declaration of Principles on Freedom of Expression in Africa
(2002)

In 2020, key issues affecting freedom of expression in Tanzania included existence of restrictive laws, ban and suspension of media outlets, decline of internet freedom, and introduction of new Online Content Regulations. These issues affected freedom of expression in several ways, including increasing self-censorship, limiting free speech, and limiting access to information

2.3.2. Laws Restricting Freedom of Expression and Civic Space

Currently, the major obstacle in effective realization of freedom of expression in Tanzania is the introduction of different pieces of legislation and amendments of freedom of expression laws in the past six years. Journalists and media houses have been affected more by these laws, leading to increased self-censorship and fear of severe punishment for failure to abide by the existing laws and regulations. Analysis of these laws by LHRC and other stakeholders has revealed failure of the laws to meet international standards on freedom of expression, particularly the tests for restrictions of this fundamental human right. These laws include the Media Services Act of 2016, the Cybercrimes Act of 2015, and the Electronic and Postal Communications (Online Content) Regulations of 2020.

⁵⁵ Human Rights Committee, General Comment No. 34, 102nd session Geneva, 11-29 July 2011, at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, accessed 28th December 2018.

⁵⁶ See Article 19(3) of ICCPR.





Laws and customs that repress freedom of expression are a disservice to society.

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Declaration of Principles on Freedom
of Expression in Africa (2002)

CSOs and media stakeholders have continuously raised concerns over existence of restrictive laws and their impact on hindering realization of freedom of expression. In 2017, the Media Council of Tanzania (MCT), Legal and Human Rights Centre (LHRC) and Tanzania Human Rights Defenders Coalition (THRDC), filed a petition before the East African Court of Justice (EACJ), challenging restrictive sections of the Media Services Act, 2016. On 28th March 2019, the EACJ issued its judgement on this landmark case.⁵⁷ The EACJ found sections 7(3) (a), (b), (c), (f), (g), (h), (i) and (j); sections 19,20 and 21; sections 35,36,37,38,39 and 40; sections 50 and 54; sections 52 and 53; and sections 58 and 59 in violation of freedom of expression and Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community. The Court directed that the Government takes such measures as are necessary, to bring the Media Services Act into compliance with the Treaty for the Establishment of the East African Community. Aggrieved by the decision of the Court, the Government of Tanzania sought an appeal on 11th April 2019 but failed to comply with appeal procedure, hence the EAC Appellate Division striking out the notice of appeal on 9th June 2020. The law is yet to be amended by the Parliament of Tanzania.

LHRC's view: Restrictive laws and regulations have played a big role in reducing civic space in Tanzania. The restrictions imposed by these laws have largely failed to meet the three-part test under the International Covenant on Civil and Political Rights (ICCPR) of 1966, as well as other international and regional human rights instruments. Vague provisions, which are open to misinterpretation and abuse, and severe penalties, are among key concerns with regards to these restrictive laws.

LHRC's Call: The Government and the Parliament to facilitate

⁵⁷ See Committee to Project Journalists "East African court rules that Tanzania's Media Services Act violates press freedom" 28 March 2019 at <https://cpj.org/2019/03/east-african-court-rules-that-tanzanias-media-serv.php>, accessed 20th February 2019.



amendment of the Media Services Act of 2016 in line with the judgement of the East African Court of Justice of March 2019 discussed above, in order to safeguard freedom of expression in Tanzania. Other laws hindering effective realization of freedom of expression should be reviewed and brought in line with international standards of freedom expression.

2.3.3. Decline in Internet Freedom

Internet has become an important platform for people across the globe, including those who conduct business, and an essential space for free expression. According to the UN Human Rights Council, “access information on the Internet facilitates vast opportunities in many spheres of life, including for affordable and inclusive education globally, and is therefore an important tool to facilitate promotion of the right to education” and Internet is “a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals.”⁵⁸ Freedom of expression online is therefore a human right and undue restriction of this right constitutes violation of international law.⁵⁹

In 2012, the UN clearly stipulated that same rights that people have offline must also be protected online, and the same test is applied in terms of limitations⁶⁰. The African Declaration on Internet Rights and Freedoms, emphasises that Internet is an enabling space and resource for the realisation of all human rights, including the right to freedom of expression, the right of access to information, the right of freedom of assembly, the right to freedom of opinion, thought and belief, the right to be free from discrimination in all forms, the right to education, the right to culture and language, and the right of access to socio-economic services.⁶¹ The declaration also emphasizes that the Internet is particularly relevant to social, economic and human development in Africa and affirms in order to fully benefit from its development potential, the Internet must be accessible, available, and affordable for all persons in Africa.⁶²

58 UN Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet : resolution / adopted by the Human Rights Council, 5 July 2018, A/HRC/RES/38/7, available at: <https://digitallibrary.un.org/record/1639840?ln=en#record-files-collapse-header> [accessed 15

59 Ibid.

60 UN Human Rights Council, Resolution 20/8 on the promotion, protection and enjoyment of human rights on the Internet, A/HRC/RES/20/8, 16 July 2012.

61 See the AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOM <https://africaninternetrights.org/>, accessed 29th December 2020.

62 Ibid



In recent years, internet freedom in various part of the world has been on the decline, owing to legal and administrative measures taken by governments to arbitrarily restrict freedom of expression online. According to the Freedom on the Net 2020 Report by Freedomhouse, in 2020 the global internet freedom decline was accelerated by the Covid19 pandemic.⁶³ The report indicates that state and non-state actors in many countries used the pandemic to limit access to information, including blocking independent news sites, criminalizing expression online, ordering removal of unwanted content, and disrupting or shutting down internet service.⁶⁴

INTERNET ACCESS AND AFFORDABILITY

Access to the Internet is essential for the full realization of human development and facilitates the exercise and enjoyment of a number of human rights and freedoms, including rights to freedom of expression and access to information, peaceful assembly and association. For universal access to the Internet to be assured, the Internet should be widely available and affordable to enable all persons to realise their full potential.

The cutting off or slowing down of access to the Internet, or parts of the Internet, for whole populations or segments of the public can never be justified on any ground, including on public order or national security grounds.

AFRICAN DECLARATION on Internet Rights and Freedoms

This situation in 2020 contributed to further decline of global internet freedom, especially in 26 countries, including Myanmar, Kyrgyzstan, India, Ecuador, and Nigeria.⁶⁵

⁶³ See Shabaz, Adrian & Funk, Allie, Freedom on the Net 2020: The Pandemic's Digital Shadow, Freedomhouse, at <https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow>, accessed 20th January 2021.

⁶⁴ Ibid.

⁶⁵ Ibid.



In East Africa, a report by Article 19⁶⁶ on the freedom of expression and the digital environment in Eastern Africa, revealed problematic laws and practices that arbitrarily restrict freedom of expression online in the region (Ethiopia, Kenya, Rwanda, Tanzania, and Uganda).⁶⁷

Tanzania, Uganda, and Ethiopia reportedly fared worse than Kenya, Rwanda, and South Sudan in terms of protection of free expression online.

On the positive note, the report indicates that all six countries have commendably enacted legal frameworks for universal access and service mechanisms, seeking to bridge the digital divide.⁶⁸

In Tanzania, some of the legislations on freedom of expression, such as the Cybercrimes Act 2015 and the Online Content Regulations 2020, restrict freedom of expression online. These laws have been said to contribute to decline of internet freedom by criminalising freedom of expression online, including through introduction of licensing requirements for internet users, including bloggers and citizen journalists. According to the Article 19 report, the Online Content Regulations 2018, (have since been replaced by the Online Content Regulations 2020) which do not meet international standards on freedom of expression, were used to justify arrest and punishment of at least four internet users for publishing content without obtaining license and sharing information on social media platforms (especially on Covid19) which are 'false' or 'unofficial.' As discussed above, these regulations were replaced by the Online Content Regulations 2020, which also fall short of international human rights standards, and consequently contribute to decline of internet freedom.⁶⁹

In late October 2020 up to the first week of November 2020, there were reported disruptions of internet in different parts of Tanzania, as the internet slowed down and people could not access some of the digital platforms such as Twitter, Facebook, WhatsApp, and Instagram. This situation disrupted access to information and affected economic activities/businesses conducted through digital platforms⁷⁰.

⁶⁶ A London-based organization that defends and promotes freedom of expression and freedom of information worldwide. It takes its name from Article 19 of the Universal Declaration of Human Rights that guarantees freedom of expression.

⁶⁷ See Article 19, Freedom of Expression and the Digital Environment in Eastern Africa Monitoring Report January–December 2020 at <https://www.article19.org/wp-content/uploads/2021/02/Freedom-of-Expression-and-the-Digital-Environment-in-Eastern-Africa.pdf>, accessed 20th January 2021.

⁶⁸ Ibid.

⁶⁹ Article 19, Freedom of Expression and the Digital Environment in Eastern Africa Monitoring Report January–December 2020.

⁷⁰ See "Kusumbua kwa mtandao wa intaneti kunavyokwamisha biashara na maisha" Mwananchi Newspaper [Online] 08 November 2020 at <https://www.mwananchi.co.tz/mw/habari/kitaifa/-kusumbua->



In this regard, small-scale traders who rely on the internet and digital platforms to sell their products were among the major victims of slow internet and limited access to digital platforms⁷¹.

Since women constitute the majority in the informal sector and continue to move their businesses online, it is safe to assume they were affected the most as their online businesses stopped.

About five days into the internet slowdown, LHRC issued a statement seeking explanation from the Tanzania Communications Regulatory Authority (TCRA) for the slowdown and difficulties in accessing some of the popular digital platforms. LHRC also called for intervention of the regulatory body to ensure restoration of high-speed internet.

LHRC's View: Unexplained internet slowdown and difficulties in accessing some of the digital platforms for over ten days constitutes violation of freedom of expression online and affected other human rights, including right to work. Additionally, existence of laws which impose undue restrictions on internet freedom fosters a culture of self-censorship and fear, which in turn hinders effective realisation of freedom of expression. To borrow the words of the African Declaration on Internet Rights and Freedoms, the Internet has a vital role to play in helping to achieve the full realisation of nationally and internationally agreed sustainable development goals (SDGs) and is a vital tool for giving everyone the means to participate in development processes.

LHRC's Call: Government authorities, including TCRA, and telecommunications companies to ensure internet freedom is not unduly restricted in line with their obligations under the International Bill of Rights and the UN Guiding Principles on Business and Human Rights.

2.3.4. Performance in World Press Freedom Index:

Tanzania dropping further in the rankings

In the past six years, media freedom has been hit the hardest by the introduction of restrictive laws, forcing journalists into self-censorship. It is no wonder the World Press Freedom Index shows a decline in media freedom. The 2018 index report, prepared by Reporters Without Borders (RSF) showed that Tanzania has dropped 10 places in the world

kwa-mtandao-wa-intaneti-kunavyokwamisha-biashara-na-maisha-3016450, accessed 29th December 2020.

⁷¹ See "Boon or a bane: Going on without internet access" The Citizen Newspaper [Online] 08 November 2020 at <https://www.thecitizen.co.tz/tanzania/magazines/sound-living/-boon-or-a-bane-going-on-without-internet-access-3015098>, accessed 29th December 2020.



rankings, from 83rd in 2017 to 93rd in 2018. In 2019, Tanzania further dropped 25 places to sit at the 118th position in the world rankings. In 2020, the index puts Tanzania at 124th position, further dropping 6 places in the world rankings.⁷²

124

in the 2020 World Press
Freedom Index

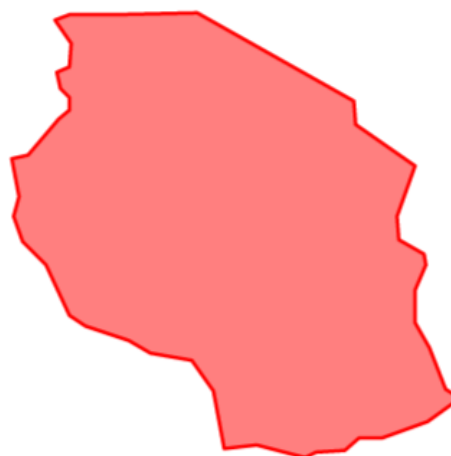
RANKING

↓ **-6**
118 in 2019

GLOBAL SCORE

↓ **+3.97**
36.28 in 2019

📅 Ranking since 2013



Picture 1: Tanzania's rank and score in press freedom in 2020
Source: World Press Freedom Index 2020

2.3.5. Ban and suspension of media outlets

In July 2018, the African Commission on Human and Peoples' Rights issued a press release in which, among other things, it expressed concerns over Tanzania' Electronic and Postal Communications (Online Content) Regulations 2018,⁷³ popularly known as the Online Content Regulations 2018. The Regulations have been subject to criticism in Tanzania and beyond for contravening international standards on freedom of expression. In 2020, at least eight media outlets were fined and suspended for violating the restrictive Online Content Regulations.

⁷² See 2019 World Press Index at https://rsf.org/en/ranking_table, accessed 20th February 2020.

⁷³ LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, p. 31.



TCRA operation brings into question adherence to the principles of natural justice. There are two main principles of natural justice. The principles are: 1. No one should be the judge in his/her own case 2. Each party should be given the opportunity to be heard. These principles call for a rule against bias, which include personal bias, subject matter bias, pecuniary bias, and departmental bias. The problem of 'departmental bias' may arise when the functions of judge and prosecutor are combined in the same department. This type of bias may greatly affect fair hearing.

In April 2020, the TRCA Content Committee banned Mwananchi Newspaper from publishing online for six months and fined the media outlet Tshs. 5 million shillings for allegedly publishing false news and misleading information, contrary to the Online Content Regulations 2018.⁷⁴

In July 2020, the TCRA Content Committee imposed a total fine of more than Tshs. 30 million to ten media outlets for breaching the Online Content Regulations. The media outlets include Clouds FM Radio, Duma TV, East Africa Radio, Global TV, SibukaTV and Star TV.⁷⁵ In the same month the TCRA Content Committee also suspended Kwanza online TV for 11 months for allegedly generating and disseminating biased, misleading and disruptive content. The online TV was accused of posting false information released by the US Embassy regarding the Coronavirus situation without taking time to balance its content and considering professional guidelines, contrary to the Online Content Regulations of 2018.⁷⁶ Other media outlets were Ayo TV, Watetezi TV, Mum Radio, Abood Radio, and Planet Radio.

LHRC's call: All laws and regulations governing freedom of expression, including the Online Content Regulations, to be reviewed and brought in line with international human rights standards. Until then, continued application and implementation of these laws will continue to infringe on freedom of expression.

⁷⁴ Committee to project Journalists "Tanzanian newspaper banned from publishing online for 6 months over COVID-19 report" 11 May 2020, at <https://cpj.org/2020/05/tanzanian-newspaper-banned-from-publishing-online/>, accessed 20th September 2020; Jacob Mosenda "TCRA suspends Mwananchi's online license for Six months" 17 April 2020, at <https://www.thecitizen.co.tz/news/TCRA-suspends-Mwananchi-s-online-license-for-Six-months/1840340-5527310-13ixgsgz/index.html>, accessed 20th September 2020.

⁷⁵ Media Survey & Human Rights Monitoring 2020.

⁷⁶ Ibid.



2.3.6. The New Online Content Regulations of 2020

Background

In March 2018, the Electronic and Postal Communications (Online Content) Regulations 2017 were signed into law,⁷⁷ introducing new legal requirements for bloggers, internet users and online media that, to a large extent, threaten freedom of expression.⁷⁸ The regulations were signed into law despite objections and criticism from various stakeholders, including the media community and civil society. The Regulations were faulted for not meeting international human rights standards, threatening media freedom, freedom of opinion and right to information.⁷⁹ Among the external stakeholders who expressed concern over the 2018 Online Content Regulations was the African Commission on Human and Peoples' Rights, which is based in Banjul-Gambia, urging Tanzania "to ensure that regulations do not undermine their commitment to ensure freedom of expression and access to information on the Internet and social media platforms."⁸⁰ In July 2020, these Regulations were repealed and replaced by the Electronic and Postal Communications (Online Content) Regulations 2020.

Overview of the Regulations

The Electronic and Postal Communications (Online Content) Regulations, 2020 are divided into four (4) parts. Part I covers the preliminary provisions; Part II is on licence requirement; Part III provides for obligations of online content service provider; and Part IV provides for general provisions, including prohibited content, powers of TCRA, and penalties. There are also schedules. The table 6 below highlights the contents of the regulations.

Table 6: Contents of the Electronic and Postal Communications (Online Content) Regulations, 2020

Part & Name	Regulations
PART I PRELIMINARY PROVISIONS	<ol style="list-style-type: none">1. Citation2. Application3. Interpretation.

77 The Electronic and Postal Communications (Online Content) Regulations, 2018, GOVERNMENT NOTICE NO. 133 published on 16/03/2018, available at https://www.tcra.go.tz/images/documents/regulations/SUPP_GN_NO_133_16_03_2018_EPOCA_ONLINE_CONTENT_REGULATIONS_2018.pdf, accessed 12th January 2019.

78 See LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at www.humanrights.or.tz.

79 Ibid.

80 See African Commission on Human and Peoples' Rights, Press Release on the growing trend of stringent regulation of the internet in East African States, 12 July 2018 at <http://www.achpr.org/press/2018/07/d409/>, accessed 19th December 2018.



PART II LICENCE REQUIREMENT	<ol style="list-style-type: none"> 4. Licence. 5. Categories of licence. 6. Application of licence. 7. Issuance of licence. 8. Suspension and revocation.
PART III OBLIGATIONS OF ONLINE CONTENT SERVICE PROVIDER	<ol style="list-style-type: none"> 9. General obligations. 10. Content service provider with district or regional licence. 11. Rights and obligations of application service licensee. 12. Online news and current affairs licensee. 13. Internet café.
PART IV GENERAL PROVISIONS	<ol style="list-style-type: none"> 14. Online content user. 15. Online content host. 16. Prohibited content. 17. Disclosure of information. 18. Children protection. 19. Powers of Authority. 20. Complaint handling. 21. Penalties. 22. Revocation of GN. No. 133 of 2018.
SCHEDULES	<p>First Schedule (Application for Licence to Provide Online Content Services)</p> <p>Second Schedule (Online Content Services Fees)</p> <p>Third Schedule (Prohibited Content)</p>

Key concerns with the Online Content Regulations

The Online Content Regulations of 2020 contain some positive aspects, such as protection of internet and social media users from online criminal activity, fighting hate speech, promoting user responsibility and accountability and protection of children against indecent online content. On the other hand, the regulations contain provisions which hinder full realization of fundamental human rights, including freedom of expression, and contravene international human rights standards. These provisions are more restrictive than those in the repealed Online Content Regulations 2018.

Vague and ambiguous definitions and prohibitions

Like the previous Regulations, the new Online Content Regulations contain words or phrases that are ambiguous and subject to misinterpretation or abuse, with potential to arbitrarily restrict freedom



of expression and internet rights and freedoms. For instance, words/phrases such as **“hate speech”, “use of disparaging or abusive words”, “cultural sensitivities”, content that causes annoyance”, “bad language”, “hate propaganda”, and “content likely to mislead or deceive the public”**, are not clearly defined and/or highly subjective, leaving loopholes for arbitrary restrictions on freedom of expression.

Everyone has the right to hold opinions without interference. Everyone has the right to freedom of expression on the Internet; this right includes the freedom to seek, receive and impart information and ideas, regardless of frontiers. The right to freedom of expression on the Internet should not be subject to any restrictions, except those which are provided by law, for a legitimate purpose and necessary and proportionate in a democratic society, as consistent with international human rights standards.

Principle 3 of the African Declaration on Internet Rights and Freedoms

Most of these words/phrases are contained in Regulation 3 and the Third Schedule of the Online Content Regulations, 2020 on prohibited content. Regulation 16(1) prohibits any person from publishing any prohibited content set out in the schedule.

Regulation 3 defines hate speech to include defamation, a loophole that could be used by powerful individuals and officials to act with impunity. Prohibiting ‘use of disparaging words’ and publishing content that is satirical or fictional in nature without being labeled as such serves to further restrict peoples’ freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, **in the form of art**, or through any other media of their choice.⁸¹

Sweeping powers for TCRA

As was the case in the Online Content Regulations, 2018, the regulator, TCRA, is granted sweeping powers in the New Online Content Regulations, 2020. These powers are articulated under Regulations 7, 8, and 19, including power to refuse issuing licence, order removal of prohibited

⁸¹ Article 19 of UDHR and Article 19(2) of ICCPR.



content, and suspend or revoke licence. Consequently, internet rights and freedoms are jeopardized, given the sweeping censorship powers granted to the regulator. Ideally and in line with principles of natural justice, powers to remove content should be granted to a court of law – which is vested with powers of interpreting the law. Indeed, the African Declaration on Internet Rights and Freedoms has clearly stipulated that “the State should not use or force intermediaries to undertake censorship on its behalf and intermediaries should not be required to prevent, hide or block content or disclose information about Internet users, or to remove access to user-generated content, including those that infringe copyright laws, unless they are required to do so **by an order of a court.**”⁸²

Obligation to moderate and filter content

The regulations put an unfair burden on content providers to moderate and filter content, which serves to restrict flow of information and may lead to removal of legitimate content. They are also required to have in place mechanisms to identify source of content, which amounts to infringement of right to privacy and prevent people to share information anonymously (e.g. whistleblowers). Filtering content – including reviewing every comment before they are published – may take a lot of man-hours and in some cases require technical expertise, which a content provider might not possess. This is particularly more problematic for a content provider receiving a large amount of content, forcing them to either hire more people to review content received or reduce the amount of content that gets published. This obligation leaves loopholes for violations of rights to privacy and freedom of expression. It also contravenes standards on freedom of expression and internet rights and freedoms, including the Joint Declaration on Freedom of Expression and the Internet, and the African Declaration on Internet Rights and Freedoms. The latter provides “Filtering, blocking, removal and other technical or legal limits on access to content constitute serious restrictions on freedom of expression and can only be justified if they strictly comply with international human rights standards relating to limitations and due process requirements.”⁸³ It further provides that “No one should be held liable for content on the Internet for which they are not the author. Furthermore, the State should not use or force intermediaries to undertake censorship on its behalf and intermediaries should not be required to prevent, hide or block content or disclose information about Internet users, or to

⁸² See the African Declaration on Internet Rights and Freedoms <https://africaninternetrights.org/>, accessed 29 October 2020.

⁸³ Ibid..



remove access to user-generated content, including those that infringe copyright laws, unless they are required to do so by an order of a court.”⁸⁴

9. A licensee shall comply with all the terms and conditions of the licence and observe the following:

- (d) use moderating tools to filter prohibited content
- (e) have in place mechanisms to identify source of content

Registration, license and fee requirements

The regulations provide for mandatory registration and licensing, including registration of bloggers – which is not in line with international standards on freedom of expression.⁸⁵ A person can only provide online content services upon obtaining a licence from TCRA,⁸⁶ failure of which may result to a fine of not less than five million shillings or to imprisonment of twelve months or both.⁸⁷

Licences are categorized into: licence for provision of predominant news and current affairs; licence for provision of predominant entertainment content; licence for provision of predominant education and religious content; and simulcasting licence issued to mainstream broadcasting licence with national coverage rights⁸⁸.

The regulations also require payment of application fees, initial license fees, annual fees, and renewal fees. These are provided for under the Second Schedule of the Regulations, whereby for news and current affairs licence, one is required to pay Tshs. 100,000 as application fee, and Tshs. 1,000,000 for each of the remaining items. For entertainment licence, the application fee is also Tshs. 100,000, while the initial licence fee, annual licence fee, and renewal fee are Tshs. 500,000 each. For education or religious content, the applicable fees are the same as those for the entertainment licence. There are also fees for simulcasting television licence and simulcasting radio licence, whereby for the former the application fee is Tshs. 50,000, and the other three fees are Tshs. 200,000 each. The same fees are applicable to the latter. The duration of licence is three years. These fees are exorbitant for most Tanzanians and deprive

⁸⁴ Ibid.

⁸⁵ Mandatory registration of blogs does not meet the restrictions tests of freedom of expression.

⁸⁶ Regulation 4(1) of the Online Content Regulations, 2020.

⁸⁷ Ibid, Regulation 4(2).

⁸⁸ Ibid, Regulation 5.





potential or new bloggers from exercising their freedom of expression on the internet, apart from limiting flow of ideas and information. This requirement also contravenes Declaration of Principles on Freedom of Expression in Africa of 2002, which provides for authorities to take positive measures to promote diversity, including through availability and promotion of a range of information and ideas to the public⁸⁹. It also affects access to the Internet, which is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.⁹⁰

In July 2018, the African Commission on Human and Peoples' Rights, which is based in Banjul-Gambia, issued a press release on the growing trend of stringent regulation of the internet in East African States. For Tanzania, the Commission was particularly concerned with the adoption of the Electronic and Postal Communications (Online Content) Regulations 2018.⁹¹

Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.

Referring to licensing requirements for bloggers, the Commission stated that the regulations "...may negatively impact the ability of users to gain affordable access to the Internet, which goes against States' commitment to protect the right of every individual to receive information, as well as the right to express and disseminate one's opinion within the law which is provided under Article 9 of the African Charter on Human and Peoples' Rights."⁹² The Commission urged Tanzania "to ensure that regulations do not undermine their commitment to ensure freedom of expression and access to information on the Internet and social media platforms."⁹³

89 African Commission on Human and Peoples' Rights, ACHPR/Res.62(XXXII)02: Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa (2002), 23 October 2002, available at: <https://www.refworld.org/docid/51949e234.html> [accessed 27 January 2019]

90 See the Joint Declaration on Freedom of Expression and The Internet.

91 African Commission on Human and Peoples' Rights, Press Release on the growing trend of stringent regulation of the internet in East African States, 12 July 2018 at <http://www.achpr.org/press/2018/07/d409/>, accessed 19th December 2018.

92 Ibid.

93 Ibid.



Severe and uniform punishment for failure to comply with regulations

Another key concern with the 2020 Regulations, like it was the case with the 2018 Regulations, is the fact that all offences under them carry a uniform punishment, as stipulated under Regulation 21. The punishment is a fine of not less than Tshs. 5 million or imprisonment of not less than 1 year, or both. Uniformity of punishment, regardless of whether an offence is major or minor, raises a human rights concern in that punishment may not be proportionate to offence. In LHRC's opinion, the punishment is severe and will mainly serve to instill fear in receiving and imparting information, thus further stifling freedom of expression on the internet.

21(1). A person who contravenes the provisions of these Regulations commits an offence and shall, upon conviction, where no specific punishment has been provided, be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than twelve months or both.

Internet café owners to install cameras and record activities of internet users

Like it was the case in the 2018 Regulations, under the Online Content Regulations of 2020, owners of internet cafes have an obligation to install surveillance cameras to record and archive activities of internet users. The recordings must be kept for at least 12 months. Apart from violating right to privacy, this requirement is very costly for internet café users, which may in turn affect citizens' access to internet and information as the service providers may be forced to charge higher prices. Under the Joint Declaration on Freedom of Expression and the Internet,⁹⁴ States are obligated to promote universal access to internet, which is deemed **essential in promotion of respect for other rights, including rights to education, work, assembly and association.**⁹⁵ Consequently, this requirement is not in line with international standards

⁹⁴ See the Joint Declaration on Freedom of Expression and the Internet (signed by The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information) at <https://www.osce.org/fom/78309?download=true>, accessed 29th December 2018

⁹⁵ Ibid, General Principle 6(a).



on freedom of expression and contravenes the Joint Declaration on Freedom of Expression and the Internet, ACHPR, UDHR, and ICCPR.

13(1). A person operating an internet café shall adhere to the following obligations-

(d) install surveillance camera to record and archive activities inside the café; and

(e) keep a proper service user register and ensure every person using internet service is registered upon showing a recognised identity card.

(2) The images recorded by surveillance camera and the register of users recorded pursuant to sub regulation (1) shall be kept for a period of twelve

Obligations of application services licensees

The Regulations impose several obligations on application services licensees, including ordering a subscriber to remove prohibited content within two hours of receiving a notification from the regulator or a person affected. If the subscriber fails to remove the content in the specified period, then the licensee is required to terminate subscriber's access account. These obligations contravene freedom of expression and principles of natural justice. This procedure does not allow the subscriber the right to be heard (defend his content) and the regulator is playing the role of the court of determining legality of the content published. Moreover, the procedure does not provide avenues for appeal or judicial review. Additionally, two hours, ten hours less than the amount of time stipulate in the 2018 Regulations, is not sufficient time for subscriber and content provider to take action or comply.





11(3) Where a licensee is ordered by the Authority or notified by a person affected by the content or existence of prohibited content, the licensee shall, within two hours, notify its subscribers to remove the prohibited content.

(4) The licensee shall suspend or terminate a subscriber's access account where the subscriber fails to remove prohibited content within two hours

Obligations of online content hosts

Like application services licensees, online content hosts are required under the regulations to remove hosted content upon notification by the regulator or a person affected by content. This obligation does not meet international standards on freedom of expression and contravenes principles of natural justice such as right to be heard and defend oneself. The regulator or affected person should not play the role of determining the legality of a content, as it is the court of law which is best placed to do that. This provision will only encourage powerful individuals to order removal of content they deem prohibited, especially since the prohibitions carry ambiguous and vague terms.

15. An online content host shall adopt a code of conduct for hosting contents and ensure that prohibited contents are removed upon notification by the Authority or affected party.

Criminalization of defamation

The Online Content Regulations of 2020 prohibit content that defames other persons⁹⁶ and includes defamation in the definition of "hatespeech."⁹⁷ They also provide that a person who contravenes the provisions of the Regulations is liable to a fine of not less than five million shillings or to imprisonment of not less than twelve months, or both,⁹⁸ essentially criminalizing defamation. Criminal penalties, especially imprisonment, are disproportionate punishments for defamation and unnecessary in a democratic society, as civil

⁹⁶ Third Schedule of the Online Content Regulations, 2020.

⁹⁷ Ibid, Regulation 3.

⁹⁸ Ibid, Regulation 21(1).



defamation is sufficient to protect reputations.⁹⁹ It has a chilling effect on freedom of expression and invites increased self-censorship.¹⁰⁰

1. States should ensure that their laws relating to defamation conform to the following standards:

- *no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;*
- *public figures shall be required to tolerate a greater degree of criticism; and*
- *sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.*

Declaration of Principles of Freedom of Expression in Africa (2002)

According to the UN Special Rapporteur on the right to freedom of opinion and expression, the subjective character of many defamation laws, their overly broad scope and their application within criminal law have turned them into a powerful mechanisms to stifle investigative journalism and silence criticism.”¹⁰¹

Criminal defamation is therefore not a justifiable restriction on freedom of expression (does not meet the three-part test), and thus all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.¹⁰²

Prohibition of anonymity

Regulation 9(e) requires a licensee to ensure that they have in place mechanisms to identify source of content. This is contrary to international

⁹⁹ Human Rights Watch, *Turning Critics into Criminals: The Human Rights Consequences of Criminal Defamation Law in Indonesia*, 3 May 2020 at <https://www.hrw.org/report/2010/05/03/turning-critics-criminals/human-rights-consequences-criminal-defamation-law>, accessed 30 October 2020.

¹⁰⁰ Ibid.

¹⁰¹ UN Commission on Human Rights, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, A/HRC/7/14*, Feb. 28, 2008, para. 41.

Joint Declaration of by the UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on freedom of the media, and the OAS Special Rapporteur on freedom of expression, “International Mechanisms for Promoting Freedom of Expression,” December 10, 2002, http://www.osce.org/documents/rfm/2002/12/190_en.pdf.

¹⁰² Joint Declaration of by the UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on freedom of the media, and the OAS Special Rapporteur on freedom of expression, “International Mechanisms for Promoting Freedom of Expression,” December 10, 2002, http://www.osce.org/documents/rfm/2002/12/190_en.pdf.



standards, including the Declaration of Principles on Freedom of Expression in Africa (2002), which encourage anonymity to enable people to freely express their opinions and undermines protection of whistleblowers. It also contravenes the right to privacy, which is protected under the UDHR, ICCPR, Banjul Charter and other human rights instruments. The African Declaration on Internet Rights and Freedoms stipulates that “Everyone has the right to privacy online including the right to control how their personal data is collected, used, disclosed, retained and disposed of. Everyone has the right to communicate anonymously on the Internet, and to use appropriate technology to ensure, secure, private and anonymous communication.”¹⁰³ It also stipulates that that the right to privacy on the Internet should not be subject to any restrictions, except those which are provided by law, for a legitimate purpose and necessary and proportionate in a democratic society, consistent with international human rights standards (the ‘three-part’ test).

Peaceful assembly and association online

According to the African Declaration on Internet Rights and Freedoms, everyone has the right to peaceful assembly and association online, including through social networks and platforms.¹⁰⁴ Restriction on this right must conform to the three-part test of legality, necessity and proportionality, consistent with international human rights standards. The Regulations prohibit “content that is involved in planning, organizing, promoting or calling for demonstrations, marches or the like which may lead to public disorder.”¹⁰⁵ This provision is overly broad and essentially arbitrarily restricts freedom of peaceful assembly and association online.

Simulcasting

The Online Content Regulations of 2020 contain a provision on “simulcasting,” defined as broadcasting content of mainstream media on an online platform.¹⁰⁶ Regulation 10 prohibits any mainstream content service provider with district or regional licence from simulcasting content using online platforms. This provision does not meet the three-part test for restriction of freedom of expression as it is unnecessary in a democratic society. It thus contravenes Article 18 of the Constitution of Tanzania, 1977 and regional and international human

¹⁰³ Principle 8 of the African Declaration on Internet Rights and Freedoms.

¹⁰⁴ Principle 5 of the African Declaration on Internet Rights and Freedoms

¹⁰⁵ Third Schedule of the Online Content Regulations, 2020.

¹⁰⁶ Regulation 3.



rights instruments, including the Banjul Charter, UDHR and ICCPR. It undermines Tanzania's commitment to ensure freedom of expression and access to information on the Internet and social media platforms.

LHRC's View: To borrow the words of the African Commission on Human and Peoples' Rights in the Declaration of Principles on Freedom of Expression in Africa (2002), freedom of expression is of fundamental importance as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms. It is therefore imperative that laws and regulations that govern freedom of expression in Tanzania adhere to the Constitution of the United Republic of Tanzania of 1977 and conform to international standards on freedom of expression. Based on current evidence, the Online Content Regulations of 2020 do not conform to international human rights standards and add to the list of restrictive laws and regulations.

LHRC's Call: The Government to oversee amendment of the Online Content Regulations of 2020 to bring them in line with the Constitution of the United Republic of Tanzania of 1977 and international human rights standards.

2.3.7. Arrests & prosecution for contravening restrictive freedom of expression laws.

Existence of restrictive laws and regulations has negatively impacted civic space in Tanzania. For journalists, these laws have created fear and increased self-censorship, owing to the vague provisions, which are open to misinterpretation and abuse, and severe penalties. Arrests and prosecutions for violating these laws and regulations have created an atmosphere of fear in realization of the right to freedom of expression. According to THRDC, in the period of January to April 2020, at least thirteen people, including seven journalists and bloggers, had been prosecuted for contravening the Online Content Regulations of 2018, including failure to register websites and YouTube pages.

2.4. Freedoms of Assembly and Association

2.4.1. Introduction

States are obligated to respect and refrain from interfering with freedom of assembly under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR)



and African Charter on Human and Peoples' Rights (ACHPR)¹⁰⁷. In 1984, the Government incorporated the bill rights, including freedom of assembly, into the Constitution of United of Tanzania of 1977.

Freedom of Association ensures one the right to form and participate in association, either formally or informally. It covers any form of organized groups and professional organizations like political parties, trade unions, public associations and non-governmental organisations. It involves an ability to seek and receive resources for organization for peaceful promotion and respect of human rights.¹⁰⁸

This right is guaranteed under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples Rights (ACHPR), and the African Charter on Democracy, Elections and Governance, among other human rights instruments¹⁰⁹.

In Africa, States have an obligation to enact a national legislation on freedom of association that facilitates and encourages establishment of associations and promotes their abilities to pursue their objectives. Members have a choice of joining and leaving associations.¹¹⁰ The only restrictions on freedoms of assembly and association allowed are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others, according to ICCPR¹¹¹. Restrictions must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based. Together with freedom of expression, freedoms of assembly and association are key for realization of the right to participate in governance (participation rights).

In 2020, the major issues affecting freedoms of assembly and association included implementation of laws restricting such freedoms and amendment of the Basic Rights and Duties Enforcement Act (BRADEA).

2.4.2. Laws Restricting Freedoms of Assembly and Association

In recent years, amendments of laws governing freedoms of assembly and association have seen curtailment of these fundamental human

¹⁰⁷ Article 20(1) of UDHR; Article 22 of ICCPR; and Article 11 of ACHPR.

¹⁰⁸ Human Rights House Foundation: Freedom of Association at <https://humanrightshouse.org/we-stand-for/freedom-of-association/> (accessed on 24th February 2019)

¹⁰⁹ Article 22(1) of ICCPR; Article 10(1) of ACHPR; Articles 12(3), 27(2); and 28 of the African Charter on Democracy, Elections and Governance, 2007

¹¹⁰ ACHPR: Guidelines on Freedom of Association and Assembly in Africa at http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf accessed on 26th February 2019

¹¹¹ See Article 22(2) of ICCPR; see also Article 11 of ACHPR and Article 22(2) of ICCPR.



rights. Notable amendments include the amendment of the Political Parties Act through the Political Parties (Amendment) Bill,¹¹² amendment of the Non-Governmental Organisations Act 2002, and amendment of the Tanganyika Law Society Act 1954. These amendments have faced criticism for failure to adhere to international standards on freedoms of assembly and association, and thus have served to arbitrarily hinder effective realization of these fundamental human rights. The amendments have been faulted for failure to meet the three-part test under the ICCPR of 1966 and other key human rights standards such as the African Charter on Human and Peoples' Rights of 1981 and the Guidelines on Freedom of Association and Assembly in Africa, published by African Commission on Human and Peoples' Rights on 10th November 2017.

The amended Political Parties Act has been faulted by stakeholders within and outside Tanzania for giving the Registrar of political parties excessive and intrusive powers over political parties and failing to conform to international standards on freedom of association. LHRC and other stakeholders have repeatedly expressed concern that the amendments made into this key piece of legislation for safeguarding democracy and right to take part in governance will seriously cripple political development.¹¹³

Among others, the law now grants sweeping discretionary powers granted to the Registrar of Political Parties and contains provisions which lack clarity, hence vulnerable to abuse¹¹⁴. Similar concerns have been raised regarding amendment of the Non-Governmental Organizations Act of 2002, which has also been faulted for granting too much powers to the Registrar of NGOs and threaten NGOs' freedom of association.¹¹⁵

Regarding the Tanganyika Law Society Act (Cap 307), the major concern with the amendments is interference with the independence of the

¹¹² See Sharon Sauwa "Muswada wa Vyama vya Siasa wapita wabunge wa CCM, upinzani wakivutana" Mwananchi Newspaper [online] 30 January 2019 at <https://www.mwananchi.co.tz/habari/kitaifa/Muswada-wa-Vyama-vya-Siasa-wapita/1597296-4957712-majnwdz/index.html>, accessed 6th March 2020; Fumbuka Ng'wanakilala "Tanzania MPs grant government sweeping powers over political parties" Reuters 30 January 2019, at <https://www.reuters.com/article/us-tanzania-politics/tanzania-mps-grant-government-sweeping-powers-over-political-parties-idUSKCN1PO0IA>, accessed 6th March 2020.

¹¹³ See Analysis of the Political Parties (Amendment) Act, 2018 by Twaweza East Africa, Legal and Human Rights Centre (LHRC), Tanganyika Law Society (TLS), Media Council of Tanzania (MCT), Waandishi wa Habari za Maendeleo Zanzibar (WAHAMAZA) and Centre for Strategic Litigation, Submitted to the Parliamentary Committee on Legal and Constitutional Affairs on January 17 2019 at <https://www.humanrights.or.tz/assets/images/upload/files/JointAnalysis%2BPre-AMENDMENT-FINAL17012019.pdf>, accessed 6th March 2020

¹¹⁴ Ibid.

¹¹⁵ See the Consolidated Analysis of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2019 Bill by Centre for Strategic Litigation, Change Tanzania, Jamii Forums, HakiElimu, Legal and Human Rights Centre, Policy Forum, Save the Children, Tanzania Human Rights Defenders Coalition, Tanzania Women Lawyers Association, TIBA, Twaweza, at <https://www.twaweza.org/uploads/files/Amendments%20Consolidated%20Analysis%20Final%20-%202023June2019.pdf>, accessed 3rd March 2020.



Tanganyika Law Society (TLS) as a bar association, which is important for enjoyment of the right to freedom of association and expression for lawyers. This is contrary to the body's right to manage its own affairs and freedom of association, in line with international standards. Key standards that have not been met include the International Covenant on Civil and Political Rights (ICCPR); the UN Basic Principles on the Role of Lawyers of 1990; the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors; and the Guidelines on Freedom of Association and Assembly in Africa.

Analysis of the proposed amendments of the Tanganyika Law Society conducted by NGOs such as LHRC and Twaweza, submitted to the Parliamentary Committee on Legal and Constitutional Affairs in January 2020 showed that some of the proposed provisions infringe on the independence of the Tanganyika Law Society as a bar association, contrary to international standards on freedom of association which establish the right of such an association to self-regulate and govern itself. Concerns with the amendments include denying majority of TLS members an opportunity to directly elect their leaders, instead of being represented by zonal chapters (restricting their right to vote); introduction of term limits for TLS leaders; directing introduction of CEO, his/her functions and removal process; unnecessary directives on how to conduct AGM and other meetings, constituting interference with the independence of the bar association; and requirement of producing minutes of meetings to the Minister responsible for constitutional and legal affairs, creating an illusion of the body being 'under' the ministry, instead being an independent association of lawyers. These provisions therefore serve to affect smooth operation of TLS and undermine its independence. There are no justifications for these provisions as they fail to meet the three-part test under international human rights law. In February 2020, TLS President, Dr. Rugemeleza Nshala, revealed that the amendments made to the TLS Act stifle civil rights and TLS will challenge the amendments in court¹¹⁶.

LHRC's View: Independence of associations such as the bar associations is essential in safeguarding rule of law, human rights and democracy. The amendments made in the Tanganyika Law Society Act affect management of the bar association, are not justified under international human rights standards on freedom of association and constitute

¹¹⁶ LHRC Media Survey 2020.



unnecessary interference with its independence. Implementation of restrictive NGO laws and regulations also affect freedom of association.

2.4.3. Freedom of Association of NGOs: Freezing of THRDC Bank Accounts

On 17th August 2020, the Board of the Tanzania Human Rights Defenders Coalition (THRDC) released a statement to notify the public that the organization was suspending its operations.¹¹⁷

According to the statement, on 14th August 2020, THRDC received complaints from suppliers and beneficiaries that they had not received any payment via THRDC's CRDB bank accounts. When the management made follow up at the bank, it was notified that the accounts had been frozen following police orders. The police force acknowledged that it had indeed ordered freezing of the bank accounts for THRDC's failure to submit contractual agreements with donors to the Treasury Office and the Registrar of NGOs and that it had called in the National Coordinator of the coalition, Onesmo Olengurumwa, for questioning. The National Coordinator was later released on police bond, with two sureties each guaranteeing Tshs. 200 million.¹¹⁸

Following these developments, the THRDC Board convened an emergency meeting and decided to suspend the operations of the organization pending resolution of the matter. The Board also issued an apology to members of the coalition, suppliers, and beneficiaries for the inconveniences caused by this predicament.¹¹⁹ The decision to freeze THRDC bank accounts was met with criticism and concern for civic space by stakeholders within and beyond Tanzania. LHRC issued a statement calling for the Government to unfreeze the bank accounts and quick resolution of the matter. Human rights defenders and NGOs from different parts of Africa also issued a joint statement, expressing their concern about restrictive operation environment for human rights defenders in Tanzania and in particular the decision to freeze THRDC's bank accounts.¹²⁰

They called upon the Government to: unfreeze THRDC's accounts to enable them to continue their vital work; create an enabling environment

¹¹⁷ See TAARIFA YA KUSITISHWA KWA SHUGHULI ZA MTANDAO at <https://www.jamiiforums.com/threads/mtandao-wa-watetezi-wa-haki-za-binadamu-tanzania-thrdc-wafungiwa-akaunti-zake-za-benki-na-polisi-wasitisha-huduma-zao.1770957/>, accessed 20th November 2020.

¹¹⁸ Ibid.

¹¹⁹

¹²⁰ See Press Release (31 signatories and 6 individuals), Tanzania: Respect the right to freedom of association, at [57](https://defenddefenders.org/tanzania-respect-the-right-to-freedom-of-association/#:~:text=On%2012%20August%202020%2C%20THRDC,pending%20resolution%20of%20the%20issue.&text=On%2010%20June%202020%2C%20the,(Miscellaneous%20Amendments%20Act%20(No., accessed 20th November 2020.</p></div><div data-bbox=)



for civil society to operate and contribute to the governance; and engage in a dialogue with THRDC to address any identified issues without compromising THRDC's work. However, more than six months later, the bank accounts are yet to be unfrozen.

LHRC's View: Freezing of THRDC bank accounts, which forced it to suspend its operations, is an example of the negative impact restrictive NGO laws and regulations can have on the work of NGOs in Tanzania, contributing to narrowing civic space. Such measures do not conform to international standards on freedom of association and do not meet the three-part test for permissible restrictions. The current legal and policy environment is not favourable for human rights NGOs and human rights defenders and needs to change for the greater good of the country.

LHRC's Call: We call upon the Government to amend NGO laws and regulations to bring them in line with international standards on freedom of association to guarantee a favourable working environment for NGOs and human rights defenders. We also call upon the Government to unfreeze the THRDC bank accounts to enable it to continue with its work and speed up investigation and resolution of the matter.

2.4.4. Complaints of Arbitrary Restriction of Freedom of Assembly of Political Parties

In 2020, opposition political parties continued to lament unfair treatment and restriction of their freedoms of association and assembly. For instance, in June 2020, ACT Wazalendo complained that six leaders of the political party were prevented from holding an internal political meeting in Kilwa District.¹²¹ In August 2020, CHADEMA's Joseph Mbilinyi complained about his arrest for unlawful assembly in Mbeya on 13th August 2020, after collecting a form for the parliamentary seat of Mbeya Urban constituency. He was later released on bail.

2.4.5. Amendment of the Basic Rights and Duties Enforcement Act vis-a-vis Freedom of Association

Amendment of the Basic Rights and Duties Enforcement Act (BRADEA) in 2020 raised eyebrows in Tanzania and beyond, given its ramifications for human rights protection, including its curtailment of freedom of association. In June 2020, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

¹²¹ LHRC Media Survey 2020.



expressed concern over the amendments, noting that he feared the amendments gravely limit the ability of civil society and individuals to defend the rights of vulnerable individuals, groups, and communities and are in violation of Article 22 of ICCPR (freedom of association).

He noted that public interest litigation forms part of freedom of association,¹²² especially for CSOs working to protect or defend human rights and playing an important role in the society by making the voice of the voiceless heard¹²³.

He also rightly noted that the amendments contradict the national jurisprudence on public interest litigation, making reference to Articles 13(6), 26(2), and 30(3), as well as the 1994 High Court decision in the case of *Rev. Christopher Mtikila v. Attorney General*.¹²⁴

Apart from requiring organizations and individuals to demonstrate how they have personally been affected by a matter in order to file a human rights petition at the High Court, the amendments have been criticized for the manner in which they were made, characterized by minimum consultation of CSOs and other stakeholders.¹²⁵

As has been the case with other recent amendments of laws governing participation rights, stakeholders were not adequately consulted in the process of amendments of BRADEA. Only two days were allocated for stakeholder consultation, which is not sufficient time to meaningfully engage policy makers. The Guidelines on Freedom of Association and Assembly in Africa stipulate that civil society allow citizens to pursue common purposes, participate in the political, social and cultural life of their societies, and be involved in all matters pertaining to public policy and public affairs.¹²⁶ They also provide that drafting and amendment of national legislation on freedom of association should be on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.¹²⁷

Inadequate stakeholder consultation therefore contravenes the

¹²² See Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, REFERENCE: OL TZA 2/2020, 24 June 2020 at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25391>, accessed 30 October 2020.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, REFERENCE: OL TZA 2/2020, 24 June 2020.

¹²⁶ See Guideline 2 of the Guidelines on Freedom of Association and Assembly in Africa, p. 9 at https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf, accessed 13 October 2020.

¹²⁷ Ibid, Guideline 7, p.10.



principle of meaningful consultation of civil society enunciated in the Guidelines on Freedom of Association and Assembly in Africa.

LHRC's View: Adequate stakeholder consultation is very important and in line with Tanzania's regional and international human rights commitments. It enables varying perspectives and smoother implementation of laws and regulations, while ensuring they conform to international human right standards.

LHRC's Call: The Government to ensure adequate stakeholder consultation and refrain from making or amending laws and regulations that affect human rights through an expedited procedure under the certificate of urgency, so that there is meaningful consultation.

2.5. Rights to Equality before the Law and Effective Remedy

2.5.1. Introduction

Rights to equality before the law and effective remedy are guaranteed and protected under various sub-regional, regional and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).¹²⁸

According to the Constitution of Tanzania, 'all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.'¹²⁹ The right to effective remedy is provided for where other rights of an individual have been violated.¹³⁰

Rights derived from these two rights include right to access to justice, right to legal representation,¹³¹ right to presumption of innocence and right to fair trial.¹³²

Access to justice

Access to justice means access to formal or informal institutions that are tasked with delivery of justice such as courts and tribunals. This access enables people whose rights are violated or jeopardized to seek remedy from these institutions, where their grievances can be heard

¹²⁸ Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.

¹²⁹ Article 13(1) of the Constitution of the United Republic of Tanzania of 1977.

¹³⁰ Article 2(3) (a) of ICCPR.

¹³¹ See Article 14(3) (b) of the Constitution of Tanzania 1977; Article 7(1)(c) of ACHPR; and Article 14(3)(d) of ICCPR.

¹³² Article 13(6) of the Constitution of the United Republic of Tanzania of 1977; Article 7 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.



and determined. Access to justice is a key component of rule of law and the international community has recognized “the right to equal access to justice for all” and committed itself to “taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.”¹³³

Presumption of innocence

Presumption of innocence is a key principle in criminal justice. The right to be presumed innocent until proven guilty is an established principle under domestic, regional and international law. According to the Constitution of Tanzania, “no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”¹³⁴

This right is also guaranteed under the ICCPR and UDHR.¹³⁵

Right to legal representation

Right to legal representation is clearly stipulated under Article 13 of the Constitution of the United Republic of Tanzania 1977, and is critical in ensuring administration and access to justice. This means the right of an accused person to a lawyer, who will help to defend them in the court of law. In criminal justice, Tanzania is required under domestic, regional and international law to ensure an attorney is appointed for the defendant where the defendant cannot afford one. Article 14(3) of ICCPR – which Tanzania has ratified – clearly stipulates this obligation on the part of States.

Rights to fair trial and effective remedy

Rights to fair trial and effective remedy are also known as rights to due process. Right to fair trial includes the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and right to be tried without undue delay by an independent, impartial and competent tribunal.¹³⁶

Right to effective remedy is closely associated to the right to fair trial; and is also protected under the Constitution of Tanzania¹³⁷ and international human rights instruments, including ICCPR.¹³⁸

¹³³ See Para 14 of the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Resolution adopted by the General Assembly A/RES/67/1, Sixty-seventh session, 30 November 2012, available at <https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf>, accessed 29th February 2020.

¹³⁴ Article 13(6) (b) of the Constitution of the United Republic of Tanzania, 1977.

¹³⁵ Article 14(2) of ICCPR; Article 11 of UDHR.

¹³⁶ See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.

¹³⁷ Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977.

¹³⁸ Article 2(3)(b) of ICCPR.



In 2020, key issues affecting the rights to equality before the law and effective remedy included: amendment of the Basic Rights and Duties Enforcement Act; lengthy detention of remandees in prisons; violation of the right to be presented before the court promptly; and delays in conducting police investigations and constant adjournment of cases.

2.5.2. Amendment of the Basic Rights and Duties Enforcement Act and its Consequences for the Right to Equality before the Law

In June 2020, a Bill was sent to the National Assembly, proposing amendment of various laws, including the Basic Rights and Duties Enforcement Act (BRADEA).¹³⁹

Under PART III of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2020, Section 4 of BRADEA is amended by designating contents of the section as subsection 1 and adding subsection 2 which reads:

“An application under subsection (1) shall not be admitted by the High Court unless it is accompanied by an affidavit stating the extent to which the contravention of the provisions of Articles 12 to 29 of the Constitution has affected such person personally.”

This proposed amendment prevents CSOs from filing cases on behalf of victims of human rights violations and limits their role of promoting and enhancing protection of human rights through the Judiciary. This signals a sudden death for public interest litigations, which have proven to be essential in safeguarding human rights in different parts of the world, including protection of human rights of vulnerable groups and ensuring States comply with their treaty human rights obligations.

The Written Laws (Miscellaneous Amendments) (No.3) Act, 2020 also amended BRADEA by adding subsection 3, which states that a person exercising the right provided for under Article 26(2) of the Constitution must abide with the provisions of Article 30(3) of the Constitution. This provision limits the parties able to seek legal redress, thus contravenes Article 26(2) of the Constitution.¹⁴⁰ It also contravenes Articles 13(3) and

¹³⁹ See BILL SUPPLEMENT, THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.3) ACT, 2020, at [https://www.parliament.go.tz/polis/uploads/bills/1591938100-MUSWADA%20WA%20SHERIA%20YA%20MABADILIKO%20YA%20SHERIA%20MBALIMBALI%20\(NAMBA%203\)%20,%202020.pdf](https://www.parliament.go.tz/polis/uploads/bills/1591938100-MUSWADA%20WA%20SHERIA%20YA%20MABADILIKO%20YA%20SHERIA%20MBALIMBALI%20(NAMBA%203)%20,%202020.pdf), accessed 13th October 2020.

¹⁴⁰ Section 7(b) of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2020.



30(2) of the Constitution by preventing protection of public interest through courts.

Consequently, the amendments violate the primacy of the Constitution. Additionally, Act No. 3 of 2020 amends BRADEA by adding subsection 4, which requires petition seeking redress against the President, Vice-President, Prime Minister, the Speaker, Deputy Speaker or Chief Justice for any act or omission done in the performance of their duties to be brought only against the Attorney General.¹⁴¹ This provision has been found to contravene Article 26(1) of the Constitution¹⁴² and violating the oath of office.¹⁴³

Introduction of amendments in BRADEA has drawn criticism from human rights stakeholders in Tanzania and beyond for failure to meet international human rights standards.¹⁴⁴ In July 2020, the UN human rights experts¹⁴⁵ expressed concerns over amendment of BRADEA, noting that it gravely limits the ability of CSOs and individuals to defend vulnerable groups and other community members.¹⁴⁶

They also expressed that the measures constitute violation of freedom of association and serve to further curb civic space.¹⁴⁷ An analysis of the proposed amendments by LHRC, CSL, THRDC, and Twaweza, submitted to the Parliamentary Committee on Legal and Constitutional Affairs in June 2020 concluded that they practically prohibit filing public interest litigation, as they direct that only those who have personally suffered harm should seek redress for human rights violations.¹⁴⁸

141 Ibid.

142 "Every person has the duty to observe and to abide by this Constitution and the laws of the United Republic."

143 Legal and Human Rights Centre (LHRC), Centre for Strategic Litigation, Tanzania Human

Rights Defenders Coalition, Twaweza East Africa, Analysis of the Written Laws (Miscellaneous Amendments) (No.3) 2020, Submitted to the Parliamentary Committee on Legal and Constitutional Affairs, 6 June 2020.

144 See Amnesty International "Tanzania: Planned law amendments to prevent solidarity lawsuits must be rejected" 5 June 2020 at <https://www.amnesty.org/en/latest/news/2020/06/tanzania-planned-law-amendments-to-prevent-solidarity-lawsuits-must-be-rejected/>, accessed 13th October 2020.

145 Mr Clément Nyaletsossi Voule, Special Rapporteur on the rights of peaceful assembly and association; Ms Mary Lawlor, Special Rapporteur on the situation of human rights defenders; and Mr David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of expression.

146 Office of the United Nations High Commissioner for Human Rights "UN experts call on Tanzania to end crackdown on civic space" 22 July 2020, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26117&LangID=E>, accessed 13 October 2020.

147 Ibid.

148 See Legal and Human Rights Centre (LHRC), Centre for Strategic Litigation, Tanzania Human

Rights Defenders Coalition, Twaweza East Africa, Analysis of the Written Laws (Miscellaneous Amendments) (No.3) 2020, Submitted to the Parliamentary Committee on Legal and Constitutional Affairs, 6 June 2020, at <https://www.humanrights.or.tz/assets/attachments/1591634261.pdf>, accessed 13 October 2020.





Consequently, the amendments contravene Article 26(2) of the Constitution of the United Republic of Tanzania, which reads “Every person has the right, in accordance with the procedure provided by law, to take legal action to ensure the protection of this Constitution and the laws of the land.”¹⁴⁹ By contravening the Constitution, which is the mother law, the amendments also set undesirable precedent that parliamentary legislation can override the Constitution.¹⁵⁰

Analysis of the proposed amendments also indicated that they violate the constitutional principle and right to equality before the law and by extension the rule of law, as they deny citizens an opportunity to directly hold their national leaders accountable through the courts of law.¹⁵¹ By denying the right to file public interest cases, the proposed amendments further contravene Article 107A of the Constitution of the United Republic of Tanzania, which stipulates that only the courts of law are vested with powers to adjudicate matters and dispense justice.¹⁵²

They also contravene the High Court ruling on the interpretation of Article 26(2) of the Constitution in the case of Legal and Human Rights Centre vs. Mizengo Peter Pinda and the Attorney General, and the well-established principles in the Christopher Mtikila vs. the Attorney General case of 1995 that citizens have double standing as individuals and members of the community in suing on matters of public interest. Additionally, the amendments deny members of the community who may not be able to complete an affidavit, such as children and persons with disabilities (PWDs), especially those who are mentally challenged, their right to access to justice¹⁵³.

LHRC’s View: Amendments of BRADEA do not meet international human rights standards and contravene key constitutional principles, such as equality before the law, supremacy of the constitution, rule of law, solidarity, and natural justice. They gravely limit the ability of CSOs and individuals to promote and protect human rights through the courts and constitutional violations of fundamental human rights and freedoms, especially the right to equality before the law and freedom of association. The amendments essentially deny the right to seek legal remedies for human rights violations through public interest litigation,

149 Ibid
150 Ibid.
151 Ibid.
152 Ibid.
153 Ibid.



thus restricting access to justice for members of the public. BRADEA is an important legislation for promotion and protection of human rights in Tanzania, including rights of vulnerable groups. It enables individuals and NGOs to seek redress for violations of human rights protected under the Constitution of the United Republic of Tanzania of 1977. It is also important for operations of CSOs, thus implementation of this restrictive law will contribute to further reduce civic space.

LHRC's Call: Provisions in BRADEA which arbitrarily restrict fundamental human rights, including the right to equality before the law, to be amended and brought in line with international human rights standards. CSOs and individuals should be allowed to pursue justice through public interest litigation.

2.5.3. Ruling on the Onesmo Olungurumwa BRADEA Case Preliminary Objections

Background

In 2019, Onesmo Olungurumwa, a human rights advocate and National Coordinator of the Tanzania Human Rights Defenders Coalition (THRDC), filed a petition before the High Court, challenging the proposed amendment of the Basic Rights and Duties Enforcement Act [Miscellaneous Civil Cause No. 15 of 2019]. He sought determination of the following issues:¹⁵⁴

1. Whether Section 4(2) of the Basic Rights and Duties Enforcement Act Cap 3 (R.E. 2019), as amended is inconsistent with Article 26(1), 26(2), 29(1), 13(2), (4) and 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977 as amended and consequently unconstitutional, null and void.
2. Whether in enacting Section 4(2) of the BRADEA as amended, the Respondent undermined the important role and contribution of the Judiciary of Tanzania in expanding the concept of public interest litigation in Tanzania and consequently violated the concept of separation of powers.
3. Whether in constructing Section 4(3) of the BRADEA as amended, an Act of Parliament can override a provision of the Constitution and as a result rendering the provision of the Constitution superfluous.

¹⁵⁴ See the Ruling of the High Court of Tanzania in *Onesmo Olungurumwa vs Attorney General*, Miscellaneous Civil Cause No. 15 of 2019.



4. Whether in constructing Section 4(4) of the BRADEA, the said Section can be noticed to infringe constitutional principles of separation of powers, rule of law and good governance.
5. Whether in constructing Section 4(5) of the BRADEA, the said Section can be noticed to limit access to constitutional remedies provided for in the Constitution.
6. Whether it is constitutionally justifiable for an Act of Parliament to introduce limitation of enjoyment of basic and fundamental rights guaranteed by the Constitution.

The petitioner prayed for the following reliefs:

1. Declaration that in enacting Section 4(2), (3), (4) and (5) of the Basic Rights and Duties Enforcement Act as amended is inconsistent with Article 13(2) and 26(2) of the Constitution of the United Republic of Tanzania and consequently unconstitutional and/or void.
2. Declaration that in enacting Section 4(2) and (3) of the Basic Rights and Duties Enforcement Act as amended, the Respondents undermined the important role and contribution of the Judiciary of Tanzania in expanding the concept of public interest litigation in Tanzania and consequently the said Section is unconstitutional, null and void.
3. Declaration that Article 26(2) and Article 30(3) introduce into the Constitution two distinct fundamental rights and those rights were intended by framers of the Constitution to be distinct and separate and not intertwined and therefore Section 4(3) is unconstitutional, null and void.
4. Declaration that Section 4(4) breaches the constitutional principles of separation of powers, rule of law and good governance and therefore unconstitutional, null and void.
5. Declaration that unconstitutional violation has no alternative available remedies other than those granted by the Constitutional Court and therefore the provisions of Section 4(5) of BRADEA are unconstitutional, null and void.
6. Declaration that a Section in an Act of Parliament that attempts to limit or derogate the enjoyment of a fundamental right enshrined in the Constitution is outrightly invalid and of no effect.



Preliminary Objections

In response to the petition, the Government raised the following three points of preliminary objections:

- The petition is incompetent for contravening the provisions of Section 6 of the Basic Rights and Duties Enforcement Act, Cap. 3, R.E 2019.
- The affidavit in support of the petition is incurably defective for contravening Order XIX Rule 3 of the Civil Procedure Code, Cap 22, R.E 2019.
- The petition is untenable for being frivolous, vexatious, and offends Article 26(2) of the Constitution of the United Republic of Tanzania 1977 as amended.

Submissions on Grounds of Objections

On the first ground of objection, the major contention by the Respondent was that the petition is incompetent as it does not meet the requirements of the provisions of Section 6 of the BRADEA. The petitioner argued that there is no specific format which needs to be conformed to.

On the second point of objection, the Respondent argued that the affidavit in support of the petition contained extraneous matters by way of legal arguments and points of law. Paragraph 7 of the affidavit contained legal argument as it is a statement which needs to be substantiated. Paragraph 4 of the affidavit contained extraneous matter by way of a proposed bill. The petitioner argued that the contents of paragraphs 4 and 7 were simply proper averments of facts, and not legal arguments or extraneous matters.

On the third point of objection, the Respondent argued that the petition was untenable for being frivolous, vexatious and offending Article 26(2) of the Constitution of the United Republic of Tanzania 1977 as amended. The contention was that the petitioner neither had substance nor bonafide claim by claiming that the impugned provisions narrow down access to justice by indigent persons. To counterclaim this argument, the petitioner asked the Court to take judicial notice of the meaning of phrases “frivolous” and “vexatious.”



Determination of Objections and Court Decision

On the first point of objection, the Court agreed with the Respondent that the petition must conform with all requirements under Section 6 of the BRADEA, and compliance with this provision is not a matter of technicality but rather a handmaid of constitutional justice. The Court therefore found the objection to be merited.

Regarding the second point of objection, the Court noted that although denied by the petitioner, paragraph 7 of the affidavit contained a legal argument and paragraph 4 contained extraneous matter. The Court then proceeded to expunge paragraphs 4 and 7 of the supporting affidavit and noted that the remaining paragraphs of the supporting affidavit are sufficient for determination of the petition to its merits.

On the third point of objective, the Court noted that a matter is considered frivolous when it is without substance, groundless and or fanciful, but the assessment of the petition on whether it is frivolous or vexatious or useless or hypothetical, can be made upon hearing of the matter on merits. It concluded that it is premature to entertain the objection at this stage and petitions should only be thrown out at preliminary stages only if the objections are pure points of law.

Having determined the points of objections, the Court granted the first and second points of objections. However, based on the first point of objection, the Court stroke out the petition with costs.

2.5.4. Amendment of the Judiciary Administration Act

Apart from BRADEA, the Written Laws (Miscellaneous Amendments) (No.3) Act, 2020 also amended the Judiciary Administration Act (Cap. 237). The amendments introduced section 65A titled “Protection of judicial officer.” According to this section, an officer of the Judiciary cannot be held liable in an action or suit in respect of anything done or omitted to be done in good faith in the performance of judicial function.¹⁵⁵ Analysis of the proposed amendments by LHRC, CSL, THRDC, and Twaweza, submitted to the Parliamentary Committee on Legal and Constitutional Affairs in June 2020 concluded that the provision contravenes Article 13 of the Constitution, which provides for equality before the law by preventing the employees to be held directly accountable.¹⁵⁶

¹⁵⁵ Section 35 of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2020.

¹⁵⁶ See Legal and Human Rights Centre (LHRC), Centre for Strategic Litigation, Tanzania Human

Rights Defenders Coalition, Twaweza East Africa, Analysis of the Written Laws (Miscellaneous Amendments) (No.3) 2020, Submitted to the Parliamentary Committee on Legal and Constitutional Affairs, 6 June 2020, at <https://www.humanrights.or.tz/assets/attachments/1591634261.pdf>, accessed 13 October 2020; See also Statement on the Proposed Miscellaneous Amendments No. 3 (2020) Bill, Issued by: Centre for Strategic



The analysis also found that the provision is vague and unnecessary, given the clear definitions of judicial immunity provided for in the Constitution and the principal Act.¹⁵⁷

The amendment violates the principle of accountability and equality before the law, contravenes international best practice on granting immunity to judicial officers, and opens the door for corruption.¹⁵⁸

LHRC's View: Granting immunity from prosecution to all judicial officers for acts done 'in good faith' during their employment constitutes a threat to the equality before the law, both as a human right and a constitutional principle, thus contravenes the Constitution and all treaties ratified by Tanzania that guarantee the right to equality before the law. The Constitution clearly stipulates that "All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law."¹⁵⁹

The immunity granted to judicial officers is wide and open to abuse as it provides loopholes to violate oath to uphold and defend the Constitution.

2.5.5. Access to Justice

Conditions for Access to Justice

- Availability of independent and impartial courts and tribunals
- Good laws
- Courts/tribunals to be accessible and have sufficient resources to administer justice
- Availability of qualified lawyers for legal representation
- Fair trial and timely justice

2.5.5.1. Action to improve access to justice

In 2020, the Government and the Judiciary took various measures to improve access to justice. These measures include construction and renovation of court buildings; using ICT to deliver court services; and fast-tracking dispensation of justice, including for cases involving members of vulnerable groups.

Litigation, JamiiForums, Legal and Human Rights Centre, Media Council of Tanzania, Tanzania Human Rights Defenders, Twaweza, 8 June 2020, at <https://www.twaweza.org/uploads/files/MiscAmendments3-2020-Analysis+Preamble-FINAL-220CSOs.pdf>, accessed 14 October 2020.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Article 13(1) of the Constitution of the United Republic of Tanzania, 1977.



Construction and renovation of court buildings

In September 2020, it was revealed that construction of the High Court of Tanzania in Kigoma Zone was completed.¹⁶⁰ The High Court was launched by H.E. President John P. Magufuli in September 2020.¹⁶¹



**Picture 2: Newly constructed High Court of Tanzania in Kigoma
Picture: Judiciary of Tanzania**

Using ICT to increase access to justice

In 2020, the predicament of Covid19 presented a big challenge in terms of accessing courts of law. The Judiciary was forced to enhance use of ICT in provision of judicial services. According to the Chief Justice, Prof. Ibrahim Juma, by July 2020, a total of 3,874 cases had been filed electronically.¹⁶² By December 2020, a total of 7,968 cases had been filed electronically.¹⁶³ The Judiciary also enhance use of video conferencing to conduct court proceedings, during the period when prisons were in lockdown due to the Coronavirus. By July 2020, the Judiciary had entertained 8,815 cases through video conferencing, following procurement and distribution of ICT equipment to 16 prisons, including 30 SMART TVs, 30 cameras, 30 laptops, and 30 HDMI cables.¹⁶⁴

160 See Lydia Churi-Mahakama "RAIS AITAKA MAHAKAMA KUTUMIA MIUNDOBINU KUIMARISHA UTOAJI HAKI NCHINI" Tanzania Judiciary Blogspot, 20th September 2020 at <http://tanzaniajudiciary.blogspot.com/>, accessed 4th October 2020.

161 See "RAIS MAGUFULI KUZINDUA JENGO LA MAHAKAMA KUU KIGOMA KESHO" Tanzania Judiciary Blogspot, 20th September 2020 at <http://tanzaniajudiciary.blogspot.com/>, accessed 4th October 2020.

162 See HOTUBA FUPI YA JAJI MKUU KUWAKUBALI MAWAKILI KWA NJIA YA MTANDAO, TAREHE 10 JULAI 2020 at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=35>, accessed 14 October 2020.

163 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA SHERIA NA SIKU YA SHERIA NCHINI NA MAADHIMISHO YA MIAKA 100 YA MAHAKAMA KUU; JIJINI DODOMA, TAREHE 01 FEBRUARI, 2021 at <https://www.judiciary.go.tz/web/index.php?r=announcements%2Fpdf&id=60>, accessed 9th February 2021

164 See HOTUBA FUPI YA JAJI MKUU KUWAKUBALI MAWAKILI KWA NJIA YA MTANDAO, TAREHE 10 JULAI 2020 at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=35>, accessed 14 October 2020





The equipment were distributed to prisons in Dar es Salaam, Mwanza, Tabora, Mtwara, Mbeya, Tanga, Musoma, Arusha, Kilimanjaro, Dodoma, Rukwa, Shinyanga, Iringa, Kagera, and Songea.¹⁶⁵

However, challenges associated with internet access have been said to affect video conferencing and contributing to adjournment of cases, which creates a burden for accused persons/remandees.

In his speech during commemoration of the Law Week and 100 Years of the High Court of Tanzania in Dodoma, of February 2021, the Chief Justice, Hon. Prof. Ibrahim Hamis Juma, revealed that the Judiciary had introduced a mobile application for judicial officers of the Primary Courts, which enables them to register and assign cases.¹⁶⁶ The mobile app was first used at the Kawe Primary Court (pilot site) in Dar es Salaam on from 13th September 2020.¹⁶⁷ The Judiciary has also introduced a special mobile app called Judiciary Mobile Tz, which enables users to access information relating to court proceedings, hence reducing movement to courts of law. According to the Chief Justice, use of ICT to provide judicial services had saved approximately Tshs. 900 million in 2020 and Tshs. 120 for the Tanzania Prison Services.¹⁶⁸

In 2020, the Judiciary piloted its programme of using only ICT (paperless court) to provide judicial services at the Kigamboni District Court. In January 2020, a total of 533 cases had been registered and 202 were entertained, with records kept electronically.¹⁶⁹

Planning translation of laws from English to Swahili

In December 2020, the Ministry of Constitutional and Legal Affairs revealed that it is in the final stages of planning translation of all laws from English to Swahili to enable wider section of public to understand and the laws.¹⁷⁰

If this move succeeds, it will significantly help in increasing legal awareness and hence enhance access to justice. However, the exercise must proceed with extreme caution, given the technical and legal English used in writing laws and shortcomings of the Swahili Language in the legal context.

¹⁶⁵ Ibid

¹⁶⁶ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA SHERIA NA SIKU YA SHERIA NCHINI NA MAADHIMISHO YA MIAKA 100 YA MAHAKAMA KUU; JIJINI DODOMA, TAREHE 01 FEBRUARI, 2021 at <https://www.judiciary.go.tz/web/index.php?r=announcements%2Fpdf&id=60>, accessed 9th February 2021.

¹⁶⁷ Ibid

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ LHRC Media Survey 2020.



2.5.5.2. Challenges affecting access to justice

Despite the various measures taken to improve access to justice, several challenges persist and hinder meaningful access to justice. These include: shortage of judicial staff; limited access to justice; concentration of lawyers in urban and semi-urban areas; delays in granting copies of judgements; and corruption, especially in lower courts and tribunals.

Shortage of judicial staff

In 2020, shortage of judicial staff continued to be one of the factors affecting access to justice. In his speech on the Law Day commemoration in February 2020, the Chief Justice, Prof. Ibrahim Juma, revealed that the number of workers in the Judiciary is 5,947, while the required number is 10,351.¹⁷¹

In February 2021, the Chief Justice revealed that a total of 10,351 judicial workers were needed, while there were only 5,623 by December 2020, hence shortage of 4,728 judicial staff.¹⁷² Shortage of judicial staff therefore stands at 46%.¹⁷³

Shortage of judicial staff has created a big burden for the available staff, especially Justices of Appeal and Judges of High Court. According to the Chief Justice, a panel of three Justices of Appeal are required to entertain 200 cases but are recurrently forced to entertain up to 1,100 cases per annum.¹⁷⁴

He added that one Judge of the High Court can entertain 220 cases per annum, but they are now entertaining an average of 491 cases per annum. For magistrates, including resident magistrates, the target per annum for one magistrate is 250 cases, but they entertain up to 273 cases.¹⁷⁵

Limited access to legal aid

Legal aid is recognized as a human right in various international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) of 1966;¹⁷⁶ the UN Convention on the

¹⁷¹ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://tanzlii.org/blog/hotuba-ya-jaji-mkuu-mhe-prof-ibrahim-hamis-juma-kwenye-kilele-cha-wiki-ya-elimu-na-siku-ya>, accessed 14th October 2020.

¹⁷² See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA SHERIA NA SIKU YA SHERIA NCHINI NA MAADHIMISHO YA MIAKA 100 YA MAHAKAMA KUU; JIJINI DODOMA, TAREHE 01 FEBRUARI, 2021 at <https://www.judiciary.go.tz/web/index.php?r=announcements%2Fpdf&id=60>, accessed 9th February 2021.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Article 14(1) & (3) of ICCPR.



Rights of the Child (CRC) of 1989;¹⁷⁷ and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems of 2013¹⁷⁸.

At regional level, apart from regional human rights instruments under the AU, legal aid is recognized as a right under instruments such as the Principles and Guidelines to a Fair Trial and Legal Assistance in Africa, the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, and the Kampala Declaration on Community Paralegals. Domestically, this right is not explicit, but it is implied under the right to equality before the law, which is constitutionally guaranteed. Legal aid is therefore essential in enhancing access to justice.

Legal aid is provided by different groups in Tanzania, including the national human rights institution, CSOs and paralegals. Despite some notable improvements, access to legal aid remained limited in 2020, especially in rural areas, owing to limited resources to reach remote areas. Another factor that may explain this situation is the majority of legal aid providers' centres being concentrated in urban and/or semi-urban areas. On the part of legal aid providers who are paralegals, the Legal Aid Act of 2017 imposes certificate of secondary education (Form Four) as minimum qualification, a move which may reduce the number of potential candidates for paralegal work, especially in rural areas.

Delays in issuance of copies of judgements

Delays in issuing copies of judgements emerged as a key issue affecting access to justice in 2020. In Lindi Region, the District Commissioner of Kilwa, Hon. Christopher Ngubiagai, revealed in January 2020 that delays in granting copies of judgements is a big challenge at the district court, drawing complaints from prisoners. He noted that a total of 88 prisoners had not received copies of their judgements, denying them their right to appeal.¹⁷⁹

In Arusha, the Head of the High Court in the region, Judge Moses Mzuna, urged judges and magistrates in the region to ensure they produce copies of judgements within 21 days of conclusion of cases. During the commemoration of the Law Day in February 2020, he noted that there had been many complaints from citizens about delays in receiving copies of judgements from courts of law.¹⁸⁰

¹⁷⁷ Article 40(2) of UNCRC.

¹⁷⁸ Principle 14.

¹⁷⁹ LHRC Media Survey 2020.

¹⁸⁰ Ibid.



Other Challenges

Other challenges affecting access to justice include: corruption; low awareness of relevant laws and procedures on the part of community members, especially in rural areas; and concentration of lawyers in urban and semi-urban areas. In July 2020, the Chief Justice, Prof. Ibrahim Juma, revealed that most law firms are concentrated in urban areas.¹⁸¹

He noted that most lawyers/advocates are concentrated in regions such as Dar es Salaam, Arusha, Mwanza, Mbeya, Tabora, and Dodoma. In July 2020, PCCB arrested a primary court magistrate in Manyoni District for soliciting a bribe of Tshs. 350,000 and receiving Tshs. 170,000.¹⁸²

In August 2020, PCCB in Manyara Region arrested a magistrate of Magugu Primary Court for soliciting and receiving a bribe of Tshs. 150,000 so that he can dismiss a criminal case.¹⁸³ In December 2020, PCCB in Mbeya arrested Harrison Makinda, a magistrate, for engaging in corrupt transactions by asking for Tshs. 600,000 as condition (fine) for release of a prisoner.¹⁸⁴

Despite the situation significantly improving following adoption and implementation of the zero-backlog policy, backlog of cases is still a challenge. In October 2020, the Principal Judge of the High Court of Tanzania, Dr. Elizer Mbuki, called upon prosecutors and magistrates to comply with government directives/policy of fast-tracking proceedings and not taking to court or entertaining cases whose investigation is incomplete in order to reduce backlog of cases.¹⁸⁵

2.5.6. Lengthy detention of remandees in prisons and constant adjournment of cases jeopardizing the right to equality before the law

Rights of persons who have been detained are protected by the Constitution of the United Republic of Tanzania of 1977, as well as regional and international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) of 1966. ICCPR stipulates that all persons are equal before the courts and tribunals, and

¹⁸¹ See HOTUBA FUPI YA JAJI MKUU KUWAKUBAALI MAWAKILI KWA NJIA YA MTANDAO TAREHE 10 JULAI 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=35>, accessed 14th October 2020.

¹⁸² LHRC Media Survey 2020.

¹⁸³ LHRC Human Rights Monitoring 2020.

¹⁸⁴ LHRC Media Survey 2020.

¹⁸⁵ Ibid



in determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone is entitled to a fair and public hearing.¹⁸⁶

It also provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law,¹⁸⁷

and that everyone is entitled to be tried without undue delay in the determination of any criminal charge against them.¹⁸⁸ Presumption of innocence and right to fair hearing, which included entitlement of being tried without undue delay, are also constitutional guarantees.¹⁸⁹

A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

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UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

In February 2020, H.E. President John Magufuli expressed concern over the slow pace of investigation that was causing unnecessary suffering to remandees and delays of cases in courts, thereby adversely affecting persons who are otherwise innocent.¹⁹⁰ He noted that delays not only frustrate court operations, they also result in unnecessary congestions in remand jails that could easily be avoided.¹⁹¹ Currently, over 56% of persons in prisons are remandees, meaning they have not been convicted by courts of law. These people continue to languish in jails because 'investigations are still underway.'

During the commemoration of the Law Day in February 2020, the Chief Justice, Hon. Prof. Ibrahim Juma, revealed that proceedings of many cases of corruption and economic crimes have stalled due to delays in concluding investigations.¹⁹² Earlier, in January 2020, Baraka Mkuki, who was remanded at Keko Prison in Dar es Salaam, complained about delays in conclusion of investigation of his case, lamenting that he has

186 Article 14(1) of ICCPR.

187 Article 14(2) of ICCPR.

188 Article 14(3)(c) of ICCPR.

189 See Article 13(6) of the Constitution of Tanzania, 1977.

190 LHRC Media Survey 2020.

191 Ibid.

192 LHRC Media Survey & Human Rights Monitoring 2020.



now spent five years in remand prison. He was accused of committing an offence of the Facebook social network.¹⁹³ LHRC's Tito Magoti, arrested in December 2019 on charges of economic crimes, was also a victim of delays and constant adjournment of cases. In February 2020, one of his lawyers, Adv. Jebra Kambole, lamented the continued adjournments of his client's case due to pending investigation.¹⁹⁴ The Prosecution kept seeking for adjournment despite telling the court several times that the investigation 'is at a good stage.'

In response to Covid19 which posed a challenge in prisons on 26th April 2020 during the commemoration of the Union Day, President Magufuli granted pardon to 3973 prisoners, as a measure to decongest prisons.¹⁹⁵ This was followed by another clemency of 3316 prisoners on 9th December 2020 during the celebration of the Independence Day.¹⁹⁶

LHRC's View: Lengthy detention of remandees constitutes violation of their right to equality before the law, which is constitutionally guaranteed and protected under regional and international human rights instruments. Being detained for too long 'pending completion of investigation' is a violation of the right to presumption of innocence and right to a fair trial. It also amounts to punishment without trial, contrary to international human rights standards.

LHRC's Call: The Ministry of Constitutional and Legal Affairs and the Judiciary to take measures to address this problem, including requiring completion of investigation before a case is brought to court and demanding increased pace of investigation. Another option is to make all offences bailable and impose a limitation on the length of time to conduct and complete investigation, as recommended by the Chief Justice in July 2019.¹⁹⁷

2.5.7. Right to be presented before the court promptly

Apart from lengthy detention of remandees in prisons, another challenge threatening the right to equality before the law is prolonged detention of accused persons who are under police custody. The law requires an accused person to be brought to court within 24 hours.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ <https://www.eatv.tv/news/current-affairs/jpm-asamehe-wafungwa-atoa-ujumbe-kuhusu-corona>

¹⁹⁶ <https://www.habarizamtaa.com/2020/12/rais-magufuli-asamehe-wafungwa.html>

¹⁹⁷ See Mary C. Gwera "JAJI MKUU APENDEKEZA MAKOSA YOTE KUWA NA DHAMANA" Judiciary of Tanzania, 26 July 2019, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=78>, accessed 2nd March 2020.



This is in line with the right to be presented before the court promptly, which is protected under the regional and international human rights instruments, including the African Charter on Human and Peoples' Rights of 1981,¹⁹⁸ and the International Covenant on Civil and Political Rights of 1966,¹⁹⁹ both of which have been ratified by Tanzania. The law requires an accused person to be brought to court within 24 hours.²⁰⁰ In February 2020, a domestic servant in Dodoma, who was arrested for causing death of a child of her employer complained about being held for 312 hours (13 days) without being produced before a court of law.²⁰¹ In July 2020, Sheikh Issa Ponda, a Muslim cleric in Tanzania, was arrested on charges of sedition and detained for more than 24 hours without being presented before the court.²⁰²

LHRC's View: The right to be presented before the court promptly is one of the core tenets of the right to equality before the law. It is also associated with the right to fair trial, which guarantees an accused person to be tried without undue delay.

LHRC's Call: The Tanzania Police Force to ensure accused persons who have been charged with criminal offences are presented to courts of law promptly for other proceedings to continue, to protect the rights of accused persons, which include the right to equality before the law.

2.5.8. Plea bargaining and its challenges

Overview of Plea Bargaining

In many parts of the world, trials are being replaced by legal regimes that encourage suspects to admit guilt and waive their right to a full trial.²⁰³ The trial waver systems, including plea-bargaining, are widely used in different parts of the world, including in U.S.A, Russia, Scotland, Australia, China, Colombia, Nigeria, Italy, Spain, Poland, Estonia, England and India.²⁰⁴ In 2019, Tanzania followed suit by introducing plea bargaining in its criminal justice system via the Written Laws (Miscellaneous

¹⁹⁸ Article 7(l) of the Banjul Charter.

¹⁹⁹ Article 14 of ICCPR.

²⁰⁰ See the Criminal Procedure Act; See also ICCPR and BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, adopted by the UN General Assembly in resolution 43/173 on 9 December 1988 at New York.

²⁰¹ LHRC Media Survey 2020.

²⁰² See LHRC, TAMKO KUHUSU KUSHIKILIWA KWA SHEIKH ISSA PONDA, at <https://www.humanrights.or.tz/posts/b/news/tamko-kuhusu-kushikiliwa-kwa-sheikh-issa-ponda>, accessed 15 October 2020.

²⁰³ See Fair Trials (2017), The Disappearing Trial: Towards a rights-based approach to trial waiver systems, at https://www.fairtrials.org/sites/default/files/publication_pdf/Report-The-Disappearing-Trial.pdf accessed 2nd March 2020.

²⁰⁴ Ibid.



Amendments (No. 4) Act of 2019, amending the Criminal Procedure Act (Cap 20). Plea bargaining is defined as “a negotiation in a criminal case between a prosecutor and the accused whereby the accused agrees to-

- a. plead guilty to a particular offence or a lesser offence or to a particular count or counts in a charge with multiple counts; or
- b. cooperate with the prosecutor in the provision of information that may lead to a discovery of other information relating to the offence or count charged, in return for concession from the prosecutor which may lead to a lenient sentence or withdrawal of other counts.”²⁰⁵

Accused persons can now enter plea agreements²⁰⁶ with the Director of Public Prosecution (DPP), with either party allowed to initiate the plea-bargaining after notifying the court. The consequences of such an agreement are such that One, the accused person may be charged with a lesser offence or prosecutor may withdraw other counts or take other measure as seen appropriate, depending on the circumstances. Two, the accused person may enter a guilty plea to the offence charged or to a lesser offence or to a particular count or counts in a charge with multiple counts in exchange for withdrawal of other counts. Three, an accused person may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question. Following the amendments, the Criminal Procedure Act (Cap 20) now contains a list offences that are not subject to plea-bargaining, which are: sexual offences whose punishment exceeds five years or involving victims under eighteen years; treason and treasonable offences; possession or trafficking in narcotic drugs whose market value is above Tshs. 20 million; terrorism; and possession of Government trophy whose value is above Tshs. 20 million without the DPP’s written consent.

Practice and Challenges

LHRC’s analysis of the plea-bargaining system concluded that the system has its advantages and disadvantages and is different in practice compared to other trial waver systems. While the system is credited for ensuring speedy disposal of cases and reducing pre-trial detention, and being less costly, it is associated with various concerns which may affect the rights of the accused person. These concerns include: coercion of accused persons; misuse of power due to the leverage enjoyed by the prosecutor; reducing the role and influence of magistrates and judges;

²⁰⁵ Section 15 of the Written Laws (Miscellaneous Amendments (No. 4) Act of 2019.

²⁰⁶ An agreement entered into between the prosecution and the accused in a criminal trial in accordance with sections 194A, 194B and 194C of the Criminal Procedure Act (Cap 20).



and the risk of accused persons pleading guilty for crimes they did not commit. To mitigate these risks, a number of procedural safeguards have been recommended. These safeguards are:²⁰⁷

- Mandatory access to lawyer: Accused person must speak to a lawyer before agreeing to waive their right to a trial
- More disclosure: Accused persons should know the case against them and be able scrutinize prosecution's case
- Timing of agreements: Accused person should be afforded time to think and make a decision (no coercion)
- Judicial oversight: Judges should be involved in negotiations, as is the case in Singapore. In our case, as indicate above, the court (meaning magistrates and judges) is barred from participation in the negotiations. This will also help to prevent double punishment.
- Enhanced recording/data collection: Record of negotiations should be kept in order to improve transparency. Shining a light on deals done by prosecutors behind closed doors would help the public to trust the system and the outcome, and avoid claims of corruption
- Limitations of benefits: There should not be a huge gulf between the sentence if one goes to trial and the sentence for a guilty plea as it can distort how people act.²⁰⁸

In March 2020, the Director of Public Prosecutions (DPP), Biswalo Mganga, revealed that a total of 357 accused persons entered into plea bargain agreements for their various charges relating to economic crimes.²⁰⁹ He noted that the plea bargains have resulted into payment of Tshs. 13.5 billion.²¹⁰ The Tanzania Human Rights Report 2021 will delve deeper into practice and challenges of plea-bargaining in Tanzania.

LHRC's View: For the interests of justice, implementation of the plea-bargaining system should proceed with caution. The safeguards highlighted above should be considered. Accused persons should not be coerced in any way and the law should not be applied discriminatively in any way.²¹¹ There is also a need to enhance public understanding of plea bargaining.

207 See Fair Trials (2017), *The Disappearing Trial: Towards a rights-based approach to trial waiver systems*, at https://www.fairtrials.org/sites/default/files/publication_pdf/Report-The-Disappearing-Trial.pdf accessed 2nd March 2020.

208 According to Fair Trials, in Germany, courts and legislators have identified that a significant sentence differential between agreement and trial can act as an 'illegal influence' on the defendant's free will.

209 LHRC Media Survey 2020.

210 Ibid.

211 See LHRC's statement on plea bargaining issued on 25th September 2019 at <https://www.humanrights.or.tz/posts/b/news/ufafanuzi-wa-kisheria-kuhusu-makubaliano-ya-kukiri-kosa-plea-bargaining>, accessed 2nd March 2020.



LHRC' Call: Amendment of the plea-bargaining law to ensure magistrates and judges are involved in plea negotiations. This will help to safeguard the rights of the accused person.

2.6. Right to Liberty and Personal Security

2.6.1. Introduction

Right to liberty and personal security is an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR.²¹² It is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977.²¹³ This right includes freedom from arbitrary arrest and detention, right to personal security and right to bail. When a person is arrested they are denied their liberty; and according to the Criminal Procedure Act, when this happens they are supposed to be brought before a court of law within 24 hours²¹⁴ and are entitled to bail,²¹⁵ unless the offence for which they have been arrested is not bailable. The right to personal security creates an obligation on the Government of Tanzania to ensure that reasonable and appropriate measures are taken to protect detained and non-detained persons.

Deprivation of liberty is only justified if it is in accordance with the law (principle of legality) and not arbitrary. If a person is arrested or detained on grounds which are not clearly stated in domestic law, the principle of legality is violated. Arbitrary arrest/detention does not only mean that against the law, but also not appropriate, unjust and done in disregard of due process of law. Arrest and detention of a person must thus not only be lawful, but also reasonable and necessary under the circumstances, for instance to prevent flight, interference with evidence or recurrence of crime. Accused person must not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.²¹⁶ Moreover, when an accused person under police custody is not produced before a court of law within 24 hours after arrest,²¹⁷ it amounts to arbitrary detention.

The Criminal Procedure Act requires police officers or other people

212 Article 3 of UDHR; Article 9(1) of ICCPR.

213 See Articles 15 & 16 of the Constitution of Tanzania 1977; Article 6 of ACHPR.

214 Section 32(1) of the Criminal Procedure Act, CAP 20 R.E 2002.

215 Ibid, section 48.

216 See ICCPR and BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, adopted by the UN General Assembly in resolution 43/173 on 9 December 1988 at New York.

217 Ibid.



carrying out an arrest to use a reasonable force during arrest (no more than is necessary to prevent escape).²¹⁸ A person being arrested should not be subjected to more force than is necessary to make the arrest.²¹⁹

2.6.2. Personal security of bodaboda drivers at risk

In 2020, bodaboda drivers continued to be targeted and attacked for their motorcycles, jeopardizing and violating their right to personal security. During this reporting period, LHRC documented five incidents of attack and killing of bodaboda drivers for their motorcycles.

In February 2020, Police in Mbeya arrested four people in connection with the abduction and killing of bodaboda drivers and theft of their motorcycles. They were arrested following a special police operation that began in February 2020. Among the incidents they were involved in is the killing of a bodaboda driver, Shukuru Juma (26), before taking his motorcycle on 10th February 2020. Another incident is the attack on another bodaboda driver, Sadock Nimrod (21) and forcefully taking his motorcycle.²²⁰ In the same month, Traffic Police Commander in Iringa, Yusuph Kamota, urged bodaboda drivers to form and register their association so that they can easily be identified and recognized, given the wave of thieves who use the motorcycles to steal from people. He noted that the move will also help to enhance the security of bodaboda drivers.²²¹

In March 2020, Police impounded 130 stolen vehicles during a countrywide special operation on stolen vehicles following growing cases of theft in the country.²²² 128 suspects were in custody.²²³ In Tabora, resident of Igunga District, Maiko Samweli (20), a bodaboda driver, was brutally killed by unknown assailants, who then took his motorcycle. The incident occurred on 23rd March 2020 after the bodaboda driver was boarded by one of the suspected assailants at Makomero area at 2300hours.²²⁴ This incident followed another incident of February 2020, in which Maneno Daud (22), a bodaboda driver and resident of Mwinyi Ward in Tabora Municipality, was killed with a sharp object by a passenger who boarded his motorcycle. The suspected assailant, Seif Nasoro (20), was arrested when he was attempting to sell the motorcycle for Tshs. 500,000.²²⁵ In July 2020, it was reported that a bodaboda driver, 30-year-old Issa Naina, resident of Matapatapa Village in Kilwa District,

218 Section 12 of the Criminal Procedure Act, CAP 20.

219 Ibid, Section 21.

220 LHRC Media Survey 2020.

221 Ibid.

222 LHRC Media Survey 2020.

223 Ibid.

224 Ibid.

225 Ibid.



was attacked and killed by his two passengers on the way to Njia Nne Village, before disappearing with his motorcycle.²²⁶

2.6.3. Arbitrary arrests and detention

According to the ICCPR, “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”²²⁷ This provision echoes Principle 10 of the UN Body of Principles for the Protection for All Persons under any Form of Detention or Imprisonment of 1988. A person deprived of his or her liberty must be promptly informed of the reasons thereof, in a language which he or she understands and in sufficient detail so as to be enabled to request a prompt decision by a judicial authority on the lawfulness of his or her deprivation of liberty.²²⁸ Accused person must also not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.²²⁹

In 2020, reported incidents of arbitrary arrest and detention included the arrest and detention of Sheikh Issa Ponda. In July 2020, the Muslim cleric was arrested on charges of sedition and detained for more than 24 hours without being presented before the court.²³⁰ Human rights stakeholders, including LHRC, criticized the arrest and detention for not affording the accused person an opportunity to communicate with his family.²³¹ LHRC also documented seven other reported incidents of arbitrary arrests and detention, as shown in the table below.

226 LHRC Human Rights Monitoring 2020.

227 See Article 9(2) of ICCPR of 1966.

228 Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers.

229 See ICCPR and BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, adopted by the UN General Assembly in resolution 43/173 on 9 December 1988 at New York.

230 See LHRC, TAMKO KUHUSU KUSHIKILIWA KWA SHEIKH ISSA PONDA, at <https://www.humanrights.or.tz/posts/b/news/tamko-kuhusu-kushikiliwa-kwa-sheikh-issa-ponda>, accessed 15 October 2020.

231 Ibid.



Table 7: Incidents of arbitrary arrests and detention documented by LHRC, January to December 2020

Incident	Report Date
<p>Morogoro: On 31st July 2020, 48-year-old Omary Selemani, resident of Madoto Village in Kilosa District, was arrested by police without being told reasons for arrest.</p>	August 2020
<p>Ruvuma: on 14th June 2020, 42-year-old Mathayo Ndaweko, resident of Lundo Village in Nyasa District was subjected to arbitrary arrest by six police officers and detained for four hours. The officers stopped and searching him for drugs, which did not find.</p>	June 2020
<p>Dar es Salaam: Five women, including 29-year-old Ashfa Rashid Mkoromie, were arrested and detained at Mabatini Police Station on 12th June 2020 for failure to pay a debt of Tshs. 50,000. It was reported that they were arrested under the orders of a woman who gave the loans, charging high and unfair interest rates. For instance, in Ashfa's case, after borrowing Tshs. 50,000, she was told that in the space of three months (December to February), her debt had increased to Tshs. 460,000, and by June it had increased to Tshs. 2,260,000. The victims of unfair loan terms claimed that they were told to sign documents indicating they accept to pay the new debts and were initially denied bail. LHRC's intervention, however, saw the matter being referred to the Regional Commissioner's office, where it was agreed that the women would pay the initial amount they owed on 19th June 2020.</p>	June 2020
<p>Tanga: A 23-year-old man, resident of Chumbageni Ward in Korogwe District, was reportedly arbitrarily arrested by police on 12th May 2020 without being told reasons for arrest. The victim's family claimed they traced their relative at police stations without any success, and a week later they found his body at a mortuary in the district.</p>	June 2020
<p>Dar es Salaam: Said Mjombe, aged 31 years and resident of Mburahati Ward in Ubungo District, was arrested by people's militia officer (sungusungu) at his home without being informed reasons for his arrest. Since his arrest, it was revealed to LHRC that he was detained for 18 days without being charged and sent to court.</p>	May 2020



Incident	Report Date
<p>Njombe: On 14th September 2020, 35-year-old Bahati Siwale, a resident of Ubena Village in Makambako Ward, Njombe District, was reportedly arrested without being told reasons for arrested and detained at Makambako Police Station, where one police officer solicited money in order to grant him bail. The matter was reported to the anti-corruption body, PCCB, which commenced an investigation.</p>	<p>September 2020</p>
<p>Morogoro: on 31st July 2020, it was reported that Omary Selemani (48), resident of Madoto Village in Kilosa District was arrested and detained at a police station without being told reasons for the arrest.</p>	<p>August 2020</p>

Source: LHRC Human Rights Monitoring 2020

LHRC's View: Incidents of arbitrary arrests and detention are widespread in Tanzania, contributing to congestion of prisons, which are mostly filled with remandees. Most of these incidents, however, go unreported. Accused persons have their rights, and these rights are protected under the Constitution of the United Republic of Tanzania, 1977 and various regional and international human rights conventions that Tanzania has ratified, including the ICCPR.²³² Such arrests and detentions constitute violation of the right to liberty and personal security.

LHRC's Call: Tanzania Police Force to ensure police officers refrain from arbitrarily arresting and detaining people suspected of committing crimes, and those who disregard procedural safeguards are held accountable.

2.6.4. Right to bail

In 2020, bail continued to be an issue of human rights concern, echoing calls for bail to be granted for all offences by the Chief Justice and other stakeholders, made in 2019.²³³ In February 2020, the Minister of Home Affairs, Hon. George Simbachawene, called upon the Police Force to grant bail to persons accused of bailable offences as a measure of reducing congestions in prisons.²³⁴

He urged the police commanders to ensure they interrogate remandees at their police stations to check whether they really deserve to be there. He noted that the purpose of this order is to address the

²³² Article 9(2) of ICCPR of 1966.

²³³ See Mary C. Gwera "JAJI MKUU APENDEKEZA MAKOSA YOTE KUWA NA DHAMANA" Judiciary of Tanzania, 26 July 2019, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=78>, accessed 2nd March 2020; "Wadau wamtaka Jaji Mkuu kuanza kurahisisha masharti ya dhamana" Mwananchi Newspaper, 22 July 2019.

²³⁴ LHRC Media Survey 2020.



problem of fabrication of cases, which has seen people languishing in jail or remand prison for offences they have not committed.²³⁵

In the same month, the Deputy Minister of Home Affairs, Hamad Masauni, ordered all police commanders to grant bail to remandees who are qualified for bail and fast-track investigation of their cases to prevent the spread of the Covid19 in prisons.²³⁶ During the human rights survey, 9.5% and 12.7% of survey participants indicated that it is likely and very likely to pay bribe for police bail respectively.

■ Likelihood of paying bribe for the police bail

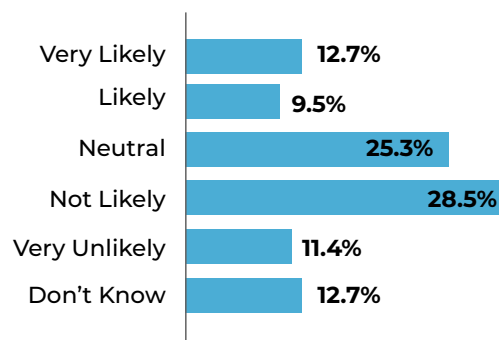


Figure 8: Human rights survey participants' perceptions on police bail and bribe

In 2020, LHRC documented eight reported incidents of denial of bail including the arrest and detention of Sheikh Issa Ponda, a Muslim cleric, in Dar es Salaam. These incidents are shown in the table 8 below.

Table 8: Reported incidents of denial of bail documented by LHRC, January to December 2020

Incident	Report Date
Dar es Salaam: Sheikh Issa Ponda, a Muslim cleric, was arrested and detained. He was accused of sedition and was not afforded an opportunity to post bail.	Jul 2020

²³⁵ Ibid.
²³⁶ Ibid.



Incident	Report Date
<p>Morogoro: In April 2020, LHRC received a report of 22-year-old Kelvin Mapondele, resident of Ifakara Ward in Kilombero District, who was reportedly arrested and severely beaten while under police custody on 27th April 2020. It was reported that he died the following day at St. Francis Hospital, where he was receiving treatment. LHRC contacted the Kilombero OCD, who claimed that he was aware of the incident, but insisted the victim had been granted bail. The victim's father, however, claimed that police bail was denied to his son. LHRC wrote to the IGP, expressing concerns of the growing trend of police brutality (excessive use of force by law enforcement officers).</p>	Jul 2020
<p>Mwanza: In March 2020, LHRC received a report of 41-year-old Lwomwadi Masami, resident of Gallu Village in Ukerewe District, who was subjected to arbitrary arrest by a police officer from Mriti Police State on 31st March 2020. It was not until 11th April 2020 that his relatives were informed that he was detained at Kirumba Police Station in Ilemela District, charged with armed robbery. He was detained for 17 days until 21st April 2020 when he was finally sent to court.</p>	Jul 2020
<p>Dar es Salaam: In March 2020, LHRC intervened to help eight arrested for possession of stolen goods to get bail. The men had been arrested on 27th March 2020 and were detained for eight days. LHRC contacted the Temeke RPC, who made follow up on the matter and ordered the accused persons to be granted bail.</p>	Apr 2020
<p>Dar es Salaam: James Raymond Tosi, aged 30 years and resident of Boko Ward in Kinondoni District, was reportedly arrested, and detained at Boko Police Station on 16th April 2020. His mother applied for police bail on 18th April 2020, but the officer on duty refused to grant bail, claiming that they do not grant bail on weekends. LHRC managed to intervene and call the officer in charge of the police station, who ordered the release of the accused person on bail.</p>	Apr 2020
<p>Manyara: 30-year-old Lemekweti Kinyoyo, resident of Nalang'tomon Village in Kiteto District, was arrested on 13th August 2020 for stealing two goats. His family complained that he was denied police bail.</p>	Sep 2020
<p>Dar es Salaam: 24-year-old Fikiri Hamisi, resident of Kinondoni District was arrested on 26th August 2020, accused of stealing a motorcycle. The accused person's family complained that their relative had been denied bail.</p>	Sep 2020

Source: LHRC Human Rights Monitoring 2020



LHRC' View: Right to bail is a constitutional right and essential for realization of the right to liberty and personal security. Posting bail is important for an accused person because it gives them an opportunity to seek legal counsel for their case. It is essential in safeguarding the right to be presumed innocent until proven guilty. Weekends should not be used as an excuse for denying bail. As pointed out by the former Minister of Home Affairs, Hon. Kangi Lugola, police bail is a constitutional right and should be granted even during weekends.

LHRC's Call: Tanzania Police Force to ensure bail is issued for all bailable offences in line with the Criminal Procedure Act.

2.6.5. The Court of Appeal Decision in the Dickson Sanga Right to Bail Case

Background of the Case

In 2019, Dickson Sanga, a practicing advocate, lodged a petition before the High Court of Tanzania, challenging the constitutionality of section 148(5) of the Criminal Procedure Act [CAP 20 R.E 2002], which governs the grant of bail [Miscellaneous Civil Cause No. 29 of 2019]²³⁷. The petition was based on the following grounds:²³⁸

- Section 148(5) of the Criminal Procedure Act (CPA) violates the right to personal liberty and presumption of innocence guaranteed by Articles 13(6)(b) and 15(1) and (2) of the Constitution.
- The impugned provision outs the constitutional mandate of the courts of law, to protect and adjudicate guaranteed rights.
- In the wake of the impugned provision, the timeframe for investigating and prosecuting the accused person in respect of the aforesaid offences is unknown and left to the discretion of the investigating body, and most cases is subject to abuse whereby the liberty of the accused is left in the hands of the State.
- The impugned provision is contrary to the very fundamental instrument for the courts to administer criminal justice during court proceedings which is in line with the universal jurisprudence acceptable in common law jurisdictions, which Tanzania belongs to.
- The impugned provision contravenes various international legal instruments to which Tanzania is a party, including Article 11(1) of the Universal Declaration of Human Rights (UDHR), Article 14(2)

²³⁷ See the Judgement of the Court, *The Attorney General vs Dickson Paulo Sanga*, Court of Appeal of Tanzania, Civil Appeal No. 175 of 2020, dated 18th May 2020.

²³⁸



of the International Covenant on Civil and Political Rights (ICCPR) and Article 7(1) B & D of the African Charter on Human and People's Rights (ACHPR).

The petitioner sought the following declamatory orders:

1. The provisions of section 148(5) of the CPA be declared unconstitutional for being violative of Articles 13(3) and 6(b) and 15(1) and (2) of the Constitution.
2. The trial courts vested with jurisdiction to deal with any offences be left to deal with the question of bail upon being properly moved by parties to the criminal disputes.
3. The High Court to issue directives as it may deem fit to meet the ends of justice and the protection of the constitutional rights of the people.

According to the petitioner, Dickson Sanga, despite the existence of a fundamental right on presumption of innocence, the courts are strictly prohibited from dealing with questions of bail, therefore treating the accused persons as if they were guilty before the trial. He noted that the problem is aggravated by the absence of timeframe for investigation of criminal offences resulting into prolonged incarceration of several persons being remanded in police custody and prison facilities.

Issues determined by the Trial Court

The High Court determined the following issues:

1. Whether the impugned provision contains circumstances and a requisite prescribed procedure for denying bail to a person accused of non-bailable offence as envisaged under Article 15(2) of the Constitution.
2. Whether by denying bail to an accused person suspected of a non-bailable offence amounts to treating such a person as a criminal person contrary to Article 13(6)(b) of the Constitution.
3. Whether the impugned provision outs the constitutional mandate of the courts in protecting and determining the right to bail of a person accused of a non-bailable offence as enshrined under Article 13(3) of the Constitution.
4. Whether the impugned provision is saved under Article 30(2) of the Constitution.



Decision of the Trial Court

After hearing arguments from both sides, the High Court delivered its judgement and declared the whole of section 148(5) of the CPA unconstitutional. The Court noted that “..the provision of section 148(5) of the Criminal Procedure Act is too broad and thereby depriving personal liberty to persons who cannot be considered to be dangerous and unintended ones” and that “...the absence of procedures prescribed by law makes the administration of the impugned provision susceptible to not only abuses but also arbitrary decisions.” The High Court then ordered rectification of the provision within 18 months.

Grounds of Appeal

Aggrieved with the decision of the High Court, the Government appealed to the Court of Appeal of Tanzania based on the following ten grounds:

1. The Court erred in law in holding that section 148(5) of the CPA is violative of Article 13(3) of the Constitution.
2. The High Court erred in holding that section 148(5) of the CPA is not consistent with Article 15(1) and (2)(a) of the Constitution.
3. The High Court erred in law in holding that section 148(5) of the CPA outs judicial process in considering possibility of admitting bail to a person accused of non-bailable offences.
4. The High Court erred in law in determining section 148(5)(a)(v) of the Criminal Procedure while the matter was res judicata.
5. The High Court erred in law in holding that section 148(5) of the CPA is unconstitutional despite the fact that the respondent has failed to prove his case beyond reasonable doubt.
6. The High Court erred in law in determining the constitutionality of section 148(5) of the CPA basing on unpleaded facts.
7. The High Court erred in law in holding that section 148(5) of the CPA is not saved by Article 30(2) of the Constitution.
8. The High Court erred in law and fact in misapplying the reasoning and holding advanced in various decisions of the Court of Appeal, particularly DPP versus Daudi Pete [1993] TLR 22 and AG versus Jeremia Mtobesya, Civil Appeal No. 65 of 2016, in relation to Article 15(2)(a) of the Constitution and section 148(5) of the CPA.
9. The High Court erred in law in striking out the whole of section 148(5) of the CPA without paying due regard to the likelihood of causing havoc in the entire system of administration of criminal justice in the country.
10. The High Court erred in law basing its decision on some defective paragraphs of the respondent’s affidavit in support of the petition.



Court of Appeal's Verdict

Having considered the grounds of appeal above, the Court of Appeal found most of the grounds of appeal to have merit. Among other things, the Court concluded that:

- It was wrong for the High Court to conclude that the impugned provision outs judicial process, hence the third ground of appeal merited.
- Section 148(5)(b) to (e) of the CPA has prescribed procedure which must be complied with in determining as to whether or not to admit to bail an accused person.
- While it is true that section 148(5)(a) (i), (ii), (iii), (b), (c), (d) and (e) of the CPA has no prescribed procedure for regulating refusal of bail on the offences listed, it meets the test of proportionality, legitimacy and lawfulness and thus saved by Article 30(2) of the Constitution. Thus, the detention pending trial is undoubtedly the necessary restriction for attainment of the desired objective which includes the interests of public safety and public order, defence and protection of those involved in judicial proceedings such as witnesses. Therefore, the seventh ground of appeal is merited.
- The prolonged investigation and prosecution, which make some of the persons accused of non-bailable offences to stay in remand for so long and some instances beyond the prescribed term of imprisonment of the offence, are operational problems adversely impacting on the criminal justice which can be addressed by the Executive arm of the State.
- Section 148(5)(a) (i), (ii), (iii), (b), (c), (d) and (e) of the CPA is not unconstitutional as it is saved by Article 30(2) of the Constitution.
- Having found the impugned provision not unconstitutional, the Court of Appeal proceeded to quash and set aside the decision of the High Court. Grounds of appeal which were not merited included the fifth, sixth and ninth grounds.

LHRC's View: The decision of the Court of Appeal comes in the wake of the remarks of the Chief Justice in the year 2019 that all offences should be bailable like in Kenya, with the Judiciary left with the mandate to determine bail on a case-to-case basis.²³⁹ The decision is therefore a move in the wrong direction in terms of safeguarding right to liberty and personal security.

²³⁹ Mary C. Gwera "JAJI MKUU APENDEKEZA MAKOSA YOTE KUWA NA DHAMANA" Judiciary of Tanzania, 26 July 2019, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=78>



2.6.6. Trumped-up charges and delays in conducting investigations

Like in 2019, trumped-up charges or fabrication of cases emerged as a human rights concern in 2020. In January 2020, five people in Kilimanjaro Region, including two police officers from Himo Police Station, were accused of abducting a businessman in Moshi and attempted to fabricate a money laundering case against him unless he gives them Tshs. 140 million.²⁴⁰

It was reported that they introduced themselves as national security officers. The matter was reported to be under police investigation.²⁴¹

In February 2020, H.E. President John Magufuli indicated that investigators and law enforcers in the country have been causing unnecessary suffering to remandees due to delays in conducting and concluding investigations.²⁴²

He also noted that some people are arrested and detained on trumped-up charges, including under instructions of the rich people. A total of 1,422 remandees have been released by the DPP after it was revealed that they had been remanded on trumped-up charges.²⁴³

In the same month, the Minister of Home Affairs, Hon. George Simbachawene, urged police commanders to ensure they interrogate remandees at their police stations to check whether they really deserve to be there.²⁴⁴ He noted that the purpose of this order is to address the problem of fabrication of cases, which has seen people languishing in jail or remand prison for offences they have not committed²⁴⁵.

As discussed in subchapter 2.5 above, delays in conducting investigations were an issue of human rights concern in 2020. In February 2020, during the commemoration of the Law Day, the President of the Tanganyika Law Society (TSL), Dr. Rugemeleza Nshala, raised concern over accused persons spending too much time in remand prisons, which constitutes violation of their right to liberty.

LHRC's Call: Police Force to ensure police officers do not fabricate cases against innocent individuals, and those who engage in such unethical conduct are held accountable.

2.6.7. Human trafficking

According to the United Nations, human trafficking is generally

²⁴⁰ LHRC Media Survey 2020.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ LHRC Media Survey 2020.

²⁴⁵ Ibid.



understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain.²⁴⁶ Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. States are required to adopt legislative and other measures to criminalize human trafficking.²⁴⁷

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

The United Nations has identified the main features of human trafficking, which are:²⁴⁸

- Trafficking affects women, men and children, and involves a range of exploitative practices.
- Trafficking does not require the crossing of an international border. Trafficking is not the same as migrant smuggling.
- Trafficking does not always require movement.
- It is not possible to “consent” to trafficking.

246 See The Office of the United Nations High Commissioner for Human Rights, Human Rights and Human Trafficking, Fact Sheet No. 36 at https://www.ohchr.org/Documents/Publications/FS36_en.pdf, accessed 15 October 2020.

247 See Article 5(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

248 The Office of the United Nations High Commissioner for Human Rights, Human Rights and Human Trafficking, Fact Sheet No. 36, p. 3.



Human trafficking is a threat to right to liberty and personal security. It also a threat to other rights and freedoms such as right to life, right to non-discrimination, freedom from slavery, freedom from torture, freedom from violence, freedom of association, freedom of movement, right to health, right to just and favourable conditions of work, right to adequate standard of living, and right to social security.²⁴⁹

In Tanzania, efforts to combat human trafficking include ratification and domestication of key international human rights instruments, including the United Convention on Transnational Organized Crime (UNTOC), 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000. The Protocol was domesticated through the Anti- Trafficking in Persons Act, No. 6 of 2008, which criminalizes trafficking in persons. There is also in place the National Anti-Trafficking in Persons Action Plan (2018 - 2021), whose general objective is to contribute towards the improvement of preventive measures and response services in combating trafficking in persons.²⁵⁰

■ Number of Human Trafficking Incidents

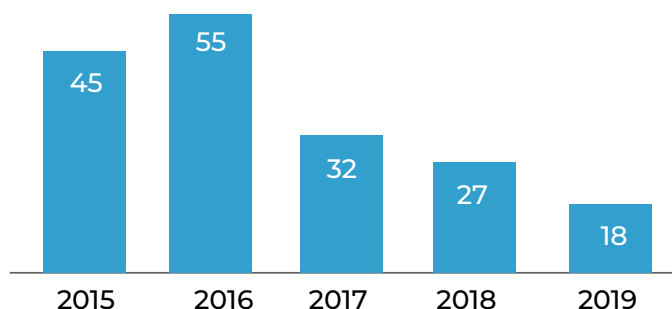


Figure 9: #Human trafficking incidents recorded by police, 2015 to 2019

Police crime statistics show that a total of 177 incidents of human trafficking were reported from 2015 to 2019. In 2019, the Tanzania Police Force documented 18 cases of human trafficking, 9 less than those reported in 2018. But it is very likely that there are many unreported cases of human trafficking.

²⁴⁹ Ibid.

²⁵⁰ See The United Republic of Tanzania, National Anti-Trafficking in Persons Action Plan (2018 - 2021), at https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Tanzania_THE_NATIONAL_ACTION_PLAN_20182021.pdf, accessed 16 October 2020.



In recent years, LHRC observed child trafficking to be a bigger concern, especially for rural communities. Children are lured away from home to be subjected to child labour. In 2019, LHRC's Human Rights and Business Report 2018/19 revealed incidents of children employed in plantations and mining, contrary to the labour and child protection laws, especially in Geita, Shinyanga and Dodoma Regions.²⁵¹ Rich livestock keepers in Geita Region were accused of employing children to herd cattle, exploiting them as cheap labour and subjecting them to dangerous working conditions.

In 2020, LHRC documented an incident of a child who was trafficked from Hanang District in Manyara Region to provide child labour in Tunduru District in Ruvuma Region.²⁵²

In January 2020, an 11-year-old boy from Gidewari Village in Hanang District, told his story of child exploitation after his was rescued by a social welfare officer. He revealed that when he was 6 years old, he was taken from home (child trafficking) to go and herd more than 1,500 livestock in the forest. He said that he was taken to Tunduru District in Ruvuma Region, where he spent five years herding the livestock in the forest, which had dangerous animals, including lions. He said that the person who took him to do the job promised to pay him Tshs. 10,000 per month, but it was his father who received the monthly payment. He also revealed that he had to hide amidst the livestock to protect himself from lions and the rain; and that he was mistreated and sometimes tortured by the livestock owners. The Social Welfare Office in Tunduru District heard about the child, rescued him and sent him back to Hanang District.

Report on trafficking in persons in Tanzania by the US Department of State, covering the period of 2019,²⁵³ shows that government efforts to combat human trafficking in Tanzania included identifying and referring to care significantly more victims; increasing public awareness campaigns; increasing investigations and convictions compared to the previous year; facilitating trainings for officials; and creating a National Guideline for Safe Houses. 19 trafficking cases were investigated, while 13 defendants were prosecuted and five traffickers were convicted, including a sex trafficker who was exploiting two girls in Singida Region. According to the report, the Government

²⁵¹ See LHRC (2019), Human Rights and Business Report 2018/2019 at www.humanrights.or.tz.

²⁵² LHRC Media Survey 2020.

²⁵³ See US Department of State, 2020 Trafficking in Persons Report: Tanzania, at <https://www.state.gov/reports/2020-trafficking-in-persons-report/tanzania/>, accessed 16 October 2020k.



reported identifying and helping 161 potential trafficking victims, a significant increase compared with 13 victims during the previous reporting period.

The report shows that traffickers enlist the help of family members, friends or intermediaries to aid their criminal conduct and there are brokers who enter into communities to recruit and transport the victims. For child trafficking, impoverished and orphaned children from rural areas are at a higher risk of being trafficked, while girls are exploited in domestic servitude and sex trafficking.

The report also identifies some key challenges in combating human trafficking in Tanzania, including: corruption within the justice system; inadequate funding for addressing the problem; the anti-trafficking law allowing fines in lieu of imprisonment, particularly with regard to sex trafficking; failure to allocate adequate resources to enable the Anti-Trafficking Secretariat (ATS) and other government entities from effectively implementing the National Anti-Trafficking in Persons Action Plan (2018 - 2021), including meeting quarterly; and official complicity in crimes. To address these challenges, the report makes several recommendations, including: the Government to ensure full implementation of the anti-trafficking legislation, regulations and action plan; amending the anti-trafficking legislation to remove sentencing provisions that allow fines in lieu of imprisonment; and increasing efforts to investigate, prosecute, and convict trafficking offenders, including complicit officials, and impose adequate penalties.

LHRC's View: Human trafficking is a serious human rights concern, especially for children, who are the most vulnerable group in the society. It constitutes violation of fundamental human rights such as the right to liberty and personal security, freedom from torture, and freedom from violence. In extreme situations it also threatens the right to life, the most fundamental human right. Statistics show a decreasing number of reported incidents of human trafficking, but LHRC fears that most of the cases go unreported.

LHRC's Call: Government to intensify efforts to implement the anti-human trafficking legislation, its regulations, and the national action plan to prevent, investigate, and prosecute human trafficking.



2.7. Right to Take Part in Governance

2.7.1. Introduction

Right to take part in governance is also known as a right to take part in public affairs or right to participate in the government.²⁵⁴

It includes citizens' right to vote and stand for election for election and the right to participate in political life.

Everyone, either directly or through a chosen representative, has a right and opportunity to take part in the public affairs of the state.²⁵⁵

Public participation enhances promotion of democracy and the rule of law. Individuals must be allowed to draw attention in case there is any aspect of work that may likely to impede realization and promotion of human rights in the country.²⁵⁶

Restrictions should not be imposed when a citizen is about to participate fully in the process leading to the matters affecting his/her wellbeing or that of the nation. ²⁵⁷

In practice, citizen participation in governance in Tanzania is limited by factors such as: low levels of financial and administrative discretion by local government authorities (LGAs); unavailability of more realistic participatory planning strategy and feedback mechanisms; and limited access to information, capacity of citizens or civil society organizations to carry out public expenditure tracking and budget analysis on a timely and regular manner.²⁵⁸

In 2020, key issues relating to the right to take part in governance that emerged and were subject to public debate included: allegations of corruption among political aspirants of the 2020 General Elections; voter and civic education; election observation; disqualification of political aspirants; and independence of the electoral body.

²⁵⁴ Is guaranteed under various regional and international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disability (CRPD).

²⁵⁵ Article 25 (a) of the International Covenant on Civil and Political Rights, 1966; Article 21(1) of the Constitution of Tanzania

²⁵⁶ Article 8 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly resolution 53/144 of 9 December 1998.

²⁵⁷ Article 21 (2) of the Constitution of the United Republic of Tanzania, 1977

²⁵⁸ Donald Mmari. Et al, Limits To Citizen Engagement And Downward Accountability In The Context Of Decentralization By Devolution In Tanzania, REPOA Brief No. 10 of April 2018 at http://www.repoa.or.tz/documents/Limits_to_citizen_engagement_and_downward_accountability_in_the_context_of_decentralization_by_devolution_in_Tanzania.pdf accessed on 27th February, 2019.



2.7.2. African Court Decision on Challenging Presidential Election Results

Background

On 15th July 2020, the African Court on Human and Peoples' Rights (the African Court) delivered its judgement in the case of Jebra Kambole v United Republic of Tanzania.²⁵⁹ The application was filed by Jebra Kambole, a Tanzanian national, in 2018. The applicant was contesting the provisions of Article 41(7) of the Constitution of the United Republic of Tanzania, 1977, maintaining that the provision bars any court from inquiring into the election of a presidential candidate after the Electoral Commission has declared a winner.

When a candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no court of law shall have any jurisdiction to inquire into the election of that candidate.

Article 41(7) of the Constitution of Tanzania

The Applicant alleged that article 41(7) of the Constitution violated his right to non-discrimination, his right to equal protection of the law and the right to have his cause heard, especially the right to appeal to competent national organs against acts violating his fundamental rights as provided for under Articles 2, 3(2) and 7(1)(a) of the African Charter on Human and Peoples' Rights (Banjul Charter), respectively. He also alleged that Tanzania had failed to honour its obligation to recognise the rights, duties and freedoms enshrined in the Banjul Charter²⁶⁰ and to take legislative and other measures to give effect to the Charter as stipulated under Article 1 of the Charter.

Merits of the Application

Has Article 2 of the Banjul Charter been Violated?

On the merits of the Application, the Court first considered whether Article 41(7) of the Tanzania Constitution violated the Applicant's right

²⁵⁹ See JUDGMENT SUMMARY, JEBRA KAMBOLE V. UNITED REPUBLIC OF TANZANIA, APPLICATION NO. 018/2018 JUDGMENT ON MERITS AND REPARATIONS, 15 JULY 2020 at https://en.african-court.org/images/Cases/Judgment/Application_018-2018_-Jebra_Kambole_v_Tanzania_-_Judgment_Summary.pdf, accessed 30 October 2020.

²⁶⁰ Ibid.



to non-discrimination under Article 2 of the Banjul Charter. The Court found that article 41(7) of the Constitution creates a differentiation between litigants in that while Tanzania's courts are permitted to look into any allegation by any litigant, they are not allowed to do so when a litigant seeks to inquire into the election of a president. The result is that those seeking to inquire into the election of a president are, practically, treated differently from other litigants, especially by being denied access to judicial remedies, while litigants with other claims are not similarly barred.

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 2 of Banjul Charter

The Court held that in the absence of clear justification as to how the differentiation and distinction in article 41(7) is necessary and reasonable in a democratic society, Article 41(7) of the Constitution effects a distinction between litigants and that this distinction has no justification under the Banjul Charter. The Court held that this amounted to a violation of Article 2 of the Charter²⁶¹.

Has Article 3(2) of the Banjul Charter been Violated?

The Court noted that the principle of equal protection of the law does not necessarily require equal treatment in all instances and can permit differentiated treatment of individuals who are differently placed. In the circumstances of the present case, the Court found that the Applicant was guaranteed the same range of rights as any other citizen within the Respondent State.

²⁶¹ Ibid.



Every individual shall be entitled to equal protection of the law.

Article 3(2) of Banjul Charter

The Court thus held that Tanzania had not violated Article 3(2) of the Banjul Charter.²⁶²

Has Article 7(1)(a) of the Banjul Charter been Violated?

The Court noted that among the key elements of the right to a fair hearing, as guaranteed under Article 7 of the Banjul Charter, is the right of access to a court for adjudication of one's grievances and the right to appeal against any decision rendered in the process. As against this, the Court noted that article 41(7) of the Constitution ousts the jurisdiction of courts to consider any complaint in relation to the election of a presidential candidate after the Electoral Commission has declared a winner.

Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

Article 7(1) of Banjul Charter

This entails that irrespective of the nature of the grievance or the merits thereof, as long as the same pertains to the declaration by the Electoral Commission of the winner of a presidential election, no remedy by way of a judicial challenge exists to any aggrieved person within the Respondent State. The Court also noted that there was nothing in the submissions of the Respondent State which established any of the conditions in Article 27(2) of the Banjul Charter to justify a limitation of the right to have one's cause heard. In the circumstances, the Court held that article 41(7) of the Constitution violated the

²⁶² Ibid.



Applicant's rights under Article 7(1)(a) of the Banjul Charter²⁶³. The Court having found that the Respondent State had violated Articles 2 and 7(1) (a) of the Charter also found, that the Respondent State had also violated Article 1 of the Charter.

Verdict

Article 41(7) of the Constitution of the United Republic of Tanzania, 1977 violates Articles 2 and 7(1) (a) of the Banjul Charter, but does not violate

Reparations and Orders

The Court noted that the only prayer for reparations the Applicant required was the adoption of constitutional and legislative measures to remedy the violations. Against the background of the violations found, the Court ordered Tanzania to take all necessary constitutional and legislative measures, within a reasonable time, to ensure that article 41(7) of its Constitution is amended and aligned with the provisions of the Banjul Charter to eliminate, among others, any violation of Articles 2 and 7(1) (a) of the Charter. The Court also directed Tanzania to submit a report within twelve (12) months of the judgment, on the measures taken to implement the terms of the judgment and to submit further reports every six (6) months thereafter until the Court is satisfied that there has been full implementation.

In the present case, the Court has found that the Respondent State has violated Articles 2 and 7(1)(a) of the Charter. Resultantly, the Court holds that the Respondent State has also violated Article 1 of the Charter.

Para 108 of the Court's Judgement, July 2020

Further, the Court ordered Tanzania to publish the Judgment within a period of three (3) months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one (1) year after the date of publication.²⁶⁴

²⁶³ Ibid.

²⁶⁴ See full judgement of the Court at <https://en.african-court.org/images/Cases/Judgment/App1%20018%20-%202018%20-%20Jebra%20Kambole%20-%20Judgment.pdf>, accessed 30 October 2020.



2.7.3. Right to Vote and Stand for Election: Key Human Rights Issues in the Tanzania General Elections 2020

The right to vote and be elected in genuine, periodic elections is intrinsically linked to a number of other human rights, the enjoyment of which is crucial to a meaningful electoral process. These prerequisite rights include the right to freedom from discrimination, the right to freedom of opinion and expression, the right to freedom of association and of peaceful assembly, and the right to freedom of movement.

UN Office of the High Commissioner for Human Rights

2.7.3.1. Legal Framework

The legal framework for the elections in Tanzania Mainland are:²⁶⁵

- The Constitution of the United Republic of Tanzania of 1977
- The Local Government (District Authorities) Act, Cap 287 RE 2002
- The Local Government (Urban Authorities) Act, Cap 288 RE 2002
- The Political Parties Act, Cap 258 RE 2015
- The National Elections Act, CAP 343 RE 2015
- The Local Government (Elections) Act, Cap 292 RE 2015
- The Election Expenses Act, CAP 278 RE 2015
- The National Elections (Election Petitions) Rules 2010 (GN No. 447 of 2010)
- The National Elections (Election Petitions) Amendment Rules, 2012 (GN No. 106 of 2012)
- The Local Authorities (Election Petitions) Rules, 2010 (GN No. 448 of 2010)
- The National Elections (Presidential and Parliamentary Elections) Regulations, 2015 (GN No. 307 of 2015)
- The Local authorities (Councilors' Elections) Regulations, 2015 (GN No. 306 of 2015)
- The Election Expenses Regulations, 2010 (GN No. 246 of 2010)
- Ethics for Election of President, Members of Parliament and Councilors, 2015 (GN No. 294 of 2015)

²⁶⁵ See COMPENDIUM OF ELECTORAL LAWS AND REGULATIONS OF TANZANIA, Prepared by the Judiciary of Tanzania with Support from the United Nations Development Programme (UNDP) November, 2016, at <https://www.undp.org/content/dam/tanzania/docs/Success%20Stories/Good%20Governance/Compendium%20of%20Electoral%20Laws%20and%20Regulations%20Tanzania%202016.docx.pdf>, accessed 5th March 2020.



2.7.3.2. International and Regional Standards for Elections

At international level, major standards for elections include:²⁶⁶

- The International Covenant on Civil and Political Rights (ICCPR) of 1966
- General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) of 1996
- International Convention on the Elimination of Racial Discrimination (ICERD) of 1966
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979
- General Recommendation 23 on Political and Public Life of 1977
- Convention on the Political Rights of Women (CPRW) of 1952
- Convention on the Rights of Persons with Disabilities (CRPD) of 2006
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981
- Declaration on the Rights of Persons Belong to National or Ethnic, Religious and Linguistic Minorities of 1992
- Declaration on the Elimination of Discrimination against Women of 1967
- Declaration on the Rights of Disabled Persons of 1975
- Declaration on the Elimination of Racial Discrimination of 1966
- Vienna Declaration of Programme of Act of 1993
- General Assembly Resolution A/RES/46/137 of 1991 (Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections)
- General Assembly Resolution A/RES/55/96 of 2001 (Promoting and Consolidating Democracy)

At regional level, major standards for elections include:

- The African Charter on Human and Peoples Rights (ACHPR) of 1981
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003
- African Charter on Democracy, Elections and Governance of 2007²⁶⁷
- The NEPAD Declaration on Democracy, Political, Economic and Corporate Governance signed by Heads of State and Government of the Members States of the African Union of 2002
- AU Declaration on the Principles Governing Democratic Elections in Africa of 2002

²⁶⁶ See Compendium of International Standards for Elections, at <https://www.ec-undp-electoralassistance.org/wp-content/uploads/2018/08/undp-contents-publications-compendium-of-int-standards-for-elections-English.pdf>, accessed 5th March 2020.

²⁶⁷ Yet to be ratified by Tanzania.



2.7.3.3. Build-up to the Elections: Complaints of Unfair Disqualification of Political Aspirants

On 28th October 2020 Tanzania conducted its periodical General Election. The build up to the 2020 General Elections was characterized by complaints of unfair disqualification of political aspirants by returning officers, concerns over the Political Parties Act (Amendment) Act 2019, concerns over voter turn-out, voter education, and questions on the independence of electoral body, the National Electoral Commission (NEC).

Regarding disqualification of political aspirants, there were widespread complaints by opposition parties that their political aspirants had been unfairly disqualified by returning officers. For instance, CHADEMA political party reported in September 2020 that it had sent 49 appeals for parliamentary positions and more than 600 appeals for unfair disqualification of councillorship aspirants to NEC.²⁶⁸ Two other political parties, ACT-Wazalendo and the Civic United Front (CUF) also raised similar complaints and appealed to NEC.²⁶⁹ In mid-September 2020, NEC revealed that by 17th September 2020, it had received a total of 616 appeals, of which 160 were from aspirants of parliamentary seats, and 456 were from councillorship aspirants.²⁷⁰ The electoral body noted that it reinstated 66 parliamentary candidates out of 160 appeals.²⁷¹ LHRC was able to document complaints of 52 political aspirants, majority of which were unfair disqualification by returning officers.

268 LHRC Media Survey and Human Rights Monitoring, 2020.

269 Ibid.

270 See Tume ya Taifa ya Uchaguzi "Tume yafanya uamuzi wa rufaa 616 zilizowasilishwa na wagombea ubunge na udiwani" September 18, 2020 at <https://www.nec.go.tz/news/tume-yafanya-uamuzi-wa-rufaa-616-zilizowasilishwa-na-wagombea-ubunge-na-udiwani>, accessed 2 November 2020.

271 Ibid.



Table 10: Reported complaints of unfair disqualification and intimidation of political aspirants documented by LHRC in 2020

Incident	Report Date
<p>Tabora: 22 political aspirants of the ruling party, CCM, in Nzega West Ward in Nzega District lodged a complaint to the PCCB in the district against the winner of opinion poll for the position of councilorship in the ward. PCCB investigation found that the winner had indeed bribed nomination committee members and informed the District party chairperson for further action.</p>	August 2020
<p>Lindi: In August 2020, 40-year-old Said Ally, resident of Buguruni Village in Ruangwa District and member of ACT-Wazalendo political party, was beaten by unknown assailants who wore masks, threatening him not to run for a parliamentary seat.</p>	August 2020
<p>Tabora: In August 2020, Awilo Kababa, resident of Maporomoko Village in Nzega District and member of CHADEMA political party, reported that he had been intimidated and harassed by unknown people on 14th August 2020 because of his decision to run for the parliamentary seat of Nzega Constituency. LHRC advised him to report the matter at Nzega Police Station.</p>	August 2020
<p>Lindi: 30-year-old Joachim Ng'ombo, resident of Buguruni Village in Ruangwa District and member of ACT-Wazalendo political party, was reportedly abducted by unknown people on 18th September 2020, who warned him against running for the parliamentary seat before dumping him at a nearby village.</p>	August 2020
<p>Katavi: Jorvin Iwiche (33), resident of Kilimani Village in Mpanda District and member of CHADEMA political party was reportedly unfairly denied his nomination after he had a family emergency.</p>	August 2020
<p>Morogoro: In August 2020, 28-year-old resident of Mlimba Village and a councillorship aspirant (CHADEMA), was reportedly abducted on 24th August 2020 by unknown people. The matter was reported to Mlimba Police Station.</p>	August 2020
<p>Songwe: 38-year-old Mkisi Elias Fanuel, resident of Vwawa Village in Mbozi District and an MP political aspirant (CHADEMA) was reportedly attacked by unknown people when he was returning his nomination forms. The perpetrators reportedly tried take from him his forms which were in the envelope but ended up taking other envelopes.</p>	August 2020





Incident	Report Date
Lindi: Ally Kinjwamu, aged 44 years, who is a CHADEMA member and resident of Buguruni Village in Ruangwa District, reported that he was threatened by unknown men at his house on 17 th August 2020. He attributed his attack to the elections and claimed that the perpetrators broke into his house and attacked his child.	August 2020
Morogoro: 38-year-old woman called Devotha Minja, a political aspirant of CHADEMA running for a parliamentary seat, was reportedly denied an opportunity to return her nomination form on 25 th August 2020, and when the returning officer eventually received she was disqualified for irregularities.	August 2020
Lindi: A woman called Fatuma Machalila, aged 42 years, who is a member of UPDP political party complained that she was unfairly disqualified by a returning officer during the nomination process for MPs.	August 2020
Tabora: 30-year-old Abdallah Hamad Abdallah, resident of Itobo Village in Nzega District and a councillorship aspirant, complained that he was unfairly disqualified by a returning officer during the nomination process without being given reasons for disqualification.	August 2020
Songwe: In August 2020, it was reported that youth members of the ruling party, CCM, and CHADEMA opposition party clashed in Majengo Ward in Songwe District, leading to a death of a CCM youth member, 19-year-old Brighton Molele on 25 th August 2020.	August 2020
Katavi: 30-year-old Steen Martus, resident of Kavuu Village in Mlele District and parliamentary seat aspirant for CHADEMA, was reportedly abducted by unknown people on 25 th August 2020 and detained for four hours so that he could not meet the deadline for returning his nomination form.	August 2020
Katavi: 42-year-old Fredrick Anthony, resident of Kanoge Village in Mlele District and a councillorship aspirant, complained about deliberate efforts by a returning officer to disqualify him by misspelling his name.	August 2020
Mwanza: 45-year-old Jonathan Mgeta, resident of Bukiko Ward in Ukerewe District and a councillorship aspirant (CHADEMA), and two other parliamentary aspirants complained that a returning officer had deliberately closed office when they had reported to submit their nomination forms.	August 2020



Incident	Report Date
<p>Mwanza: 32-year-old Edward Kasoga, resident of Nyamanga Village and a councillorship aspirant (ACT-Wazalendo), reported that he was unfairly disqualified by a returning officer, who closed the office early so that he and other opposition aspirants would not be able to submit their forms. He claimed that the returning officer had closed the office by 8:00am and travelled to Nansio Ward.</p>	August 2020
<p>Morogoro: 57-year-old Suzana Kiwanga, resident of Mlimba Village in Kilombero District and a parliamentary seat aspirant (CHADEMA), complained that she had been unfairly disqualified by a returning officer, who claimed she had not attached payment receipt. But the aspirant claimed she had indeed attached the receipt.</p>	August 2020
<p>Lindi: 42-year-old Shaibu Mnyake, resident of Kinyonga Village in Kilwa District and a councillorship aspirant (CCM), reported that he had been unfairly treated by the CCM secretary in the district, who influenced nomination committee members to nominate another person instead of him.</p>	August 2020
<p>Mara: Ester Marko, resident of Tarime District and a political aspirant (CHADEMA), complained that she had been denied Form No. 12 by a returning officer, which would enable her to appeal against the returning officer's decision.</p>	August 2020
<p>Katavi: Rashid Makona (49), resident of Mpanda District and a ward executive officer (WEO) was attacked by a man identified as Justine Joh (42), a ward councillorship aspirant, was reportedly dissatisfied with the nomination process.</p>	August 2020
<p>Mwanza: Nyabukondo M. Magayane and three other political aspirants from opposition parties in Ukerewe District, complained that they had been unfairly disqualified by the returning officer.</p>	August 2020
<p>Arusha: John Parmwat (43), resident of Olosokwan Village in Arusha and a councillorship aspirant (CCM), together with a ruling party secretary who is a member of the Village Council, were accused of engaging in corruption during the nomination process by Molemt Sangui. The matter reported to the police and perpetrators released on bail.</p>	August 2020
<p>Morogoro: Remig Mandinga (36), resident of Ifakara Village in Kilombero District and a ward councillorship aspirant (CHADEMA), reported that he had been unfairly disqualified by a returning officer without being given any justifiable reasons.</p>	September 2020





Incident	Report Date
Morogoro: Erik Pulita (41), resident of Viwanja 60 Ward in Kilombero District and a councillorship aspirant (CHADEMA), reported that he was unfairly disqualified by the returning officer after initially accepting his form for allegedly 'not properly filing the form.' He appealed against the decision.	September 2020
Morogoro: Damka Raphael Oswald (43), resident of Mbasaa Village in Kilombero District and a councillorship aspirant (CHADEMA), reported that he was unfairly disqualified by the returning officer after initially accepting his form and without being given any reasons for disqualification. He appealed against the returning officer's decision.	September 2020
Morogoro: Azizi Likumi (36), resident of Bomani Village in Kilombero District and a councillorship aspirant (CHADEMA), was reportedly unfairly disqualified by a returning officer without being given any reasons for disqualification. He successfully appealed against the decision.	Sept 2020
Morogoro: Hassan Legu (36), resident of Mrabani Village in Kilombero District and a councillorship aspirant (CHADEMA), reported that she was unfairly disqualified by the returning officer after initially accepting his form and without being given any reasons for disqualification.	Sept 2020
Arusha: Juma Ismail (36), resident of Monduli West in Monduli District and a councillorship aspirant (CHADEMA), complained that he was unfairly disqualified by the returning officer, who allegedly added another zero to the year 2020 in his form to disqualify him. He appealed against the decision to NEC.	September 2020
Mwanza: Anatori D. Mboga (43), resident of Nduruma Ward in Ukerewe District and a councillorship aspirant, reported that he was unfairly disqualified by the returning officer, and decided to appeal against the decision.	September 2020
Mwanza: Charles M. Papaa (45), resident of Ngoma Ward in Ukerewe District and a councillorship aspirant (ACT-Wazalendo), reported that he rejected a bribe from a returning officer to step down from seeking the councillorship (via a text message). He was eventually disqualified when he submitted his form and appealed against the decision.	September 2020
Morogoro: Hatibu Mfinanga (45), resident of Kiberege Ward in Kilombero District and a councillorship aspirant (CHADEMA), lamented unfair disqualification by a returning officer by tricking him to sign a false registration book so that it appears the form was never returned.	September 2020



Incident	Report Date
Dar es Salaam: CUF's presidential candidate, Prof. Ibrahim Lipumba, said that his party had received reports of candidates being threatened, dubiously disqualified, and robbed of their nomination forms by unknown individuals.	August 2020

Source: LHRC Human Rights Monitoring 2020

On the issue of the Political Parties Act, the main concern was the recent amendments made in January 2019, which were faulted by stakeholders within and outside Tanzania for failing to conform to international standards on freedom of association. Major concerns with the amendments of the Political Parties Act are: lack of clarity in some provisions, which leaves loopholes for abuse of powers and creation of fear; sweeping discretionary powers granted to the Registrar of political parties, which seriously affect autonomy of political parties; criminalisation or regulation of legitimate political activities and expressions; severe penalties for breaching the law, which are not proportional to the administrative offences; civic education; coalition of political parties; and limited checks and balances on the work of the Registrar.²⁷² Restrictions imposed on freedom of association of political parties do not meet the three-part test under the ICCPR of 1966. Other key standards that have not been met include those of the African Charter on Human and Peoples' Rights of 1981 and the Guidelines on Freedom of Association and Assembly in Africa, published by African Commission on Human and Peoples' Rights on 10th November 2017.

Regarding the independence of NEC, there have been repeated calls from stakeholders in recent years to make the body more independent.²⁷³ These calls echo calls made in the past by prominent figures such as Justice Francis Nyalali in 1991; Justice Robert Kisanga in 1999; Justice Joseph Warioba and his team (the Constitution Review

272 See LHRC, Analysis of the Political Parties (Amendment) Act 2018 at <https://www.humanrights.or.tz/posts/b/news/analysis-of-the-political-parties-amendment-act-2018>, accessed 6th March 2020; Analysis of the Political Parties (Amendment) Act, 2018 by Twaweza East Africa, Legal and Human Rights Centre (LHRC), Tanganyika Law Society (TLS), Media Council of Tanzania (MCT), Waandishi wa Habari za Maendeleo Zanzibar (WAHAMAZA) and Centre for Strategic Litigation, Submitted to the Parliamentary Committee on Legal and Constitutional Affairs on January 17 2019 at <https://www.humanrights.or.tz/assets/images/upload/files/JointAnalysis%2BPreamble-FINAL17012019.pdf>, accessed 6th March 2020; See also JOINT SUBMISSION OF POLITICAL PARTIES (AMENDMENT) BILL 2019 TO THE PARLIAMENTARY COMMITTEE, BROUGHT JOINTLY BY TANLAP AND 13

OTHER CSOS at <https://www.tanlap.or.tz/sites/default/files/POLITICAL%20PARTIES%20%28AMENDMENT%29%20BILL%20ANALYSIS-%20TANLAP.pdf>, accessed 6th March 2020.

273 Elias Msuya "NEC independence queried" The Citizen Newspaper (online), 24 March 2020 at <https://www.thecitizen.co.tz/news/NEC-independence-queried/-1840340-5502584-13ds22w/index.html>, accessed 2 November 2020.



Commission) in the first and second Draft Constitutions in 2013 and 2014; and more recently by the third President, the late Hon. Benjamin Mkapa.²⁷⁴ Concerns regarding the electoral body members being presidential appointees,²⁷⁵ and structure of the body.²⁷⁶ In the build up to the General Elections, opposition parties showed little faith in the NEC. For instance, ACT-Wazalendo proposed that to be independent, the body's Chairperson and Director of Elections should not just be appointed by the President, but also confirmed by another body, and District Executive Directors (DEDs)/Municipal Directors/City Directors should not be returning officers.²⁷⁷

2.7.3.4. Gender Aspects and Issues

None of the political parties which participated in the general elections had clear guidelines for gender consideration or inclusion to enable effective participation of women in the elections or safeguard their right to stand in election. Affirmative action was therefore not effectively taken, which explains the small percentage of female candidates in the general elections. Overall, only 9% of candidates nominated by political parties in all positions (presidential, parliamentary and councillorship) were women.²⁷⁸ Only 23.3% of parliamentary seat candidates were female, while at councillorship level, only 7% of the candidates were female. Few women also hold leadership positions within political parties. The small percentage of female candidates in the general elections could also be explained by widespread disqualification of candidates, particularly from opposition parties.

Another key gender issue which was reported during the general elections was violence against women in politics/female political aspirants (including online violence), which mainly materialized in the form of abusive words and statements.²⁷⁹ There were reports of male candidates labelling and calling female candidates names and using sexist rhetoric to belittle them. For instance, in Mara Region, a campaign manager labelled a female candidate a 'prostitute' while appealing

274 See Nora Damian "Madai tume huru ya uchaguzi yanavyopata msukumo mpya" Mtanzania Digital, 5 April 2020 at <https://mtanzania.co.tz/madai-tume-huru-ya-uchaguzi-yanavyopata-msukumo-mpya/>, accessed 2 November 2020; Gaudensia Mngumi "Tume Huru ya Uchaguzi, Sasa imetimia miaka 28 kullilia mabadiliko" Nipashe Newspaper (online), 25 March 2020 at <https://www.ippmedia.com/sw/makala/tume-huru-ya-uchaguzi-sasa-imetimia-miaka-28-kullilia-mabadiliko>, accessed 2 November 2020.

275 See Article 74(1) of the Constitution of the United Republic of Tanzania, 1977.

276 Nora Damian "Madai tume huru ya uchaguzi yanavyopata msukumo mpya" Mtanzania Digital, 5 April 2020.

277 Ibid.

278 See Victoria Lihiru, *Chronicles of Women Participation in the 2020 General Elections in Tanzania*, 3 December 2020 at <http://www.udadisi.org/2020/12/chronicles-of-women-participation-in.html?m=1>, accessed on 2nd January 2021.

279 LHRC Media Survey 2020; LHRC Human Rights Monitoring 2020.



for people to vote for a male candidate.²⁸⁰ In Rukwa Region, a CCM parliamentary candidate reportedly urged people during a political rally not to vote for a female candidate because ‘she would not be able to represent them while on her period.’²⁸¹

Female candidates from opposition candidates suffered more violence than those from the ruling party, and there was no concrete action to address this form of violence against female candidates on the part of NEC, despite the Electoral Code of Conduct 2020 prohibiting use of abusive language, scandalous, harassment, threat or language enticing violence or discrimination on basis of gender, disability, color or body structure in the election campaigns.²⁸²

But violence against women during elections is not a new phenomenon. According to the study conducted by Tanzania Women Cross-Party Platform in the aftermath of the 2015 Tanzania General Elections, violence against women during the 2015 general elections occurred in psychological, physical and sexual forms, whereby the dominant form was psychological violence.²⁸³ According to the study report, 69% of women candidates reported that they had experienced abusive language during campaigns, which included verbal harassment, insults, and being booed while on the stage.²⁸⁴ It was also reported that “some women political aspirants and candidates were subjected to sexual demands from party leaders and campaign managers, which tended to demoralise them and hinder effective participation in the electoral process.”²⁸⁵

In the media, male candidates also enjoyed more coverage and positive coverage during the 2020 general elections, hence lack of equal coverage between male and female political aspirants. This negatively affected the visibility of female candidates. There were also instances where the media did not use gender-sensitive language in their coverage of female political candidates. For instance, one print media outlet used the word “Majike” to describe women who had been nominated to vie for different leadership positions for the ruling party - CCM. The word is an offensive word for women.

280 Victoria Lihuru, *Chronicles of Women Participation in the 2020 General Elections in Tanzania*, 3 December 2020.

281 *Ibid.*

282 Electoral Code of Conduct for the Presidential, Parliamentary and Councillors' Elections 2020, R. 2.2 (b)

283 See TANZANIA WOMEN CROSS-PARTY PLATFORM, *VIOLENCE AGAINST WOMEN IN ELECTIONS: VAWE EVIDENCE FROM 2015 TANZANIA GENERAL ELECTIONS*, at http://mlkrook.org/pdf/TWCP_VAWE.pdf, accessed 29th December 2020.

284 *Ibid.*

285 *Ibid.*





Picture 3: A newspaper heading containing words “Majike” instead of the appropriate word “Wanawake”

LHRC’s View: A new, people-centred constitution that will guarantee 50/50 equal representation between men and women in Parliament is the answer to ensuring political parties nominate more women to contest during elections. Merely requiring political parties to make gender consideration during nominations, will never be effective as it all depends on the discretion of political party leaderships.

LHRC’s Call: NEC and other authorities, including PCCB, to address violence against women in elections, including abusive language, sexist rhetoric, and sexual corruption in order to ensure effective participation of women and safeguarding of their right to stand for election.

2.7.3.5. Voter Turnout and Apathy

Percentage of registered voters who turned up to vote declined from 67.34% during the General Elections of 2015 to 50.7% during the General Elections of 2020. This means nearly half of the registered voters did not vote as only 14,662,246 people (49.27%) out of 29,754,696 registered voters voted.²⁸⁶ In the past five elections, the highest turnout was during the 2000 General Elections, at 84.4%.²⁸⁷ Political commentators and human rights stakeholders indicated that the lower voter turnout is indicative of voter apathy, with lack of faith in the electoral system a contributing factor.²⁸⁸ Other reasons included lack of knowledge about

²⁸⁶ LHRC Media Survey 2020.

²⁸⁷ Ibid.

²⁸⁸ Ibid.



the importance of elections and some voters being far from their polling stations on election day.

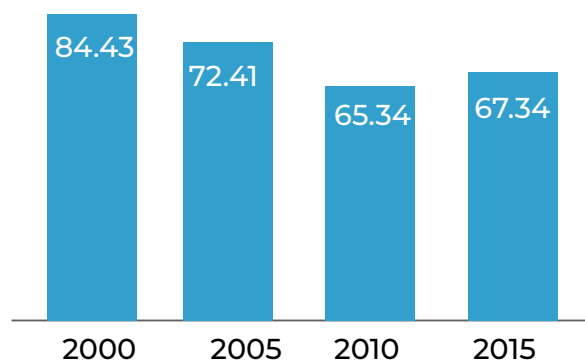


Figure 10: %Voter turnout during general elections of 2000,2005,2010,2015 & 2020

2.7.3.6. Inclusion of Persons with Disabilities at Party Level

The National Elections Act (1985) in Tanzania does not explicitly provide for the inclusion or representation of persons with disabilities in election. The Political Parties (Amendment) Act, 2019, while providing for the inclusion of PWDs, falls short of prescribing the measures to be taken by respective parties in ensuring the participation of PWDs in elective office. As such, this is left to the discretion of individual political parties. During the 2020 General Elections, of all the political parties, it is only the ruling party CCM that explicitly provided for the inclusion of PWDs among its women special seat MPs. At least one seat is reserved for PWDs, in line with the ruling party's election guidelines. Other political parties did not make for such provision. Subsequently, in 2020, it is only CCM that successfully nominated women special seat MPs from among PWDs.

2.7.3.7. Media Coverage

Through media survey, LHRC found that the media, including social media played a big role in covering the elections before, during and after the election day, assisting with communication between different parties, such as the Government, political parties and members of the public. However, existence of restrictive media laws, which has created a culture of fear and self-censorship, meant reduced ability to cover political issues and rights freely. This might have affected media reporting of the 2020 General Elections.



2.7.3.8. Election Observation: Key stakeholders missing in election observation for the first time since 1995

The right to take part in governance, also known as the right to take part in the conduct of public affairs, includes the right to vote and to stand for election, and is essential in a democratic society. Genuine elections play a fundamental role in creating an environment for protection and promotion of human rights.²⁸⁹ Such elections ensure meaningful electoral process²⁹⁰ and underline the need to election observation, which plays a vital role in ensuring elections are genuine, by providing accurate and impartial assessment of electoral processes.²⁹¹ Election observers help to deter or expose electoral irregularities and fraud and in the process improve electoral integrity. They are “an important contributory factor to ensuring the regularity, transparency and credibility of elections,”²⁹² hence it is desirable for States to “create a conducive environment for independent and impartial national monitoring or observation mechanisms.”²⁹³ According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the right to freedom of association entails the freedom of associations to, among other things, to monitor and observe electoral processes.²⁹⁴

During the Tanzania General Elections of 2020, key stakeholders and associations which have traditionally observed elections, including LHRC, were not given accreditation, hence could not observe the elections despite having the resources to do so. Consequently, there was lack of adequate observation, which dented the credibility of the elections, as opposition political parties cried foul play before and during the elections. It was therefore not easy to deter or expose possible electoral irregularities and fraud.

2.7.3.9. Corruption and other Complaints of Human Rights Violations

In 2020, LHRC documented four incidents involving 24 political aspirants implicated in corruption to secure nominations or influence

289 See Office of the United Nations High Commissioner for Human Rights “Human rights and elections” at <https://www.ohchr.org/EN/Issues/Pages/HRElections.aspx>, accessed 2 November 2020; Office of the United Nations High Commissioner for Human Rights & The Carter Center, Human Rights and Election Standards: A Plan of Action, December 2017 at https://www.ohchr.org/Documents/Issues/Democracy/Elections/POA_EN.pdf, accessed 2 November 2020.

290 Ibid.

291 See Declaration of Principles for International Election Observation at <https://aceproject.org/electoral-advice/dop/the-declaration-of-principles>, accessed 2 November 2020.

292 See The African Charter on Democracy, Elections and Governance at <http://archive.ipu.org/idd-E/afrc-charter.pdf>, accessed 2 November 2020.

293 Ibid, Article 22.

294 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/68/299, Sixty-eighth session, 7 August 2013 at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/423/09/PDF/N1342309.pdf?OpenElement>, accessed 2 November 2020.



votes, including at party level. These incidents were reported in Pwani, Mtwara, Arusha, and Kigoma Regions.

Table 9: Reported incidents of political aspirants implicated in corruption documented by LHRC, Jan – Dec 2020

Incident	Report Date
Pwani: In June 2020, PCCB in Pwani Region arrested Salum Mkemi, resident of Dar es Salaam on accusations of engaging in corruption in the region to win support of CCM election members.	19 Jun 2020
Mtwara: In June 2020, PCCB reported that it had arrested 18 CCM members for engaging in corruption.	8 Jul 2020
Arusha: PCCB in Arusha Region reported that it was holding four members of the ruling party CCM's parent wing for allegedly giving bribe in order to be nominated as MP candidates in the forthcoming October general elections. The arrested members include Sifael Pallangyo and Laraposhu Laizer.	1 Jul 2020
Kigoma: PCCB in Kigoma Region reported that it had arrested the former MP of Buhingwe Constituency, Albert Ntabaliba, for bribing CCM election members a total of Tshs. 2.2 million so as to influence their votes in his favour. The incident occurred on 1 st July 2020.	10 Jul 2020

Source: LHRC Human Rights Monitoring 2020

Other complaints were made by political parties during campaigns, including unfair suspension from conducting campaigns for allegedly violating electoral laws.²⁹⁵ Most of these complaints came from the opposition parties, especially the CHADEMA political party. For instance, the CHADEMA parliamentary candidate for Kawe Constituency located in Dar es Salaam complained about being slammed with a seven-day suspension from campaigning for allegedly violating electoral laws on 11th October 2020. On 17th October 2020,²⁹⁶ NEC announced that it had suspended NCCR-Mageuzi parliamentary candidate for Vunjo Constituency James Mbatia from campaigning for seven days for allegedly using a prospectus which had not been approved by the election supervisor in the constituency.²⁹⁷

²⁹⁵ LHRC Media Survey 2020.

²⁹⁶ Ibid.

²⁹⁷ NEC suspends NCCR's Mbatia from campaigns for 7 days,' The Citizen Newspaper [Online], <https://www.thecitizen.co.tz/news/NEC-suspends-NCCR-s-Mbatia-from-campaigns-for-7-days/1840340-5632696-196yiyz/index.html>



The opposition parties generally indicated that they were aggrieved by the Electoral Code of Conduct. They also complained about denial of entry of their polling agents into polling stations; attack, arrest, and attempted abductions of their political aspirants; arbitrary detention; and violation of the right to privacy.

In some parts of Tanzania Mainland there were also some reported incidents of electoral violence, some of which escalated to murder. For instance, on 26th September 2020, it was reported that unidentified people had attacked and killed a CCM Youth Wing (UVCCM) member in the Southern Highlands, Emmanuel Mlelwa.²⁹⁸

On 30th October 2020, it was reported that unknown people had killed five people, including an election returning officer, in Tandahimba District, Mtwara Region.²⁹⁹

2.7.3.10. General Election Results

On 28th October 2020, NEC declared Dr. John Pombe Magufuli, presidential candidate of the ruling party (CCM), the winner of the election after scooping 12,516,252 out of 14,830,195.³⁰⁰ He had won ahead of 14 other presidential candidates. CHADEMA's Tundu Lissu came in second with 1,933,271 votes, while ACT-Wazalendo's Bernard Membe was third with 81,129 votes.³⁰¹ According to NEC, 15,091,950 out of 29,754,699 voted in the 2020 General Elections³⁰². The 15 political parties that were represented during the presidential elections were CCM, CHADEMA, ACT-Wazalendo, NRA, CUF, ADA TADEA, CHAUMA, NCCR-Mageuzi, SAU, Demokrasia Makini, DP, ADC, UPDP, AAFP, and UMD.³⁰³

298 LHRC Media Survey 2020.

299 Ibid.

300 See Tume ya Taifa ya Uchaguzi "Tume yamtangaza Dkt. Magufuli kuchaguliwa kuwa Rais wa Jamhuri ya Muungano wa Tanzania Oktoba 28, 2020" 31 October 2020 at <https://www.nec.go.tz/news/commission-announces-dkt-magufuli-elected-to-be-the-president-of-united-republic-of-tanzania-on-28th-october-2020>, accessed 2 November 2020.

301 Ibid.

302 Ibid.

303 Ibid.



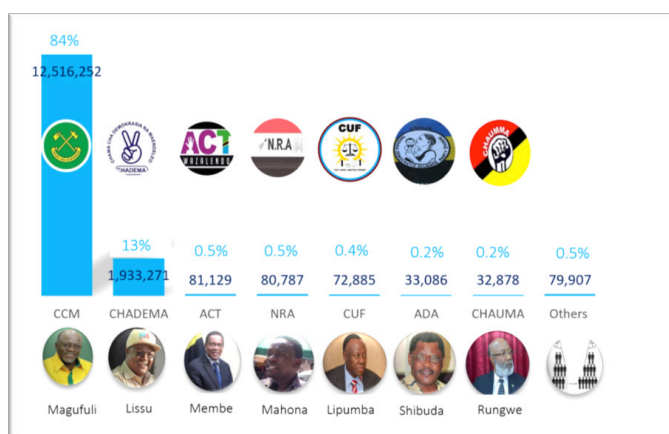


Figure 11: Presidential election results 2020 - Tanzania

Announcement of the election results was met with criticism from the main opposition parties, including CHADEMA and ACT-Wazalendo, who cried foul play. They cited several irregularities, as highlighted above, including unfair disqualification of candidates and denial of entry polling agents into polling stations. However, there were no reports of violence in the aftermath of elections.

2.7.3.11. Representation of Women in Parliament

SDG 5 of the UN Sustainable Development Goals seeks to achieve gender equality and empower all women and girls. In order to achieve gender equality, women must be represented fairly. The target is to ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.³⁰⁴ There are two indicators for this target, the first being the proportion of seats held by women in national parliaments and local governments. The second indicator is the proportion of women in managerial positions.

A legislative quota system, which requires 30% of all MPs to be women has played a big role in increasing the number of women MPs.

³⁰⁴ See SDG 5 at <https://sdgs.un.org/goals/goal5>, accessed 3 November 2020.



Despite the improvements made, achieving full gender equality remains a challenge in different parts of the world, including Tanzania. In the case of seats held by women in the Parliament of Tanzania, the number of women MPs have increased from 127 in 2015 to 143 in 2019.³⁰⁵ The number of elected women MPs increased from 21 in 2015 to 26 in 2019.³⁰⁶ However, in terms of proportion between male and female MPs, the number of women MPs is not adequate and remains far below that of men, considering also that the number of constituencies has been increasing. For instance, in July 2015, the National Electoral Commission (NEC) announced creation of 26 new electoral constituencies.³⁰⁷

Women make 51% of the Tanzania population and more than half of registered voters. For the 2020 GE, 50.33% of the voters registered were women.

During the General Elections of 2020, out of the 264 parliamentary seats, women candidates only scooped less than 10% as elected MPs. Out of 1,257 political aspirants who were nominated by their political parties to contest parliamentary seats, only 278 (22%) were women. A total of 113 were appointed into the parliament through special seats, making a total of 131 women MPs of 393 MPs.

305 See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.

306 Ibid.

307 See African Union, AFRICAN UNION ELECTION OBSERVATION MISSION TO THE 25 OCTOBER 2015 GENERAL ELECTIONS IN THE UNITED REPUBLIC OF TANZANIA, Final Report, December 2015 at <https://www.refworld.org/pdfid/5836cccc4.pdf>, accessed 20th December 2020; "NEC yatangaza majimbo mapya 26 ya uchaguzi" EATV [Online], 13 July 2015 at <https://www.eatv.tv/news/current-affairs/nec-yatangaza-majimbo-mapya-26-ya-uchaguzi>, accessed 20th December 2020.



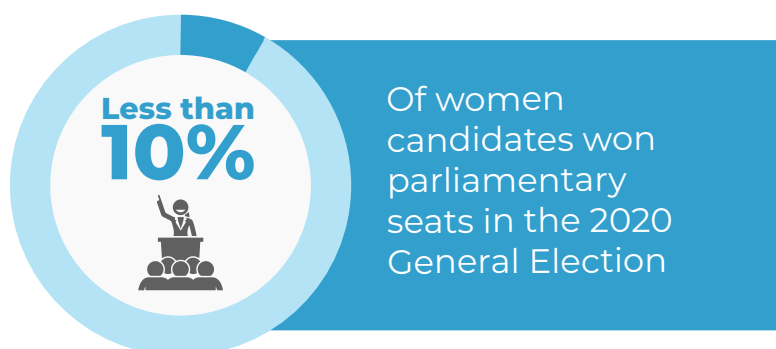


Figure 13: %Women who won parliamentary seats during the 2020 GE

LHRC's View: The fact that less than 10% of women occupy constituencies as elected MPs is a worrying sign, considering Tanzania's international commitments, including the under the SDGs and Maputo Protocol. Article 9 of the Maputo Protocol provides for the right to participation in the political and decision-making process. It requires States Parties, including Tanzania, to take specific positive action to promote participative governance and equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that women participate without any discrimination in all elections³⁰⁸ and that they are represented equally with at all levels with men in all electoral processes.³⁰⁹ It also requires States Parties to ensure increased and effective representation and participation of women at all levels of decision-making.³¹⁰ Tanzania must do more to increase female representation in decision-making. The Second Draft Constitution, made by the Constitution Review Commission in 2013, proposed a 50-50 representation in Parliament, and had it become the new Constitution, Tanzania would have made significant progress in achieving SDG 5, which is also the focus of the Tanzania Development Vision 2025.

LHRC's Call: Political parties must have an affirmative action plan to ensure at least 30% of all candidates in constituencies are women. They should also take steps to effectively support female candidates during campaigns. More importantly, we need to have a new, people-centred constitution that will guarantee equal representation of women and men and greater protection of civil and political rights.

³⁰⁸ Maputo Protocol, Article 9(1) (a).

³⁰⁹ Ibid, Article 9(1)(b).

³¹⁰ Ibid, Article 9(2).



2.8. Freedom from Torture and Inhuman or Degrading Treatment

2.8.1. Introduction

Freedom from torture is a basic human right protected under the regional and international human rights treaties.³¹¹ The Constitution of the United Republic of Tanzania also prohibits torture, providing that to ensure equality before the law, among the principles that must be taken into account, is to ensure that no person is subjected to torture or inhuman or degrading punishment or treatment.³¹² The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture for the purposes of the convention as any act inflicting severe pain to obtain information, confession or to intimidate or punish by a public official or any person in official capacity.³¹³ However, it also provides for a wider application. According to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, “Any unnecessary, excessive or otherwise arbitrary use of force by law enforcement officials is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment.”³¹⁴ He notes that the act of a law enforcement official intentionally and purposefully inflicts pain or suffering on an individual who is powerless and unable to escape or resist arrest is unlawful and amounts to torture.³¹⁵

2.8.2. Reported Torture Incidents

In 2020, LHRC documented at least six incidents of torture and inhuman or degrading treatment. These incidents were reported in Kilimanjaro, Mbeya, Morogoro, Dar es Salaam, and Mara Regions.

³¹¹ Article 5 of ACHPR and Article 7 of ICCPR.

³¹² Article 13(6) (e) of Constitution of Tanzania 1977.

³¹³ Article 1 of CAT.

³¹⁴ See “Arbitrary police violence can amount to torture, even in public spaces, UN expert warns” at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22235&LangID=E>, accessed 23rd December 2018.

³¹⁵ Ibid.



Table 11: Reported incidents of torture and inhuman or degrading treatment documented by LHRC, 2020

Incident	Report Date
<p>Mbeya: Atuganile Kalenga (39), resident of Uyole Ward in Mbeya City was arrested and detained at Mbeya Central Police Station, accused of trespassing on private land. It was reported that she was severely beaten while under police custody.</p>	<p>April 2020</p>
<p>Kilimanjaro: Police arrested five village leaders in Isuki Village in Hai District, accused of conducting an operation of violence against women by subjecting them to physical punishment of 60 strokes, fining them and pouring stinging nettle (itching powder) on their private parts. The village leaders were also accused of sanctioning arbitrary detention of villagers at a makeshift detention facility in the village.</p>	<p>6 Jul 2020</p>
<p>Morogoro: In April 2020, LHRC received a report of 22-year-old Kelvin Mapondele, resident of Ifakara Ward in Kilombero District, who was reportedly arrested and severely beaten while under police custody on 27th April 2020. It was reported that he died the following day at St. Francis Hospital, where he was receiving treatment. LHRC contacted the Kilombero OCD, who claimed that he was aware of the incident, but insisted the victim had been granted bail. The victim's father, however, claimed that police bail was denied to his son. LHRC wrote to the IGP, expressing concerns of the growing trend of police brutality (excessive use of force by law enforcement officers).</p>	<p>April 2020</p>
<p>Dar es Salaam: Musa Mohamed Nassor (18), resident of Charambe Magengeni in Temeke District, was reportedly beaten and severely injured while under police custody in Mbagala area following his arrest on 15th January 2020. Eight days later the accused person's mother was allowed to take her son home but reportedly denied PF3 so that he can receive medical treatment. LHRC intervened on behalf and contacted the Temeke RPC, who promised the PF3 would be issued.</p>	<p>February 2020</p>





Incident	Report Date
<p>Mara: Paulo Chacha Gati (47), resident of Tarime District, was reportedly arrested and severely beaten while police custody on 15th March 2020. He was accused of unlawful possession of weapon. The accused person was eventually taken to the court on 10th April 2020 but failed to show up in court when the case was mentioned on 12th May 2020, and on 13th May 2020 it was reported that he was sent to Tarime District Hospital, where he died the next day. The doctor informed the victim’s family that he had died because of bacterial infection and not because of the beatings.</p>	May 2020
<p>Dar es Salaam: Hamza Juma Charles (30), resident of Sinza D ares in Ubungo District, was reportedly arrested and subjected to severe beatings while under police custody at Mabatini Police Station on 19th May 2020. He was accused of stealing two sets of television and detained for three days without his statement being taken and sent to court. He reportedly received bail on 21st May 2020 after paying Tshs. 150,000 and his statement was taken. LHRC contacted the police officer in charge of the station, who promised to make follow up on the matter and take action.</p>	May 2020

Source: LHRC Human Rights Monitoring & Media Survey 2020

During the human rights survey, 8.8% and 33.5% of survey participants indicated that it is likely and very likely respectively to be subjected to ill-treatment/physical abuse while under police custody. LHRC also documented child torture incidents, which are well documented under subchapter 5.3 of this report.

2.9. Impact of Covid19 on Civil and Political Rights

The Covid19 pandemic contributed to negatively impacting enjoyment of civil and political rights, owing to restrictions that were imposed, including on freedom of expression, freedom of movement, freedom of association, and freedom of assembly. Freedoms of association and assembly were restricted by prohibition of gatherings in line with the Constitution of the United Republic of Tanzania of 1977 and international human rights instruments, which allow restrictions in case of a public health concern. On the other hand, restrictive laws such as the Cybercrimes Act 2015 and the Online Content Regulations 2018 (and later 2020), were used to punish individuals who spread ‘false’ information about Covid19 and did so without authority. LHRC documented at least eight such cases, of which seven concerned





individuals and one concerned a media outlet (Mwananchi Newspaper). Punishment included jail terms and fines.

The right to take part in governance, particularly the right to vote, was also affected by the Covid19 pandemic. During the second updating of voter register, some people did not participate in the exercise for fear of the pandemic. Fear of the pandemic also somewhat affected voter turnout on election day and overall participation of people in the electoral process.



CHAPTER 3: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.1. Overview

The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, ratified by Tanzania in 1976, guarantees economic, social and cultural rights. States have a duty to ensure progressive realization of these rights.³¹⁶ Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic, social and cultural rights recognized in the present Covenant to non-nationals.³¹⁷

Social and economic rights enhance individuals' protection by the state, for their dignity, freedom and well-being. The State is duty bound to support provision of entitlements to the basic needs such as education, food, public health care, housing, and other social goods to the maximum of the available resources.³¹⁸

Right to education, right to health, right to social security, right to food, right to clean water and sanitation, and the right to adequate standard of living are commonly identified as the entitlements upon which states should accord their citizens with for the purpose of improving and maintaining their social lives.

At international level, economic, social and cultural rights are mainly guaranteed and protected under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). At regional level, they are provided for and protected under the African Charter on Human and Peoples' Rights of 1981 (ACHPR),³¹⁹

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (Maputo Protocol)³²⁰ and the African Charter on the Rights and Welfare of the Child of 1990 (ACRWC).³²¹

³¹⁶ Article 2(1) of ICESCR.

³¹⁷ Ibid, Article 2(3).

³¹⁸ Dawood, A. et al (2017) Social and Economic Rights, International Institute for Democracy and Electoral Assistance (IDEA) 2nd Ed, Stockholm Sweden

³¹⁹ See for example Articles 15, 16(1) and 17(1) of ACHPR;

³²⁰ See for example Articles 12(1), 14-15 and 16 of Maputo Protocol.

³²¹ Articles 11 and 14 of ACRWC.





Tanzania is duty bound under the ICESCR, ACHPR, Maputo Protocol and ACRWC to progressively realize these rights for its citizens to the maximum of its available resources.

Economic and social rights, such as right to work and right to own property are also enshrined in the Constitution of the United Republic of Tanzania.³²²

These rights are also provided for under key pieces of legislation, such as the Employment and Labour Relations Act of 2004, the Land Act of 1999, the Village Land Act of 1999 and the Law of Marriage Act of 1971.

3.2. Right to Education

3.2.1. Introduction

As stated above, States are duty bound under the international human rights treaties to ensure progressive realization of economic and social rights, including right to education. This right has to be implemented by member states without any discrimination as to race, colour, origin and sex, since it is one of the most basic human rights as guaranteed by the international human rights covenants.³²³ This right is also recognised under the Constitution of the United Republic of Tanzania of 1977, which clearly stipulates that “the authority shall make appropriate provision for realizations of person’s right to self-education.”³²⁴ Right to education is essential for effective realization of all other human rights, including the right to take part in governance.

³²² See for example Articles 22, 23 and 24 of the Constitution of the United Republic of Tanzania, 1977

³²³ Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966

³²⁴ Article 11 of the Constitution of the United Republic of Tanzania, 1977



Four Essential Features of the Right to Education

Availability - Institutions and programmes must be available in sufficient quantity. All institutions will require buildings, sanitation, safe drinking water, trained teachers with domestically competitive salaries, and teaching materials. Other elements may be required depending on the developmental context.

Accessibility - This incorporates three main aspects: (i) non-discrimination, (ii) physical accessibility/proximity, and (iii) economic accessibility (which is defined in relation to each category of education).

Acceptability - Form and substance, including curricula and teaching methods, must be acceptable to students and, in appropriate cases, parents. Given examples of 'acceptable' include (i) relevant, (ii) culturally appropriate and (iii) of good quality. This is subject to the educational objectives set forth in Art.13(1).

Adaptability - It must adapt to the changing needs of society and students and be capable of reflecting the diverse social and cultural settings.

ICESCR Committee General comment No. 13 of 1999

Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 explicitly provides for the right to education as one of the basic human rights. Right to education entails right to access education and right to quality education. The right is also guaranteed under the African Charter on the Rights and Welfare of the Child (African Child Charter) of 1990³²⁵ and provided for under the Law of the Child Act of 2009.³²⁶

During this reporting period, key issues and actions which affected progressive realisation of the right to education included: Government action to ensure progressive realization of the right to education, including implementation of the fee-free education policy; budgetary allocation for the education sector; shortages of classrooms and toilet holes; shortages of teachers, including for reproductive health education

³²⁵ Article 11 of the African Charter on the Rights and Welfare of the Child, 1990.

³²⁶ Section 9(1) of the Law of the Child Act (2009)



and inclusive education; long distance from home to school; male teachers implicated in sexual violence and impregnating schoolgirls; violence against children; child pregnancy and child marriage; and Covid19.

3.2.2. Government action to ensure realization of the right to education, including implementation of fee-free education policy

In this reporting period, the Government continued to take steps to ensure progressive realisation of the right to education, in line with its international human rights obligations, particularly under the ICESCR and the African Child Charter. Key among the steps is implementation of the fee-free education, which has been vital in enhancing access to education for children in Tanzania. Authorities in different parts of Tanzania Mainland continued to oversee implementation of the policy and holding accountable parents who fail to take their children to school. According to Hakielimu, on average the enrolment rate has increased by at least 17% since 2016.³²⁷ In January 2020, it was reported that the policy implementation had pushed up enrollment by at least 21.8%.

■ Primary education enrolment rate for public schools

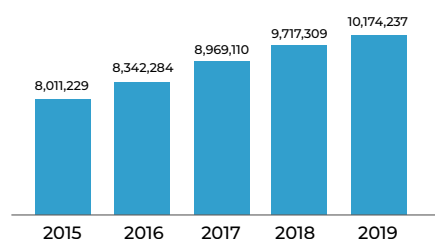


Figure 14: Total enrolment in primary education for public schools – 2015 to 2019

Source: Tanzania in Figures 2019

Other steps taken, which were highlighted in the budget speech of the ministry responsible for education for the financial year 2020/21 include: construction of 9,712 toilet holes (5,539 for girls, 3,645 for boys, 528 for teachers); construction and renovation of educational facilities/buildings; registration of 395 out of 407 schools that applied for

³²⁷ Hakielimu Annual Report 2018.



registration at pre-primary, primary and secondary levels; developing Teachers' Continuous Professional Development Framework; and procurement and distribution of special needs education facilities to 424 schools and centres.³²⁸ It was also reported that the Government provided learning and educational materials, facilities, and equipment to government educational institutions; conducted school inspections at 428 primary schools and 76 secondary schools; and enhanced ICT use at higher learning institutions.³²⁹

In terms of provisions of loans for students of higher learning institutions, it was reported that in the financial year 2019/2020, the Government, through the Higher Education Students' Loans Board (HESLB), had granted loans to a total of 132,119 students by March 2020, of which 49,799 were continuing students and 82,320 were new students.³³⁰ A total of Tshs. 449.99 billion was disbursed, which equals to 99%. It was further reported that the HESLB had received Tshs. 144.3 billion through loan repayment, which equals to 86.9% of the target.³³¹



Picture 5: Newly-constructed building at Mzumbe University – Mbeya Campus

Despite these positive steps towards progressive realization of the right to education, the education sector continues to be faced with various challenges, some of which are highlighted below. Some of these

³²⁸ See HOTUBA YA MHESHIMIWA PROFESA JOYCE LAZARO NDALICHAKO (MB), WAZIRI WA ELIMU, SAYANSI NA TEKNOLOJIA AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1587730111-Hotuba%20ya%20Wizara%20ya%20Elimu.pdf>, accessed 20th December 2020.

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Ibid.



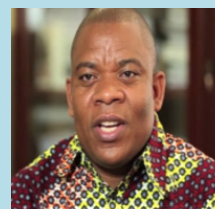
challenges stem from the education system and affect access and quality of education. In February 2020, it was reported that the Parliamentary Committee for Services and Social Development had called for the formation of an enquiry team that would review the education system and advice on ways to tackle a myriad of challenges that negatively impact on the sector.³³² This echoes repeated calls by stakeholders for review of the system and curricula in light of technological advancement and modern needs, calling for a national dialogue on the matter.³³³

RC Anthony Mtaka & DC Jokate Mwegelo – Efforts to boost right to education in Simiyu Region and Kisarawe District

In 2018, H.E. President John P. Magufuli announced Hon. Anthony Mtaka as the best Regional Commissioner, recognizing his efforts in ensuring Simiyu Region takes the right development path. One of the things the RC has done well is promoting the right to education in the region, which has seen Simiyu earn a third place in the Standard Seven national examinations for the year 2020. From 2018 to 2020, the schools in the region have also been among the 10 best performing regions in Form Four and Form Six national examinations, with majority of the schools being public schools. One of the reasons for improved performances was introduction of educational camps by the RC in 2017.

Another government leader who has been a staunch advocate of the right to education is Hon. DC Jokate Mwegelo of Kisarawe District, who introduced a special campaign to boost right to education in the district. The campaign is called Tokomeza Zero Campaign – which translates to a campaign to eradicate zeros in education. The campaign has contributed to increasing performances in national examinations and reducing the number of candidates with zeros in the district.

LHRC Recognition



3.2.3. Budgetary allocation for the education sector

In May 2015, the World Education Forum (WEF) adopted the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 (Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all), popularly known as the Incheon Declaration, named after the city where it was adopted, Incheon, in Republic of Korea.³³⁴ The WEF 2015 addressed five

³³² LHRC Media Survey 2020.

³³³ Ibid.

³³⁴ See the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 Ensure inclusive and equitable quality education and promote lifelong learning



themes, namely: the right to education; equity in education; inclusive education; quality education; and lifelong learning. 184 States around the world, including Tanzania, made commitments under this Declaration; and one of the commitments is to allocate at least 15-20% of their national budgets on education, in order to achieve SDG 4 targets by 2030.³³⁵ In this Declaration, States agreed to and showed determination to increase public spending on education in accordance with country context and allocate at least 4 – 6% of Gross Domestic Product and/or up to 20% of total public expenditure to education, as benchmark.³³⁶

Recent trends on budgetary allocation for the education sector show that Tanzania falls short of the minimum standards agreed in the Declaration above. For instance, the budget for the financial year 2018/2019 dropped to Tshs. 4.641 trillion from Tshs. 4.706.3 trillion in the financial year 2017/18, and both were short of the minimum standard.³³⁷ In the financial year 2019/20, the budget allocated for the education sector was Tshs. 4.511 trillion, equal to 13.63% of the overall budget, while in the financial year 2020/21 the budget allocated was Tshs. 4.721 trillion, equal to 13.54% of the overall budget.³³⁸

LHRC's View: There is no doubt that effective implementation of the fee-free education policy requires improving the funding for the education sector, as the policy brings with it challenges of shortages of teachers and facilities such as classrooms, toilets, and desks.

LHRC's Call: The Government of Tanzania to increase budget for the education sector in line with its international commitments.

3.2.4. Shortages of classrooms and toilet holes

In the period under review, shortages of classrooms and toilet holes

opportunities for all, at <https://unesdoc.unesco.org/ark:/48223/pf0000245656>.

335 Ibid; see also UNESCO. 2019. Beyond commitments – How countries implement SDG 4. Paris, UNESCO., at https://reliefweb.int/sites/reliefweb.int/files/resources/UNESCO-2019-HLPF_Beyond-en-v7.pdf, accessed 7th March 2020.

336 Ibid.

337 See THE UNITED REPUBLIC OF TANZANIA, MINISTRY OF FINANCE AND PLANNING, THE CITIZENS' BUDGET, A SIMPLIFIED VERSION OF GOVERNMENT BUDGET FOR FINANCIAL

YEAR 2017/2018 at [https://mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%202017-18%20%20%20%20%20%20\(Eng_Final\).pdf](https://mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%202017-18%20%20%20%20%20%20(Eng_Final).pdf), accessed 20th December 2020; THE UNITED REPUBLIC OF TANZANIA, MINISTRY OF FINANCE AND PLANNING, THE CITIZENS' BUDGET, A SIMPLIFIED VERSION OF GOVERNMENT BUDGET FOR FINANCIAL YEAR 2018/2019 at [https://mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%2018-19%20\(English\)-Final%20Final.pdf](https://mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%2018-19%20(English)-Final%20Final.pdf), accessed 20th December 2020.

338 See THE UNITED REPUBLIC OF TANZANIA, MINISTRY OF FINANCE AND PLANNING, THE CITIZENS' BUDGET, A SIMPLIFIED VERSION OF GOVERNMENT BUDGET FOR FINANCIAL

YEAR 2019/2020 at [https://mof.go.tz/docs/CITIZENS%20BUDGET%202019-20%20\(English\)-%202nd%20draft.pdf](https://mof.go.tz/docs/CITIZENS%20BUDGET%202019-20%20(English)-%202nd%20draft.pdf), accessed 20th December 2020; THE UNITED REPUBLIC OF TANZANIA, MINISTRY OF FINANCE AND PLANNING, THE CITIZENS' BUDGET, A SIMPLIFIED VERSION OF GOVERNMENT BUDGET FOR FINANCIAL

YEAR 2020/2021 at https://mof.go.tz/docs/news/CITIZEN%20BUDGET%20ENGLISH%20VERSION%202020_21.pdf, accessed 20th December 2020.



continued to be among key challenges facing the education sector, particularly at primary and secondary school levels. Increased access to education due to implementation of the fee-free education, which has led to significant increase in enrollment, has aggravated these problems in some areas across Tanzania Mainland. For instance, in 2020 there were numerous reports of shortages of classrooms and toilet holes in some parts of Kagera, Dar es Salaam, Mwanza, Mara, Shinyanga, Mbeya, Kilimanjaro, Simiyu, and Mtwara Regions. The table below presents some of the reported cases of shortages of classrooms, desks and toilet holes documented by LHRC in 2020.

Table 12: Reports of shortages of toilet holes, classrooms and desks documented by LHRC in 2020

Report	Date
Kagera: In February 2020, it was reported that Nshambya Primary School, located in Bukoba Municipality was facing closure due to shortage of 26 toilet holes. This was revealed by the Nshambya Ward Councilor, Mr. Jimmy Kalugendo, who stated that a health official was considering ordering closure of the school due to the shortage of toilet holes. He noted that there are currently only 10 toilet holes, accommodating 824 pupils.	11 Feb 2020
Dar es Salaam: In February 2020, it was reported that Mloganzila Primary School was facing shortage of 43 toilet holes. The situation has caused both teachers and more than 1,000 pupils to share the available four toilet holes. It was further reported that Mloganzila Hospital had constructed 10 toilets but there is still shortage of 43 toilet holes.	31 Jan 2020
Mwanza: In February 2020, it was reported that more than 1,700 students of Igoma Secondary School in Mwanza Region were sitting on the floor in classrooms due to shortage of desks. This was revealed when the Nyamagana District Commissioner, Dr. Philisi Nyimbi and the Mwanza City Director, Kiomoni Kibamba, visited some of the schools in the district.	7 Feb 2020
Mara: In January 2020, it was reported that the Bunda Town Council was faced with a severe shortage of classrooms in primary and secondary schools. This was revealed by the Bunda District Commissioner, Lydia Bupilipili, during a ward councilors' meeting. She noted that there is a shortage of 31 classrooms which are needed to accommodate 1,700 students selected to join secondary education.	1 Jan 2020



Report	Date
Mara: In January 2020, it was reported that more than 270 pupils at Waneyre B Primary School in Suguti Ward in Musoma District were learning under trees due to shortage of classrooms. The headteacher at the school, Peter James, revealed that there was shortage of three classrooms, needed to accommodate 274 pupils.	7 Jan 2020
Shinyanga: In January 2020, it was reported that Mwenge Primary School, located in Shinyanga Municipality, was in need of 18 classrooms to accommodate an increasing number of pupils. Headteacher, Mika Kakema, stated that there are only 17 classrooms, but they need 18 more; and that there is also shortage of 47 toilet holes, 10 teachers, 150 desks and 10 ICT equipment.	20 Jan 2020
Mbeya: In July 2020, it was reported that more than 160 pupils at Mwasanga Primary School in Mbeya City were using a single classroom due to shortage of classrooms at the school. The headteacher, Keneth Amon, revealed that the school has 1,311 pupils but only eight classrooms and remarked that the available classrooms are also not in a very good condition. He further highlighted that the school experiences shortage of 140 desks.	28 Jul 2020
Kilimanjaro: Headmaster of Natiro Secondary School, Emmanuel Mrema, revealed that his school needs Tshs. 100 million to address various challenges, including completion of a girls' dormitory, construction of boys' toilet and library.	4 Nov 2020
Simiyu: Teachers and pupils at Mwatigi Primary School in Maswa District, Simiyu Region, were reportedly forced to relieve themselves in the nearby bushes after lacking toilets for 10 months. It was reported that there was a toilet which overflowed then collapsed. The school has 8 teachers and 340 pupils.	13 Nov 2020
Morogoro: More than 150 students from Kizinga and Pangawe Villages were reportedly forced to walk for up to 24 km to attend school at Nelson Mandela Secondary School in Morogoro District.	13 Aug 2020
Mtwara: District Executive Director of Masasi District, Gimbana Ntavyo, revealed that fee-free education has significantly increased access to education for children, but has also resulted into shortage of classrooms and desks.	5 Oct 2020
Shinyanga: 400 pupils of Bugarama Primary School in Kahama District were reportedly going to school in shifts due to shortage of classrooms. It was reported that this challenge has disrupted the learning environment.	5 Oct 2020

Source: LHRC Media Survey 2020 & LHRC Human Rights Monitoring 2020



LHRC's View: Shortages of classrooms, desks, and toilet holes creates a learning environment that is not friendly for children, which affects learning outcomes. It is also not a conducive working or teaching environment for teachers, who are also overburdened because of shortage of teachers. These factors hinder effective realization of the right to education and slow down the process of achieving key SDG and Tanzania Development Vision 2025 targets relating to the right to quality education.

LHRC's Call: The Government, through the Ministry of Education, Science and Technology, should intensify efforts to address challenges of shortages of classrooms, desks, and toilet holes to improve the learning environment at public schools. Non-government actors, including investors, should also help in this regard through corporate social responsibility.

3.2.5. Shortages of teachers, including for reproductive health education and inclusive education

Shortage of teachers continued to be a challenge in 2020, contributed by increased enrolment caused by implementation of the fee-free education policy of 2014. A report, Tanzania in Figures 2019, released by the National Bureau of Statistics (NBS), has shown that there is a decrease of teachers in public schools. According to the report, the number of teachers has decreased by 5%, from 191,772 in 2016 to 182,002 in 2019. While the number of teachers has decreased, the number of pupils/students in the same period has increased by 25%, from 8.3 million to 10.2 million. The education policy of 2014 indicates that the ratio should be one (1) teacher per forty (40) pupils, but in practice teachers find themselves overwhelmed with large number of pupils and students, as well as faced with the challenge of shortage of classrooms, which affects the learning environment.

In May 2019, the Deputy Minister of State in the President's Office (Regional Administration and Local Government), Hon. Mwita Waitara, revealed during a parliamentary session that the Government was facing shortage of 80,000 teachers (66,000 for primary school, 14,000 for secondary school). In 2020, reports of shortage of teachers were made in some parts of Tanzania Mainland. For instance, in Shinyanga in September 2020 it was reported in Kishapu District that shortage of female teachers in the district affects provision of reproductive health



education to girls at schools. This was revealed by the Headmaster of Kiloleli Secondary School, Christopher Hamisi, during a seminar on child marriage, organized by the Tanzania Women Lawyers Association (TAWLA). In October 2020, the headteacher of Ibinzamata Primary School in Shinyanga Municipality, which provides inclusive education, revealed that his school is faced with the challenge of shortage of teachers. He noted that there is shortage of 10 teachers of special needs education.

3.2.6. Long distance from home to school

Long distance to school continues to be a concern in terms of effective realization of the right to education for some of the schoolchildren in different parts of Tanzania Mainland, especially in rural areas. This is particularly a bigger challenge for children who come from poor families or households, which cannot even afford a bicycle to help their children with movements. For girls, this puts them at increased risk of sexual violence and child pregnancy, with bodaboda drivers among the major perpetrators. In 2020, LHRC documented an incident of long distance from home to school reported in Lindi Region. In February 2020, it was revealed that more than 260 pupils at Hoteli Tatu Primary School in Kilwa District had been walking long distances to reach school. It was reported the pupils, who come from Kalashi, Kibaoni and Manyuli areas, use up to three hours to reach school.³³⁹

3.2.7. Male teachers implicated in sexual violence and impregnating schoolgirls

The Tanzania Human Rights Report 2019 reported incidents of male teachers who were accused of subjecting girls to sexual violence, especially in the form of rape, as well as engaging in prohibited sexual relationships with and impregnating schoolgirls. In 2019, The Teachers Service Commission (TSC), revealed that 162 teachers had been dismissed since July 2016 for engaging in sexual relationships with schoolgirls and LHRC documented at least 24 cases of teachers implicated in sexual violence, who were either arrested and sent to court or found guilty and imprisoned, three of whom were headteachers. In 2020, TSC reported that alcoholism and sexual violence constituted the leading complaints against teachers in the period of 2016 to 2020. Deputy Secretary of the TSC, Moses Chitama, mentioned that during this period, a total of 9,819 complaints were filed against teachers, which resulted into dismissal of 5,441 teachers. 1,803 teachers were given warning letters, 520 teachers

³³⁹ LHRC Media Survey 2020.



had their salaries deducted, 244 were not given salary increase and 403 were demoted.³⁴⁰

3.2.8. Violence against children negatively affecting schoolchildren

Acts of VAC such as food denial, verbal abuse/insults, sexual harassment, rape, sodomy, threats, humiliation, and beatings may result in psychological harm, emotional harm, physical pain or injury, lack of self-confidence and lack of self-esteem on the child, affecting their wellbeing and ability to concentrate in class. Children who are victims of VAC cannot be expected to be the same and perform like other children at school as they find it difficult to adjust psychologically and concentrate because of worrying and reliving their ordeals. In the past three years, reported incidents of VAC, especially sexual VAC, have been significantly increasing. These incidents are discussed in detail in Chapter Five below.

3.2.9. Child pregnancy and child marriage

Child pregnancy and child marriage continue to be obstacles in terms of effective realisation of the right to education for girls. During the Covid19 leave, which saw schools closed for about three months, cases of child pregnancy were said to be on the rise. Regarding child marriage, the Law of Marriage Act of 1971 is yet to be amended to outlaw child marriage in line with recent judgments by the High Court and the Court of Appeal of Tanzania. These obstacles are discussed in detail in Chapter Five below.

LHRC's call: The Government and other stakeholders to work together and address challenges hindering effective realisation of the right to quality education. Addressing challenges discussed above is essential for achieving key targets relating to education under SDG 4 and the Tanzania Development Vision 2025.

3.3. Right to Health

3.3.1. Introduction

Right to health is key for realization of other rights, including the fundamental right to life. This right means that hospitals, clinics, medicines and doctors' services must be accessible, available, acceptable, and of good quality for everyone on an equitable basis, where and when needed. This right is guaranteed and protected

³⁴⁰ LHRC Media Survey 2020.



under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises enjoyment of the highest attainable standard of physical and mental health.³⁴¹ States parties to the ICESCR are required to take several steps towards full realization of the right to health, including creating conditions which would assure to all medical services and attention in the event of sickness and prevention, treatment and control of epidemic, occupational and other diseases.³⁴²

States thus have a primary duty to ensure that necessary measures are taken to protect the health of their people and to ensure that they receive medical attention when they are sick.³⁴³ This right is also guaranteed under regional treaties that Tanzania is bound by, such as the African Charter on Human and Peoples' Rights of 1981 (ACHRPR), the African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (Maputo Protocol).³⁴⁴

Right to health includes right to access health services and right to quality health services.

In 2020, key issues affecting right to health included: Government action to ensure progressive realisation of right to health; budgetary allocation for the health sector; the outbreak of the Covid19 pandemic; mental health and high rates of suicide; shortage of healthcare workers; shortage of healthcare facilities; and low health insurance coverage.

3.3.2. Government action to ensure progressive realisation of right to health

In line with its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the Government continued to take steps towards progressive realisation of the right to health. These steps included: construction and repair of healthcare facilities; distribution of essential medicines and medical supplies; provision of vaccinations for infants, as part of efforts to reduce child mortality; conducting campaigns to promote healthy and clean environment; combating GBV and VAC, including through conducting awareness-raising sessions and contributing to establishment of police gender and children desks; taking measures to prevent spread of the Covid19 pandemic, including community awareness-raising;

³⁴¹ Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1977

³⁴² See Article 12(2) of ICESCR.

³⁴³ Article 16(2) of the African Charter on Human and People's rights, 1981.

³⁴⁴ See Article 16(1) of ACHRPR; Article 14 of ACRWC; and Article 14 of Maputo Protocol.



and improving sexual and reproductive health and HIV services.³⁴⁵ According to the ministry responsible for health, improved child health services have seen infant child mortality drop from 43 deaths per 1,000 live births in 2015/16 to 9 deaths per 1,000 live births in 2019/20. Under five child mortality rate has also decreased from 67 deaths per 1,000 live births in 2015/16 to 11 deaths per 1,000 live births in 2019/20. In February 2020, it was revealed that the Government was planning to hire 1,000 new doctors to curb shortage of cadre of healthcare workers by 20%.

In March 2020, it was reported that the Government had hired 307 healthcare professionals as it seeks to strengthen health system service delivery and reinforce the fight against the COVID19 outbreak in the country. The healthcare professionals would be deployed in 11 regions in dire need of personnel.³⁴⁶ In August 2020, it was reported that the Government had added an additional 71 types of drugs into the list of essential medicines covered by the National Health Insurance Fund (NHIF). The move came in response to complaints from public members who were forced to dig deeper into their pockets to buy those drugs after doctor's prescriptions. The resolution was made after a joint meeting held in Morogoro between NHIF and Medical Stores Department (MSD).³⁴⁷ In November 2020, it was reported that the Muhimbili National Hospital employed 68 health workers at different levels.³⁴⁸

3.3.3. Budgetary allocation for the health sector

As it is the case with the education sector, trends show that the health sector has been faced with the challenges of budgetary allocation not being in line with international standards and delays in disbursement of funds. Sikika's analysis of the 2019/2020 budget for the health sector revealed persistent low budget allocation and partial and delayed disbursements, which continued to be barriers in achieving health sector targets.³⁴⁹

The 2020/21 budget was particularly very important for the health sector given the eruption of the Covid19 pandemic in March 2020. The Minister of Finance and Planning, Hon. Phillip Mpango, revealed that the Government was compelled to allocate more resources for the health and infrastructure sectors, due to the

345 See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.

346 LHRC Media Survey 2020.

347 Ibid.

348 Ibid.

349 See Policy Forum, HEALTH SECTOR: BUDGET ALLOCATION & EXECUTION MUST BE IN LINE WITH STRATEGIC PLAN COSTING, Brief 5.19 at <https://www.policyforum-tz.org/sites/default/files/brief%205.19.pdf>, accessed 7th March 2020.



outbreak of Covid19 and destruction of transport infrastructure caused by heavy rains/floods across the country respectively.³⁵⁰

19 years ago, in April 2001, African governments made a historic commitment to allocate at least 15% of their annual budgets to the health sector,³⁵¹ seeking to boost their fragile health systems. Walking the talk, however, has proven to be elusive for most African countries, Tanzania inclusive. For the financial year 2019/20, the budget allocated for the health sector accounted for only 7.8% of the Government budget, while for the financial year 2020/2021, the budget allocated for the sector was Tshs. 1.92 trillion, which is equivalent to 5.5% of the government budget. Both the budgets fall short of the 15% of the total government budget minimum standard proposed in the Abuja Declaration. Amid the Covid19 outbreak, meeting this standard was essential.

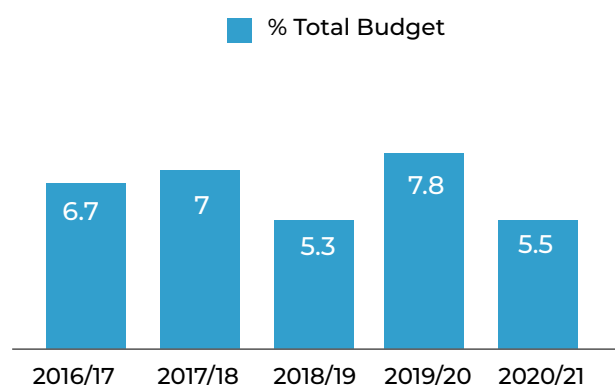


Figure 15: % Health sector budget in total government budget – 2016 to 2021

Another key challenge that has been affecting effective realization of the right to health through provision of timely and quality healthcare services is delays in disbursement of funds. For instance, for the financial year 2018/19, by March 2019, only 39% of the funds had been disbursed to MOHCDGEC. For the financial year 2019/20, by March 2020, MOHCDGEC had received Tshs. 391,732,923,520 out of the Tshs. 959,152,164,597 allocated for the ministry,³⁵²

350 See PADILI MIKOMANGWA “What Tanzania’s 2020/2021 budget says” THE EXCHANGE 14 October 2020, at <https://theexchange.africa/countries/tanzania/what-tanzanias-2020-2021-budget-says/>, accessed 20th December 2020.

351 See the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, 2001 at <https://au.int/sites/default/files/pages/32894-file-2001-abuja-declaration.pdf>, accessed 21st December 2020.

352 See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MIHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021



equivalent to 41% of the funds.

LHRC's call: The Government to increase budget for the health sector in line with its international commitments. Increasing the budget for this key sector is also essential for achieving key SDGs targets relating to health and those under the Tanzania Development Vision 2025, including high quality livelihood and industrialisation. Timely disbursement of funds is also needed to ensure provision of timely and quality healthcare services.



Target

3.c

Substantially increase health financing and the recruitment, development, training and retention of the health workforce in developing countries, especially in least developed countries and small island developing States

3.3.4. Outbreak of the Covid19 pandemic

Like in most other countries, the Covid19 pandemic hit Tanzania hard, wreaking havoc and seriously disrupting provision of healthcare services. The first case of the virus was reported in March 2020, setting the scene for emergency measures to be taken to prevent the spread of the virus. The ministry responsible for health, led by Hon. Ummu Mwalimu, became the busiest ministry as the Government led efforts to combat the pandemic.

The Constitution of Tanzania and international human rights standards such as ICCPR, ICESCR and the UN Siracusa Principles of 1984) allow restrictions on human rights for reasons of public health or national emergency. However, the measures taken must be lawful, necessary, and proportionate.

In line with permissible restrictions under international human rights standards, the Government restricted enjoyment of some of the human rights, such as freedom of movement and right to education.

The Covid19 outbreak severely hindered effective realisation of the right to health as health facilities were overwhelmed as stigma, panic and fear

at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.



kicked in. Healthcare workers had to work night and day to attend Covid19 patients and the government was forced to create makeshift quarantine centres for people who were diagnosed with the virus. Ambulances were on alert, especially in Dar es Salaam, to pick up people infected with the virus to prevent spread of the virus. The ministry responsible for health lead the public awareness-raising initiatives to ensure people take necessary measures to protect themselves from contracting the virus, including handwashing, wearing facemasks, using sanitizers, and avoiding crowds. The need for adequate water and sanitation was therefore essential, as was the need for increased budget for the health sector. For healthcare workers, the need for appropriate training and adequate PPE was evident. The government also made efforts to release some of the prisoners to reduce the risk of infection and spread of the virus. Judicial proceedings were only allowed to proceed remotely via video conferences. It was also reported that that the government hired 307 healthcare professionals as it sought to strengthen health system service delivery and reinforce the fight against the COVID19 outbreak in the country. The professionals were deployed in 11 regions in dire need of personnel.³⁵³

Unlike most other countries, Tanzania employed a different approach to combating Covid19, including using prayers and traditional means, as opposed to the popular lockdown approach. As a result, the country came under heavy criticism from a large section of the international community, but fortunately the virus did not spread as much as it was anticipated.

3.3.5. Mental health and high rates of suicide

According to the World Health Organization (WHO), suicide is a serious public health problem.³⁵⁴ However, with timely, evidence-based and often low-cost interventions, suicides are preventable.³⁵⁵ Those who have depression or severe stress, consume alcohol excessively, are in deep trouble financially, have experienced a relationship breakup, have chronic pain and illness, have suffered abuse or violence and have a sense of isolation, are more associated with suicidal behaviour.³⁵⁶ In Tanzania, reported incidents of suicides in the past four years have raised an alarm. In September 2019, it was reported that 666 Tanzanians had committed suicide from 2016 to

353 LHRC media survey

354 See WHO Suicide Factsheet at <https://www.who.int/news-room/fact-sheets/detail/suicide>, accessed 7th March 2019.

355 Ibid.

356 Ibid.



2019.³⁵⁷ Majority of cases were of people committing suicide by hanging themselves, followed by stabbing themselves.

In February 2020, a local NGO dealing with older women, Chota Busara Kwa Kinamama wazee kwa faida ya vijana (TEWWY), indicated that mental health is currently a big challenge in Tanzania. The NGO Director, Ms. Rustica Tembele, stated that a small study conducted by the organization has revealed that many people have mental health issues, and do not know where they can get help. Consequently, some of them resort to suicide after feeling that they have no other option.³⁵⁸

In 2019, police recorded 105 incidents, while LHRC documented 8 incidents through media survey. In 2020, LHRC documented 22 reported cases of suicide, which are summarized in the table below.

Table 13: Reported incidents of suicides documented by LHRC, Jan – Dec 2020

Incident	Date
Ruvuma: Police in Ruvuma reported in May 2020 that Jackson Hamis (24), resident of Making'inda Msamala area, strangled his wife to death due to jealousy and then hanged himself using a bedsheet.	30 May 2020
Mwanza: Police in Mwanza revealed in June 2020 that a secondary school student, Fatuma Makaranga (15), resident of Nyamagana District, committed suicide by throwing herself into a water tank at her home following a dispute with her father. She had disappeared until found dead in the water tank.	6 Jun 2020
Mtwara: A headteacher at Chisegu Primary School in Masasi District, Mohamed Mboloma, was found hanging on a tree in a bush after going missing for three days. His car was found beside the tree.	20 Jun 2020
Kagera: Ishengoma Rafael (29), resident of Kyasha Village, hanged himself with an electric cable. The incident occurred on 14 th June 2020.	7 Jun 2020
Shinyanga: Resident of Mbule Street in Mhogolo Ward, Kahama District, called Maziku, was found dead after hanging himself on a tree due to jealousy. He accused his wife of being unfaithful to him.	13 Mar 2020

357 Tanzania Police Force, 2019.

358 LHRC Media Survey 2020.



Incident	Date
Tanga: Resident of Lushoto District, Julius Martin, hanged himself with a rope after his lover broke up with him.	27 Mar 2020
Ruvuma: A prominent businessman in Songea, Justin Rwendera (64), was found dead after shooting himself with his gun.	30 Mar 2020
Tabora: A teacher at Ikongolo Primary School, Basil Steven Sungu (38), hanged himself in his room using his wife's khanga. Tabora RPC also revealed that an entrepreneur called James Albert (22), resident of Tabora Municipality, was found hanging in his sitting room 31 st December 2019.	-
Songwe: Ezekiel Mela, estimated to be about 30 years old and resident of Ihanda Village in Mbozi District, hanged himself following the loss of his child.	4 Apr 2020
Ruvuma: Basilius Mwingira (60), resident of Mkako Village in Mbinga District, committed suicide after his failed attempt to rape his 10-year-old daughter. Ruvuma Regional Police Commander, Simon Maigwa, revealed that the man attempted to rape his daughter on 28 th July 2020 but the neighbours managed to intervene and rescue the girl and the father ran away to his farm, where he shot himself in the head on 30 th July 2020. It was believed that he suffered from depression after the attempted rape incident, and ashamed of his acts, he decided to commit suicide by using his gun.	2 Jul 2020
Mara: Buroi Motera (38), resident of Masangura Village, committed suicide to escape punishment in the wake of the judgement of a cattle theft case against him, scheduled for 11 th January 2020.	7 Jan 2020
Mara: A standard six pupil, Juma Gilbert (14), resident of Serengeti District, reportedly committed suicide.	13 Oct 2020
Mbeya: Five schoolgirls from different schools reportedly committed suicide in Mbeya Region in the period of January to September 2020.	13 Oct 2020
Iringa: 15-year-old Andrea Mhagila, resident of Kinyanambo A Village in Mafinga District, committed suicide on 10 th August 2020 after he was told by his parents that there would be no breakfast that day.	17 Aug 2020
Pwani: 16-year-old Ziana, resident of Utete Ward in Rufiji District, who was a domestic worker, committed suicide on 7 th August 2020 for unknown reasons.	14 Aug 2020



Incident	Date
Simiyu: 42-year-old Kulwa Samweli, resident of Mwamanyili Ward in Busega District on 21 st June 2020 following a matrimonial dispute with his wife. He had accused his wife of having an extra marital affair.	30 Jun 2020
Mbeya: 40-year-old Robert Lukelo, resident of Mbugani Village in Kyela District, committed suicide on 4 th May 2020 at his house for unknown reasons.	5 May 2020
Mbeya: 15-year-old Furaha Msafiri, resident of Bondeni Village in Kyela District committed suicide on 31 st May 2020. The incident was reportedly linked to witchcraft beliefs.	2 Jun 2020

Source: LHRC Media Survey 2020 & Human Rights Monitoring 2020

3.3.6. Shortage of healthcare workers

Shortage of healthcare workers has a negative impact on provision of quality health services and consequently effective realization of right to health. In February 2020, it was revealed that the Government was planning to hire 1,000 new doctors to curb shortage of cadre of healthcare workers by 20%.³⁵⁹ In the same month, Dodoma City Director, Godwin Kunambi, revealed that there is shortage of 406 healthcare workers in the city, equal to 47.7%.³⁶⁰

He noted that the available number is 445. Again, in February 2020 the Tanzania Doctors' Association (MAT), revealed plans to see the President over shortage of healthcare workers. According to the association president, Dr. Elisha Osati, while the WHO standards require one doctor to attend no more than 10,000 patients per year, in Tanzania one doctor attends up to 25,000 per year.³⁶¹

A month a later, the Covid19 pandemic happened and aggravated the situation, as healthcare workers were overburdened and overwhelmed.

LHRC's View: The Government needs to invest more in the health sector, including hiring more health professionals to address existing gaps in provision of quality healthcare services. A healthy nation is essential for sustaining the industrialization drive and achieving key SDG and Tanzania Development Vision 2025 targets.

³⁵⁹ LHRC Media Survey 2020.

³⁶⁰ Ibid.

³⁶¹ Ibid.



3.3.7. Shortage of healthcare facilities

During this reporting period, LHRC was able to document one reported incident of shortage of healthcare facilities, which was reported in Mbeya Region. In July 2020, it was revealed that children admitted at Mwakaleli Health Centre in Rungwe District were put in the same ward as adults due to lack of a children's ward at the health facility.³⁶² This puts children at risk of infections from the adults.

3.3.8. Low health insurance coverage

Sustainable Development Goal number 3 seeks to ensure good health and well-being by ensuring healthy lives and promoting well-being for all at all ages. One its targets is to achieve universal health coverage, including financial risk protection, access to quality essential healthcare services and access to safe, effective, quality and affordable essential medicines and vaccines for all. Health insurance is a safety net as it provides social protection in case one sustains a serious injury or becomes ill. It ensures that everyone has access to basic health services and affordable medicines.



In Tanzania, there are publicly and privately-owned health insurance schemes. Among the publicly owned schemes are the National Health Insurance Fund (NHIF) and the improved Community Health Fund (CHF). The National Health Insurance Fund (NHIF) is a Social Health Insurance Institution established under the National Health Insurance Act³⁶³ with the main objective of ensuring accessibility of health care services to all people. It is a Government entity that operates under the Ministry of Health, Community Development, Gender, Elderly and Children (MHCDGEC). Despite the compulsory enrollment arrangement to public servants, the Fund has expanded its coverage to include other groups like councilors, private companies, education institutions, private

³⁶² LHRC Media Survey 2020.

³⁶³ CAP 395.



individuals, children under the age of 18, farmers in cooperatives as well as organized registered groups like Machinga and Bodaboda groups.³⁶⁴

Despite the existing arrangements, low health insurance coverage remains an obstacle in effective realization of the right to health for majority of Tanzanians.³⁶⁵ According to MOHCDGEC, by March 2019 only 33% of Tanzanians were covered by health insurance. In January 2020, Deputy Director of the National Health Insurance Fund (NHIF), Christopher Mapunda, revealed that 66% of Tanzanians are not covered by health insurance in the country.³⁶⁶ This means more than half of the Tanzanian population are not covered with NHIF.

LHRC's view: Improving health insurance coverage situation is imperative, but this should also go hand in hand with improving the quality of health services provided, especially at public health facilities.

3.4. Right to Water

3.4.1. Introduction

The UN Committee on Economic, Social and Cultural Rights defines the right to water as the right of everyone to **sufficient, safe, acceptable and physically accessible and affordable** water for personal and domestic uses.³⁶⁷ It is also known as right to water and sanitation and is essential and indispensable in ensuring life with dignity.³⁶⁸

“The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”

– **Human Rights Council**

While not covered under the International Covenant on Economic,

³⁶⁴ See the National Health Insurance fund profile on groups covered at <https://www.nhif.or.tz/pages/profile#gsc.tab=0>. Accessed on 02/10/2020

³⁶⁵ See World Health Organization “Accelerating attainment of Universal Health Coverage in Tanzania” 26 March 2019, at <https://www.afro.who.int/news/accelerating-attainment-universal-health-coverage-tanzania>, accessed 19th December 2020.

³⁶⁶ LHRC Media Survey 2020.

³⁶⁷ See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> [accessed 17 December 2017].

³⁶⁸ Article 1.1 of the General Comment No. 15. The right to water, UN Committee on Economic, Social and Cultural Rights, November 2002,



Social and Cultural Rights (ICESCR), this right is implied under the right to adequate standard of living – which is provided for in the ICESCR – and it is also covered under key human rights instruments such as the UN Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).³⁶⁹

Moreover, in 2010 the UN General Assembly declared right to clean drinking water and sanitation a human right essential in full realization of other human rights, especially right to life. Domestically, the Constitution of the URT 1977, under its Article 14, provides for the right to life and security of that life, which implies that the right to water promotes the right to life. There is also the National Water Policy of 2002 and the Water Resources Management Act of 2009, which recognize the right to clean and safe water in the country.

In 2020, key issues affecting progressive realisation of the right to water included: government action to ensure provision of clean and safe water; budgetary allocation for the water sector; and various challenges affecting provision of clean and safe water to Tanzanians.

3.4.2. Government action to ensure progressive realization of the right to water

In 2020, the Government, through the Ministry of Water, reportedly implemented various water projects to enhance access to water, including the Lake Victoria Water Project. This is in line with Tanzania's obligation to ensure progressive realization of the right to water under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. In April 2020, the Ministry of Water revealed that access to clean and safe water in rural areas had increased from 47% in 2015 to 70.1% by March 2020.

In urban areas, access to water had increased from 74% in 2015 to 84% by March 2020.³⁷⁰ For rural areas the target was to reach 85% in 2020.

Despite the efforts made to increase access to clean and safe water, still there are some areas in the country which are facing challenges in accessing clean and safe water. For instance, during this reporting period, LHRC documented reported incidents of water shortage/access challenge in Dodoma Region and Mtwara Rural and Mtwara Urban in Mtwara Region.³⁷¹

³⁶⁹ Article 24(2) of CRC & Article 14(2) of CEDAW.

³⁷⁰ See HOTUBA YA WAZIRI WA MAJI, MHE. PROF. MAKAME MNYAA MBARAWA (MB), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI KWA MWAKA 2020/2021.

³⁷¹ LHRC Media Survey 2020.



3.4.3. Budgetary Allocation for the Water Sector

Lack of adequate funds for the Ministry of Water hinder timely completion of some of the water projects and implementation of new projects.³⁷²

As is the case in education and health sectors, partial disbursement of funds also presents a challenge for effective realization of the right to water. For the financial year 2019/2020, budgetary allocation for the Ministry of Water was Tshs. 634,196,197,530, whereby Tshs. 634,196,197,530 were for recurrent expenditure and Tshs. 610,469,888,530 were for development expenditure. By March 2020, the ministry had received Tshs. 470,374,480,186.31, which is equivalent to 74% of the budget. 74% of the funds for development expenditure were also disbursed, a 23% increase compared to the disbursement by April 2019 for the financial year 2018/19. This is a positive step, but full disbursement of funds is essential for improving access to clean and safe water.

3.4.4. Challenges hindering effective provision of clean and safe water

Despite the progress made in enhancing access to water, there are still several major challenges that hinder effective provision of clean and safe water, apart from the budgetary challenge highlighted above. These challenges are highlighted below:

Destruction of water sources caused by human activities

Destruction of water sources in Tanzania is mainly caused by human activities, including agricultural activities, livestock and housing construction. The situation is caused by lack of water supply infrastructure; irrigation agriculture; and livestock irrigation in rural areas. The result of the damage is drying up, siltation dams and some areas having conflicts over water use. The worst affected regions are Rukwa, Katavi, Morogoro, Tanga, Mbeya, Iringa and Ruvuma.

Loss of water and leakages

Water loss is one of the key challenges facing the water sector. In his budget speech for the financial year 2020/2021, the former Minister of Water, Hon. Prof. Makame Mbarawa, revealed that the Government was seeking to reduce water losses in the Regional Capital Water and Sanitation Authorities by 25% by June 2020. As of March 2020, the average water loss had reached 33% whereas in June 2019 the loss was 40.63%.

³⁷² See HOTUBA YA WAZIRI WA MAJI, MHE. PROF. MAKAME MBARAWA (MB), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI KWA MWAKA 2019/2020.



The Ministry, through the water authorities, continued to take various measures to reduce the loss, including ensuring that all customers are close to the water supply, repair of dilapidated water supply pipes, monitoring public information about water leaks and taking appropriate action against all those arrested for sabotage on water infrastructure and water theft.

Citizen reluctance to contribute to water services

The National Water Policy of 2002 emphasizes the need for citizen contributions into the costs of operating and maintaining rural water projects and various efforts have been made to encourage citizens to participate in financing water projects. However, in some areas citizens have developed a negative perception and reluctance to contribute, feeling that it is not fair to pay for water services, while water is a natural resource. To address this challenge, the Ministry of Water reported that, through RUWASA, it would continue to create public awareness and encourage people to contribute to financing and maintenance of water projects and infrastructure.³⁷³

Limited capacity of water consumer communities in managing projects

In 2020, limited capacity to manage water projects and monitor provision of water services to rural communities of water user associations (CBWSOs), was also identified as a challenge hindering effective provision of clean and safe water. The situation has led some rural water projects to provide unsatisfactory and unsustainable services. To address this challenge, the Government reported that it would hire experts to assist the water user associations.

COVID-19

In 2020, the ministry responsible for water conducted an initial assessment of the impact of Covid19 pandemic on the water sector. The results of the assessment indicated, among other things, that there is a possibility of delays in the completion of some water projects due to external partners failing to import materials on time as per the contracts and/or failure to transport construction materials.

³⁷³ Ibid.



Challenges relating to sanitation and sewage management

Sanitation services are important in ensuring that citizens live in a better environment and prevention of spread of diseases such as cholera. As of March 2020, the sewerage service had reached 15% where the target was to reach 30% by October 2020. Overall, the country's sewerage service through sewerage networks is still a challenge due to the limited investment made in the construction of the infrastructure, and low awareness of citizens to join the sewer network in areas where the infrastructure is located.

The challenges to quality and water safety

As part of its efforts to protect public health and economic activities, the ministry responsible for water reported that it was continuing to monitor the quality of water distributed for domestic, industrial, construction, and irrigation purposes. As of March 2020, a total of 4,218 water samples were collected from rural and urban drinking water distribution systems and their safety has been checked based on the country's water quality standards. The results showed 90.8%, equivalent to 3,832 samples, met acceptable standards. The challenges of water quality and safety identified by the Water Authorities and Rural Water Utilities Authority include the presence of high levels of iron ore, Manganese and salts in Lindi and Mtwara Regions, Fluoride in Arusha and Singida Regions, Nitrate and salt in Dodoma Region. Those challenges are addressed at the relevant levels of political administration.

3.5. Right to Work

3.5.1. Introduction

Right to work is provided for under various international instruments, including the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR) and the African Charter on Human and Peoples' Rights of 1981 (ACHPR).³⁷⁴ It gives an individual an opportunity to gain a living by work they freely choose or accept.³⁷⁵ An emphasis is made for governments to set up social, civil, political and economic mechanisms to enable full and progressive realization of the right to work.³⁷⁶ Right to work includes right to gain living by work and right to just and favourable working conditions.

³⁷⁴ Article 15 of ACHPR.

³⁷⁵ Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, 1966

³⁷⁶ Ibid 6(2)



The International Labour Organization (ILO) emphasises on the commitment of member states to adhere to and respect four categories of rights in enhancing realization of the right to work, which are: freedom of association and recognition of the right to the collective bargaining, elimination of all forms of discrimination in employment, elimination of child labour and elimination of forced and compulsory labour³⁷⁷.

The United Republic of Tanzania under its Constitution, provides for the right to work under Article 22, stating that “Every person has the right to work” and “Every citizen has the right to equal opportunity with equal terms to acquire any work position or any other undertaking in the country.” Articles 23 and 24 provide for the right and fair remuneration for work done without any discrimination whatsoever. There is also the Employment and Labour Relations Act of 2004, which sets the required standards for employment and labour rights in the country.

In 2020, key issues which affected the right to work for Tanzanians included: PAYE and loan board payments burden for workers; shortage of workers in health and education sectors; poor working conditions; inadequate rest for workers; and violations of labour rights of workers, aggravated by the Covid19 outbreak.

3.5.2. PAYE and loan board payments burden for workers

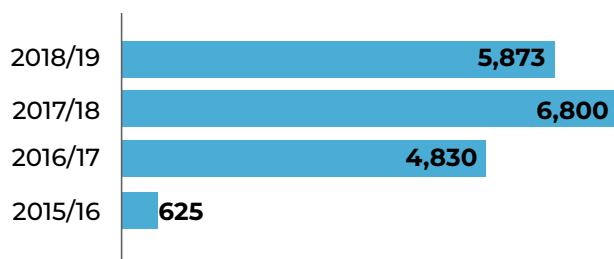
In 2020, some workers in both public and private sectors continued to lament the burden of combined deductions of PAYE, loan board payments and other monthly deductions. . PAYE constitutes 30% of monthly pay, while loan board repayment was reviewed since January 2017 to be 15% of monthly pay, from the earlier 8%. Recent CAG reports show that application of the new rate of 15% to employees who are beneficiaries of Higher Education Students’ Loans Board (HESLB), instead of 8% used to be charged previously has led to excessive deductions, and sometimes causing employees to receive less than one third of their basic salaries, which is contrary to the Specified Officers (Debt Recovery) Act No.7 of 1970 as emphasized in circular with Ref. No.CE.26/46/01/1/66 of 28th November 2012.³⁷⁸

³⁷⁷ ILO Declaration on Fundamental Principles and Rights at Work, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

³⁷⁸ See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2016/2017 at http://www.nao.go.tz/?wpfb_dl=257, accessed 30th December 2018; ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th April 2019.



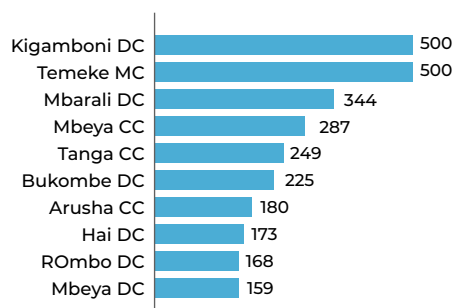
■ Number of LGA employees with less than one third of basic salary



The CAG reports have warned that these excessive deductions may adversely affect employees' performance and their well-being and leave them vulnerable to fraudulent practices and misappropriation of public funds or abuse of office, which will affect service delivery. He also recommended that "in future any amendments to the law by the Government should apply prospectively in order to avert negative impact to parties that had already contracted using the Act before its amendments."³⁷⁹

In the CAG Local Government Authorities audit report for the financial year 2018/19, which was submitted to the President, H.E. John Pombe Magufuli, in March 2020, the CAG also warned about the excessive deductions, which can affect the morale of LGA employees.³⁸⁰ The CAG report revealed that a total of 5,873 employees of 55 LGAs were receiving less than one third of their basic salaries, which is contrary to the Specified Officers (Debt Recovery) Act No.7 of 1970 as emphasized in circular with Ref. No.CE.26/46/01/1/66 of 28th November 2012.³⁸¹

■ Top 10 LGAs with employees with less than one third of basic salary - 2018/2019



³⁷⁹ Ibid.

³⁸⁰ See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2018/2019 at https://www.nao.go.tz/uploads/MAMLAKA_ZA_SERIKALI_ZA_MITAA_KWA_MWAKA_WA_FEDHA_2018-2019.pdf, accessed 12th November 2020.

³⁸¹ Ibid.



LHRC's Call: The Government to make necessary legal and policy reforms to ensure workers, in both government and private sectors, are not overburdened with excessive monthly deductions of their basic salaries. A happy and motivated workforce means increased productivity, and for the LGA employees it also means improved service delivery.

3.5.3. Shortage of workers in health and education sectors

Three recent CAG reports on audit of local government authorities (LGAs), of the financial years 2016/17, 2017/18, and 2018/19, have highlighted shortage of staff in the LGAs, especially in the health and education sectors. For instance, for the financial year 2017/18, the CAG revealed shortage of 37,544 staff (47%) in the health sector (hospitals, health centres and dispensaries) in 155 LGAs;³⁸² shortage of 58,057 staff (29%) in primary education in 146 LGAs; and shortage of 21,257 staff (24%) in secondary education in 146 LGAs. The CAG indicated that shortage of workers creates a burden for existing employees, who are forced to work harder in order to meet performance expectations.³⁸³ He warned that this negatively affects efficiency and effectiveness of service delivery and could result into mental and physical health problems and lower morale and job satisfaction. In his report on the audit of LGAs for the financial year 2018/19, which was released in March 2020, the CAG observed shortage of 162,342 workers in 169 LGAs which were audited, especially in health and education sectors.³⁸⁴ This is equivalent to 33% shortage, compared to the required number of 494, 825 workers.³⁸⁵

382 See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th March 2020.

383 Ibid.

384 See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2018/2019 at https://www.nao.go.tz/uploads/MAMLAKA_ZA_SERIKALI_ZA_MITAA_KWA_MWAKA_WA_FEDHA_2018-2019.pdf, accessed 12th November 2020.

385 Ibid.



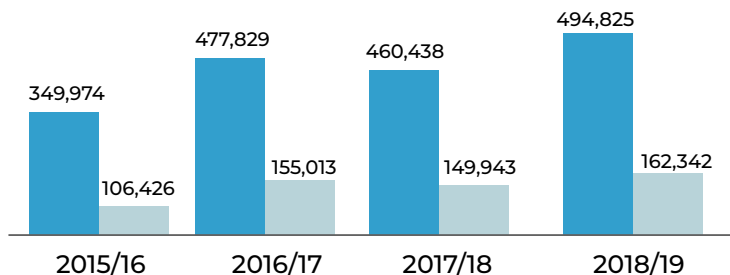


Figure 16: Worker shortages in LGAs audited by CAG – 2016 to 2019

Shortages of workers, especially in the education and health sectors, have also been discussed in sub-chapters 3.2 and 3.3. above. These shortages cause a huge burden on available workers, who are usually working beyond the time stipulated by labour laws and attend a number of people needing service well beyond the standard ratio.

3.5.4. Poor working conditions

In this reporting period, poor working conditions continued to be one of the major factors affecting the working environment in both public and private sectors, and for the year 2020 working class such as teachers were mostly affected, due to factors such as shortages of classrooms, teacher houses, desks and unpaid staff claims. These factors have been discussed in subchapter 3.2 of this report. Workers in the private sector also continued to lament poor working conditions. Detailed information about labour rights and standards will be provided in the Human Rights and Business Report 2020/21, expected to be released in July 2021.

3.5.5. Inadequate rest for workers

As discussed above, shortage of workers in key sectors such as health and education create a burden for the available workers to work beyond the required time in order to meet performance expectations. This creates a toll on workers and leaves them without adequate rest, which is their entitlement under labour and human rights laws. Inadequate rest may also lead to violation of the right to spend adequate time with family.



3.5.6. Violations of labour rights of workers, aggravated by Covid19 Pandemic

The Covid19-hit 2020 saw increased reporting of labour rights violations. Various incidents of these violations were reported, especially in the period starting April 2020 following the outbreak of the pandemic a month earlier. Analysis of our legal aid data for the year 2020 shows that land disputes constituted most legal aid cases, at 39%, followed by labour disputes at 29%. Labour rights violations complaints reported during this period included wrongful and unfair termination of employment, deduction of salaries, and non-payment of salaries. These issues will be addressed in detail in the Human Rights and Business Report 2020/21, scheduled for release in July 2021.

3.6. Right to Own Property

3.6.1. Introduction

Right to property is recognized under various regional and international human rights instruments, including ICCPR, ACHPR, UDHR, CEDAW and the Declaration on the Elimination of Discrimination against Women.³⁸⁶ It is somewhat complex human rights, subjected to more qualifications and limitations than any other human right and having features of both civil and socio-economic nature.³⁸⁷

Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.

Article 24(1) of the Constitution

It is an essential right and has implications for other human rights, including right to work, right to education and right to adequate housing. The Constitution of Tanzania also recognizes this right under Article 24.

Interference with or deprivation of the right to own property is only allowed where it is lawful, done for the public interest, proportional and accompanied by fair and adequate compensation.³⁸⁸

In case of interference with right to property of its people, therefore,

³⁸⁶ Article 26 of ICCPR; Articles 13 & 14 of ACHPR; Article 17 of UDHR; Articles 15 & 16 of CEDAW; and Article 6 of the Declaration on the Elimination of Discrimination against Women.

³⁸⁷ Magdalena Sepúlveda et al (2004), *Universal and Regional Human Rights Protection: Cases and Commentaries* (University for Peace, Costa Rica), p. 373.

³⁸⁸ Article 24(2) of the Constitution of Tanzania of 1977; see also Article 14 of ACHPR.



the Government must balance its interests with that of the people in accordance with the law. This subchapter looks at land as a major issue of concern in property ownership in Tanzania in 2020.

Right to own land includes right to acquire and own such land, as well as right to protection of the land. Land ownership and use in Tanzania are governed by the Land Act of 1999 and the Village Land Act, also of 1999. These Acts recognize the right to own land for Tanzanians and define land to include “the surface of the earth and the earth below the surface and all substances other than minerals or petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water.”

In 2020, key issues affecting the right to property included: land conflicts/disputes; land tenure security; land dispute settlement mechanisms; women’s access, control and ownership of land; and writing of wills to secure property and inheritance rights.

3.6.2. Government action to promote right to own property

In the past five years, government action to promote right to own and use land includes enhancing tenure security; use of ICT to improve land administration and management, including establishment of 26 land offices in 26 regions; introduction of the National Land Information Centre (NLIC) and Integrated Land Management Information System (ILMIS); and intensifying efforts to address land disputes/conflicts.³⁸⁹ Establishment of this system has enabled the ministry to shift from analog to digital keeping of land records, whereby 728,370 records are kept in the system.³⁹⁰

Enhanced use of ICT to provide land services has increased access to information and contributed to reducing disputes.³⁹¹

389 HOTUBA YA WAZIRI WA ARDHI, NYUMBA NA MAENDELEO YA MAKAZI, MHESHIMIWA WILLIAM V. LUKUVI (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA WIZARA KWA MWAKA WA FEDHA 2020/21 Mei, 2020 at <https://www.velmalaw.co.tz/wp-content/uploads/2020/05/HOTUBA-YA-BAJETI-YA-ARDHI.pdf>, accessed October 2020.

390 See HOTUBA YA WAZIRI WA FEDHA NA MIPANGO, MHESHIMIWA DKT. PHILIP I. MPANGO (MB), AKIWASILISHA BUNGENI MAPENDEKEZO YA SERIKALI KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA 2020/21 at <https://www.parliament.go.tz/uploads/budgetspeeches/1591886189-HOTUBA%20YA%20BAJETI%20YA%20SERIKALI.pdf>, accessed 29th October 2020.

391 Ibid.



3.6.3. Land conflicts/disputes

As the saying goes, land is life. For many Tanzanians, land is a source of livelihood, and is central to economic rights. People need land, which is becoming a scarce resource in the country, for different purposes, including farming, grazing, business, and residence. More than 70% of Tanzanians are reliant on agriculture, hence the increased importance of land. As the country makes progress in economic development, land acquisition has increased to pave way for large-scale farming and development projects.

In recent years, land conflicts have been reported in some parts of Tanzania, such as Morogoro, Pwani, and Tanga. These conflicts are usually between villagers and investors, farmers and pastoralists and boundary disputes. Some of these disputes over land, especially between farmers and pastoralists, have sometimes led to violent conflict and affect personal and community development.

In 2020, the Minister of Lands, Housing and Human Settlements Development, Hon. William Lukuvi, revealed that despite progress in addressing land disputes, they continue to be a major challenge in Tanzania.³⁹² The disputes include boundary disputes and land use disputes.³⁹³

For the financial year 2019/20, the Government, through the ministry responsible for land and LGAs, addressed a total of 5,892 land use disputes by April 2020. During this period, a total of 19,360 out of 44,456 land disputes were entertained by District Land and Housing Tribunals.³⁹⁴

In 2020, LHRC continued to provide its legal aid services to beneficiaries across Tanzania Mainland amid the Covid19 pandemic. Legal aid data indicates that land disputes constituted most legal aid cases, at 39%, followed by labour disputes at 29%. This is an indicator of land disputes being an issue of public concern, hence need to intensify efforts to prevent and address them.

³⁹² HOTUBA YA WAZIRI WA ARDHI, NYUMBA NA MAENDELEO YA MAKAZI, MHESHIMIWA WILLIAM V. LUKUVI (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA WIZARA KWA MWAKA WA FEDHA 2020/21 Mei, 2020 at <https://www.velmalaw.co.tz/wp-content/uploads/2020/05/HOTUBA-YA-BAJETI-YA-ARDHI.pdf>, accessed October 2020.

³⁹³ Ibid
³⁹⁴ Ibid.



3.6.4. Land tenure security and women's access, control and ownership of land

The Constitution of the United Republic of Tanzania 1977 guarantees the right to own property under Article 24(1). Reforms in land laws of 1999, leading to enactment of Land Act and Village Land Act, improved the situation of women in relation to acquisition and ownership of property. These laws recognize equal entitlement in relation to property ownership between men and women and prohibit discrimination of any kind, including based on sex, in acquiring, owning and using property. Nevertheless, in practice women continue to face a lot of challenges, hindering them from acquiring and owning property.

Despite guarantees in the Constitution and the two land Acts, there is recognition and application of customary laws and practice and inheritance laws, which discriminate women in owning property. Limited knowledge about their rights and land laws is also a challenge for most women, especially in rural areas. Widows and divorced women are usually faced with discrimination and harassment, and occasionally kicked out of the properties they have stake in. Due to male dominance/patriarchy, most women access land through their husbands or relatives, few own their own land, despite women accounting for a larger percentage of the population. An assessment of LHRC legal aid data for the year 2020 shows that in terms of land disputes, 69% of the legal aid beneficiaries were male, while only 31% were female. This could be an indicator of the challenge of land ownership and use facing women in Tanzania Mainland.

3.6.5. Placing District Land and Housing Tribunals under the Judiciary

In his ministry budget speech for the financial year 2020/21, the Minister of Lands, Housing and Human Settlements Development, Hon. William Lukuvi, revealed that the Government was seeking to place District Land and Housing Tribunals under the Judiciary, shifting them from his ministry.³⁹⁵

The news was met with mixed reaction from land rights stakeholders. Those supporting the idea are hopeful that placing the tribunals under the supervision of the Judiciary would help to enhance their effectiveness

³⁹⁵ HOTUBA YA WAZIRI WA ARDHI, NYUMBA NA MAENDELEO YA MAKAZI, MHESHIMIWA WILLIAM V. LUKUVI (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA WIZARA KWA MWAKA WA FEDHA 2020/21 Mei, 2020 at <https://www.velmalaw.co.tz/wp-content/uploads/2020/05/HOTUBA-YA-BAJETI-YA-ARDHI.pdf>, accessed October 2020.



and address key challenges facing them, including corruption and capacity gaps. On the other hand, placing the tribunals under the Judiciary might increase the burden on the Judiciary, which is already faced with various challenges of its own, including shortage of judicial staff. Another argument made against the idea is the whole essence of not having the tribunals under the Judiciary in the first place, which was, among other things, to avoid legal technicalities and procedures in resolving the land disputes.

3.6.6. Writing of wills to secure property and inheritance rights

Inheritance disputes are among the most common legal aid cases. In most cases such disputes could be avoided if there was a will. In November 2020, Principal Judge of the High Court in Tanga, Hon. Amiri Mruma, revealed during the launch of the Legal Assistance Service Week in Tanga that some people fear writing wills because they feel by doing so they are inviting death.³⁹⁶

He stated that distribution of estates is still a big challenge in the community, and called upon community members to ensure distribution of estates is done before a person dies to overcome this challenge. He noted that the best way to overcome the challenge is to prepare wills. He added that widows and orphans are the major victims of unfair distribution of estates in the absence of wills, as the estate is distributed to wrong beneficiaries.³⁹⁷

3.7. Right to Adequate Standard of Living

3.7.1. Introduction

Everyone has a right to a standard of living adequate for the health of himself and his family³⁹⁸. According to the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR) and the Universal Declaration of Human Rights of 1948 (UDHR), this right includes right to adequate food and right to shelter.³⁹⁹

Under the Convention of the Elimination of all forms of Discrimination Against Women of 1979 (CEDAW) States are required to take all appropriate measures to eliminate discrimination against women in rural areas to ensure the right to enjoy adequate living conditions, including in relation to housing.⁴⁰⁰

³⁹⁶ LHRC Media Survey 2020.

³⁹⁷ Ibid.

³⁹⁸ Article 11(1) of the ICCPR; Article 25(1) of UDHR.

³⁹⁹ Ibid; Article 27 of the Convention of the Rights of the Child (CRC).

⁴⁰⁰ See Article 14 of CEDAW.



Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life.

States have a duty to take appropriate steps to ensure realization of the right to adequate standard of living, including right to adequate food and right to shelter/housing. Apart from the duty stipulated in human rights conventions, these states, including Tanzania, have made commitments to realise this right under several international instruments, including the UN Declaration on the Right to Development of 1986⁴⁰¹ and the UN Universal Declaration on the Eradication of Hunger and Malnutrition of 1974.⁴⁰²

- **Security of tenure is key to protect against arbitrary eviction, especially for women in marriage and widows.**
- **Cost of housing should not be too high such that people are able to find affordable but adequate housing.**
- **Housing must be habitable, free from hazards.**
- **Housing must be accessible to everyone, including disadvantaged groups.**
- **Housing must be located at a place where basic social services can be easily accessed and free from pollution.**
- **Housing should be culturally adequate**

Like other social rights, right to food is realized progressively and is accomplished when every man, woman and child, alone or in a community with others, has physical and economic access, at all times, to adequate food or the means for its procurement. This right is essential for realization of other human rights. Key elements of right to adequate food include **availability of food, food safety, acceptability** and **accessibility**.⁴⁰³

401 Article 8

402 Article 1.

403 See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, available at: <http://www.refworld.org/docid/4538838c11.html> [accessed 19 December 2017]; See also Icelandic Human Rights Centre, Right to An Adequate Standard of Living, at <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living>,



Availability of food means food is available in quantity and quality required to satisfy the dietary needs of people and can be moved from where it is produced to markets, while food safety means food should be protected from substances that may contaminate it. Acceptability means food should be accepted within the community or culture; and accessibility, both economic and physical, means people should be able to meet financial costs of acquiring food and the food is accessible to everyone, including disadvantaged groups such as children and persons with disabilities (PWDs).

The right to adequate housing is essential for enjoyment of all economic, social and cultural rights. This right is enshrined in major human rights instruments adopted by the United Nations, including ICESCR, UDHR, CEDAW, CERD and CRPD. Elements of the right to adequate housing include **security of tenure, affordability, habitability, accessibility, location** and **cultural adequacy**.⁴⁰⁴

The right is closely connected to rights to health, water and sanitation.

In 2020, key issues affecting the right to adequate standard of living included: government action to boost food security and adequate housing for poor households; food security; access to adequate housing; and impact of Covid19 on food security and housing.

3.7.2. Government action to boost food security and adequate housing for poor households⁴⁰⁵

In 2020, the Government revealed its plans to continue implementing the Tanzania Social Action Fund (TASAF) cash transfers programme to address basic needs of poverty (food, clothing, shelter) among the poor. In his budget speech for the financial year 2020/21, the Minister of Finance and Planning, Hon. Prof. Phillip Mpango, mentioned that the programme has helped to economically empower poor households.

He stated that for the financial year 2020/21, the Government would continue with implementation of phase three of the programme, whereby a total of 1,067,041 households with 5,130,001 people have been

accessed 19th December 2017

404 See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <http://www.refworld.org/docid/47a7079a1.html> [accessed 19 December 2017]; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22, available at: <http://www.refworld.org/docid/47a70799d.html> [accessed 19 December 2017].

405 See Maelezo ya Philip Mpango bungeni kuhusu ukomo wa bajeti 2020/21 at <https://www.mof.go.tz/docs/speeches/MAELEZO%20YA%20WFM%20BUNGENI%20MAMPANGO%20NA%20UKOMO-%2011%20MACHI%202020%20F.pdf>. Accessed on 19th October 2020.



identified and registered in villages and localities.⁴⁰⁶

3.7.3. Food security

Reports by the Ministry of Agriculture and international organizations dealing with food, such as the World Food Programme (WFP), indicate that Tanzania remains largely food secure, owing to excess of food produced and exported. So, in terms of food availability the situation appears to be stable. According to the Ministry of Agriculture, despite decreased food production in the financial year 2018/19, there were 2,473,774 tonnes in excess in the financial year 2019/20 as food availability stood at 118%.⁴⁰⁷ By November 2020, the National Food Reserve Agency (NFRA) held 110,289 tonnes of food stock.⁴⁰⁸

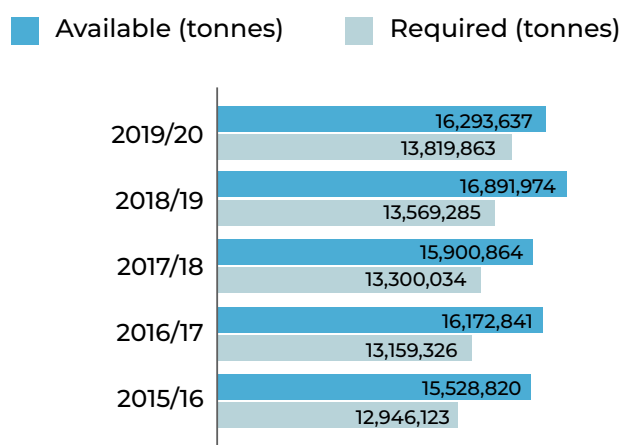


Figure 17: Food availability in Tanzania - 2016 to 2020
(Source: Ministry of Agriculture, 2020)

While food availability is generally satisfactory, it is still a challenge in some parts of the country. In January 2020, the Ministry of Agriculture, through its food security department, released a report on the assessment of food security situation that was conducted in 16 districts of 9 regions⁴⁰⁹

⁴⁰⁶ Ibid.

⁴⁰⁷ See HOTUBA YA WAZIRI WA KILIMO, MHESHIMIWA JAPHET NGAILONGA HASUNGA (MB), KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA KILIMO KWA MWAKA 2020/2021 at <https://www.kilimo.go.tz/index.php/en/resources/view/hotuba-ya-wizara-ya-kilimo-mwaka-2020-2021>, accessed 9th December 2020.

⁴⁰⁸ See the Bank of Tanzania (BoT), Monthly Economic Review, December 2020 at <https://www.bot.go.tz/Publications/Regular/Monthly%20Economic%20Review/en/2020122811342899.pdf>, accessed 30 December 2020.

⁴⁰⁹ Arusha (Longido); Dodoma (Mpwapwa, Kongwa, Bahi & Chamwino); Kilimanjaro (Mwanga & Same); Mara (Rorya & Musoma); Manyara (Simanjiro); Shinyanga (Kishapu & Shinyanga); Singida (Manyoni); Tabora (Nzegu); Tanga (Mkinga & Korogwe).



of Tanzania Mainland in November and December 2019.⁴¹⁰

The assessment centred on key food security indicators such as food availability, food accessibility and food consumption. In terms of food availability, the assessment showed that food availability was generally low for majority of households, with factors such rainfall uncertainties contributing to the situation.⁴¹¹

More than 90% of the of the households that were assessed experienced poor crop yields, while 65-70% did not have food reserves for a three-month period (December 2019 to February 2020).⁴¹²

In terms of food accessibility and affordability, the food security assessment revealed that most households had little access to food despite food availability at marketplaces, mainly due to less purchasing power and increasing food prices.⁴¹³

The assessment results also indicated that only 34% of the households experienced acceptable food consumption, while 26% of experienced poor food consumption, and 40% experienced borderline food consumption. Further, cereal crops, especially maize, were the most consumed foods (84%), followed by greens (56%), while fish scored 29%, milk scored 22%, and meat scored 10%. Most of the households which experienced poor eating habits were from Manyoni, Musoma, Rorya and Bahi District Councils. 21% of the households were faced with acute food insecurity, especially in Musoma, Longido, and Kishapu Districts.⁴¹⁴

Access to nutritious food is also key issue affecting food security, especially for the most vulnerable and marginalized members of the society. According to the World Food Programme (WFP), given the poverty and food poverty situation, majority of households in Tanzania find it difficult to afford nutritious diets, contributing to malnutrition.⁴¹⁵

As the country continues to shift to large-scale farming, small-scale farmers' access to land for food production also becomes a challenge. But there are also factors which compromise food security, especially at community and household levels,⁴¹⁶ such as overdependence on rainfed

⁴¹⁰ See Idara ya Usalama wa Chakula – Wizara ya Kilimo na Idara ya Uratibu Maafa – Ofisi ya Waziri Mkuu, Taarifa ya Tathmini ya Kina ya Halli ya Usalama wa Chakula na Lishe Nchini, Januari 2020 at <https://www.kilimo.go.tz/index.php/en/resources/view/taarifa-ya-tathmini-ya-kina-ya-hali-ya-usalama-wa-chakula-na-lishe-nchini>, accessed 28th November 2020.

⁴¹¹ Ibid.

⁴¹² Ibid.

⁴¹³ Ibid.

⁴¹⁴ Ibid.

⁴¹⁵ See World Food Programme, Tanzania Country Brief, December 2020, at https://docs.wfp.org/api/documents/WFP-0000123042/download/?_ga=2.42566317.968835604.1611986772-1108408858.1611986772, accessed 9th December 2020.

⁴¹⁶ See World Food Programme, Tanzania Country Brief, December 2020, at https://docs.wfp.org/api/documents/WFP-0000123042/download/?_ga=2.42566317.968835604.1611986772-1108408858.1611986772,



agriculture, use of inadequate tools and technology in food production, lack of adequate investment in irrigation farming, and adverse effects of climate change. Because of these challenges, pockets of food shortages are occasionally reported at regional, district, and household levels. In 2020, the Ministry of Agriculture stated that despite the excess food stocks, food shortages were reported in 16 district councils in 9 regions.⁴¹⁷ Consequently, food prices in these areas rose.

3.7.4. Access to adequate housing

Adequate housing is a big challenge for most countries in Africa and other third world countries, characterized by slums and informal settlements in urban areas and poor shelter in rural areas. Majority of people who lack adequate shelter/housing live in urban areas, with urbanization and poverty playing a big role in their predicament.

More than 1 billion people across the world still lack adequate shelter and live in unacceptable conditions of poverty. UNHABITA

In Tanzania, inadequate housing continues to be a major challenge for the urban poor, especially in some areas of Dar es Salaam and Mwanza Cities. Majority of people living in these areas do not live in housing that that are adequate, located in places which are not habitable and where basic social services cannot be easily reached. Due to poverty, they cannot afford to build or access adequate housing. As a result, progress in achieving the SDG 11 target of ensuring access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030, has been slow.

For women, existence of discriminatory laws and practices hinders their access to adequate housing. In Tanzania, such laws and practices include inheritance laws, especially customary laws; fraudulent mortgages by spouses, lack of legal knowledge; limited access to justice; GBV, whereby women decide to stay with their spouses despite the violence due to fear to homelessness; loopholes in land laws; and patriarchy. Some of the cultural practices also deny widows right to inherit and seek to disinherit them or provide them limited inheritance rights. A good example of this

accessed 9th December 2020.
417 Ibid.



is the culture of widow inheritance, which is practiced in some tribes of Tanzania Mainland. These laws and practices leave women exposed to lack of adequate shelter or poor quality of housing.⁴¹⁸

LHRC's View: Tanzania as a state has a duty under various conventions providing for women's rights, including CEDAW and Maputo Protocol, to ensure that women have equal access to adequate housing. Efforts to enhance adequate standards of living for all Tanzanians also need to be enhanced.

3.8. Impact of Covid19 on Economic, Social and Cultural Rights

Covid19 hit socio-economic rights the hardest in the year 2020, affecting effective realization of human rights such as the right to work, right to property, right to education, right to adequate standard of living, and right to health. In April 2020, the Economic and Social Research Foundation (ESRF) released a report on rapid socio-economic impact assessment of Covid19, which assessed the likely socio-economic impacts of Covid19 in Tanzania.⁴¹⁹

The assessment focused on six sectors with the highest risks, namely: tourism and hospitality industry, transportation and storage industry, agriculture (crops, livestock and fisheries), wholesale and retail trade, finance and insurance, and social sector (health and education).⁴²⁰

The tourism sector was one of the sectors which was impacted a lot, as one of the measures taken by countries across the world to prevent spread of the virus was to restrict arrivals, which meant reduced number of tourists and consequently affecting hotel business and no work for tourism companies and tour guides. Zanzibar, whose economy relies a lot on tourism, suffered even more in terms of decreased economic activities.⁴²¹ The consequences were far reaching, going as far as loss of government revenue, loss of jobs, and households becoming less food secure. Because of reduced revenue, the Government's ability to provide social services was also compromised.

The transportation sector was also significantly negatively affected

418 Katherine Hughes & Elisabeth Wickeriy, A Home in the City: Women's Struggle to Secure Adequate Housing in Urban Tanzania, Fordham International Law Journal, Volume 34, Issue 4, Article 5, 2011, available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://www.google.co.tz/&httpsredir=1&article=2294&context=ilj>, accessed 21st December 2020.

419 See Economic and Social Research Foundation, Rapid Socio-Economic Impact Assessment of Covid19 in Tanzania, April 2020, at <https://www.undp.org/content/dam/tanzania/docs/docs2020/undp-tz-SEA-Report%20Rapid-COVID19.pdf>, accessed 10th December 2020.

420 Ibid.
421 Ibid



by the Covid19 pandemic as the Government took measures such as directing bus operators to ensure level sitting and providing sanitizers, which meant extra costs of doing business and reduced income. Inter-regional buses experienced decline of profits due to fewer people travelling to reduce the risk of contracting the virus. Public transport was therefore hit hard, characterized by long waiting hours, and forcing passengers to use other and costlier means of transport such as bodaboda and bajaj. The aviation subsector was also not spared, as flights were cancelled and business became hard, as was the marine transportation subsector, the country witnessed a drastic reduction in the number of ships coming in, affecting imports and exports.⁴²²

In the trade sector, local and international trades were affected by limited supplies as countries closed their borders and imposed strict restrictions, affecting imports and exports. Women, who constitute the majority of traders, were disproportionately affected by Covid19 in terms of their trading activities, including cross-border trading. Restaurants, petty traders and other businesses suffered losses and reduced income.⁴²³

In the finance sector, Covid19 enhanced the risk of non-performing loans, as businesses ran slow and some were closed, reducing their ability of loan repayment. Affected borrowers included large corporate borrowers, SMEs and micro credit clients. For loans which were secured by property, loan repayment failure meant risk of losing one's property.⁴²⁴ Right to education was one of the rights which was mostly affected by the Covid19 pandemic, as the Government ordered closure of schools and other educational institutions. The Covid19 leave lasted from April to June 2020. School children from poor households suffered the most as they could not adapt to learning by using ICTs. Online learning was only possible for ICT-enabled schools, most of which are privately owned, leaving majority of pupils and students in public schools at a great disadvantage. Closure of schools also increased the risks of school dropout, child marriages, and child pregnancies. It also caused increased cost to employers as employees were paid without generating returns. In fact, some of the private employers started laying off employees because of lack of clear revenue streams. Right to work for teachers and workers in other professions and businesses was also severely infringed, due to non-payment of wages, unfair termination of employments, and payment of reduced wages.

422 Ibid
423 Ibid
424 Ibid





The UN Special Rapporteur on the Right to Education, Boly Barry, also conducted an assessment on the impact of Covid19 on education. She explained that long-term impact of the pandemic on education worldwide would depend on the measures countries adopt then and warned against the excessive use of digital technologies to enable homeschooling because it would exacerbate inequalities. Boly Barry also cited figures from UNESCO which show that 826 million students do not have access to a home computer, and 706 million do not have the internet at home, and suggested simplest technologies, such as printed documents as a positive response in the continuity of learning during the school closure. In her report, she also highlighted on the rights of teachers and other education staffs. She mentioned the decline of remuneration for many staff as a result of the pandemic, stating that teachers in private schools have been particularly affected.⁴²⁵ The pandemic also had significant impacts on health services for noncommunicable diseases by severely disrupting medical treatment services for the diseases, as resources were reassigned or directed towards preventing and addressing the virus. As noted in subchapter 3.3. above, the health sector was overburdened in terms of healthcare workers even before the pandemic, so the pandemic compounded the problem of shortage of workers to deliver quality healthcare services. There were also reports of some health facilities and workers stigmatizing patients ‘suspected of having the virus.’

⁴²⁵ See Bolly Barry (UN Special rapporteur on the right to education) report on how the covid-19 pandemic has affected the right to education, to the 44th session of human right council in Geneva, Switzerland at <https://www.ohchr.org/en/NewsEvents/Pages/COVID-19-and-education.aspx>. Accessed on 20th October 2020.



CHAPTER 4: COLLECTIVE RIGHTS

4.1. Overview

Collective rights are the rights that belong to the group of people as opposed to individual rights. An individual enjoys collective rights as part of a group. Collective rights include the right to self-determination, the right to clean and safe environment, the right to natural resources, the right to peace and the right to development. These rights are enshrined in various international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; the African Charter on Human and People's Rights (ACHPR) of 1981 and the United Nations Charter of 1945. For a right to be recognised as a collective right, the holder of the right should be collective or affirm the collective identity of groups in society, the exercise of the right pertains to a legally protected collective good, the interest of a right is of a collective nature.⁴²⁶

4.2. Right to Development

4.2.1. Introduction

The United Nations (UN) has defined development as “...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.**”⁴²⁷

The right to development is a human right on a par with all other human rights.⁴²⁸ Key elements of this right are: people-centred development; a human rights-based approach; participation; equity; non-discrimination; and self-determination.

⁴²⁶ Andrea, N. (2018) Collective Rights: In The United Nations Declaration On The Rights of Peasants And Other People Working In Rural Areas, Fian International available at https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/droits_collectifs_UK_web.pdf, accessed on 18th March 2019.

⁴²⁷ Article 1 of the UN Declaration on the Right to Development, A/RES/41/12, 4 December 1986, available at <http://www.un.org/documents/ga/res/41/a41r128.htm>, accessed 27th December 2017.

⁴²⁸ Office of the United Nations High Commissioner for Human Rights (2016), Frequently Asked Questions on the Right to Development, Fact Sheet No. 37 at <https://digitallibrary.un.org/record/3832228?ln=en>, accessed 29 October 2020.



The right to development is both an individual and a collective right. It belongs to all individuals and all peoples.

Office of the United Nations High Commissioner for Human Rights

Rule of law, good governance, participation of people and respect for human rights are key for realization of the right to development, which is essential in enjoyment of other fundamental human rights guaranteed under the ICCPR and the ICESCR. The Government has a duty to involve community members in creating development plans and policies,⁴²⁹ as well as ensuring fair distribution of the benefits. As indicated in the UN Declaration on the Right to Development, development is not just economic, but also social, cultural and political.⁴³⁰

Governments are also obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals to ensure meaningful participation in development and fair distribution of benefits resulting from such development.⁴³¹

The Declaration further provides for states' duty to co-operate with each other in ensuring development and eliminating obstacles to development.⁴³²

4.2.2. Right to Development as Tanzania becomes a middle-income country⁴³³

In July 2020, the World Bank (WB) declared Tanzania to be a middle-income country, categorizing it as a lower-middle income country. This was made possible after the Gross National Income (GNI) increased from \$1,020 in 2018 to \$1,080 in 2019.⁴³⁴ According to the WB, Tanzania's GNI for the year 2019 exceeded the threshold of \$1,036 for lower-middle income

429 In Tanzania, we have the Tanzania Development Vision 2025, which is an essential tool that guides the development process in the country.

430 Article 1 of the UN Declaration on the Right to Development.

431 Ibid Article 2(3).

432 Ibid, Article 3(3).

433 See Umar Serajuddin & Nada Hamadeh "New World Bank country classifications by income level: 2020-2021" World Bank Blogs, 01 July 2020 at <https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021>, accessed 29 October 2020; FURTHER AFRICA "World Bank promotes Tanzania to middle income status" 3 July 2020 at <https://furtherafrica.com/2020/07/03/world-bank-promotes-tanzania-to-middle-income-status/>, accessed 29 October 2020;

434 Ibid.



status, attributed to a strong economic performance in the past decade.⁴³⁵

Achieving this status is one of the targets set out in the Tanzania Development Vision 2025, which envisages Tanzanians to “have graduated from a least developed country to a middle income country by the year 2025 with a high level of human development.”⁴³⁶

Tanzania has been advised to build on the middle-income status achievement by focusing on other goals set out in the Tanzania Development Vision 2025, including high level of human development, high-quality livelihoods, and good governance.⁴³⁷

It is thus important to invest in human development in order to improve the quality of life for all citizens.⁴³⁸

Economists in Tanzania have commended the middle-income status as a step forward in national development, but have cautioned that the country must strive to reduce inequalities, particularly the gap between the rich and the poor,⁴³⁹ which remains a big challenge as poverty reduction rate continues to be slow.

Infrastructural development and rural electrification are among the factors that have contributed to economic development. Significant progress has been made in infrastructural development in the past fifteen years, with the Ministry of Works, Transport and Communications, among ministries receiving a big chunk of the national budget. Recent projects include construction of roads, flyovers and bridges, as well a railway (SGR) construction. According to the Bank of Tanzania (BoT), fastest growing activities in 2019 were agriculture, construction, and transport, playing a big part in GDP growth.⁴⁴⁰

Agriculture, construction, trade and manufacturing were dominant contributors to the GDP in 2020⁴⁴¹. In February 2020,

435 See William G. Battaile “What does Tanzania’s move to lower-middle income status mean?” World Bank Blogs, 10 July 2020 at [HTTPS://BLOGS.WORLDBANK.ORG/AFRICAN/WHAT-DOES-TANZANIAS-MOVE-LOWER-MIDDLE-INCOME-STATUS-MEAN](https://blogs.worldbank.org/afriacan/what-does-tanzanias-move-lower-middle-income-status-mean), accessed 29 October 2020.

436 See THE TANZANIA DEVELOPMENT VISION 2025 at <https://mof.go.tz/mofdocs/overarch/vision2025.htm>, accessed 29 October 2020.

437 William G. Battaile “What does Tanzania’s move to lower-middle income status mean?” World Bank Blogs, 10 July 2020.

438 Ibid.

439 See Alawi Masare “Tanzania: What It Means As Tanzania Rises to Middle Income Level” The Citizen Newspaper, 3 July 2020 at <https://allafrica.com/stories/202007030449.html>, accessed 29 October 2020.

440 See Bank of Tanzania, ANNUAL REPORT 2018/19, at <https://www.bot.go.tz/Publications/EconomicAndOperationsAnnualReports/ANNUAL%20REPORT%202018-19%20SIGNED.pdf>, accessed 3rd March 2020.

441 See Bank of Tanzania (BoT), Monetary Policy Statement, 2020/21, June 2020 at <https://www.bot.go.tz/Publications/Regular/Monetary%20Policy%20Statement/en/2020061515311396.pdf>, accessed 20 October 2020.

LHRC Media Survey 2020.



it was revealed in the new 2020 African Economic Outlook report that at the rate of 6.8%, Tanzania's economy had become among the world's 10 fastest growing economies.⁴⁴²

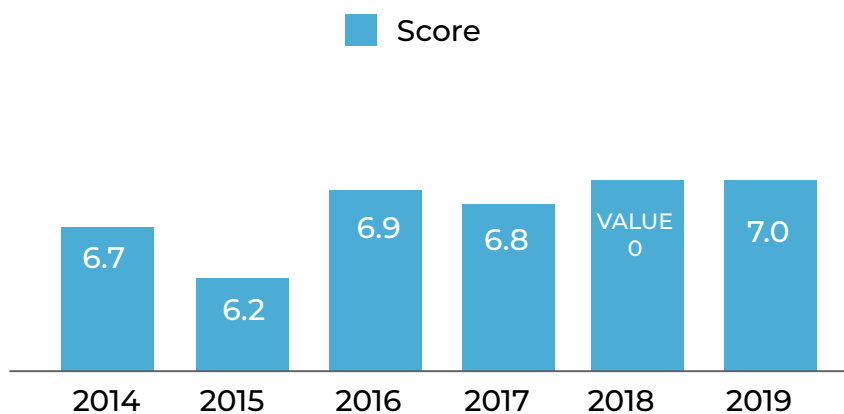


Figure 18: Real GDP Growth Tanzania
Source: Bank of Tanzania (BoT) 2020

Tanzania has also made significant progress in rural electrification. In February 2020, Minister for Energy, Dr. Medard Kemani, revealed that Tanzania had acquired the first slot in rural electrification in Africa, overtaking Nigeria. He noted that through the Rural Electrification Programme (REA), rural electrification had reached 74%, which is 2% more than Nigeria's 72%.⁴⁴³

LHRC's View: Achieving the middle-income country status is a great achievement, and LHRC congratulates the Government, considering Tanzania has achieved this status five years ahead of time in line with the targets under the Tanzania Development Vision 2025. However, much still needs to be done to achieve the Tanzania Development Vision 2025, which also calls for good governance and respect for rule of law. According to the United Nations, rule of law is a vital mechanism for enjoyment and realization of human rights, and there is no rule of law if human rights are not protected.⁴⁴⁴

Human rights and rule of law are thus mutually

⁴⁴² LHRC Media Survey 2020.

⁴⁴³ Ibid.

⁴⁴⁴ See United Nations "Rule of Law and Human Rights" <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/#:~:text=The%20rule%20of%20law%20is%20the%20implementation%20mechanism%20for%20human,a%20principle%20into%20a%20reality.&text=In%20the%20Millennium%20Declaration%2C%20Member,human%20rights%20and%20fundamental%20freedoms,> accessed 29 October 2020.



reinforcing, as are good governance and human rights.⁴⁴⁵

A human rights-based approach has been emphasized in the UN Declaration on the Right to Development and the 2030 Agenda for Sustainable Development. This approach requires development to be achieved in a manner that ensures that all human rights and fundamental freedoms are fully realized.⁴⁴⁶

Taking measures to improve respect for human rights is also key for achieving key SDGs. They include: SDG 1 on ending poverty in all its forms; SDG 4 on ensuring inclusive and equitable quality education; SDG 5 on achieving gender equality and empowering all women and girls; and SDG 16 on providing access to justice for all and build effective, accountable and inclusive institutions at all levels.

Additionally, Tanzania needs also improve in terms of human development, as envisaged in the development vision. Tanzanian's human development for the year 2018 back-pedaled by 24.9% compared to 2017, according to UNDP's 2019 Human Development Report.⁴⁴⁷ The criteria used were income disparity, lack of equality in the provision of education, lack of equality in the environment when a baby is born and a wide gap between the haves and the have nots.

4.2.3. Political Development

In 2020, Tanzania continued to back-pedal in terms of political development. This type of development requires greater participation in political life, which is a constitutional right.⁴⁴⁸

As discussed in subchapters 2.3 and 2.4 of this report, freedoms of expression, assembly, and association continued to be negatively affected by restrictive legislation, exacerbated by various amendments made in 2019 and 2020. These rights are known as participation rights, and their curtailment has culminated into reduced civic space, negatively impacting political development.

445 Ibid; Office of the United Nations High Commissioner for Human Rights (2007), Good Governance Practices for The Protection of Human Rights, United Nations, New-York and Geneva, at <https://www.ohchr.org/Documents/Publications/GoodGovernance.pdf>, accessed 29 October 2020.

446 See Article 1 of the Declaration of the Right to Development of 1986; Office of the United Nations High Commissioner for Human Rights (2016), Frequently Asked Questions on the Right to Development, Fact Sheet No. 37.

447 LHRC Media Survey 2020.

448 See Article 21 of the Constitution of the United Republic of Tanzania, which speaks of the freedom to participate in public affairs.



4.2.4. Social Development

Social development entails effective realisation of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Tanzania's Development Vision 2025 seeks to achieve high quality livelihood for Tanzanians; and the strategies for this include food self-sufficiency and security, universal primary education, access to quality primary health care, absence to abject poverty and universal access to safe water. Social development means investing in the people and essential in ensuring people reach their full potential.

In 2020, challenges hindering effective realisation of social rights negatively affected social development. For instance, as discussed in Chapter 3 of this report, challenges that hindered effective realisation of right to education included shortage of toilet holes, shortage of classrooms, shortage desks, and shortage of teachers. Shortage of classrooms has been compounded by increased enrollment following implementation of fee-free education policy. Child marriage and child pregnancies also continue affect right to education and consequently social development.

In provision of healthcare services, as part of progressive realisation of the right to highest standard of health, the Government took measures to ensure progressive realisation of this right in 2020. However, the major challenges faced were insufficient budget, the burden of Covid19, and shortage of healthcare workers. Other factor that continue to affect provision of social services and consequently social development, include corruption, tax avoidance, and tax evasion.

4.3. Right to Enjoy and Benefit from Natural Resources

4.3.1. Introduction

The African Charter on Human and People's Rights of 1981 provides that "all people shall freely dispose of their wealth and natural resources" and importantly that "this right shall be exercised in the exclusive interest of the people."⁴⁴⁹

The right is also covered under the UN General Assembly Resolution 1803 of 1962 which calls for "permanent sovereignty over natural resources." Domestically the Constitution of the United Republic of Tanzania provides for the right to natural resources under article 9. This article provides that "the use of natural resources places emphasis

⁴⁴⁹ Article 21(1).



on the development of people and in particular is geared towards the eradication of poverty, ignorance and disease.” Nevertheless, this provision is unenforceable as it is not in the Bill of Rights within the URT Constitution.

Natural resources are important for generation of revenue and provide employment for many Tanzanians, for example in the tourism industry. The mining industry is another area where natural resources generate revenue and provide employment. Local and foreign investors have invested in the mining sector. Duty bearers are required to ensure permanent sovereignty over the natural resources for the purpose of enhancing national development and wellbeing of the people, ensure respect of the rights and interests of the indigenous people, equitable sharing of transboundary natural resources and protection and conservation of the natural resources.⁴⁵⁰

Under the Constitution of the United Republic of Tanzania, the State authority and agencies are required to direct policies and programmes in ensuring that the use of natural wealth places emphasis on the development of the people and geared towards eradication of poverty, ignorance and disease.⁴⁵¹

4.3.2. Action to safeguard the right to enjoy and benefit from natural resources

In 2020, government action to safeguard the right to enjoy and benefit from natural resources included implementation of relevant laws, regulations, and policies, and review of investment contracts. In February 2020, the Attorney General, Prof. Adelarudus Kilangi, revealed that his office had reviewed 200 investment contracts, including those related to the exploration and production of oil and gas and complex agreements between investors and public entities.⁴⁵²

The Attorney General noted that his Office would also review bilateral investment treaties and multilateral investment treaties which involve Tanzania⁴⁵³.

450 Christina, V. International Environmental Law: Sovereignty over Natural Resources and Prohibition of Transboundary Harm available at <https://www.uio.no/studier/emner/jus/jus/3US5520/h14/undervisningsmateriale/3.-sovereignty-over-natural-resources.pdf>, accessed on 9th March 2020.

451 Article 9(i) of the Constitution of the United Republic of Tanzania, 1977

452 LHRC Media Survey 2020.

453 Ibid.



4.3.3. Challenges in realization of the right to enjoy and benefit from natural resources

Among the challenges that affected realization of the right to enjoy and benefit from natural resources was the Covid19 outbreak.⁴⁵⁴ Like it was the case in different parts of the world, this outbreak impacted Tanzania's tourism industry as flights to bring tourists were cancelled.⁴⁵⁵ Other challenges that continue to affect realisation of this fundamental human right include corruption; tax evasion and avoidance; tax incentives; transfer pricing;⁴⁵⁶ and loopholes in mining and natural resources laws.⁴⁵⁷

4.4. Impact of Covid19 on Collective Rights

Like it was the case for most other human rights, Covid19 pandemic also had a huge impact on personal and national development, affecting key sectors and industries such as health sector, education sector, tourism industry, business sector, and hospitality industry. Covid19 outbreak had a big impact on realisation of the right to development for both individuals and peoples, as it affected businesses, work, and provision of social services. The health sector was also hit hard as healthcare providers and workers were overburdened and overworked, not to mention most of the healthcare workers had to be reassigned to attend Covid19 cases. This significantly reduced availability of treatment services, especially of noncommunicable diseases. The tourism sector was also hit hard, as tourists were no longer pouring in to visit the different tourist attractions in different parts of Tanzania. Additionally, there was increased pressure on public expenditure on health while the revenues plummeted.

454 LHRC Media Survey 2020.

455 Ibid.

456 See LHRC (2019), Human Rights and Business Report 2018/19, at www.humanrights.or.tz.

457 See analysis by HakiRasilimali at <https://www.hakirasilimali.or.tz/tamko-rasmi-la-hakirasilimali-juu-ya-miswada-ya-tasnia-ya-madini/>.



CHAPTER 5: RIGHTS OF VULNERABLE GROUPS

5.1. Introduction

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. In Tanzania, vulnerable groups include women, children, persons with disabilities (PWDs), the elderly, persons living with HIV/AIDS, and refugees. These groups require special protection as they are more likely to face human rights violations than others. There is special protection, which is guaranteed under laws and conventions that specifically provide for rights of these groups, seeks to ensure they enjoy and realize fundamental human rights equally with others.

5.2. Women's Rights

5.2.1. Introduction

As human beings, women enjoy human rights guaranteed and protected under key human rights conventions that form the international bill of rights, namely the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). They also enjoy human rights recognised under the regional human rights charter, the African Charter on Human and People's Rights. However, there are treaties that specifically provide for women's rights, namely the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) of 1979 and Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) of 2003. Another key convention that provides for rights of women is the SADC Protocol on Gender and Development of 2008.

The principle of non-discrimination takes the centre stage when discussing women's rights; and domestically the Constitution of the United Republic of Tanzania of 1977 guarantees human rights generally under the bill of rights in the constitution and specifically the right to equality before the law, which prohibits



any form of discrimination, including based on sex and gender.⁴⁵⁸

Under CEDAW, Maputo Protocol and SADC Protocol on Gender and Development, Tanzania is obligated to pursue all appropriate means to eliminate discrimination against women and promote and ensure gender equality. In the country, there are also several laws which provide for and protect women's rights, including the Land Act and Village Land Act of 1999, which provide for the right of women to own land, and the Penal Code, which protects women against different forms of sexual violence, FGM and human trafficking, to mention but a few. In the same legal framework, there are laws which do not protect women from discrimination or abuse such as the laws of inheritance (especially the Local Customary Declaration Order of 1963) and the Law of Marriage Act 1971.

In 2020, key issues affecting women's rights included: physical violence; sexual violence in the form of rape and sodomy; psychological violence and sexual corruption. A total of 26,544 incidents of violence against women (VAW) were reported to the police, an increase of 2,859 incidents.

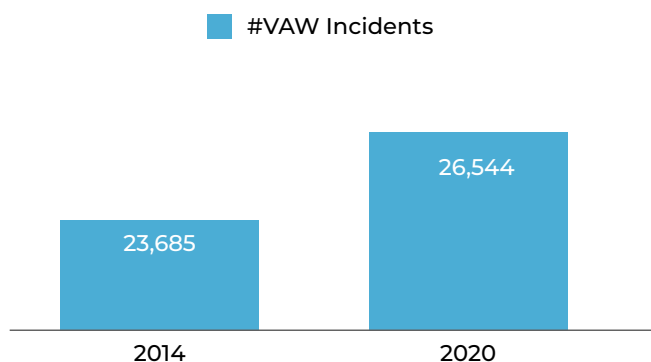


Figure 19: #VAW incidents recorded by police 2019 & 2020
Source: Tanzania Police Force

According to the World Bank, in some countries, violence against women costs countries up to 3.7% of their Gross Domestic Product (GDP).
[World Bank (2018)]

⁴⁵⁸ See Article 13 of the Constitution of the United Republic of Tanzania 1977.



5.2.2. Physical violence against women: Killings of women motivated by jealousy

Violence against women (VAW) refers to any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women.⁴⁵⁹ It includes threats which of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Examples of VAW include: rape, sexual harassment at work, trafficking in women and girls, forced prostitution, beatings, torture, sextortion, and harmful traditional practices such as female genital mutilation (FGM). VAW is a form of discrimination and constitutes human rights violation,⁴⁶⁰ violating rights such as right to life; right to physical integrity; right to liberty and personal safety; right against torture or cruel, inhuman or degrading treatment or punishment; and right to health.⁴⁶¹

The most common type of violence experienced by women is intimate partner violence.

World Health Organization

In 2020, physical violence continued to be one of the factors that hinder effective realisation of women's rights. Of note, were the killings of women by their spouses, motivated by jealousy. In 2019, LHRC recorded at least 12 incidents of killing of women, of which 8 were motivated by jealousy.⁴⁶² In 2020, through human rights monitoring and media survey, LHRC recorded 32 incidents of killings of wives by their spouses, of which 23 were motivated by jealousy. These incidents are summarized in the table below. It should be noted, however, that these are just a few incidents which the LHRC could record, but there are many more incidents which are recorded by the police.

459 See the United Nations Declaration on the Elimination of Violence against Women of 1993.

460 United Nations Human Rights, Office of the High Commissioner, Violence Against Women, Information Series on Sexual and Reproductive Health and Rights, available at http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf, accessed 30th December 2018.

461 See Nieves Rico, Gender-Based Violence: A Human Rights Issue, available at <http://www.cepal.org/mujer/noticias/paginas/9/27409/genderbasedviolence.pdf>, accessed 30th December 2018; Amnesty International, Violence Against Women Information, available at <https://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women-information>, accessed 30th December 2018.

462 LHRC (2020), Tanzania Human Rights Report 2019, Tanzania Mainland.



There were many incidents of killings motivated by jealousy in 2020.

- *The Commissioner of Police in charge of Operations and Training, Liberatus Sabas*

Table 14: Incidents of killings of women by their spouses following acts of violence against them, Jan – Dec 2020

SN	Incident	Report Date
1	Mbeya: Police Force in Mbeya Region arrested Festo Maduhu (28-30), resident of Kabwe area in Mbeya City, who was accused of killing his lover at a guest house. The reportedly committed the offence on 22 nd March 2020, doing so by strangling and hitting the victim after accusing her of being unfaithful.	25 Mar 2020
2	Rukwa: Police in Rukwa Region arrested a 55-year-old man, accused of strangling to death his wife, Namsong Bonifas (53) following a family dispute. The incident occurred on 9 th May 2020.	4 May 2020
3	Mwanza: Samwel Baada (32), resident of Bomani Ward in Sengerema District, was accused of killing his wife because of jealousy, before killing himself by torching their house. The incident occurred on 30 th May 2020.	3 Jun 2020
4	Kagera: Erick Samson, resident of Itojo Village, was arrested by police after he was accused of killing his wife, Mercy Ukandala on 16 th June 2020. It was reported that a few days before the incident the couple had a marital dispute.	24 Jun 2020
5	Ruvuma: Police in Ruvuma reported in May 2020 that Jackson Hamis (24), resident of Making'inda Msamala area, strangled his wife to death due to jealousy and then hanged himself using a bedsheet.	30 May 2020
6	Singida: Police in Singida arrested a bodaboda driver, Abubakari Hamisi (25), for killing his wife, Fadhila Ibrahimu (19).	28 Mar 2020
7	Kilimanjaro: Anthony Asenga (33), resident of Rombo District, surrendered to the police after killing his wife, Happiness Sianga (27) on 12 th February 2020. He slaughtered his wife, who was eight-month pregnant.	14 Feb 2020



SN	Incident	Report Date
8	Geita: Police in Chato District arrested Adeki Nyamanang'ondi, who attempted a murder-suicide. He was accused of killing his wife, Mwajuma Kinyama, on 1 st February 2020 in Mbuye Village. He then attempted to kill himself.	11 Feb 2020
9	Tabora: Police in Tabora arrested a resident of Isikizya Village, accused of killing his wife Hawa Juma Seif (35), by stabbing her with a spear. His acts were motivated by jealousy.	26 Feb 2020
10	Mara: Police in Butiama District arrested Juma Warioba (27), resident of Wegero area, for brutally killing with a machete his wife, Bevatha Boniphance (22), before stabbing himself with a knife. The reason for his action was jealousy.	14 Jan 2020
11	Kigoma: Police in Kigoma Region arrested a doctor with the Red Cross, Albert Lugayi (65), accused of killing his lover and attempting to take is own life thereafter.	16 Jul 2020
12	Manyara: Shedrack Sekeyani (40), resident of Kiteto District, killed his wife, Magdalena Sira (30), because of jealousy. He then used his late wife's khaga to hang himself, leaving behind four children.	8 Apr 2020
13	Mwanza: Laurent Herman (50-55), resident of Buhaji Village in Misungwi District, killed his wife, Anastazia Zakaria (40-45), for refusing to have sex with him. He thereafter drank some poison and died the following day at a hospital.	29 Apr 2020
14	Arusha: Police in Arusha Region arrested a prominent businessman, Elibariki Kessy (40), on accusation of shooting and killing his wife, Ester Elibariki (30), after accusing her of being unfaithful. The jealousy-motivated killing incident occurred on 23 rd April 2020, when the husband found a romantic message on his wife's phone.	25 Apr 2020
15	Tabora: Police in Igunga District arrested Machanya Wenja (25), accused of killing his wife, Machanya Wenja (25), after catching her engaging in sexual intercourse with another man outside their home. The incident occurred on 31 st July 2020.	4 Aug 2020
16	Dar es Salaam: Police in Kinondoni District arrested Jeremiah Duma, accused of killing his wife, Agnes, due to jealousy.	25 Aug 2020



SN	Incident	Report Date
17	Rukwa: Police in Nkasi District arrested Frank Galamoshi (30), accused of killing his wife Tabitha Mwanyanje (29), due to jealousy. The incident occurred on 25 August 2020. It was reported that a quarrel ensued when the wife's phone received an sms and the husband thought it was another man sending her money through MPESA, while in fact it was a salary alert sms.	28 Aug 2020
18	Kagera: Police in Ngara District arrested Derrick Dambuue(26), resident of Mgoma Village, after he reportedly killed his lover and her two-year-old child due to jealousy. It was reported that the man committed the murders after catching the lover with his friend.	28 Aug 2020
19	Kagera: Police in Karagwe District arrested Alistides Crizostom (40), on accusation of killing his wife, Donina Alistides (53) on 21 July 2020 after finding her with another man in their bedroom.	24 Jul 2020
20	Dar es Salaam: Police in Dar es Salaam arrested a man, resident of Mbezi kwa Msuguri, accused of beating his wife, Agness Mushi, to death on 27 th August 2020.	9 Sep 2020
21	Kagera: Police in Kagera Region arrested Faraji Yunusu (44), resident of Kikagati Village in Muleba District for reportedly killing his wife, Nadia Colnel (30) and his sister-in-law, Shadia Yusuf (25). He killed the latter after accusing her of extramarital affair and the latter because she allegedly drove his wife to the affair.	29 Oct 2020
22	Mwanza: Police in Mwanza Region arrested Benson Oluochi (54), resident of Capripoint area, for killing his wife, Elizabeth Benson after accusing her of being unfaithful to their marriage.	10 Nov 2020
23	Rukwa: Police in Rukwa Region were looking for a man named Joseph Kalolo, who was accused of strangling and killing his wife, Maria Kaozya (30), because of jealousy.	30 Nov 2020
24	Pwani: Police in Pwani Region arrested a JWTZ military officer, Daniel Warioba (43) for killing his wife, Joyce Ismail (35), who was a teacher at Ruvu Darajani Primary School.	13 Dec 2020
25	Mwanza: Fred John (20), resident of Mwanza City, was arraigned before the Bunda District Court on the charge of killing his lover, Doros Samson (18) by hitting her with a heavy object and strangling to death her sibling, Nickson Charles (5).	19 Nov 2020



SN	Incident	Report Date
26	Shinyanga: Police in Shinyanga arrested Elia Shija (30) for stabbing and killing his wife, Mariam Julius (26) because of jealousy. The husband accused his wife of having an extramarital affair.	2 Dec 2020
27	Mbeya: Police in Mbeya arrested Samson Kyando (26), resident of Mswisi Ward in Mbarali District, for hitting with a stick and killing his wife, Cecilia Wilson (24).	20 Dec 2020
28	Mara: Police in Serengeti District arrested Mantage Magocha (26), resident of Nyamokobiti Village, for beating with a stick and killing his pregnant wife because of jealousy.	22 Dec 2020
29	Lindi: Lindi Regional Police Commander, Ntatiro Kitinkwi, reported that on 27 th November 2020, Sophia Mkutenda, resident of Ruangwa District, was brutally killed with a sharp object for witchcraft-purposes. The crime was orchestrated and carried out by her husband, who was assisted by two other people. According to the husband, he was told by his boss at a mine in Namungo Village that if he wants to become rich, he has to kill his wife. He stated that after killing his wife they took her head to his boss.	29 Nov 2020
30	Kigoma: Police arrested Dinoventule Basilo Bugoma (53), resident of Makere Village in Kasulu District, for killing his wife, Trodasia Bugoma (42), on 2 nd August 2020 because of jealousy.	10 Aug 2020
31	Shinyanga: Police in Kahama District arrested John Chumila (42) for attacking his wife, Christina Jacob (41), with a machete and killing her because of jealousy, before hanging himself to death.	20 Aug 2020
32	Dar es Salaam: Police in Dar es Salaam arrested Erick Bubelwa, resident of Kimara Stop Over area for killing his wife, Mercy Mkandara (33). The incident occurred in June 2020.	28 Jun 2020

Source: Media Survey & Human Rights Monitoring 2020



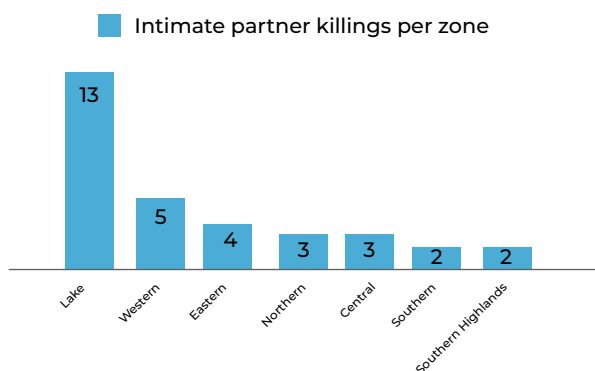


Figure 20: Intimate partner killings documented by LHRC per zone
Source: LHRC Media Survey and Human Rights Monitoring 2020

Apart from death, there were also other consequences that women suffered as a result of VAW, including severe or permanent injuries and disability, as well as psychological problems. For instance, in September 2020, Veronica Kidemi, a teacher at Kiranyi Secondary School in Arusha was reportedly subjected to a brutal act of violence by her husband.⁴⁶³

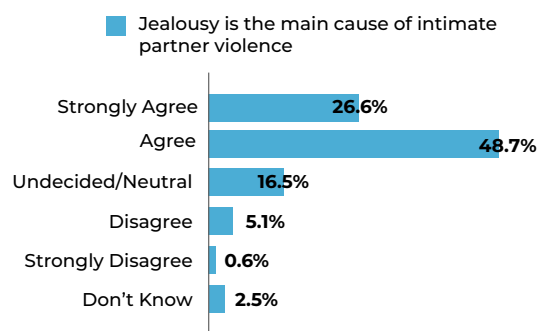


Figure 21: Human rights survey participants' perceptions on jealousy and intimate partner violence

The husband attacked her with a machete and chopped-off part of her arm because of jealousy. The victim reported that her husband, who was working in Dar es Salaam, had been constantly accusing her of being unfaithful but has never been able to substantiate any of his claims. He would also constantly give her a hard time at work, such that her fellow teachers, especially male teachers, would not want to be near her most

⁴⁶³ LHRC Media Survey 2020.



of the times. Arusha police confirmed the occurrence of the incident and arrest of the husband, who had absconded to Dar es Salaam.⁴⁶⁴ In another incident, Police in Mbeya Region arrested 10 people in October 2020, including two from the same family, for attacking and burning their stepmother after accusing her of using title deeds of the houses they inherited for securing a bank loan.⁴⁶⁵

During the human rights survey, 48.7% and 26.5% of the survey participants agreed and strongly agreed respectively that jealousy is the main cause of intimate partner violence.



Picture 6: A victim of intimate partner violence whose husband chopped-off her hand because of jealousy in Arusha

Source: Millard Ayo

LHRC's View: Intimate partner violence has become a big challenge and has far-reaching ramifications for families and the society at large. It destabilizes families, has negative impact on children, and affects women's ability to function properly and become more productive members of the society. It is a public health problem and human rights concern that affects women's physical and mental health, subjecting victims to psychological impacts such as depression, anxiety, and post-traumatic stress disorder (PTSD).

Addressing the problem of VAW is essential in achieving SDG 5 on

464 Ibid
465 Ibid.



gender equality, which targets elimination of all forms of violence against all women and girls in the public and private spheres. It is essential in achieving the high-quality livelihood goal in the Development Vision 2025, which calls for gender equality and empowerment of women.

LHRC's Call: Deliberate efforts are needed to address VAW, starting with increasing the budget allocation for implementation of the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22.⁴⁶⁶ Furthermore, LHRC calls for collective efforts and collaboration among community actors, including religious leaders, community leaders/elders and household members, to address this problem. Increased awareness to break the patriarchal system, which has normalized violence, and economic empowerment among women will help them walk away from any signs of violence at earlier stages before they escalate and get out of control resulting to brutal killings and death.

5.2.3. Physical Violence against Women: Wife Beating and other Forms of Domestic Violence

Domestic violence, especially wife beating, continues to be a challenge for married women. In 2020, LHRC documented at least 23 reported incidents of wife beating and other forms of domestic violence. These incidents were reported in Mara, Manyara, Morogoro, Mbeya, Tabora, Dodoma, Pwani, Lindi, Iringa, and Geita.⁴⁶⁷ Six of the incidents were reported in Mara Region, including an incident in Chamoto Village in Serengeti District, where John Marawa Petro (44) was reportedly arrested by police for assaulting his wife, Bhoke Nyamatanga Chacha (38), on 9th June 2020 after accusing her of witchcraft. In another incident, reported in Tarime District, Adama Chacha (30), was arrested by police and arraigned before the Tarime Primary Court for beating his wife, Rhibina Adambi (26) until she became unconscious on 3rd December 2020. In Rorya District, police arrested Onyango Omolo (30) for attacking his wife with a machete and chopping her left hand after the wife had caught him with another woman.

In Malinyi District, Morogoro Region, police arrested the husband of Oro Senene (21), resident of Ngombo Village in Biro Ward, for beating and humiliating his wife for allegedly leaking their secret about marrying-

⁴⁶⁶ Contains eight thematic areas, namely: Household Economic Strengthening; Social norms and values; Safe Environment in Public Spaces; Parenting Family support and relationships; Implementation and Enforcement of Laws; Response and support services; Safe schools and life skills; and Coordination.

⁴⁶⁷ LHRC Human Rights Monitoring 2020.



off their 14-year-old daughter who had just completed Standard VII. The incident occurred on 21st February 2020. In December 2020, police in the district arrested another man for severely beating his wife.

In Iringa, police arrested Dauson Ndazi (27), for beating his wife, Rukia Mduda (26), and pulling out some of her hair, causing her severe bodily pain. In Lindi, police in Kilwa District, Ally Mbera (53), beat his wife, Dorine Chande (49) on 28th July 2020 after their secondary school child was found pregnant.

In Dodoma, Sadala Mavunde (58) was accused of severely beating his wife, Flora Maobe (41), resident of Chali Makulu Village in Bahi District, for allegedly being unable to bear him children. The incident occurred on 9th May 2020. In Iringa, police in Mufindi District arrested Atilio Mhumba (48) for burning his wife's leg. The incident occurred on 15th August 2020 in Ithomasa Village in Kasanga Ward.



Picture 7: A woman (41 years) whose husband burned her leg in Mufindi District, Iringa Region

5.2.4. Sexual Violence against Women and Girls

In the past five years, sexual violence has been a major threat for women and girls in Tanzania. Incidents of rape have increased from 5,802 in 2015 to 7,837 in 2019.⁴⁶⁸ This is equivalent to an average of 7,388 rape incidents per annum, or 615 incidents per month; and this is for the reported cases alone, considering many cases of GBV, including sexual violence, go unreported. In 2020, reported incidents of raped decreased by 574 incidents.

⁴⁶⁸ See United Republic of Tanzania, 2019 TANZANIA IN FIGURES, National Bureau of Statistics, June 2020, p. 78.



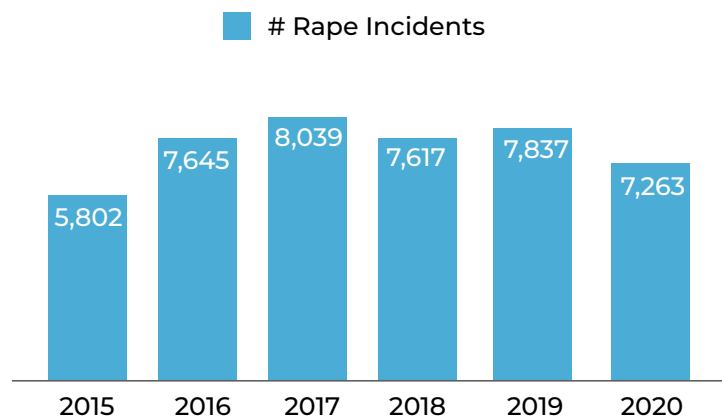


Figure 22: #Rape incidents recorded by police 2015 - 2020
Source: Tanzania Police Force

In 2020, LHRC was able to document more than 70 incidents of sexual violence against women reported in various regions of Tanzania Mainland, including Rukwa, Kilimanjaro, Arusha, Pwani, Geita, Shinyanga, Katavi, Mwanza, and Dar es Salaam. The table below shows some of the incidents reported in these regions.

Table 15: Some of the reported incidents of sexual violence against women recorded by LHRC in 2020

Incident	Report Date
Rukwa: Sumbawanga District Court sentenced to 30 years in prison a resident of Kizitwe Village, Samson Venance (27), after finding him guilty of raping an 18-year-old woman. He was caught in the act by neighbours.	19 Jun 2020
Geita/Kagera: Police revealed that the arrested witchdoctors were responsible for encouraging their clients to rape or kill a total of 50 women so that they would become rich. In Kagera Region, police arrested five people who carried orders of attacking with machetes and killing people suspected of practicing witchcraft.	15 Feb 2020



Incident	Report Date
Pwani: Police Gender Desk of Kisarawe District launched anti-GBV campaign called 'Ukatili wa Kijinsia Kisarawe Sasa Basi'. Kisarawe OCD, Eva Stesheni, noted that the campaign was organized by the desk in collaboration with the children in the district. She stated that sexual violence continued to be a problem in the district, whereby in 2019, a total of 55 cases of rape were reported, while in the period of 10 th January to 22 nd February 2020, a total of 20 rape cases were reported.	26 Feb 2020
Geita: A doctor at a health centre in Lugunga Village, Emmanuel Philipo, was brought before the Bukombe District Court, accused of drugging and raping a pregnant woman aged 20 years. He committed the offence on 15 January 2020.	21 Jan 2020
Katavi: Jenipha Isaya (22), resident of Kazima Street in Mpanda Municipality, was raped and killed by unknown assailant(s) and her body dumped on a farm near Nyerere Primary School. Her body was found on 23 rd January 2020 by pupils of the school.	27 Jan 2020
Pwani: Regional Police Commander of Pwani Region ordered arrest of a pastoralist accused of raping a 60-year-old woman at a farm. The incident occurred during a conflict between farmers and pastoralists in August 2020 in Rufiji District.	24 Aug 2020
Dar es Salaam: Bonifas Senda (26), resident of Mtoni Unguja in Temeke Municipality, was sentenced to 30 years in prison after he was found guilty of raping his former lover. He was also fined Tshs. 500,000.	12 Nov 2020
Tabora: Police in Igunga District arrested Hamisi Masoud (37), resident of Mwayunge Street, for raping and sodomizing a 31-year-old woman.	7 Oct 2020
Katavi: Police in Mpanda District arrested Kafuru Christopher for raping Agnes Lumbeta (30), resident of Machomboni Ward on 8 th November 2020.	13 Nov 2020
Mwanza: Police in Magu District arrested Manyenye Ntenganijija (30) for raping Diana Josephe(40), resident of Bugili Village in Lutale Ward on 16 th November 2020 as she was going to take bath.	16 Nov 2020

Source: Media Survey & Human Rights Monitoring 2020

Based on the crime statistics of the Tanzania Police Force of 2019, regions which are most notorious for sexual violence against women and girls in the form of rape in Tanzania Mainland are: Dar es Salaam (1,027), Kilimanjaro (482), Tanga (453), Mbeya (441), Dodoma (330), Kigoma (289), Morogoro (285), Pwani (281), Arusha (247), Kagera (260), Shinyanga (237), Njombe (228), Tabora (223), Ruvuma (218), Lindi (213), Iringa (204), and Mwanza (202).



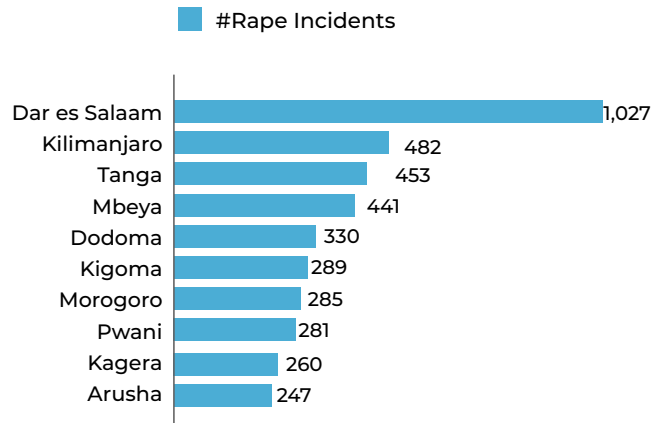


Figure 23: Top 10 regions which recorded more than 200 incidents of rape in 2019
Source: Police Force Data 2019

LHRC’s View: Goal 5 of the Sustainable Development Goals (SDGs) calls for achieving gender equality and empowering all women and girls.⁴⁶⁹ To achieve this goal, the Government of Tanzania needs to end all forms of discrimination against women and girls; eliminate all forms of violence against women and girls;⁴⁷⁰ ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.⁴⁷¹ Alarming rates of violence against women and girls hinder achievement of key SDG and targets under the Tanzania Development Vision 2025. Deliberate efforts are required to address this form of violence.

LHRC’s Call: LHRC calls upon the Government of Tanzania to allocate adequate resources, including financial resources, tools and qualified personnel, to address the situation at all levels. More efforts should be directed towards prevention through enhanced awareness creation and sensitization. Additionally, relevant criminal justice institutions, particularly the Tanzania Police Force and the Judiciary, should address these matters with highest level of professionalism to ensure perpetrators are brought to justice.

⁴⁶⁹ Goal 5.1 of the SDGs.
⁴⁷⁰ Goal 5.2 of the SDGs.
⁴⁷¹ Goal 5.5 of the SDGs



5.2.5. Sexual corruption a major concern at higher learning institutions

In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the university, shortly after the visit of the President of Tanzania, H.E. Joseph Pombe Magufuli.⁴⁷²

In her tweet on Tweeter she urged the President to intervene on the matter, stating that sexual corruption at the university is rampant. The tweet stimulated public debate, particularly on social media; and human rights activists commended her for her bravery in fighting against sexual violence, which is among key issues affecting women and girls in Tanzania. The lecturer was later called before the ethics committee at the university to discuss and see how to address the matter⁴⁷³.

LHRC commends Dr. Vicensia Shule's bravery and initiative to expose sexual corruption at higher learning institutions.

Fast forward two years later, in 2020 the Prevention and Combating of Corruption Bureau (PCCB) conducted a study on sexual corruption at higher learning institutions, focusing on the University of Dar es Salaam (UDSM) and the University of Dodoma (UDOM). The sexual corruption study report of June 2020 showed that sexual corruption is a big problem at the institutions, with more than 50% of the study participants acknowledging existence of the problem.⁴⁷⁴ 57.5% of study participants at UDSM confirmed existence of sexual corruption at the university, while at UDOM 54.6% said the vice exists and is big problem.⁴⁷⁵

Lack of ethics/professional ethics was cited as the leading cause of sexual corruption by both students and staff members who participated in the study at UDSM and UDOM. At UDSM, this factor was mentioned as the main cause of sexual corruption by 56.7% of students and 74.6% of staff members, while at UDOM it was mentioned by 26.4% of students and 66.1% of staff members.⁴⁷⁶

Other causes of sexual corruption at the higher learning institutions

472 "TGNP yaibuka sakata la rushwa ya ngono" Nipashe Newspaper, 7th December 2018; Elias Msuya "Mhadhiri aliyedai rushwa ya ngono imekithiri UDSM apongezwa" Mwananchi Newspaper, 10th December 2018; Peter Mwai "Vicensia Shule: Mhadhiri aliyezua mjadala wa rushwa ya ngono chuoni UDSM, Tanzania ni nani" BBC Swahili, at <https://www.bbc.com/swahili/habari-46368623>, accessed 25th December 2018.

473 "Kashfa ya ngono UDSM, mhadhiri kuhojiwa kamati ya maadili" Mwananchi Newspaper, 30th November 2018 at <https://www.mwananchi.co.tz/habari/Kitaifa/Kashfa-ya-ngono-UDSM--mhadhiri-kuhojiwa-kamati-ya-maadili/1597296-4875598-068aj8/index.html>, accessed 25th December 2018.

474 See TAASISI YA KUZUIA NA KUPAMBANA NA RUSHWA, UTAFITI WA RUSHWA YA NGONO KATIKA TAASISI ZA ELIMU YA JUU: UCHUNGUZI KIFANI WA CHUO KIKUU CHA DAR ES SALAAM NA DODOMA, JUNI 2020 at http://pccb.go.tz/images/stories/joomlart/UTAFITI_UDHIBITI/Utafiti/RUSHWA%20YA%20NGONO%20FINAL%20JULAI-2020.-2.pdf, accessed 3 November 2020.

475 Ibid.
476 Ibid.



include abuse of position of authority, lack of friendly and confidential reporting mechanisms, lack of effective institutional controls, and discretionary powers of lecturers to award marks and grades.⁴⁷⁷

Shortage of key services such as hostels for female students, modes of delivery, and increased enrollment were also cited as factors affecting the learning process and create an environment for students to offer sex bribe or lecturers to solicit sex bribe. Some of the participants reported that there are cases of female students who did not respond to sexual advances of their lecturers and offer sex bribe who were deliberately failed, hence forced to prolong their stay at the universities. They also revealed that there is lack of adequate of protection for those who report acts of sexual corruption, as some of them have faced retaliation and threats, and some of the members of ethics committee are themselves unethical.⁴⁷⁸

Additionally, they mentioned “the culture of lecturers protecting each other,” signaling bureaucracy in handling complaints. There is also little faith in the dispute handling mechanism and lack of records of complaints and measures taken to address them.⁴⁷⁹

Study participants cited awarding lower marks/grades to students as one of the main methods used by lecturers to solicit sex bribe from students. At UDSM, it was mentioned as the main method by 40.5% of students and 50.5% of staff members, while at UDOM it was mentioned by 36.6% of students and 44.4% of staff members. Other methods include threats of failing students; promise of marriage, position, scholarship, hostel room, leadership position, and increase of marks; coercion; lecturers summoning students at informal settings ‘to assist them with assignment or inspect research proposal or dissertation;’ and lecturer joining students’ WhatsApp groups.⁴⁸⁰

Earlier, in January 2020, the anti-corruption body revealed the existence of sexual corruption at St. Augustine University of Tanzania (SAUT) and indicated that it had received complaints of acts of sexual corruption from students and lecturers at the university.⁴⁸¹

In June 2020, female students of secondary and higher learning institutions in Tabora Region requested government intervention to take

477 Ibid.

478 Ibid.

479 Ibid.

480 Ibid.

481 LHRC Media Survey 2020.



legal action against teachers and lecturers who solicit sex bribe from them. This was revealed during a seminar organized by the Prevention and Combating of Corruption Bureau (PCCB).

During this reporting period, incidents of sexual corruption were also reported at workplaces and schools. For instance, in January 2020, a total of 22 women who worked at a company in Hai District accused a senior officer at the company of soliciting sex bribe from them so that he can 'create a good environment for them to be employed.' Hai District Commissioner, Hon. Lengai Ole Sabaya, ordered PCCB investigation into the matter. In the same month, Police in Shinyanga Region arrested Sheliku Sweya (45) for pretending to be a national security officer and soliciting sex bribe from the Regional Medical Officer (RMO) of Shinyanga Region. The incident occurred in January 2020.

In January 2020, PCCB in Arusha arrested a secondary school teacher, William Mollé, for soliciting sex bribe from a female student.⁴⁸²

He was arrested at a guesthouse while waiting for the female student to arrive. It was revealed that he had a habit of intimidating female students into sleeping with him and eventually a trap was set after one of them reported him to the anti-corruption body. In Mbarali District, Mbeya Region, PCCB arrested headteacher of Nyeregete Primary School, Adelhard Mjingo (44) for soliciting sex bribe from a 14-year-old standard seven pupil in exchange for helping her to pass her exams.⁴⁸³

As part of government efforts to address sexual corruption at higher learning institutions, the ministry responsible for health revealed that by March 2020, it had coordinated establishment of gender desks at five higher learning institutions.⁴⁸⁴

These institutions are: the University of Dar es Salaam; the Institution of Social Work; Tengeru Institute of Community Development; University of Dodoma; and Mzumbe University.⁴⁸⁵

LHRC' View: Administrations of higher learning institutions need to take sexual corruption more seriously and ensure those implicated in this form of sexual violence are held accountable for their actions in accordance with the law. PCCB should work closely with established gender desks at

482 Ibid.

483 LHRC Human Rights Monitoring 2020.

484 See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.

485 Ibid.



higher learning institutions as well as student governments to address sexual corruption and improve learning environment.

5.2.6. Economic Violence against Women

Economic violence refers to a form of violence that involves denial of certain opportunities, including controlling a woman or man's access to resources for generating income, discrimination in employment, denial of inheritance and discrimination in accessing economic and educational opportunities. According to UNWOWEN, this type of violence "involves making or attempting to make a person financially dependent by maintaining total control over financial resources, withholding access to money, and/or forbidding attendance at school or employment."⁴⁸⁶

States have obligations to respect, protect and fulfil women's right to a life free of violence.

In 2020, LHRC recorded at least 27 reported incidents of economic violence against women through human rights monitoring, including denial of inheritance and being kicked out of matrimonial home.⁴⁸⁷

These incidents were reported in Dar es Salaam, Morogoro, Mara, Lindi, Tabora, Pwani, Mtwara, Mbeya, Ruvuma, Shiyanga, Songwe, Mwanza, and Dodoma Regions.⁴⁸⁸

Out of these incidents, 11 incidents (40%) related to denial of widow's right to inheritance. For instance, in Mara Region, Beatrice Joseph (45), resident of Mkoma Ward in Rorya District, was denied her right to inherit her deceased husband's property by relatives of her late husband, who invoked Kurya customs to justify the denial of right to property. Another incident in the district was reported in October 2020, whereby Susana Medard (33), resident of Kigunga Ward, was deprived her right to inherit her late husband's property by her brother-in-law. She received assistance from paralegals in Tarime District and the case is pending before the Nyaburongo Primary Court. Similar incidents were reported in Nanyumbe District, Mtwara Region;

⁴⁸⁶ See UNWOMEN "Frequently asked questions: Types of violence against women and girls" at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, accessed 20th December 2020.

⁴⁸⁷ LHRC Human Rights Monitoring 2020.

⁴⁸⁸ Ibid.



Nachingwea District, Lindi Region; and Kyela District, Mbeya Region.⁴⁸⁹

Relatives of deceased husbands colluded to throw out widows, and sometimes even their children.

12 incidents related to women being kicked/thrown out of the matrimonial houses. For instance, in Morogoro Region, Flora John (30) was forced out of her matrimonial home by her husband in November 2020. A similar incident was reported in Ruangwa District in Lindi Region, where Esther Alphone (42), was kicked out of her matrimonial home by her husband, Abdahalla Juma, in November 2020.⁴⁹⁰

LHRC's View: Right to inheritance is among the most violated women's rights in Tanzania, particularly in rural areas where customary laws are mostly practiced and invoked to justify denial of property rights. Some of the customs and traditions remain major obstacles hindering effective realization of women's rights, especially in rural area.

5.2.7. Women's Participation in Political Leadership

Despite progress made in increasing female representation in decision-making positions, the proportion of women who hold leadership positions in Tanzania is still relatively low, despite the fact that women account for more than half of the adult population and constituting the majority of eligible and registered voters. For instance, out of 1,257 political aspirants who were nominated by their political parties to contest parliamentary seats during the 2020 General Elections, only 278 (22%) were women, while less than 10% of women were directly elected as MPs. This is huge concern in terms of achieving Goal 5 of the UN Sustainable Development Goals, which seeks to achieve gender equality and empower all women and girls. Women's participation in political leadership in the 2020 General Elections is discussed in detail in subchapter 2.7 of this report.

5.3. Children's Rights

5.3.1. Introduction

Children's rights in Tanzania are protected at international, regional and domestic levels. They are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989 and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, which require

⁴⁸⁹ Ibid.
⁴⁹⁰ Ibid.



Tanzania to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation;⁴⁹¹ and to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.⁴⁹²

Tanzania has enacted a Law of the Child Act in 2009 (Revised Edition of 2019) which has considered most of the rights provided for in the international and regional instruments.⁴⁹³

For the year 2020, key issues affecting children's rights included: sexual violence; physical and psychological violence; child labour and exploitation; child marriage; and the predicament of child pregnancy. Reported incidents of violence against children have increased from 10,551 in 2016 to 15,680 in 2019, an increase of 49%.⁴⁹⁴

5.3.2. Sexual Violence continues to be the biggest human rights issue affecting children

Sexual violence refers to "Any sexual act, attempt to obtain a sexual act, or acts to traffic for sexual purposes, directed against a person using coercion, and unwanted sexual comments, harassment or advances made by any person regardless of their relationship to the survivor/victim, in any setting, including but not limited to home and work."⁴⁹⁵ Acts of sexual violence include rape, sodomy, and sexual harassment.

Alarming rate of sexual violence against children

In Tanzania, trends in the past five years show that incidents of rape and sodomy, perpetrated against children, have been on the rise. Most of these acts of violence are perpetrated against girls, especially in the form of rape.

For the period of 2015 to 2019, a total of 36,940 rape incidents, inclusive of children, were recorded by police, equal to an average of 7,388 per annum.⁴⁹⁶

Reported rape incidents increased from 5,802 in 2015 to 7,837 in

491 Articles 5 & 6 of Maputo Protocol; Articles 6, 19 & 34 of the Convention on the Rights of the Child; Article 16 of the African Charter on the Rights and Welfare of the Child.

492 Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.

493 See the Law of the Child Act, No. 21 of 2009.

494 See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.

495 See the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22, p. vi.

496 Police Force Data, 2015-2019.



2019. Children are the major victims of these acts of violence. In 2019, the highest number of incidents of rape of women and girls (200 incidents and above) were recorded by the police in Dar es Salaam (1,027), Kilimanjaro (482), Tanga (453), Mbeya (441), Dodoma (330), Kigoma (289), Morogoro (285), Pwani (281), Arusha (247), Kagera (260), Shinyanga (237), Njombe (228), Tabora (223), Ruvuma (218), Lindi (213), Iringa (204), and Mwanza (202).⁴⁹⁷

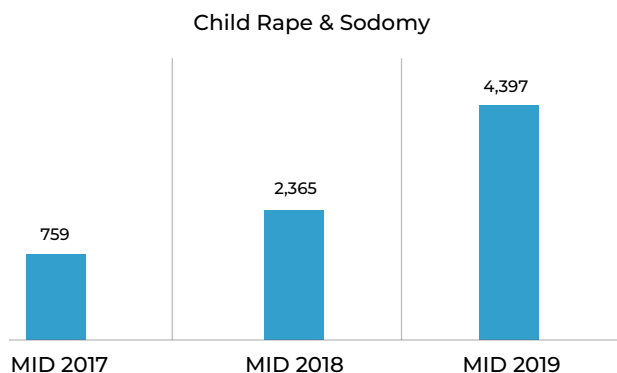


Figure 24: Child rape and sodomy incidents mid-2017 to mid-2020

Source: Police data, 2017-2019

In 2020, sexual violence, especially rape, presented the biggest threat to children’s rights. Incidents of rape and sodomy of children were widely reported. LHRC’s Media Survey 2020 showed that 87% of reported incidents of VAC were sexual, while 13% constituted physical and other forms of violence against children. Most of these incidents were reported in Dar es Salaam, Kilimanjaro, Katavi, Tabora, and the Lake Zone. For instance, in Dar es Salaam, in April 2020 police arrested a man suspected and accused of raping and sodomizing children aged 9 to 12 years in Kibangu area.⁴⁹⁸

In September 2020, a resident of SalaSala area in Dar es Salaam, Stephano Isaya (18), confessed before the Kinondoni District Court to raping a 3-year-old child on 18th August 2020 at SalaSala Msikitini area in Dar es Salaam. In Kilimanjaro, Ramadhan Tesha (44), resident of Bomang’ombe in Hai District, was taken to court on the charge of defiling and sodomizing his child. He committed the offence on 23rd January 2020. In March 2020, Juma Mndeme (38), resident of Lawate Village in Siha District, was sent before the Siha District Court, accused

⁴⁹⁷ Ibid.

⁴⁹⁸ LHRC Media Survey 2020.



of sexually harassing his 6-year-old daughter by touching her private parts, contrary to section 135(1) & (2) of the Penal Code. The incident reportedly occurred on 4th March 2020 in the village.⁴⁹⁹

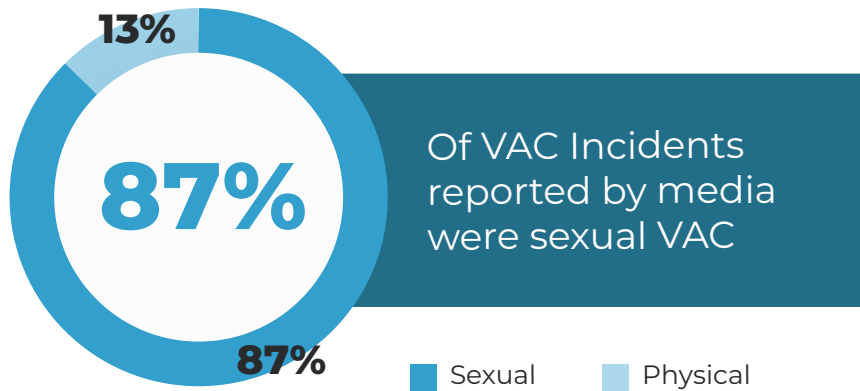


Figure 25: % of physical and sexual incidents of VAC reported by media

Source: LHRC Media Survey 2020

In Tabora, incidents of sexual violence against children included rape of a 17-year-old student by her teacher, Keby Aron (32), in Igunga District, and a schoolgirl who was raped and impregnated by Elipidius Kwenumba (31) during the Coronavirus quarantine in March 2020. In September 2020, Police in Igunga District arrested Kitundu Godfrey (35), resident of Stoo Street, and took him before the Igunga Resident Magistrate Court, charged with committing a sexual violence offence against his 4-year-old daughter in June and August 2020. It was reported that he inserted his fingers into the child’s private parts for his sexual pleasure, causing her severe pain.

In Katavi, in March 2020, Police in Katavi Region arrested a retired JWTZ army major, aged 54 years, accused of raping three schoolgirls aged 13 and 14 years. Earlier in January 2020, a stepfather in Mlele District, Ignas Katula, was accused of sleeping with (raping) and impregnating his 16-year-old stepdaughter.⁵⁰⁰ On 9th January 2020, a standard four pupil at Katisunga Primary School in Mpanda District, aged 10 years, was brutally raped and killed, then dumped into a bush in Katishunga Village. Two unknown men reportedly grabbed her when she was coming from fetching water with her friend and

⁴⁹⁹ Ibid.
⁵⁰⁰ Ibid.



disappeared with her into the bush where they raped and then killed her.⁵⁰¹ Incidents reported in the Lake Zone include incidents of men raping their own children, child sodomy, and child rape at court premises. For instance, In January 2020, Police in Bunda District in Mara were looking for a man, Simon Joseph, who was accused of raping his own child, a standard seven pupil. The child told police that at first her father told her he would give her Tshs. 5000 if she agreed to sleep with him and when she refused, he got into her room and raped her while blocking her mouth with his hand so that she would not scream. She said that this was a second time her father did this to her and that the first time he told her he would kill her if she told anyone.⁵⁰² In June 2020, again in Bunda District, police arrested a man, Meshack Michael, for reportedly raping his three children and impregnating one of them. It was reported that the man had been repeatedly sexually abusing his children, especially when his wife was way on business trips. In Mwanza, in February 2020, a court of law sentenced Bosco Amoni (20), resident of Buganda Village in Misungwi District, to 30 years in prison for raping a 12-year-old child.⁵⁰³

Incidents of violence against children increased during the Covid19 leave/school closure period

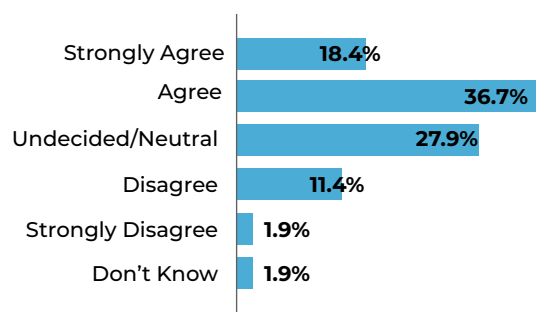


Figure 26: Human rights survey participants' perceptions on VAC during Covid19 leave

In Geita, Police in Chato District took to court Kazimili Dotto, accused of threatening, raping and sodomizing his stepdaughter who is a standard two pupil, while Chato District Court sentenced Kabagambe Mihayo to 30 years in prison after finding him guilty of raping a standard seven pupil in February 2020. In Shinyanga, a guard at the Resident Magistrate Court in Shinyanga, Joseph Masanja (58), was

501 Ibid.

502 Ibid.

503 LHRC Media Survey & Human Rights Monitoring 2020.



accused of raping a 10-year-old girl within the court premises on 21st March 2020, after luring her and her seven-year-old friend to come to his workplace so that he can give them money to buy some sandals.⁵⁰⁴

It was also reported in December 2020 that 11 male children were subjected to sexual violence in Kahama Town Council in the period of January to September 2020. A total of 132 incidents of sexual violence were reported out of the 1,627 total GBV incidents that were documented during this period. A total of 35 cases of child pregnancy were also reported. Staying with Shinyanga, 9 people received a 30-year-in prison sentence for raping children in the period of January to November 2020 in Kishapu District. During this period, 91 incidents of child rape were reported, whereby 43 cases are ongoing in courts of law.

During the human rights survey, 36.7% and 18.4% of the survey participants agreed and strongly agreed respectively that incidents of violence against children increased during the Covid19 school closures.

Child-on-child sexual abuse: Concerns over child sodomy and defilement cases in primary and secondary schools

In 2017 and 2018, LHRC received and documented reports of child-on-child sexual abuse in the form of child sodomy in Dar es Salaam, Kilimanjaro, Singida, Dodoma, Tabora, Mbeya, and Mwanza Regions.⁵⁰⁵ Schoolboys were accused of sodomizing each other at school premises or in the bush on their way to and back from school.⁵⁰⁶ In 2020, concerns over child-on-child sexual abuse and incidents of child sodomy were mainly reported in Pwani, Simiyu, and Tabora Regions.

In Pwani, in February 2020, a social welfare officer of Kimanzichana Ward in Mkuranga District noted that there are reports of sodomy among pupils at schools in the ward or pupils being subjected to such act of sexual violence by their relatives. A police gender and children desk officer in the district also claimed to have received reports of sodomy among pupils in schools and noted that they have started visiting the schools to address the problem and raise awareness. The social welfare office in Mkuranga District indicated that it had received reports of such incidents from at least four schools and noted that factors contributing to prevalence of such form of sexual violence include poverty and

⁵⁰⁴ Ibid.

⁵⁰⁵ See LHRC (2019), Tanzania Human Rights Report 2018, at www.humanrights.or.tz.

⁵⁰⁶ Ibid.



customs and traditions, including a local dance known as 'vigodoro'.⁵⁰⁷

In March 2020, it was revealed that sodomy among pupils is a big problem at primary schools in Mkuranga District. In one incident a standard five pupil at one of the schools in the district revealed to his grandmother that some standard seven boys had sodomized him and other pupils of lower classes. He revealed to the grandmother that the older boys were doing that to him and other boys every day when they arrive at school in the morning, but they stopped sodomizing him when his grandmother went to complain at the school. Teachers at the school confirmed that there is a tendency of standard seven boys perpetrating such acts of sexual violence against fellow pupils, usually of standards three to five, including during breaks⁵⁰⁸.

In Simiyu, in February 2020, citizens in Maswa District expressed concern over child sodomy cases at schools in the district and demanded an investigation. This followed reports of pupils at one of the primary schools in the district of schoolboys sodomizing each other. One of the pupils at the school expressed that he had been sodomized at his aunt's home by a male domestic worker. He then went on to teach his fellow pupils at school and they started sodomizing each other in the bushes near the school, especially during tea breaks. "I must tell the truth, I learned this at my aunt's home where I used to live. When my aunt left home, a male domestic servant used to do it to me and I then taught my fellow pupils at school, so we started doing it together and there are many of us." Another standard three pupil at the school admitted that he had also participated in sodomy with fellow pupils but have stopped since they were taken to the police.⁵⁰⁹

In Tabora, In April 2020, it was revealed that cases of sodomy among children aged 14 to 17 were on the rise. Social Welfare Officer in Tabora Municipality, Nehemia Steven, reported that in the period of October to December 2019, their office received 17 child cases, of which 60% were sodomy cases, whereby children had sodomized fellow children.⁵¹⁰

She noted that children sodomizing each other has become a big problem in the municipality and is motivated by revenge, as those who have been subjected to such act of violence also target their victims.

507 LHRC Media Survey 2020.

508 Ibid.

509 Ibid.

510 Ibid.



Judicial action against perpetrators of sexual violence against Children

In 2020, LHRC documented at least 45 convictions of persons accused of perpetrating sexual violence against children. These convictions were reported in Mara, Songwe, Njombe, Ruvuma, Dar es Salaam, Lindi, Kilimanjaro, Singida, Mwanza, Geita, Kigoma, Katavi, and Tabora Regions.⁵¹¹

For instance, in March 2020, Matiko Chanduru (20), resident of Maburi Village in Serengeti District in Mara Region, was sentenced to death by hanging by the High Court, after he was convicted of raping and subsequently killing his 7-year-old niece. The incident occurred in June 2018. In May 2020, Resident Magistrate Court in Njombe convicted Charles Mwinami (45) of sexually abusing/raping his 5-year-old granddaughter. It was revealed that the convict repeatedly sexually abused the child in 2020 until he was arrested.⁵¹²

In March 2020, Geoffrey Sengeli (19), resident of Serengeti District in Mara, was sentenced to life in prison after the court found him guilty of defiling and sodomizing a 9-year-old girl in October 2019. In Kilimanjaro, Hai District Court sentenced 30-year-old man Juma Mwakikoti Mnyaturu to 30 years in prison in January 2020 after finding him guilty of sodomizing a Standard One boy.⁵¹³ In Lindi, in February 2020, Lindi District Court imposed a 30-year prison sentence on Issa Mussa Tambue (62), resident of Mmangawanga Village, after convicting him of raping a child. It was reported that he raped a 10-year-old child in 2019.⁵¹⁴

In Singida, in September 2020 the Resident Magistrate Court imposed a life in prison sentence on Hussein Azizi (34), resident of Singida Municipality, after finding him guilty of sodomizing a 4-year-old child. He committed the offence on 6th August 2020. In the same month, the Resident Magistrate Court in the region imposed a 30-year prison sentence on Hamisi Mtanda (57), resident of Singida Municipality, after finding him guilty of raping his 11-year-old child.⁵¹⁵

5.3.3. Sexual violence perpetrated by teachers

In November 2019, the Secretary of the Teachers Service Commission (TSC), Winfrida Rutaindurwa, revealed that 4,046 teachers of primary and secondary school were dismissed due to different reasons, including truancy, violating code of

⁵¹¹ LHRC Media Survey 2020.

⁵¹² Ibid.

⁵¹³ Ibid.

⁵¹⁴ Ibid.

⁵¹⁵ Ibid.



conduct and engaging in sexual relationships with students.⁵¹⁶

In January 2021, TSC revealed that alcoholism and sexual violence constituted the leading complaints against teachers in the period of 2016 to 2020. Deputy Secretary of the TSC, Moses Chitama, mentioned that during this period, a total of 9,819 complaints were filed against teachers, which resulted into dismissal of 5,441 teachers. 1,803 teachers were given warning letters, 520 teachers had their salaries deducted, and 244 were not given salary increase, while 403 were demoted.

5.3.4. Physical and Psychological Violence against children

Physical violence against children refers to all acts perpetrated against children that bring them physical harm. Such acts may include slapping, pushing, hitting with a fist (punching), kicking, whipping, or threatening a child with a weapon.⁵¹⁷ Emotional or psychological violence includes restricting a child's movements, denigration, ridicule, threats and intimidation, discrimination, rejection and other non-physical forms of hostile treatment.⁵¹⁸

In 2020, physical violence was the second most common form of violence against children. LHRC's Media Survey revealed that 13% of reported incidents of violence against children were physical. Children in different parts of Tanzania Mainland were subjected to physical abuse by parents or guardians, teachers, and close relatives for reasons such as stealing money, secure marriage, jealousy, wetting on bed, discipline, and returning home late. For instance, in March 2020, Police in Arusha arrested Mkami Shirimia (33), resident of Ilkiurei area, who was accused of killing her house girl, Salome Zacharia (17), after accusing her of stealing Tshs. 50,000. She reportedly committed the offence on 9th March 2020, beating the victim with a stick and locking her up in a room for two days without food and water.⁵¹⁹

In the same month, Police in Kwimba District in Mwanza Region arrested Helena Wishera (19), resident of Nyamilamba area, for killing her 9-month-old baby so that she could be married by another man. She reportedly colluded with her lover Lucas Jackson (24), who told her if she wants him to marry her, she should kill the baby first. The incident occurred on 25th February 2020 in Bugembe Village in Mwanza.⁵²⁰

⁵¹⁶ LHRC Media Survey 2019.

⁵¹⁷ See the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22, p. vi.

⁵¹⁸ See World Health Organization "Violence against children" 8 June 2020 at <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>, accessed 18 October 2020.

⁵¹⁹ LHRC Media Survey 2020.

⁵²⁰ Ibid.





In June 2020, Police in Bagamoyo District in Pwani Region arrested Sofia Marius (28) for organizing and participating in the killing of a child of her co-wife. She ordered the killing due to jealousy, as she could not bear a child with her husband due to female infertility.⁵²¹

Prior to this incident, police in the region arrested a bishop from a Pentecostal church in Kibaha District, Japhes Manwa (40), accused of burning his child on different parts of his body (especially hands and back) and causing him great bodily pain. This incident occurred in January 2020. Another incident, which also occurred in January 2020, involved a standard two pupil in Kibaha District, Celina Fosi, who was found brutally killed and some of her body parts removed. The incident is believed to be motivated by belief in witchcraft and the body parts to be used for such purposes.

In Dodoma, Zena Mohamed, resident of Chang'ombe area in Dodoma, was arrested by police in February 2020 for beating her child on the head with a wooden cooking spoon, causing him serious head injury. In Shinyanga, in April 2020 police in Kahama District arrested Janeth Nzemya (39) for burning the hands of her 9-year-old child with a hot knife as punishment for theft and sodomizing his siblings and neighbours' children. A similar incident occurred in Serengeti District, Mara Region, where police arrested a man, resident of Mosongo Village, on accusation of burning his child on his back with a hot machete and leg for returning late from fetching water at a well. The incident occurred in July 2020. Another incident occurred in Geita Region, where Police arrested a woman, Ester John (30), accused of burning the hands of her two stepchildren for stealing food. Neighbours reported the stepmother had developed a habit of torturing the children.

In September 2020, Police in Ilemela District in Mwanza Region arrested Anthony Costantine (50) for beating to death his daughter, Veronica Anthony (17), for returning home late from school. The incident occurred on 8th September 2020. In Tabora, Police arrested and took to court Peter Masanja, resident of Urambo District, after severely beating his 5-year-old son for refusing to go school, causing him to be admitted to a hospital for two days and great bodily harm.

In Kagera, in January 2020 police arrested Juma Daniel (30), accused of killing his 2-year-old child with a sharp object for wetting on bed. In August 2020, police in the region arrested Ayoub John (38), resident of

⁵²¹ Ibid.



Muleba District, for brutally killing with a knife his 3-year-old stepson following his conflict with wife after he accused her of being unfaithful. He killed the child after his wife ran to a neighbour's house and spent the night there.

In Njombe, Resident Magistrate Court in Njombe sentenced to three years in prison a teacher from Welela Primary School and a fine of Tshs. 10 million for causing great bodily harm and permanent disability to a pupil after caning the pupil with a stick ten times. The teacher, Focus Mbilinyi, committed the offence in January 2020. A similar incident was reported in Pwani, where police arrested a primary school teacher, Evatha Mboya (50), for severely flogging a 12-year-old standard five pupil and causing the child to be admitted to a hospital after complaining about a headache.

In Mtwara Region, a 5-year-old child was severely injured after his grandmother, Fatuma Hashim (48) burned his hands for allegedly stealing Tshs. 22,000. The incident occurred on 4th August 2020 in Magomeni Ward in Mtwara Urban. The perpetrator was arrested and released on police bail. A similar incident occurred in Makambako Town Council in Njombe District, where another 5-year-old child was beaten and burnt on different parts of his body by his stepmother. The perpetrator was arrested and detained at Makambako Police Station.



Picture 8: Five-year-old children whose body parts were burned as punishment by their guardians in Mtwara (left) and Njombe (centre & right)

5.3.5. Child Labour and Exploitation

According to UNICEF, nearly 1 in 10 children are subjected to child labour worldwide, with some forced into hazardous work through trafficking.⁵²²

Children who are subjected to child labour are denied the

⁵²² See UNICEF "Child Labour" at <https://www.unicef.org/protection/child-labour>, accessed 18 October 2020



fundamental human rights through exposure to bodily and mental harm, slavery, sexual or economic exploitation, and school dropout.⁵²³

The African Charter on the Rights and Welfare of the Child explicitly prohibits child labour, stating that “Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, social development.”⁵²⁴

In Tanzania, child labour is defined as “Any work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: is mentally, physically, socially or morally dangerous and harmful to children.”⁵²⁵

Child labour is prohibited under various domestic legislations, most notably the Law of the Child Act of 2009 (revised in 2019) and the Employment and Labour Relations Act of 2004.

Despite efforts to combat child labour and exploitation in Tanzania, child labour persists in its various forms, denying children the fundamental rights, including right to education and protection from harmful employment. In 2019, LHRC documented incidents of child labour and exploitation reported in Manyara and Shinyanga Regions. In Manyara, in January 2020, an 11-year-old boy from Gidewari Village in Hanang District, told his story of child exploitation after his was rescued by a social welfare officer.⁵²⁶

He revealed that when he was 6 years old, he was taken from home (child trafficking) to go and herd more than 1,500 livestock in the forest. He said that he was taken to Tunduru District in Ruvuma Region., where he spent five years herding the livestock in the forest, which had dangerous animals, including lions. He said that the person who took him to do the job promised to pay him Tshs. 10,000 per month, but it was his father who received the monthly payment. He also revealed that he had to hide amidst the livestock to protect himself from lions and the rain; and that he was mistreated and sometimes tortured by the livestock owners. The Social Welfare Office in Tunduru District heard about the child, rescued him and sent him back to Hanang District. In Shinyanga, in January 2020, Sheikh of Kahama District, Ramadhani Damka, warned residents of Chela Ward in the district against the habit of subjecting their children to agricultural and livestock herding activities, preventing them from attending school.

⁵²³ Ibid.

⁵²⁴ Article 15(1) of the African Charter on the Rights and Welfare of the Child.

⁵²⁵ NPA-VAWC 2017/18 – 2021/22, p. v.

⁵²⁶ LHRC Media Survey 2020.





He noted that child labour and exploitation violates children's rights.⁵²⁷

Another concern of child labour in Shinyanga was reported in November 2020. Residents of Maswa District lamented prevalence of child labour in the district and called for government and CSO interventions to address the problem.⁵²⁸

They said that the number of children who have been subjected to child labour and exploitation has been on the rise, noting that most of the children are used in domestic labour, petty trading, and selling and serving liquor. They added that apart from being subjected to child labour, the children are also exploited as they are usually not paid, save for food and a place to sleep. Female children, especially those working for food vendors and serving as bar maids and/or housemaids, are also subjected to sexual exploitation, which puts them at an increased risk of contracting HIV and teenage pregnancies. One of the children claimed that she had been brought from Kasulu in Kigoma Region under the promise of providing domestic work for the monthly payment of Tshs. 30,000, but when she arrived in Maswa she was given food vending work and usually works from around 04:00am to 10:00pm. Another child claimed that his work involves walking for long distances carrying goods and farming using donkeys and all that he gets is some food and shelter.⁵²⁹

5.3.6. Child Neglect

Child neglect is a form of child abuse, which is associated with failure to provide for a child's basic needs such as adequate food and clothing⁵³⁰ and failure to protect a child from violence.⁵³¹ It is an act or omission by a parent or guardian that deprives a child of basic age-appropriate needs, causing them physical or psychological harm.⁵³²

It includes abandonment, failure to attend a child's emotional needs, and failure to provide a child with basic services. The African Charter on the Rights and Welfare of the Child of 1990 requires States Parties to take specific legislative, administrative, social, and educational measures to protect the child from abuse, torture, and neglect.⁵³³

527 Ibid.

528 Ibid.

529 Ibid.

530 See HelpGuide "Child Neglect" at <https://www.helpguide.org/articles/abuse/child-abuse-and-neglect.htm>, accessed 18 October 2020.

531 NPA-VAWC 2017/18 – 2021/22, p. 5.

532 See Psychology Today "Child Neglect" at <https://www.psychologytoday.com/us/conditions/child-neglect>, accessed 18 October 2020.

533 Article 16(1) of the African Charter on the Rights and Welfare of the Child, 1990.



Domestically, the Law of the Child Act of 2009 and the NPA-VAWC 2017/18 – 2021/22 define child abuse to include neglect.⁵³⁴ The Law of the Child Act also imposes parental duty and responsibility to protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression.⁵³⁵

In recent years, incidents of child neglect have been rising in Tanzania Mainland, with more cases received and documented each year by the social welfare departments. In 2020, cases of child neglect, including abandonment, were reported in regions such as Tanga and Katavi. For instance, in Katavi, it was reported in February 2020 by the Regional Social Welfare Officer, Mmasa Malugu, that the number of child neglect cases for children below the age of seven in the region rose from 115 in 2017/18 to 387 in 2018/19.⁵³⁶

In Katavi, it was reported in the same month that James Kipeta (40), resident of Mpanda District, was accused of abandoning his five children, forcing authorities to locate and send them to their grandmother. It was reported that in the year 2019 alone, a total of 170 child abandonment/neglect cases were reported in Mpanda District.⁵³⁷

In Mwanza Region, it was reported in Sengerema District that a 2-year-old child, resident of Mtakuja Mashariki Village was abandoned by his parents, Said Juma (30) and Halima Said (26), since 14th August 2020. The child was taken by a social welfare officer to child's nearby relatives.⁵³⁸

For they year 2020, LHRC documented at least 30 reported cases of child neglect, reported in regions such as Kigoma, Pwani, Katavi, Mwanza, and Mbeya Regions.⁵³⁹ But these are a just a few cases reported by media, hence do not reflect a reality on the ground. For instance, during an interview with LHRC, a social welfare officer in Bagamoyo District revealed that there are so many cases of child neglect in the district and across Pwani Region.

5.3.7. Child marriage and the Law of Marriage Act

Tanzania is party to the Protocol to the African Charter on Human and People's Rights on The Rights of Women in Africa of 2003, popularly known as the Maputo Protocol, having ratified the Protocol on 3rd March

⁵³⁴ Section 3 of the Law of the Child Act, 2009;

⁵³⁵ Section 9(3)(a) of the Law of the Child Act, 2009.

⁵³⁶ LHRC Media Survey 2020.

⁵³⁷ Ibid.

⁵³⁸ LHRC Human Rights Monitoring 2020.

⁵³⁹ LHRC Media Survey 2020.



2007.⁵⁴⁰ The Protocol requires States Parties to combat and eliminate all forms of discrimination against women and girls, including harmful practices which endanger their health and general well-being.⁵⁴¹ The Protocol also prohibits child marriage, and sets the minimum age of marriage for women and girls to be 18 years.⁵⁴² The Protocol further requires States Parties to take all appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training.⁵⁴³

13 & 17

Number of years since Tanzania ratified the Maputo Protocol and the African Children Charter respectively, both of which prohibit child marriage.

Tanzania has also ratified the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, on 16th March 2003.⁵⁴⁴

The Charter prohibits child marriage and the betrothal of girls and boys and requires States to take effective action, including legislation, to specify the minimum age of marriage to be 18 years.⁵⁴⁵

Despite its international commitment to prohibit child marriage, Tanzania still retains child marriage. The Law of Marriage of Act of 1971 allows girls aged 14 and 15 to get married.⁵⁴⁶

In 1994, the Law Reform Commission of Tanzania,⁵⁴⁷ presented its report on the Law of Marriage Act, 1971.⁵⁴⁸ The Commission conducted regional tours⁵⁴⁹ and public hearings regarding the Law of Marriage Act,

540 See African Union (AU), LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA, at <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf>, accessed 14 October 2020.

541 See Articles 1 & 5 of the Maputo Protocol

542 Ibid, Article 12.

543 Article 6 of the Maputo Protocol.

544 See African Committee of Experts on the Rights and Welfare of the Child, List of countries which have SIGNED, RATIFIED/ACCEDED to the AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD, at <https://www.acerwc.africa/ratifications-table/>, accessed 14 October 2020.

545 Article 21(2) of ACRWC.

546 Sections 13 and 17 of the Law of Marriage Act [Cap 29 R.E. 2002]

547 The Commissioners were: Hon. Justice Raymond Jumbe Mwaikasu (Chairman); Mr. Damian Saleka Meela; Ms. Julie Catherine Manning; Hon. Pius Msekwa (MP & Speaker of the National Assembly); Mr. Mohammed Ismail; Mr. Harold Reginal Nsekela; and Ms. Stella Longway

548 The United Republic of Tanzania, the Law Reform Commission of Tanzania, Report of the Commission on Law of Marriage Act, 1971 (No. 5 of 1971), Presented to the Minister for Justice and Constitutional Affairs, April 1994.

549 Regions that were visited were Dar es Salaam, Morogoro, Dodoma, Singida, Mwanza, Kagera, Shinyanga, Tabora, Tanga, Kilimanjaro, Arusha, Rukwa, Mbeya, Iringa, Mtwara, and Lindi.



touching on various issues, including the minimum age for marriage.⁵⁵⁰ The Commission considered medical, legal, and social reasons advanced in relation to the minimum age for marriage. One of the legal reasons that were advanced is that a girl below the age of 18 years may easily be coerced into a marriage by greedy parents and cause a lot of miseries the girl in the married life.⁵⁵¹ The Commission opined that change of age structure for marriage was necessary and recommended that a new minimum age for marriage should be 21 years for both males and females, entailing amendment of section 13(1) of the LMA, 1971. It also called for amendment of section 13(2) of the LMA to replace 14 years with 18 years, and deletion of section 17 of the LMA.⁵⁵²

The fact that Tanzania has ratified and domesticated various regional and international human rights instruments, demonstrates that it has committed itself in enforcing them and should thus do so.

Court of Appeal Judgement, Rebecca Gyumi Case.

In 2016, the High Court of Tanzania delivered its judgment on the Rebeca Gyumi case,⁵⁵³ filed by Rebecca Gyumi, the Executive Director of a girls' rights organization called Msichana Initiative. The Court declared provisions within the Law of Marriage Act allowing girls at 14 and 15 years to be married unconstitutional and called for the Government to amend the law. However, the Government has since appealed the decision. In a landmark decision, delivered in October 2019, the Court of Appeal of Tanzania upheld that landmark 2016 ruling by the High of Tanzania that child marriage, allowed under the Law of Marriage Act of 1971, contravenes the Constitution of the United Republic of Tanzania of 1977 and increased the minimum age of marriage for girls and boys from 14 and 15 years respectively to 18 years.⁵⁵⁴

550 The researchers were: Mr. Sadallah Mussa Sadallah; Mr. Thomas Raphael Mwananyongo; Ms. Fauster Mkakili Ngowi; and Ms. Mary Anita Ngowi.

551 Report of the Commission on Law of Marriage Act, 1971 (No. 5 of 1971), p. 17.

552 Ibid.

553 Rebeca Z. Gyumi v Attorney General (Tanzanian Civil Case No. 5 of 2016)

554 See Msichana Initiative "Tanzania Court of Appeal Upholds 2016 Ruling: Child Marriage Is Unconstitutional" at <https://msichana.or.tz/tanzania-court-of-appeal-upholds-2016-ruling-child-marriage-is-unconstitutional/>, accessed 3rd March 2020; Ettie Bailey-King "TANZANIA'S SUPREME COURT DECLARES CHILD MARRIAGE UNCONSTITUTIONAL" Girls Not Brides, 14 Nov 2016, at <https://www.girlsnotbrides.org/law-one-steps-ending-child-marriage-says-rebeca-gyumi-founder-msichiana-initiative-tanzania/>, accessed 3rd March 2020.



Table 16: Developments relating to child marriage in Tanzania

1994	The Law Reform Commission releases its report on the Law of Marriage Act. It recommends minimum age of marriage to be 21 years, outlawing child marriage.
2003	Tanzania ratifies the African Charter on the Rights and Welfare of the Child 1990, which prohibits child marriage and sets 18 years as minimum age of marriage for women.
2007	Tanzania ratifies the Maputo Protocol of 2003, which prohibits child marriage and sets 18 years as minimum age of marriage for women.
2016	Tanzania participates in developing and adopting the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage
2016	Rebecca Gyumi case, challenging provisions within LMA allowing child marriage, is filed before the High Court of Tanzania.
2016	High Court of Tanzania delivers its judgement on the Rebecca Gyumi case, declared provisions within the Law of Marriage Act allowing girls at 14 and 15 years to be married unconstitutional and called for amendment of LMA to set 18 years as minimum age for marriage.
2019	Court of Appeal upholds decision of the High Court, calling for amendment of LMA to outlaw child marriage by setting 18 years as minimum age for marriage.
2020	One year on since the Court of Appeal delivered its judgement, the Parliament of Tanzania is yet to amend the Law of Marriage Act of 1971 to outlaw child marriage.

In 2020, incidents of child marriage were reported in different parts of Tanzania Mainland. LHRC documented at least 35 such incidents, of them reported in Shinyanga, Arusha, and Katavi Regions. These incidents are summarized in the table below.



Table 17: Reported incidents of child marriage documented by LHRC, Jan-December 2020

Incident	Report Date
<p>Arusha: In August 2020, it was reported that 20 schoolgirls of primary and secondary schools in Longido District were impregnated and married off during the Covid19 leave.</p>	17 Aug 2020
<p>Shinyanga: Police in Shinyanga Region arrested parents of a 17-year-old schoolgirl at Mwantini Secondary School in Shinyanga District for marrying her off to a man. The incident occurred on 5th September 2020.</p>	7 Sep 2020
<p>Shinyanga: Police in Shinyanga Region arrested four people in connection with marrying off a standard five pupil aged 12 years from Samuye Primary School in Shinyanga District, after receiving a dowry of eight cows and Tshs. 600,000. The incident occurred on 14th September 2020.</p>	21 Sep 2020
<p>Shinyanga: Intervention made by residents of Igegu Mwamala Village in Shinyanga District rescued a 16-year-old schoolgirl from child marriage in June 2020. The villagers alerted advocates of child rights about the planned wedding, who managed to educate the father of the child about the impact of child marriage and prevented the marriage. The child's father had already accepted a dowry of 11 cows.</p>	1 Jun 2020
<p>Geita: A resident of Geita Town, Monica Lucas, was accused of forcing her 15-year-old daughter to marry her stepfather. The stepfather had told the mother that he would only continue to support her family if she allowed him to marry her daughter. When the mother forced the daughter to sleep with her husband and agree to marry him, the daughter ran away and sought refuge at an orphanage.</p>	17 Jun 2020
<p>Arusha: Police in Arumeru District in Arusha arrested a man, Saiboka Memriki, accused of attempting to marry-off his 12-year-old daughter, who is a primary school pupil, to a 45-year-old man. Police intervened and arrested the father and the man following an alert by community members. The incident occurred during the Coronavirus leave in June 2020.</p>	15 Jun 2020
<p>Katavi: Police in Mpanda Municipality rescued a 15-year-old girl from child marriage moments before she about to be married to a 30-year-old man. Police arrested parents of the 15-year-old, who is a pupil at Kakese Primary School and some few other attendees of the wedding ceremony.</p>	30 Jul 30



Incident	Report Date
Shinyanga: 16-year-old girl, Malogi Mashaka, resident of Sango Village in Kahama District, was married off to a 22-year-old Mhoja Maneno Manyanda. The man and his brother were arrested in connection with the incident.	August 2020
Morogoro: 17-year-old girl, Jenifer Stephano, resident of Mlimba Village in Kilombero District, was forced by her parents to get married instead of continuing with education, having passed her Form Four national examinations. She fled to a good Samaritan's refuge. The matter was reported to the Police Gender and Children Desk at Mlimba Police Station.	August 2020
Katavi: A 16-year-old girl, Furaha Ramadhani, resident of Mpembe Village in Tanganyika District, was subjected to a child marriage by her parents on 20 th August 2020. At the time she was standard seven pupil at Mpembe Primary School. Her headteacher reported the matter to the Mpembe Police Station, which led to arrest of the victim's father and the man she was married to, Emily Samweli (23).	August 2020
Manyara: 16-year-old Asia Said Isaka, resident of Njoro Ward in Kiteto District and standard six pupil at Orpopong Primary School, was married-off to a 38-year-old man, Issa Challi. The incident occurred in March 2020, during the closure of schools because of the Covid19 pandemic. The man was arrested by police and sent to court.	August 2020
Shinyanga: 14-year-old girl, Justina John, resident of Mwamalulu Village in Shinyanga Rural District, was married-off to a 20-year-old man, Nteng Kamuli, on 25 th August 2020 after a dowry of 12 cows had been paid. The matter was reported to police, who crashed the wedding ceremony and arrested the man and the victim's father.	September 2020
Simiyu: A 14-year-old girl, Lulu Kitambe and her 11-year-old sister, Neemba Kitambe, were reportedly forcibly married-off to a 41-year-old man after their father, Kitambe Gadagada, had received 23 cows as dowry. The incident was reported at Maswa Police Station.	September 2020
Tabora: A 14-year-old girl, Esther Izengo, resident of Kiplim Village in Nzega District, was married-off to a man by her aunt. A social welfare officer intervened and reported the matter to police, leading to arrest of four people.	September 2020
Tabora: Two pastoralists from Mwalala Village in Igunga District were arraigned before Igunga District Court for denying their female children the right to education and marrying them off.	11 Oct 2020



Incident	Report Date
Mara: A 16-year-old child, Elizabeth Ochara, resident of Kinesi Village in Rorya District and a secondary school student, was forced to marry on 19 th November 2020.	20 Nov 2020

Source: LHRC Media Survey & Human Rights Monitoring 2020

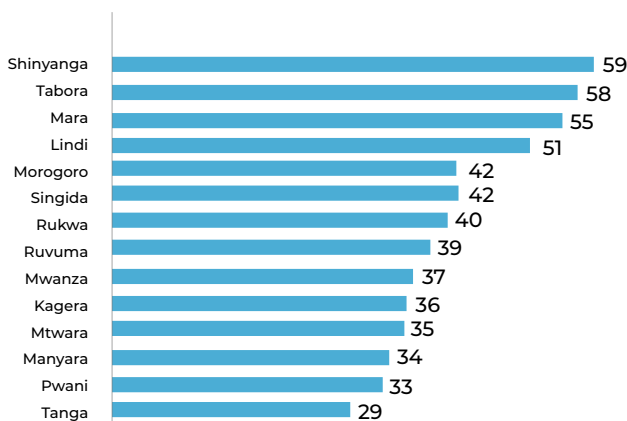


Figure 27: Regional Percentages of Child Marriage in Tanzania Mainland

LHRC's View: Child marriage disrupts girls' right to education and other fundamental rights, including sexual and reproductive rights. In light of the recent decision of the Court of Appeal of Tanzania, it is high time now that we amend the Law of Marriage Act of 1971 to outlaw child marriage and safeguard children's rights.

LHRC's Call: To address the persistence of child marriage, LHRC calls for collective efforts among community members and duty bearers to support the girl child and invest more in her education and social-economic development. Enhanced awareness and sensitization against harmful traditional practices which subjects the girl child to early, forced and child marriage is of great significance in eradicating child marriage in Tanzania.

5.3.8. Female Genital Mutilation

FGM is a form of violence against women and girls and continues to be a challenge in different parts of Tanzania, especially in Manyara, Dodoma,



Arusha, Mara, and Singida Regions. FGM is both a public health and human rights concern.

FGM is more prevalent in Manyara (58%), Dodoma (47%), Arusha (41%), Mara (32%), and Singida (31%) Regions.

In 2020, incidents of FGM were mostly reported in Mara Region. In April 2020, parents in Serengeti District were accused of taking advantage of the closure of schools due to the Corona pandemic to take their children to secretly undergo FGM. The District Commissioner of Serengeti, Nurdin Babu, revealed that five parents in Nyamakendo and Machochwe Villages had been arrested. An intervention by the Christian Council of Tanzania (CCT) in the district helped to save 75 girls from FGM. In the same month, it was reported that 20 girls lined up for FGM had been rescued, thanks to by intervention by an organization called Hope for Girls and Women Tanzania (HGWT) in collaboration with the police gender and children desk. It was further reported that a standard six pupil at Kitaruga Primary School almost bled to death after undergoing FGM in Serengeti District. The 14-year-old child was rescued by police, who rushed her to the hospital.

In December 2020, LHRC rescued a total of 636 girls from FGM in Mara Region in collaboration with local stakeholders. The girls were referred to safe houses in the region, namely: Hope for Young Girls and Serengeti and FGM Masanga Tarime. In Rorya District, Mara Region, the police force intervened to rescue a 13-year-old child in Gamasra Village in Nyandoto Ward from FGM as her father was preparing for the practice. The incident occurred on 13th December 2020 and the perpetrator was arraigned before the Tarime District Court. Allowing children to undergo FGM is a criminal offence under the penal law (Penal Code, CAP 16).

5.3.9. Children's rights and the predicament of child pregnancy

Child pregnancy or teenage pregnancy is serious health and human rights concern in Tanzania and has a negative impact on the achievements of the country's key targets under the Sustainable Development Goals (SDGs) and the Tanzania Development Vision. In the period of 2018 and 2019 alone, more than 2,500 child pregnancy incidents were documented by LHRC, and this is bearing in mind that there are many unreported cases. In 2020, LHRC documented 448



child pregnancy incidents reported in fifteen regions of Tanzania in the period of January to December 2020, most of them involving girls aged 13 to 17 years.⁵⁵⁵

2,991+

Number of child pregnancy incidents documented by LHRC, in 2018, 2019 & 2020 through media survey and human rights monitoring.

Table 18: Some of the reported incidents of child pregnancy documented by LHRC, Jan – Dec 2020

Incident	Report Date
Shinyanga: In August 2020, it was reported that 9 pupils at primary schools in Kahama Town Council had become pregnant during the Coronavirus leave, causing them to drop out of school.	11 Aug 2020
Arusha: In August 2020, it was reported that 20 schoolgirls of primary and secondary schools in Longido District were impregnated and married off during the Covid19 school closure.	17 Aug 2020
Mara: In July 2020, it was revealed that a total of 29 girls were impregnated in Bunda District from January to June 2020. This was revealed by the Bunda DC, Hon. Lydia Bupilipili. She DC also noted that in the same period 19 girls were raped.	1 Jul 2020
Mara: In September 2020, it was reported that 28 primary and secondary school girls in Serengeti District in Mara Region dropped out of school after acquiring pregnancy during the Covid19 leave. 23 of them were secondary schoolgirls and 5 were primary schoolgirls.	12 Sep 2020
Morogoro: Police in Morogoro arrested Joseph Gervas (28), a bishop at Ukombozi Church in Gairo District, for impregnating a Form Three student. It was reported that the bishop was sleeping around with women and girls, telling them that the only way they can get rid of demons is by sleeping with him.	28 May 2020
Manyara: In February 2020, it was reported that 100 schoolgirls in primary and secondary schools in Kiteto District dropped out of school due to pregnancy.	13 Feb 2020

555 LHRC Media Survey 2020.



Incident	Report Date
Mbeya: In February 2020, UNICEF reported that Mbeya Region is one of the regions which is notorious for child pregnancy. A UNICEF official, Pamela Shao noted that 33% of girls aged 15 to 19 in the region have children, exceeding the national average of 21%.	29 Feb 2020
Lindi: 11 students at seven secondary schools in Liwale District were found pregnant in the period of January to February 2020.	21 Feb 2020
Dodoma: In February 2020, it was reported that a total of 47 schoolgirls in Mpwapwa District dropped out of school due to pregnancy in the period of January to December 2019.	25 Feb 2020
Ruvuma: In February 2020, it was reported that 41 schoolgirls dropped out of school due to pregnancy in Tunduru District in January and February 2020.	18 Feb 2020
Katavi: A 17-year-old girl from Nkungwi Primary School in Tanganyika District was reportedly impregnated by a man working at the school, who absconded after the incident.	August 2020
Songwe: A 15-year-old schoolgirl, resident of Iboya Village in Mbozi District, was reportedly impregnated by a 19-year-old man, Emmanuel Bukuku, and forced to drop out of school.	August 2020
Tabora: A 16-year-old girl, resident of Izimili Ward in Urambo District, was found pregnant in August 2020.	August 2020
Katavi: A 17-year-old girl, resident of Kakese Village in Mpanda District, was reportedly impregnated by a 22-year-old man, John Bonifance. She was a Form Three student at Misunkumilo Secondary School.	August 2020
Arusha: A 14-year-old girl and her cousin, aged 13 years, both residents of Osero Village in Ngorongoro District, were expelled from school after they were found pregnant in August 2020.	August 2020
Katavi: A 16-year-old schoolgirl, resident of Uruwila Village in Mpanda District, was found to be three-month pregnant in August 2020.	August 2020
Morogoro: A 16-year-old schoolgirl, resident of Manzese A Village in Kilosa District, was impregnated by a 22-year-old man, Faraji Mwamtema.	August 2020
Katavi: A 17-year-old girl, resident of Itenka A Village in Mpanda District, was found pregnant in August 2020.	August 2020



Incident	Report Date
Lindi: A 14-year-old primary school girl, resident of Mahiwa Village in Lindi Rural District, was found pregnant in June 2020. The man responsible for the pregnancy was her step-father, who was sent to court and sentenced to 30 years in prison.	August 2020
Njombe: A 17-year-old girl, resident of Itunduma Village in Njombe District, was impregnated by a 27-year-old man, Danstan Mhema, in May 2020.	July 2020
Mbeya: A girl, aged 15 years and a standard five pupil at Janguturu Primary School, was found pregnant after a pregnancy test was conducted at school.	July 2020
Mbeya: A 16-year-old girl, resident of Isisi Vilalge in Mbarali District, was found pregnant in July 2020. She was forced to drop out of school as a Form Four student at Lujewa Secondary School.	July 2020
Arusha: A 14-year-old schoolgirl, and 15 other primary schoolgirls in Endulen Ward in Ngorongoro District, were expelled from school after they were found pregnant during a pregnancy test session. It was reported that they were impregnated during the Covid19 pandemic period when the schools had been closed.	July 2020
Katavi: A 15-year-old child, resident of Songambebe Village in Nsimbo District and a standard six pupil at Mapinduzi Primary School, was found to be pregnant in January 2020.	July 2020
Geita: A 17-year-old girl, resident of Buselesele Ward in Chato District, was expelled from Mlanda Secondary School after she was found to be four month pregnant.	September 2020
Mara: A 14-year-old girl, resident of Bukole Village in Bunda District, was forced to drop out of school after she was found pregnant in September 2020.	September 2020
Iringa: A 17-year-old girl, resident of Nzivi Village in Mufindi District was found pregnant during a pregnancy test test conducted at school.	September 2020
Katavi: A 16-year-old girl, resident of Istikana Vilalge in Mpanda District and a Form Three student, was found to be pregnant in September 2020.	September 2020



Incident	Report Date
Njombe: Masinde Masinde, a social welfare officer at Makambako Town Council in Njombe Region, said that in the period of March to July 2020, a total of 20 cases of child pregnancy were recorded at schools in the council. He mentioned that the cases increased during the Covid19 leave and it is possible there were other unreported cases.	13 Nov 2020
Arusha: It was reported that more than 20 schoolgirls in Longido District in Arusha Region were impregnated and married during the Covid19 leave.	6 Nov 2020
Mara: Police in Serengeti District arrested Wambura Sukuru (34), resident of Mugumu area, for impregnated a primary school pupil during the Covid19 leave.	2 Nov 2020
Shinyanga: 60 schoolgirls from two councils in Shinyanga Region reportedly got pregnant during the Covid19 leave.	6 Dec 2020
Mara: Police in Serengeti District arrested Wambura Sukuru (34), resident of Mugumu area, for impregnating a primary school pupil during the Covid19 leave.	28 Oct 2020
Mtwara: A 13-year-old child aged 13 years, resident of Chitoholi Village in Tandahimba District was found pregnant in October 2020. The perpetrator was identified as a witchdoctor.	21 Oct 2020
Pwani: A 15-year-old child, resident of Msafiri Village in Kibiti District and a secondary school student was found pregnant. The man responsible was identified as Hamis Mtimbwawa (22), who was arrested and detained at Bungu Police Station. The incident occurred on 15 th November 2020.	20 Nov 2020
Kagera: a 14-year-old child, resident of Nyamiro Village in Biharamulo District, was found pregnant and Eliud Nicholas (25) was identified as a person responsible. The incident occurred on 3 rd November 2020 and matter was under police investigation.	7 Nov 2020

Source: LHRC Media Survey & Human Rights Monitoring 2020

In various areas, child pregnancy incidents were reported to have increased during the Covid19 leave. For instance, as indicated in Shinyanga in the table above, 60 schoolgirls from two councils in the region and more than 20 schoolgirls in Longido District in Arusha were impregnated and married during the Covid19 leave. In Njombe, Masinde Masinde, a social welfare officer at Makambako Town Council in Njombe Region said that in the period of March to July 2020, a total of 20 cases of



child pregnancy were recorded at schools in the council. He mentioned that the cases increased during the Covid19 leave and it is possible there were other unreported cases.

In Dodoma, it was revealed in November 2020 by the police gender and children desk that Form Two and Form Three schoolgirls aged 15 and 16 years constitute the majority of child pregnancy cases. Majority of VAC reported cases at the desk are child pregnancy cases. In Arusha Female students at Enyoito Secondary School in Arusha District identified poverty and poor parenting as major factors contributing to child pregnancy in the district. They mentioned that most parents spend most of their time working and allocate very little time for their children. They also noted some girls are forced to walk long distances to school, hence vulnerable to men who seek sexual relationship with them. In Dar es Salaam, it was reported during a child rights stakeholder meeting that students staying in 'ghetto' hostels form the majority of teenagers falling in teenage pregnancy category in the community, because they lack parental care and upright upbringing.

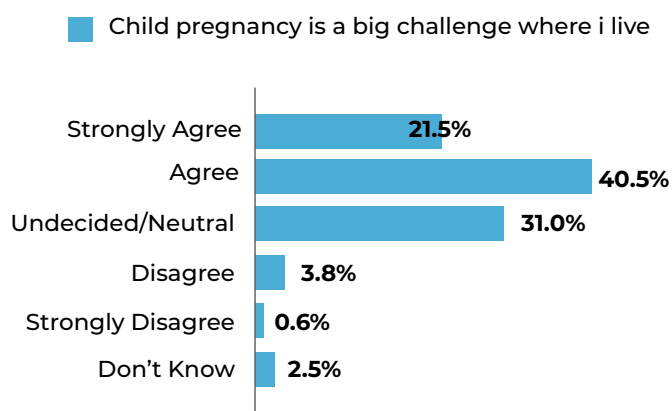


Figure 28: Human rights survey participants' perceptions on child pregnancy challenge

During the human rights survey, 40.5% and 21.5% of the survey participants agreed and strongly agreed respectively that child pregnancy is a big challenge where they live.

LHRC's View: Increasing rate of child pregnancy is an indicator of children being at higher risk of contracting HIV due to unprotected sex. It also continues to jeopardize girls rights, including right to education,



as well hindering progress towards achieving key SDGs goals relating to women and girls, especially SDG 5 on gender equality.

Decision on admissibility of Complaint Challenging Expulsion & Exclusion of Pregnant Schoolgirls

On 17th June 2019, LHRC and the Center for Reproductive Rights filed a Complaint before the African Committee of Experts on the Rights and Welfare of the Child challenging forced pregnancy testing and the expulsion and exclusion of pregnant girls from public schools in Tanzania. The Complaint was filed on behalf of female students in Tanzania and alleged violations of the African Charter on the Rights and Welfare of the Child and other international and regional human rights instruments ratified by Tanzania. In considering the admissibility of the case, the Committee determined:

- Whether or not the Communication raises matters pending settlement by another international body;
- Whether the Complainants have exhausted local remedies, and whether they should be exempted from exhausting local remedies; and
- Whether the Communication is presented within a reasonable time after exhaustion of local remedies.

In its decision on admissibility of September 2020, the Committee ruled that:

- The complaints that have been submitted to the Special Rapporteur on Education and the Working Groups on Discrimination against Women in Law and Practice do not qualify as matters 'pending settlement or previously settled', hence the Committee is not prevented from considering the Communication.
- While a remedy may be available in the Respondent State for cases like the current one, it, however, notes that the remedy is unjustifiably and unduly prolonged which makes it not suitable for the Complainants to pursue.

SDG and Vision 2025 concerns

The predicament of child pregnancy is a threat to achieving key SDG goals and targets under the Tanzania Vision 2025. Relevant SDGs here include SDG 1 (reduce poverty), 4 (quality education) and SDG 5 (gender equality). Allowing these girls to continue with their education contributes to attaining these goals. The move will also help to achieve the Tanzania Development Vision 2025, particularly Target 3.1 (High quality Livelihood).



5.3.10. Action to address VAWC

In 2020, government and stakeholder action to address violence against women and children (VAWC) included establishment of gender and children desks in Kondoa and Bahi Districts in Dodoma Region.⁵⁵⁶ The desks were launched in December 2020 by the District Commissioners of the Kondoa and Bahi, together with the head of the children and gender desks, DCP Maria Nzuki.⁵⁵⁷

It was also reported in March 2020, that a total of five gender desks were established at universities, namely: University of Dar es Salaam; University of Dodoma; Mzumbe University; Institute of Social Work; and Tengeru Institute of Community Development.



Picture 9: Police children and gender desk established in Kondoa District – Dodoma

Establishment of the children and gender desks is a boost for implementation of the National Plan of Action to End Violence Against Women and Children (NPA-VAWC 2017/18 – 2021/22), but several challenges persist. One of the biggest challenges in implementation of the action plan is budgetary deficits, as very little funding is allocated for implementation of the plan. Another key challenge is severe shortage of social welfare officers (SWOs) at LGAs. As of March 2020, there were only 740 SWOs, who are only 3% of the required number of SWOs.⁵⁵⁸ Shortage of community development officers (CDOs), who

⁵⁵⁶ See Tanzania Police Force “WATENDAJI WA DAWATI LA JINSIA NA WATOTO SIKU 16 ZA KUPINGA UKAITILI” at <https://www.polisi.go.tz/2020/12/27/watendaji-wa-dawati-la-jinsia-na-watoto-siku-16-za-kupinga-ukaitili/>, accessed 2nd January 2021.

⁵⁵⁷ Ibid.

⁵⁵⁸ See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.



are also key in implementation of the action plan, stands at 45%.⁵⁵⁹

5.4. Rights of Persons with Disability

5.4.1. Introduction

Rights of persons with disabilities (PWDs) are provided for under the Convention of the Rights of Persons with Disabilities (CRPD). These rights include right to equality and non-discrimination, right to life, right to equality before the law, right to liberty and security of person, freedom from torture, freedom from violence, right to education, right to health and right to work and employment.⁵⁶⁰

Tanzania is party to this treaty and has an obligation to take measures to safeguard rights of PWDs. In Tanzania, the treaty was domesticated in 2010 through the Persons with Disabilities Act, No. 9 of 2010.

CRPD requires States to guarantee the right of PWDs to work on equal basis with others and ensure their acceptance in the labour market and work in an environment that is open, inclusive and accessible to them.⁵⁶¹

This right is safeguarded through various measures, including prohibiting discrimination on the basis of disability.⁵⁶²

Under the CRPD States are required to take all appropriate legislative, administrative, social, educational and other measures to protect PWDs from all forms of exploitation, violence and abuse, including GBV.⁵⁶³

Like other groups, PWDs also face different forms of violence, including physical, psychological and sexual.

5.4.2. A boost for right to education for children with disability

In recent years, realization of the right to education for children with disability in Tanzania has not been easy due to the various challenges they face, including lack of adequate and friendly infrastructure. Shortage of teachers,⁵⁶⁴

schools, tools, and equipment to facilitate education for children with special needs has also been a big challenge in effective realisation of the right to education for children with disability.⁵⁶⁵

These challenges have resulted into a slow pace of achieving intended objectives of the National Strategy for Inclusive Education in 2017.⁵⁶⁶

⁵⁵⁹ Ibid.

⁵⁶⁰ See CRPD.

⁵⁶¹

⁵⁶² Ibid, Article 27(1)(a).

⁵⁶³ Article 16(1) of CRPD.

⁵⁶⁴ See Uwezo (2019): Are Our Children Learning? Uwezo Tanzania Learning Assessment Report. Dar es Salaam: Twaweza East Africa.

⁵⁶⁵ See LHRC (2020), Tanzania Human Rights Report 2019, at www.humanrights.or.tz.

⁵⁶⁶ See the United Republic of Tanzania, Ministry of Education, Science and Technology, the National Strategy for Inclusive Education 2018-2021, December 2017 at <http://rodra.co.za/images/countries/tanzania/>



In 2020, there was a boost for the right to education for children with disability, as the Government announced that it had procured equipment and tools to aid children with disability in their learning process worth Tshs. 2.3 billion.⁵⁶⁷

The tools and equipment include a Braille writing machine, braille papers, spelling tools, sunglasses for children with albinism, hearing test equipment, wheelchairs, laptop computers, desktop computers, televisions, and printers.⁵⁶⁸

5.4.3. Violence and Discrimination against PWDs

In Tanzania, PWDs are among the groups that are more susceptible to various acts of violence and discrimination. Children and women PWDs have been particularly more vulnerable, subjected to various acts of violence and discrimination, including being denied access to education and subjected to acts of sexual violence. For instance, in 2020 LHRC documented one incident of an elderly woman with physical disability who was brutally attacked and raped in Njombe Region in September 2020.⁵⁶⁹ For PWAs, there were no reported incidents of attacks against them and killings. According to an NGO advocating for the rights of persons with albinism, Under the Same Sun (UTSS) revealed that since 2015 there have been no reported cases of killings of PWAs.⁵⁷⁰ However, they continue to live in relative fear and extreme precautions as they remain vulnerable to physical violence, threatening their right to life and right to liberty and personal security.

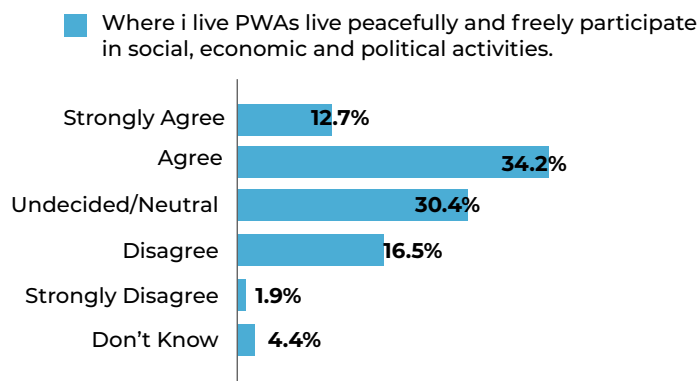


Figure 29: Human rights survey participants' perceptions on participation of PWAs

policies/National%20Strategy%20for%20Inclusive%20Education_version%20for%20signing.pdf, accessed 7th March 2020.

567 LHRC Media Survey 2020.

568 Ibid.

569 LHRC Human Rights Monitoring 2020

570 LHRC Media Survey 2020.



During the human rights survey, 34.2% and 12.7% of the survey participants agreed and strongly agreed respectively that PWAs live peacefully and freely participate in social, economic, and political activities where they live.

5.4.4. Access to Social Services and Opportunities

Challenges facing PWDs, such as lack of friendly infrastructure and conducive learning environment, leaves them at a disadvantage in terms of accessing social services and realizing their fundamental human rights. This limits their social and economic opportunities as they are not able to enjoy their rights equally with others. For instance, lack or shortage of required tools and equipment to facilitate their learning at schools means they will lag behind others, which affects their future prospects in the job market.

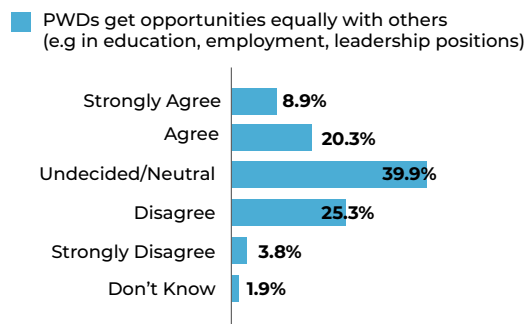


Figure 30: Human rights participants' perceptions on opportunities for PWDs

During the human rights survey, only 20.3% and 8.9% of the survey participants agreed and strongly agreed respectively that PWDs get opportunities equally with others in terms of education, employment, and leadership positions.

5.5. Rights of the Elderly

5.5.1. Introduction

Rights of the elderly are guaranteed and protected under various, regional, continental and international human rights instruments. These include the African Charter on Human and Peoples' Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for



elderly PWDs. We are yet to have in place a convention on the rights of the elderly.

According to HelpAge International, elderly-specific human rights convention is needed because existing human rights mechanisms do not guarantee and provide for adequate protection and promotion of rights of older people.⁵⁷¹ It states that the convention should: provide a comprehensive and systematic framework for the protection and promotion of all our human rights in older age; prohibit all forms of discrimination in older age in every aspect of our lives; articulate how each human right specifically applies to us in older age; and provide for a strong implementation, monitoring and accountability system.

According to the 2011 report of the Secretary General to the UN General Assembly, older persons around the world face four major challenges in terms of human rights.⁵⁷² These challenges are discrimination, poverty, violence and abuse, and lack of specific measures and services.⁵⁷³ These challenges are also major challenges faced by the elderly in Tanzania,⁵⁷⁴ who are believed be over four million people.

5.5.2. Violence against the elderly

Under the Maputo Protocol, Tanzania is obligated to provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training.⁵⁷⁵ It is also required to ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.⁵⁷⁶

While women and children have generally been more vulnerable to violence, the elderly have also continued to be subjected to different forms of violence. In 2020, LHRC documented at least eight incidents of violence against the elderly, including physical violence and sexual violence. They also continue to be among the major victims of witchcraft-related killings.

571 See HelpAge International "Towards a UN convention on the rights of older people" at <https://www.helpage.org/what-we-do/rights/towards-a-convention-on-the-rights-of-older-people/>, accessed 5th January 2019.

572 See Follow-up to the Second World Assembly on Ageing: Report of the Secretary-General, Sixty-sixth session, A/66/173, 22 July 2011 at <https://undocs.org/A/66/173>, accessed 5th January 2019.

573 Ibid.

574 According to the Tanzania National Age Policy 2003, these are people who are 60 years and above.

575 Article 22(a) of Maputo Protocol.

576 Ibid, Article 22(b).



Table 19: Reported incidents of violence against the elderly documented by LHRC in 2020

Incident	Report Date
Mbeya: Resident Magistrate Court in Mbeya has sentenced a resident of Izumbi Village – Chunya District, Solo Rashid (43), after finding him guilty of raping and sodomizing a 70-year-old woman. He committed the offence on 16 th June 2019.	10 Jun 2020
Tabora: Police in Tabora Region arrested a man accused of killing his own mother, Dotto Bundala (75), so that he could inherit the land and farms left behind by his late father.	15 Feb 2020
Rukwa: Police in Rukwa Region arrested a resident of Mtenga Village in Nkasi District for attacking with a machete and killing his father Ntemi Seni (65), when demanding his inheritance.	30 Apr 2020 29 Apr 2020
Pwani: Regional Police Commander of Pwani Region ordered arrest of a pastoralist accused of raping a 60-year-old woman at a farm. The incident occurred during a conflict between farmers and pastoralists in August 2020 in Rufiji District.	24 Aug 2020
Katavi: A 67-year-old woman, resident of Ngomba Lusambo Village, was raped by a 38-year-old man, Juma Kaasa, on 30 th August 2020. The perpetrator reportedly broke into the victim's house and raped her.	August 2020
Katavi: A 70-year-old man, Ngeranjua Mashamba, resident of Mnyamasi Vilalge in Tanganyika Village, was killed by his son, Pascal Neganijua, following a dispute over livestock left behind the victim's deceased wife.	June 2020
Njombe: A 62-year-old woman, resident of Ngelele Village in Njombe District was reportedly raped by a 28-year-old man, Agani Chambilo, on 28 th August 2020. The victim is a person with physical ability	September 2020
Tanga: 48-year-old Haruni Myombe was accused of killing 62-year-old Juma Mwilenga, resident of Iyula Village in Mombo District, for allegedly bewitching him. He attacked and killed the victim with a machete before absconding on 28 th July 2020.	July 2020

Source: LHRC Media Survey & Human Rights Monitoring 2020



LHRC's Call: The Government to enact a law specific for the elderly in order to safeguard their rights. Internationally, there is also a need for an international convention on the rights of the elderly.

5.5.3. Access to Health Services

Challenges in accessing health services affect the elderly the most. One way to help ease the burden of accessing health services carried by the elderly is through providing them with identity cards to enable them to get free health services. For the financial year 2019/20, the Government revealed that it provided a total of 167,566 older persons (71,801 male, 95,765 female) with IDs to enable them to get health services free of charge.⁵⁷⁷ This brings the number of older persons with such IDs to 856,052 by March 2020.⁵⁷⁸ In Shinyanga, in October 2020, the Shinyanga District Council reported that it granted 5,568 cards to the elderly to enable them to enjoy free healthcare services.⁵⁷⁹

Provision of the IDs to the elderly is a welcome development, but more efforts need to be made to improve the overall situation of right of the elderly, especially right to health. Addressing key challenges such as budgetary deficits and shortage of healthcare workers, is essential in safeguarding this fundamental right of the elderly.

5.6. Rights of Persons Living with HIV/AIDS

5.6.1. Introduction

Like any other human being, rights of persons living with HIV/AIDS are provided for and protected under various regional and international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the African Charter on Human and Peoples' Rights (ACHPR). In Tanzania, their rights are covered under the HIV and Aids (Prevention and Control) Act of 2008, which provides for the right to non-discrimination and right to access social services, among others.

5.6.2. Access to medical services

⁵⁷⁷ See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. UMMAY ALLY MWALIMU (MB, KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2020/2021 at <https://www.parliament.go.tz/uploads/budgetspeeches/1588245798-Hotuba%20ya%20Bajeti%20Wizara%20ya%20Afya.pdf>, accessed 20th December 2020.

⁵⁷⁸ Ibid.

⁵⁷⁹ LHRC Media Survey 2020.



A UNAIDS report released in 2020 showed that Tanzania has made good progress in achieving its 90-90-90 targets. 83% out of 90% of people living with HIV know their HIV status, compared to 61% in 2016/17.⁵⁸⁰

90% of all people with diagnosed HIV infection had received sustained antiretroviral therapy. 92% of people receiving antiretroviral therapy had viral suppression. It was also revealed that HIV/AIDS deaths had decreased by 47% in the period of 2010 to 2019.⁵⁸¹

This signals an improved access to medical services for PLHIVs in Tanzania, which is their right under the the HIV and Aids (Prevention and Control) Act of 2008.

5.6.3. Stigma and discrimination

Despite improvement in terms of access to medical services, stigma and discrimination continue to be a challenge for PLHIVs. Women and girls are disproportionately affected by the stigma and discrimination associated with HIV infection, facing discrimination in settings such as family, community, school and workplace. Stigma and discrimination can limit women and girls' access to HIV prevention, treatment and care, as well as to SRH and other services. It can also lead to increased GVAW, and limit women and girls' educational attainment or make them lose their jobs, income or property rights.⁵⁸² Women and girls also continue to be at higher risks of being infected with HIV owing to an increase of rate of sexual violence, especially in the form of rape. Increased rate of child pregnancy is also indicative of the risk girls are in of contracting HIV as they engage in unprotected sex.

LHRC's view: Increased incidence of violence against women and children, puts women and children, especially girls, at an increased risk of new HIV infections. Increase of child pregnancy cases, which suggests more girls engage in unprotected sex, is also a worrying sign in terms of combating HIV and AIDS and preventing new HIV infections, which is key in attaining the 90-90-90 targets and relevant key SDGs, especially those relating to health and education.

LHRC's call: Community members should also refrain from discriminating or stigmatizing PLHIVs and respect their rights as human beings. There is also need to intensify efforts to address sexual violence against women and children, as well as child pregnancy, in order to

⁵⁸⁰ LHRC Media Survey 2020.

⁵⁸¹ Ibid.

⁵⁸² See The State of the African Woman Campaign Project, The State of African Women Report, August 2018, at <https://www.ippfar.org/sites/ippfar/files/2018-09/SOAW-Report-FULL%20VERSION.pdf>.



prevent new HIV infections among women and girls.

5.7. Rights of Refugees

5.7.1. Introduction

A refugee has been defined as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country ...”⁵⁸³

Rights of refugees are protected under various international and regional human rights instruments. Originating under Article 14 of the Universal Declaration of Human Rights of 1948, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the most comprehensive codification of the rights of refugees at the international level. It is both a status and rights-based instrument, which entered into force on 22 April 1954.

The 1951 UN Refugee Convention recognizes various rights of refugees and imposes several obligations upon States Parties, Tanzania inclusive, to safeguard those rights. Such rights include the right to non-discrimination, freedom of religion, artistic rights, right of association, access to courts, right to wage-earning employment, right to self-employment, right to practice a liberal profession, right to housing, right to education, labour rights, freedom of movement, right to identity papers, and right to travel documents.⁵⁸⁴

In ensuring realization of these rights, States are required to accord refugees treatment not less favourable than that accorded to aliens generally or the same treatment as accorded to nationals.

The Convention also requires States not to impose penalties on people who are unlawfully in their countries, as long as they are directly from a territory in line with Article 1 of the Convention.⁵⁸⁵

It also stipulates that a country can only expel a refugee lawfully in its territory only on the grounds of national security or public order.⁵⁸⁶

More importantly, the Convention is underpinned by the principle of non-refoulement, such that no State is to expel or return (“refouler”)

⁵⁸³ See UNHCR “Protecting Refugees: questions and answers” 01 February 2002 at <https://www.unhcr.org/publications/brochures/3b779dfe2/protecting-refugees-questions-answers.html#:~:text=A%20refugee%20has%20the%20right,from%20torture%20and%20degrading%20treatment.,> accessed 3 November 2020; See also Article 1(1) of the African Refugee Convention.

⁵⁸⁴ See Articles 3, 4, 14, 15, 16, 19, 21, 22, 24, 26, 27 & 28 of the UN Refugee Convention, 1951.

⁵⁸⁵ Ibid, Article 31.

⁵⁸⁶ Ibid, Article 32(1).



a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.⁵⁸⁷

Additionally, the Convention encourages States to facilitate the assimilation and naturalization of refugees.⁵⁸⁸

The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

Article 5 of the African Refugee Convention

At regional level, refugee rights are protected under the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the OAU in 1969. According to this convention, the term “refugee” also applies to “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”⁵⁸⁹ The African Refugee Convention recognizes rights of refugees such as the right to asylum, right to non-discrimination, right to voluntary repatriation, and right to travel documents.⁵⁹⁰

It also reiterates the principle of non-refoulement, whereby it prohibits return of expulsion of a person to return to or remain in a territory where his life, physical integrity or liberty would be threatened.⁵⁹¹

Both conventions set out duties for refugees, the chief of which is to respect the laws and regulations of the land which grants them asylum.⁵⁹²

Tanzania has in place legislation governing rights and duties of refugees, the Refugees Act, 1998. It provides for a definition of refugees that is similar to that provided for in the UN Refugee Convention and the African Refugee Convention. It also establishes a committee to receive and determine applications for refugee status, provides

587 Ibid, Article 33(1).

588 Ibid, Article 34.

589 Article 1(2) of the African Refugee Convention.

590 See Articles 2, 4, 5, 6.

591 Article 2(3) of the African Refugee Convention.

592 See for example Article 3 of the African Refugee Convention.



for the process for determining such status, stipulates rights of refugees, such as right to work, right to education, right to voluntary repatriation, right to family reunion, and right to resettlement.⁵⁹³

It also stipulates duties of refugees, including respective laws and paying taxes.⁵⁹⁴

5.7.2. Situation of Refugee Rights

Traditionally, Tanzania has been one of the countries that are very welcoming to refugees in the world, which has earned it accolades within the international community. Over the years, political instability in neighbouring countries such as Burundi and the Democratic Republic of Congo (DRC) has seen Tanzania become a second home for many refugees and asylum seekers, currently hosting more than 300,000 refugees.⁵⁹⁵

In recent years, challenges faced by refugees include right to work and to participate in income-generating activities, which in turn affects their right to adequate standard of living.

Repatriations

As of September 30th, 2020, the United Republic of Tanzania hosted 155,667 Burundian refugees who arrived in the country in several waves since 2015. The country hosts the largest number of all the Burundian refugees in the Great lakes region (UNHCR)⁵⁹⁶. Since 2017, with the situation in Burundi seemingly stabilizing, the Governments of Burundi, Tanzania and UNHCR began to engage in tripartite agreements on the voluntary repatriation of Burundian refugees back home. Following the peaceful election of President Ndayishimiye in June 2020, and his call for Burundians living in exile to return, an increase in interest in voluntary return has been observed. The voluntary repatriation of Burundian refugees from Tanzania started in September 2017, on 31st August 2020, a total of 90,747 Burundian refugees were assisted to return home. An increase in the return trend was observed since July 2020, with more than 10,000 of the 12,500 who

⁵⁹³ See sections 31, 32, 34, 35 & 36 of the Refugees Act, 1998.

⁵⁹⁴ Ibid, section 33.

⁵⁹⁵ Guri Romtveit "6 things to know about refugees in Tanzania" Norwegian Refugee Council, 06 Mar 2019.

⁵⁹⁶ IOM, UN Migration, <https://crisisresponse.iom.int/response/voluntary-repatriation-and-reintegration-burundian-refugees-plan-2020>. Accessed on 17th February 2021



have been assisted to return home between January and August 2020.⁵⁹⁷

Although these repatriations are said to be voluntary the closing and destructions of the markets, restrictions on commercial activities, limited access to social services and the lack of freedom of movement dent the voluntariness of the repatriation.⁵⁹⁸

Rights of refugees and COVID 19 response

The Tanzanian Government responded well during the Covid19 outbreak in terms of enhancing protection of refugees in the refugee camps. They made sure that all the measures to prevent the spread of disease were also observed in the camps as well. The schools in the camps were also closed the same as it was done in the rest of Tanzania. There was also the inclusion of the refugees in regional plans on the prevention of the COVID 19.

Right to work

The refugees in Tanzania have also a right to work like any other non-citizen in Tanzania. Although the refugees are guaranteed this right, there is no specific law that provides for procedures to facilitate the whole process as it is for the Non-citizens who are regulated under the Non-citizens (Employment Regulation) Act, 2015. Therefore, the government should facilitate the enactment of this regulation to bring certainty of the procedures on the side of refugees too.

Likewise, the restriction of some of the commercial activities like bodaboda has contributed to into frustration/psychological torture of the refugees. Being idle and failure to engage in any commercial activity to support your family is stressing most men in the camps.

Refugees status determination

Section 9 of Tanzania Refugee Act of 1998 requires that any person entering or who is within Tanzania, whether lawfully or otherwise and who wishes to remain in Tanzania as a refugee within the meaning of section 4, shall immediately and not later than seven days after entry, unless he can show reasonable cause for delay, present himself or report to the nearest authorised officer, village executive officer, or a justice of

597 Burundi: Urgent funding requirements - Voluntary repatriation of Burundian refugees returning from Rwanda and Tanzania (September - December 2020), <https://reliefweb.int/report/burundi/burundi-urgent-funding-requirements-voluntary-repatriation-burundian-refugees#:~:text=The%20Voluntary%20Repatriation%20of%20Burundian%20refugees%20from%20Tanzania%20started%20in%20September%202017.&text=UNHCR%20anticipates%20that%20nearly%2020%2C000,trends%20of%20registration%20for%20return> accessed on 17th February 2021.

598 Tanzania: Burundians Pressured into Leaving. <https://www.hrw.org/news/2019/12/12/tanzania-burundians-pressured-leaving>



the peace and apply for recognition as a refugee. After application as a refugee then National Eligibility Committee will seat and determine whether that person is accepted or rejected.

The National Eligibility Committee (NEC) is the Tanzanian body that is responsible for the determination of refugee status in the country. It is composed of members from the Office of the President, Prime Minister's Office, Ministry of Foreign Affairs and International Cooperation, as well as police and immigration forces."⁵⁹⁹ The main concern regarding the NEC is how it takes a long time to seat and therefore most people stay in asylum seeker situation for a long time and therefore miss a lot of important rights which are enjoyed by a refugee including the right to work. The National Eligibility committee had a meeting in 2020 following that of 2017 and the rejection rates are very high.

5.8. Impact of Covid19 on the Rights of Vulnerable Groups

Vulnerable groups were affected the most by Covid19 in the year 2020. One of the measures taken by the Government to contain spread of Covid19 pandemic was to close schools until the situation improves. Closure of schools saw children return home for about three months, and during this period acts of violence against children, especially sexual violence, FGM, and child pregnancy were reported to have escalated. During the human rights survey, 36.7% and 18.4% of participants agreed and strongly agreed that incidents of violence against children increased during the Covid19 leave. Closure of schools also hindered children from effectively realizing right to education, especially those from poor households and without access to ICTs.

For persons with disabilities, measures to prevent the spread of Covid19 such as social distancing and self-isolation proved to be difficult, since they need care and support of others to do basic things such as eating and dressing.⁶⁰⁰ For the elderly, the World Health Organization (WHO) declared that they are at the highest risk of contracting the virus, hence heightening their health challenges.⁶⁰¹

For women, Covid19 meant increased burden in terms of work, for instance

⁵⁹⁹ Tanzania: Refugee status determination in Tanzania, including acceptance rates and source countries available at <https://www.refworld.org/docid/3ae6ad7f74.html>. Accessed on 19/02/2020.

⁶⁰⁰ See Economic and Social Research Foundation, Rapid Socio-Economic Impact Assessment of Covid19 in Tanzania, April 2020, at <https://www.undp.org/content/dam/tanzania/docs/docs2020/undp-tz-SEA-Report%20Rapid-COVID19.pdf>, accessed 10th December 2020.

⁶⁰¹ Ibid





as nurses, and domestic work. According to the United Nations, women bear additional household burdens during the pandemic, spending three times as many hours in unpaid domestic and care work as men.⁶⁰²

It also indicated that cases of domestic violence in some countries had increased by 30%, as lockdowns increased the risk of VAWG.⁶⁰³ In Tanzania, 51% of women work in the informal sector, which is characterized by daily wages, limited social protection measures and savings, rendering women very vulnerable during times of pandemics such as Covid19.⁶⁰⁴

The virus led to reduced demand of their good and services, mostly contributed by reduction of customers.

⁶⁰² See United Nations "Goal 5 Achieve gender equality and empower all women and girls" at <https://sdgs.un.org/goals/goal5>, accessed 5 November 2020.

⁶⁰³ Ibid.

⁶⁰⁴ Economic and Social Research Foundation, Rapid Socio-Economic Impact Assessment of Covid19 in Tanzania, April 2020.



CHAPTER 6: HUMAN RIGHTS MECHANISMS

6.1. Overview

This chapter looks at local, regional and international human rights mechanisms applicable Tanzania. These human rights mechanisms comprise of laws and institutions that protect and promote human rights. The national mechanisms highlighted in this chapter are the national human rights institution (CHRAGG), the Judiciary and law enforcement organs. Regional and international human rights mechanisms covered in this chapter are the Universal Periodic Review (UPR) mechanism and mechanisms established by treaties, namely the Human Rights Committee, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of the Child, and the African Committee on the Rights and Welfare of the Child.

6.2. National Human Rights Mechanisms

6.2.1. Legal Framework

The national human rights mechanisms in Tanzania are the Commission for Human Rights and Good Governance (CHRAGG), the Prevention and Combating of Corruption Bureau (PCCB), the Judiciary, the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS).

1. The Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance is a constitutional creature, established under article 129 to 131⁶⁰⁵. The Commission's establishment went hand in hand with the enactment of Act no 7 of 2001.⁶⁰⁶ The Act provides for the functions, composition and jurisdiction of the commission. The Commission is the key institution in the promotion and protection of human rights in Tanzania. The commission also receives complaints on both human rights violations and good governance. The commission can conduct inquiry, hearing and has the power to call witnesses. The decision of the commission has a status of recommendation but can be enforced before the court of law when not implemented⁶⁰⁷.

⁶⁰⁵ See the Constitutional of the United Republic of Tanzania 1977.

⁶⁰⁶ The Commission for Human rights and Good Governance Act No. 7 of 2001

⁶⁰⁷ See section 28(3) of the commission for human rights and good governance Act no. 7 of 2001



2. The Judiciary

This is among the three arms of the state which are the executive, parliament and judiciary. The judiciary of Tanzania has two main functions which are to interpret and enforce the law. The judiciary can also make precedents through its binding decisions. The judiciary of Tanzania has four divisions which are land court division, labour court division, corruption and economic zone division. The judiciary is another key institution in the protection and enforcement of human rights in Tanzania. The courts of law, through entertaining both the civil and criminal cases, have been able to provide remedies to those whom their rights are violated. In criminal cases, the courts have been frontline in ensuring the rights of the accused person such as the presumption of innocence, right to heard, right to equality before the law, legal representation and bail are preserved and not breached.

3. The Law enforcement organs

The law enforcement organs in Tanzania include the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS). The Tanzania Police Force (TPF) is responsible for detecting, preventing and combating crimes in the United Republic of Tanzania to ensure people's and property security. The Tanzania Police Force also works with the office of the Director of Public Prosecution (DPP), whereas the police arrest criminals and investigate while the prosecutors prosecute the cases before the court. Since the Tanzania Police Force is playing a vital role in the whole process of arresting, detaining, interrogating and investigating the cases then the human right cannot be separated from it. The police are obliged to take the suspects to court before 48 hours from the time they arrested them, not to obtain confessions aggressively, grant bail to those bailable offences, and not to torture the suspects.

The primary responsibilities of the Tanzania Prisons Services are to receive and detain all persons brought to prison in accordance with the laws of the land and to run various programs aimed at rehabilitating convicted prisoners so that they can eventually be released from prison as good citizens. In carrying out these responsibilities, the prisons are responsible for complying with and respecting all laws of the country as well as the various laws about human rights.



4. Prevention and Combating of Corruption Bureau (PCCB)

The Bureau is established under section 5 of the Prevention and Combating of Corruption Bureau (PCCB) Act.⁶⁰⁸

The act also provides for composition and functions of the bureau. The act also provides for the different offences which are related to corruption. The main function of the bureau is to examine and advise the practices and procedures of public parastatal and private organisations, to facilitate the detection of corruption or prevent corruption and secure the revision of methods of work or procedure which appear to add to the efficiency and transparency of the institution concerned. This is a very important function in ensuring good governance which is a very important element for the protection of human rights.

6.2.2. Tanzania Police Force

In the year 2020, the Tanzania Police Force continued to perform its functions, including that of protection of people and their properties. The obligations of taking to court the suspects on time as prescribed by the law have made the Tanzania Police Force role vital in the protection of rights of the remandees. The Police have also participated in raising awareness to the society on the proper ways of reporting crimes. Police participation in public exhibitions including saba saba played a vital role in connecting them and the society they are serving. The traffic has also worked hand in hand with the community to make sure each observes the laws while using roads to reduce the roads accidents due to negligence through different campaigns in schools and streets including that of “NENDA KWA USALAMA.” The police have also continued to cooperate with the CSOs in the different activities deemed necessary for promotion and protection of human rights in Tanzania which needs their approval or permit for example those involving gathering of many people. The gender desks in the police stations played a very vital role in the reduction of the Gender-Based Violence (GBV).

On thing which has been observed with police services is the issue of friendliness of the services for persons with disabilities (PWDs). There is a need to ensure availability of facilities at police stations that will enable provision of PWD-friendly police services.

6.2.3. Tanzania Prison Services

The Tanzania Prison Services (TPS) continued providing prison services in line with the law. The prison officers continued to assist the remandees

⁶⁰⁸ CAP 329, Act No. 11 of 2007



to attend before the courts of law to face their charges after every fourteen days. The TPS also did a great job during the Covid19 pandemic eruption to prevent spread of the virus, including taking measures to ensure social distancing and facilitating release of some of the prisoners to reduce prison overcrowding. In process of rehabilitating the prisoners, TPS continued to engage them in different productive activities like carpentry, construction and farming which will help them earn their living legally once they are out hence become good citizens. This will help them to engage themselves in the legal activities for gain once they are out. In recognizing and promoting the rights of women, TPS also established gender desks to facilitate equal gender opportunities and to combat acts of violence in the institution and to prevent violence against inmates including children in prisons, a total of 153 cases were entertained.⁶⁰⁹

6.2.4. Commission for Human Rights and Good Governance

The CHRAGG, which is the national human rights institution, continued carrying out its different activities on the protection and promotion of human rights. They also commemorated various human rights days, with the goal of raising awareness on varying human rights issues. Among the human rights days commemorated by the CHRAGG in 2020 was the World Day Against Child Labour and the International Day of Older Persons. The theme for the 2020 World Day Against Child Labour was “Covid-19: protect children from labour, more than ever.”

On 12th June 2020, CHRAGG collaborated with other stakeholders to commemorate the World Day Against Child Labour and issued a statement. In this statement, CHRAGG expressed that it joined other human rights stakeholders is in protesting against child labour and exploitation and calling for greater protection of children.

The Commission also stated that child labour is mostly occurring in the countryside, on the streets and in the mines and a concern that these child labour is a also a driver for violence against children. The commission also stressed that following the outbreak of the COVID-19 epidemic, children workers were put at a greater risk of contracting the virus. Thus the international community had given a priority to

⁶⁰⁹ See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MH. UMMY .A. MWALIMU KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2018/2019 at https://www.jamii.go.tz/uploads/publications/sw1542102246Hotuba_ya_Bajeti_ya_mheshimiwa_WAMJJW_2018-19.pdf.



the issue of protection of children against hazardous employment.”⁶¹⁰

On 1st October 2020, the Commission commemorated the International Day of Older Persons. In its statement, the Commission urged the Government and other stakeholders to collaborate to enhance protection of the rights of the elderly. In the statement, the Commission called upon joint action to end all forms of violence against the elderly, including killings; and enhance provision of free medical care to the elderly at all levels of provision of healthcare services.

The Commission also cited the ongoing challenges facing the elderly and called on the Government to take action to address those shortcomings. These challenges include: lack of special law that protects and recognizes the rights of the elderly, despite the fact that policy of the elderly was completed since 2003; shortage of medicines and equipment in hospitals and various health facilities across the country, which disproportionately affects the elderly; the pace of reduction of poverty among the elderly, especially those who were not in formal employment through TASAF, and some of the eligible beneficiaries not be covered by the funds.”⁶¹¹

Moreover, in 2020 CHRAGG expressed concern over the right to health violations when the Covid19 pandemic erupted in Tanzania, whereby there were reports of some healthcare workers discriminated patients or not attending to them for fear that they might be having the virus. The Commission urged doctors and nurses to refrain from discriminatory practices in order to safeguard the right to health and the right to non-discrimination, which are constitutionally protected⁶¹²

The Commission explained that such acts are a violation of the right to health for citizens and a threat to right to life.

Furthermore, CHRAGG continued to raise awareness to the people across the country through awareness campaigns, publications. CHRAGG also has been frontline in cooperation with other CSOs dealing with human rights matters in conducting fact-findings, human rights studies and establishment of the human rights clubs.

610 See Tamko la THBUT siku ya kupinga ajira kwa watoto, Juni 12 2020 at https://www.chragg.go.tz/images/PRESS/Tamko_la_THBUB_Siku_ya_kupinga_ajira_kwa_watoto_Juni_12_2020fv.pdf

611 See Tamko la THBUT maadhimisho ya siku ya wazee duniani, Oktoba 1 2020 at https://www.chragg.go.tz/images/PRESS/Tamko_la_THBUB_maadhimisho_ya_siku_ya_wazee_duniani.pdf

612 See Tamko la THUB kuhusiana na wahuduhu wa afya kuwatenga wagonjwa at https://www.chragg.go.tz/images/PRESS/TAMKO_1.jpg



6.2.5. Prevention and Combating of Corruption Bureau

In 2020, PCCB played its role as one of the national institutions for protection and promotion of human rights in Tanzania. The year 2020 was an election year the PCCB continued to monitor reported corruption issued during the elections. The PCCB investigated and arrested suspects of corruption and continued conducting awareness campaigns through radios and television, physical campaigns and other platforms. PCCB has also managed to set up a Gender Desk to address sexual corruption issues. In the period March 2019 to March 2020, 31 case files were received from 15 regions. Out of those files, 14 were taken to court and 17 files are still under investigation.⁶¹³

Tanzania's performance in the Corruption Perceptions Index has indicated improvements in combating corruption, although corruption is still a big problem in Tanzania. In 2019, Tanzania was ranked 96th out of 180 countries, jumping another 3 places after scoring 37 out 100 points.⁶¹⁴ In 2020, Tanzania's jumped two more places in the world rankings to 94th after scoring one more point. The figure below shows score trend from 2014 to 2020.

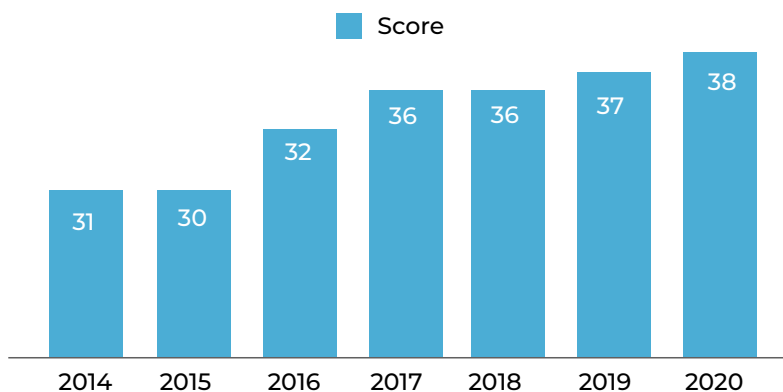


Figure 31: Tanzania's scores in the Corruption Perceptions Indexes 2014-2020

Source: Corruption Perceptions Indexes 2014 to 2020

LHRC acknowledges the efforts made by the Government and PCCB

⁶¹³ See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MH. UMMY .A. MWALIMU KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2018/2019 at https://www.jamii.go.tz/uploads/publications/sw1542102246Hotuba_ya_Bajeti_ya_mheshimiwa_WAMJJW_2018-19.pdf

⁶¹⁴ See Transparency International's Corruption Perceptions Index 2019, at <https://www.transparency.org/cpi2019>, accessed 5th March 2020.



to tackle corruption. However, corruption is still pervasive in different sectors, including petty and grand corruption, and if Tanzania is to make significant strides in the fight against corruption, the role of the media and CSOs cannot be underestimated. A better landscape for the media and CSOs to operate in will yield better results in this noble fight against corruption. Whistleblowers may be discouraged by the restrictive provisions within freedom of expression laws discussed under 2.3 in this report.

6.2.6. Challenges facing national human rights mechanisms

The national human rights mechanisms are faced with various challenges which hinder their mandate.

These challenges include;

A. Question of independence of CHRAGG as a National Human Rights Institution.

CHRAGG is a national human rights institution established in the constitution of the United Republic of Tanzania from Article 129-131. Although CHRAGG is addressed as an independent institution there are some issues which may be questioned on the independence of this institution. The Paris principles which are the UN guidelines principles for the establishment of the National Human Rights Institutions require that the National Human Rights Institutions should be constitutionally or legally vested operational and financial independence through a separate state budget allocation and independent procedures of reporting.⁶¹⁵ .But unfortunately in Tanzania, CHRAGG budgetary allocation is not independent, and the Commission is required to submit quarterly implementation report to Ministry of the Constitutional and Legal affairs. This waives its independence and hence challenges its mandate as a National human rights Institution. If the budgetary allocation for this institution will become independent then there is no doubt that this will be the answer for the budgetary constraint for this institution.

B. CHRAGG operational mandate throughout the country

The CHRAGG as a National Human Right Institution is mandated to operate in the whole country (both Tanzania mainland and Zanzibar). However, CHRAGG has only 5 offices currently which are located in Dar Es Salaam, Zanzibar, Mwanza, Lindi and Dodoma. This limits its ability to reach all the citizens throughout the country whose rights

⁶¹⁵ See the principles relating to the status of National Institution (The Paris Principles) Adopted by the General Assembly resolution 48/134 of 20 December 1993



have been violated, considering the fact that most Tanzanians have no awareness of human rights issues.

C. Budgetary constraints

Budgetary constraints is one of the obstacles for national human rights mechanisms to effectively carry out their mandates. For CHRAGG, limited budget affects performance of functions such as making follow up on issues, conducting awareness-raising campaigns, and conducting studies and fact-findings. Budget constraint is a challenge to the other national human rights mechanisms including the Judiciary, Tanzania Police Force and Tanzania Prison Services.

D. Appointment procedures of commissioners as a challenge to the continuity and effectiveness of CHRAGG mandate

The CHRAGG appointment procedures are cumbersome hence affects the continuity of its mandate. For example, for the past two years until September 2019, CHRAGG had no leadership for a long time and therefore it was inactive. It took time for the commissioners and chairman to be appointed. This affected directly the continuity of its mandate in the country.

E. Corruption

Corruption is still a major challenge facing the National human rights mechanisms in effecting their mandate. Judiciary and the Tanzania Police Force are the most affected institutions something which hinders their capability in protecting and promoting human rights. Corruption in the judiciary and Tanzania Police Force have been the main causes delay proceedings hence delaying justice.

F. Overcrowding in the prisons.

Prison overcrowding is still a challenge for Tanzania Prison Services in 2020 despite the efforts done to decrease the number of prisoners. This was the most addressed issue during the eruption of COVID-19 pandemic disease. While reading his ministry's budget speech, the minister of Home Affairs, Hon Boniface Simbachawene revealed that as of March 2020, there were a total of 32,438 prisoners and detainees in all prisons in the country. Of these, 14,464 are prisoners and 17,974 detainees, which is 9% more than the current capacity of 29,902 prisoners and detainees. The Prisons Service has continued to reduce overcrowding by using the Parole system, in which 92 prisoners have been released. Also, 695 prisoners were released from prisons to serve out-of-prison duty.⁶¹⁶

⁶¹⁶ HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE, GEORGE BONIFACE SIMBACHAWENE (Mb), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA 2020/21 at <https://www.moha.go.tz/sw/blog/2020-04-23/hotuba-ya-waziri-wa-mambo-ya-ndani-ya-nchi-mhe-george-boniface->



6.3. Regional and International Human Rights Mechanisms

6.3.1. Legal Framework

Tanzania as a member of the UN and the different International treaties have a primary role of reporting. The reporting process provides an opportunity for an individual state to conduct a comprehensive review of the measures it has taken to bring its national laws and policies in line with the provisions of the treaties to which is a party, and also their efforts to implement the treaties in the protection and promotion of human rights. The treaties specify when to submit an initial report and periodic too and the time framework differs from one instrument to another.

The Universal Period Review (UPR) is a state-driven process, under the auspices of the human rights council, which provides the opportunity for each state party to declare what actions they have taken to improve the human rights situation in their countries and fulfil their human rights obligations and overcome challenges to the enjoyment of human rights. UPR is a unique process which involves a review of the human rights record of all 193 UN Member states. UPR involves sharing of best human rights practices around the globe.

During the first cycle in 2008-2011, all UN Member states were reviewed. The second cycle which officially started in May 2012-2016, Tanzania submitted its report and CSOs submitted their shadow reports in 2016. The third cycle is due on 2017-2021, and Tanzania is due for review on 39th Session of the working group April to May 2021.

Under the regional level, the main reporting obligation for Tanzania is in the Banjul Commission. The Banjul Commission is established under the African Commission on Human and People's Rights (ACHPR), a creature of the African Charter aimed at protection and promotion of human rights in the region. The state parties are required to submit every two years, a report on the legislative or other measures taken, with a view of giving effect to the rights and freedoms recognized and guaranteed under the Charter. Tanzania ratified the Banjul charter in 1984 and has prepared and submitted to the Commission two reports. First periodic report for the period of 1984-1992 submitted in 1990 and second periodic report for the period of 1992-2006 submitted in 2006. Tanzania is among the countries which have not submitted the third periodic report to the Commission to date.

simbachawene-mb. Accessed on 2nd November 2020.



6.3.2. Key Issues

Key issues for Tanzania in the year 2020 in terms of regional and international human rights mechanisms included preparations for Tanzania's review of its human rights obligations under the UPR Process and difficulties in enforcing decisions of regional and international human rights mechanisms.

Tanzania's review before the UPR Working group in 2021

Tanzania is due for review on 39th Session of the UPR working group from April to May 2021. The move has brought different concerns among the Human rights institutions both governmental and non-governmental. The early preparations of the reports for the review have made headlines in the year 2020.

Difficulties in Enforcing Decisions of Regional and International Human Rights Mechanisms

In December 2019, it was revealed that Tanzania had decided to withdraw access of individuals and NGOs to the African Court on Human and Peoples' Rights, issuing a notice of withdrawal.⁶¹⁷

According to the notice, the withdrawal decision was reached after the Declaration had been implemented contrary to the reservations submitted by Tanzania when making its Declaration.⁶¹⁸

The withdrawal came at a time when it enforcement of regional and international human rights mechanisms, especially of the African Court on Human and Peoples' Rights and the East African Court of Justice, has been a challenge.

Enforcement of decisions/judgements of the regional and international human rights mechanisms in domestic jurisdictions usually depends on the political will. For instance, in 2013, the African Court on Human and Peoples' Rights issued its judgement on the private candidate case filed by the late Christopher Mtikila, but the judgement is yet to be enforced. In 2019, the East African Court of Justice delivered its judgement on the Media Services Act of 2016 but it is yet to be enforced.

⁶¹⁷ See NOTICE OF WITHDRAWAL OF THE DECLARATION MADE UNDER ARTICLE 34(6) OF THE PROTOCOL TO THE AFRICAN CHARTER ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/12/Tanzania-Withdrawal-Article-36-4-African-Court.pdf>.

⁶¹⁸ Ibid.



CHAPTER 7: IMPLEMENTATION OF RECOMMENDATIONS IN PREVIOUS REPORTS

7.1. Introduction

Apart from providing the situation of human rights, as guaranteed in the Constitution of the United Republic of Tanzania of 1977 and regional and international human rights instruments, Tanzania Human Rights Reports provide recommendations to enhance protection of human rights. In this reporting period, LHRC assessed the status of implementation of recommendations provided in five previous reports, covering the period of the year 2015 to the year 2019. The table below shows the number of recommendations that were implemented (I), partially implemented (PI), not implemented (NI), and whose status is unknown (U).

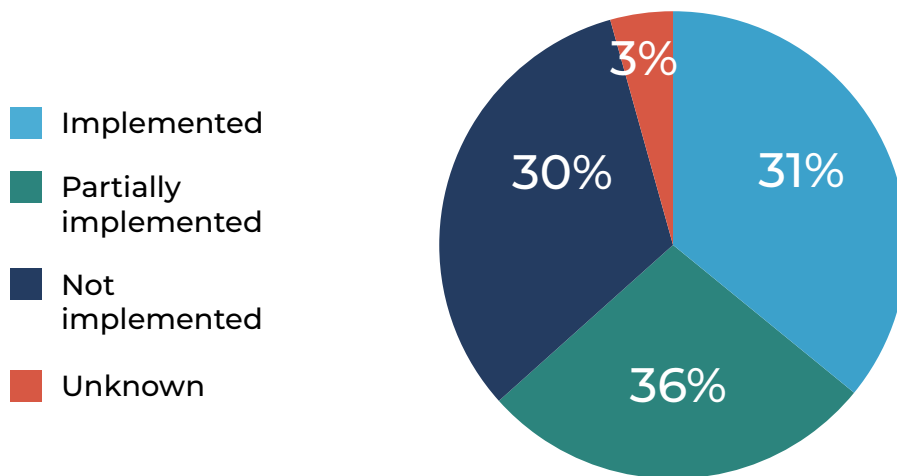


Figure 31: Status of implementation of recommendations of THRR 2015 to 2019



Table 20: Status of recommendations of Tanzania Human Rights Reports 2015 to 2019

Category of Human Rights	#Recommendations	I	PI	NI	U
Civil and Political Rights	64	21	22	21	0
Economic, Social and Cultural Rights	42	12	17	12	1
Rights of Vulnerable Groups	28	8	9	9	2
Other human rights	5	2	2	0	1
TOTAL	139	43	50	42	4

Majority of the recommendations made during this period (46%) were on civil and political rights. This is because these rights constitute the majority of human rights stipulated in international human rights instruments and are the most violated human rights compared to other categories of human rights. Recommendations on civil and political rights also constituted the majority of recommendations which were implemented (49%) and not implemented (44%).

LHRC's Call: In order to safeguard fundamental human rights, enhance social justice, and achieve sustainable development goals (SDGs), we call upon the Government and other actors to fully implement recommendations which are not implemented and those which are partially implemented.

7.2. Civil and Political Rights Recommendations

During this reporting period, a total of 64 key recommendations on civil and political rights made in the Tanzania Human Rights Reports of years 2015 to 2019 were assessed to determine their status. Out of these, only 21 recommendations have been implemented, while 22 have been partially implemented. A total of 21 recommendations were not implemented.



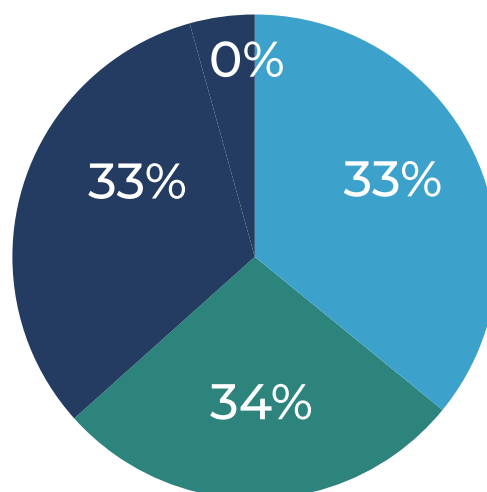
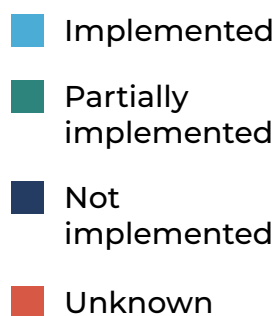


Figure 32: Status of THRR recommendations on civil and political rights (2015-2019)

Table 21: Status of implementation of key recommendations on civil and political rights – 2015 to 2019

Recommendation	Action	Verdict
Officially declare the state of moratorium on execution of death penalty and amend Penal Code to end compulsory sentencing of death penalty for the crime of murder and treason.	No declaration. Mandatory death penalty still in place, despite decision of the African Court of November 2019.	NI
Exonerate those convicted and sentenced to death penalty, especially the ones who have spent longer periods in prisons.	Some death row inmates exonerated; many have had death sentences commuted to life imprisonment, especially during the current administration.	I
Sign and ratify the Second Optional Protocol to the International Convention on Civil and Political Rights to abolish the death penalty	No signature and ratification.	NI





Recommendation	Action	Verdict
Improve road and road safety infrastructure to reduce road accidents.	Increased investment in road infrastructure. Road accidents significantly reduced. Regular inspection of vehicles.	I
Improve railway infrastructure and railway transport system to reduce road use by cargo vehicles.	Efforts to improve railway transport under way, e.g. SGR	PI
Integrate road safety into national school curricula.	Road safety education incorporated into primary school curriculum.	PI
Raise public awareness on witchcraft and harmful consequences of witchcraft allegations/accusations. Public sensitization on witchcraft-related violence	Public sensitization on witchcraft conducted. Government, CSOs, and other stakeholders conducting public awareness.	I
Revise the Witchcraft Act	None.	NI
Police and local security committees to increase efforts to locate, charge and prosecute perpetrators of witchcraft-related killings.	Intensified measures to deter witchcraft-related killings, including increased rate of arrests and prosecution of perpetrators. Police operations to arrest and take to court perpetrators, especially in the Lake Zone and Tabora.	I
Government collaboration with other stakeholders to develop national strategy for protection of PWAs and promotion of their rights.	No formal strategy in place but collaborative efforts by government, CSOs, and other stakeholders (taskforce) to enhance protection of PWAs. Decrease of attacks against PWAs.	PI





Recommendation	Action	Verdict
Public sensitization on albinism and PWA rights.	Awareness-raising sessions conducted by government and non-government actors.	I
Fast-tracking of cases involving PWAs	Introduction of regulations/guidelines directing courts to fast-track the cases. [Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rules, 2019]	I
Fast-track cases of attacks against and killings of PWDs.	Legal and policy reforms made to fast-track such proceedings in court.	I
Enact a law to safeguard access to information.	A law enacted and currently in place but contains a few provisions which do not meet international standards on access to information.	PI
Amend or repeal repressive and outdated laws such as the Cybercrime Act of 2015, the Statistics Act, 2015, the Newspapers Act of 1976, the Public Leadership Code of Ethics (Declaration of Interests, Assets and Liabilities) Regulations, and the National Security Act of 1970.	Newspapers Act of 1976 repealed. Cybercrimes Act 2015 not amended. Statistics Act 2015 amended.	PI
Enhance use of ICT platforms by MDAs to increase access to information.	ICT platforms used by MDAs but access to information not satisfactory.	PI
Enhance civic and voter education.	Enhanced civic and voter education.	I
Establish an independent electoral body.	None.	NI





Recommendation	Action	Verdict
Government to commute death sentences to life imprisonment.	Presidential pardons, commuting death sentences into life imprisonment.	PI
Police measures to ensure perpetrators of mob violence are prosecuted in order to reduce mob killings.	Rate of mob violence has declined.	PI
Leaders and state officials to refrain from making public statements that have negative impact on human rights or encourage human rights violations.	None.	NI
Establishment of an independent police oversight body.	None.	NI
Drivers to avoid drinking and driving; and police to ensure that those who do not abide by this rule are dealt with in accordance with the traffic law.	Stricter enforcement of traffic laws. Reduced road accidents and resulting deaths and injuries.	I
Government to amend the Media Services Act 2016 to bring it in line with international standards on freedom of expression.	None, despite decision of the East African Court of Justice of 2019.	NI
Government to amend the Cybercrimes Act so that it does not infringe on freedom of expression and other human rights.	None.	NI
Government and the Judiciary to intensify efforts to construct and renovate court buildings.	Renovation and construction of court buildings, leading to increased number of court buildings.	I
The Judiciary to fully and effectively implement the zero-backlog policy in order to address the problem of backlog of cases in courts of law.	Policy implementation at all court levels. Implementation satisfactory.	I





Recommendation	Action	Verdict
Government leader and officials to exercise their powers in accordance with law and uphold principles of natural justice.		PI
Police officers to stop interfering with the work of advocates and respect the right to legal representation and right to presumed innocent until proven guilty for all suspected criminals and accused persons	Cases of interference still reported.	PI
Police officers to refrain from conducting arbitrary arrests and detentions.	None.	PI
The Police Force and courts of law to grant bail for allailable offences and to do so timely.	Situation somewhat improved.	PI
The Ministry of Home Affairs and CHRAGG to ensure there is regular human rights training for police, particularly on the rights of accused persons and due process of law.	No reports of regular trainings.	NI
The Ministry of Home Affairs, the Police Force, and courts of law to ensure law enforcement officials who arbitrarily deprive liberty of persons are held accountable.	Reports of some of the police officers held accountable and punished by internal accountability mechanisms.	PI
CHRAGG and CSOs to continue raising awareness on civil and political rights, particularly important rights of accused persons such as right to bail and right to liberty	Many awareness-raising sessions conducted.	I
The Government to ratify and domesticate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	None.	NI





Recommendation	Action	Verdict
CSOs advocating for the ratification and domestication of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.		I
The Ministry of Home Affairs and the Police Force to ensure quick response to incidents of mob violence and extrajudicial killings; and ensure the perpetrators are brought to justice.	Incidents of mob violence have decreased and more cases against perpetrators reported.	PI
Abolish death penalty.	None.	NI
Ensure security or law enforcement officers implicated in extrajudicial killings are held accountable and brought to justice	Reports of some of the officers being held accountable internally.	PI
CHRAGG and the police force to ensure police officers are familiar with the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and are adequately trained on human rights in an effort to reduce extrajudicial killings.		NI
The Government and PCCB to address allegations of corruption within the justice system (police and courts of law) to restore public confidence and reduce risk of mob violence.	Intensified anti-corruption drive. Judiciary anti-corruption plan in place and implemented.	PI
CSOs and FBOs to use their platforms to speak against and raise awareness about mob violence, death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their impact in the society.		I
Regular human rights trainings for judges, magistrates and attorneys.	Trainings conducted mainly by Judiciary and CSOs.	I





Recommendation	Action	Verdict
CSO and government stakeholders to continue raising public awareness on human rights, particularly rights related to justice, such as equality before the law and effective remedy.		I
Government and police authorities, including the Ministry of Home Affairs, to ensure that restrictions imposed on freedom of assembly are in accordance with the law, including international human rights standards.		NI
The police officials to use their mandate under the Police Force and Auxiliary Services Act in relation to assemblies objectively, as well as providing clear and justifiable reasons (in writing) for denying assembly.	Sometimes reasons given but not justifiable. Accusations of double standards. Police preference of preventing rather than protecting assemblies.	NI
Government to sign and ratify the African Charter on Democracy, Elections and Governance.	None.	NI
The National Electoral Commission (NEC), should take steps to address the irregularities that hinder effective realization of the right to vote, including for marginalized groups such as PWDs		PI
Government to prevent and address arbitrary interference with freedoms of expression, assembly, and association.		NI
Government to amend the Statistics Act 2015 to bring it in line with international human rights standards.	Statistics Act 2015 amended in 2019.	I





Recommendation	Action	Verdict
Government to amend the Online Content Regulations to remove or amend provisions that do not conform to international human rights standards.	New Online Content Regulations introduced in 2020 to replace the Online Content Regulations of 2018, but still do not conform to international human rights standards, especially on freedom of expression.	NI
Regional and District authorities should refrain from misusing their powers of arrest and detention under the Regional Administration Act.	Reduced reported incidents of abuse of powers.	PI
Police to refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them court within a specified period of time (usually 24 hours) as required by the law, in order to safeguard the right to liberty.	Incidents of arbitrary arrests and detention still reported.	PI
Police officers to refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.	Complaints/concerns over police fabrication of cases/trumped-up charges recently, including by the President.	NI
CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as encouraging community members to obey the law and respect human rights of others in order to preserve right to life.	Awareness-raising conducted.	I
CSOs and FBOs to use their platforms to speak against and raise awareness about mob violence, death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their overall impact on human rights.	Awareness-raising conducted.	I





Recommendation	Action	Verdict
Members of the public to refrain from taking the law into their own hands and seek remedies at higher levels of the justice system where they are not happy with the outcome of a case	Reduced incidents of mob violence.	PI
Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially right to life, freedom of expression and freedom from torture, as a way of promoting these rights.	Religious leaders playing their role in this regard.	I
Government to amend the Political Parties Act 1992 to remove problematic provisions in line with international standards on freedoms of association and assembly.	The law amended in 2019, but not in conformity with international standards on freedoms of association and assembly.	NI
Provide civic and voter education in order to prepare Tanzanians to effectively participate in the elections as part of realizing their right to take part in governance.	Situation of provision of civic and voter education satisfactory, but not adequate.	PI
Amend the Non-Governmental Organizations (Amendments) Regulations, 2018 to ensure they do not arbitrarily interfere with the realization of freedom of association of NGOs.	None.	NI
CSOs should raise public awareness on freedom of assembly, freedom of association and right to take part in governance.	Awareness-raising conducted.	I
The Police Force to promptly and effectively investigate cases in order to safeguard rights to liberty and personal security and right to equality before the law.	Investigations take too long to conclude, contributing to pre-trial detentions and prison overcrowding.	NI
Community members to expose and report violations of human rights, especially right to life, and ensure the perpetrators are brought to justice.	Increased reporting of incidents, but still many incidents go unreported.	PI



7.3. Economic, Social, and Cultural Rights Recommendations

During this reporting period, a total of 42 key recommendations on economic, social, and cultural rights made in the Tanzania Human Rights Reports of years 2015 to 2019 were assessed to determine their status. Out of these, only 12 recommendations have been implemented, while 17 have been partially implemented. A total of 12 recommendations were not implemented, and status of implementation of 1 recommendation was unknown.

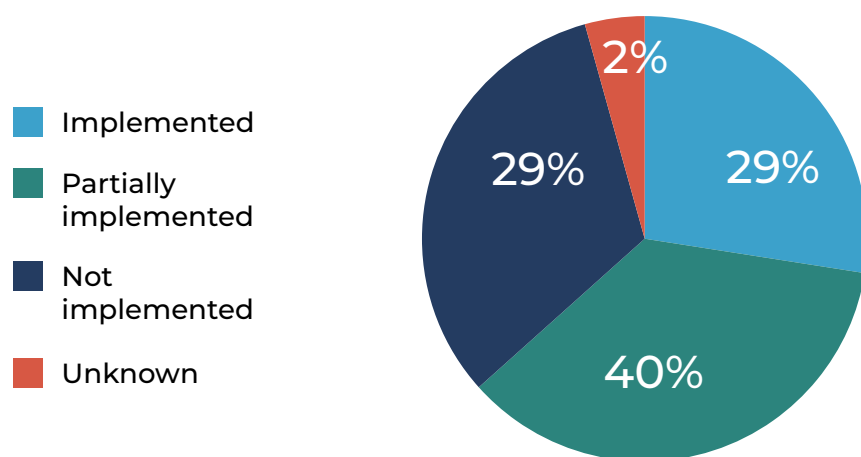


Figure 33: Status of THRR recommendations on economic, social and cultural rights (2015-2019)

Table 22: Status of implementation of key recommendations on economic, social and cultural rights – 2015 to 2019

Recommendation	Action	Verdict
The Government to increase budgetary allocations for education, water and health sectors in line with international standards and ensure full and timely disbursement of funds for these sectors.	Budgets have been increased but not in line with international minimum standards.	NI



Recommendation	Action	Verdict
The Government to increase budgetary allocation for the agriculture sector, which is the leading employer, to boost the right to development and right to work. It should also increase investment in irrigation farming to boost food production and improve accessibility.	Budgets increased but not sufficient.	PI
Ministry responsible for education to address challenges faced by teachers to ensure they work in favourable conditions, as key measure in improving quality of education and achieving key targets under SDG 4 and the Tanzania Development Vision 2025.	Teachers still faced with many challenges, despite progress. Working environment generally not conducive, especially in rural and semi-urban areas.	PI
Ministry responsible for education to devise strategies of preventing VAC perpetrated by male teachers in schools.	No strategy in place.	NI
Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted immediately after being promoted.	None.	NI
Government to implement CAG recommendation of management of LGAs to ensure that all the retired, absconded, transferred and dismissed employees are timely and effectively removed from payroll; and taking stringent measures should be taken to ensure total recovery of TZS 207,375,726 used to pay nonexistent employees.	Operation conducted to remove ghost workers from state payroll.	I



Recommendation	Action	Verdict
Government to implement CAG recommendation of Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO-PSM) to perform staff requirement assessment in LGAs and come up with mechanisms that will ensure that qualified staffs are recruited to fill the existing positions, retention of well skilled and experienced employees and provision of special incentives for employees especially those in education and health sector who are working in remote LGAs.	Recruitment process not as smooth as recommended.	PI
The Government to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water.	Funding has been increased to facilitate ongoing water projects.	I
The Government to ensure its institutions pay water bills on time in order for the water authorities to effectively implement their activities and maintain water infrastructure.	Still reports of government institutions which are notorious in non-payment of bills on a timely basis.	NI
Ministry responsible for education to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.	Progress made, but shortages are acute.	PI
Ministry responsible for education to address the problem of lack of employability skills among majority of university graduates.	Ministry collaborating with the private sector to address this.	PI
CSOs, the media and other stakeholders to collaborate with the Government to promote and protect social and cultural rights, including through awareness-raising of the public.	Collaborated with the Government in this regard.	I



Recommendation	Action	Verdict
Members of the public are also encouraged to report violations of their economic rights to relevant authorities and CSOs.	Increased reporting.	I
Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.	Some of the community members in some areas of Tanzania Mainland on the forefront in this regard.	PI
Strengthen the land-dispute settlement mechanisms, such as land tribunals.	Complaints about village and district land tribunals.	NI
Review the Wage Order and ensure it is reviewed after every 3 years as required by law.	None. Last reviewed in 2013.	NI
Increase investment in irrigation in order to boost the right to work and economic boost.	Inadequate investment.	NI
Ministry responsible for PWDs to strengthen mechanisms for protection of labour rights and enhance regular inspection of workplaces to ensure rights are respected, protected and promoted, including favourable working environment	Lack of adequate regular inspection. Complaints of corruption.	NI
Ministry responsible for land should ensure that people who possess title deeds to land are timely and adequately paid compensation when their land is acquired for other use, as directed by law.	Compensation problems highlighted in Human Rights and Business Report 2018/19	PI
Land management programmes should be properly and cautiously implemented to guarantee long-term solutions	Improved land management.	I
Make corporate social responsibility (CSR) a legal requirement for all sectors, following the amendments to the Mining Act, which saw CSR mandatory for companies in the mining sector.	None.	NI



Recommendation	Action	Verdict
The Ministry of Education and Vocational Training should ensure school inspections are conducted regularly and meals are available at primary schools, particularly in rural areas.	Inspections, but not regular.	PI
Increase budgetary allocation for the health sector to at least reach the minimum target of 15% as required under the Abuja Declaration.	Budget increased but not in line with the minimum standards.	NI
Ministry responsible for health to enhance efforts to address challenges faced in the health sector, including shortage of health facilities.	Efforts made to increase health facilities.	PI
The Government to increase budgetary allocation for the sector of agriculture and increase investment in irrigation farming in order to boost food production and improve accessibility	Increase of budget but not sufficient.	PI
Ministry responsible for human settlements to intensify efforts to increase access to adequate but affordable housing in line with the Development Vision 2025 and the Sustainable Development Goals.	Affordable housing projects implemented.	PI
Ministry responsible for water to enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of money.		U
Intensify efforts to empower women, especially those in rural areas, enhancing their knowledge about their property-related rights and laws governing property acquisition, use and ownership	Implementation of women empowerment programmes. 4% of LGA revenue for interest-free loans to women groups.	I



Recommendation	Action	Verdict
Improve the situation of human resources in the land sector to address delays in obtaining necessary land ownership and use documents, which has been identified to create the environment of corruption		I
Government to reconsider its stance on pregnant schoolgirls and allow them back to school.		NI
Ministry responsible for health to ensure budget for essential drugs and medicines is increased	Funding increased, but not in line with international standards.	PI
The Government, in collaboration with local and international organizations, to continue reaching out to people residing in valleys and inform them about the impact of staying in such hazardous areas	Government tried re-location but residents returned to the valleys.	I
Ensure increased access to adequate housing in line with the Development Vision 2025 and the Sustainable Development Goals	TASAF programmes.	PI
Economic empowerment to poor families to enable them to meet the indirect education related costs.	TASAF programme. Fee-free education policy implementation.	I
Take measures to improve the situation of food security.	Increased food stocks at NFRA.	I
Intensify efforts to address land disputes and conflicts.	Efforts intensified by responsible ministry under Hon. William Lukuvi.	I
CSOs to raise awareness and provide assistance in land matters.		I
Improve school learning environment, including water, toilet, and classroom facilities.	Environment somewhat improved, including renovation and construction of classrooms and toilets. But fee-free education implementation has exacerbated shortages.	PI



Recommendation	Action	Verdict
Government to amend all laws, regulations and policies which discriminate against girl child to enable her to effectively realize her right to education.	Implementation of expulsion of pregnant schoolgirls policy.	NI
Government to fully implement the Education and Training Policy of 2014.	Provision of fee-free education.	PI
Enhance quality of education and provide regular job training for teachers.		PI
Government to provide more resources for education development programmes.	Budget allocation increasing but still below the minimum standard in terms of percentage of overall budget.	PI

7.4. Rights of Vulnerable Groups Recommendations

During this reporting period, a total of 28 key recommendations on rights of vulnerable groups made in the Tanzania Human Rights Reports of years 2015 to 2019 were assessed to determine their status. Out of these, only 8 recommendations have been implemented, while 9 have been partially implemented. A total of 9 recommendations were not implemented, and status of implementation of 2 recommendations was unknown.



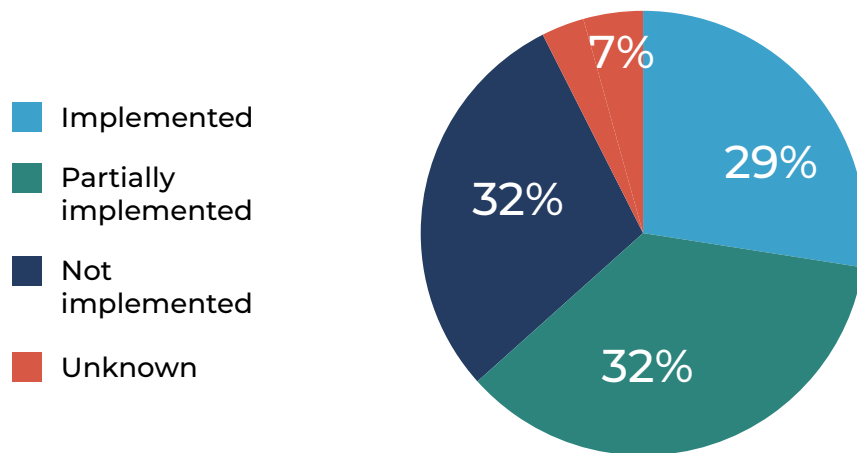


Figure 34: Status of THRR recommendations on rights of vulnerable groups (2015-2019)

Table 23: Status of implementation of key recommendations on economic, social and cultural rights – 2015 to 2019

Recommendation	Action	Verdict
Enhance and promote inclusive education for PWDs in line with Goal 4 of the SDGs.	Steps taken to ensure availability of tools and facilities to facilitate inclusive education, but shortage of special needs education teachers and facilities.	PI
Sensitize the public on rights of PWDs and develop and implement disability awareness programmes for key stakeholders to reduce stigma and discrimination of PWDs.	Sensitization programmes conducted by government and non-government actors.	PI
Develop and implement programmes for empowerment of PWDs.	Measures to economically empower PWDs taken, e.g. 10% empowerment loans for PWDs, youth, and women, whereby PWDs are allocated 2% of revenues collected by LGAs for interest-free loans.	PI





Recommendation	Action	Verdict
Take measures to protect the elderly from all forms of violence and discrimination and prosecute perpetrators of violence against them.	Increased arrest and prosecution rates of perpetrators of violence against the elderly. Decrease of incidents of witchcraft-related killings, especially of the elderly.	PI
Improve access to free, age-friendly health services for the elderly.	Some of the older persons have been given IDs to enable them access free medical services.	PI
The Government to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues.	None.	NI
Intensify efforts to prosecute and punish acts of GBV.	Efforts intensified by the Judiciary.	I
The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.	Women underrepresented in decision-making positions.	NI
The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children	Improvement in investigation and prosecution.	PI
CSOs and social welfare departments within local governments to increase awareness on violence against children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.	Awareness-raising sessions conducted.	I



Recommendation	Action	Verdict
Ensure jobs and employment opportunities for PWDs.	Employment opportunities still among major challenges for PWDs, especially in the private sector. No effective implementation of the Persons with Disabilities Act, 2010.	PI
The Ministry of Home Affairs to ensure that police investigate and prosecute cases of violence against PWDs, especially PWAs.	Cases investigated and prosecuted.	I
The Ministry of Constitutional and Legal Affairs to ensure that courts of law fast-track proceedings of violence against PWDs.	Pace of proceedings satisfactory. Introduction and implementation of zero-backlog policy.	I
Ministries responsible for housing and infrastructure to ensure that buildings and infrastructure built can be accessed by PWDs.		PI
Spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy	None.	NI
The Ministry of Constitutional and Legal Affairs to ensure that the Government adheres to its reporting obligations under regional and international human rights treaties	Status of reporting good.	I
The Government to increase the pace of implementation of accepted recommendations made during the UPR process in 2016 as well as those made during the previous process in 2011	Slow pace of implementation.	PI





Recommendation	Action	Verdict
The Government to amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.	None.	NI
Harmonize laws on administration of deceased's estates to address the problem of conflict of laws applicable during administration of estate	None.	NI
The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971.	None. One year on since directive of the Court of Appeal of Tanzania.	NI
CSOs and social welfare departments within local governments to increase awareness on violence against children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.	Awareness-raising sessions conducted.	I
The Government to ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.	Increased protection of the elderly. Less reported incidents of killings and attacks. Increased arrests and prosecution.	I
Ministry responsible for health to fast-track the process of introducing pension for the elderly.		U



Recommendation	Action	Verdict
CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.	Awareness-raising sessions conducted.	I
The Government to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.	None.	NI
The Government through the Ministry of Education, Science and Technology to integrate gender education in learning curriculums from elementary to higher learning.		U
Increase funding for the police gender desk to enable it to effectively address gender-based violence and violence against children.	Funding for desks still one of the major challenges.	NI
The Government to increase budget for implementation of the NPA-VAWC in order to address VAC and VAW, which have reached alarming levels.		NI

7.5. Other Recommendations

A total of 5 other key recommendations made in the Tanzania Human Rights Reports of years 2015 to 2019 were assessed to determine their status. Out of these, only 2 recommendations have been implemented and 2 have been partially implemented. None of them were not implemented, and status of implementation of 1 recommendation was unknown.



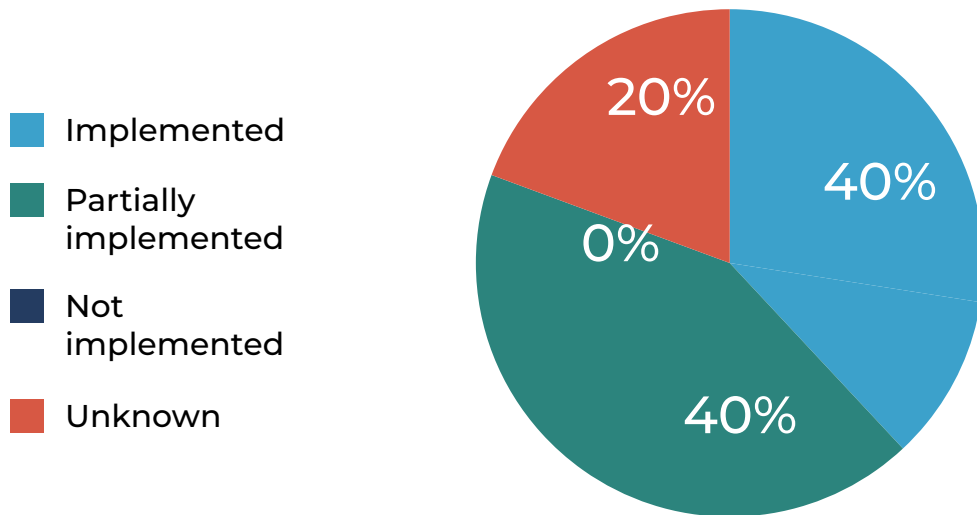


Figure 35: Status of other THRR recommendations (2015-2019)

Table 24: Status of implementation of other key recommendations—2015 to 2019

Recommendation	Action	Verdict
The Government should address corruption in the mining sector, which is threatening right to development and right to enjoy and benefit from natural resources.		PI
The Government to ensure effective implementation of corporate social responsibility (CSR) policy to ensure people in areas with heavy investment, such as mining areas, benefit from their natural resources through improved social services.		PI
The Government to ensure respect of human rights while attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations. Employ a HRBA		U





Recommendation	Action	Verdict
The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable.		I
CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on right to development and right to benefit from natural resources.		I



CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

8.1. Conclusion

Civil and Political Rights

In the year 2020, the situation of civil and political rights slightly deteriorated as basic rights and duties continued to be jeopardized by key issues such as mob violence, witchcraft-related killings, violence against PWAs, death penalty, killings of children, gender-related killings, restrictive laws and amendments, arbitrary arrests and detention, human trafficking, decline in internet freedom, violation of the right to presumption of innocence, limited access to legal aid by residents of rural areas and delays and constant adjournment of cases. Other key issues affecting effective realisation of civil and political rights included shortage of judicial personnel, corruption within the justice system, disregard of due process of the law, lengthy detention of remandees, denial of bail, violations of right to take part in governance, prosecution before completion of investigation and arbitrary restrictions on freedoms of association and assembly, low representation of women in leadership positions, and violence against women and children. The situation of civil and political rights was compounded by the Covid19 pandemic.

On a positive note, the African Court on Human and Peoples' Rights boosted the right to take part in governance in its landmark decision of July 2020, by holding that the constitutional provision prohibiting challenging of presidential election results contravenes the African Charter on Human and Peoples' Rights of 1981. To safeguard the right to equality before the law, the Government and Judiciary took measures to improve access to justice in light of the Covid19 situation, including by enhancing use of ICT in dispensation of justice.

Economic, Social and Cultural Rights

In 2020, the Government continued to take various measures to ensure progressive realisation of economic, social, and cultural rights in line with its obligations under regional and international human rights instruments. Key policies such as the fee-free education policy, continued to be implemented to safeguard the right to education. However, effective realisation of these rights continued to be hindered by challenges such as insufficient budget; shortage of workers,



including teachers and healthcare workers; shortage of classrooms and dormitories; shortage of toilet holes; violence against children; harmful cultural practices; low social security coverage; and labour rights violations.

Collective Rights

During this reporting period, collective rights, particularly the right to development, were boosted by Tanzania achieving the middle-income country status. While there promising signs for economic development, the country did not fare well in terms of political development and human development, while challenges hindering effective realisation of social rights negatively affected social development. Realisation of the right to enjoy and benefit from natural resources was affected by challenges, such as the Covid19, which affected industries such as the tourism industry; corruption; tax avoidance and evasion.

Rights of vulnerable groups

Vulnerable groups include women, children, PWDs, the elderly and PLHIVs. These are groups that are more likely to suffer human rights violations, which is why there are special protection mechanisms for them, including specific human rights instruments, save for the elderly who are yet to have a specific human rights convention. In the year 2020, these groups continued to be the major victims of human rights violations. These violations materialised in the form of violence against women, children, and the elderly, including sexual, physical, and psychological violence; harmful cultural practices, including child marriage and FGM; and limited budget for implementing NPA-VAWC. Incidents of child rape and sodomy increased compared to the year 2019, as the rate of sexual violence continued to be alarmingly high. Child pregnancy also continued to be an issue of major concern for girls' rights. For PWDs, discrimination and lack of equal opportunities continued to be a major challenge for realisation of their rights, while for PLHIVs, stigma and discrimination presented a challenge.

Human rights mechanisms

Key national human rights mechanisms are the law enforcement organs, mainly the Tanzania Police Force and the Tanzania Prison Services; the Judiciary; and the Commission for Human Rights and Good Governance (CHRAGG). Their role is to protect human rights under different capacities and in 2020 they continued to play this role in various ways, including bringing perpetrators of human rights violations



to justice and taking various measure to enhance access to justice. However, key issues affecting their role in human rights protection included corruption, delays in investigation and prosecution of cases, poor working environment due to shortage of equipment, shortage of law enforcement officers and judicial workers, overcrowding in prisons, budgetary constraints, shortage of facilities, and poor knowledge about human rights and essence of procedural safeguards.

International, regional, and sub-regional human rights mechanisms include: Universal Periodic Review Mechanism, Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Tanzania is a party to all these mechanisms, some of which are based in Arusha – one of its regions. Non-enforcement of the decisions of these mechanisms continued to be a challenge in 2020.

8.2.Recommendations

8.2.1. Civil and Political Rights

State actors

- Being a de facto abolitionist state, the Government, through the Ministry of Constitutional and Legal Affairs, should move to declare a state of moratorium and improve death row conditions and prepare to abolish death penalty.
- Police force should promptly respond to mob violence and witchcraft-related killings; and ensure the perpetrators are brought to justice.
- Ministry of Home Affairs to ensure law enforcement officers who conduct extra-judicial killings are held accountable in accordance with the law
- The Ministry of Constitutional and Legal Affairs to spearhead amendments of restrictive laws restricting freedoms of expression, association and assembly.



- The Government to amend the Online Content Regulations 2020 to bring them in line with international human rights standards.
- The Government to amend Media Services Act of 2016 in line with the decision/judgement of the East African Court of Justice of 2019.
- Government officials to refrain from interfering with freedom of expression without reasonable ground stipulated by law; and stop threatening journalists.
- Freedom of expression should be effectively guaranteed, and citizens should be freely allowed to air their views on the governance issues.
- The Police Force to promptly and effectively investigate cases in order to safeguard rights to liberty and personal security and right to equality before the law.
- Police to use their powers under the Police Force and Auxiliary Services Act in relation to freedom of assembly objectively, ensuring that any denial of assembly is lawful, reasonable and necessary.
- Government authorities and police to refrain from suppressing opposition political parties through denial of political assembly.
- Government officials and members of political parties to exercise political tolerance in order to preserve peace and security.
- Ministry of Home Affairs and the Police to ensure the police force responds timely to prevent mob violence and act against mob-killings, ensuring the perpetrators are brought to justice.
- The Government, through the Ministry of Constitutional and Legal Affairs, to create a police oversight body to ensure and promote accountability in law enforcement.
- Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.
- The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.



- The Government and the Police Force to refrain from arbitrarily interfering with freedom of expression, including press freedom; freedom of assembly; and freedom of association.
- The Police Force should refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them to court within a specified period of time (usually 24 hours) as required by the law, in order to promote the right to liberty. Police officers implicated in this behaviour should be held accountable.
- The Police Force should ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
- The Government, through the Ministry of Constitutional and Legal Affairs, to take legal and administrative measures to safeguard the right to take part in governance, including allowing independent candidates and creation of an independent and inclusive electoral body.
- The Government to allow all CSOs, especially those dealing with human rights, to observe elections in order to enhance credibility of such elections.
- The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.
- The Police Force and courts of law to grant bail for all bailable offences and to do so timely.

Non-state actors

- CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as encouraging community members to obey the law and respect human rights of others in order to preserve right to life. In case of mob violence, for example, members of the public should be made aware of offences which are bailable.
- CSOs and FBOs to use their platforms to speak against and raise awareness about mob violence, death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their overall impact on human rights.
- CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance with knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.



Members of the public

- To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system when they are not satisfied with the outcome of a case.
- Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially right to life, freedom of expression and freedom from torture, as a way of promoting these rights.
- Community members to expose and report violations of human rights, especially right to life, and ensure the perpetrators are brought to justice.

8.2.2. Economic, Social and Cultural Rights

State actors

- The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for education, water and health sectors in line with international standards and ensure full and timely disbursement of funds for these sectors.
- The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the agriculture sector, which is the leading employer, in order to boost the right to development and right to work. It should also increase investment in irrigation farming in order to boost food production and improve accessibility.
- The Prime Minister's Office Labour, Employment, Youth and People with Disability should collaborate with the Ministry of Health, Community Development, Youth, Gender and Children to promote self-employment and entrepreneurship in order to address the problem of youth unemployment.
- The Ministry of Education, Science and Technology should address challenges faced by teachers to ensure they work in favourable conditions, as key measure in improving quality of education and achieving key targets under SDG 4 and the Tanzania Development Vision 2025.
- The Ministry of Education, Science and Technology to devise strategies of preventing VAC perpetrated by male teachers in schools.



- Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid accumulation of debts; and ensure no new staff debts are created..
- As recommended by the CAG in the 2017/18 audit report on local government authorities (LGAs), management of the LGAs and the Government as a whole to ensure that there is sufficient budget allocation for staff appraisal activities and perform awareness program to LGAs' staff on the importance of staff appraisal to the government employees.
- Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted immediadely after being promoted.
- The Government, through the Ministry of Finance and Planning, to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water, which is essential to the Government's industrialisation drive.
- The Government should ensure its institutions pay water bills on time in order for the water authorities to effectively implement their activities and maintain water infrastructure.
- The Ministry of Water should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of monies.
- Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions.
- Ministry of Education, Science and Technology to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.

Non-state actors

- CSOs should work with relevant government ministries, such as the ministry responsible for women and ministry responsible for land, to promote and protect economic rights, including conducting awareness-raising sessions and campaigns.



- CSOs should collaborate with the Prime Minister's Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties.
- The private sector should collaborate with the Government to invest in water projects in order to increase access to water services. This could also be done as part of corporate social responsibility.
- CSOs, the media and other stakeholders should collaborate with the Government to promote and protect social and cultural rights, including through awareness-raising of the public.

Members of the public

- Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work, right to own property and popular versions on laws relating to these rights prepared by government and no-government actors.
- Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission for Human Rights and Good Governance.
- Parents should strive to understand their duties and responsibilities towards their children under the Law of the Child Act of 2009 (as amended in 2019) and make efforts to ensure children enjoy and realise their rights, including right to education and freedom from violence.
- Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.
- Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.

8.2.3. Collective Rights

State actors

- The Government should address corruption in the mining sector, which is threatening right to development and right to enjoy and benefit from natural resources.



- The Ministry of Natural Resources should ensure effective implementation of natural resources laws.
- The Government to ensure respect of human rights while attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- The Government to ensure effective implementation of corporate social responsibility (CSR) policy to ensure people in areas with heavy investment, such as mining areas, benefit from their natural resources through improved social services.
- The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable.

Non-state actors

- CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on right to development and right to benefit from natural resources.
- CSOs should identify gaps in realization of natural resources and engage and advise the government accordingly.
- CSOs should collaborate with the government to ensure companies comply with their corporate social responsibilities. CSOs can also advocate for CSR to be mandatory for other companies, following amendments to the Mining Act of 2010, which have made CSR a legal requirement for companies in the mining sector.

Members of the public

- Community members are encouraged to preserve and protect natural resources, which is their constitutional duty.
- Community members are also encouraged to pay their taxes, since these are key in realization of social and economic rights.

8.2.4. Rights of Vulnerable Groups

State actors

- The Government, through the Ministry of Constitutional and Legal Affairs, to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues.



- The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
- The Government, through the Ministry of Constitutional and Legal Affairs and the Ministry of Foreign Affairs, to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.
- The Government through the Ministry of Education, Science and Technology to Integrate gender education in learning curriculums from elementary to higher learning.
- The Government, through the Ministry of Finance and Planning and Ministry of Home Affairs, should increase funding for the police gender desk to enable it to effectively address gender-based violence and violence against children.
- The Government, through the Ministry of Health, Community Development, Gender, Elderly, and Children, and the Ministry of Home Affairs, to ensure that acts of gender-based violence (violence against women) are prevented and investigated.
- The Judiciary to ensure that courts prosecute and punish acts of gender-based violence.
- The Government to ratify the ILO C190 - Violence and Harassment Convention, 2019 (No. 190) to safeguard against acts of violence and harassment in the world of work.
- The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.
- The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action.
- The Government, through the Ministry of Constitutional and Legal Affairs, to facilitate amendment of the Law of Marriage Act of 1971 in line with the Court of Appeal decision of 2019 in the Rebeca Gyumi case.
- The police and courts of law to increase the pace of investigation and prosecution of cases on violence against children and women.



- The Judiciary to ensure that courts of law fast-track proceedings of violence against PWDs.
- The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.
- The Government, through the Ministry of Constitution and Legal Affairs, to table a bill in Parliament to propose enactment of a specific law to cater for the promotion and protection of the elderly.
- The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of a law on elderly rights and protection to complement the National Age Policy.
- The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly.
- The Government, through the Ministry of Finance and Planning, to increase budget for implementation of the NPA-VAWC in order to address VAC and VAW, which have reached alarming levels.
- The Ministry of Health, Community Development, Gender, Elderly and Children to ensure allocation of adequate budget for community development and social welfare departments to effectively perform their duties in relations to violence against women and children, including making follow-ups on the incidents and providing relevant assistance to victims.
- The Government to take deliberate measures to increase the number of social welfare officers to enhance provision of relevant services to the vulnerable groups.

Non-state actors

- CSOs and social welfare departments within local governments to increase awareness on violence against women and children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.
- CSOs should collaborate with the Government to ensure effective implementation of the Convention on the Rights of the Child in order to safeguard rights of all children, including street children and children with disabilities.



- CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.
- Stakeholders should strengthen mechanisms to enable women to report abuse instantly as they happen, especially women in remote areas of Tanzania.
- CSO to advocate for the realization of a specific Convention on the rights of the elderly.

Members of the public

- Community members to perform their duties of protecting and safeguarding children's rights refraining from conducting acts of abuse to children.
- Community members should refrain from discriminating all children, including street children and children with disabilities.
- Community members to refrain from protecting perpetrators of violence against children simply because they need 'to conceal family shame.'
- Women and children are encouraged to come forward and report acts of violence against them in order to receive relevant assistance, including legal and health services. They are also encouraged to cooperate with the Prosecution and social welfare, including testifying in court, in order to ensure perpetrators of violence are held accountable and justice is achieved.

8.2.5. Human Rights Mechanisms

State actors

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights. Adequate budget should be allocated for CHRAGG as a national human rights institution, to enable it to effectively carry out their mandate.
- The Government, through the Prevention and Combating of Corruption Bureau (PCCB), should move to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.



- The Government to reconsider its decision to withdraw access to the African Court on Human and Peoples' Rights for NGOs and individuals.
- The Government should enforce decisions of the African Court on Human and Peoples' Rights on, independent candidate, mandatory death sentence and that of the East African Court of Justice on the Media Services Act of 2016.

Non-state actors

- CSOs must collaborate with CHRAGG build capacity for law enforcement officials to apply a rights-based approach in their work
- CSOs could also collaborate with CHRAGG to prepare rights-based approach guides for law enforcement officials.
- CSOs to engage human rights mechanisms at national, regional, continental and international levels as a way of promoting and protecting human rights. CSOs should apply for observer status at some of the human rights mechanisms, such as the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights.
- CSOs should engage regional and international human rights mechanisms as part of their regional and international level advocacy and influencing the Government to improve its human rights record and ratifying key human rights treaties that it is yet to ratify.
- The Media should report about different human rights mechanisms and how they can be engaged.
- CSOs should sensitize the public about different national, regional/continental and international human rights mechanisms.

Members of the public

- Members of the public are encouraged to engage different levels of human rights mechanisms, either individually, or with assistance of CSOs when their human rights are violated, as a way of seeking remedy.



ANNEXES

Annex 1: Status of International Human Rights Ratifications in 2020

As of December 2020, Tanzania has ratified 10 out of 18 international human rights treaties/conventions. The table below indicates the number of regional and international treaties ratified by Tanzania so far.

	Convention/Treaty	Ratification
International	Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979	1985
	Convention on the Elimination of All forms of Racial Discrimination 1965	1972
	Convention on the Rights of the Child (CRC) 1989	1991
	International Covenant on Civil and Political Rights (ICCPR) 1966	1976
	International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	1976
	Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	2005
	Optional Protocol to the Convention on the Elimination of All forms of Discrimination Against Women 2000	2006
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002	2004
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002	2003
	Convention on the Rights of Persons with Disabilities 2008	2009
	Convention Relating to the Status of Refugees 1951	1983
Optional Protocol on the Convention on the Rights of Persons with Disabilities 2008	2009	



	Convention/Treaty	Ratification
Regional	African Charter on Human and Peoples' Rights 1981	1984
	African Charter on the Rights and Welfare of the Child 1990	2003
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2000 (Maputo Protocol)	2007
	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 1998	2006

Tanzania is yet to ratify the following treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003.
- African Charter on Democracy, Elections and Governance. Date of Adoption: January 30, 2007.
- International Convention for the Protection of all Persons from Enforced Disappearance 2010.
- Optional Protocol to the International Covenant on Civil and Political Rights 1976.
- Second Optional Protocol to the International Covenant and Political Rights, aiming at the abolition of the death penalty 1991.
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2013.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006.
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.

LHRC calls upon the Government to ratify the conventions which are



yet to be ratified in order to safeguard human rights and strengthen human rights mechanisms in Tanzania.

Annex 2: Status of Tanzania's Reportage to Treaty Bodies

The table below shows the status of Tanzania's reporting to the treaty bodies.

Treaty Body	Mandate	Tanzania Reports
Human Rights Committee	Monitoring implementation of the ICCPR (Article 40 of ICCPR)	<p>First report submitted on 20th August 1979.</p> <p>Second report submitted on 4th June 1991.</p> <p>Third report submitted on 6th February 1997.</p> <p>Fourth and last report submitted on 8th October 2007.</p> <p>Fifth report was due on 1st August 2013.</p>
Committee on Economic, Social and Cultural Rights	Monitoring implementation of ICESCR (Article 17 of ICESCR)	<p>First report submitted on 10th September 1979.</p> <p>Second report submitted on 25th August 2009.</p> <p>Third report was due on 30th November 2017.</p>
Committee on Elimination of Discrimination Against Women	Monitoring implementation of CEDAW (Article 18 of CEDAW)	<p>First report submitted on 9th March 1988.</p> <p>Second report submitted on 25th September 1996.</p> <p>Third report submitted on 16th April 2007.</p> <p>Fourth and last report submitted on 10th November 2014.</p>



Treaty Body	Mandate	Tanzania Reports
Committee on the Elimination of Racial Discrimination	Monitoring implementation of CERD (Article 9 of CERD)	<p>First report submitted on 22nd March 1976.</p> <p>Second report submitted on 29th January 1980.</p> <p>Third report submitted on 1st October 1982.</p> <p>Fifth report submitted on 17th July 1986.</p> <p>Sixth and last report submitted on 27th October 2004. Seventh report was due on 26th November 2007.</p>
Committee on the Rights of Persons with Disabilities	Monitoring implementation of CRPD (Article 35 of CRPD)	Report was due on 10 th December 2011, yet to be submitted.
Committee of the Rights of the Child	Monitoring implementation of CRC (Article 44 of CRC)	<p>First report submitted on 20th October 1999.</p> <p>Second report submitted on 20th October 2004.</p> <p>Third report submitted on 13th January 2012.</p> <p>Next report due on 9th January 2020.</p>
Committee on the Rights and Welfare of the Child	Monitoring implementation of the ACRWC (Article 43 of ACRWC)	Initial report submitted in December 2006. Consolidated 2 nd , 3 rd and 4 th reports submitted in October 2015.

The table above indicates the extent to which Tanzania has complied with its reporting obligations under the treaties it has ratified. While Tanzania has done well in its reporting obligations under the ICESCR, CEDAW, CRC, and ACRWC, it has not done so with regard to its reporting obligations under the CRPD and recently under the ICCPR and CERD. LHRC calls upon the Government, under the Ministry of Constitutional



and Legal Affairs to comply with its treaty reporting obligations by preparing and submitting timely reports on actions taken to improve, promote and protect human rights in Tanzania.

Annex 3: List of International Human Rights Instruments

- African Charter on Human and Peoples Rights (ACHPR) of 1981.
- African Charter on the Rights and Welfare of the Child (ACRWC) of 1990.
- African Declaration on Internet Rights and Freedoms.
- AU Declaration of Principles on Freedom of Expression in Africa 2002.
- AU Model on Freedom of Expression Law.
- Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.
- Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969
- Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) of 1979.
- Convention on the Rights of Persons with Disabilities (CRPD) of 2006
- Declaration on the Elimination of Discrimination against Women of 1993.
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.
- Guidelines on Freedom of Association and Assembly in Africa.
- International Convention on the Elimination of all forms of Racial Discrimination (CERD) of 1965.
- International Covenant on Civil and Political Rights (ICCPR) of 1966.
- International Covenant on Economic, Social and Cultural Rights



(ICESCR) of 1966.

- International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors of 2004.
- Johannesburg Principles of National Security, Freedom of Expression and Access to Information of 1995.
- Joint Declaration on Freedom of Expression and the Internet of 2011.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.
- SADC Protocol on Gender and Development of 2008.
- UN Basic Principles on the Role of Lawyers of 1990.
- UN Convention Relating to the Status of Refugees, 1951.
- UN Convention on the Rights of the Child (CRC) of 1989.
- Universal Declaration of Human Rights (UDHR) of 1948.
- UN Declaration on the Right to Development of 1986.
- UN Universal Declaration on the Eradication of Hunger and Malnutrition of 1974.

Annex 4: Reported Incidents of Violence against Children

Incidents of physical and sexual violence documented by
LHRC – January to December 2020

Incident	Report Date
Arusha: Police in Arusha arrested Mkami Shirimia (33), resident of Ilkiurei area, who was accused of killing her house girl, Salome Zacharia (17), after accusing her of stealing Tshs. 50,000. She reportedly committed the offence on 9 th March 2020, beating the victim with a stick and locking her up in a room for two days without food and water. When she realized the girl's condition had worsened she sent her to a hospital, where she died.	13 Mar 2020



Incident	Report Date
<p>Kilimanjaro: Juma Mndeme (38), resident of Lawate Village in Siha District, was sent before the Siha District Court, accused of sexually harassing his 6-year-old female child by touching her private parts, contrary to section 135(1)&(2) of the Penal Code. The incident reportedly occurred on 4th March 2020 in the village.</p>	13 Mar 2020
<p>Mwanza: Police in Kwimba District arrested Helena Wishera (19), resident of Nyamilamba area, for killing her 9-month-old baby so that she could be married by another man. She reportedly colluded with her lover Lucas Jackson (24), who told her if she wants him to marry her, she should kill the baby first. The incident occurred on 25th February 2020 in Bugembe Village in Mwanza.</p>	16 Mar 2020
<p>Katavi: Police in Katavi Region arrested a retired JWTZ army major, aged 54 years, accused of raping three schoolgirls aged 13 and 14 years.</p>	20 Mar 2020
<p>Kigoma: Police in Kigoma Region were looking for a woman who was accused of dumping a her 4-month-old baby in a public toilet in Kigoma Ujiji Municipality.</p>	5 Mar 2020
<p>Songwe: Ileje District Court sentenced Abed Rajab Mbuba (54), a teacher at Shinji Primary School in Shinji Village, to 30 years in prison and 24 sticks, after finding him guilty of raping a schoolgirl.</p>	1 May 2020
<p>Shinyanga: Police in Shinyanga arrested a woman, Debora Magiligimba, who was accused of dumping her 2-year-old baby in the bush on 19th May 2020.</p>	21 May 2020
<p>Morogoro: Police in Morogoro arrested Josehp Gervas (28), a bishop at Ukombozi Church in Gairo District, for impregnating a Form Three student. It was reported that the bishop was sleeping around with women and girls, telling them that the only way they can get rid of demons is by sleeping with him.</p>	28 May 2020
<p>Njombe: Resident Magistrate Court in Njombe convicted Charles Mwinami (45) of sexually abusing/raping his 5-year-old granddaughter. It was revealed that the convict repeatedly sexually abused the child in 2020 until he was arrested.</p>	17 May 2020
<p>Shinyanga: Police in Kishapu District arrested Lucia Mahazi (42) for killing her one-month-old baby on 26th May 2020.</p>	29 May 2020



Incident	Report Date
Ruvuma: Tunduru District Court sentenced to seven years in prison Mohamed Masud (30), resident of Mnazi Village, after finding him guilty of inflicting great bodily harm on his 7-year-old child by burning his feet. The incident occurred on 15 th March 2020.	29 May 2020
Pwani: Police in Bagamoyo District, arrested Sofia Marius (28) for organizing and participating in the killing of a child of her co-wife. She ordered the killing due to jealousy, as she could not bear a child with her husband due to female infertility.	11 Jun 2020
Katavi: A woman in Mpanda District, accused her husband, Emmanuel Kwsizesra (40), of abandoning her and her children to live with her other child, a 14-year-old, as a 'wife' after impregnating the child.	1 Jun 2020
Mara: Police in Bunda District were looking for a man, Simon Joseph, who was accused of raping his own daughter, a standard seven pupil. The child told police that at first her father told her he would give her Tshs. 5000 if she agreed to sleep with him and when she refused, he got into her room and raped her while blocking her mouth with his hand so that she would not scream. She said that this was a second time her father did this to her and that the first time he told her he would kill her if she told anyone.	24 Jun 2020
Mara: Police in Bunda District arrested a man, Meshack Michael, for reportedly raping his three children and impregnating one of them. It was reported that the man had been repeatedly sexually abusing his children, especially when his wife was way on business trips.	19 Jun 2020
Lindi: Kassimu Bidhali Chilumba (18), was arrested and sent before a court of law in Lindi, accused of raping a schoolgirl.	15 Jun 2020
Dar es Salaam: Kinondoni District Court imposed a life imprisonment sentence on Ally Petro, resident of Manzese area, after finding him guilty of raping his niece.	20 Jun 2020
Iringa: In January 2020, it was reported that about 404 incidents of sexual violence against children occurred in Iringa Region in the period of January to November 2019.	9 Jan 2020
Rukwa: Police in Nkasi District arrested a 37-year-old teacher of Milundikwa Secondary School, accused of raping 17-year-old secondary school student. He reportedly committed the offence on 15 th March 2020.	26 Mar 2020





Incident	Report Date
Tabora: Police in Uyui District arrested Juma Edward Tandu, resident of Lutona Village, who was accused of engaging in sexual relationship with a schoolgirl aged 14 years and rape. He committed the offence between 2019 and March 2020.	26 Mar 2020
Pwani: In March 2020, it was revealed that sodomy among pupils is big problem at primary schools in Mkuranga District. In one incident a standard five pupil at one of the schools in the district revealed to his grandmother that some standard seven boys had sodomized him and other pupils of lower classes. He revealed to the grandmother that the older boys were doing that to him and other boys every day when they arrive at school in the morning, but they stopped sodomizing him when his grandmother went to complain at the school. Teachers at the school confirmed that there is a tendency of standard seven boys perpetrating such acts of sexual abuse against fellow pupils, usually of standards three to five, including during breaks.	17 Mar 2020
Pwani: Social Welfare Officer of Kimanzichana Ward in Mkuranga District noted that there are reports of sodomy among pupils at schools in the ward or pupils being subject to such act of sexual violence by their relatives. Police gender and children desk officer in the district also claimed to have received reports of sodomy among pupils in schools and noted that they have started visiting the schools to address the problem and raise awareness. The Social Welfare Office in Mkuranga District indicated that it had received reports of such incidents from at least four schools and noted that factors contributing to prevalence of such form of sexual violence include poverty and customs and traditions, including a local dance known as 'vigodoro.'	19 Feb 2020
Dodoma: A woman, Zena Mohamed, resident of Chang'ombe area in Dodoma, was arrested by police for beating her child on the head with a wooden cooking spoon, causing him serious head injury. She was later released on bail.	19 Feb 2020
Singida: In February 2020, it was reported that a total of 172 cases of rape of primary and secondary schoolgirls were filed in 2019 in courts of law.	19 Feb 2020
Kilimanjaro: An 80-year-old man, Obed Ndosu, resident of Masama Mbweera, was taken before the Hai District Court, charged with raping a standard six pupil aged 13 years in December 2019.	4 Jan 2020





Incident	Report Date
Pwani: Police in Pwani Region arrested a bishop from a Pentecostal church in Kibaha District, Japhes Manwa (40), accused of burning his child on different parts of his body (especially hands and back) and causing him great bodily pain.	23 Jan 2020
Kagera: Police in Kagera Region arrested Juma Daniel (30), accused of killing his 2-year-old child with a sharp object for wetting on bed.	17 Jan 2020
Njombe: Ezroni Ndone (44), accused of raping his 10-year-old daughter, was taken before the Resident Magistrate Court in Njombe on 7 th February 2020.	7 Feb 2020
Mwanza/Tabora: In January 2020, reports emerged that women seeking medical help or treatment were subjected to acts of sexual violence, especially rape. The perpetrators were said to be medical professionals and traditional healers, accused of drugging and then raping the women. In Mwanza, police in the region arrested Hemed Jumanne (40), a traditional healer in Sengerema District, for drugging and raping a 32-year-old woman who sought treatment from him on 4 th January 2020. In his defence, he claimed that the treatment could only be done through sexual intercourse. In another incident, which occurred in Tabora, a doctor at a health centre in the region raped a pregnant woman after drugging her. He lured the pregnant woman into his trap by telling her that she was at risk of miscarriage, hence needed immediate medical help.	28 Jan 2020
Kilimanjaro: Hai District Court in Kilimanjaro yesterday sentenced 30-year-old man Juma Mwakikoti Mnyaturu to 30 years in jail after finding him guilty of sodomizing a Standard One boy.	11 Jan 2020
Kilimanjaro: A 3-year-old child was found brutally killed and his one eye removed in Rombo District. He was killed on 25 th January 2020 and his body dumped at a nearby neighbour's farm.	2 Feb 2020
Kilimanjaro: Ramadhan Tesha (44), resident of Bomang'ombe in Hai District, was taken to court on the charge of defiling and sodomizing his child. He committed the offence on 23 rd January 2020.	2 Feb 2020
Kilimanjaro: Siha District Court imposed a 60-year-prison sentence on Mathayo Mollel (19), after finding him guilty of impregnating a secondary school student.	2 Feb 2020



Incident	Report Date
Singida: A court in Singida sentenced a man to 30 years in prison after finding him guilty of rape.	13 Feb 2020
Mwanza: A court in Mwanza sentenced Bossco Amoni (20), resident of Buganda Village in Misungwi District, to 30 years in prison for raping a 12-year-old child.	13 Feb 2020
Kilimanjaro: Traffic police officer, William Mwakatange (50), was taken before the Moshi Resident Magistrate Court, charged with raping a 15-year-old child of a fellow police officer. He reportedly committed the offence October and December 2019.	29 Feb 2020
Geita: Police in Chato District took to court Kazimili Dotto, accused of raping and sodomizing his stepdaughter who is a standard two pupil. He threatened killing her if she told anyone.	22 Feb 2020
Simiyu: In February 2020, citizens in Maswa District expressed concern over child sodomy cases at schools in the district and demanded an investigation. This followed reports of pupils at one of the primary schools in the district of schoolboys sodomizing each other. One of the pupils at the school expressed that he had been sodomized at his aunt's home by a male domestic worker. He then went on to teach his fellow pupils at school and they started sodomizing each other in the bushes near the school, especially during tea breaks. "I must tell the truth, I learned this at my aunt's home where I used live. When my aunt left home, a male domestic servant used to do it to me and I then taught my fellow pupils at school, so we started doing it together and there are many of us." Another standard three pupil at the school admitted that he had also participated in sodomy with fellow pupils but have stopped since they were taken to the police.	12 Feb 2020
Njombe: Resident Magistrate Court in Njombe sentence to three years in prison a teacher from Welela Primary School and a fine of Tshs. 10 million for causing great bodily harm and permanent disability to pupil after caning the pupil with a stick ten times. The teacher, Focus Mbilinyi, committed the offence in January 2020.	25 Feb 2020
Geita: Chato District Court sentenced Kabagambe Mihayo to 30 years in prison after finding him guilty of raping a standard seven pupil. He was arrested on 10 th February 2020.	15 Feb 2020



Incident	Report Date
Manyara: Mwikanzi Village authorities in Mamaire Ward, Manyara District, were looking for Elibariki Naeli, a church choir member, accused of raping a 10-year-old child who is a pupil at Sora Primary School. The incident occurred on 4 th February 2020.	15 Feb 2020
Katavi: A stepfather in Mlele District, Ignas Katula, was accused of sleeping with (raping) and impregnating his 16-year-old stepdaughter.	29 Jan 2020
Katavi: On 9 th January 2020, a standard four pupil at Katisunga Primary School in Mpanda District, aged 10 years, was brutally raped and killed, then dumped into a bush in Katisunga Vilalge. Two unknown men reportedly grabbed her when she was coming from fetching water with her friend and disappeared with her into the bush where they raped and then killed her.	10 Jan 2020
Mara: A court in Serengeti District imposed a life in prison sentence on Jack Mahembega (28), resident of Nyiberekera Village, after finding him guilty of sodomizing a 6-year-old child on 8 th January 2020.	14 Jan 2020
Pwani: A standard two pupil in Kibaha District, Celina Fosi, was found brutally killed and some of her body parts removed in January 2020. The incident is believed to be motivated by belief in witchcraft and the body parts to be used for such purposes.	22 Jan 2020
Manyara: In January 2020 the Hanang District Council in Manyara revealed that 24 children were raped and 2 sodomized in the past three months (October to December 2019). Social Welfare Officer, Martha Sulle, noted that factors contributing to high prevalence of sexual violence against children include parents neglecting their children and children having to walk long distances to reach school. She identified youth and men aged 17 to 40 years as major perpetrators but noted that some elderly men have also been implicated in those acts of sexual violence against children.	17 Jan 2020
Iringa: In January 2020 it was revealed that a total of 657 children in Iringa Region had been subjected to different forms of violence in Mufindi, Kilolo, Iringa Urban and Iringa Rural in the period of January to September 2019.	1 January 2020
Kilimanjaro: A male domestic worker in Hai District, Juma Mwaikokoti, was sentenced to 30 years in prison after he was found guilty of sodomizing a standard six pupil, an offence he committed in November 2019.	11 Jan 2020



Incident	Report Date
Manyara: Police in Babati District were looking for an unknown man who lured two schoolgirls from Maisaka Primary School into the bush and sodomized them. He lured them into the bush while they were on their way home from school.	11 Jan 2020
Arusha: PCCB in Arusha arrested a teacher from Emberway Secondary School in Ngorongoro District, accused of seeking sexual bribe from a female student. Following constant sexual harassments, the student reported the teacher to the anti-corruption body and the trap was set for the teacher on 8 th January 2020.	10 Jan 2020
Dar es Salaam: Kinondoni District Court sentenced to 60 years in prison a man, Rashid Ismaili, resident of Kitundo Relini, after finding him guilty of raping and impregnating a standard six pupil. He committed the offence on 2 nd September 2019.	18 Apr 2020
Tabora: In April 2020, it was revealed in Tabora Region that cases of sodomy among children aged 14 to 17 were on the rise. Social Welfare Officer in Tabora Municipality, Nehemia Steven, reported that in the period of October to December 2019, their office received 17 child cases, of which 60% were sodomy cases, whereby children had sodomized fellow children. She noted that children sodomizing each other has become a big problem in the municipality and is motivated by revenge, as those who have been subjected to such act of violence also target their victims.	3 Apr 2020
Mbeya: Resident Magistrate Court in Mbeya received Francis Mlingano (24), charged with raping a 13-year-old girl and theft, offences he committed on 14 th February 2020.	15 Apr 2020
Shinyanga: A guard at the Resident Magistrate Court in Shinyanga, la Joseph Masanja (58), was accused of raping a 10-year-old girl within the court premises on 21 st March 2020, after luring her and her seven-year-old friend to come to his workplace so that he can give them money to buy some sandals.	4 Apr 2020
Shinyanga: Police in Kahama District arrested Janeth Nzemya (39) for burning the hands of her 9-year-old child with a hot knife as punishment for theft and sodomizing his siblings and neighbours' children.	24 Apr 2020
Lindi: A court in Lindi sentenced Selemani Hassani (29) to life in prison after finding him guilty of raping an 8-year-old child. The incident occurred on 6 th January 2020.	27 Apr 2020





Incident	Report Date
Mara: Parents in Serengeti District were accused of taking advantage of the closure of schools due to the Corona pandemic to take their children to secretly undergo FGM. The District Commissioner of Serengeti, Nurdin Babu, revealed that five parents in Nyamakendo and Machochwe Villages had been arrested. An intervention by the Christian Council of Tanzania (CCT) in the district helped to save 75 girls from FGM.	7 Apr 2020
Shinyanga: Police in Shinyanga Region arrested three people for taking a 3-year-old child to a bar and making her drink liquor and recording her before circulating the video on social media. One of those arrested is the child's father Godius Katisha (32).	27 Apr 2020
Geita: A court in Geita slapped Jakob Thomas (20) with a life imprisonment sentence after finding him guilty of raping an 8-year-old girl who is his relative.	24 Apr 2020
Shinyanga: Police in Shinyanga Region arrested a bodaboda driver, Tumaini Julius (28), and took him before Kahama District Court, charged with raping a 16-year-old student of Kishimba Secondary School. The incident occurred on 8 th April 2020.	20 Apr 2020
Dar es Salaam: A witchdoctor/traditional healer, Omari Rashidi (64), resident of Wazo Msikitini area in Kinondoni District, was taken before the Kinondoni District Court, charged with sodomizing and defiling a 4-year-old child in 2018 and 2019.	1 Apr 2020
Dar es Salaam: Athumani Rajabu (28), resident of Madale area, was taken before the Kinondoni District Court, accused of raping a 12-year-old girl at Buga Kulungwa area on 28 th December 2019.	1 Apr 2020
Dar es Salaam: Neenia Eliasi (20), resident of Goba area, was taken before the Kinondoni District Court, charged with raping a 15-year-old girl between July 2019 and January 2020.	1 Apr 2020
Mara: A standard six pupil at Kitaruga Primary School almost bled to death after undergoing FGM in Serengeti District. The 14-year-old child was rescued by police, who rushed her to the hospital.	13 Apr 2020
Dar es Salaam: Police in Dar es Salaam arrested a man suspected and accused of raping and sodomizing children aged 9 to 12 years in Kibangu area.	23 Apr 2020



Incident	Report Date
Mara: Police in Mara Region arrested a bodaboda driver, resident of Morembe Street in Musoma, for luring a standard seven pupil (13) into a guest house for purposes of engaging in sexual intercourse with her. The incident occurred on 16 th April 2020.	24 Apr 2020
Tabora: Police in Tabora arrested and took to court Petr Masanja, resident of Urambo District, after severely beating his 5-year-old son for refusing to go school, causing him to be admitted to a hospital for two days and great bodily harm.	5 Mar 2020
Mara: 20 girls lined up for FGM in Mara Region have been rescued, thanks to anti-FGM activists. This was made possible by intervention by an organization called Hope for Girls and Women Tanzania (HGWT) in collaboration with the police gender and children desk.	10 Apr 2020
Tabora: Police in Igunga District arrested a secondary school teacher, Keby Aron (32), accused of raping a 17-year-old student at his school. It was reported that he committed the offence in March and May 2020.	26 Aug 2020
Kilimanjaro: Police in Kilimanjaro Region arrested a woman, Doria Frank (55) – resident of Mamba Kaskazini in Moshi District, accused of burning her 6-year-old grandson from his waist down. The incident occurred on 10 th July 2020.	18 Jul 2020
Mara: Police in Serengeti District arrested a man, resident of Mosongo Village, on accusation of burning his child with a hot machete on his back and leg for returning late from fetching water at a well.	1 Jul 2020
Kilimanjaro: Head of the police gender desk in Kilimanjaro Region, ACP Zuhura Suleyman, revealed in July 2020 that uncles and close relatives were among the major perpetrators of child pregnancy in the region. She also revealed that the custom of a using a famous leave in the Chagga tradition called 'sale' to beg for forgiveness for various acts of violence against children, including child pregnancy, contributes to high prevalence of such acts in the Chagga community in the region. She noted that a total of 793 incidents of gender-based violence were reported at the police gender desk from January to May 2020.	20 Jul 2020
Lindi: Resident Magistrate Court in Lindi sentenced secondary school teacher, George Ngalu (32), to 30 years in prison, after finding him guilty of raping a Form Five student.	19 Aug 2020



Incident	Report Date
Pwani: Police in Pwani Region arrested a primary school teacher, Evatha Mboya (50), for severely flogging a 12-year-old standard five pupil and causing the child to be admitted to a hospital after complaining about a headache.	20 Aug 2020
Shinyanga: Police in Shinyanga Region arrested Paschal Coloneli (27), resident of Shinyanga Municipality, accused of impregnating a 15-year-old standard five pupil.	20 Aug 2020
Arusha: A 6-year-old child in Arusha City died after she was raped by unknown assailant. The incident occurred on 11 th July 2020 at Jamhuri Street. The street has been said to be notorious for such acts of violence and close relatives have been implicated in most cases.	15 Jul 2020
Kagera: Police in Muleba District arrested Ayoub John (38) for brutally killing with a knife his 3-year-old stepson following his conflict with wife after he accused her of being unfaithful. He killed the child after his wife ran to a neighbour's house and spent the night there.	11 Aug 2020
Tabora: Police in Igunga District arrested a woman, Eva Timotheo Ernest (20), resident of Elimu Street, and took her before the Igunga District Court, accused of conducting an act of sexual violence to a 2-year-old child, contrary to Section 38C (1) (2)(b) of the Penal Code, CAP 16.	9 Aug 2020
Morogoro: Police arrested a witchdoctor who was accused of sodomizing nine children. Parents of the children claimed relatives of the accused person made attempts to persuade them to settle the matter out of court.	17 Sep 2020
Singida: Resident Magistrate Court in Singida imposed a life in prison sentence on Hussein Azizi (34), resident of Singida Municipality, after finding him guilty of sodomizing a 4-year-old child. He committed the offence on 6 th August 2020.	12 Sep 2020
Geita: Police in Geita District arrested a woman, Ester John (30), accused of burning the hands of her two stepchildren for stealing food. Neighbours reported the stepmother had developed a habit of torturing the children.	12 Sep 2020
Tabora: Police in Igunga District arrested Kitundu Godfrey (35), resident of Stoo Street, and took him before the Igunga Resident Magistrate Court, charged with committing a sexual violence offence against his 4-year-old female child in June and August 2020. It was reported that inserted his fingers into the child's private parts for his sexual pleasure, causing her severe pain.	14 Sep 2020



Incident	Report Date
Singida: Resident Magistrate Court in Singida imposed a 30-year prison sentence on Hamisi Mtanda (57), resident of Singida Municipality, after finding him guilty of raping his 11-year-old child.	18 Sep 2020
Dar es Salaam: A resident of SalaSala area in Dar es Salaam, Stephano Isaya (18), confessed before the Kinondoni District Court to raping a 3-year-old child on 18 th August 2020 at SalaSala Msikitini area.	18 Sep 2020
Morogoro: Police in Morogoro Region arrested Shabani Hatibu (50), resident of Madizini Village, for raping his stepdaughter who is primary school pupil. He reportedly committed the offence on 1 st September 2020.	4 Sep 2020
Dar es Salaam: Police gender and children desk at Mburahati Police Station in Dar es Salaam, Rose Menyema, revealed that 90% of acts of gender-based violence occur in family settings.	-
Lindi: Lindi District Court sentenced resident of Milola Ward, Athumani Mussa, to 30 years in prison after finding him guilty of raping a child of his employer aged 14 years. He committed the offence at the employer's farm in April 2020.	-
Mwanza: Police in Ilemela District arrested Anthony Costantine (50) for beating his daughter, Veronica Anthony (17), to death for returning home late from school. The incident occurred on 8 th September 2020.	11 Sep 2020
Mwanza: A court in Misungwi District sentenced resident of Ilesa Village, Bujiku Peleka (20), to 30 years in prison for raping and living with a Form Two student aged 16 years as husband and wife during the Coronavirus leave.	10 Sep 2020
Tabora: Resident Magistrate Court in Tabora sentenced a doctor, Elipidius Kwenumba (31), to 30 years in prison after finding him guilty of raping and impregnating a schoolgirl below the age of 18 during the Coronavirus leave in March 2020.	-
Ruvuma: Basilius Mwingira (60), resident of Mkako Village in Mbinga District, committed suicide after his failed attempt to rape his 10-year-old daughter. Ruvuma Regional Police Commander, Simon Maigwa, revealed that the man attempted to rape his daughter on 28 th July 2020 but the neighbours managed to intervene and rescue the girl and the father ran away to his farm, where he shot himself in the head on 30 th June 2020. It was believed that he suffered from depression after the attempted rape incident, and ashamed of his acts, he decided to commit suicide by using his gun.	2 Jul 2020



Incident	Report Date
Mara: In July 2020, it was revealed that a total of 29 girls were impregnated in Bunda District from January to June 2020. This was revealed by the Bunda DC, Hon. Lydia Bupilipili. She DC also noted that in the same period 19 girls were raped.	1 Jul 2020
Mwanza: Police in Magu District arrested Badru Juma (40), Chairperson of Ijinga Village, for raping and impregnating a standard six pupil aged 15 years.	13 Nov 2020
Arusha: Police in Arusha reported that a 6-year-old pupil of Thembi Primary School was raped to death by unknown assailants. The incident occurred in July 2020.	13 Nov 2020
Arusha: A 10-year-old primary school pupil aged 10 years was reportedly raped by her teacher.	13 Nov 2020
Lindi: Lindi District Court sentenced Godrey Ndumbaro (30), a teacher from Ujirani Mwema Primary School in Mtama District to 30 years in prison after convicting him of raping and impregnating a 13-year-old schoolgirl.	4 Nov 2020
Geita: Geita District Court sentenced Nyakumbu Juma Kisinja (50) to 30 years in prison and to be caned 12 times after finding him guilty of raping a 13-year-old girl in July 2020. He threatened the victim that if she screamed, he would kill her.	13 Nov 2020
Geita: Nestory Nkola (19), resident of Bukondo, was arraigned by Geita District Court for raping a schoolgirl.	Nipashe Newspaper
Kigoma: Muhoza Kasaba was arraigned by Kigoma District Court for raping a 9-year-old child, escaping a life sentence because the victim gave her testimony without giving oath.	Mwananchi Newspaper
Rukwa: Oswald Gabriel (18), resident of Kizombwe Village in Kalambo District, was sentenced to 33 years in prison and a fine of Tshs. 500,000 for raping and causing great bodily harm to child in July 2020.	6 Nov 2020
Kilimanjaro: A priest in Moshi District, Erasmus Swai (44), was arraigned before the Hai District Court for raping and impregnating a 17-year-old secondary school student.	3 Dec 2020
Songwe: Police in Songwe Region arrested Paschal Vahaye (35), a secondary school teacher at Vwawa Secondary School, for attempting to engage in a sexual activity with a female student at the school. The incident occurred on 28 th November 2020 at the school and the police set a trap for the teacher.	3 Dec 2020



Incident	Report Date
Mara: Mapinduzi Kibaba (40), resident of Bonchungu Village in Serengeti District, was sentenced to 30 years in prison after he was convicted of raping his 15-year-old stepdaughter.	3 Dec 2020
Lindi: Lindi District Court imposed a life imprisonment sentence on Ally Kacha (27), resident of Simana Village in Mtama, for raping a 3-year-old and causing her great bodily harm. The incident occurred on 24 th August 2020.	17 Dec 2020
Shinyanga: 11 male children were subjected to sexual violence in Kahama Town Council in the period of January to September 2020. A total of 132 incidents of sexual violence were reported out of the 1,627 total GBV incidents that were documented during this period. A total of 35 cases of child pregnancy were also reported.	17 Dec 2020
Shinyanga: 9 people received a 30-year-in prison sentence for raping children in the period of January to November 2020 in Kishapu District. During this period 91 incidents of child rape were reported, whereby 43 cases are ongoing in courts of law.	8 Dec 2020
Manyara: Police in Manyara arrested Regina Daniel (24), resident of Ruksimanda Village in Babati District, for poisoning and killing her three children. The incident occurred on 5 th November 2020.	9 Dec 2020
Dar es Salaam: Hamis Mhina (52), resident of Mbagala Kiburugwa, was arraigned before the Temeke District Court on charges of raping and impregnating his 15-year-old child.	1 Dec 2020
Ruvuma: Police arrested Pastor Boston Chimalilo (72) from Pentecostal Gospel Mission (PGM) in Mbiga District for defiling 13-year-old girl in a cemetery.	5 Dec 2020
Ruvuma: Police arrested Neema Athumani (24), resident of Tunduru District, for killing her 4-year-old child so that she gets a job in Arusha Region.	28 Dec 2020
Dodoma: Police in Dodoma were looking for Grace William (45), who was accused of killing her 7-year-old son when he was asleep. The incident occurred in Ihumwa Ward in October 2020.	7 Oct 2020
Kigoma: Kigoma District Court sentenced Agness Damian (40), resident of Mji Mwema area in Kigoma Ujiji Municipality, to two years in prison for attacking and cutting her 15-year-old stepchild with a razor blade.	1 Dec 2020



Incident	Report Date
Manyara: Police in Babati District arrested Regina Daniel following accusations of poisoning and killing her three children. It was reported that she committed the crimes after a dispute with her husband, Agostino Daniel.	9 Dec 2020
Shinyanga: Police in Shinyanga Region arrested two 14-year-old boys, residents of Shinyanga Municipality, who were accused of raping a 6-year-old child.	16 Oct 2020
Shinyanga: Police in Shinyanga Region arrested two 14-year-old boys, residents of Shinyanga Municipality, who were accused of raping a 6-year-old child.	16 Oct 2020
Dar es Salaam: Temeke District Court sentenced Hamisi Mhina to 30 years in prison after finding him guilty of raping and impregnating a 14-year-old child, a student at Mbande Secondary School.	17 Dec 2020
Arusha: Ngorogoro District Court sentenced to life in prison Filimon Valentine, Resident of Maalon Village in Loliondo Division, Ngorogoro District, after finding him guilty of raping a 9-year-old girl in June 2020.	22 Dec 2020
Tanzania Mainland: 15 incidents of physical violence against children reported in 9 regions, namely: Mara, Dar es Salaam, Morogoro, Katavi, Njombe, Mtwara, Arusha, Pwani, and Iringa.	Jun to Dec 2020
Tanzania Mainland: 47 incidents of sexual violence against children reported in 14 regions, namely: Tanga, Morogoro, Mara, Kagera, Katavi, Arusha, Manyara, Shinyanga, Iringa, Songwe, Lindi, Tabora, Mtwara, and Njombe. Most of them were reported in Katavi Region, followed by Morogoro Region. Incidents included rape/defilement of children aged 3 and 8 years in Mpanda District – Katavi Region and Kilosa District – Morogoro Region respectively. In Morogoro, the incidents include that of a father intimidating and raping his 17-year-old daughter in Kilosa District.	Jun to Dec 2020



Judicial action against perpetrators of violence against children in 2020

Incident	Report Date
Mara: Matiko Chanduru (20), resident of Maburi Village in Serengeti District, was sentenced to death by hanging by the High Court, after he was convicted of raping and subsequently killing his 7-year-old niece. The incident occurred in June 2018.	25 Mar 2020
Songwe: Ileje District Court sentenced Abed Rajab Mbuba (54), a teacher at Shinji Primary School in Shinji Village, to 30 years in prison and 24 sticks, after finding him guilty of raping a schoolgirl.	1 May 2020
Njombe: Resident Magistrate Court in Njombe convicted Charles Mwinami (45) of sexually abusing/raping his 5-year-old granddaughter. It was revealed that the convict repeatedly sexually abused the child in 2020 until he was arrested.	17 May 2020
Ruvuma: Tunduru District Court sentenced to seven years in prison Mohamed Masud (30), resident of Mnazi Village, after finding him guilty of inflicting great bodily harm on his 7-year-old child by burning his feet. The incident occurred on 15th March 2020.	29 May 2020
Dar es Salaam: Kinondoni District Court imposed a life imprisonment sentence on Ally Petro, resident of Manzese area, after finding him guilty of raping his niece.	20 Jun 2020
Mara: Geoffrey Sengeli (19), resident of Serengeti District, was sentenced to life in prison after the court found him guilty of defiling and sodomizing a 9-year-old girl in October 2019.	27 Mar 2020
Lindi: Resident Magistrate Court in Lindi imposed a life imprisonment sentence on Masatu Mjarifu (35), after finding him guilty of defiling a 3-year-old child in December 2018.	10 Jan 2020
Kilimanjaro: Hai District Court in Kilimanjaro yesterday sentenced 30-year-old man Juma Mwakikoti Mnyaturu to 30 years in jail after finding him guilty of sodomizing a Standard One boy.	11 Jan 2020
Kilimanjaro: Siha District Court imposed a 60-year-prison sentence on Mathayo Mollel (19), after finding him guilty of impregnating a secondary school student.	2 Feb 2020
Singida: A court in Singida imposed a life imprisonment sentence on a 74-year-old madrasa teacher who was found guilty of raping girls aged seven to twelve years in the period of December 2016 to October 2017.	13 Feb 2020



Incident	Report Date
Singida: A court in Singida sentenced a man to 30 years in prison after finding him guilty of rape.	13 Feb 2020
Mwanza: A court in Mwanza sentenced Bossco Amoni (20), resident of Buganda Village in Misungwi District, to 30 years in prison for raping a 12-year-old child.	13 Feb 2020
Njombe: Resident Magistrate Court in Njombe sentenced to three years in prison a teacher from Welela Primary School and a fine of Tshs. 10 million for causing great bodily harm and permanent disability to pupil after caning the pupil with a stick ten times. The teacher, Focus Mbilinyi, committed the offence in January 2020.	25 Feb 2020
Geita: A court in Geita sentenced Medi Maliatabu, resident of Buserere Ward in Chato District, to 30 years in prison after finding him guilty of raping a standard six pupil. He committed the offence in October 2019.	18 Feb 2020
Lindi: Lindi District Court imposed a 30-year prison sentence on Issa Mussa Tambue (62), resident of Mmangawanga Village, after convicting him of raping a child. It was reported that he raped a 10-year-old child in 2019.	18 Feb 2020
Geita: Chato District Court sentenced Kabagambe Mihayo to 30 years in prison after finding him guilty of raping a standard seven pupil. He was arrested on 10 th February 2020.	15 Feb 2020
Kigoma: Kigoma District Court sentenced a witchdoctor and resident of Ujiji Municipality, Venas Edward (48), to life in prison after finding him guilty of raping and defiling an 8-year-old child. He committed the offence in April 2019.	28 Jan 2020
Mara: A court in Serengeti District imposed a life in prison sentence on Jack Mahembega (28), resident of Nyiberekera Village, after finding him guilty of sodomizing a 6-year-old child on 8 th January 2020.	14 Jan 2020
Dar es Salaam: Kinondoni District Court sentenced to twenty years in prison a resident of Kimara Stop Over, Liziki Kessy, after finding him guilty of sodomizing and defiling a seven-year-old child.	21 Jan 2020
Mara: Bunda District Court sentenced Masatu Mjaribu (35) to life in prison after finding him guilty of raping and defiling a 3-year-old child, an offence committed in December 2018.	11 Jan 2020





Incident	Report Date
Lindi: The Resident Magistrate Court in Lindi imposed a 30-year prison sentence and a Tshs. 500,000 fine on Zacharia Kisuka (30), after finding him guilty of raping a 16-year-old secondary school student. The incident occurred in November 2019.	4 Apr 2020
Dar es Salaam: Kinondoni District Court sentenced John Mkolonga to 30 years in prison for sodomizing a standard four pupil. The incident occurred in October 2019.	24 Apr 2020
Lindi: A court in Lindi sentenced Selemani Hassani (29) to life in prison after finding him guilty of raping an 8-year-old child. The incident occurred on 6 th January 2020.	27 Apr 2020
Geita: A court in Geita slapped Jakob Thomas (20) with a life imprisonment sentence after finding him guilty of raping an 8-year-old girl who is his relative.	24 Apr 2020
Lindi: Resident Magistrate Court in Lindi sentenced secondary school teacher, George Ngalu (32), to 30 years in prison, after finding him guilty of raping a Form Five student.	19 Aug 2020
Kigoma: Kigoma District Court imposed a life in prison sentence on Jeremiah Kilahunja (49), resident of Kigoma/Ujiji Municipality, after finding him guilty of raping a 6-year-old primary school girl. He committed the rape offence on four occasions, from 2015 to 2019.	21 Jul 2020
Singida: Resident Magistrate Court in Singida imposed a 30-year prison sentence on Shabani Salimu (25), resident of Ikungu District, after finding him guilty of raping a 13-year-old girl. He committed the offence in June 2019.	14 Sep 2020
Singida: Resident Magistrate Court in Singida imposed a life in prison sentence on Hussein Azizi (34), resident of Singida Municipality, after finding him guilty of sodomizing a 4-year-old child. He committed the offence on 6 th August 2020.	12 Sep 2020
Singida: Resident Magistrate Court in Singida imposed a 30-year prison sentence on Hamisi Mtanda (57), resident of Singida Municipality, after finding him guilty of raping his 11-year-old child.	18 Sep 2020
Katavi: Mpanda District Court sentenced a resident of Mpanda Hotel Wad, Said Selemani (20), to 60 years in prison, after finding him guilty of raping a Form Two secondary school student in November and December 2019.	18 Sep 2020



Incident	Report Date
Lindi: Lindi District Court sentenced resident of Milola Ward, Athumani Mussa, to 30 years in prison after finding him guilty of raping a child of his employer aged 14 years. He committed the offence at the employer's farm in April 2020.	-
Mwanza: A court in Misungwi District sentenced resident of Ilesa Village, Bujiku Peleka (20), to 30 years in prison for raping and living with a Form Two student aged 16 years as husband and wife during the Coronavirus leave.	10 Sep 2020
Tabora: Resident Magistrate Court in Tabora sentenced a doctor, Elipidius Kwenumba (31), to 30 years in prison after finding him guilty of raping and impregnating a schoolgirl below the age of 18 during the Coronavirus leave in March 2020.	-
Lindi: Lindi District Court sentenced Godrey Ndumbaro (30), a teacher from Ujirani Mwema Primary School in Mtama District to 30 years in prison after convicting him of raping and impregnating a 13-year-old schoolgirl.	4 Nov 2020
Geita: Geita District Court sentenced Nyakumbu Juma Kisinja (50) to 30 years in prison and to be caned 12 times after finding him guilty of raping a 13-year-old girl in July 2020. He threatened the victim that if she screamed, he would kill her.	13 Nov 2020
Geita: Nestory Nkola (19), resident of Bukondo, was arraigned by Geita District Court for raping a schoolgirl.	6 Nov 2020
Mara: A man in prison for defiling a four-year-old girl in Mara Region lost an appeal against the life sentence imposed on him in 2018.	16 Nov 2020
Lindi: Mohamedi Abdallah (50), resident of Mnazi Mmoja area in Lindi Municipality, was sentenced to 20 years in prison after he was found guilty of sodomizing a 14-year-old child.	9 Nov 2020
Rukwa: Oswald Gabriel (18), resident of Kizombwe Village in Kalambo District, was sentenced to 33 years in prison and a fine of Tshs. 500,000 for raping and causing great bodily harm to a child in July 2020.	6 Nov 2020
Mara: Mapinduzi Kibaba (40), resident of Bonchungu Village in Serengeti District, was sentenced to 30 years in prison after he was convicted of raping his 15-year-old stepdaughter.	3 Dec 2020
Mara: A 9-year-old child, resident of Bunda District, was burnt on the different parts of his body by his grandmother, Juliana Matutu, for allegedly tearing a bedsheet.	6 Dec 2020



Incident	Report Date
Samwel Tengaga (20) and Jaffari Msuka (20) were sentenced to 30 years in prison for gang-raping a 16-year-old girl.	21 Oct 2020
Lindi: Ramadhani Yusuph (22), resident of Mnonela Village in Lindi District, was sentenced to life imprisonment after he was convicted of sodomizing a 3-year-old child. He confessed his crime and was the victim's uncle.	12 Oct 2020
Kigoma: Kigoma District Court sentenced Agness Damian (40), resident of Mji Mwema area in Kigoma Ujiji Municipality, to two years in prison for attacking and cutting her 15-year-old stepchild with a razor blade.	1 Dec 2020
Dar es Salaam: Temeke District Court sentenced Hamisi Mhina to 30 years in prison after finding him guilty of raping and impregnating a 14-year-old child, a student at Mbande Secondary School.	2 Dec 2020

Annex 5: Laws and Regulations Affecting Freedom of Expression

Law/Regulations	Problematic Provisions/Key Concerns	Standards not Met
Media Services Act, 2016	<ul style="list-style-type: none"> ■ Accreditation (licensing) of journalists ■ Editorial and publication powers of the Minister ■ Government control over content to be published by media houses ■ Vague provisions on restrictions based on national security and hate speech ■ Establishment of non-independent media regulatory bodies ■ Criminalization of defamation ■ Seditious offences ■ Licensing of print media ■ Criminalization of false statement, rumor or report likely to cause fear and alarm 	<ul style="list-style-type: none"> ■ UDHR ■ ICCPR ■ ACHPR ■ Constitution of Tanzania ■ AU Declaration of Principles on Freedom of Expression in Africa 2002 ■ African Declaration on Internet Rights and Freedoms ■ Johannesburg Principles of National Security, Freedom of Expression and Access to Information of 1995



Law/ Regulations	Problematic Provisions/Key Concerns	Standards not Met
Cybercrimes Act of 2015	<ul style="list-style-type: none"> ■ Publication false information ■ Lack of clear definition of key terms, phrases and offences (e.g. misleading information," "inaccurate information,") ■ Offences and severe punishments ■ Extensive search and seizure powers for law enforcement officers ■ Intentionally and unlawfully receiving unauthorised computer data ■ Responsibility of hosting provider to take down offending information 	<ul style="list-style-type: none"> ■ UDHR ■ ICCPR ■ ACHPR ■ Constitution of Tanzania ■ AU Declaration of Principles on Freedom of Expression in Africa 2002
Access to Information Act of 2016	<ul style="list-style-type: none"> ■ Access only to information held by public authorities and private bodies utilizing public funds ■ Access to information limited to Tanzanian citizens ■ Narrow scope of information required to be published ■ Vague exceptions to disclosure of information ■ Long time for responding to information request ■ Information holder's mandate to transfer request to another body ■ Deferral of access (provision broad and open to abuse) ■ Vague terms and phrases (e.g. "distortion of information") ■ Review of decisions of information holder (Minister's decision generally final, no further avenue for appeal/ judicial review) ■ Appeal for refusal to give access to information requested ■ Independent information commission missing in the Act ■ Severe Punishment for Releasing Exempt Information ■ The Act does not Override other Laws on Access to Information ■ Lack of promotion and monitoring of access to information 	<ul style="list-style-type: none"> ■ UDHR ■ ICCPR ■ ACHPR ■ Constitution of Tanzania ■ AU Declaration of Principles on Freedom of Expression in Africa 2002 ■ AU Model on Freedom of Expression Law





Law/ Regulations	Problematic Provisions/Key Concerns	Standards not Met
<p>Electronic and Postal. Communications (Online Content) Regulations of 2020</p>	<ul style="list-style-type: none"> ■ Vague and ambiguous terms and phrases susceptible to abuse by authorities (e.g. 'hate material,' 'hate speech,' 'internet café,' 'obscene content,' 'prohibited content,' 'bad language') ■ Powers of registration and ordering removal of content of the regulatory authority (not meeting three-part test on lawful restrictions to be legitimate) ■ Registration and licensing requirements (mandatory registration and licensing for bloggers) ■ Fees (fees are excessive, a burden for online content providers) ■ Difficult requirements for internet café owners, including installing surveillance cameras to record the activities of Internet users inside the café ■ Severe punishment (Tshs. 5 million, 1-year imprisonment) ■ Complaints handling (disregard of principles of natural justice, no avenue for appeal/judicial review) ■ Broad language and unclear terms on obligations of online content providers and users (e.g. 'objectionable content,' 'cultural sensitivities') ■ Vague and overboard obligations for online content providers and hosts ■ Obligations of application service licensees in relation to prohibited content (content removal within two hours, content removal procedure not confirming to international standard) 	<ul style="list-style-type: none"> ■ UDHR ■ ICCPR ■ ACHPR ■ African Declaration on Internet Rights and Freedoms ■ Joint Declaration on Freedom of Expression and the Internet of 2011





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