

LEGAL AND HUMAN RIGHTS CENTRE &
ZANZIBAR LEGAL SERVICES CENTRE

'Unknown Assailants': A Threat to Human Rights

Tanzania Human Rights Report - 2017

Not to be SOLD



Part One: Tanzania Mainland - Legal and Human Rights
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Part Two: Zanzibar - Zanzibar Legal Services Centre
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LHRC and ZLSC

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-Governmental, non-partisan and non-profit sharing organization envisioning a just and equitable society. It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country. The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of the society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar.

Vision: The 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 rule of law; and where there is public awareness, respect and engagement for human rights and good governance; where justice and respect for human dignity are reality.

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.*

It is our sincere hope that the readers of this report will be a change agent towards attaining just and equitable society.

The Zanzibar Legal Services Centre (ZLSC) was established in 1992 as a non-governmental, voluntary, independent and non-profit making organisation. It is a body corporate and its major aim is to provide legal services to the poor, women, and children, the disabled, marginalised and other disadvantaged sections of the Zanzibari society. The Centre also aims to popularise knowledge on the law and produce publications in all areas of legal concern to the people of Zanzibar.

Vision: Rights and Access to Justice for all.

Mission: Raising people's awareness, promoting human rights and good governance.

Core Objectives: Providing free legal aid to the poor; providing free legal representation

for clients in need of it; providing legal education to the public and raise awareness about human rights and duties; conducting research in different issues of or related to law and human rights.

Some of the results of research and other interventions have been both attractive and appealing to the government thus helping to shape policies and laws on various issues including the issue of the rights of the child in Zanzibar. The most notable research undertaken by ZLSC is Annual Human Rights Report since 2006.

Prof. Geoffrey Mmari
Chairperson - LHRC Board

Prof. Chris Peter Maina
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Part One: Tanzania Mainland - Legal and Human
Rights Centre (LHRC)

Introduction

Major Developments in 2017

A local music artist, popularly known as Roma Mkatoliki, and colleagues abducted and tortured by 'unknown people'
Offices of prominent law firm, IMMMA Advocates, bombed by 'unknown assailants'
'Unknown assailants' invade political party, CUF, meeting and attack members and journalists
Bodies of people, appearing to have been killed, found in sacks floating along the Indian Ocean
TLS President and opposition chief whip, Tundu Lissu, shot more than 30 times outside his residence in Dodoma by 'unknown assailants'
Terrifying attacks and killings of law enforcement officers, civilians and leaders in Kibiti and other areas of Pwani Region
Disappearance of Azory Gwanda, a journalist allegedly taken by 'unknown people' outside his house in Pwani Region
Hope of abolition of death penalty as President Magufuli refuses to order execution of death row inmates
Government crackdown on tax evasion in the mining sector
Intensified crackdown on corruption
Crackdown on public servants with fake certificates
Sweeping reforms in the mineral law regime
Increased enrolment in pre and primary education through fee-free education policy.

Overview of Human Rights Situation in 2017

In 2017 the situation of human rights in Tanzania deteriorated compared to the year, 2016. Civil and political rights in particular, suffered the most, with violations or restrictions of right to life, freedom of expression, freedom of assembly and right to liberty and personal security increasing. Rights of women and children continued to be jeopardized by incidents of violence against women (VAW) and violence against children (VAC), especially sexual violence, which was on the rise in 2017.

On the other hand, government action helped to boost right to education, through

increased access to education under the new education policy, although quality of such education remains a challenge as is learning and teaching environment. The Government also moved to safeguard the right to benefit from natural resources through sweeping reforms in the mining sector and changes on the mining laws.

Objectives of the Report

The main objective of this report is to shed light on the situation of human rights in Tanzania in 2017, highlighting violations of human rights in the year and efforts made to safeguard basic human rights. Another objective of the report is to make comparisons between the situation in 2017 and that of 2016 in order 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 the state of its obligations, promote behaviour change in the society and provide statistics on human rights issues.

Methodology

In preparation of this report, the LHRC research team employed a number of methods to collect data, both primary and secondary. Data was collected from various credible sources, including government institutions, bodies and ministries; CSOs; judiciary; and the citizens. Primary data was obtained through a human rights survey conducted in 10 regions, namely Kilimanjaro, Manyara, Mara, Simiyu, Singida, Tabora, Dodoma, Iringa, Mbeya and Songwe. Data collection methods employed included questionnaire, key informant interview and face to face interview, respondents being members of the public, community development officers, social welfare officers, education officers, district medical officers and officials of CBOs and paralegal centres. Targeted information was on social rights; violence against women and children; civil and political rights; and general human rights.

Secondary data was obtained through desk review, including review and analysis of national, regional, and international legal and human rights documents. The research team also surveyed and analysed reports by different government institutions and local and international NGOs, as well as news reported by newspapers, radio stations and television stations.

Data analysis was done through Microsoft Excel and IBM's Statistical Package for Social Sciences (SPSS). The data is presented in this report using tables and figures, showing frequency and percentages, summarizing information and trends of on human rights issues and incidents.

Report Structure

This report has two parts; Part One and Part Two. Part One depicts the situation of human rights in Mainland Tanzania whereas Part Two depicts the situation in Tanzania Zanzibar. **Chapter One** of the Report provides background information on Tanzania (both Mainland and Zanzibar). **Chapter Two** covers the situation of key civil rights, namely: right to life; freedom of expression; rights to equality before the law and effective remedy; right to liberty and personal security; and freedom from torture. **Chapter Three** is about the situation of political rights, particularly freedom of assembly and freedom of association. **Chapter Four** covers economic rights such as right to property and right to adequate standard of living. **Chapter Five** examines the situation of social and cultural rights, especially the quality and accessibility around rights to education, water and health. **Chapter Six** looks at collective rights, particularly right to development and right to benefit from natural resources, while **Chapter Seven** is on the rights of vulnerable groups, which are women, children, Persons with Disabilities (PWDs), and the elderly. **Chapter Eight** is on Corruption, Good Governance and Human Rights. **Chapter Nine** looks at human rights mechanisms, at domestic, regional and international levels, while **Chapter 10** is on other issues of human rights concern in 2017.

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	Comptroller and Auditor General
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCM	Chama cha Mapinduzi
CDF	Children's Dignity Forum
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
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
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
LGA	Local Government Authority
LHRC	Legal and Human Rights Centre
Maputo Protocol	African Charter on Human and Peoples' Rights on the Rights of Women in Africa

MDAs	Mining Development Agreements
MDG	Millennium Development Goal
MoHCDEC	Ministry of Health, Community Development, Elderly, Gender and Children
MPs	Members of Parliament
NBS	National Bureau of Statistics
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
TECMN	Tanzania Ending Child Marriage Network
TGNP	Tanzania Gender Networking Programme
THIS	Tanzania HIV Impact Survey
THRDC	Tanzania Human Rights Defenders Coalition
TLS	Tanganyika Law Society
TMAA	Tanzania Minerals Audit Agency
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

LHRC and ZLSC have been jointly preparing the Tanzania Human Rights Report since 2006. Before this arrangement, LHRC was producing the report since 2002. Preparation of the report includes collaboration with different stakeholders such as the Government and its institutions, the media, academic institutions, CSOs, researchers and community members as well as LHRC and ZLSC partners.

The Tanzania Human Rights Report 2017 discusses the situation of human rights in Tanzania for the year 2017, analysing the situation of 21 fundamental human rights in Tanzania. The report examines how these rights were enjoyed, protected, promoted or violated in 2017. This report has two parts. Part One depicts the situation of human rights in Mainland Tanzania whereas Part Two depicts the situation in Tanzania Zanzibar. Both parts have 10 chapters as follows: **Chapter One** of the Report provides a contextual overview of Tanzania. **Chapter Two** covers the situation of key civil rights, namely: Right to life, Freedom of Expression, Rights to Equality before the Law and Effective Remedy, Right to Liberty and Personal Security and Freedom from Torture and Inhuman or Degrading Treatment. **Chapter Three** is about the situation of key political rights, namely: Freedom of Assembly, Freedom of Association and Right to Take Part in Governance. **Chapter Four** examines the situation of economic rights, Right to Property and Right to Work, while **Chapter Five** covers social and cultural rights namely: Right to Education, Right to Health, Right to Water, Right to Adequate Standard of Living and Right to Culture. **Chapter Six** focuses on Right to Development and Right to Enjoy and Benefit from Natural Resources as key collective rights. **Chapter Seven** examines rights of special/vulnerable groups, namely: women, children, persons with disability, elderly and persons living with HIV/AIDS. **Chapter Eight** explores corruption and how it impacts human rights, while **Chapter Nine** reviews human rights mechanisms in Tanzania. Lastly, **Chapter Ten** covers other issues of human rights in 2017.

Methodology

In preparation of this report, the LHRC and ZLSC research teams employed a number of methods to collect data, both primary and secondary. Data was collected from various credible sources, including government institutions, bodies and ministries; CSOs; Judiciary; Parliament, media and members of the public.

Key Findings

1. Civil and Political Rights

Generally, the situation of civil and political rights worsened in 2017 compared to 2016, owing to increased violations of/restrictions on right to life, freedom of expression, right to equality, right to liberty and personal security, freedom from torture, freedom of association and right to take part in governance.

1.1. Right to Life

The situation of the right to life slightly deteriorated in 2017, mainly because of mob violence, extrajudicial killings and violence against law enforcement officers. There was increased hope for abolition of death penalty when President Magufuli announced that he would not sign death warrants and pardoned 61 death row inmates. There were also fewer road accidents and death resulting from them.

Mob violence: **479** incidents were reported to police from January to June 2017. By the end of December the number of incidents reported was **917**, which is 5 more than those reported in 2016. Problematic regions in this regard are **Dar es Salaam, Mbeya, Mara, Geita, Tanga and Kigoma**, based on the statistics of the first 6 months of 2017. Lack of faith in the justice system (police and judiciary) due to corruption continued to be the major reason for resorting to mob violence.

Extrajudicial Killings and Violence against Law Enforcement Officers: LHRC documented **9 incidents of alleged extrajudicial killings**, 5 more incidents than those documented in 2016. LHRC and ZLSC's Civil and Political Rights Perceptions Index 2017 ranks extrajudicial killings as the lowest among six rights-issues assessed in 2017. On the other hand, the unfortunate incidents of killings in Kibiti and other areas of Pwani Region saw **12 police officers brutally attacked and killed**, including 8 who were returning from patrol duty in April 2017.

Witchcraft-related Killings and Violence against PWAs: 307 deaths resulting from witchcraft-related attacks, 47 fewer than those reported in 2016. Three (3) people of the same family were killed in Sumbawanga, Rukwa Region. In Kwimba, Mwanza Region, a man killed his wife on suspicion of witchcraft. In Nzega, Tabora Region, 5 women were burned to death.

In connection with witchcraft belief, PWAs continued to be attacked in 2017 for their body parts, although no deaths were reported. LHRC was able to document at least 2 incidents of violence against PWAs and 1 incident of vandalism of PWA grave. Government, police, judiciary and CSO action has helped to address killings of PWAs, but they are still facing attacks and living in fear. Some parents and guardians in Simiyu Region reportedly resorted to **painting their children's skin and dyeing their hair black to protect them**.

Death Penalty: There was no execution of death row inmates in 2017 as President Magufuli declared that he would not sign execution warrants, with the country continuing to be considered in a state of moratorium. However, death sentences continue to be imposed by courts of law in accordance with the law. LHRC documented **15 death sentences** through media survey, 4 less than those reported by Amnesty International in 2016. Currently, there are about **400 death row inmates**, after the

President pardoned 61.

Road Accidents: Fewer road accidents and deaths (**6,022 accidents and 2,705 deaths**) reported in 2017, compared to 10,292 accidents and 3,381 deaths reported in 2016. A total of 32 pupils from Lucky St Vincent in Arusha killed in a tragic road accident in Karatu, Arusha.

1.2. Freedom of Expression

This was among the most violated human rights in 2017, characterized by attacks and threats to journalists, ban of media houses and arbitrary application of freedom of expression laws, including the Media Services Act of 2016. LHRC and ZLSC's Tanzania Civil and Political Rights Perceptions Index 2017 indicates that this right is more restricted when it comes to discussing political issues, violating the right to participate in political life in the process.

Media Freedom: Several incidents of threats and harassment were reported, including raid of offices of Clouds Media by the Dar es Salaam Regional Commissioner and threat and arbitrary arrest of 10 journalists by a district commissioner in Arusha. A total of 4 print media outlets were banned and fined for different reasons, including under the highly criticized Media Services Act, which contains vague provisions subject to abuse. A journalist with *Mwananchi Communications Limited*, Azory Gwanda, was also reported to have been abducted by unknown people in Pwani Region in November 2017, and remains missing. In September 2017, the Electronic and Postal Communications (Online Content) Regulations bill was introduced, containing a number of provisions which threaten media freedom (social media) and freedom of expression at large.

Access to Information: Right to access information was jeopardized by increased restrictions of media freedom and freedom of opinion. The proposed online content regulations, if signed into law, will further affect the right to information.

Freedom of Opinion: There were several incidents of arbitrary restriction of freedom of opinion in 2017, including threatening former minister responsible for information, Hon. Nape Nnauye, with a pistol when he was about to hold a press conference following his dismissal from office. Religious leaders were also on the hot seat following their opinions about human rights situation in Tanzania. In December 2017, there was a threat by the Permanent Secretary of the Ministry of Home Affairs to deregister religious institutions whose leaders comment on political issues while in places of worship, noting that they should stick to religious issues. In the same month, a university student in Dar es Salaam was reportedly arrested for taking and posting pictures of cracks on one of the building of the newly-build hostels. Several arrests were also made under the highly criticized Cybercrimes Act, the offence of sedition

being the focus.

1.3. Rights to Equality before the Law and Effective Remedy

A slight improvement was made to increase access to justice, but rights to equality before the law and effective remedy continued to be affected by costs of legal representation, shortage of resources with the judiciary, judicial corruption and lack of legal awareness.

Access to Justice: In 2017, access to justice continued to be affected by a number of challenges. These include shortage of advocates – hindering legal representation, delays in investigation by law enforcement officials, corruption, lack of awareness of laws and procedures, shortage and distance of court buildings, limited access to legal aid and cost of legal advice and representation – which is one of the major obstacles in accessing justice, according to the United Nations. Currently, there is **one (1) advocate for every 7800 people** in Tanzania. **There are also only 976 wards which have primary courts**, while each ward is required to have at least 1 primary court and **there are about 3000 wards in Mainland Tanzania**. Judicial corruption is particularly pervasive in lower courts.

To improve access to justice, the Judiciary took action to construct new courts and reduce backlog of cases and Parliament enacted the Legal Aid Act, which recognized paralegals and legal aid providers.

Right to Legal Representation: While LHRC did not receive complaints about denial of legal representation, quality of representation for the poor majority (cannot afford best qualified lawyers) was observed as a challenge.

Rights to Fair Trial and Effective Remedy: Challenges of accessing justice, such as shortage of judicial resources, delays in proceedings and corruption continue to be among factors affecting right to fair trial in Tanzania in 2017. Fair trial is less likely to be achieved by the poor, compared to those who can afford attorneys.

1.4. Right to Liberty and Personal Liberty

Right to liberty and personal security was jeopardized by a number of incidents, including arbitrary arrests and detentions, abductions, disappearances and killings.

Freedom from Arbitrary Arrests and Detention: LHRC documented more than 15 reported arbitrary arrests and detention incidents in the year 2017, including arbitrary arrest of human rights defenders attending a book launch in Dar es Salaam; arbitrary arrests ordered by Regional and District Commissioners; arbitrary arrest of the President of Tanganyika Law Society (TLS); and arbitrary arrests and detention of opposition political leaders and members.

Right to Personal Security: Reported incidents that threatened the right to personal security documented by LHRC include abductions and disappearances of people

under mysterious circumstances; bodies of people appearing to have been killed, put in sacks and dumped along the Indian Ocean; killing of a wildlife activist; attack of the TLS President, Singida East MP and chief opposition whip, Tundu Lissu; and killings of civilians, local leaders and police officers in Kibiti and other areas in Pwani Region, where at least 40 people, including 12 police officers, have been killed since 2015. LHRC recorded at least 38 incidents of violations of the right to personal security in the year 2017.

Right to Bail: Judiciary promoted right to bail through its judgement issued in 2017, whereby the High Court granted petitioner's prayer by declaring section 148(4) of the Criminal Procedure Act unconstitutional. The Court noted that indeed the provision violates Article 13 (6) (a) of the Constitution of the United Republic of Tanzania 1977, adding that the accused person has a right to be heard to challenge the decision of the DPP.

1.5. Freedom from Torture

In 2017, LHRC documented at least 22 incidents of torture, majority of which (15) were death penalty-which constitutes torture. These incidents include that of a local artist called Roma Mkatoliki and his colleagues. Several incidents of child torture were also reported. However, fewer incidents of torture are documented, including of suspects under police custody. Another challenge is that Tanzania is yet to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1.6. Freedom of Assembly

Freedom of assembly continued to be under severe pressure and slightly worsened in 2017, particularly through ban of political assemblies for political parties, unless it is by a Member of Parliament or other political leader within their respective constituency. Though it has no legal basis, several opposition political leaders were arrested for going against the order of not holding political assemblies outside their respective constituencies. Police also became increasingly suspicious of even CSO meetings, worrying they may be 'politically-motivated.' In June 2017, police prevented launch of a book by a human rights activist about human rights activists at higher learning institutions at a hotel, arresting and charging the Director of the Tanzania Human Rights Defenders Coalition (THRDC) in the process.

1.7. Freedom of Association

Arbitrary restrictions on freedom of assembly had a severe impact on realization of freedom of association in 2017. As the African Commission on Human and Peoples' Rights held in the case of *the World Organization against Torture et al v. Zaire*, not permitting opposition parties to meet in public or private and harassing them, amounts to violation of their the right to freedom of association. In February 2017, the former Minister for Constitutional and Legal Affairs, Hon. Harrison Mwakyembe, threatened

to deregister the Tanganyika Law Society (TLS) for what he called 'elements of political activism' within the organization.

1.8. Right to Take Part in Governance

Right to take part in governance or participate in the government includes the right to vote and be voted for and the right to participate in political life.

Right to Vote and Be Voted for: In November 2017 in 43 wards across 19 regions in Tanzania Mainland, Tanzanians exercised their right to vote during the council by-election. LHRC's assessment of the election revealed that the by-election was marred by a number of incidents of violence and irregularities, including: excessive use of force by law enforcement officers; abductions of party leaders, representatives and voters; and beatings and torture.

Right to Participate in Political Life: Right to participate in political life was severely violated in 2017, owing to **arbitrary restrictions on participation rights**, namely: **freedom of expression, freedom of assembly and freedom of association.**

Right to education is also a key participation right, but as indicated in Chapter Five, it faced a number of challenges. Unlike the thinking of some government officials, this right is for everyone, including religious leaders; and as such there is no need to attack or threaten religious leaders because of 'commenting on political issues.'

2. Economic, Social and Cultural Rights

These rights are supposed to be realized progressively, depending on availability of resources. However, the pace of their realization continued to be slow, due to a number of challenges.

2.1. Right to Property

This right focuses on land, which is defined to include anything erected above it. Several incidents of violation of the right to property were reported in 2017, including demolition of houses along the Morogoro Road to pave way for expansion of the road. Some of the owners of houses lined to be demolished claimed that they had the necessary documents to show that they did legally acquire property ownership and managed to secure court injunction. Land conflicts in different parts of Tanzania also continued to affect realization of the right to property. Such conflicts, usually between farmers and pastoralists, are common in areas such as Kisarawe in Pwani Region; Kilosa in Morogoro Region; and Handeni in Tanga Region. Women's access to land control and ownership continued to be limited, owing to factors such as discriminatory customary laws and practices and lack of or poor knowledge about their land rights. Property rights abuses were also reported during eviction of farmers and pastoralists in villages around wildlife protected areas and national parks, including in Katavi Region, Loliondo-Arusha and Saadani-Pwani.

2.2. Right to Work

Right to Work includes right to gain living by work and right to just and favourable working conditions. Right to gain living by work continued to be affected by the challenge of unemployment and lack of employability skills among university graduates. The exercise of removing workers with fake/forged certificates, conducted in 2017, violated the right to gain living by work by some of the public civil servants. 1500 out of the 9000 servants removed from their positions appealed and 450 were reportedly reinstated after it was discovered that they were wrongfully dismissed

The right to just and favourable working conditions is was affected by a number of challenges such as poor remuneration and salaries, including for Tanzanians working in industries owned by foreigners; poor working conditions in the education, judiciary and health sectors, including shortage of relevant facilities and tools; workers in key sectors such as health and education being overworked because of shortage of workers, and even then without overtime pay; and poor enforcement of labour laws, especially in the informal sector. LHRC has also observed that political interference affects the work of professionals and cases of workers being manipulated because of their poor knowledge about their labour-related human rights are common.

2.3. Right to Education

Introduction of a fee-free education policy by the Government has helped to increase access to education (primary and secondary). However, there was bad news for girls who are impregnated while in school, as the Government made it clear in 2017 that they would not be allowed to go back to school.

While there is an increase to the access to education, quality of such education became a bigger challenge in 2017 due to a number of factors, including grants provided for fee-free education not being adequate and shortage of teachers, toilets, desks, classes and teacher houses. Other factors include funds allocated for education not being disbursed in full or delayed and poor working conditions for teachers. For children with disability, lack of friendly infrastructure and learning tools remains a big challenge for them to access quality education.

2.4. Right to Health

A number of challenges continued to hinder **access to health services**, including distance to health facilities, especially in rural areas, and corruption. **Quality of health services** is compromised by a number of challenges, including insufficient budget, shortage of beds, shortage of health workforce and shortage of medicines and medical supplies. **The exercise of removing civil servants with fake certificates** also affected health workforce, leading to increased shortage of health workers. **Maternal mortality** continued to be a problem affecting expectant women in 2017, owing to lack of access to quality health services by women. Based on the 2010 NBS survey,

the maternal mortality ratio currently stands at 556 death per 100,000 live births, a significant increase compared to 454 per 100,000 livebirths in 2010.

2.5. Right to Water

Recent studies indicate that at least half the citizens do not have access to clean and safe water, the problem being bigger in rural areas. Women and children (especially girls) suffer the most because of lack of clean and safe water, having to walk long distances to fetch water. It also contributes to gender-based violence. Insufficient budget for the water sector and delayed disbursement of funds were observed to be among the factors contributing to lack of safe and clean water in 2017.

2.6. 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.

Right to Food: Food security in 2017 was compromised by a number of factors, including climate change, insufficient budget for the agricultural sector and inadequate tools and technology used in food production. Majority of farmers use inadequate tools and poor technology in agriculture, hence less productive. A study by *TWAVEZA*, an NGO operating in East Africa, indicated fears of food shortages in several locations in Tanzania, especially in rural areas.

Right to Shelter/Adequate Housing: Right to adequate housing continued to be affected by a number of factors, most notably urbanization and poor housing for the urban poor, demolition of houses in Dar es Salaam claimed to be within road and railway reserves. More than 1000 houses were demolished, which adds to the problem of adequate housing in the city. Houses were also destroyed during eviction of farmers and pastoralists in villages around wildlife management areas and national parks in different parts of Mainland Tanzania. While some of the people may really be at fault for building within the road or railway reserve areas, the Government must take part of the blame as corruption in the land sector and local government authorities has contributed to the situation of illegal housing.

2.7. Right to Culture

Right to culture is one of the fundamental human rights that is freely enjoyed in Tanzania; and 2017 was no different. LHRC observed in 2017 that Tanzanians, including ethnic minorities, are generally free to participate in cultural life and enjoy cultural products and identity. The Government also did well to promote the Swahili language, with the President leading by example by using the language at different forums, both local and international. People were also free to practice religion and embrace religious culture.

3. Collective Rights

3.1. Right to Development

Political development was an issue of great concern in 2017 as freedom of expression was seriously curtailed and rule of law was not fully safeguarded. Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Government action helped to improve the situation of some of these rights, especially right to access education, but as highlighted above, several challenges hamper full enjoyment of these rights by the majority of citizens. In terms of economic development, impressive economic growth has failed to significantly improve human development, hence resulting in minimal impact on poverty reduction to reduce the gap between the haves and the have-nots in Tanzania. Consequently, poverty rate (47%) continues to be high.

3.2. Right to Enjoy and Benefit from Natural Resources

Government action helped to promote and protect the right to enjoy and benefit from natural resources, most notably the sweeping reforms in the mining sector. For instance, amendment of the Mining Act of 2010 led to introduction of a mandatory corporate social responsibility (CSR) for mining companies, allowing renegotiation of contracts and increased government stake in the companies.

4. Rights of Special/Vulnerable Groups

Special/vulnerable groups discussed in this report are women, children, persons with disability, elderly and persons living with HIV/AIDS.

4.1. Freedom from Violence

Women and children were the major victims of different forms of violence in 2017, especially sexual violence – which was observed to be on the rise. A survey on human rights conducted by LHRC across 20 districts in 2017, revealed that most common forms of VAW is sexual violence, especially rape, followed by physical violence, according to social welfare officers.

Sexual violence: By the end of December 2017, police data indicated that 8,039 rape cases (women and children) were reported, 394 more than those reported in 2016 (7,645 cases). Police data also indicates that a total of 13,457 incidents of violence against children were reported, most of which were rape and sodomy cases. In 2016, the reported incidents were 10,551. LHRC media survey revealed that 85% of reported acts of violence against children were of sexual violence, particularly rape or sodomy. **Majority of the victims of sexual violence were primary school pupils aged 7 to 14 years, but even more sadly one of the reported victims was as young as 2 years old!** Sexual violence against children leaves them with a traumatic experience, severely affecting them emotionally and psychologically for the rest of their lives and sometimes leads to death, as it was the case of one child victim who was brutally raped by a gang in Katavi Region in June 2017. Another gang-rape was reported in Mwanza Region. Furthermore, LHRC received a sad case of **a 3-year old child who was raped by her father in Arusha Region.**

Harmful cultural practices against children: Practices such as child marriage and FGM continued to perpetrate violence against children or expose them to risk of such violence in 2017.

Physical violence against women, children and PWDs: Majority of incidents of violence against women reported by the media and documented by LHRC were of physical violence. 16% of them were jealousy-motivated. Other factors include drunkenness among men and suspicion of practicing witchcraft (especially older women in rural areas). LHRC also documented at least 18 incidents of physical violence against children, as reported by the media, some of which were so brutal and cruel that they resulted into deaths of children. In June 2017 PWDs who were peacefully demonstrating in Dar es Salaam's city centre were brutally attacked and beaten by police. Video clips circulating in social media showed police officers using excessive force in dealing with the PWDs, including pulling and beating them.

4.2. Right to Equality and Non-Discrimination

As it was the case in 2016, female representation in key decision-making positions remained a challenge in 2017. Land ownership and control and denial of inheritance also continued to be key factors hindering the right to equality and non-discrimination for women. PWDs continued to face challenges related to discrimination, including access to health services, education and infrastructure. Domestically and within communities, PWDs continued to be subjected to different forms of discrimination, according a 2017 report by a coalition of institutions and organizations advocating for PWDs' rights.

-Incidents of discrimination of the elderly seeking free health care at public health services facilities were also reported in 2017. Stigma and discrimination were also observed to be among factors affecting human rights of PLHIVs in Tanzania; and this is evident in the streets, at work, at health facilities and at school.

4.3. Right to Access and Quality Social Services

Challenges in accessing quality social services such as health, education and water affects the special groups more, given their special needs, poverty and discrimination they face.

5. Corruption and Human Rights

Corruption affects the ability of the Government to achieve progressive realization of economic, social and cultural rights to the maximum of its available resources. Embezzlement and mismanage of public resources may hinder the Government from effectively safeguarding key social rights such as the right to education, right to health and right to water by delivering quality education, health and water services. Civil and political rights such as right to life, access to justice, right to equality before the law and right to fair trial are also affected by corruption. Corruption within the justice system creates corrupt police officers, investigators, magistrates and judges, who tend

to deny rights to equality before the law and right to fair trial. Corruption during elections may also discourage people from exercising their political rights, such as right to vote.

In 2017, the fifth phase Government was lauded domestically and internationally for its intensified efforts to fight corruption. Two corruption perception surveys indicated that corruption is perceived to have decreased in Tanzania, with police and judiciary still perceived to be most corrupt institutions. Transparency International's Corruption Perceptions Index of 2017 also indicates slight improvement in Tanzania's ranking, scoring 36 out of 100 points, compared to 32 in 2016. However, reduced transparency and restrictions on freedom of expression are more likely to negatively impact the fight against corruption.

The major anti-corruption agency, PCCB, charged Mr. James Rugemalira, who was implicated in the famous Tegeta Escrow Account saga. Another high-profile figure connected to the Tegeta Escrow Account saga, Mr. Harbinder Sethi, was also charged together with the Mr. James Rugemalira. However, PCCB's effectiveness in combating corruption in Tanzania is hampered by a number of factors, including loopholes in the Prevention and Combating of Corruption Act of 2007, prosecution of cases only with DPP's consent, budgetary constraints, shortage of human resources, and lenient sentences imposed for grand corruption offences.

6. Other issues of Human Rights Concern

6.1. Political Tolerance

In 2017, LHRC observed with concern a growing political intolerance, especially between the ruling party (CCM) and major opposition party (CHADEMA). There appeared to be increasing hatred between leaders and members of these two parties, resulting to tension and violation of human rights through violence and arbitrary restrictions of rights. Discriminatory statements made by some leaders, especially of the ruling party, are also not helping the situation.

6.2. Responsibility of State and Non-State Actors to Promote and Protect Human Rights

In 2017, LHRC also observed that there is still low awareness about the responsibility to promote and protect human rights by different actors, some of them thinking the responsibility only lies with the State or other certain people in the community. Under domestic and international human rights systems, individual citizens have a duty to obey laws and follow legal procedures, as well as to report crimes and incidents of human rights violations, and intervene to protect human rights when possible. Religious and traditional leaders must also play a role in ensuring respect for human rights within communities, including by continually speaking out against human rights violations and urging community members to refrain from practices that violate such

rights. Law enforcement officers and the media also have a big role in promotion and protection of human rights..

Key Recommendations

Civil and Political Rights

- 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 and security or law enforcement officers implicated in extrajudicial killings are held accountable and brought to justice;
- The Government to officially declare the state of moratorium and commute death sentences to life imprisonment;
- The Law Reform Commission and the Parliamentary Committee on Constitutional and Legal Affairs to push for amendment of the Constitution to outlaw death penalty;
- 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;
- CSOs, FBOs, religious leaders and traditional leaders 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;
- The Ministry of Legal and Constitutional Affairs to initiate a process of revising/reviewing freedom of expression laws, such as the Media Services Act and Cybercrimes Act, with the view of removing or amending problematic provisions, including ambiguous and vague provisions;
- Government authorities and police to refrain from arbitrarily restricting civil and political rights, including arbitrary arrests and detentions;
- The Ministry of Home Affairs, the Police Force, and courts of law to ensure law enforcement officials who arbitrarily deprive human rights are held accountable;
- The Government to ratify and domesticate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- 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;
- In a bid to strengthen democratic institutions in Tanzania, the Government should sign and ratify the African Charter on Democracy, Elections and Governance;
- CSOs and government authorities to work closely and see each other as allies in promotion and protection of human rights in Tanzania;

- The Government and police to allow CSOs and political parties to operate freely, including exercising their right to peacefully assemble;
- The National Electoral Commission (NEC), should take steps to address the irregularities that hinder effective realization of the right to take part in governance, including for marginalized groups such as PWDs;
- NEC, CHRAGG and CSOs to provide and continue providing civic and voter education before we reach the 2020 general elections; and
- Law enforcement officials to refrain from using excessive force during election periods and ensure violence does not erupt between members of opposing political parties.

Economic, Social and Cultural Rights

- Legal reforms are still needed to further protect women's right and access to property ownership, particularly targeting customary laws and practices that limit their right to property. The Ministry of Land, Housing and Human Settlements Development should spearhead this process in collaboration with the Law Reform Commission;
- Government agencies and institutions should adhere to human rights principles when conducting operations that may affect enjoyment of economic, social and cultural rights;
- The Ministry of Education and Vocational Training should increase efforts to improve quality of education at all levels, including higher learning, in order to produce graduates who have employability skills;
- The Government, through Ministry of Finance and Planning, should increase budgetary allocations for social services sectors and ensure timely disbursement of funds;
- □ The amendments made in the Mining Act make it mandatory for mining companies to develop CSR plans on annual basis, containing priorities set out by local government authorities. LHRC strongly recommends such priorities to include educational facilities. LHRC also advises the Government, through the Ministry of Education and Vocational Training, to now shift focus to quality of education.;
- LHRC strongly advises the Government to reconsider its stance on pregnant girls not going back to school in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions ratified by Tanzania;
- Access to education for children with disabilities and other PWDs should also be improved, by especially ensuring availability of relevant infrastructure and learning tools. Moreover, the Ministry of Education and Vocational Training should strive to improve working environment for teachers, especially ensuring

- their houses are built and they are fairly remunerated;
- Furthermore, the ministry should enhance inspection of schools, ensuring they are regularly inspected, and ensure meals are available at primary schools, particularly in rural areas; and
 - The Government to ensure operations conducted by its institutions and agencies, such as demolition and eviction exercises in Dar es Salaam, adhere to human rights standards.

Rights of Special/Vulnerable Groups

- 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;
- 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 effectively investigated;
- 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 to amend the Law of Marriage Act 1971;
- 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;
- The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities should ensure increased jobs and employment opportunities for PWDs;
- 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; and
- To improve the situation of the rights of PLHIVs, deliberate efforts must be taken by the Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, and CSOs to educate members of public about their rights, impact of stigma and discrimination and improve access to basic social services, especially health services.

Chapter 1:

Contextual Overview

1.1 Historical Overview

By 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, 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, with Nyerere as its first Prime Minister and the Independence Constitution adopted as first constitution. 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 neighbouring 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 multipartism 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 we still 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 Human 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 located in Eastern part of Africa between longitudes 29⁰ and 41⁰ East, and Latitude 1⁰ and 12⁰ South.¹ Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest free standing mountain in the world and the highest mountain in Africa (referred as the roof of Africa).

Tanzania has beautiful natural vegetation, with the exception of the semi-arid central region of the country. The natural vegetation cover includes the Kitulo Natural Garden

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

in Makete District in Njombe Region, which has 350 different flora species.² The Kitulo Garden is famously known as the *Garden of God* and others have dubbed it “Serengeti of Flowers”. It occupies an area of 2,600 meters between the peaks of Kipengere, Poroto and Mt. Livingstone.³ The Great Rift Valley cuts across the country from the western and central parts of the country running through to Mozambique. The Great Rift Valley provides ground for pastoralist activities and agriculture due to its fertile soil that supports growth of different crops. The Usangu Valley, famous for rice production in Mbeya Region lies within the path of the Great Rift Valley.



Picture 1: Kitulo Plateau (The Garden of God)

Tanzania is blessed with sufficient 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.⁴ In 2016, Tanzania entered into agreement with Uganda to construct an

2 See <http://www.tanzaniatourism.com/en/destination/kitulo-national-park/P10>, accessed on 20th December, 2016.

3 Ibid.

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

oil pipeline which will run from Uganda to the Tanga Port.⁵ 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.⁶

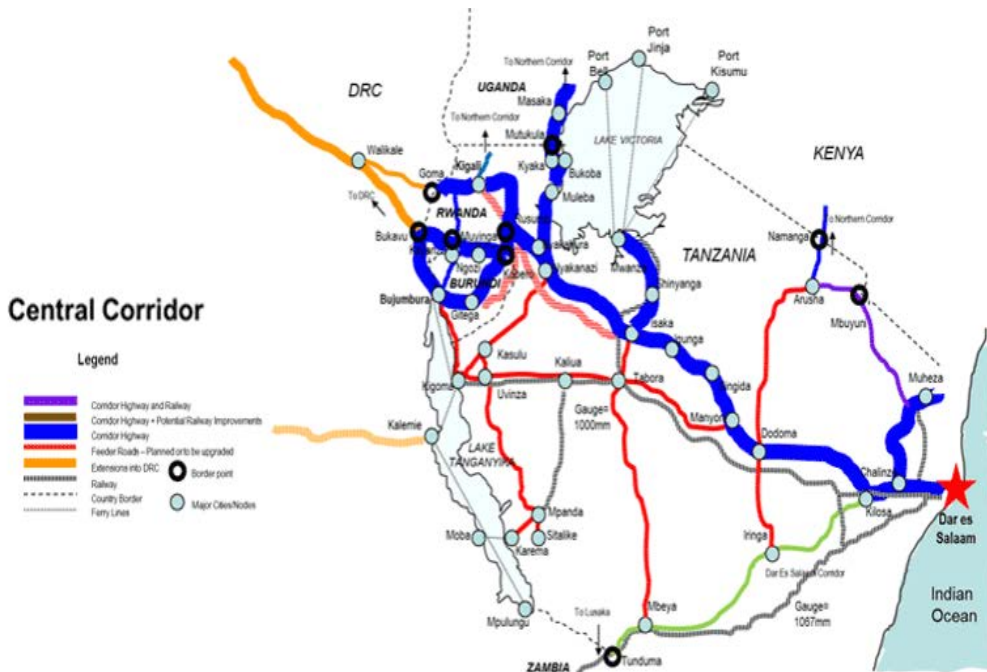


Figure 1: The Proposed Central Corridor for Standard Gauge Railway

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 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.⁷ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.⁸ The bi-modal regions experience short rainfall (*vuli*) in the months of

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

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

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

8 Unimodal areas include the following localities: Western regions (Rukwa, Katavi, Tabora

October to December and heavy rainfall season starts around the end of March to early June.⁹ Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of sufficient 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.¹⁰ 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, 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.¹¹ Further explorations for gas and oil are ongoing in different parts of the country attracting heavy foreign direct investment through exploration and manufacturing industry. A good example is the commission of the Dangote Cement plant in Mtwara in 2015, capable of producing high quality grade cement.¹² The plant utilises natural gas as the main source of power generation. The discovered natural gas is aiming at generating power, with a major project of the Kinyerezi Power Plant.¹³

The Population of the country is rapidly growing, at the rate of 2.7 per annum. The National Population and Housing Census of 2012 estimated the population at 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, with women making

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).

9 Ibid.

10 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-entarget-market-analysis-wind-tanzania.html>, accessed on 1st December 2015.

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

12 See <http://www.dangotecement.com/operations/tanzania/> accessed on December 2016.

13 See www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts, accessed on 10th December 2017.

the majority at 51.3% and male at 48.7%.¹⁴ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹⁵ 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.¹⁶ 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 421,456.¹⁷

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

Currently, the country's economic growth rate is mainly driven by transport, communication, manufacturing, construction and agriculture sectors, which accounts for 70% of the Gross Domestic Product (GDP).¹⁸ Therefore such initiatives have reduced donor dependency from 42% in 2005 to 15% in 2015.¹⁹

There are different initiatives that have been taken by the Government to engineer the economy of the country. Such initiatives include the Big Results Now (BIG) model, adopted in 2013-2014 in order to further initiatives of the country in transition from

14 URT 2012, the National Population and Housing Census.

15 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.

16 Ibid.

17 Ibid.

18 Delloite (2015), *Tanzania Budget Insight 2015: Diving Deep*, p. 1, available at http://www2.deloitte.com/content/dam/Deloitte/tz/Documents/tax/Tax_Budget%20Insight%202015_TZ.pdf, accessed on 15th December 2015.

19 See Speech by Hon. Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania when bidding farewell and dissolving the 10th Parliament of the United Republic of Tanzania, Parliament House, Dodoma on 9th July, 2015, p. 23.

lower to middle income.²⁰ The Government also plays a vital role in implementing the Five Year Development Plan 2016/17 - 2020/21, the National Strategy for Growth and Poverty Reduction Phase II and the ruling party (CCM) election manifesto 2015-2020.

1.4 Political and Governance Systems

Political Background

Since 1964, Tanzania has been governed by five presidents, namely: the late Julius Kambarage Nyerere (1962-1985), Ali Hassan Mwinyi (1985-1995), Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and Dr. John Pombe Magufuli (2015-to date). Tanzania is a two-government state.

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.²¹ The Government of the United Republic of Tanzania is in charge of all union matters and all matters of Tanzania Mainland.²² 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.

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

20 <http://www.pmoralg.go.tz/quick-menu/brn/>. BRN is Malaysian development model that helped to transform the economy of Malaysia.

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

22 Ibid, Article 34.

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 also 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.²³

The majority of the MPs are elected members from their constituencies.²⁴ Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.²⁵ The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.²⁶ The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.²⁷ 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.²⁸ The House 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 government. More information about Zanzibar can be found in Part Two of this report.

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

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

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

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

27 Ibid. Article 68(1) (d).

28 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.

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.²⁹ Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.³⁰ 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.³¹ Magistrates are appointed directly by the Commission.³² The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the Economic and Organised Crime Act was amended to establish the Economic, Corruption and Organised Crime Court (*Mahakama ya Mafisadi*).³³

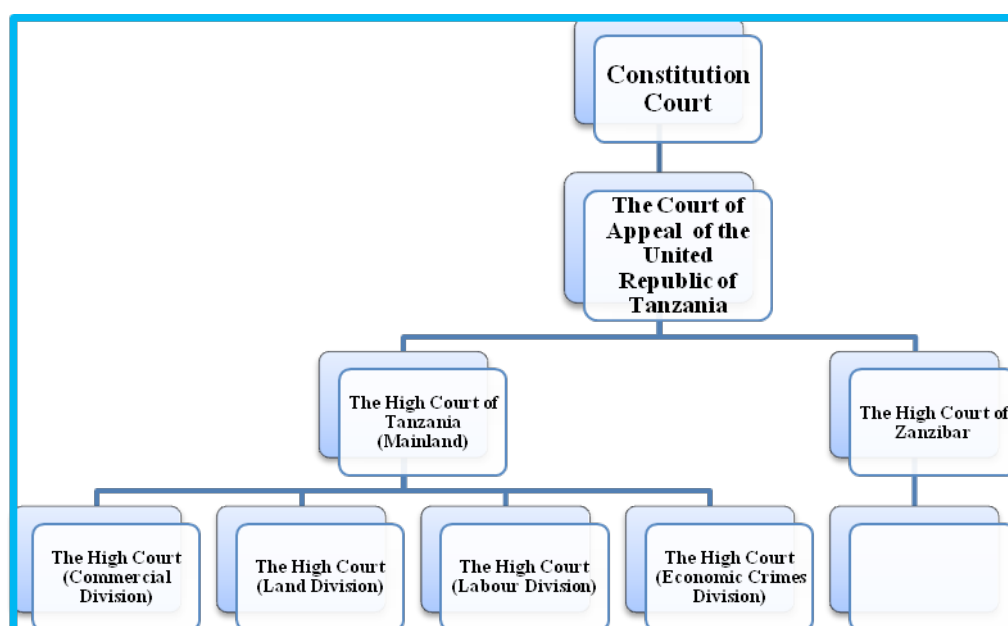


Figure 2: Tanzania Court Structure

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

30 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].

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

32 Ibid, Article 113(1).

33 Section 3 of the Economic and Organized Crimes Act.

Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.³⁴ 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.³⁵ 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.³⁶

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.³⁷ 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.

LHRC is of the view that, in order for the Judiciary to protect and promote human rights, it must be fully independent, free from any form of interference or influence. The current setting jeopardizes judicial independence as members of the Judiciary, the Chief Justice and all other judges, are presidential appointees, with no subsequent approval of the National Assembly. This leaves a loop hole that can be abused by the President during appointments. Judges and should be as members of the Judiciary should be independent from any influence in order “to do justice without fear or favour, affection or ill will”.³⁸

34 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].

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

36 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.

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

38 Chris Maina Peter, “Independence of the Judiciary in Tanzania: Many Rivers to Cross” in Frederick Juuko, [e.d.] *The Independence of Judiciary and Rule of Law: Strengthening Constitutional Activism in East Africa* (Kampala: Kituo cha Katiba, 2005) 58 at 2.

Chapter 2:

Civil Rights

2.0 Introduction

Civil rights are protected under various regional and international human rights instruments, including conventions ratified by Tanzania. These instruments include the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the African Charter on Human and Peoples' Rights (ACHPR), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), and the African Charter on the Rights and Welfare of the Child (ACRWC). The Constitution of the United Republic of Tanzania of 1977 contains a bill of rights, which includes civil rights. This report focuses on six key civil rights, namely Right to Life, Freedom of Expression, Rights to Equality before the Law and Effective Remedy, Right to Liberty and Personal Security and Freedom from Torture. These rights are thus protected both domestically and internationally and are also key for enjoyment of other human rights.

2.1 Right to Life

Being the most fundamental human right, right to life is protected under Article 14 of the Constitution of Tanzania and various regional and international human rights instruments.³⁹ A number of state obligations arise out of these instruments, including taking appropriate measures to safeguard peoples' lives, putting in place effective criminal justice system to deter crime, having a strong and effective law enforcement body, and properly investigating and prosecuting criminal offences causing death.

Right to life in Tanzania is usually affected by factors such mob violence, extrajudicial killings, witchcraft-related violence and killings, death penalty and road accidents. In 2017, these factors continued to play a role in threatening right to life, especially mob violence.

39 See Article 3 of the Universal Declaration of Human Rights (UDHR); Article 6 of the International Covenant on Civil and Political Rights (ICCPR); and Article 4 of the African Charter on Human and Peoples' Rights (ACHPR).

2.1.1 Mob Violence

Mob violence was a major threat to right to life in 2017. Police statistics indicate that in the period of January to June 2017, incidents of mob violence that were reported and recorded were 479, more than three times the number of incidents reported around the same period in 2016. By December 2017, the number stood at 917, five more than those killed in 2016.

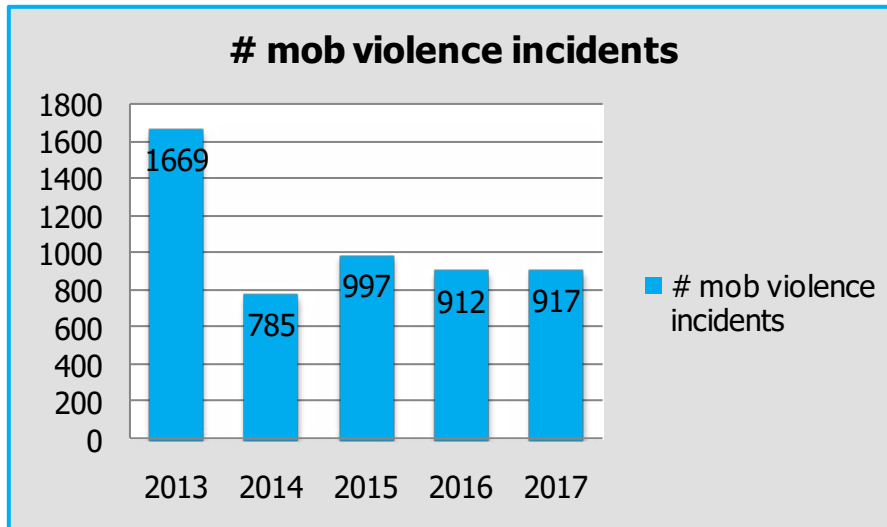


Figure 3: Killings caused by mob violence 2013-2017

Source: Tanzania Police Force Data

Police data indicates that mob violence is more prevalent in urban areas. In the first half of 2017, Dar es Salaam Region had the highest number of mob violence incidents (117), more than Mbeya and Mara combined in second and third consecutively (see table below).

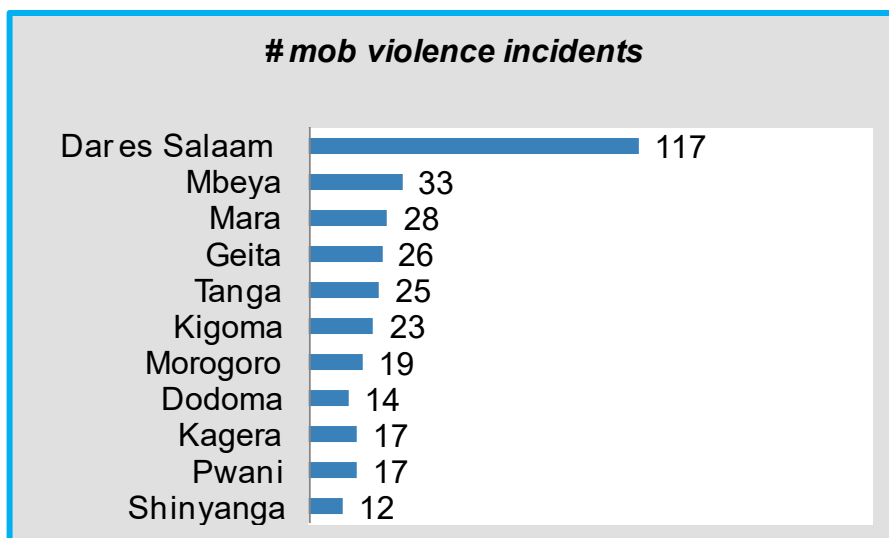


Figure 4: Regions with more than 10 incidents of mob violence Jan – June 2017

Source: Tanzania Police Force Data

In the past seven years, the year 2013 has recorded the highest number of mob violence incidents (1669), but since then an average of half such incidents have been reported and recorded. Lack of faith in the justice system (police and judiciary), considered corrupt by a significant section of the public in Tanzania, is a major factor contributing to mob violence.⁴⁰

79 Average number of people killed each month in mob violence across Tanzania from January to June 2017

The table below indicates some of the incidents of mob violence reported by media as documented by LHRC in the period of January to December 2017.

⁴⁰ LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017; LHRC & ZLSC (2018), Tanzania Civil and Political Rights Perceptions Index 2017.

Table 1: Incidents of mob violence recorded by LHRC from January to December 2017

Description	Source	Date
Musoma, Mara: A 24-year old resident of Bweri Nyabisare Ward in Musoma was killed by a group of people for allegedly being an armed robber.	<i>Mwananchi</i> Newspaper	6 Feb 2017
Kyela, Mbeya: An angry mob in Kyela attacked a 32-year old resident they accused of stealing two cows. The victim was attacked to death with stones and iron rods.	<i>Mtanzania</i> Newspaper	27 Feb 2017
Arusha: A man was killed by an angry mob after they mistook him for a motorcycle thief.	LHRC Human Rights Monitoring Data	10 th June 2017
Lindi: A resident of Mahiwa Village in Nyagao Ward died after he was beaten up by a mob for allegedly stealing maize.	<i>The Citizen</i> Newspaper	5 Jan 2017
Ilaa, Dar es Salaam: One person, suspected of being an armed robber, was killed by an angry mob in Mbalaga area. The incident occurred on 2 nd April 2017.	LHRC Human Rights Monitoring Data	5 Jun 2017
Makete, Njombe: One person named Nestory Ndelwa (27) was killed in a mob violence attack on 7 th May 2017, accused of stealing five chickens.	LHRC Human Rights Monitoring Unit	5 Jun 2017
Songwe: One person was reportedly killed in mob violence incident that occurred on 31 st March 2017.	LHRC Human Rights Monitoring Data	4 Apr 2017
Geita: Three people were killed by a group of people in Geita District for allegedly stealing 16 bags of maize.	<i>Nipashe</i> Newspaper	6 May 2017
Kilosa, Morogoro: 37 people, believed to be pastoralists/herdsmen, were arrested by police for playing part in attacking 2 farmers with machetes and killing them in Kilosa District.	<i>The Citizen</i> Newspaper	6 Jan 2017
Mwanza: A 30-year-old resident of Nyakato area was killed by an angry mob on allegations of theft.	<i>Mwananchi</i> Newspaper	18 Feb 2017
Muheza, Tanga: A resident of Muheza District, Ally Mzigua, who had been accused of killing his lover, was killed by an angry mob.	<i>Nipashe</i> Newspaper	5 Jan 2017

Description	Source	Date
Sumbawanga, Rukwa: Victoria Kalungwizi (67) was killed by an angry mob for allegedly stealing maize at a farm of Michael Mkombozi.	LHRC Human Rights Monitoring Data	20 Jul 2017
Misungwi, Mwanza: One person known as Bungate was reportedly killed by an angry mob for stealing chicken.	LHRC Human Rights Monitoring Data	17 Jul 2017
Tunduma, Songwe: One suspected armed robber, Isha Martin Mwampulo (20) was killed by an angry mob as he was escaping from the police.	EATV News	11 Oct 2017
Mbeya Rural, Mbeya: A resident of Masoko Village, Asa Mwile (21), was beaten to death by an angry mob after attempting to rob a shop of one Zicky Yoram.	LHRC Human Rights Monitoring Data	24 Oct 2017
Mbeya Urban, Mbeya: Unknown person (male) was beaten to death by an angry mob for allegedly stealing.	LHRC Human Rights Monitoring Data	24 Oct 2017
Ijala, Dar es Salaam: One person, aged 25-30, was killed by an angry mob for allegedly stealing a motorcycle.	<i>Nipashe</i> Newspaper	3 Sept 2017



Picture 2: Body of a victim of mob violence in Makete – Njombe being taken away by authorities in May 2017

2.1.2 Extrajudicial Killings

Extrajudicial killings are killings committed by law enforcement and military officials which are not sanctioned by law, outside the justice system. These killings usually result from excessive or unnecessary use of force, with perpetrators assuming the function of the court of determining guilt and providing punishment. These killings were among threats to right to life in 2017. The killings contravene the Constitution and human rights treaties ratified by Tanzania. They also contravene the **Code of Conduct for Law Enforcement Officials**, adopted by the UN General Assembly in December 1979, which provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.⁴¹ The focus is on the **principle of proportionality**, that the use of force must be proportionate to the objective intended and use of firearms should be limited to when a suspect is armed and there is possibility of the lives of others being in jeopardy

Extrajudicial killings were on the rise in 2017, with at least 9 incidents documented by LHRC by June as reported from various sources, including the media.⁴² This is a significant increase compared to 2016, whereby the Police Force reported 1 incident and LHRC documented 3 other incidents.⁴³ LHRC and ZLSC's Tanzania Civil and Political Rights Perceptions Index 2017 ranks extrajudicial killings as the lowest among six rights-issues assessed in 2017, with the score of 25 (D).⁴⁴ This is further evidence of extrajudicial killings posing a serious threat to right to life. Excessive use of force by law enforcement and military officials remains a key factor contributing to extrajudicial killings in Tanzania.

The table below highlights some of the incidents of extrajudicial killings captured by LHRC in 2017.

41 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.

42 See LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

43 Ibid.

44 LHRC & ZLSC (2018), Tanzania Civil and Political Rights Perceptions Index 2017.

Table 2: Reported incidents of extrajudicial killings in 2017

Description	Source	Date
Tanga: A daladala (bus) conductor died enroute to Mombo Hospital after receiving a heavy beating at a military camp. It was reported that he had been taken by military officers after a quarrel with one of the officer's siblings in the bus.	<i>Mwananchi</i> Newspaper	29 Jan 2017
Arumeru, Arusha: 4 people were killed and 5 others injured after being shot by SUMA JKT military officers guarding the Meru-Usa forest plantation, which is part of Meru forest Reserve.	<i>Mtanzania</i> Newspaper	27 Jan 2017
Arumeru, Arusha: A 15-year old boy was reportedly shot four times on his back and killed by SUMA JKT officer guarding the Meru-Usa forest plantation.	<i>Mtanzania</i> Newspaper	17 Apr 2017
Bagamoyo, Pwani: 3 police officers were arrested for allegedly killing 2 pastoralists, members of the same family, after they had refused to take their cattle to the police station.	<i>Mwananchi</i> Newspaper	8 Mar 2017
Kigamboni, Dar es Salaam: A 25-year old student of the Fisheries Education and Training Agency (FETA) – Mbegani Campus, Boniventura Kimali, was reportedly killed by a police officer while at home in Kigamboni District, police allegedly suspecting him of being a bandit.	<i>Mwananchi</i> Newspaper	29 May 2017

Source: LHRC Media Survey



Picture 3: A body of one of the victims of police shooting in Bagamoyo being carried away

(Picture by Global Publishers Company)

2.1.3 Violence against Law Enforcement Officers

Lives of police officers came under threat in 2017, with a number of attacks and killings reported. Most of these incidents occurred in Pwani Region, where a total of 12 police officers were attacked and brutally killed. The head of criminal investigation in Kibiti-Pwani was killed by unknown assailants in February and 8 police officers were killed by unknown gunmen while returning from patrol duty in April in the district. In another incident, two police officers were killed in Msafiri Village – Bungu Ward.



Picture 4: The Minister of Home Affairs, Hon. Mwigulu Nchemba, paying his last respects to the bodies of police officers who were killed in Kibiti-Pwani Region

Attacks and killings of police officers indicate a challenge faced by the police force, which needs to be addressed by the Government. Their working environment and protection of their lives while on duty is something that needs to be looked at and measures taken to ensure the police are well equipped to fight crime, protect citizens and protect themselves.

2.1.4 Witchcraft-related Killings and Violence against PWAs

Witchcraft-related killings were also a key issue affecting right to life in 2017. Police data indicates fewer such killings reported by mid-2017 (115) compared to those reported by June 2016.⁴⁵ From January to December 2017 a total of 307 witchcraft-related killings were reported to the police, 47 less than the number of 2016. However, 307 still a high number, with Tabora Region continuing to be the most notorious in these killings.⁴⁶

45 LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

46 Ibid.

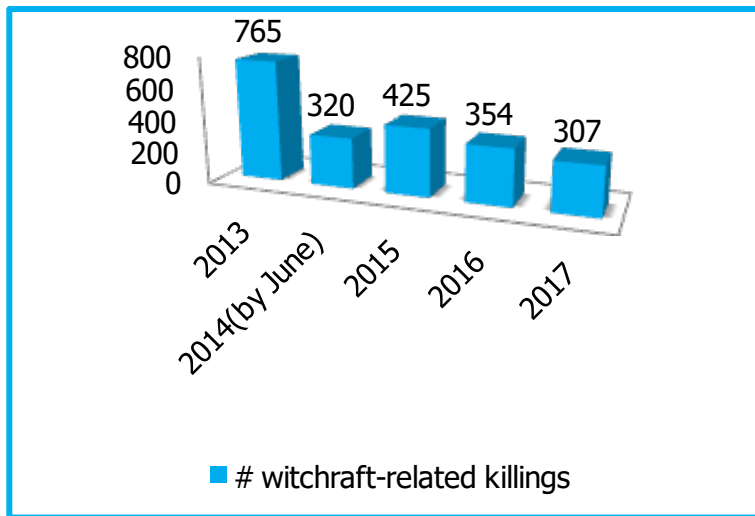


Figure 5: Witchcraft-related Killings 2013 - 2017

Through media survey and its human rights monitoring unit, LHRC was able to document several incidents of witchcraft-related killings across Tanzania, as indicated in the table below.

Table 3: Reported incidents of witchcraft-related killings in 2017

Description	Source	Date
Magu, Mwanza: A man in Mwanza was arrested by police for allegedly killing his 6-year old child in order to become rich through witchcraft. He killed the child by putting his hand on mouth to denying him air.	<i>Mwananchi</i> Newspaper	17 Jun 2017
Sumbawanga, Rukwa: Three people of the same family, residents of Kipa Village, were attacked with machetes to death on suspicion of witchcraft. They were attacked in Mfinga Village where they had gone to engage in agriculture.	<i>Mwananchi</i> Newspaper	25 Feb 2017
Biharamulo, Kagera: A pupil at Kibale Primary School in Kabumbiro Village (13) and her parent (40) were killed on suspicion of witchcraft.	<i>Mtanzania</i> Newspaper	1 Apr 2017
Maswa, Simiyu: A male resident of Mabayanda Village was attacked with machetes by three people, who claimed he had bewitched his neighbours' children.	<i>Mtanzania</i> Newspaper	1 Apr 2017

Description	Source	Date
Nkasi, Rukwa: A male resident of Mwenge Village in Kate Ward (50) was brutally killed due to witchcraft suspicion. One his relatives had alleged that he was bewitching him.	<i>Mtanzania</i> Newspaper	24 Apr 2017
Kwimba, Mwanza: A man called Kumalija Kondolo Basu, resident of Solwe Village, was arrested by police for killing his wife because of witchcraft belief. The incident occurred in April 2017.	LHRC Human Rights Monitoring Data	7 Apr 2017
Mbalizi, Mbeya: A resident of Ijenga Village, Sikitu Mwalala, was killed after being accused of practicing witchcraft on 1st May 2017.	LHRC Human Right Monitoring Data	5 Jun 2017
Nzega, Tabora: Four women were burnt to death beyond recognition and one woman beaten to death by unidentified people, who suspected the victims of being witches in Undomo Village.	<i>The Citizen</i> Newspaper	27 Jul 2017
Kasulu, Kigoma: One person killed and 2 cars and 10 houses destroyed by angry mob in Kibanga Village, accusing businessmen in the village of engaging in witchcraft.	<i>Habari Leo</i> Newspaper	6 Sep 2017

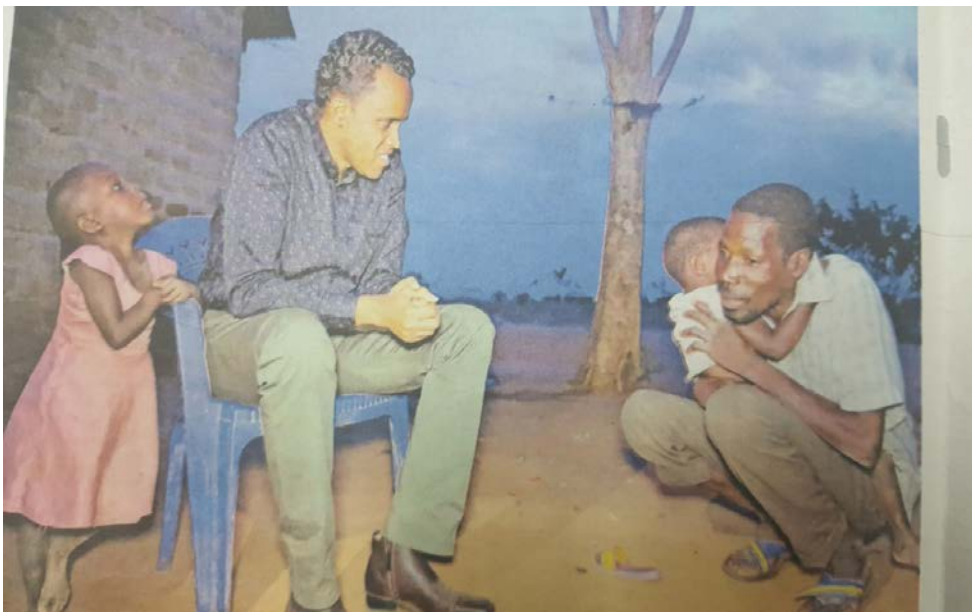
Source: LHRC Media Survey & Human Rights Monitoring Unit



Picture 5: Bodies of women accused of witchcraft who were burnt to death in Nzega District

Strong belief in witchcraft continues to be a major factor responsible for prevalence of witchcraft-related killings in Tanzania, whereby witchdoctors play a major role in encouraging their clients that somebody has bewitched them or their loved ones, causing suffering or death. They also tell clients what they need to do to become rich or successful in whatever they are doing, for instance business or winning a political election. Poor education among community members also contributes to these killings. The elders are usually the major victims of these killings, especially those with red eyes.⁴⁷

An average of 19 people killed each month due to witchcraft beliefs from January to June 2017.



Picture 6: Nzega Urban MP (seated), Hon. Hussein Bashe, speaking to a man whose wife was killed due to suspicions of witchcraft in Nzega in July 2017
(Picture by Mwananchi Communications Ltd)

Another group that is vulnerable to witchcraft-related killings and violence is Persons with Albinism (PWAs), who are targeted for their body parts. Recent trend shows that incidents of attacks and killings of PWAs have significantly decreased, owing to collaborated effort to protect PWAs by the Government through the Commission for Human Rights and Good Governance (CHRAGG), judiciary, police and civil society. No incidents of violence against PWAs were reported by June 2017, the last time such incidents were reported being 2015.

47 See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016, p. 25.

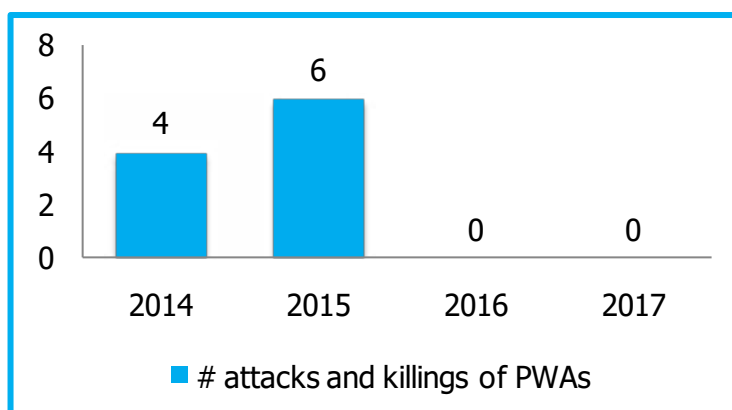


Figure 6: Reported incidents of attacks and killings of PWAs 2014-2017

Although there have been no reported incidents of violence against PWAs in 2017, there have been reports of vandalism of PWA graves. Such incidents were reported in Chapakazi Village in Mbeya Rural, Kagera and Morogoro, according to the PWA rights and welfare advocacy organization, Under the Same Sun (UTSS). In October 2017, it was reported that unknown people attacked and chopped a hand of a PWD, Nassoro Msingili (75), in Morogoro.⁴⁸ In August 2017, it was reported that two people were arrested for abduction of a 5-year old PWA in Kilimanjaro Region.⁴⁹

This situation has created fear amongst PWAs; and as a result, they cannot fully participate in social life as well as economic and political activities. In Bariadi – Simiyu Region, for example, it was reported that due to fear of attack and being killed, parents and guardians of PWA children have resorted to dyeing and painting their hair and skin black respectively.⁵⁰ In Morogoro, following another PWA attack, the Tanzania Albino Society (TAS) leadership in the region pleaded with religious and political leaders, as well as other stakeholders to educate the citizens about PWA rights and change their witchcraft-related beliefs and attitudes in relation to albinism.⁵¹

In November 2017, during a stakeholder meeting on the situation of PWAs, it was revealed that 67 cases of killing PWAs, 34 people had been convicted and sentenced to death in recent years.⁵² Mwanza Region was reported to take a lead in number of such cases (15), followed by Geita (10), Tabora (5), Simiyu (4), Mara (4), Kigoma (4) and

48 *Mwananchi* Newspaper, 5 October 2017; *Mtanzania* Newspaper, 11 September 2017.

49 Edward Gorro “Two arrested for abduction of 5-year old with albinism” *The Guardian* Newspaper, 25 August 2017, available at <https://m.ippmedia.com/en/news/two-arrested%20abduction-5-year-old-albinism>, accessed 10th October 2017.

50 *HABARILEO* Newspaper, 11 September 2017.

51 *Mtanzania* Newspaper, 11 September 2017.

52 Polycarp Machira “34 sentenced to death for killing persons with albinism” *The Guardian* Newspaper, 3 November 2017, available at <https://m.ippmedia.com/en/news/34-sentenced-death-killing-persons-albinism>, accessed 15th December 2017.

Shinyanga (3).⁵³ Other regions where such cases were reported are Rukwa, Morogoro, Pwani, Katavi, Tanga, Songwe, Singida, Mbeya and Arusha.⁵⁴ In September 2017, the High Court of Tanzania in Sumbawanga-Rukwa Region sentenced a man to 8 years in prison for chopping a hand of a PWA and 6 men to 20 years in prison each found guilty of chopping a hand of a child PWA in 2013.⁵⁵ In the same month the High Court in the region sentenced four people to a total of 62 years in prison, after they were convicted of murder attempt and conspiracy to commit murder.⁵⁶ They were accused of attacking and chopping off a hand of a PWA in 2014 in Sumbawanga District.⁵⁷

2.1.5 Death Penalty

Tanzania is considered to be an abolitionist state when it comes to death penalty, despite the penalty being recognized as a legal sanction under the Penal Code and continuing to be imposed by courts of law. Imposing death sentences contravenes the most fundamental human rights, right to life, which is protected by the Constitution of the United Republic of Tanzania of 1977⁵⁸, regional human rights instruments⁵⁹, and international human rights instruments.⁶⁰

It should be noted that the last time a death row inmate was executed in Tanzania was more than 20 years ago, which is why the country is considered to be in a state of moratorium. Nevertheless, death sentences continued to exist and be imposed in 2017, despite repeated calls for abolition by human rights activists and stakeholders, including LHRC. By June 2017, LHRC was able to document 7 death sentences imposed in different parts of the country.⁶¹ As of June 2017, there were 465 death row inmates, 445 male and 20 female.⁶²

April, 2017: Parliamentary Constitutional and Legal Affairs Committee urges the Government to consider community death sentences to life in prison after a certain period of time

53 Ibid.

54 Ibid.

55 HABARILEO Newspaper, 6 September 2017; Majira Newspaper, 1 September 2017.

56 Peti Siyame "Tanzania: Albino Attack 'Earns' Four 62 Years in Prison" *Daily News*, 5 September 2017, available at <http://allafrica.com/stories/201709050188.html>, accessed 10th October 2017.

57 Ibid.

58 Constitution of Tanzania, Article 14.

59 Such as the African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC).

60 Including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

61 See LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

62 Ibid.

Amnesty International, an international human rights organization, tracks death sentences imposed across the world; and in 2016 it is indicated that 19 such sentences were imposed in Tanzania. For the year 2017, by the time of completion of this report Amnesty International had not released the figures. However, LHRC was able to document at least **15 death sentences** through media survey.

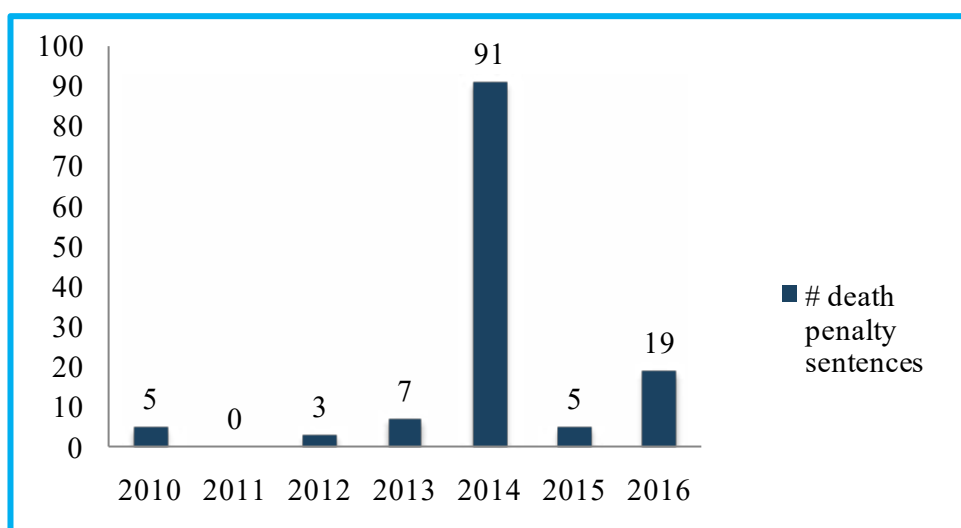


Figure 7: Number of death penalty sentences in Tanzania 2010-2016

Source: Amnesty International

The table below highlights some of the death penalty sentences imposed in courts of law in different parts of Tanzania in 2017.

Table 4: Death sentences imposed by courts of law as reported by the media in 2017

Description	Source	Date
Songwe: Four people, claimed to be bandits, were sentenced to death after murder conviction.	ITV News	18 May 2017
Mbeya: The High Court in Mbeya sentenced to death Godfrey Sichizya (27), after he was convicted of murdering his grandfather, Labson Schizya in order to inherit his cows.	East Africa Television	8 Jun 2017
Mara: A resident of Mugumu area in Serengeti District, 28 years old, was convicted of murder of his lover and sentenced to death.	<i>HABARILEO</i> Newspaper	27 May 2017

Description	Source	Date
Mara: A resident of Nyamongo, 30 years old, was sentenced to death after conviction on killing a woman with a machete.	<i>HABARILEO</i> Newspaper	6 May 2017
Mtwara: High Court in Mtwara sentenced to death by hanging a resident of Samora Village in Newala District, Halfani Ismail, after finding him guilty of killing one Jafari Selemani.	<i>Nipashe</i> Newspaper	18 Dec 2017
Rukwa: The High Court in Sumbawanga handed a man death sentence for beating his 12-year old daughter to death and tossing her body into water well in 2015. It was revealed that he had a habit of regularly beating his daughter and his wife left him due to GBV.	<i>The Guardian</i> Newspaper	26 Sep 2017
Rukwa: The High Court in Sumbawanga sentenced six residents of Kalambo District to death by hanging after finding them guilty of beating and burning their relative to death on suspicion of witchcraft in 2014.	<i>The Citizen</i> Newspaper	27 Sep 2017

Source: LHRC Media Survey

President Magufuli says he will not sign death penalty warrants and pardons 61 death row inmates

On a positive note, in 2017 Hon. President John Pombe Magufuli declared that he will not sign any death warrant to order execution of death penalty convicts.⁶³ This is a positive step towards abolition of death penalty in Tanzania in line with the growing worldwide trend against death penalty,⁶⁴ although public opinion is still relatively divided. President Magufuli also granted presidential pardon to 61 convicts who were on death row, which reduces the number of such inmates currently to around 400.

LHRC commends President Magufuli for saying no to execution of death row inmates and granting presidential amnesty to 61 of them. However, the President and his Government can go further and take initiative to abolish death penalty altogether as it is a cruel and inhuman punishment that constitutes torture and violates the fundamental right to life.

63 Kiangiosekazi wa Nyoka "Is capital punishment coherent with our cultural values?" DAILY NEWS Newspaper, 14 Oct 2017, available at <http://www.dailynews.co.tz/index.php/columnist/53565-is-capital-punishment-coherent-with-our-cultural-values>, accessed 1st January 2018.

64 This includes 20 African countries which have abolished death penalty, including those which have experienced massacres like Rwanda and Burundi.

2.1.6 Road Accidents

Road accidents continued to jeopardize right to life in Tanzania, whereby the police data indicates a total of 3,090 accidents occurred by June 2017, claiming 1,308 lives.⁶⁵ By December 2017, the data showed that a total of 6,022 accidents occurred in Tanzania, resulting to 2,705 deaths, a significant decrease of both accidents and deaths compared to the year 2016. These are 4275 less accidents compared to those reported in 2016, resulting into fewer deaths. Most of these accidents in 2017 (approximately 50%) occurred in Dar es Salaam. Traffic Police report indicates that 86% of these accidents are caused by reckless driving, driving while drunk and dangerous overtaking.⁶⁶

One of the accidents which shocked the nation was that which occurred in Karatu – Arusha, killing 32 pupils of Lucky Vincent Primary School and their teachers.

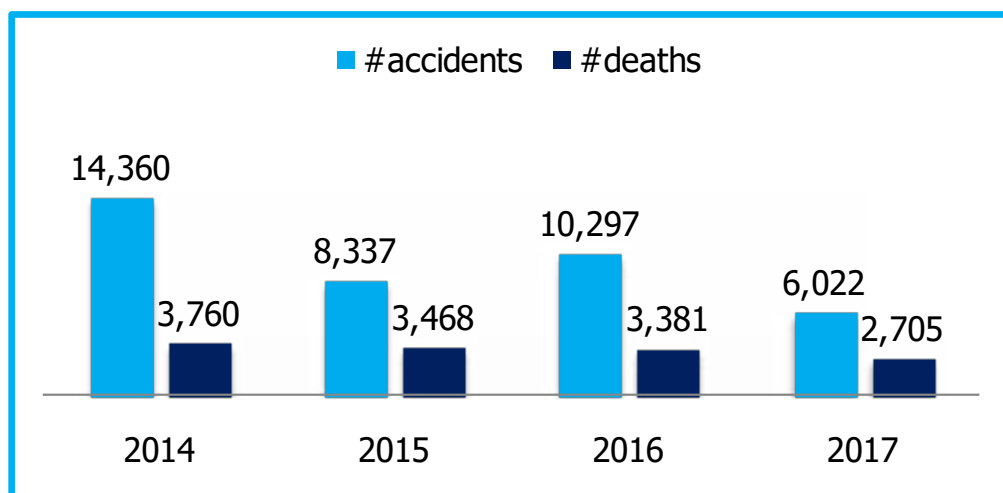


Figure 8: Road accidents and deaths 2014 – 2017

65 See LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

66 Ibid.



Picture 7: Bodies of 32 pupils of Lucky St. Vincent Primary School being taken off the bus at the accident scene in Karatu - Arusha

The table below highlights some of the incidents of road accidents reported in 2017.

Table 5: Some of the road accidents reported by media in 2017

Description	Source	Date
Njombe, Njombe: 3 people killed, 34 injured in a road accident.	<i>Nipashe</i> Newspaper	4 Mar 2017
Dar es Salaam: 1 person killed and a dozen injured after a passenger bus hit the train	<i>HABARILEO</i> Newspaper	20 Apr 2017
Mbeya: An accident involving Taqwa Bus claimed 4 lives, causing 16 injuries	<i>Majira</i> Newspaper	20 Jan 2017
Mikese, Morogoro: 3 people killed in an accident involving two cars in Lubungo Village.	<i>HABARILEO</i> Newspaper	21 Feb 2017
Magu, Mwanza: 2 people killed and 3 injured in an accident involving a small car and a truck at Kayenze area.	<i>Mtanzania</i> Newspaper	11 Feb 2017
Moshi, Kilimanjaro: 7 people killed, 4 injured in an accident at Mwika area.	<i>Mwananchi</i> Newspaper	6 Feb 2017
Kibondo, Kigoma: 2 pupils of Nyaryuba Primary School killed in a road accident after being hit by a lorry.	<i>Nipashe</i> Newspaper	24 Apr 2017

2.1.7 Conclusion and Recommendations

Right to life continues to be the most violated human right, owing to incidents of mob violence, extrajudicial killings, witchcraft-related killings and road accidents. Particularly alarming, are the incidents of mob violence and witchcraft-related killings, which remain high. More efforts are needed to be made by the both government and non-government actors to improve the situation of right to life in Tanzania. In its 2016 report, LHRC made a number of recommendations; and some of them, especially those on protection of PWAs, have been taken aboard. However, most of the recommendations remain relevant as they are yet to be addressed in 2017, including:

- 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;
- The Government to officially declare the state of moratorium and commute death sentences to life imprisonment;
- The Law Reform Commission and the Parliamentary Committee on Constitutional and Legal Affairs to push for amendment of the Constitution to outlaw death penalty; and
- The Government, through the Ministry of Home Affairs, to ensure security or law enforcement officers implicated in extrajudicial killings are held accountable and brought to justice.

LHRC further recommends that:

- 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;
- Local government authorities to establish programmes of enhancing protection of PWAs residing in their respective areas;
- 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; and
- 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.

2.2 Freedom of Expression

Freedom of expression refers to **freedom of every person to hold opinions** as well as freedom to **seek, receive and impart information** and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.⁶⁷ This is a fundamental right that is protected by the Constitution of Tanzania of 1977 and regional and international human rights conventions ratified by Tanzania, including the African Charter on Human and Peoples' Rights (ACHPR) of 1981 and the International Covenant on Civil and Political Rights (ICCPR) of 1966. The ICCPR outlines restrictions on this right as **only those 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."**

Freedom of Expression is divided into three main sub-rights, which are **press or media freedom, right to information and freedom of speech or opinion**. The Government of Tanzania is obligated under treaties like ACHPR and ICCPR to safeguard these rights. This report looks at these three aspects of freedom of expression.

In 2017, freedom of expression was among the most violated human rights in Tanzania, owing to attacks and threats to journalists, ban of media houses, and application of laws arbitrarily restricting freedom of expression, such as the Media Services Act and the Cybercrimes Act. The impact of restrictions of these rights is also felt at regional level, as indicated in LHRC and ZLSC's Tanzania Civil and Political Rights Perceptions Index 2017. The Index, which looks at 4 key civil and political rights, grades freedom of expression C (average). However, the Index indicates that there is less freedom when it comes to discussing political issues, especially for civil servants, as opposed to non-political ones.

2.2.1 Media Freedom

In 2017, several incidents of violations of media freedom were reported across Tanzania. These include: raid of Clouds Media Office by the Dar es Salaam Regional Commissioner, journalists being threatened, interference and ban of media outlets. A journalist called Azory Gwanda was also reported missing, feared to have been abducted by "unknown people."

Media outlets and journalists threatened and harassed

In March 2017 media outlets, including social media, reported news of raid of offices of Clouds Media at night by the Dar es Salaam Regional Commissioner, Hon. Paul

⁶⁷ See Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

Makonda, accompanied by security officers, some of whom were armed.⁶⁸ It was reported that the Regional Commissioner wanted a programme about a local bishop to be aired, something the local TV had not done. The incident was condemned by media stakeholders and human rights activists alike⁶⁹ and prompted the former Minister responsible for information, Hon. Nape Nnauye, to form a team to probe into the matter.⁷⁰ Report by the probe team revealed that the Regional Commissioner had breached the law forcing his way into the offices of Clouds Media and forcing staff to broadcast the programme before ordering them to give him back the material content. The probe team recommended that the Regional Commissioner apologize to the media outlet, but to no avail.⁷¹ Another recommendation by the team was for the report to be submitted by the Minister to the appointing authorities for further action,⁷² but the Minister was removed from his position two days later, owing to the changes made by the President in his cabinet.⁷³

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- 68 Asha Bani “MAKONDA ‘ATEKA’ KITUO CHA CLOUDS MEDIA” *Mtanzania* Newspaper, 20 March 2017; “CLOUDS WATOLEA UFAFANUZI MADAI YA RC MAKONDA KUVAMIA OFISI ZAO USIKU” *Swahili Times*, 19 March 2017, available at <https://swahilitimes.com/clouds-watolea-ufafanuzi-madai-ya-rc-makonda-kuvamia-ofisi-zao-usiku/>, accessed 21st July 2017; “Makonda in hot water over night Clouds raid” *The Citizen Newspaper*, 20 March 2017, available at <http://www.thecitizen.co.tz/News/Makonda-in-hot-water-over-night-Clouds-raid-/1840340-3856500-format-xhtml-u6hkea/index.html>, accessed 21st July 2017.
- 69 “Chorus of condemnation grows after Makonda TV raid outrage” *The Citizen Newspaper*, 22 March 2017, available at <http://www.thecitizen.co.tz/News/Chorus-of-condemnation-grows-after-Makonda-TV-raid-outrage/1840340-3859446-13qyw6h/index.html>, accessed 21st July 2017.
- 70 Getrude Mbago “Nnauye condemns Makonda media house raid, forms probe committee” *The Guardian Newspaper*, 21 March 2017; Frank Kimboy & Hellen Nachilongo “Probe team to release report on Makonda” *The Citizen Newspaper*, 21 March 2017, available at <http://www.thecitizen.co.tz/News/Probe-team-to-release-report-on-Makonda/1840340-3858006-format-xhtml-pd566/index.html>, accessed 21st July 2017.
- 71 “Makonda-Clouds saga ages on as probe team submits report” *Daily News Newspaper*, 22 March 2017, available at <http://dailynews.co.tz/index.php/home-news/49362-makonda-clouds-saga-ages-on-as-probe-team-submits-report>, accessed 21st July 2017.
- 72 Ibid.
- 73 “Rais Magufuli afanya mabadiliko baraza la mawaziri” *Mwananchi Newspaper*, 23 March 2017, available at <http://www.mwananchi.co.tz/habari/Rais-Magufuli-afanya-mabadiliko-baraza-la-mawaziri/1597578-3861010-14dco4o/index.html>, accessed 21st July 2017; Deogratus Kamagi “Cop in Nape drama to be investigated” *The Citizen Newspaper*, 25 March 2017, available at <http://www.thecitizen.co.tz/News/Cop-in-Nape-drama-to-be-investigated/1840340-3863930-upnduo/index.html>, accessed 21st July 2017; “Magufuli sacks minister after he criticised ally’s raid on TV” *Daily Nation Newspaper*, 24 March 2017, available at <https://www.nation.co.ke/news/africa/Magufuli-sacks-minister-after-condemning-TV-raid/1066-3862486-format-xhtml-kehv2/index.html>, accessed 21st July 2017.



Picture 8: Dar es Salaam Regional Commissioner (first from left) captured on CCTV camera entering Clouds Media offices

The new Minister responsible for information, Hon. Harrison Mwakyembe, dismissed the report on the incident by the probe team formed by Hon. Nape Nnauye, stating that Hon. Makonda was not afforded an opportunity to tell his side of the story.⁷⁴ He stated during a press conference after being sworn in that he cannot make his decision on the matter based on the reports by the media and on social media, but promised to form a new team to listen to both sides and prepare a report. However, there has been no news of the new probe team and its investigation to date.

In March 2017, it was reported that the Arusha District Commissioner, Hon. Alexander Mnyeti, had threatened journalists for seeking stories during district council meetings, telling them that he would order the police to beat them.⁷⁵ 10 journalists were also arbitrarily arrested by police and later released when covering news stories about the tragic accident involving pupils of Lucky St. Vincent Primary School at the school in Arusha.⁷⁶

In another incident, a reporter from *Mwananchi* Newspaper was reportedly approached by three people who claimed they were from the disaster management department and

74 Saumu Mwalimu "Mwakyembe speaks out on Clouds report" *The Citizen* Newspaper, 25 March 2017, available at <http://www.thecitizen.co.tz/News/Mwakyembe-speaks-out-on-Clouds-report-/1840340-3863924-uor8b9/index.html>, accessed 21st July 2017.

75 LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

76 Ibid.

took away his equipment as he was interviewing family members of 11 people who allegedly died after eating poisonous mushrooms in Kilindi District - Tanga.⁷⁷ It was also reported that the editor of *Mawio* Newspaper received phone calls threatening him after an article linking former presidents, Hon. Benjamin Mkapa and Hon. Jakaya Kikwete, to controversial mining contracts, was published by the newspaper.⁷⁸

LHRC is concerned with the trend of government officials threatening or harassing media outlets and journalists, as it threatens press freedom. It is important for government leaders to refrain from restricting or violating media freedom, which is constitutionally guaranteed. Instead, the Government must ensure that media freedom is safeguarded as a fundamental human right.

Bans for media outlets

In 2017, a number of media outlets were faced with bans and fines for allegedly violating media laws and regulations. These include *Mawio* Newspaper, *Mwanahalisi* Newspaper, *Tanzania Daima* Newspaper and *Raia Mwema* Newspaper.

In June 2017, *Mawio* Newspaper was banned after publishing an article which linked former presidents with controversial mining contracts, which had been subject of a public debate as the fifth phase government under President Magufuli sought to address problems in the mining sector.⁷⁹ Earlier in March 2017, the High Court delivered a judgment in favour of the newspaper following a permanent ban⁸⁰ issued in January 2016, which led the newspaper to file a petition in March 2016. The new ban against *Mawio* Newspaper was widely condemned by the media community led by the Media Council of Tanzania and Tanzania Editors Forum, as well as by human rights activists.

In October 2017, *Tanzania Daima* Newspaper was banned for 90 days for what was described by the Director of Information Services, Dr. Hassan Abbasi, as “continuous publication of false information.”⁸¹

77 Ibid.

78 Ibid; Also see Amnesty International (2018), Tanzania 2017/2018, available at <https://www.amnesty.org/en/countries/africa/tanzania/report-tanzania/>, accessed 28th February 2018.

79 LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

80 The newspaper was banned for allegedly writing and publishing seditious article about the situation of Zanzibar following the re-run presidential election.

81 See Ismaile Akwei “Fourth Tanzania newspaper banned for 90 days over ‘false’ publication” africanews, available at <http://www.africanews.com/2017/10/25/fourth-tanzanian-newspaper-banned-for-90-days-over-false-publication/>, accessed 5th December 2017; Ibrahim Yamola “Serikali yalifungia gazeti la Tanzania Daima siku 90” Mwananchi Newspaper (online), 24 December 2017, available at <http://www.mwananchi.co.tz/habari/Gazeti--Tanzania--Daima-lafungwa/1597578-4154012-rn8uxl/index.html>, accessed 5th December 2017.

In September 2017, *Mwahalisi* Newspaper was banned for two years for publishing false and seditious content, jeopardizing national security.⁸² In the same month, the Director of Information Services announced ban of another newspaper, *Raia Mwema*, accused of publishing an article titled “Urais utamshinda Rais Magufuli” (Magufuli presidency likely to fail) containing wrong quotes of the president.⁸³ The ban was for 90 days.

LHRC is very concerned with the continuing bans of media outlets, which is a worrying trend for media freedom. Vague words and phrases such as “false information”, “sedition” and “threatening national security” as contained in the highly-criticized Media Services Act 2016 are commonly used to justify unwarranted banning of media outlets, thus creating fear among these outlets and restricting media freedom.

Missing Journalist – Where is Azory Gwanda?

On 21 November 2017, a journalist from the Mwananchi Communications Limited, Azory Gwanda (42), was reported by his wife missing. The incident took place in Kibiti District – Pwani Region, where the journalist was looking into the alarming rate of murders in the district.⁸⁴ According to his wife, she last saw her husband with four ‘unknown persons’ in a Toyota Landcruiser, claiming her husband had an emergency trip and would return the following day.⁸⁵ However, he did not return and all his phone numbers were off-air. The wife also claimed that when she returned home she found the house had been searched, with papers scattered all over the place. She reported the matter to the police station in Kibiti, where a file with number *Kibiti/RB/1496/2017* was opened.

82 Statement by the Director on Information dated 19 December 2017, available at <https://www.jamiiforums.com/threads/gazeti-la-mwanahalisi-lafungiwa-kwa-miaka-miwili-wahukumiwa-kwa-kuandika-habari-za-uzushi-kuhusu-mwakyembe-namakinikia.1321550/>, accessed 5th December 2017.

83 Ismaile Akwei “Another Tanzanian newspaper banned for criticizing the government” africanews, available at <http://www.africanews.com/2017/10/25/fourth-tanzanian-newspaper-banned-for-90-days-over-false-publication/>, accessed 5th December 2017; “Serikali ya Tanzania yalifungia gazeti la Raia Mwema kwa siku 90” BBC Swahili, available at <http://www.bbc.com/swahili/habari-41445599>, accessed 5th December 2017.

84 “Disappearance of Azory: what we know so far” *The Citizen* Newspaper, 17 Dec 2017, available at <http://www.thecitizen.co.tz/News/Disappearance-of-Azory--what-we-know-so-far/1840340-4231716-r17bs4z/index.html>, accessed 31st December 2017; “Tanzanian journalist Azory Gwanda goes missing for 28 days” DailyNation Newspaper, 18 December 2017, available at <https://www.nation.co.ke/news/africa/Tanzania-journalist-missing-for-28-days-and-counting-1066-4232586-hnbwhkz/index.html>, accessed 31st December 2017.

85 According a joint statement by media stakeholders, led by the Tanzania Human Rights Defenders Coalition (THRDC), some of the neighbours also reported seeing the Toyota Landcruiser near the missing journalist’s house.

40 days since Azory Gwanda disappeared (as of 31st December 2017), he is yet to be found – dead or alive – and authorities claim the matter is still under investigation. His disappearance was met with strong condemnation by media community, media stakeholders and human rights activists, who together launched a campaign to urge the Government to ensure his safe return.



Picture 9: Local newspapers, The Citizen and Mwananchi, displaying a picture of Azory Gwanda and hashtags as part of the campaign to bring him back

Several media stakeholders, activists and human rights defenders have expressed shock and voiced their concerns over the disappearance of Azory Gwanda. Below are some of the statements they made over the incident in 2017.⁸⁶

“This is a democratic country. Mr. Gwanda should be brought before the courts of law if has committed any crime for justice to take its course.”

MCL Managing Director, Francis Nanai.

“How can someone disappear for 17 days without a trace, if there are no evil intentions?”

Chairperson of Tanzania Editors Forum

86 As reported in the Citizen Newspaper (online) dated 6 December 2017 (“Disappearance of MCL reporter shocks the local media fraternity”) available at <http://www.thecitizen.co.tz/News/Disappearance-of-MCL-reporter-shocks-the-local-media-fraternity/1840340-4216576-11tv08uz/index.html>, accessed 31st December 2017.

“There have been so many incidents of this kind that they are becoming normal. So, we request the police force to speed up investigations.”

CHRAGG Chairperson, Tome Bahame Nyandunga.

“This is another proof that being a journalist now is a very dangerous thing. It is now not uncommon for journalists to disappear in mysterious circumstances.”

MCT Executive Director, Kajubi Mukajanga.

“We are saddened by increased incidents of people being taken by ‘unknown persons’ and nothing is done or seems to have been done to really address this problem in the community.”

Joint statement by THRDC, MCT, UTPC and OJADAC



Picture 10: Journalists holding newspapers with a picture of the missing journalist, pleading for his safe return

(Picture source: Radio 5 FM)

LHRC is deeply concerned with the continuing disappearance of people, believed to be taken by ‘unknown persons’, Azory Gwanda being the latest victim. Azory’s disappearance may also cause fear among journalists, particularly those who specialize in investigative journalism – which is key for exposing evils and problems in the society. LHRC urges the Government to put more pressure in ensuring safe return of Azory and the police force to speed up the investigation into the matter and provide regular feedback.

Introduction of the Electronic and Postal Communications (Online Content) Regulations 2017

In September 2017, the Government introduced the Electronic and Postal Communications (Online Content) Regulations 2017.⁸⁷ The bill will enable the Government to regulate online content with strict regulations. The regulations,⁸⁸ which will affect social media, bloggers, internet cafes, online television, online radio and websites, will come into force once signed by the Minister of Information, Culture, Arts and Sports. The Tanzania Communication Regulatory Authority (TCRA) will be the body responsible for regulation of online content. In early October 2017, the Ministry of Information, Culture, Arts and Sports announced that media stakeholders had 7 days to give their views on the regulations and submit them in writing.

The Regulations contain some key provisions such as those seeking to protect children from adult content, promoting user responsibility and combating extremism and terrorism. However, some of the provision are problematic and will further infringe freedom of expression in Tanzania.

LHRC's analysis of the proposed Regulations revealed a number of concerns, which further restrict freedom of expression in Tanzania by **threatening fundamental civil rights of freedom of expression and right to privacy**. Below are the major issues of concern that LHRC was able to highlight, most of which were also expressed by other media stakeholders:

(a) Registration and licensing requirements

The Regulations require registration of online forums and blogs with TCRA as soon as they come into force, which thereafter provides licenses. This procedure is new and is likely to be used to further restrict freedom of expression, akin to the Media Services Act and the media outlets.

Subject to Regulation 5 every blogger and online forum shall register with the authority in a manner prescribed under these Regulations.

Regulation 7(1)(a)

87 "Government tightens noose on social media" *The Citizen* Newspaper, 25 Dec 2017, available at [http:// www.thecitizen.co.tz/News/ Govt-tightens-noose-on-social-media /1840340-4110742-dj5ud0z/index.html](http://www.thecitizen.co.tz/News/Govt-tightens-noose-on-social-media/1840340-4110742-dj5ud0z/index.html), accessed 31st December 2017.

88 The Regulations apply to Tanzanian citizens inside and outside Tanzania as well as non-citizen residents.

(b) Blogger to review user content before it is published or posted

The Regulations require a blogger to review user content before it is published or posted, which is not an easy thing to do. The blogger is also required to use moderating tools to filter content.

Subject to Regulation 5 every blogger and online forum shall ensure that, where his blog or online forum allows the general public to post content, he sets mechanism that content is not published prior to the blogger's review.

Regulation 7(1) (b)

(c) Fine of Tshs. 5 million and minimum 1-year jail term for violation

Any violation of the Regulations attracts a fine of Tanzanian Shillings 5 million or imprisonment of not less than one year. Upon conviction a person may be required to pay fine as well as serve a jail sentence. These are severe penalties, with no regard to seriousness of the offence, and will instill fear and disrupt free flow of information.

Any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine not less than five million Tanzanian Shillings or to imprisonment for a term not less than twelve (12) months or to both.

Regulation 16

(d) Powers of TCRA to shut down social media

TCRA is given too much power by the Regulations, particularly suspending or shutting down online forums and bloggers.

(e) Internet cafes to have surveillance cameras and archive records

Internet cafes are required to monitor activities of users as well as install surveillance cameras to record and archive activities of users and see who comes and goes. Again, this provision is problematic for café owners in terms of costs of archiving all activities on a daily basis. It also infringes on users' right to privacy.

Subject to Regulation 5 every internet face shall have the following obligations: install surveillance camera to record and archive activities inside the cafe.

Regulation 9(d)

Requiring installation of cameras and recording of all activities is a costly venture for café owners, which in turn may lead to higher internet costs and affect access to internet by users.

(f) Prohibit anonymous users and require disclosure of identity

Online content providers are required under the regulations to block users who are anonymous and to put in place mechanisms of identifying sources of contents. They are also required to cooperate with law enforcement officers in pursuing their functions under the Regulations. This has implications on protection of whistleblowers who need anonymity to reveal corruption and other evils in the society. It also violates right to privacy for online content users.

An online content provider shall cooperate with law enforcement officers in pursuing functions under these Regulations.

Regulation 5(3)

It should be remembered that in 2016, the director of a popular online forum called *Jamii Forums*, Mr. Maxence Melo, was arrested and charged with obstruction of police investigation after refusing to reveal the identities of anonymous users of the forum.⁸⁹ Being a key forum for revealing evils and freely discussing various issues of national importance, the forum and other forums like this will be hit hard by the proposed Regulations.

(g) Vague and ambiguous phrases which can easily be abused

Some of the regulations contain phrases that are not clearly defined or clarified, which may be abused by authorities to restrict freedom of expression in online platforms. For examples the are phrases like “bad language”, “use of disparaging or abusive language”, “false content” and “content likely to mislead or deceive the public”, which are not clearly defined.

Online content provided shall not publish: content that uses bad language including but not limited to the use of disparaging or abusive words which is calculated to offend an individual or a group of persons; false content which is likely to mislead or deceive the public...

Regulation 12

89 The case is still pending in Court.

A Drop in the World Press Freedom Index 2017

Tanzania's drop in the World Press Freedom Index 2017 is a reflection of violations of media freedom in 2017 as highlighted above. According to the World Press Freedom Index Report 2017, Tanzania has dropped 12 places, with factors such as suspension and closure of media outlets, threats to media houses and attacks of journalists playing a major role.⁹⁰



Figure 9: Tanzania's ranking in the World Press Freedom Index 2017

Stakeholders File Petition on the Media Services Act 2016

In 2016 the Media Services Act was enacted, replacing the highly criticized Newspapers Act of 1975. However, the new law contained provisions similar to those in the previous Act, which further restrict media/press freedom.⁹¹ In January 2017, media stakeholders, including human rights activists, took the matter to the East African Court of Justice, challenging the sections of the new law that restrict media freedom. Among the stakeholders were the Media Council of Tanzania (MCT), the Legal and Human Rights Centre (LHRC) and the Tanzania Human Rights Defenders Coalition (THRDC).

90 LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017, available at www.humanrights.or.tz.

91 See LHRC & ZLSC (2017), *Tanzania Human Rights Report 2016*, available at www.humanrights.or.tz.

2.2.2 Access to Information

Due to continued and increased restrictions on media freedom, the right of access to information is also jeopardized. This is caused by fear among media outlets and journalists, given the strict provisions and regulations of media freedom laws and regulations, particularly the highly-criticized Media Services Act of 2016 and now the proposed online content regulations. As indicated above, these laws and regulations give government authorities vested with media regulation too much power, contain ambiguous and vague provisions, carry hefty fines for violation, and provide strict penalties.

LHRC has also observed that websites of various government institutions contain less information than was the case in the past, while other have information which have not been updated for a long time. This has made access to information a bigger challenge in 2017.

2.2.3 Freedom of Opinion

In 2017, freedom of speech/opinion continued to be under severe threat. This year witnessed a number of incidents which violated freedom of opinion. For instance, **in March 2017**, a shocking video of the former minister responsible for information, Hon. Nape Nnauye being threatened with a gun as in front of press circulated on social media. Two people, believed to be law enforcement or security officers, appeared to force the former minister into a car before he addressed the media, as one of them briefly threatened him with his gun. Nevertheless, the former minister managed to resist and eventually talked to the members of the press, who surrounded his car.



Picture 11: Former information minister, Hon. Nape Nnauye (middle), being approached by two people believed to be law enforcement or security officers, who want him to leave the area before addressing the press

(Picture by Mwananchi Communications Limited)

The year 2017 also witnessed tension between the Government and religious leaders, over what the Government called unfair criticism. Some religious leaders were vocal about restrictions of freedom of expression, disappearance of people and the issue of a new constitution. They criticized and warned the Government about violation of human rights, especially crackdown on freedom of expression.⁹² Among those religious leaders concerned with the situation of freedom of expression were Bishop of the Evangelical Lutheran Church in Tanzania (ELCT), Dr. Fredrick Shoo, and Bishop Benson Bagonza, also of the Evangelical Lutheran Church. They noted that people are afraid of exercising their freedom of expression for fear of “saying the wrong things.”⁹³

The tension intensified in December 2017, when the Permanent Secretary of the Ministry of Home Affairs threatened to deregister religious institutions whose leaders comment on in political issues while in places of worship.⁹⁴ The Permanent Secretary noted that commenting on political issues is not one of the main activities of religious

92 “Religious leaders warn govt against violating human rights” *Mwananchi* Newspaper, 31 Dec 2017.

93 “Religious leaders speak out against crackdown on freedom of expression” *The Citizen* Newspaper, 26 Dec 2017.

94 Ibrahim Yamola “Serikali yatishia kuzifuta taasisi za dini” *Mwananchi* Newspaper, 28 Dec 2017, available at <http://www.mwananchi.co.tz/habari/Serikali-yawaonya-viongozi-wa-dini/1597578-4244354-1525nwnz/index.html>, accessed 1st January 2018.

institutions and that they should stick to religious issues.⁹⁵ His statement was widely condemned by stakeholders of freedom of expression, including human rights activists.⁹⁶ The coordinator of the Tanzania Human Rights Defenders Coalition, Mr. Onesmo Olengurumwa, dismissed the threat and noted that there is a big difference between “engaging in politics” and “giving political opinion.”⁹⁷ LHRC Executive Director, Dr. Helen Kijo-Bisimba, noted that the constitutional right to freedom of expression is a right for all people, including religious leaders.⁹⁸ She also stated that only those who criticize the government are warned, but not those who applaud or sympathize with it.⁹⁹ The ruling party’s Member of Parliament for Nzega Constituency, Hon. Hussein Bashe, also spoke against the warning against religious leaders, noting that they have a right to comment on political issues and is not breaking any law.¹⁰⁰

In December 2017, a student of University of Dar es Salaam residing in newly-built hostels was reportedly arrested by police for taking pictures of cracks on one of the buildings and posting it on social media (Facebook). The student, Kumbusho Dawson, took the pictures to warn about the state of the hostel buildings, which attracted the attention of the Tanzania Building Agency (TBA). TBA Chief Executive Officer noted that the cracks were at the expansion joints, which are normal in buildings to “allow adjustments.”¹⁰¹ The CEO blamed the student for taking pictures and circulating them on social media, with the aim of ‘tainting the image of the fifth phase government.’¹⁰²

Cybercrimes Act, which has been named among the laws severely restricting freedom of expression, continued to be applied in 2017. The offence of sedition continued to take centre stage, whereby several political figures were arrested and charged, including CHADEMA’s Tundu Lissu and Pascal Haonga; and ACT Wazalendo’s Zitto Kabwe. A Muslim cleric, Sheikh Issa Ponda, was also arrested on charges of sedition in October 2017.¹⁰³

95 Ibid.

96 Khalifa Said “Threat criticized” *The Citizen Newspaper*, 30 Dec 2017.

97 Ibid.

98 Ibid.

99 Ibid.

100 Ibid.

101 Louis Kolumbia “TBA allays fears about Udsm hostel cracks” *The Citizen Newspaper*, 4 Dec 2017, available at <http://www.thecitizen.co.tz/News/-TBA-allays-fears-about-Udsm-hostel-cracks-/1840340-4214180-d7otp8z/index.html>, accessed 15th December 2017.

102 Ibid.

103 Witness Robert “Ponda given 3 days to surrender to Dar police” *The Citizen Newspaper*, 13 October 2017, available at <http://www.thecitizen.co.tz/News/Ponda-days--surrender---Dar--police-abusive--language/1840340-4137086-134pkv1/index.html>, accessed 16th December 2017.

2.2.4 Conclusion and Recommendations

Action by government authorities and application of restrictive laws contributed to the violation of Freedom of Expression in 2017, as the situation of this right worsened. Media freedom, in particular, suffered the most, with journalists facing threats and others like Azory Gwanda disappearing. Freedom of speech is also severely restricted, as people find themselves with less freedom to give their opinions due to application of restrictive laws such as Cybercrimes Act, which contain vague and ambiguous provisions. Restrictions on media freedom and freedom of opinion/speech directly and negatively impact the right to information. LHRC would like to remind the Government that freedom of expression is key for development as well as its anti-corruption drive. LHRC proposes a number of recommendations on improving the situation of freedom of expression in Tanzania. Key among them was for the Ministry of Legal and Constitutional Affairs to initiate a process of revising/reviewing freedom of expression laws, such as the Media Services Act and Cybercrimes Act, with the view of removing or amending problematic provisions, including ambiguous and vague provisions. LHRC further urges government authorities to refrain from violating freedom of expression, particularly by threatening and harassing journalists and media outlets. Rule of law and good governance should be observed by government authorities in order to safeguard basic human rights, including freedom of expression.

2.3 Rights to Equality before the Law and Effective Remedy

Rights to equality before the law and effective remedy are stipulated under various regional and international human rights instruments, including 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).¹⁰⁴ Domestically, the Constitution of the United Republic of Tanzania guarantees the right to equality before the law under Article 13. The right to effective remedy is provided for where other rights of an individual have been violated.¹⁰⁵

All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.

Article 13(1) of Tanzania Constitution of 1977

Rights derived from these two rights include right to access to justice, right to legal representation¹⁰⁶ and right to fair trial.¹⁰⁷ The situation of these three rights in Tanzania

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

105 Article 2(3) (a) of ICCPR.

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

107 Article 13(6) of the Constitution of the United Republic of Tanzania of 1977; Article 7 of

for the year 2017 is discussed below.

In 2017 enjoyment of the rights to equality before the law and effective remedy was boosted by improved access to justice through action by the Government, Judiciary and CSOs. On the other hand, these rights were curtailed through corruption within the justice system, costs of legal representation, shortage of resources within the judiciary and lack of legal awareness.

2.3.1 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 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.”**¹⁰⁸

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

In 2017, access to justice continued to be affected by a number of challenges. These include shortage of advocates – hindering legal representation, delays in investigation by law enforcement officials, corruption, lack of awareness of laws and procedures, shortage and distance of court buildings, limited access to legal aid and cost of legal advice and representation – which is one of the major obstacles in accessing justice, according to the United Nations.

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

108 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 December 2017.

According to the most recent statistics, Tanzania has about 6400 Advocates, after new advocates were sworn in by the Chief Justice in June and December 2017. Projections made by the National Bureau of Statistics (NBS) for the year 2017, based on the population census of 2012, indicate that Tanzania population is currently about 50 million people.¹⁰⁹ Therefore, 6,400 advocates means **one advocate for every 7,800 people** in Tanzania.

Reading his ministry's budget speech for the financial year 2017/2018 in Parliament in June 2017, the Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba Kabudi, acknowledged that shortage of court buildings and resources – including human resources, are among the challenges that continue to face the judiciary.¹¹⁰ This echoes the statement made by the Chief Justice of Tanzania, Prof. Ibrahim Juma, during his swearing in ceremony at the state house in September 2017.¹¹¹ Hon. Chief Justice noted that while **Tanzania has more than 3000 wards, only 976 of them have primary courts.** This presents a serious challenge for community members, particularly in rural areas, to access justice, as each ward is supposed to have a primary court.

Despite these challenges, the situation of access to justice in Tanzania continued to slightly improve, owing to several steps taken by the Government, Judiciary and CSOs. These steps include constructing new court buildings, providing legal aid, increasing the number of advocates, speeding up case proceedings and enactment of the legal aid law.

Construction of new court buildings and repairing old ones: In 2016, the Government and Judiciary pledged to construct and repair court buildings, including constructing 9 high courts to add to the 14 that were available. During his budget speech in June 2017, the Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba Kabudi, mentioned that until March 2017 the Judiciary had built a resident magistrate court and a district court (Kibaha) in Pwani Region and that construction of district courts in Bagamoyo, Mkuranga, Kigamboni, Kinyerezi as well as a primary court in Kawe - Dar es Salaam, was ongoing.¹¹² He added that other areas where construction

109 See Sub-Divisional Population Projection for Year 2016 and 2017 Based on 2012 Population and Housing Census at http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf, accessed 10th December 2017.

110 Speech by the Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba John Aidan Mwaluko Kabudi (MP), on budget estimates of the ministry for the financial year 2017/2018 delivered in Parliament in June 2017.

111 See Judiciary of Tanzania, HAKIBulletin, Issue No. 1, July – September 2017, available at <http://www.judiciary.go.tz/judiciary-of-tanzania-newsletter-haki-bulletin-july-september2017/>, accessed 30th December 2017.

112 Speech by the Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba John Aidan Mwaluko Kabudi (MP), on budget estimates of the ministry for the financial year 2017/2018 delivered in Parliament in June 2017.

of court buildings were ongoing (mainly primary courts) were Mkalama, Ngorongoro, Korogwe, Kondoa, Karatu, Mvomero and Kilwa. High Courts of Dar es Salaam and Tanga were also renovated.

Regions with High Courts

Dar e Salaam, Mwanza, Dodoma, Arusha, Kilimanjaro, Kagera, Tanga, Iringa, Ruvuma, Tabora, Mbeya, Rukwa, Mtwara and Shinyanga.

(As of September 2017)

According to the Judiciary of Tanzania, under the five-year judiciary infrastructure development plan (2015/2016 – 2019/2020), one building for Court of Appeal, 30 high courts, 24 resident magistrate courts, 109 district courts and 150 primary courts will be built by 2020.¹¹³

Provision of Legal aid: Given the fact that majority of Tanzanians are poor and cannot afford expensive legal fees, legal aid plays a huge role in enhancing access to justice in Tanzania. Legal aid is provided by various stakeholders, including NGOs, FBOs, CBOs, institutions like the Tanganyika Law Society (TLS) and paralegal centres. Legal aid services provided include legal education, legal advice, legal assistance and legal representation.

Table 6: LHRC Legal Aid Cases 2017

Types of Cases	Old Clients			New Clients			Grand Total
	Male	Female	Total	Male	Female	Total	
Employment	2090	292	2382	586	116	702	3084
Matrimonial	193	589	782	51	104	155	937
Land	2227	1006	3233	314	165	479	3712
Contract	106	88	194	35	10	45	239
Children (adoption, rape, support)	55	137	192	23	72	95	287
Tort	183	60	243	40	10	50	293
Probate	281	296	577	64	75	139	716
Insurance	191	103	294	26	10	36	330
Other	106	39	145	48	16	64	209
TOTAL	5, 432	2, 610	8, 042	7, 806	3, 766	1, 765	12, 861

Source: LHRC legal aid clinics

113 Judiciary of Tanzania, HAKIBulletin, Issue No. 1, July – September 2017, available at <http://www.judiciary.go.tz/judiciary-of-tanzania-newsletter-haki-bulletin-july-september2017/>, accessed 30th December 2017.

A 2017 legal aid report by the Tanzania Network of Legal Aid Providers (TANLAP) indicates that legal aid is mainly provided on cases of land (94.1%), matrimonial and GBV (88.2%), probate (86.3%) and child maintenance/support (74.5%).¹¹⁴ Most of these organizations that provide legal aid, including LHRC, have paralegals who also provide legal aid in their respective areas.

Legal aid providers continued providing legal aid in Tanzania in 2017. On its part, LHRC continued to provide legal aid to its clients at its Kinondoni Legal Aid Clinic and the Arusha sub-office. Below is the number of clients attended by LHRC in 2017.

In late January and early February each year, legal aid providers provide legal aid to members of the public during the law week and day commemorations. Over the course of the week the public benefits from legal aid provided by various legal aid providers. In this year's commemoration, LHRC joined other stakeholders such as the Tanganyika Law Society (TLS) and Tanzania Women Lawyers Association (TAWLA) to provide legal aid.

The main challenge faced by legal aid providers in Tanzania is funding to enable them to reach remote areas. The Tanzania population keeps growing and the demand for legal aid remains high.

Enrolled advocates: In June 2017, a total of 248 lawyers passed their examinations at the Law of School of Tanzania to help ease the burden of shortage of advocates. More advocates were enrolled in December 2018.

Speeding up case proceedings: Delays and backlog of cases in administration of justice have been among the factors affecting access to justice in Tanzania. To address this problem, the Judiciary and the Ministry of Constitutional and Legal Affairs have taken several steps to speed up dispensation of justice, particularly by introducing the "zero case backlog" policy, which indicates the number of cases to be determined by a judge and a magistrate each year. According to the minister responsible for justice, the steps taken have helped to reduce backlog of cases in the Court of Appeal (46% to 21%), High Courts (33% to 9%), Resident Magistrate Courts (9% to 3%), District Courts (9% to 3%) and Primary Courts (3% to 0%) to in December 2016, compared to the year 2013.¹¹⁵ At the time of writing LHRC could not obtain the statistics of 2017,

114 TANLAP (2017), Tanzania Legal Aid Report 2017, available at http://www.tanlap.or.tz/sites/default/files/documents/ILAG_2017_National_Report_-_Tanzania_-_Ms_Christina_Kamili.pdf, accessed 28th December 2017.

115 Speech by the Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba John Aidan Mwaluko Kabudi (MP), on budget estimates of the ministry for the financial year 2017/2018 delivered in Parliament in June 2017.

however, the statistics of 2016 bode well for the year 2017 as the Judiciary continues to improve dispensation of justice. Introduction of a division dealing with corruption within the High Court set up is also a positive step taken by the Government and Judiciary in 2017 towards improving access to justice.

Enactment of legal aid legislation: In 2017 the Parliament enacted the **Legal Aid Act**, which will regulate all legal aid activities in Tanzania. Enactment of this law is great news for legal aid providers and beneficiaries as it will enable to enhance legal aid provision and in turn improve access to justice for majority of Tanzanians. The law recognizes paralegals scattered in different parts of Tanzania, regulating and coordinating their operations. It also provides for qualifications of legal aid providers, including paralegals, which will help to improve the quality of legal aid provided. The Legal Aid Act 2017 will significantly help to improve access to justice for the financially-challenged groups.

2.3.2 Right to Legal Representation

Right to legal representation is clearly stipulated under Article 13 of the Constitution of the United Republic of Tanzania 1977, which is key for 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.

In 2017, no reports of denial of legal representation reached LHRC. Defendants in criminal cases are afforded attorneys by the Government. The challenge may be the effectiveness or quality of representation, compared to that available for those who can afford an attorney. Moreover, as is the case for access to justice, right to legal representation continues to be affected by shortage of advocates, particularly in rural and semi-urban areas.

2.3.3 Rights to Fair Trial and Effective Remedy

The Constitution of Tanzania provides that **“when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.”**¹¹⁶ It recognizes the right to ‘fair hearing’ and right to ‘legal remedy.’ These are key rights in the administration of justice; and as indicated in the ICCPR, which binds Tanzania, the remedy provided

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

must be **effective** and determined by **competent judicial, administrative or legislative authorities** or any other authority mandated by law¹¹⁷

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.¹¹⁸

Challenges of accessing justice, such as shortage of judicial resources, delays in proceedings and corruption continued to be among factors affecting right to fair trial in Tanzania in 2017. Fair trial is less likely to be achieved by the poor, compared to those who can afford attorneys.

2.3.4 Conclusion and Recommendations

Steps continue to be made by the Government, Judiciary and CSOs to safeguard the right to equality before the law, including by improving access to justice through judicial reforms, regulation of legal aid and construction of court buildings. However, challenges of accessing justice, including judicial corruption, continue in different parts of the country, particularly the poor. To further safeguard the rights to equality before the law and effective remedy, LHRC recommends the following:

- The Government, through the Ministry of Constitutional and Legal Affairs, to ensure the budget allocation for the judiciary is increased to provide for adequate resources;
- CSOs, the Commission for Human Rights and Good Governance (CHRAGG) and the Ministry of Constitutional and Legal Affairs to provide regular trainings on human rights for judges, magistrates and attorneys;
- The anti-corruption body, PCCB, to regularly monitor and address judicial corruption in order to safeguard the right to access to justice;
- 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;

2.4 Right to Liberty and Personal Security

Article 9 of the ICCPR states that **“Everyone has the right to liberty and security of person”** and **“No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such ground and in accordance**

117 See Article 2(3) of ICCPR.

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

with such procedure as are established by law.” This right is echoed in various other human rights conventions and in the Constitution of the United Republic of Tanzania 1977.¹¹⁹ Other rights related to right to liberty include right to be informed about reasons for arrest and charges against a person at time of arrest and right to trial within a reasonable time.¹²⁰ The Criminal Procedure Act requires the police to charge a person they have arrested and send them to court within 24 hours¹²¹ and right to bail.¹²² With regard to the right to personal security, the Government has an obligation to take reasonable and appropriate measures to protect detained and non-detained persons.

2.4.1 Freedom from Arbitrary Arrest and Detention

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.¹²³ Moreover, when an accused person under police custody is not produced before a court of law within 24 hours after arrest,¹²⁴ it amounts to arbitrary detention; and such complaints continued to be levelled against the police in 2017. LHRC documented more than 15 reported arbitrary arrests and detention incidents in the year 2017.

Arbitrary arrest of journalists in Arusha

Several incidents of arbitrary arrest and detention were reported in 2017, including arbitrary arrest and detention of journalists and human rights defenders. In Arusha, it was reported that 10 journalists were arrested by police while seeking news stories at a primary school, St. Lucky Vincent, whose pupils were victims of a fatal road accident. They were temporarily arrested and later released.

119 See Article 15 of the Constitution of Tanzania 1977; Article 6 of ACHPR.

120 See Article 9 of ICCPR.

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

122 Ibid, section 48.

123 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.

124 Ibid.

Arbitrary arrest of human rights defenders in Dar es Salaam

In June 2017, human rights defenders and invited guests were arbitrarily arrested by police where they had gone to attend a book launch at Blue Pearl Hotel in Dar es Salaam. Among those arrested was the Executive Director of the Tanzania Human Rights Defenders Coalition (THRDC), Mr. Onesmo Olengurumwa, who was arrested and detained, but was later released on bail.

Arbitrary arrests and detention ordered by RCs and DCs

Regional Commissioners (RCs) and District Commissioners (DCs) were also mixed up in violation of the right to freedom from arbitrary arrest and detention in 2017. Claiming to exercise their powers under the Regional Administration Act, the RCs and DCs continued to order arrests which were neither reasonable nor necessary. The Regional Administration Act only allows them to order arrest of a person if such person has committed an offence for which they may be arrested and tried in court and where a person's act may result to breach of peace or disturb public tranquility.¹²⁵ And the detention of a person should not last more than 48 hours, after which they must be produced before a court of law.¹²⁶ However, LHRC has observed that these powers are usually abused by RCs and DCs. For instance, in February 2017 it was reported that the DC of Mwanza in Kilimanjaro ordered arrest of three officials of Mwanza District Council, to be detained for not more than 48 hours on allegations of not doing their jobs properly.

LHRC and other human rights stakeholders are not alone in expressing concern over abuse of arrest and detention powers by RCs and DCs. Senior government officials have also expressed concern. For instance, in March 2017, the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Ummu Mwalimu, warned against RCs and DCs ordering arrest of health workers without good cause and following legal procedures. In June 2017, the Minister of State in the President's Office, Regional Administration and Local Government, Hon. George Simbachawene, also warned against abuse of detention powers by RCs and DCs.¹²⁷

Arbitrary arrest of President of the Tanganyika Law Society (TLS)

The year 2017 also witnessed arbitrary arrest of the President of Tanganyika Law Society (TLS), Tundu Lissu, at the Julius Nyerere International Airport (JNIA) in

125 Section 7 of the Regional Administration Act 1997.

126 Ibid.

127 LHRC (2017), Tanzania Bi-Annual Human Rights Report 2017.

Dar e Salaam in July 2017, when he was heading to Rwanda for the East African Law Society (EALS) summit.¹²⁸ The arrest, which was not accompanied by a clear explanation of charges during the arrest, was condemned by various stakeholders, including the Tanganyika Law Society (TLS) – which questioned the decision to arrest people when they air their personal views.¹²⁹ The arrest was also condemned by the East African Law Society (EALS), the Southern African Development Community Law Association (SADC-LA) and the Pan African Lawyers Union (PALU), noting that due process of law was not followed in Lissu's arrest.¹³⁰

Arbitrary arrests and detention of members and leaders of opposition political parties

In 2017, a good number of arrests of members and leaders of opposition political parties were reported in various platforms, including print media.¹³¹ Most of these were from the main opposition party, CHADEMA, who on various occasions complained about the arrests as arbitrary and claimed that they were being systematically harassed.¹³² Most of the arrests were made on allegations or charges of unlawful assembly and sedition. Rights to due process were frequently disregarded during arrests and detention. CHADEMA, the main opposition party, claimed in the year 2017 that more than 400 of its members had been arrested and/or questioned since 2015, most of them arbitrarily.¹³³

2.4.2 Right to Personal Security

Apart from actions and incidents threatening right to liberty, there were also incidents threatening security of persons. According to the Human Rights Committee, Article 9(1) of the International Covenant on Civil and Political Rights protects the right of

128 *The Citizen* Newspaper "Lissu arrested at Julius Nyerere International Airport en route to Kigali" 21 July 2017 available at <http://www.thecitizen.co.tz/News/Lissu-at-Julius-Nyerere-International/1840340-4024876-v47gsc/index.html>, accessed 10th October 2017.

129 *The Citizen* Newspaper "TLS raps Police over arrest of its president" 21 July 2017 available <http://www.thecitizen.co.tz/News/TLS-raps-Police-over-arrest-of-its-President/1840340-4026598-l58td0/index.html>, accessed 12th October 2017.

130 Louis Kolumbia "Three regional law associations condemn Lissu arrest" *The Citizen* Newspaper, 23 July 2017, available at <http://www.thecitizen.co.tz/News/Three-regional-law-associations-condemn-Lissu-arrest/1840340-4028186-s64nqyz/index.html>, accessed 12th October 2017.

131 "Chadema condemns arbitrary arrests of its leaders" *The Citizen* Newspaper, 24 July 2017, available at <http://www.thecitizen.co.tz/News/Chadema-condemns-arbitrary-arrests-of-its-leaders-/1840340-4029646-pox04n/index.html>, accessed 12th October 2017.

132 Ibid.

133 "Chadema asks EAC leaders to intervene over member arrests and harassment" *The East African Newspaper*, 26 August 2017, available at <http://www.theeastafrican.co.ke/news/Tanzania-opposition-EAC-intervene-arrest-harassment/2558-4072142-12i4whz/index.html>, accessed 16th October 2017.

security of person also outside the context of formal deprivation of liberty, meaning States cannot ignore known threats to the personal security of persons under their jurisdiction. In 2017, LHRC was able to document the following incidents that threatened the right to personal security. LHRC recorded at least 38 incidents of violations of the right to personal security in the year 2017, as indicated below.

Abductions and disappearances of people

For instance, there has been a wave of abductions and disappearance of people, threatening personal security. In April 2017 a local singer/rapper known as Roma Mkatoliki and his two colleagues were reportedly abducted and tortured by unknown people before being released. This incident captured the public's interest as it was compared to the disappearance of Ben Saanane in 2016, who remains missing to date.

Bodies of people appearing to have been killed found along the Indian Ocean

The year 2017 also saw a number of bodies of people found along the Indian Ocean in Dar es Salaam. Most of the bodies found were in sacks, with the victims appearing to have been tortured and then killed. 17 bodies were found ashore Coco Beach in Dar es Salaam in September 2017 alone, wrapped in polythene bags and some with rocks tied to them or wrists tied with ropes.¹³⁴ The Minister of Home Affairs, Hon. Mwigulu Nchemba, mentioned that it could be illegal migrants, but the official police investigation report is yet to be released.

Killing of a Wildlife Activist

In August 2017, a wildlife conservationist from South Africa by the name of Wayne Lotter was killed by unknown gunman in Masaki Dar es Salaam. The anti-poaching crusader was the founder of PAMS Foundation, which advocates for combating of poaching in Tanzania.

134 "PRESIDENT MAGUFULI CITES SUCCESS, WHILE ACTIVISTS CRY FOUL" Tanzania Affairs, 1 January 2018, Issue 119, available at <https://www.tzaffairs.org>, accessed 29th January 2018.



Picture 12: Wayne Lotter, a wildlife activist who was killed in Masaki – Dar es Salaam in August 2017

Attack of Tundu Lissu in Dodoma

In September 2017, the outspoken opposition Member of Parliament, representing Singida East, Mr. Tundu Lissu (advocate), was brutally attacked by unknown gunmen outside his house in Dodoma Region.¹³⁵ Mr. Lissu, who is also the President of the Tanganyika Law Society (TLS), was shot more than 30 times, with 16 bullets hitting and leaving him with multiple gunshots.¹³⁶ The attack on Mr. Lissu was met with great condemnation by local and international actors, including human rights activists, CSOs, embassies, political parties, law societies, lawyers and the European Union. Nobody is yet to be arrested by the police in connection with the attack on the TLS President in Dodoma.

135 “Lissu attack overshadows TZ politics” The Citizen Newspaper, 24 September 2017 available at <http://www.thecitizen.co.tz/News/Lissu-attack-overshadows-TZ-politics/1840340-4109458-ooejlh/index.html> accessed 28th October 2017.

136 “Bullet lodged in my body ‘too dangerous to remove’ – Lissu” *The Guardian* Newspaper, 6 January 2018, available at <https://www.ippmedia.com/en/news/bullet-lodged-my-body-too-dangerous-remove-lissu>, accessed 10 January 2018.



Picture 13: Hon. Tundu Lissu (MP) being rushed to Agha Khan Hospital in Nairobi from Dodoma Regional Hospital

Killings of civilians, local leaders and police officers in Kibiti and other areas in Pwani Region

In the period of January to June 2017, a big number of killings occurred in Kibiti, Rufiji and Mkuranga Districts in Pwani Region, a continuation of events of 2016. Most of those killed are police officers and local leaders, particularly of the ruling party (CCM). These killings have threatened peace and security in Tanzania, with fear that they could be acts of terrorism. The situation in these areas, however, is still being investigated and monitored by the law enforcement bodies to determine the real causes of the killings and restore peace and order.

Among the victims of the killings were 8 police officers who were killed in Kibiti in April 2017. Before the killing of these officers, it was reported that unknown assailants killed the head of criminal investigation in Kibiti, Peter Kubezya, in February 2017. Two more police officers were killed in June 2017, bringing the total of law enforcement officers killed from January to June to 11 as reported in the media. However, police data indicates a total of 12 police officers killed.

At least four local leaders were reported killed in the period of January to June 2017, including Emmanuel Ndindu (village leader); Alife Mtulia (CCM Secretary – Bungu Ward in Kibiti); and Oswald Mrope (member of village government).



Picture 14: Some of the local leaders and police officers who lost their lives following the killings in Pwani Region
(Picture by *Mwananchi* Newspaper)



Picture 15: Senior police officials paying their last respects to the body of the late OC-CID, Peter Kubezya
(Picture by Global Publishers)

Since the killings started in 2015, at least 40 people, including 12 police officers, have been killed. The killings in Pwani Region have left the community members in the region living in fear, worried about the situation of security. The police launched a special operation to hunt the killers in the region. LHRC strongly condemns these killings and calls upon the Government, through the Ministry of Home Affairs, to address the situation of insecurity in Pwani and other areas of Tanzania in order to safeguard the right to personal security and right to life.

2.4.3 Right to Bail

As indicated above, the right to bail is guaranteed under the Constitution of Tanzania 1977 and stipulated in the Criminal Procedures Act, CAP 20. Bail can be granted by police following an arrest, or by a court of law.

In July 2015, an advocate by the name of Jeremiah Mtobesya filed a petition before the High Court of Tanzania, challenging the constitutionality of section 148(4) of the Criminal Procedure Act, CAP 20.¹³⁷ The section allows the Director of Public Prosecutions (DPP) to forbid police or court bail for an accused person by filing a certificate. The petitioner argued that the discretionary powers given to DPP violates the constitutional right to bail, as well as the right to be heard to challenge DPP's decision

137 LHRC (2016), Tanzania Human Rights Report 2015.

under Article 13(6)(a) of the Constitution of the United Republic of Tanzania 1977.¹³⁸

In its judgement delivered in 2017, the High Court granted petitioner's prayer by declaring section 148(4) of the Criminal Procedure Act unconstitutional. The Court noted that the provision indeed violates Article 13 (6) (a) of the Constitution of the United Republic of Tanzania 1977, adding that the accused person has a right to be heard to challenge the decision of the DPP.¹³⁹ Part of the High Court's judgement reads **"The impugned section of 148(4) of the CPA is a potential ground for breeding arbitrary detentions as it denies the accused person the right to be heard on matters of bail and prematurely treats the accused person as a convict. This kind of restriction puts the liberty of the citizen at stake and infringes his right to liberty. It is in conflict with the presumption of innocence which is guaranteed under Article 13(6) of the Constitution."**¹⁴⁰

Aggrieved by the decision of the High Court, the Government decided to appeal against the judgement at the Court of Appeal. By December 2017, the judgement of the Court of Appeal had not yet been delivered.

2.4.4 Conclusion and Recommendations

Right to liberty continued to be jeopardized through action by government officials and the police. Incidents of killings in Pwani Region have raised fresh concerns over the right to personal security. While arbitrary arrests and detentions were among the major challenges of realization of the right to liberty in 2017, the safeguarding of the right to bail by the Court of Appeal is amuch welcome news. LHRC strongly condemns the killings, abductions and torture that occurred in 2017 and calls upon the Government to ensure security is restored and the perpetrators are caught and brought to justice.

To safeguard the rights to liberty and personal security, LHRC recommends the following:

- The Police Force to refrain from conducting arbitrary arrests and detentions; and those who do so and their superior officers to be held accountable;
- The Government to increase funding for the Police Force to enable them address the challenges they face in ensuring their own security and security of the people as well as improving their remuneration and working conditions;

138 Ibid.

139 Ibid.

140 See judgement by the Court of Appeal in Attorney General vs. Jeremia Mtobesya, Court of Appeal, Misc. Civil Cause No. 29 of 2015.

- Regional Commissioners and District Commissioners to refrain from abusing their powers of arrest and detention;
- The Police Force and courts of law to grant bail for all bailable offences and to do so timely;
- 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;
- 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; and
- 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.

2.5 Freedom from Torture and Inhuman or Degrading Treatment

Freedom from torture is a basic human right protected under the regional and international human rights treaties.¹⁴¹ 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.¹⁴² 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.¹⁴³ However, it also provides for a wider application.

Incidents of torture in Tanzania are not well documented. However, torture exists, especially by the security authorities, including the police. Complaints against law enforcement and security officials on inflicting torture are common, as received by human rights institutions which attend clients like LHRC and CHRAGG.

In 2017, LHRC documented at least 22 incidents of torture, majority of which (15) were death penalty-which constitutes torture. One such incident was that of a local music artist called Ibrahim Mussa (popularly known as Roma Mkatoliki), who was abducted by 'unknown people' together with two colleagues in April 2017. A few days

141 Article 5 of ACHPR and Article 7 of ICCPR.

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

143 Article 1 of CAT.

after the abductions, they were found by police and claimed they had been tortured. There were also incidents of torture of children, which are highlighted in Chapter Seven of this report.

One of the challenges in addressing the problem of torture in Tanzania is the fact that Tanzania is yet to ratify the United Nations Convention Against Torture, which would pave way to increased protection of people in Tanzania from torture. In February 2017, human rights stakeholders led by the Tanzania Human Rights Defenders Coalition (THRDC) established the Anti-Torture Network in Tanzania, which will document and keep records of incidents of torture in Tanzania. Moreover, the network will advocate for Tanzania to sign and ratify the United Nations Convention Against Torture and raise public awareness about torture.

2.5.1 Conclusion and Recommendations

Faiure to ratify the anti-torture convention so far presents a challenge in the fight against torture in Tanzania. To improve the situation of the right to freedom from torture, LHRC reiterates its recommendations in the 2016 Tanzania Human Rights Report, majority of which have not been worked upon and thus remain relevant. These recommendations are:

- The Governemnt to ratify and domesticate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- More research needs to be done on the extent to which torture is prevalent in Tanzania and ways of addressing it;
- Perpertrators of torture to be held accountable, investigated, and prosecuted by the law enforcement bodies and courts of law; and
- CHRAGG and CSOs to continue raising awareness about freedom from torture and advocating for the ratification and domestication of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Chapter 3:

Political Rights

3.0 Introduction

Political rights are the rights that protect individual freedoms from infringement by governments, social organisations and private individuals. Political rights ensures one's ability to participate in political life of a given society and state, without discrimination or repression. Direct participation in political life includes the right to vote and to be voted for; the right to participate in democratic processes; freedom of association; freedom of assembly; and the right to demand accountability from the State. Indirectly, non-state actors participate in political life through forming and joining civil societies and trade unions.

Political rights are generally protected under the International Covenant on Civil and Political Rights of 1966. Domestically, political rights are constitutionally guaranteed under the Constitution of the United Republic of Tanzania of 1977. This Chapter examines the situation of freedom of assembly, freedom of association and right to take part in governance in the year 2017 as key political rights in Tanzania

3.1 Freedom of Assembly

Freedom of assembly as a human right is guaranteed under various international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and Peoples' Rights (ACHPR).¹⁴⁴ Domestically, the Constitution of the United Republic of Tanzania also guarantees the right the right of every person "to freely and peaceably assemble."¹⁴⁵

Everyone has the right to freedom of peaceful assembly and association.

Article 20(1) of UDHR

The only restrictions on freedom of assembly 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

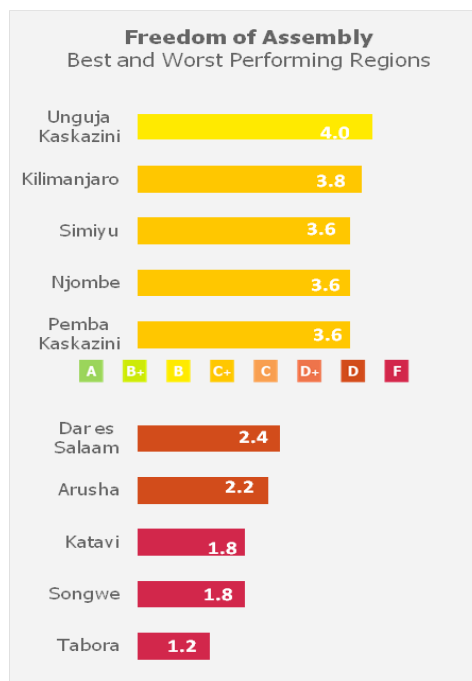
144 Article 20(1) of UDHR; Article 22 of ICCPR; and Article 11 of ACHPR.

145 Article 20(1) of the Constitution of Tanzania.

and freedoms of others, according to ICCPR.¹⁴⁶

ACHPR echoes the ICCPR in this regard, providing that exercise of right to assemble is subject only to necessary restrictions provided for by law in the interest of national security, the safety, health, ethics and rights and freedoms of others.¹⁴⁷ Restrictions must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based.

As it was the case in 2016,¹⁴⁸ freedom of assembly continued to be under severe pressure in 2017, particularly through ban of political assemblies for political parties, unless it is within the constituency of the Member of Parliament or political leader. This move was widely criticized by human rights stakeholders and opposition leaders. Generally, the situation of freedom of assembly worsened in 2017 as the police tightened the noose on public assemblies / rallies by political parties and authorities became increasingly suspicious of even CSO, fearing they might be holding 'politically-motivated' meetings. The Tanzania Civil and Political Rights Perceptions Index 2017,¹⁴⁹ produced by LHRC and ZLSC, indicates that freedom of assembly was perceived poor in 2017, maintaining the grade of D+ that was scored in 2016.



Reasons cited for the low grades in some regions include discrimination in providing space for assemblies and interference with the right to assemble by police and

146 Article 22(2) of ICCPR.

147 Article 11 of ACHPR.

148 In the aftermath of the 2015 General Elections, the Government indicated that there was a need to suspend political rallies until the next general elections (2020) to pave way for development activities.

149 The Tanzania Civil and Political Rights Perceptions Index establish national and regional grades for six civil and political rights issues. These grades are based on the perceptions of a network of local experts across the country. LHRC and ZLSC have trained and supported 31 human rights monitors and paralegals across the regions to participate in the Index process and provide informed assessments on the civil and political rights situation in their regions. Their perceptions are shaped by the situation around them, in addition to their deep knowledge of human rights standards. The rights-issues are freedom of expression, freedom of assembly, right to vote, right to life – witchcraft-related killings, right to life – extrajudicial killings, and right to life – mob violence.

government authorities.¹⁵⁰

Politicians to hold public rallies only within their constituencies

As indicated above, Government authorities and the police force continued to limit the exercise of the right to freedom of assembly. Meetings by political parties continued to be denied for various reasons under the Police Force and Auxiliary Services Act, which has been criticized for leaving loopholes for arbitrary denial of assembly. On various occasions, government and police authorities reiterated that only politicians who are Members of Parliament (MPs) and leaders in their respective constituencies were allowed to conduct public political meetings. On a number of occasions, opposition political parties such as CHADEMA and ACT-Wazalendo, voiced their concern and protested against what they called 'arbitrary restriction of right to assemble through different platforms, including press conferences and social media.'¹⁵¹ These sentiments were shared by various other commentators, including academicians, human rights defenders and religious leaders.

A good number of politicians and members of opposition parties, especially the main opposition party (CHADEMA), were arrested for allegedly organizing unlawful assemblies.¹⁵² For instance, in July 2017 several CHADEMA leaders were reportedly arrested and put under police custody for 48 hours for what the Ruvuma Regional Police Commander stated to be 'turning an internal party meeting, for which the police had given permit, into a demonstration.'¹⁵³ Earlier in the month 51 members of the party were reportedly arrested on similar charges in Chato District.¹⁵⁴ Several other CHADEMA leaders were reportedly arrested for unlawful assembly from July to September 2017, including Hon. Esther Bulaya (Bunda MP) and Hon. Godbless Lema (Arusha Urban MP).¹⁵⁵

150 LHRC & ZLSC (2018), Tanzania Civil and Political Rights Perceptions Index 2017.

151 *See for example* Johanes Respicius "ACT-Wazalendo yatishia kujitoa uchaguzi wa marudio" Mtanzania Newspaper, 11 December 2017, available at <https://www.pressreader.com/tanzania/mtanzania/20171211/281582355971958>, accessed 12th January 2018; Kalunde Jamal "Kuminya demokrasia ndio chanzo wanasiasa kupumulia mitandao ya kijamii" Mwananchi Newspaper, 1 October 2017, available at <http://www.mwananchi.co.tz/Makala/Kuminya-demokrasia-ndio-chanzo-wanasiasa-/1597592-4119832-16clp4/index.html>, accessed 12th January 2018.

152 "Six top Chadema leaders arrested" The Citizen Newspaper, 21 July 2017, available at <http://www.thecitizen.co.tz/News/Six-top-Chadema-leaders-arrested/1840406-4017014-164q3cz/index.html>, accessed 12th January 2018.

153 Ibid.

154 "51 Chadema members charged of unlawful assembly" The Citizen Newspaper, 10 July 2017, available at <http://www.thecitizen.co.tz/News/51-Chadema-members-charged-of-unlawful-assembly/1840406-4009120-g1y7y2z/index.html>, accessed 12th January 2018.

155 LHRC's Human Rights Monitoring Unit.

LHRC is concerned with this trend of arbitrary limitation of freedom of assembly. No provision of law, whether in the Constitution or the Political Parties Act, provides that political assemblies can only be held with a constituency of an MP or political leader. Therefore, government action in this regard violates the constitutionally-guaranteed right to freedom of assembly, the Political Parties Act and various regional and international human rights and democracy instruments that Tanzania has ratified, including the African Charter on Human and Peoples Rights. As indicated above, there is also a perception of police discrimination in allowing assemblies, raising fears of possible abuse of discretionary police powers in relation to assemblies under the Police Force and Auxiliary Services Act.

Arbitrary interference with right of CSOs to assemble

Civil Society Organisations were also restricted in conducting lawful assemblies. For instance, in June 2017, the Police interfered with freedom of assembly when they prevented launching of a book by a human rights activist about human rights activists at higher learning institutions. The book launch was scheduled to take place at a hotel in Ubungu area, but police officers surrounded the area and arrested attendees. Among those arrested was the Executive Director of the Tanzania Human Rights Defenders Coalition (THRDC), Mr. Onesmo Olenguruwa. The THRDC Director was arrested and charged with unlawful assembly (criminal trespass). He was later released on bail.

3.1.1 Conclusion and Recommendations

Realization of freedom of assembly continues to be jeopardized, especially for political parties, as the authorities continue to insist on limiting political assemblies to within constituencies. However, as indicated by LHRC above, there is no legal basis for this; and therefore this action is arbitrary and contravenes the Constitution of the United Republic of Tanzania of 1977 as well as the Political Parties Act of 1992. In order for the situation of this right to improve, LHRC recommends that:

- 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;
- Government and police authorities to refrain from arbitrarily interfering with assemblies;
- 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;

- The Government and police to allow CSOs to operate freely, including exercising their right to peacefully assemble; and
- In a bid to strengthen democratic institutions in Tanzania, the Government should sign and ratify the African Charter on Democracy, Elections and Governance.

3.2 Freedom of Association

3.2.1 Introduction

Freedom of association is closely related to freedom of assembly, which is why the two rights are provided for together under Article 20(1) of the Constitution of the United Republic of Tanzania of 1977, stating that “every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purposes, express views publicly and to form and join with associations or organizations formed for purpose of preserving or furthering his beliefs or interests or any other interests.” The International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR), among other human rights instruments, also guarantee the right to freedom of association.¹⁵⁶

Like for the right to freedom of assembly, restrictions applicable for the right of freedom of association 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 rights and freedoms of others.¹⁵⁷ In 2017, freedom of association, for political parties and civil society, was arbitrarily restricted in various ways, as indicated below.

3.2.2 Political Parties

Restrictions on freedom of assembly threatening freedom of association

As indicated above, freedoms of assembly and association are closely related. As such, restrictions on freedom of assembly also threaten the right to freedom of association. As highlighted above, opposition political parties faced harassment and arbitrary

¹⁵⁶ Article 22(1) of ICCPR and Article 10(1) of ACHPR.

¹⁵⁷ Article 22(2) of ICCPR.

limitation in conducting public and private meetings, which also amounts to violation of their right to freedom of association. The case of *the World Organization against Torture et al v. Zaire* before the African Commission on Human and Peoples' Rights is illustrative in this matter.¹⁵⁸ The Commission concluded that by not permitting opposition parties to meet in public or private and harassing them, the Government of Zaire had clearly violated Article 10(1) of the ACHPR, which guarantees the right to freedom of association.¹⁵⁹ The Commission clearly stated that harassment of political parties amounts to violation of freedom of association.¹⁶⁰

Fears that new law on political parties will severely restrict freedoms of association and assembly for political parties

Reports emerged in August 2017 that a proposed new Political Parties Act was shared with stakeholders, including political parties and civil society for comments.¹⁶¹ According to the reports, the bill contained provisions that will severely curtail rights and freedoms of political parties, including holding public rallies and recruiting new members.¹⁶² However, in October 2017 it was reported that the Registrar of Political Parties, Rtd Justice Francis Mutungi, denied sharing any document (bill) with stakeholders, stating that he only wrote to them to seek their comments on what should be in the new law regulating political activities.¹⁶³ In November 2017, LHRC received a letter from the Office of the Registrar of Political Parties seeking comments on the enactment of a new law on political parties. Accompanied by the letter was the document containing issues relevant to political parties law and views collected from various stakeholders from 2013 to November 2017. Therefore, LHRC did not obtain an official bill from the Registrar of Political Parties.

158 Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, Professional Training Series No. 9, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (United Nations, New York and Geneva, 2003), pp. 521 – 530.

159 Ibid.

160 Ibid.

161 “Registrar invite views on amendment of Political Parties Act” The Citizen Newspaper, 30 August 2017, available at <http://www.thecitizen.co.tz/News/Registrar-invite-views-on-amendment-of-Political-Parties-Act-/1840340-4076446-3349h4z/index.html>, accessed 12th January 2018; Kelvin Matandiko “Sheria mpya ya vyama vya siasa yaiva” *Mwananchi* Newspaper, 30 August 2017, available at <http://www.mwananchi.co.tz/habari/Sheria-mpya-ya-vyama-vya-siasa-yaiva/1597578-4076482-262sjn/index.html>, accessed 12th January 2018.

162 Deogratius Kamagi “Opposition up in arms over proposed law” *Mwananchi* Newspaper, 13 October 2017, available at <http://www.thecitizen.co.tz/News/Opposition-up-in-arms-over-proposed-law/1840340-4137528-1kab3m/index.html>, 12th January 2018.

163 Ibrahim Yamola “Msajili wa vyama vya siasa aibua utata sheria mpya ya vyama” *Mwananchi* Newspaper, 16 October 2018

3.2.3 Civil Society

Civil society freedom of association in 2017 was jeopardized through interference with freedom of assembly and shrinking civic space, which has led to a difficult environment in which to operate. Human rights advocacy-based organizations are particularly seen as a threat rather than allies. Interference with CSO freedoms of assembly and association is usually because of 'fear' of politically-motivated meetings.

In February 2017, the former Minister for Constitutional and Legal Affairs, Hon. Harrison Mwakyembe, threatened to deregister the Tanganyika Law Society (TLS) for what he called 'elements of political activism' within the organization.¹⁶⁴ The statement by the former minister was met with anger and criticism by various stakeholders, within and outside Tanzania, including lawyers in Tanzania¹⁶⁵ and the East African Law Society (EALA). EALA issued a statement condemning the threat made by the minister, noting that it amounts to "a grievous affront to the well laid-out principles of independence of the legal profession" and interferes with independence of lawyers, which is a fundamental principle under international law.¹⁶⁶

3.2.4 Conclusion and Recommendations

Situation of the right to freedom of association continues to be a concern for political parties and civil society, especially through restrictions on freedom of assembly. In most cases restrictions imposed on this right are not in line with the Constitution and international human rights standards. To improve realization of this right, LHRC recommends the following:

- The Government, through the Ministry of Constitution and Legal Affairs and the Commission for Human Rights and Good Governance (CHRAGG), to ensure that government authorities do not arbitrarily interfere with the right to freedom of association;
- The Ministry of Home Affairs to ensure police officers do not arbitrarily interfere with political meetings and ensure those who do are held accountable;

164 "Minister under fire for TLS ban threat" *The Guardian* Newspaper, 23 February 2017, available <https://www.ippmedia.com/en/news/minister-under-fire-tls-ban-threat>, accessed 12th January 2018; "Lawyers lock horns over Mwakyembe TLS ouster" Daily Newspaper, 17 March 2017, available at <http://www.dailynews.co.tz/index.php/home-news/49234-lawyers-lock-horns-over-mwakyembe-tls-ouster>, accessed 12th January 2018.

165 Deogratius Kamagi "Lawyers fault Mwakyembe's threat to ban TLS" available at <http://www.thecitizen.co.tz/News/Lawyers-fault-Mwakyembe-s-threat-to-ban-TLS/1840340-3816756-yyoi77z/index.html>, 17 February 2017, accessed 12th January 2018.

166 *The Guardian* Newspaper, Ibid.

- CSOs and government authorities to work closely together and see each other as allies in promotion and protection of human rights in Tanzania; and
- The Government and police to allow CSOs and political parties to operate freely, including exercising their right to peacefully assemble.

3.3 Right to Take Part in Governance

3.3.1 Introduction

Right to take part in governance, also known as right to take part in public affairs or right to participate in the government, 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).¹⁶⁷ This right includes the right to for Citizens to vote and be voted for public office and the right to participate in political life. The Constitution of the United Republic of Tanzania of 1977 also recognizes the right of every citizen to participate in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people in accordance with the law.¹⁶⁸ Right to participate in in the government is also articulated under 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 the UN General Assembly in 1988¹⁶⁹

Under the CRPD, states are required to ensure PWDs have easy access to voting facilities and procedures, while CEDAW, apart from asserting women's right to take part in governance, emphasizes on elimination of discrimination against women in participating in political life.

167 Article 25 of ICCPR; Article 21(2) of UDHR; Article 5 of CERD; Articles 7 & 8 of CEDAW; and Article 29 of CRPD.

168 Article 21(1) of the Constitution of Tanzania; Article 25(a) of the ICCPR.

169 See Article 8(1) 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, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>, accessed 12th January 2018.

3.3.2 Right to Vote and be Voted for

Violence leading to human rights violations during council by-election in November 2017

In November 2017 Tanzania held council by-election in 43 wards across 19 regions in Tanzania Mainland. The by-election was held to fill in vacated posts of ward councillors due to several reasons, including death and resignation. LHRC closely followed the proceedings of the campaigns and elections and conducted an assessment to determine observation of human rights during the election.¹⁷⁰ LHRC observed that the election was free and fair in some wards, but marred with violence and irregularities in others. Irregularities and incidents of human rights violations were reported in several wards, including: excessive use of force by law enforcement officers; abductions of party leaders, representatives and voters; and beatings and torture.¹⁷¹

The main parties implicated in human rights violations during the election period are police, members of political parties (especially CCM and CHADEMA), and 'unknown people.'¹⁷² For instance, two voters were reportedly attacked and their items taken by unknown people while going to vote in Kilolo District, while in Iringa the Mayor was reportedly arrested by police and his deputy had his car attacked. In Dar es Salaam, a CCM member was reportedly attacked and injured by members of CHADEMA in Kawe Constituency, hospitalized at Rabininsia Hospital in the city.¹⁷³ A CCM leader in Itilima – Simiyu Region was also reportedly attacked by unknown people and two CHADEMA members (a party agent and chairperson of a local area) were attacked with machetes while going to polling stations. Several party agents were reportedly arrested and held by police in Tanga, Morogoro and Simiyu, without reasons for arrest being provided. In Simiyu three CHADEMA members were also reportedly attacked with machetes by people suspected to be CCM members.

170 An Assessment of Human Rights Violations During Council By-election in 43 Wards of 26 November 2017, dated 30 November 2017, available at www.humanrights.or.tz.

171 Ibid.

172 Ibid.

173 Ibid.



Picture 16: CCM followers who were attacked during the by-elections in Dar es Salaam and Itilima-Simiyu

In six wards of Arumeru East Constituency, it was reported that all party agents were sent out of the polling stations while voting continued inside, told to return after 4 hours. CHADEMA party agents were also reported to have been denied entry into polling stations in Saranga Ward – Dar es Salaam Region for about 1 hour. These incidents raised fears of foul play; and it was obvious that the election was marred by violence exacerbated by political intolerance, especially between the ruling party (CCM) and CHADEMA. During a press conference in the aftermath of the council by-election, LHRC called upon the police force to investigate the incidents of human rights violations and bring the perpetrators to justice. It also urged the National Electoral Commission (NEC) to address the irregularities during the election, a step that will serve to encourage people to participate in the upcoming elections of 2019 and 2020.¹⁷⁴



Picture 17: CHADEMA members/party agents who were attacked with machetes in Arumeru

Following the reported irregularities and violence during the election, opposition parties led by CHADEMA sought audience with NEC to discuss and find solutions, but NEC declined and stated that since the election was smooth and fair, there was no need to hold such a meeting. NEC Director, Ramadhani Kailima, noted that reports that party agents were denied entry into polling stations were not true and that restrictions otherwise imposed were in accordance with the law. A coalition of opposition parties (CHADEMA, CUF, NLD and CHAUMMA) threatened to boycott the election of MPs in three constituencies in early 2018.¹⁷⁵ Earlier in November 2017, another political party, ACT-Wazalendo, announced that it would boycott the January 2018 by-election due to 'unfair political environment' and 'failure by authorities to guarantee credibility of elections.'¹⁷⁶

LHRC condemns the violence that occurred during the council by-election of November 2017 and calls upon the authorities to address the irregularities and ensure future elections are free, fair and peaceful. LHRC is also very concerned (as highlighted in Chapter 10 of this report) with the level of political intolerance, which contributed to violence during the by-election in 43 wards, especially between the members of CCM and CHADEMA. Citizens are urged to refrain from hating each other because of differences in political affiliations or memberships. At the end of the day they are all Tanzanians and must work together to achieve all aspects of development and preserve peace. It is upon the government to address the issue of political intolerance and refrain from actions which may encourage hatred among members of different political parties. NEC should also sit with stakeholders to address and find solution to election concerns for the benefit of the whole country.

3.3.3 Right to Participate in Political Life

Right to participate in political life is key for advancement of human rights and promotion of democracy in Tanzania. It also helps to open up debate and discussion about development and promote rule of law. This is a right of all people and can be enjoyed directly or indirectly through MPs. By nature, human rights are interrelated and interdependent; and as such, there are human rights which are crucial for realization of the right to participate in political life, also known as *participation rights*. These

175 Louis Kolumbia "Opposition threatens to boycott January by-elections" *The Citizen Newspaper*, 12 December 2017, available at <http://www.thecitizen.co.tz/News/Opposition-threatens-to-boycott-January-by-elections/1840340-4224414-9nntt4/index.html>, accessed 10th January 2018.

176 See Azam News at <http://news.azamtv.com/en/news/act-boycotts-januarys-by-election-15434>, accessed 10th January 2018; Hellen Nachilongo "ACT-Wazalendo not taking part in Kinondoni, Siha by-elections" *The Citizen Newspaper*, 21 January 2018, available at <http://www.thecitizen.co.tz/News/ACT-Wazalendo-not-taking-part--in-Kinondoni--Siha-by-elections--/1840340-4272504-g361n7z/index.html>, accessed 10th January 2018.

rights include freedom of expression, right to education, freedom of assembly and freedom of association. International human rights standards require that participation in political life and public affairs be equal (**discrimination-free**). Marginalized groups such as women, PWDs and indigenous peoples are usually not able to fully participate in political life in equal basis.

Consequently, based on the discussion about civil and political rights above, we can conclude that in 2017 the right to participate in political life was severely restricted. This was especially done through restrictions on freedom of expression, freedom of assembly and freedom of association.

Moreover, according to a **declaration adopted by the UN General Assembly through Resolution 53/144 of 1998**, the right to participate in the government includes the right, individually and in association with others, to submit to government bodies and agencies and organizations concerned with public affairs **criticism** and proposal for improving their functioning and to **draw attention to any aspect of their work** that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.¹⁷⁷ Putting this in Tanzanian context, any person or organization has a right and responsibility to criticize government authorities and draw to their attention any aspect of their work that may affect realization of human rights. As such, **even religious leaders have a right and responsibility** to submit to the government their criticism as a way of participating in political life, contrary to suggestions by a number of government leaders and commentators in 2017. The right to participate in political life is not just for politicians, but for all citizens of Tanzania. The right to take part in governance therefore does not end with the right to vote.

Civil society organizations and the media thus also have a right to participate in political life, criticize where they see government action or inaction is hindering realization of human rights and draw attention to the Government and members of the public any issue of human rights concern. Human rights defenders, media outlets and CSOs have a big role to play in promotion and protection of human rights in Tanzania; and as such any form of harassment, arbitrary arrest and discrimination against them by government authorities is unwarranted and reduces their ability to freely raise to the Government's and public's attention issues of concern.¹⁷⁸

177 Article 8(2) 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.

178 See Report of the Office of the United Nations High Commissioner for Human Rights, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Factors that impede equal political participation and steps to overcome those challenges*, Human Rights Council Twenty-seventh session Agenda items 2 and 3, A/HRC/27/29, 30 June 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/069/52/PDF/G1406952.pdf?OpenElement>, accessed 12th

3.3.4 Conclusions and Recommendations

Right to take part in governance could not be fully realized in 2017, owing to a number of factors that limited people's ability to participate in the government, especially restrictions on freedom of expression, freedom of assembly and freedom of association (participation rights). Realization of the right to vote, as a component of the right to participate in the government, during the council by-election in November 2017 was marred by violence and a number of irregulars as reported in the media. Right to participate in political life is a right for all people, regardless of their status in the society, including religious leaders. To improve realization of the right to take part in governance and public affairs, LHRC recommends that:

- 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;
- NEC, CHRAGG and CSOs to provide and continue providing civic and voter education before we reach the 2020 general elections;
- Government authorities to refrain from arbitrarily interfering with the right of its citizens to participate in political life;
- Members of the public to exercise their right to take part in governance in order to choose leaders of their choice and demand and enhance accountability; and
- Law enforcement officials to refrain from using excessive force during election periods and ensure violence does not erupt between members of opposing political parties.

Chapter 4:

Economic Rights

4.0 Introduction

Economic rights are set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, ratified by Tanzania in 1976. States have a duty to ensure progressive realization of these rights.¹⁷⁹ Like social rights, economic rights are rights which are essential for a person to meet their basic needs, enabling them to lead or live a life with dignity. They are also enshrined in a several other human rights instruments, including the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights (ACHPR) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Rights of Persons with Disabilities (CERD). These rights include the right to property and right to work, which are also stipulated in the Constitution of the United Republic of Tanzania 1977. This report focuses on these two rights.

4.1 Right to Own Property

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.¹⁸⁰ It is

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

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.¹⁸¹ 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.

179 Article 2(1) of ICESCR.

180 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.

181 Magdalena Sepúlveda et al (2004), *Universal and Regional Human Rights Protection: Cases and Commentaries* (University for Peace, Costa Rica), p. 373.

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.¹⁸² In case of interference with right to property of its people, therefore, 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 2017.

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 2017, several incidents and actions impacted realization of the right to own land as property. These include demolition of houses in Dar es Salaam, land conflicts and women’s limited access, control and ownership of land.

Demolition of Houses in Dar es Salaam

In 2017 the Government, through its roads agency, TANROADS, conducted a structure and house demolition along the Morogoro Road to pave way for the expansion of the road. In May 2017, TANROADS issued a notice for the residents and business community to vacate houses and other structures constructed within the road reserve in contravention of the laws governing roads, including the Roads Act of 2007 (see the notice below). Most of the residents protested against the demolition and some claimed that they had the relevant legal documents to prove they had legally acquired title over land. Consequently, some of the people affected by the demolition exercise rushed to court to seek injunction, which was granted by the High Court’s Land Division (see the court ruling copy below).

182 Article 24(2) of the Constitution of Tanzania of 1977; see also Article 14 of ACHPR.

TANZANIA NATIONAL ROADS AGENCY



Tarehe: 06/05/2017 (1/5/2017 -30/5/2017)
RM/TRD/DSM/R.80.465/.....

S.L.P 4838
Mabibo,
Barabara ya
Mandela,
Dar es Salaam.

Ndugu:
S. L. P
Dar es Salaam

**YAH: NOTISI YA KUBOMOA UKUTA/JENGO NDANI YA HIFADHI YA BARABARA KUPISHA UPANUZI
WA BARABARA YA MOROGORO KUENZIA KIMARA HADI KILUVYA**

Tafadhali rejea kichwa cha habari hapo juu.

Ofisi ya Meneja wa (TANROADS) Mkoa wa Dar es Salaam inatarajia kuanza mradi wa upanuzi wa barabara tajwa hapo juu. Hifadhi ya barabara ya Morogoro ina upana wa mita 121.5 kutoka katikati mwa barabara Kila upande.

Kwa kuwa nyumba yako /Ukuta/shimo la maji taka (soak pit)/uzio/Frem za biashara vimo ndani ya hifadhi ya barabara ya Morogoro kinyume na sheria za barabara za "The Highway Ordinance Cap.167" Kifungu Na.52 ya mwaka 1932, "The Highway Act ya mwaka 1967", Ilani ya serikali Na.161 (G.N), Sheria ya barabara Na. 13 ya mwaka 2007 na Kanuni za hifadhi za barabara za mwaka 2009 kifungu (2) (d).

Wakala wa Barabara (TANROADS) Mkoa inakuagiza kubomoa nyumba/Ukuta/uzio/Frem za biashara zilizopo katika eneo la hifadhi ya barabara ndani ya siku thelathini (30) kuanzia tarehe ya barua hii, usipofanya hivyo taratibu za kisheria zitafuata ikiwa ni pamoja na kukubomolea nyumba/Ukuta/shimo la maji taka (soak pit)/uzio/Frem za biashara na utalazimika kulipa gharama zote zitakazojitokeza katika utekelezaji wa zoezi hilo. Nyumba/Mali zinazotakiwa kuondolewa zimewekewa alama ya "x" mnamo tarehe... 06/05/2017

Ndyeorukama, J.
Meneja Mkoa,
TANROADS - DSM.

Nakala:
1. Afisa Mtendaji wa Kata ya SALBUNGA

Mtoa Notisi: Johnson RUFUKURA
Tarehe: 06/05/2017
Mpokea Notisi:
Tarehe: 06/05/2017

Tel: + 255 22 2450185/2450046 Fax: + 255 22 2450628, E-Mail: rmo@dsm.tanroads.org

TANROADS is an Executive Agency of the Ministry of Works, Transport and Communication Tanzania, established under the Executive Agencies Act, 1997 1/5/2017 -30/5/2017

Picture 18: Demolition notice issued by TANROADS in May 2017

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DARE S SALAAM**

MISC. LAND APPLICATION NO. 119 OF 2017

ABDALLAH M. MALIK & 545 OTHERS.....APPLICANTS

VERSUS

ATTORNEY GENERAL & ANOTHER.....RESPONDENTS

ORDER

I have heard the Applicants' Counsels prayers in respect of this Application. 1st is that the *status quo* be maintained pending hearing and determination of this Application Interparties and; 2nd that the 2nd Respondents exercise to issue Notices to the Applicants be suspended.

On the first prayer, since the same was not objected by the learned State Attorney, and upon court's consideration to this matter, the same is hereby **granted as prayed**. In avoidance of doubt, is that the *status quo* to the disputed land in this Application as stated in the Chamber Application and in Applicants' Affidavit, along **KIMARA STOP OVER/ SUCA, MBEZI LUIS TO**

Picture 19: Copy of The High Court's injunction order ruling

A total of 286 houses were protected from demolition following the High Court's injunction order. However, it was reported that TANROADS demolished 3 of the 286 houses located in Kimara a week since the ruling was made by the High Court.¹⁸³ Asked about the incidents, the Registrar of the High Court noted that if true, the victims can seek remedy in court against TANROADS for disregard of court order.¹⁸⁴

It was reported that more than 1000 houses were demolished along the Morogoro

183 James Magai "Mahakama yaijia juu Tanroads kwa kubomoa nyumba iliyozipa kinga" *Mwananchi* Newspaper, 24 August 2017, available at <http://www.mwananchi.co.tz/habari/Mahakama-yaijia-juu-Tanroads-kwa-kubomoa-nyumba-iliyozipa-kinga/1597578-4068822-fbpx22z/index.html>, accessed 20th January 2018.

184 Ibid.

Road.¹⁸⁵ The demolition exercise had a huge impact on the welfare of the affected families and realization of their right to adequate standard of living.¹⁸⁶ In LHRC's view, regardless of whether or not demolition of houses and other structures along the Morogoro Road was justified, the Government cannot escape blame for the situation due to corruption in the land sector, which has contributed to the problem of illegal housing in Tanzania. A 2015 report by PCCB on extent of corruption in police force, judiciary and land sector, revealed that in the land sector corruption occurs at ministry and local government authority (LGA) levels, including when recruiting sector employees, making and changing land use plans, and issuing building permits.¹⁸⁷ Moreover, over the years people were allowed to build houses and businesses, paid taxes and obtained services such as water and electricity from government agencies; and government authorities were there all this time.



Picture 20: A resident of Kimara area cooking for her grandchildren outside following demolition of her house

Another demolition exercise was carried out in Buguruni area, spearheaded by Reli Assets Holding Company (RAHCO), which manages assets of the Tanzania Railway Limited (TRL). In April 2017, residents of Buguruni, whose houses had been demolished

185 Jackline Masinde "Misikiti ,makanisa kubomolewa Kimara" *Mwananchi* Newspaper, 15 October 2017, available at <http://www.mwananchi.co.tz/habari/Nyumba-za-Ibada-24-kubomolewa-kesho-Kimara/1597578-4140608-format-xhtml-wn04oiz/index.html>, accessed 20th January 2018.

186 The impact is further discussed in Chapter 5 of this report under the subchapter on the right to adequate standard of living.

187 See Prevention and Combating of Corruption Bureau, *Review of Corruption in High Risk and High Impact Sectors*, December 2015.

for allegedly being built within the 30-metre railway reserve, served a notice to sue the Government and RAHCO.¹⁸⁸ This followed demolition of 250 houses.¹⁸⁹

In March 2017, LHRC responded to claims of illegality of demolition of some of the houses in Buguruni by conducted a fact-finding mission. The objective was to ascertain the claims and possible human rights violations during the operation, conducted by RAHCO. One of the claims made by residents affected by the demolition exercise was that there was no notice by RAHCO regarding the demolition, but LHRC learned that RAHCO had given a public notice in April 2016 (see below) and issued a 30-day notice to vacate buildings and structures built within 15 metres from the centre of railway line in urban areas and 30 metres in rural areas.¹⁹⁰

188 Hellen Nachilongo “Govt may be sued over Buguruni demolition” *The Citizen Newspaper*, 5 April 2017, available at <http://www.thecitizen.co.tz/News/Govt-may-be-sued-over-Buguruni-demolition/1840340-3878246-107eia8z/index.html>, accessed 21st January 2018.

189 Ibid.

190 LHRC demolition exercise in Buguruni fact-finding report (March 2017).



TAARIFA KWA UMMA

Kampuni Hodhi ya Rasilimali za Reli (RAHCO) ilianzishwa mwaka 2007 kupitia sheria ya Reli namba 4 ya mwaka 2002. Lengo kubwa la kuanzishwa kwake ni kusimamia na kuendeleza miundombinu ya rasilimali za reli nchini. Kifungu cha 57(2) cha sheria ya reli kinabainisha wazi kuwa mtu yeyote haruhusiwi kufanya ujenzi wowote katika hifadhi ya njia za reli pasipo kibali kutoka RAHCO. Vile vile kifungu cha 4 cha sheria hiyo kinaelekeza kuwa hifadhi ya reli ni mita 15 kutoka katikati ya njia ya reli kwa pande zote kwa maeneo ya mjini na mita 30 kwa pande zote kwa maeneo ya vijijini.

Kufuatia ukaguzi wa miundombinu na rasilimali za reli, RAHCO imebaini kuwa baadhi ya hifadhi ya reli pamoja na maeneo mengine inayoyasimamia yamevamiwa na wananchi. Kitendo cha kuvamia maeneo hayo ni ukiukaji wa sheria. Kwa hiyo, uongozi wa RAHCO unatoa taarifa ya kuwataka wale wote waliovamia na kujenga ndani ya hifadhi za reli na maeneo mengine inayoyasimamia kubomoa majengo yao ndani ya siku 30 baada ya kutolewa kwa tangazo hili. Kwa wale watakaokaidi agizo hili, hatua za kisheria zitachukuliwa dhidi yao ikiwa ni pamoja na RAHCO kuyabomoa majengo kwa gharama za wahusika waliokiuka sheria.

Imetolewa tarehe **25-04-2016** na:

MKURUGENZI MTENDAJI

Kampuni Hodhi ya Rasilimali za Reli (**RAHCO**)

Picture 21: Public notice issued by RAHCO in April 2016

The residents also understood that they were only subjected to the 15-metre rule (and they demolished their buildings and other structures in this regard), considering themselves to be in urban area. However, when they approached RAHCO with the query, they were told that for Dar es Salaam urban area ends at Kamata area, hence areas of Buguruni and Gongo la Mboto fall under rural area and hence subject to the 30-metre rule, not 15-metre rule. The residents also claimed that they wrote to the Minister responsible for transport, who allegedly assured them that they would only

be subjected to the 15-metre rule, but LHRC was not shown or provided with a copy of the letter. The residents also mentioned that they sought assistance and intervention of the Commission for Human Rights and Good Governance (CHRAGG), which summoned RAHCO and local government leaders as well as representatives of the affected families to enquire about the matter and ascertain the legality of the demolition of houses by applying the 30-metre rule. However, it was claimed that RAHCO did not respond or attend the meeting, according to the local government leaders.

In November 2017 the Commission for Human Rights and Good Governance (CHRAGG), issued a press statement condemning demolition of houses in the area, noting that the demolition was illegal because the Railways Act indicates that a railway reserve is 15 metres and not 30 metres.¹⁹¹ The Act defines railway strip (reserved to facilitate future development of rail infrastructure) as land on both sides of a railway track measuring **in urban area fifteen metres** and **in rural area thirty metres** in width from the centre line of the track.¹⁹² This leads to the controversy between laws governing railway and land use planning. LHRC intervention in the matter revealed corruption within the land sector and lack of legal awareness among citizens, as factors contributing to violations of human rights among the victims of demolition.

Land Conflicts

Land conflicts continued to affect right to property in 2017. LHRC was able to document a number of ongoing land conflicts in different areas of Tanzania, most notably in Morogoro, Tanga and Pwani Regions. These conflicts are usually between villagers and investors, farmers and pastoralists and boundary disputes.

In Kisarawe-Pwani Region, ongoing land-related conflicts involving villagers, investors, farmers and pastoralists were reported in 2017.¹⁹³ During a meeting with village, ward and district leaders, organized by Tanzania Gender Networking Programme (TGNP) in February 2017, residents in the district complained about denial of their right to own land through their land being taken by people who use their money to get their way (corruption), not being compensated when their land is

191 Ibrahim Yamola "Demolition of Buguruni houses illegal, rights commission says" *The Citizen* Newspaper, 8 November 2017, available at <http://www.thecitizen.co.tz/News/Demolition-of-Buguruni-houses-illegal-rights-commission-says/1840340-4178424-trba0a/index.html>, accessed 21st January 2018.

192 See sections 4 and 57 of the Railways Act, 2002.

193 Tumaini Msowoya "Migogoro ya ardhi inavyoirudisha nyuma Kisarawe" *Mwananchi* Newspaper, 16 February 2017, available at <http://www.mwananchi.co.tz/habari/habari-yandani/Migogoro-ya-ardhi-inavyoirudisha-nyuma-Kisarawe/1724700-3815314-y65660z/index.html>, accessed 21st January 2018.

taken and their farms being invaded by livestock.¹⁹⁴ One resident, Kuruthum Mbwana, stated that she found herself screaming when she saw a herd of cattle in her farm. The Kisarawe District Commissioner, Happiness Seneda, acknowledged that there are many land conflicts in the district, which negatively affect development. She singled out dishonest village leaders as a major factor contributing to land conflicts in Kisarawe, selling village land to investors without following legal procedures and taking advantage of villagers not knowing land laws and procedures. She called upon the village authorities to rectify the situation and hold themselves accountable. A study by TGNP in the region revealed conflicts between community members and investors, boundary disputes among villages, many villagers lacking certificates of customary right of occupancy and lack of land use plan.¹⁹⁵ TGNP Executive Director, Lilian Liundi, noted that the major victims of these land conflicts are women and children.¹⁹⁶

In Kilosa-Morogoro, land conflicts between farmers and pastoralists are also common. Kilosa District Commissioner, Adam Ngoyi, noted that the large herds of cattle that enter the district are the main cause of conflicts between farmers and pastoralists, stating that as of April 2017 there were about 300,000 cattle while the district could only accommodate 100,000.¹⁹⁷ As a result, due to limited pastureland, pastoralists enter their cattle in farms, leading to conflicts. He noted that, the only solution he sees that will help to resolve the situation is for pastoralists to reduce the number of cattle they keep.¹⁹⁸ On his part, the Chairperson of Kilosa District Council, Hassan Mkopi, noted that apart from the problem of large herds of cattle, another challenge in the district is presence of many farms/plantations that are cultivated on, preventing other people from farming and grazing cattle.¹⁹⁹

Land conflicts in Kilosa District have led to several human rights violations, including killings of people and cattle and destruction of farms and plantations. It was reported in 2017 that not 3 months go by without people or cattle getting killed due to clashes between farmers and pastoralists.²⁰⁰

One farmer in the district claimed that sometimes when they find pastoralists grazing cattle in their farms they tell them that they have paid for the farms for pasture and sometimes resort to beating them, taking away their possessions and even occasionally

194 Ibid.

195 Ibid.

196 Ibid.

197 "Migogoro ya wakulima, wafugaji ipatiwe ufumbuzi" *Mwananchi* Newspaper, 4 April 2017, available at [HTTP://WWW.MWANANCHI.CO.TZ/HABARI/HABARI-YA-NDANI/MIGOGORO-YA-WAKULIMA--WAFUGAJI-IPATIWE-UFUMBUZI/1724700-3877086-Y3IPMDZ/INDEX.HTML](http://www.mwananchi.co.tz/habari/habari-ya-ndani/migogoro-ya-wakulima--wafugaji-ipatiwe-ufumbuzi/1724700-3877086-Y3IPMDZ/INDEX.HTML), accessed 22nd January 2018.

198 Ibid.

199 Ibid.

200 Ibid.

raping women.²⁰¹ Another farmer claimed that they usually do not get much help when they report these incidents to authorities. As result of these conflicts, there are so many land conflict cases in courts in Kilosa District. LHRC is involved in some of these cases, providing legal representation.

In Handeni-Tanga, corruption within village leaderships was cited as a major factor fueling conflicts between farmers and pastoralists.²⁰² One farmer and pastoralist in Mbagwi Village claimed that there is a tendency of village leaders selling the same land twice (to two different people), driven by greed, sometimes even selling pastureland to farmers. He added that pastoralists are better off economically and use their money to bribe local leaders and magistrates to win cases against farmers.²⁰³ Village leaders were also blamed for not adhering to land use plans. Areas mostly affected by land conflicts in the district are Kwamagome, Sindeni, Kwamatuku, Mkata and areas near Manyara Region, where most pastoralists and cattle come from.²⁰⁴

Women's Limited 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 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 practices, inheritance laws, which discriminate women in owning property. 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, very few own their own land, despite women accounting for a larger percentage of the population.

Property rights abuses during evictions of farmers and pastoralists in villages around wildlife protected areas and national parks in different parts of Tanzania Mainland

In 2017, the Government conducted various operations across Tanzania to evict pastoralists and farmers residing within and near wildlife protected and reserve areas.

201 Ibid.

202 "Migogoro ya wakulima, wafugaji ipatiwe ufumbuzi" *Mwananchi* Newspaper, 4 April 2017.

203 Ibid.

204 Ibid.

These operations were conducted in different parts of the country, including in Katavi Region, Loliondo-Arusha and Saadani-Pwani Region. Several complaints of human rights violations during the evictions exercises were reported to LHRC and by the media, including violations of property rights. Farmers and pastoralists complained about officers conducting the operation stealing or taking their properties by force, including cattle, money, crops and motorcycles.

4.1.1 Conclusion and Recommendations

Corruption in the land sector and local government and land conflicts appear to be major threats to property ownership in Tanzania. Greedy and corrupt land officials, village leaders and local government authorities are mainly responsible for escalation of land conflicts. For women, customary laws and practices deny their right to acquire and own property, despite guarantees provided in the Constitution of the United Republic of Tanzania, Land Act and Village Land Act. As a result, most women only have a limited access to land and few own property, especially in rural areas. To address these challenges, LHRC recommends the following:

- The Government, through PCCB, to take appropriate measures to prevent and combat corruption within the land sector, especially at district and village levels;
- Legal reforms are still needed to further protect women's right and access to property ownership, particularly targeting customary laws and practices that limit their right to property. The Ministry of Land, Housing and Human Settlements Development should spearhead this process in collaboration with the Law Reform Commission;
- CSOs and religious leaders should educate members of the public in urban areas about their duty to refrain from corrupt practices and follow procedures in acquiring property;
- Government agencies and institutions should adhere to human rights principles when conducting operations;
- The Ministry of Health, Community Development, Elderly, Gender and Children should 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; and
- The Government should 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.

4.2 Right to Work

The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for right to work “which includes the right to everyone to the opportunity to gain his living by work which the freely chooses or accepts.”²⁰⁵ The African Charter on Human and Peoples’ Rights (ACHPR) guarantees the right of every individual to work under equitable and satisfactory conditions and receiving equal pay for equal work.²⁰⁶ ICCPR also emphasizes on just and favourable conditions of work, including: fair wages and equal remuneration for work of equal value without and not discriminatory, especially to women; remuneration that will provide a decent living for an individual and their families; safe and healthy working conditions; equal opportunity for promotion; and enjoyment of holidays.²⁰⁷

Various conventions of the International Labour Organization (ILO) also provide for right to work and related rights, including favourable working conditions.

SDG 8: Promote inclusive and sustainable economic growth, employment and decent work for all

Domestically, the Constitution of the United Republic of Tanzania 1977 guarantees the right to work under Article 22. Article 23 of the Constitution insists that every person, without discrimination of any kind, is entitled to remuneration that is just and commensurate with their work, echoing the ACHPR. The Employment and Labour Relations Act of 2004 and Labour Institutions Act also of 2004 regulate right to work and labour in Tanzania, establishing various organs such as the Commission for Mediation and Arbitration (CMA) and the Labour Division of the High Court to resolve labour disputes and provide remedies.

This subchapter briefly looks at the situation of the right to work in the year 2017. Realization of this right will be discussed at length in LHRC’s upcoming Human Rights and Business Report 2017, which is due in July 2018.

205 See Article 6 of ICESCR.

206 Article 15 of ACHPR.

207 Article 7 of ICESCR.

4.2.1 Right to Gain Living by Work

As indicated above, everyone is entitled to work and gain from such work. Realization of this right remained a challenge in 2017 due to a number of challenges, as briefly highlighted below:

Problems of Unemployment

High unemployment rate remains a key factor negatively affecting progressive realization of right to gain living by work, leaving many people without a decent living and continuing to live under \$2 a day, majority of them being youth. According to the Integrated Labour Force Survey (ILFS) 2014 by the National Bureau of Statistics (NBS), number of unemployed persons aged 15 and above stood at 2.3 million in 2014, with rural areas having more unemployed persons (1.2 million) than urban (1.1 million). Majority of those unemployed are females (1.4 million) overall, whose unemployment rate is twice as much as males in Dar es Salaam and other urban areas.²⁰⁸ Out of the 12.5 million economically active youth, 11 million (88.3%) are employed and 1.5 million (11.7%) are unemployed, the proportion being higher among females (14.5%).²⁰⁹ Unemployment rate thus stood at 10.3% in 2014, with Dar es Salaam having the highest rate at 21.5%.²¹⁰

Women, youth and PWDs are more vulnerable to unemployment. Women, especially youth, face a challenge of sexual violence in the form of sextortion (sexual corruption) when accessing work. They are also subjected to various forms of discrimination. For instance, some employers do not prefer women because they are likely to get pregnant and need a leave.²¹¹

For the youth the problem of limited number of employment opportunities is compounded by that lack of employability skills. According to 2014 survey by the Inter-University Council for East Africa (IUCEA),²¹² at least 50% of university graduates lack employability skills; and in Tanzania the rate is 61%,

At least 50% of university graduates in East Africa, 61% in Tanzania, lack employability skills.

IUCEA 2014

208 National Bureau of Statistics (NBS) [Tanzania] 2014. Tanzania Integrated Labour Force Survey 2014, Dar es Salaam, Tanzania: NBS.

209 Ibid.

210 Ibid.

211 Statements by clients received by LHRC's Legal Aid Clinic based in Kinondoni, Dar es Salaam.

212 A body that regulates higher education in the five countries forming the East African Community (EAC).

with Uganda leading at 63%.²¹³ This means majority of university graduates (youth) in Tanzania seeking jobs do not have the necessary competence and skills, something which forces employers to sometimes prefer foreign applicants. Four years on, the situation is less likely to have significantly improved, given the challenges faced by the education sector. LHRC interaction with university graduates seeking jobs also indicates the extent of this problem, with some of the applicants even failing to write proper application letters and failing to properly express themselves.

The major problem for PWDs is discrimination in accessing employment opportunities and at workplace. According to the Formal Sector Employment and Earnings Survey of 2015 by NBS, only 3,977 out of 2,060,013 employees in the formal sector are PWDs, equaling to 0.2%.²¹⁴

SDG 8 Targets

By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

By 2020, substantially reduce the proportion of youth not in employment, education or training.

Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

Removal of Workers with Fake/Forged Certificates

In the year 2017 the Government embarked upon dismissal of civil servants with fake or forged academic certificates following a nationwide verification exercise. As

213 See "Half of graduates produced by EA universities lack employability skill" *The Guardian* Newspaper, 8 August 2016, available at <https://www.ippmedia.com/en/features/half-graduates-produced-ea-universities-lack-employability-skill>, accessed 21st January 2018; "Over 50 per cent of EA graduates half-baked" *The East African Newspaper*, 12 June 2014, available at <http://www.theeastafrican.co.ke/news/Over-50-per-cent-of-EA-graduates-half-baked/2558-2345578-jw87c4/index.html>, accessed 21st January 2018; and Gilbert Nganga "Survey finds most East African graduates 'half-baked'", *University World News* website at <http://www.universityworldnews.com/article.php?story=20140523130246934c>, accessed 20th January 2018.

214 National Bureau of Statistics Ministry of Finance October (2016), *Formal Sector Employment and Earnings Survey, 2015 Tanzania Mainland*, available at http://www.nbs.go.tz/nbs/takwimu/labour/EES_2015_REPORT.pdf, accessed 20th December 2017.

a result, more than 9,000 civil servants were dismissed in April 2017.²¹⁵ The exercise was met with mixed reaction, with some criticizing it for double standards, leaving out verification of political appointees such as Regional Commissioners (RCs) and District Commissioners (DCs).²¹⁶ One leader who attracted a big debate over fake certificates was Dar es Salaam Regional Commissioner, Paul Makonda, following allegations that he was using another person's name and certificates.²¹⁷ Some of the commentators expressed concern of disruption of civil services if such a large number of workers were removed at once.²¹⁸ Indeed, there were several reports of increased shortage of workers, especially in the health sector,²¹⁹ as also observed by LHRC during human rights survey in 2017.

Following claims of some of the workers that they were unfairly dismissed, in May 2017, the Permanent Secretary in the President's Office (Public Service and Good Governance), Dr. Laurian Ndumbaro, announced that workers who felt aggrieved can appeal.²²⁰ 1500 civil servants responded by appealing against their dismissal; and in July 2017, the Permanent Secretary announced that 450 out of the 1500 appellants were reinstated, after it was discovered that they were wrongfully dismissed.²²¹

Workers employed with fake or forged certificates deny the right to work for those with credible academic certificates and it was right to remove them. However, LHRC's concern is disregard of due process of law, including the right to be heard, in the course of conducting this exercise, which affected some of the workers who as it turned out later were mistakenly dismissed. In LHRC's view this saga also attests to the extent of corruption in recruitment of civil servants.

215 Elizabeth Edward "Waliofukuzwa kwa vyeti feki wazua mjadala" Mwananchi Newspaper, 30 April 2017, available at <http://www.mwananchi.co.tz/habari/Waliofukuzwa-kwa-vyeti-feki-wazua-mjadala/1597578-3908834-mell1oz/index.html>, accessed 21st January 2018.

216 Ibid.

217 Tanzanian Affairs, CLAMPDOWN ON FAKE ACADEMIC CERTIFICATES, 1 September 2017, Issue 118, available at <https://www.tzaffairs.org/2017/09/clampdown-on-fake-academic-certificates/>, accessed 21st January 2018.

218 Ibid.

219 Deogratus Kamagi and Shija Felician "Workers can appeal in bogus certificates saga" The Citizen Newspaper, 3 May 2017, available at <http://www.thecitizen.co.tz/News/Workers-can-appeal-in-bogus-certificates-saga/1840340-3911828-ajuhg9z/index.html>, accessed 21st January 2018.

220 Ibid.

221 Gerald Kitalima "Watumishi vyeti feki warudi kazini" EATV, available at <https://www.eatv.tv/news/entertainment/watumishi-vyeti-feki-warudi-kazini>, accessed 21st January 2018.

4.2.2 Right to Just and Favourable Working Conditions

The right to just and favourable working conditions is affected by a number of challenges such as poor remuneration and salaries, including for Tanzanians working in industries owned by foreigners; poor working conditions in the education, judiciary and health sectors, including shortage of relevant facilities and tools; workers in key sectors such as health and education being overworked because of shortage of workers, and even then without overtime pay; and poor enforcement of labour laws, especially in the informal sector. LHRC has also observed that political interference affects the work of professionals and cases of workers being manipulated because of their poor knowledge about their labour-related human rights are common. Moreover, Tanzanians working in industries owned by foreigners usually get discriminated against and mistreated. 47% of clients attended by LHRC's Legal Aid Clinic (Labour Unit) had complaints about violation of their rights as employees.

4.2.3 Conclusion and Recommendations

Despite steps taken by the Government, unemployment, especially youth unemployment, remains to be a major challenge affecting the right to work. Women and PWDs are also more vulnerable to unemployment. While LHRC acknowledges the Government's efforts of removing workers who faked their way into employment, due process and caution should be exercised identifying and dismissing them. To improve realization of right to work, LHRC recommends the following:

- The Government, through the Ministry of Labour, Employment, Youth and Development should intensify efforts of creating job opportunities by strengthening its industrialization drive;
- The Ministry of Education and Vocational Training should increase efforts to improve quality of education at all levels, including higher learning, in order to produce graduates who have employability skills;
- The Ministry of Labour, Employment, Youth and Development and Ministry of Health, Community Development, Youth, Gender and Children should intensify promotion of self-employment and entrepreneurship;
- The Ministry of Labour and CSOs should raise awareness about labour rights for employees;
- The Government should increase budget for agriculture and capitalize on it to create jobs for youth; and
- The Government, through the Ministry of Labour, Employment, Youth and Development, should strengthen mechanisms for protection of labour rights and ensure regular inspection of industries to ensure labour rights are respected, including matters of contract and safe working environment.

Chapter 5:

Social and Cultural Rights

5.0 Introduction

Social rights refer to rights and entitlements that are necessary for individuals in a community to live a life with dignity. These rights are internationally codified and protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, having been introduced in the Universal Declaration of Human Rights (UDHR) of 1948. They include the right to education, right to health, right to social security, right to clean water and right to adequate standard of living. Under ICESCR, states, Tanzania inclusive, are required to take steps to **progressively** achieve these rights to the maximum of its **available resources**.²²² In the Tanzania Constitution, only the right to education is stipulated, which prompted calls for other social rights to be included in the new Constitution during the constitutional review process.

This chapter examines the situation of five social and cultural rights in the year 2017. These rights are: right to education, right to health, right to water, right to adequate standard of living and right to culture.

5.1 Right to Education

Right to education is a fundamental human right, crucial in promoting individual freedom and empowerment; and essential for enjoyment and realization of other human rights. This right is guaranteed under various regional and international human rights conventions ratified by Tanzania, including ICESCR, the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC).²²³ Domestically,

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

UDHR, Article 26(1)

²²² International Covenant on Economic, Social and Cultural Rights, 1966, Article 2.

²²³ Article 13 of ICESCR; Article 28 of CRC; Article 17 of ACHPR; and Article 11 of ACRWC.

this right is provided under the Constitution of the United Republic of Tanzania 1977 and Law of the Child Act 2009.²²⁴

Right to education requires education provided to be accessible and of quality. Therefore it is not just a matter of a state providing education; rather the education provided must be of quality.

5.1.1 Right to Access Education

In terms of improving access to education, especially primary education, Tanzania has done well over the past decade, attaining the Millennium Development Goal (MDG) on universal primary education before 2015, the deadline for MDGs. Access to secondary and university education has also improved. The year 2017 witnessed increased access to education following the introduction of the new education policy that provides for fee-free education up to form four (ordinary level secondary education). On the other hand, access to education for girls was restricted for pregnant teens and teen mothers.

Tanzania is duty bound under the Convention on the Rights of the Child to make education accessible to all. Hence, no discrimination of any form is allowed.

Increased Access to Education after Introduction of Fee-Free Education Policy

Progressive realization of the right to education is achieved through making primary education compulsory and available to all and then making secondary education accessible to all while progressively making it free. In fulfilling its obligations under the ICESCR, Tanzania intensified the application of the free education policy, adopted in 2015. The policy extends basic education, which is compulsory and free, to 10 years, meaning that ordinary level education (from one to form four) is now part of free basic education. This is a very positive step taken by the Government, which has resulted in increased enrollment in primary education. No fee is required to access basic education. Hon. President John Magufuli and other senior government officials insisted that the education is provided free of fees and any contributions, warning that school authorities that ask for contributions will be held accountable.

Enrolment rate for pre-primary school has increased by 46%, while that of primary school has increased by 41%.

BEST, 2016

224 Article 11 of the Tanzania Constitution & Section 9(1) of the Law of the Child Act.

A recent study by *HakiElimu*, a local organization that advocates for the right to education, has revealed that the Government has done well in providing grants for free education in primary schools by 93% and secondary schools by more than 100%. This is good news and LHRC commends this effort by the Government, making education more accessible to children in Tanzania.

Denial of Right to Education for Pregnant Teens and Teen Mothers

One of the major developments in 2017 was denial of right to education for girls who acquire pregnancy and those who already have babies. During his visit in Bagamoyo-Pwani Region, in June 2017, Hon President. John Pombe Magufuli, stated that his administration will not allow a girl who has gotten pregnant to go back to school and enjoy government-sponsored education. This statement has led to a big public debate on the matter, with some supporting the President and others protesting this move, which denies pregnant teens and teen mothers the right to education.

Human rights activists and other right to education stakeholders have come out strongly against the President's statement and made repeated calls for the President to change his stance. In a joint statement issued by 26 CSOs in June 2017, right to education stakeholders voiced their disagreement with the statement, stating that it denies these girls their right to education, which is protected under the Constitution of the United Republic of Tanzania of 1977 and regional and international human rights conventions that Tanzania has ratified. The Commission for Human Rights and Good Governance also expressed its concern, noting that there is no law which prohibits a child from continuing with studies after delivery, thus girls should be allowed back to school. However, despite repeated calls for the current administration to change its stance and allow these girls to exercise their right to education, the Government has been reluctant to do so, with CSOs speaking against denial of these girls' right to education seen as enemies.

Wasichana wote wa elimumsingi wanaoacha shule kwa sababu ya kupata ujauzito wataendelea na masomo. (*All girls attending basic education who drop out because of pregnancy will continue with education*)

Ruling party (CCM) election manifesto of 2015, para 52

LHRC is very concerned with this new precedent set by the Government. In LHRC's view, not allowing pregnant girls and teen mothers back to school goes against Tanzania's obligations under domestic, regional and international human rights laws. This will also have a negative impact in the long run as uneducated mothers and their children will increase the burden of dependency at individual and national levels; and will in turn increase poverty due to lack of education.

In 2016 the Government of the URT, after a longtime discussion with stakeholders, developed guidelines on how to enable pregnant girls return to school and resume their studies, recognizing the obligation by our country in national and international policy framework in realizing their right to education. The new stance taken by the Government is thus a huge set-back following to the progress already made by the Government itself and other stakeholders. It should also be noted that even the election manifesto of the ruling Chama cha Mapinduzi (CCM) pledges to allow schoolgirls who acquire pregnancy back to school. The same stance was expressed by the Minister of Health, Community Development, Gender, Elderly and Children, assuring the Government's commitment to provide education to these girls. In Zanzibar the *Spinsters and Single Parent Children Protection Act* of 2005 protects their right to education by allowing re-instatement to school of girls a year after giving birth. The neighboring Kenya also has a re-entry policy, and there is no evidence of teen pregnancy increasing among schoolgirls.

An assessment conducted by *Twaweza*, a local NGO, revealed that a mother's level of education is strongly associated to her child's learning levels.²²⁵ This means that the children of girls expelled from school because of pregnancy are also more likely to suffer the consequences. Moreover, a study conducted by the organization in 2016 revealed that 71% of citizens who were asked "what should happen to a girl who gets pregnant while still in school?" thought the girl should be allowed back in school after giving birth.²²⁶

Denying a girl her right to education because of pregnancy is in violation of various international conventions that Tanzania has signed and ratified such as the International Covenant on Civil and Political Rights, UN Convention on the Rights of the Child, Convention on the Elimination of all Forms of Discrimination Against Women- CEDAW, African Charter on the Rights and Welfare of the Child and Maputo Protocol.

Denying a girl her right to education because of pregnancy is in violation of the Constitution of the United Republic of Tanzania.

Denying a girl her right to education because of pregnancy amounts to discrimination, prohibited in the Constitution and international conventions on women's and girls' rights such as CEDAW and Maputo Protocol.

225 Twaweza, Pregnancy and girls' right to education: are we there yet?, available at <http://www.twaweza.org/go/pregnancy-school-girls>, accessed 20th December 2017.

226 Ibid.

Denying a girl her right to education because of pregnancy puts her and her child at increased risk of poverty and uncertain future, hence increased burden for the state in the long run.

Denying a girl her right to education because of pregnancy puts her at increased risk of violence (GBV).

Denying a girl her right to education because of pregnancy limits her career options, significantly decreasing her chances of employment and better life in the future.

Denying a girl her right to education because of pregnancy contravenes the ruling party's election manifesto.

5.1.2 Right to Quality Education

While the Government has done well in increasing access to basic education, quality of education in public schools continues to be a challenge, indicating focus on quantitative rather than qualitative indicators. Quality of education in these schools is compromised by a number of factors, including congestion in schools and shortage of teachers, inadequate remuneration for teachers and inadequate number of well-trained and competent teachers.

Challenges associated with fee-free education

The study by *HakiElimu* on fee-free education revealed a number of challenges facing implementation of the fee-free education policy.²²⁷ One such challenge is the understanding of the policy itself, whether all education costs are covered by the Government or just school fees and contributions. According to the study, 45% of head teachers at surveyed schools believed that the Government covers all costs, which is not the case; while only 23% indicated that fee-free basic education only covers fees.²²⁸ This confusion has also been observed by LHRC, with even some of the government leaders and officials themselves not having a clear understanding of the policy. The study also revealed that the grants provided, Tshs. 10,000 for each primary school pupil and Tshs. 25,000 for secondary school student per year, are not sufficient to run the schools, buy books, buy examination materials and renovate school buildings. This was stated by 95% of head teachers and head masters that were

227 HakiElimu, *Impact of the Implementation of Fee-Free Education Policy on Basic Education in Tanzania: A Quantitative Study*, March 2017.

228 Ibid, pp. 12 & 13.

involved in the study.²²⁹ This concern was also expressed by head teachers in Babati, Manyara Region as reported by media in April 2017. Another challenge that has been brought about by the fee-free education policy is congestion in classes and increased teacher to student ratio. The ratio is now 1:164 instead of 1:45.

Other challenges

Other than the challenges associated with fee-free education, right to quality education is affected by other factors such as shortage of toilets, shortage of desks and classes, shortage of teachers and shortage of teacher houses. Report by the Auditor and Controller General for the year 2015/16, released in April 2017, revealed shortages of toilets, desks and classes, especially in Geita, Mpanda and Mpwapa Districts. The report indicates that shortage of toilets stands at 75%. It also indicates shortage of laboratories, which stands at 59%. CAG report also indicates severe shortage of science teachers, which is 3,438 teachers. In Kibaha-Pwani Region, it was reported in October 2017 that more than 200 pupils at Kongowe Primary School were using one class.²³⁰ At Missuna Primary School in Singida District it was reported in October 2017 that shortage of classes at the school necessitated pupils to be taught at a church nearby.²³¹

Another challenge compromising the right to quality education in public schools is the issue of food at school. In its assessment of learning conducted in 2015, *Twaweza* found out that only a few schools (24%) provide lunch, which significantly impacts children's ability to learn.²³² Two examples of food problems at public schools reported in 2017 indicate that this is still a problem in education, given the fact that there is increased enrolment and parents have been told not to contribute anything. In October 2017, it was reported that pupils of Kilimatinde Primary School in Monduli District were learning on an empty stomach all day due to food shortage in the village, causing some of them to skip school.²³³ In another incident, of December 2017, it was reported that 400 pupils at Gesarya Primary School in Serengeti District were at risk of getting ulcers due to lack of food at school.²³⁴ It was also stated that most of them walk for about 5 to 10 kilometres to and from school.

229 Ibid, p. 13.

230 "Wanafunzi 200 wasomea chumba kimoja cha darasa" *Mtanzania* Newspaper, 2 October 2017.

231 "Wakosa madarasa, wasomea kanisani" *HABARILEO* Newspaper, 8 October 2017.

232 Uwezo (2017): Are Our Children Learning? Uwezo Tanzania Sixth Learning Assessment Report. Dar es Salaam: Twaweza East Africa

233 "Njaa yawaondoa shuleni wanafunzi Monduli" *Mwananchi* Newspaper, 25 October 2017.

234 "Wanafunzi 400 hatarini kupata vidonda vya tumbo" *Mtanzania* Newspaper, 21 December 2017.

Table 7: Shortage of desks, classes and teacher houses in secondary and primary schools

DESKS		
	Sec. School	Pri. School
Needed	64,675	397,652
Available	36,043	278,443
Shortage	28,632	119,209
CLASSES		
	Sec. School	Pri. School
Needed	209,773	44,000
Available	109,767	23,630
Shortage	100,006	20,370
TEACHER HOUSES		
	Sec. School	Pri. School
Needed	56,000	69,047
Available	11,017	19,500
Shortage	44,983	49,547

Source: CAG Report

A media survey conducted by LHRC in 2017 also revealed reports of shortages of toilets and teachers, as indicated in the table below.

Table 8: Shortage of toilets and teachers as reported in the media

Area	Shortage
Kilwa	There were reports of shortage of toilets, whereby a study by <i>Action Aid</i> involving 30 schools revealed that one toilet hole is used by 135 pupils, while at other schools one hole was used by 90 and 60 pupils, the standard being one hole for 20 girls and 25 boys
Kilombero	It was revealed that 21 primary schools did not have toilets, with pupils and teachers forced to use toilets of residents around the school and shrubs.
Ukerewe	Three schools (3,971 pupils) were closed in January 2017 for lack of and shortage of toilets. In Mufindi-Iringa, it was reported that 863 pupils of Mafinda Primary School were using only 7 toilet holes.

Area	Shortage
Mufindi	It was reported that 863 pupils of Mafinda Primary School were using only 7 toilet holes.
Sengerema	It was reported that 832 pupils at Nyehunge Secondary School had 24 toilet holes, 30 more needed.
Tabora	It was reported that 300 pupils of Kipela Primary School in Kipela Village were using only 2 toilet holes. To help reduce this problem, villagers built toilets with a total of 18 holes.
Dodoma	Shortage of teachers was reported at Mbalawa Primary School in Dodoma Region, whereby it was revealed that 922 pupils had only 5 teachers by April 2017.
Songea	It was reported in January 2017 that there was a shortage of 243 science and mathematics teachers. In Kilombero District-Morogoro, it was reported in February 2017 that there is a shortage of 700 teachers.

Source: LHRC Media Survey

In an effort to ease the shortage of desks in Geita, it was reported that the Geita Gold Mine provided 10,000 desks to be distributed to all five districts in the region.²³⁵ It was also reported in April 2017 that the Government had employed 3,081 new teachers.²³⁶ In LHRC's view there should be no shortage of desks or classes in areas where there are mining companies. These companies should assist the Government in this regard through their corporate social responsibility (CSR) plans, which are now mandatory, as a way of giving back to the community.

Working conditions for teachers: This continued to be a major challenge compromising quality of education in 2017. As indicated above and revealed during LHRC human rights survey, shortage of teacher houses is a big problem, adding to that of teachers themselves. Given the shortage of teaching and learning materials at most schools, these teachers find themselves working in a difficult environment, especially those in rural areas.

In an effort to improve working conditions for teachers in Dar e Salaam, the Regional Commissioner in the region, Hon. Paul Makonda, started a campaign of constructing offices for teachers in November 2017, promising construction of 402 offices. This is a good initiative by the Regional Commissioner and LHRC commends his efforts. However, more needs to be done by the Government to address more pressing concerns for teachers, including houses and remuneration, especially in other regions and rural areas, as Dar es Salaam is much better off, being the country's largest city.

235 LHRC (2017), *Tanzania Bi-Annual Human Rights Report 2017*.

236 Ibid.



Picture 22: Dar es Salaam Regional Commissioner, Hon. Paul Makonda, launching teacher offices project in Dar es Salaam

Budget for the education sector: For the financial year 2016/17, the Government has budgeted Tshs. 4,770 billion in education sector. The amount budgeted on education sector is equivalent to 22.1 percent of total Government Budget excluding public debt service, without national loan. Out of this, Tshs. 3,069 billion was allocated for implementing fee-free basic education program. The budget is more than 20% of overall budget required as a minimum under regional and international commitments. This is a significant improvement compared to the financial year 2015/16, whereby the budget was Tshs. 3,887 billion. It remains to be seen, however, if the amount will be disbursed in full.

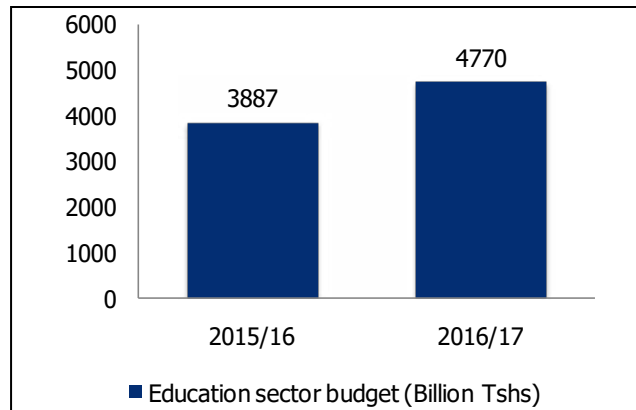


Figure 10: Education sector budgets of 2015/16 & 2016/17 without national debt
Source: Policy Forum

Other than the overall budget for the education sector, budget allocated for development expenditure has been a challenge over the years. For instance, in the financial year 2015/16, development budget accounted for only 16% of the whole sector budget,²³⁷ short of the 40% standard, with the bulk of the budget was allocated for recurrent expenditure. However, the development budget was improved for the financial year 2016/17, whereby 35% of the education sector budget was allocated for development expenditure, which is close to the 60:40 ratio proposed in the development plan.

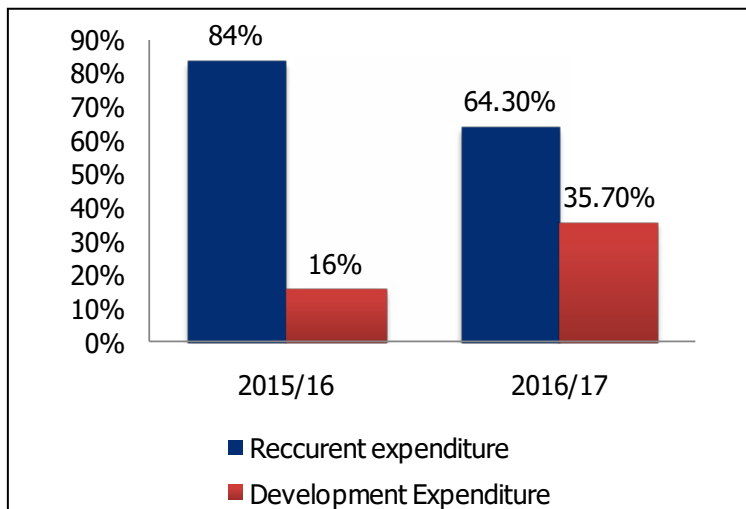


Figure 11: Recurrent and development expenditures in the education sector budgets of 2015/16 and 2016/17
Source: Policy Forum

237 Policy Forum, Bajeti ya Elimu ya Mwaka 2016/2017 Je, ni Kweli Imeongezeka? Dondoo ya Sera 3:2016, available at <http://www.policyforum-tz.org/sites/default/files/hakielimuelimu.pdf>, accessed 5th January 2018.

Right to education for children with disabilities: Children with disabilities face a big challenge in accessing education in Tanzania, especially due to lack of friendly infrastructure and learning tools at most schools. In a recent study on the rights and welfare of PWDs more than 40% of the respondents stated that they faced difficulties in accessing toilets.²³⁸ Lack of relevant infrastructure and learning tools make it difficult for children with disabilities to progress in their education pursuit, which explains the study on the rights of PWDs also revealed that 58% of respondents had only attained primary education, while only 1% had obtained university degree.

5.1.3 Conclusion and Recommendations

While access to basic education has increased, education in public schools is still faced with acute shortage of learning materials and facilities, such as classes and desks. For areas where there are mining activities, mining companies should help with some of the challenges in the education sector such as shortage of desks as part of their corporate social responsibility (CSR). Sweeping reforms in the sector recently made by the Government provide an opportunity for this to be achieved in greater magnitude. The amendments made in the Mining Act make it mandatory for mining companies to develop CSR plans on annual basis, containing priorities set out by local government authorities. LHRC strongly recommends such priorities to include educational facilities. LHRC also advises the Government, through the Ministry of Education and Vocational Training, to now shift focus to quality of education, starting with addressing the challenges highlighted above, in line with SDG 4, ensuring that inclusive and equitable education and promote life-long learning opportunities for all.

Regarding denial of right to education for pregnant girls, LHRC strongly advises the Government to reconsider its stance in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions ratified by Tanzania. Access to education for children with disabilities and other PWDs should also be improved, by especially ensuring availability of relevant infrastructure and learning tools. Moreover, the Ministry of Education and Vocational Training should strive to improve working environment for teachers, especially ensuring their houses are built and they are fairly remunerated. Furthermore, the ministry should enhance inspection of schools, ensuring they are regularly inspected, and ensure meals are available at primary schools, particularly in rural areas.

238 The study was conducted in 2017 by Inclusive Development Promoters and Consultants (IDPC), an organization that conducts research on rights and issues of Persons with Disabilities (PWDs) in Tanzania.

5.2 Right to Health

The human right to health care 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.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."²³⁹ This right is key in realization of other rights, including right to life, and States parties to

the ICESCR are required to take several steps towards full realization of right to health, including creating conditions which would assure to all medical service and attention in the event of sickness and prevention, treatment and control of epidemic, occupational and other diseases.²⁴⁰ States thus have a primary duty to ensure that necessary measures are taken in protecting the health of their people and to ensure that they receive medical attention when they are sick.²⁴¹

5.2.1 Right to Access Health Services

Over the years, the Government has taken several initiatives to improve access to health service, including construction of new hospitals and health centres as well as renovation of old ones. In the financial year 2016/17, the Government indicated that there would be renovation of health facilities in 5 new district hospitals. In June, the Government indicated that it was planning to construct 100 health centres across the country. In the meantime, a number of challenges continue to hinder access to health services, including distance to health facilities, especially in rural areas, and corruption.

Indicating a high demand for medical services, thousands of people turned up for the services when a Chinese Naval Hospital Ship, *Peace Ark*, docked at the Dar e Salaam port in November 2017. This was the second time the ship had arrived in Tanzania in 7 years to provide health services. However, the crew was only able to attend 6,421 patients, 31 of which were operated in the course of the week. The thousands of people showing up for the health services provided by the Chinese ship should be a wakeup call for the Government, that accessing health services is a still a serious problem for majority of people.

239 Article 12(1) of ICESCR.

240 See Article 12(2) of ICESCR.

241 Article 16(2) of the African Charter on Human and People's rights, 1981.



Picture 23: Residents of Dar es Salaam who showed up to access health services from the Chinese naval ship, The Peace Ark, which docked at the Dar es Salaam Port

5.2.2 Right to Quality Health Services

The major concern in realizing right to health is the quality of health services provided. Quality of health services is compromised by a number of factors, including insufficient budget, shortage of beds, shortage of health workforce and shortage of medicines and medical supplies.

Insufficient Budget: One of the factors that affect delivery of quality health services is insufficient budget, which usually falls short of the minimum 15% of the annual budget required under the Abuja Declaration on HIV/AIDS, Tuberculosis and other related Infectious Diseases of 2001. In 2016/17 Tshs. 1,988.2 billion has been budgeted for health sector which is equivalent to 9.2 percent of the total budget excluding public debt services, an increase of 1.1% compared to the budget allocated in 2015/16. Despite this improvement, it has not reached 15% target required under the Abuja Declaration. Out of the budget allocated for the health sector for the financial year 2016/17, Tshs. 251.5 billion was for purchasing medicines, medical equipment and reagents, with Tshs. 71 out of it used to settle outstanding MSD debts. LHRC human rights survey in 20 districts across 10 regions of Tanzania Mainland also revealed that there delayed disbursement of funds is still a big problem, affecting efficient delivery of health services.²⁴²

Shortage of beds, essential medicines and medical supplies: Shortages of beds were reported at various health facilities across the country in 2017. For instance, in Kibiti – Pwani Region, it was reported that sometimes pregnant women at Mchinga Village

242 LHRC Human Rights Survey 2017.

Dispensary deliver on make-shift beds made of rope due to lack of special delivery beds. In March 2017, it was reported that some expectant mothers in Kasense Ward, Sumbawanga – Rukwa Region were forced to deliver on the floor due to shortage of beds. At Mbeya Referral Hospital, it was reported that there was shortage of beds at maternity ward, causing congestion and inconvenience. Out of required 100 beds, it was reported that there were 39. LHRC human rights survey also revealed shortage of essential medicines and medical supplies at health facilities and centres in some of the districts, including in Tarime, Meatu and Hai. Health officials in surveyed districts also mentioned delays in supply of medicines from the MSD as a challenge.²⁴³

Health Workforce Shortage: Shortage of health workers is still a challenge for most areas of the country. In January 2017, it was reported that Handeni District Hospital was experiencing a shortage of 40 health workers, including medical doctors. Currently they only have 14 health workers. In April 2017, shortage of 40 workers was reported at Nyakanazi Health Care in Biharamulo District. LHRC survey in 10 regions of Tanzania Mainland in late 2017 also revealed shortage of health workers in most of the districts, the problem compounded by removal of workers with fake certificates.²⁴⁴

There is indeed shortage of health workers. Before the exercise of removing public servants with fake certificates shortage stood at 44%, but now it has increased.

DMO – Hai District

In April, President John Magufuli ordered employment of 258 doctors who were scheduled to go work in Kenya. LHRC has not been able to establish if they have been employed. Nevertheless, employment of new doctors will help to ease the problem of shortage of health workers, especially in rural areas, as doctors and nurses were especially mentioned as key health workers in short supply.²⁴⁵

Maternal Health and Mortality: Maternal mortality continued to be a problem affecting expectant women in 2017,²⁴⁶ owing to lack of access to quality health services by women. Based on the 2015-16 NBS survey, the maternal mortality ratio currently stands at 556 deaths per 100,000 live births,²⁴⁷ a significant increase compared to 454

243 Ibid.

244 LHRC Human Rights Survey 2017.

245 Ibid.

246 Florence Majani “Vifo vya kina mama wakati wa kujifungua vyaongezeka nchini” *Mwananchi* Newspaper, 17 March 2017.

247 Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC), [Tanzania Mainland, Ministry of Health (MoH) [Zanzibar], National Bureau of Statistics (NBS), Office of the Chief Government Statistician (OCGS) and ICF. 2016. 2015-16 TDHS-MIS Key Findings. Rockville, Maryland, USA: MoHCDGEC, MoH, NBS, OCGS, and ICF.

per 100,000 live births in 2010.²⁴⁸ In Arusha, it was reported that data released by the Regional Commissioner in January 2017 indicated that maternal deaths in the region had increased by 31%.²⁴⁹

5.2.3 Conclusion and Recommendations

Health is essential for development, and in that sense right to health should not be compromised. Deficit of health budget is major concern, giving rise to other challenges such as shortage of beds, medicines and health workforce. To improve access to quality health services, LHRC recommends the following:

- The Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC) to increase budgetary allocation for the health sector. In order to improve the quality of health services the Government must strive to improve budget allocation for this key sector, to at least reach the minimum target of 15% as required under the Abuja Declaration;
- MoHCDEC to ensure budget for essential drugs and medicines is increased;
- MoHCDEC to ensure there is at least each ward has a health centre that has adequate key health personnel;
- The Government, through MoHCDEGC, to also address the problem of bed shortage, especially at maternity wards, to help ease the suffering of expectant mothers; and
- CSOs and other right to health stakeholders to sensitize members of the public about right to health and importance of regular check-up.

5.3 Right to Water

Right to water refers right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.²⁵⁰ This right is

248 Shija AE et al, *Maternal health in fifty years of Tanzania independence: Challenges and opportunities of reducing maternal mortality*, Tanzania Journal of Health Research, 2011 Dec; 13 (5 Suppl 1):352-64, available at <https://www.ncbi.nlm.nih.gov/pubmed/26591990>, accessed 17th December 2017.

249 "Maternal, child mortality increasing in Arusha" The Guardian Newspaper, 24 January 2017, available at <https://www.ippmedia.com/en/news/maternal-child-mortality-increasing-arusha>, accessed 17th December 2017.

250 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].

recognized as a human right under various 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).²⁵¹ The right is not only recognized as right to water, but right to clean and safe water.²⁵² While this right was not included in the International Covenant on Economic, Social and Cultural Rights (ICCPR) of 1966 or previously in the 1948 Universal Declaration of Human Rights (UDHR), 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 United Republic of Tanzania does not provide for right to water. However, the National Water Policy of 2002 and the Water Resources Management Act of 2009 recognize clean and safe water as a basic need and right for all human beings. This subchapter looks at the situation of right to water in Tanzania in 2017, in terms of access and quality.

5.3.1 Right to Access Water

Over the years, various measures have been taken by the Government to improve access to water for people in Tanzania. These efforts continue to be undertaken under the Water Sector Development Programme (WSDP), in an effort to achieve the objective of the National Development Vision 2025 of high quality livelihood for all Tanzanians through universal access to safe water. WSDP is currently in phase two, covering the period of 2014/2015 to 2018/2019, the first one having covered the period of 2007/2008 to 2013/2014. This programme focuses on four components, namely: Water Resources Management; Rural Water Supply and Sanitation; Urban Water and Sewerage; and Urban Water Supply and Sanitation.

In his budget speech for the Ministry of Water and Irrigation for the financial year 2017/18, the Minister claimed that 72.58% of people in rural areas had access to clean and safe water by March 2017, available within 400 metres as directed in the Water Policy of 2002.²⁵³ He added that the Government continued implementing and embarked upon a number of water projects in rural and urban areas, including the water project in Tabora (targeting to improve access to 31 villages across all 7 districts); the Same-Mwangaa-Korogwe water project (targeting Same and Mwanga as well as 38 villages); water project in Kigoma (targeting 26 villages); Lake Victor water project; Ruvuma River water project; and Malagarasi River water project.²⁵⁴

251 Article 24(2) of CRC & Article 14(2) of CEDAW.

252 Ibid.

253 Budget speech of the Minister of Water and Irrigation, para 16.

254 Ibid.

Despite the various interventions made in improving access to water, access to clean and safe water remains a big challenge in Tanzania, especially in rural areas. A 2016 survey conducted by *Twaweza*²⁵⁵ and released in March 2017, revealed that access to water in Tanzania, especially in rural areas, has remained largely stagnant over the past decade, with half the citizens (54%), having access to improved water source (46% in rural areas and 74% in urban areas).²⁵⁶ In rural areas, majority of people have access to unimproved sources, unprotected wells (26%) and surface water (20%).²⁵⁷ *WaterAid*²⁵⁸ also suggests that nearly half the population in Tanzania do not have access to clean and safe water, while 8 in 10 people do not have a decent toilet.²⁵⁹ Lack of access to clean and safe water has a profound effect on women and girls, as they are forced to spend a significant amount of time travelling for quite some distance to fetch water.²⁶⁰

Table 9: Reported incidents of difficulties in accessing safe and clean water in 2017

Description	Source	Date
Kwimba, Mwanza: It was reported that majority of people in the district do not have access to tap water, thus forced to walk about 5 to 8 km to fetch water at ditches and wells. Deputy Chairperson of the district council noted that the problem exists in 25 out of 30 wards.	<i>HABARILEO</i> Newspaper	23 Oct 2017
Nachingwe, Lindi: It was reported that 55% of villagers in the district did not have access to clean and safe water; and residents of Litandamtama Village have never have tap water, forced to fetch water at near village called Lionja (6.4 km away) or Mbwemkuru River (9.6 km away).	<i>Mwananchi</i> Newspaper	5 Oct 2017

255 An NGO that works in Tanzania, Kenya and Uganda.

256 Twaweza press release at <http://www.twaweza.or.tz/index.php?r=szw-maji-2017-tz-kis&m=1&m=0>, accessed on 20th January 2018.

257 Ibid.

258 An international NGO dedicated to helping people escape from poverty and disease caused by living without safe water and sanitation.

259 WaterAid website “Tanzania” at <https://www.wateraid.org/where-we-work/tanzania>, accessed 20th January 2018.

260 Water.org, Tanzania’s water and sanitation crisis, at <https://water.org/our-impact/tanzania/>, accessed 20th January 2018.

Description	Source	Date
Nanyumbu, Mtwara: It was reported that lack of access to clean and safe water was jeopardizing marriages in the district. Only 34.8% of residents in the district had access to clean water. As a result, women have to spend a lot of time fetching water far away from home and when they return they face the wrath of jealous husbands, some of whom resort to physical violence. One woman claimed her husband beats her when she returns home late from fetching water and she had reported him to the police on two occasions, but no action had been taken against him. One man divorced his wife after finding out her about her affair with another man, who was sometimes helping her to fetch water.	<i>Mwananchi</i> Newspaper	9 Oct 2017
Babati, Manyara: It was reported that residents of Ngolay Village in Mwada Ward have never had access to clean and safe water.	<i>Nipashe</i> Newspaper	12 Oct 2017

Source: LHRC Media Survey 2017

LHRC human rights survey in 10 regions revealed that lack of access to clean and safe water posed a greater challenge for women and children. Women and children to walk between 2 and 5 kilometres to fetch water.²⁶¹ Meanwhile, women leave children at home alone and some children have to go and fetch water to use at school.²⁶²

Limited access to clean and safe water has led to increased price of improved water, which majority of people cannot afford. For instance, one resident of Morogoro, Charles Makota, mentioned during a media interview that water service charge and price of water sold by water traders are a big concern for normal citizens. He mentioned that in the streets 20 litres of water costs about Tshs. 500 to 1000, which is not quite affordable for majority of local residents.²⁶³

261 LHRC Human Rights Survey 2017 Report.

262 Ibid.

263 Chistrina Mwakangale "Bajeti ya maji ilivyo kitendawili kwa mwanamke" *Nipashe* Newspaper, 8 June 2017, available at <https://www.ippmedia.com/sw/makala/bajeti-ya-maji-ilivyo-kitendawili-kwa-mwanamke>, accessed 19th December 2017.

5.3.2 Right to Quality Water

Right to water suggest that the water must be of required quality, meaning they must be clean and safe. While efforts made by the Government and other stakeholders have helped to improve access to water in Tanzania, availability quality water, especially in rural areas, continued to be a challenge in 2017.

One of the factors that compromised access to quality water in 2017 was insufficient budget allocated for the water sector. Budget allocated for the sector in the financial year 2017/18 is Tshs. 747.91 billion.²⁶⁴ Budget allocation for the water sector for the financial year 2016/17 was Tshs. 1,020 billion, equivalent to 4.8% of the total budget excluding public debt services.

In May 2017, the Ministry of Water and Irrigation requested Tshs. 672.2 billion in its budget speech, which led to a huge debate in Parliament as it was deemed insufficient, as it is much less than budget allocation for the water sector for the financial year 2016/17. Although the actual budget allocation was Tshs. 75.71 billion more than the amount requested, it was still deemed insufficient to significantly improve the situation of water in Tanzania.

Apart from the problem of budget shortage, the funds disbursed are usually delayed and not in full. For instance, for the financial year 2016/17 only 19.8% of the funds had been disbursed by March 2017.²⁶⁵ In the same financial year, Tshs. 421.56 billion had been allocated for implementation of rural water projects, but by March 2017, only 19.07% of the funds had been disbursed.²⁶⁶

Table 10: Major spending in the water sector 2017/18

Item	Amount
Implementing rural water projects	Tshs. 237.8 billion
Improving water supply service at townships	Tshs. 91.0 billion
Improving water supply and sanitation in Dar es Salaam	Tshs. 62.5 billion
Same-Mwanga-Korogwe Water Project	Tshs. 37.0 billion
Lake Victoria-Kahama-Nzegwa-Igunga-Tabora Water Project	Tshs. 21.0 billion

264 See A Simplified Version of Government Budget for the Financial Year 2017/18, Issued by the Ministry of Finance and Planning in Collaboration with Policy Forum at [http://www.mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%202017_18%20%20%20%20%20\(Eng_Final\).pdf](http://www.mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%202017_18%20%20%20%20%20(Eng_Final).pdf), accessed 19th December 2017.

265 Sharon Sauwa "Bajeti 'kiduchu' ya maji yaibua mjadala mzito bungeni Tanzania" *Mwananchi* Newspaper, 12 May 2017, available at <https://data.mwananchi.co.tz/nape-kitwanga-wachachamaa-bajeti-ya-maji/>, accessed 19th December 2017.

266 Budget speech of the Minister of Water and Irrigation, para 74.

Item	Amount
Rehabilitation and expansion of network for clean water network in Babati, Mtwara, Kigoma, Sumbawanga, Lindi and Morogoro	Tshs. 19.5 billion
Construction and rehabilitation of dams projects as well as expansion of infrastructure for water supply from dams	Tshs. 10.5 billion
Expansion of sewerage system at Mwanza, Bukoba and Musoma and construction of network for clean and safe water at Lamadi, Misungwi and Magu	Tshs. 7.9 billion
Expansion of infrastructure for clean and safe water supply in rural areas.	Tshs. 7.5 billion
Construction of infrastructure for clean and safe water supply at Dodoma, Shinyanga, Singida, Pwani, Manyara, Katavi, Lindi, Songwe and Simiyu regions	Tshs. 5.0 billion
for improving water supply services at new regions head offices	Tshs. 5.0 billion
Implementing Kigoma Water Project	Tshs. 4.1 billion

Source: Ministry of Finance and Planning & Policy Forum

Other factors compromising access to quality water included increased population, short-term solution approach, neglect of water projects through failure to maintain them, contamination of water sources in mining areas, climate change and falling of water points. In his budget speech for the financial year 2017/18 the Minister of Water and Irrigation acknowledged that production of water in regional capitals in Tanzania had fallen from 470 litres per day in March 2016 to 400 litres per day in March 2017, due to decrease of water volume at water sources.²⁶⁷

Lack of adequate access to clean and safe drinking water contributes to diseases like cholera and diarrhoea. Children are among the major victims when these diseases strike, resulting to their suffering and death. Access to basic social services, such as safe drinking water and sanitation has a huge impact on children's health, educational advancement and well-being.

267 Budget speech of the Minister of Water and Irrigation, para 20.



Picture 24: Residents of Nanyumbu district in Mtwara region fetching water from wells for personal and domestic uses

5.3.3 Conclusion and Recommendations

LHRC acknowledges efforts made by the Government to increase access to water in Tanzania. However, more government action is needed to address the challenges in the water sector, especially the budget. LHRC calls upon the Government to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water. Increased water budget is key to boost water availability, which itself is essential the Government's industrialisation drive. The Ministry of Water and Irrigation and the Ministry of Natural Resources and Tourism should also ensure water-related and environmental laws are enforced to enhance protection of water sources.

5.4 Right to Adequate Standard of Living

Everyone has a right to a standard of living adequate for the health of himself and his family.²⁶⁸ According to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), this right includes right to adequate food and right to shelter.²⁶⁹ Under the Convention of the Elimination of all forms of Discrimination Against Women (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.²⁷⁰

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

268 Article 11(1) of the ICCPR; Article 25(1) of UDHR.

269 Ibid; Article 27 of the Convention of the Rights of the Child (CRC).

270 See Article 14 of CEDAW.

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 Declaration on the Right to Development²⁷¹ and the Universal Declaration on the Eradication of Hunger and Malnutrition.²⁷² This subchapter looks at the realization of the two rights derived from the right to adequate standard of living, namely right to adequate food and right to shelter/housing, in Tanzania in 2017.

5.4.1 Right to Food

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

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.

for realization of other human rights. Key elements of right to adequate food include **availability of food, food safety, acceptability and accessibility**.²⁷³ 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).

While the food situation slightly improved in 2017 compared to 2016, several challenges threatened food security in Tanzania in 2017. Food security was compromised by a number of factors, including climate change, insufficient budget for the agricultural sector and inadequate tools and technology used in food production. Due to overdependence on rainfall in agricultural production, adverse effects of climate

271 Article 8.

272 Article 1.

273 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>, accessed 19th December 2017.

change have resulted into decreased production in some parts of the country.²⁷⁴ On top of that, majority of farmers use inadequate tools and poor technology in agriculture, hence less productive. This can be attributed to insufficient budget allocated for the sector of agriculture and even less for irrigation, despite having more than 29 million hectares suitable for irrigation farming.

In January 2017, agriculture stakeholders urged the Government to assess food and drought situations in order to take precautionary measures against possible famine in some areas and provide food aid to households that are in need.²⁷⁵ They also advised promoting irrigation farming as a way of boosting food security and food stock at the National Food Reserve Agency (NFRA), especially during periods of adverse climate.²⁷⁶ Report by the Bank of Tanzania (BoT) of December 2017 indicated that food stocks held by the NFRA had increased since July 2017,²⁷⁷ as indicated in the table below.

Table 11: Food stocks held by National Food Reserve Agency

	Tonnes				
	2013	2014	2015	2016	2017
January	72,170.0	235,309.0	459,561.0	125,668.0	86,833.5
February	60,739.0	228,014.0	454,592.0	88,414.0	86,444.0
March	46,153.0	214,157.0	452,054.0	68,727.0	86,443.8
April	36,982.0	195,246.0	433,547.0	64,825.0	86,278.0
May	26,802.0	195,956.0	406,846.0	63,341.0	74,826.0
June	27,494.0	189,494.0	353,702.0	61,837.5	70,393.0
July	71,141.0	182,200.0	282,401.0	49,632.0	68,697.0
August	175,609.0	196,854.0	268,514.9	59,832.0	78,434.0
September	224,295.0	299,624.0	265,046.0	86,545.0	85,403.0
October	235,817.0	426,999.0	253,655.2	90,905.0	89,248.0
November	234,145.0	460,295.0	238,133.6	90,900.0	93,353.7
December	232,963.0	466,583.0	180,746.3	89,691.8	

Source: BoT Monthly Economic Review, December 2017

In January 2017, the Ministry of Agriculture stated that the food situation for the

274 Policy Forum, *Position Statement: Budget 2017/18*, available at <http://www.policyforum-tz.org/position-statement-budget-201718>, accessed 20th January 2018.

275 Louis Kolumbia “Act over drought threat, govt urged” The Citizen Newspaper, 6 January 2017, available at <http://www.thecitizen.co.tz/News/Act-over-drought-threat--govt-urged/1840340-3507946-1316rq6/index.ht>, accessed 20th January 2018.

276 Ibid.

277 Bank of Tanzania, *Monthly Economic Review*, December 2017, available at <https://www.bot.go.tz/Publications/MonthlyEconomicReviews/MER%20December%202017.pdf>, accessed 21st January 2018.

financial year 2016/17 was satisfactory.²⁷⁸ However, in July 2017, the Prime Minister warned that the food situation is generally not satisfactory as some areas experience food shortage.²⁷⁹ And back in February, 2017, the Minister of Agriculture, Livestock and Fisheries, Hon. Dr. Charles Tizeba, stated that 35,549 tonnes of food would be distributed to about 1.2 million people in 55 districts across Tanzania, noting that number of districts facing food shortage had risen from 43 to 55.²⁸⁰

Moreover, a quantitative study about food security in Tanzania conducted by *Twaweza*,²⁸¹ an NGO operating in East Africa, indicated that food security situation had worsened between September 2016 and February 2017, whereby 65% of respondents reported being worried about their household not having enough food in the past 7 days in February 2017, compared to 45% in September 2017.²⁸² The study also indicated that 78% of respondents reported food shortages in their locations, 84% in rural areas and 64% in urban areas.²⁸³ Further, according to the study, maize price has doubled (as of February 2017) compared to the year 2015.²⁸⁴

5.4.2 Right to Shelter/Adequate Housing

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**.²⁸⁵ The right is closely connected to

278 See Wizara ya Kilimo, *Hali ya Chakula kuelekea mwaka 2017*, available at <http://www.kilimo.go.tz/index.php/en/resources/view/hali-ya-chakula-nchini-kuelekea-mwaka-2017>, accessed 20th January 2018.

279 Kelvin Matandiko "Waziri Mkuu: Hali yachakula nichini hairidhishi" Mwananchi Newspaper, 5 July 2017, available at <http://www.mwananchi.co.tz/habari/Waziri-Mkuu-Hali-ya-chakula-nchini-hairidhishi/1597578-4001048-rn0fc6/index.html>, accessed 20th January 2018.

280 Sylvester Domasa "35,000 tonnes for distribution to hunger stricken citizens" 1 February 2017, available at <https://www.dailynews.co.tz/index.php/home-news/48255-35-000-tonnes-for-distribution-to-hunger-stricken-citizens>, accessed 20th January 2018.

281 The study looked at perceptions and experiences of the current food security situation and on its underlying drivers, conducted through *Sauti za Wananchi* - a nationally-representative (Tanzania Mainland), high-frequency mobile phone panel survey.

282 Twaweza, *Hunger pangs: Food (in)security in Tanzania*, Sauti za Wananchi, Brief No. 39, March, 2017, available at <http://www.twaweza.org/uploads/files/SzW-FoodSecurity-EN-FINAL.pdf>, accessed 20th January 2018.

283 Ibid.

284 Ibid.

285 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

rights to health, water and sanitation.

- ♦ 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.

Urbanization and Poor Housing for the Urban Poor

According to UNHABITAT, more than 1 billion people across the world still lack adequate shelter and live in unacceptable conditions of poverty.²⁸⁶ Majority of these people live in developing countries, especially in urban areas, due to urbanization. As a result, there has been an increase of slums and informal settlements in urban areas, which is why one of the Sustainable Development Goals (SDGs) is **making cities inclusive, safe, resilient and sustainable**.²⁸⁷ According to the United Nations, common challenges in urban areas 'include congestion, lack of funds to provide basic services, **a shortage of adequate housing** and declining infrastructure.' This is why one of the targets under SDG 11 is to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030.

In Tanzania, poor or inadequate planning for housing development in most urban areas over the years, coupled with corruption within the land sector have contributed to the problem of inadequate housing.²⁸⁸ As a result, majority of people in urban areas such as Dar es Salaam live in housing that are not adequate, located in places which are not habitable and where basic social services cannot be easily reached. A good example is

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].

286 See UNHABITAT, Need for effective housing policies, at <http://mirror.unhabitat.org/content.asp?cid=413&catid=281&typeid=24&subMenuId=0>, accessed 21st January 2018.

287 SDG 11 (Sustainable Cities and Communities).

288 See Prevention and Combating of Corruption Bureau, Review of Corruption in High Risk and High Impact Sectors, December 2015.

people living along the Msimbazi Valley in Magomeni area – Dar es Salaam, which has been designated an area prone to floods and unfit for human settlement. For years, the people who have settled there have been told to leave and relocate to other areas, but always return. Different other areas of the city are characterized by dilapidated houses, including some parts of Gongo la Mboto and Temeke. Generally, majority of the people are still swamped in poverty, living on less than 1 dollar and 2 dollars a day, hence cannot afford to build or access adequate housing.

Demolition of Houses in Dar es Salaam

As indicated in Chapter Two of this report, in 2017 two major operations of demolition of houses was carried out by the Government to pave way for construction and expansion of road and railway. The first operation was demolition of houses along deemed illegally built within the road reserve along the Morogoro Road. The demolition exercise, conducted by the Tanzania Roads Agency (TANROADS), along the Morogoro Road left many people homeless and confused. Some of them reportedly claimed that they had the necessary legal documents to show that they had settled legally, but were not accorded a right to be heard, hence rushed to court to seek injunction.²⁸⁹ It was also reported that the demolition exercise caused many conflicts between tenants and landlords.²⁹⁰ In the same month (August 2017), the High Court (Land Division), provided an injunction, ordering halt of demolition of 286 houses until court hearing.²⁹¹ Applicants' prayers where that the court declares them legitimate owners of the houses; they did not build them within road reserve; and if they Government wants to demolish them then they are fairly compensated as required by law.

289 "Ongoing demolition along Morogoro Road causes havoc to the citizenry" *The Guardian* Newspaper, 29 August 2017, available at <https://www.ippmedia.com/en/news/ongoing-demolition-along-morogoro-road-causes-havoc-citizenry>, accessed 21st January 2018.

290 Ibid.

291 James Magai "Court temporarily spares 286 houses" *The Citizen* Newspaper, 20 August 2017, available at <http://www.thecitizen.co.tz/News/Court-temporarily-s pares-286-houses/1840340-4063830-84q2g6/index.html>, accessed 21st January 2018.



Picture 25: Demolition in Kimara Area in Dar es Salaam
(Picture by the IPP Media)

The second operation was demolition of houses along the railway line, was spearheaded Reli Assets Holding Company (RAHCO), which manages assets of the Tanzania Railway Limited (TRL). In April 2017, residents of Bugurni, whose houses had been demolished for allegedly being within the 30-metre railway reserve, served a notice to sue the Government and RAHCO, following demolition of 250 houses.²⁹² Whether or not the operations were legally justified, it was a huge blow for majority of citizens in the affected areas in terms of realization of their right to adequate housing.

In another development, in August 2017 the President, Hon. John P. Magufuli, announced stoppage of demolition of 17,300 houses along the Msimbazi Valley and Masaki Tuangoma in Dar es Salaam, which had been announced by the National Environmental Management Council (NEMC) and the Ministry of Lands, Housing and Human Settlements Development.²⁹³ According to the Dar es Salaam Regional Commissioner, Mr. Paul Makonda, the authorities had been given a green light to demolish the houses and the President called him and ordered halt of the exercise.²⁹⁴ Residents claimed that their District Commissioner had told them that they are supposed to leave the areas.²⁹⁵ Earlier in March 2017, however, the Dar es Salaam

292 Hellen Nachilongo “Govt may be sued over Buguruni demolition” *The Citizen Newspaper*, 5 April 2017, available at <http://www.thecitizen.co.tz/News/Govt-may-be-sued-over-Buguruni-demolition/1840340-3878246-107eia8z/index.html>, accessed 21st January 2018.

293 “Demolition stoppage benefits 100,000” *Daily News*, 31 August 2017, available at <http://dailynews.co.tz/index.php/home-news/52697-demolition-stoppage-benefits-100-000>, accessed 21st January 2018.

294 Ibid.

295 “JPM azuia ubomoaji wa nyumba 17,000 Dar” *Mwananchi Newspaper*, 31 August 2017, available at <http://www.mwananchi.co.tz/habari/JPM-azuia-ubomoaji-wa-nyumba-17-000-Dar/1597578-4077950-4k6d0pz/index.html>, accessed 21st January 2018.

Regional Commissioner had ordered, and rightly so, demolition of houses in flood prone areas in Dar es Salaam, including some areas along the Msimbazi Valley.²⁹⁶ For years, residents in flood prone areas have been refusing relocate, which is for their own safety, despite government effort. He added that those who were there legally and not yet compensated would be compensated.²⁹⁷

Women's Access to Adequate Housing

A study on women's access to adequate housing in Tanzania, conducted in 2010 revealed that women's access to adequate housing is hindered by various factors, including discriminatory laws and practices.²⁹⁸ Discriminatory laws in question include inheritance laws, especially customary laws, usually forced to leave matrimonial home and face homelessness, especially when they refuse to be 'inherited' by deceased husband's siblings.²⁹⁹

Other than discriminatory laws and practices, the study revealed that women's access to adequate housing in Tanzania is compromised by barriers such as fraudulent mortgages by spouses, lack of legal knowledge; limited access to justice; GBV, whereby women decide to stay despite the violence due to fear to homelessness; loopholes in land laws; and patriarchy.³⁰⁰ Cultural practices usually deny widows right to inherit and seek to disinherit them or provide them limited inheritance rights. These barriers have a big impact on women's access to adequate housing, causing health and safety concerns, poor quality of housing and increased exposure of GBV.³⁰¹

The circumstances surrounding women's access to adequate housing highlighted above still exist. As such, it is safe to assume that these barriers are still hinder effective realization of the right to adequate housing for women in Tanzania. Tanzania as a state has a duty under various conventions providing for women's rights, including CEDAW, to ensure that women have equal access to adequate housing; and do to so these barriers must be addressed.

296 Fatma Abdu "RC orders demolition of houses on flood prone areas in Dar" 15 March 2017, available at <http://dailynews.co.tz/index.php/home-news/49163-rc-orders-demolition-of-houses-on-flood-prone-areas-in-dar>, accessed 21st January 2018.

297 Ibid.

298 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 January 2018.

299 Ibid.

300 Ibid.

301 Ibid.

Housing problems following eviction of farmers and pastoralists in villages around wildlife management areas and national parks in different parts of Tanzania Mainland

As indicated above (in Chapter Four) in 2017, the Government conducted various operations across Tanzania to evict pastoralists and farmers residing within and near wildlife protected and reserve areas. These operations were conducted in different parts of the country, including in Katavi Region, Loliondo-Arusha and Saadani-Pwani Region. Regardless of who is at fault, the eviction exercises, which included demolition or destruction of houses, left many farmers and pastoralists and their families homeless. Again, in such cases the ones who suffer the most are children, the elderly and women.

Floods in Bukoba – Kagera

In April 2017, floods hit hard two wards within Bukoba Municipality, leading to destruction of 600 houses, which had also been affected by an earthquake the previous year. This exacerbates the inadequate housing problem in the area; and as indicated above, majority of Tanzanians cannot afford adequate housing.



Picture 26: Floods victims being rescued in Kagera

5.4.3 Conclusion and Recommendations

Despite efforts made in improving the situation of food and housing in Tanzania, slow progress has been made. High poverty levels, particularly in rural areas, hindered access to adequate food and housing. Agriculture in rural areas is still mainly dependent on rainfall and production is mainly small-scale, using traditional farming tools. As a result, poverty levels remain high, affecting access to and affordability of adequate housing and food. Demolition of houses in Dar es Salaam in 2017 rendered many people homeless and led to a bigger problem of inadequate housing in the city. While some of the people may really be at fault for building within the road or railway reserve areas, the Government must take part of the blame as corruption in the land sector and local government authorities has contributed in the situation of illegal housing.

To help improve the situation and ensure better realization of the right to adequate standard of living, LHRC recommends the following:

- The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the sector of agriculture in order to boost food production and improve accessibility;
- The Government to be quick in providing humanitarian assistance, including shelter and food, in case of natural disasters;
- The Government, through Ministry of Education and Vocational Training, to improve access to vocational training as a way of reducing unemployment among the youth;
- 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;
- The Government to ensure operations conducted by its institutions and agencies, such as demolition exercises in Dar es Salaam, adhere to human rights standards;
- The Ministry of Lands, Housing and Human Settlements Development to ensure increased access to adequate housing in line with the Development Vision 2025 and the Sustainable Development Goals; and
- The Ministry of Agriculture, Livestock and Fisheries to increase focus on and ensure increased budget for irrigation schemes.

5.5 Right to Culture

Right to culture refers to the right to access and participate in a culture. It includes the right of all persons to take part in cultural life, right to enjoy the benefit of scientific progress and its applications and the right of people belong to ethnic, religious and linguistic minorities within a country to enjoy their culture, practice religion and use their language. This right is provided for under various regional and international human rights conventions, including the ICESCR, CERD, CEDAW, CRC, CRPD and ICCPR.³⁰²

Culture is dynamic and includes language, religion, land, arts, literature, sports and education. Right to culture is enjoyed individually and as part of a group.

Tanzania is composed of more than 120 tribes and people of different faiths, including Islam and Christianity. These people practice different cultures; hence Tanzania is a culturally diverse country. This subchapter looks the situation of the right to participate in cultural life in Tanzania in 2017.

5.5.1 Right to Participate in Cultural Life

As indicated above, the right to participate in cultural life is enshrined in various human rights conventions. Like other economic, social and cultural rights, it is realized progressively, depending on availability of resources and is insists on non-discrimination. This right raises three State obligations, namely to **respect**, **protect** and **fulfil**. This right may be limited in accordance with the law and to the extent that it does not interfere with the rights of other people.

Tanzanians, including Ethnic Minorities, are Generally Free to Participate in Cultural Life and Enjoy Cultural Products and Identity

Right to participate in cultural life is among the rights that are to a large extent respected and promoted in Tanzania. People of different tribes, including minority tribes such as the Hadzabe, are free to engage in cultural practices as long as they do not contravene the laws of the land and infringe on human rights. They participate in cultural life in various ways, including cultural clothing, tribal languages, traditional dances and rites of passage. People of different tribes, such as the Maasai, are also free to identify and express themselves in their cultural attire and produce, sell and buy cultural products. In Dar es Salaam at Mwenge Area, for example, one can still find a variety of cultural products for sale, as well as all major airports in Tanzania.

302 Article 15 of ICESCR; Article 5(e) (vi) of CERD; Article 13(c) of CEDAW; Article 30 & 31 of CRC; Article 30 of CRPD; and Article 27 of ICCPR.



Picture 27: People enjoying a traditional dance in Mbeya in 2017

Promotion of the Kiswahili Language

Language is an important part of culture. In Tanzania, the Government has over the years (since the Nyerere presidency) made efforts to promote the Swahili Language, which is now spoken across the East African region. The fifth phase government has continued with the tradition of promoting the national language; and in particularly the President, Hon. John Magufuli, has been done well to promote the language by using it during his speeches in different forums, more than it was the case for his predecessor, Hon. Jakaya Kikwete. LHRC commends the President in this regard and calls upon other government leaders and Tanzanians to follow lead. The Swahili Language was established as one of the six official languages of the African Union (AU) and of the official languages of the East African Community (EAC). Promotion of this language is key as apart from cementing our national identity, as a job opportunity. There is a growing number of people in different parts of the world, including China, which presents an opportunity for Tanzanians to teach them at different forums, including universities.

Freedom to Practice Religion and Embrace Religious Culture

Religion is a big part of culture in Tanzania. The Constitution of the United Republic of Tanzania guarantees the freedom of religion under Article 19, allowing people freedom to choose faith or religion and practice culture associated with such faith or

religion. Peaceful co-existence among different religious groups and denominations was observed in 2017 in Tanzania, thus not incidents of friction related to religion or religious culture. People are also free to contract customary marriages by law (Law of Marriage Act 1971).

Prohibition of Harmful Cultural Practices

Restrictions on right to culture are only there by law, as is the case for other human rights. Such restrictions are particularly for cultural practices which have been considered to be harmful to vulnerable groups such as women and girls domestically and internationally, and as such prohibited by law. These cultural practices include female genital mutilation (FGM), early (child) marriage and discrimination based on gender.

5.5.2 Conclusion and Recommendations

Culture is a key identity of a state and its people, giving people the meaning of life and differentiating Tanzania from other states and their people. Tanzania's culture of collectivism, shaped by the late Mwalimu Julius Kambarage Nyerere through his socialism policy, is important in shaping our personalities and behavior as Tanzanians, bringing us closer as a unit, hence promoting unity. Therefore it is important for the Government, through the Ministry of Information, Youth, Culture and Sports, to continue promoting culture and protect cultural sites. Parents, CSOs and traditional leaders should play a role of promoting culture among children and other community members.

Chapter 6:

Collective Rights

6.0 Introduction

Collective rights are the rights that belong to a 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); the African Charter on Human and People's Rights (ACHPR) and the United Nations Charter.

6.1 Right to Development

The UN Declaration on the Right to Development defines 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.**”³⁰³ Like all human rights, the right to development belongs to everyone, individually and collectively, with no discrimination and with their participation.

Rule of law, good governance, participation of people and respect for human rights are key for realization of the right to development. The Government has a duty to involve community members in creating development plans and policies, 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.³⁰⁴

Political Development

Political development was an issue of great concern in 2017 as freedom of expression

303 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.

304 Ibid.

was seriously curtailed and rule of law was not fully safeguarded. As discussed in chapters on civil and political rights above, the year 2017 witnessed a crackdown on freedom of speech, freedom of the media and freedom of assembly. These actions are not in line with Tanzania's Development Vision 2025, which seeks to achieve good governance and rule of law. Political development in Tanzania thus took a hit in 2017.

Social Development

Social development suggests realization 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 2015 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. Provision of quality education and healthcare are very important in ensuring development and achieving economic empowerment.

In 2017, the Government continued with its efforts of improving access to education through feed education policy, as discussed above. This has helped to boost enrollment in primary education and subsequently will do the same for secondary education. However, quality of education offered remains to be a concern and an area where the Government needs to improve. Food security is threatened by uncertainties of rains and underfunding of the agricultural sector, as indicated above, while access to quality healthcare services remains a problem for majority, owing to various challenges in the sector as discussed above.

Cultural Development

Tanzanians remain free to practice their culture, save for harmful cultural practices prohibited by law. In terms of language, the Swahili language continues to be promoted and accepted beyond Tanzania as the language of the East African community, which is a pride for all Tanzanians.

Economic Development

One of the major targets of Tanzania's Development Vision 2025 is a strong and competitive economy, looking to achieve a semi-industrialized economy with a substantial industrial sector comparable to middle-income countries, a growth rate of 8% per annum or more and adequate level of physical infrastructure, among others.³⁰⁵

305 See Tanzania Development Vision 2025 at <http://www.mof.go.tz/mofdocs/overarch/vision2025.htm>, accessed 30th December 2017.

Over the past decade, efforts by the Government have seen the economy grow, with Tanzania continuing to enjoy a relatively high economic growth, at 7% in 2016, and putting it among the fastest growing economies in Sub-Saharan Africa.³⁰⁶ One of the focuses of the fifth phase government is industrialization, and it remains to be seen to what extent such a process will help to curb the ever growing problem of unemployment, especially among youth who finish their university education each year.

In terms of infrastructure development, the fourth and fifth phase governments have done well to connect Tanzania regions by tarmac roads. In cities like Dar es Salaam, congestion is a big issue affecting the economy; and introduction of the Bus rapid transit (BRT) public transport system and construction of flyovers provide an opportunity to address the problem. The Government also seeks to construct a standard gauge railway (SGR), which may help to boost industrialization, improve transportation, boost GDP and increase job creation, among others. While the economic value of such a project may be a concern, proper management of the railway may indeed further boost Tanzania's economy.

While the country continues to enjoy a relatively high economic growth, poverty rate continues to be high, at 47%, with majority of Tanzanians either living under or slightly above USD 1 per day. This is because, as indicated in LHRC's Tanzania Human Rights Report 2015, the impressive economic growth has failed to significantly improve human development, hence resulting in minimal impact on poverty reduction to reduce the gap between the haves and the have not in Tanzania.³⁰⁷

Another issue of concern affecting economic and even social development in Tanzania is the agricultural sector, which continues to be underfunded. Agriculture is responsible for employment of majority of Tanzanians (more than 70%), hence a key sector. The AU Maputo Declaration on Agriculture and Food Security of 2003 requires that at least 10% of total budget should be allocated for agriculture, this is yet to be achieved,³⁰⁸ including in 2017. It should also be noted that in most cases not the full amount is disbursed in a particular financial year. In 2017, agriculture stakeholders also raised concerns about the poor funding allocated for agriculture in the budget of the financial year 2017/18, noting that it will hamper transformation of the sector.³⁰⁹ They also

306 See The World Bank, The World Bank in Tanzania: Overview at <http://www.worldbank.org/en/country/tanzania/overview>

307 See LHRC (2016), Tanzania Human Rights Report 2015.

308 For instance, the 2014/15 budget for agriculture was 7%, while that for the financial year 2016/17 was 4.9%.

309 Ludger Kasumuni "Agriculture still poorly funded in 2017/18 Budget, govt told" 10 June 2017, available at <http://www.thecitizen.co.tz/News/Agriculture-still-poorly-funded-in-2017-18-Budget--govt-told/1840340-3964164-ndr7fa/index.html>, accessed 25th October 2017.

noted with concern the small funding allocated for water projects, which are key for irrigation, given the fact that climate change has affected rainfalls.³¹⁰

Women's Participation in Development Process

The declaration on the Right to Development requires that women have an active role on the development process.³¹¹ It also calls for elimination of discrimination based on sex in enjoyment of all human rights and fundamental freedoms.³¹² Although significant progress has been made over the years to include women in the development process, they continue to face a number of challenges, including underrepresentation in positions of authority or decision-making. GBV also hinders majority of women, particularly in the informal sector, to effectively take part in the development process.

As indicated above, one of the key weapons for achieving development is safeguarding the right to education for all. However, we have seen that girls who become pregnant are not allowed back to school, which has long lasting impact on them and the future of the nation as far as women's involvement in the development process is concerned, given the risks girls face in accessing education in Tanzania.

6.2 Right to Enjoy and Benefit from Natural Resources

The right to enjoy natural resources is recognized under international and regional human rights law. 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."³¹³ 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 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 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.

310 Ibid.

311 Article 8(1) of the Declaration on the Right to Development.

312 Ibid, Article 6(1).

313 Article 21(1).

In 2017, the Government made a number of interventions towards safeguarding the right to enjoy and benefit from natural resources in Tanzania. These include ban of export of mineral concentrates, call for review of mining contracts, sackings of senior government officials, probe into mineral exports, negotiation with Acacia Mining Company, probe into diamond and tanzanite mining operations and changes in mining laws.

Ban of Export of Mineral Concentrates

In March 2017, the Government banned export of mineral concentrates and ores for metallic minerals such as gold, copper, nickel and silver, to ensure they are processed, smelted or refined here in Tanzania, rather than abroad, in line with the Mineral Policy of 2009³¹⁴ and the Mining Act of 2010.³¹⁵ It was explained that this would help to create more jobs and guarantee technology and skill transfer.³¹⁶ In the same month the President of Tanzania made an impromptu visit to the Dar es Salaam port, inspected several containers of minerals and ordered impound of 277 of them until they had been analysed.³¹⁷

Concerns over immediate ban has been expressed by several stakeholders, including mining companies and opposition MPs, warning against unilateral decisions and unpredictability of policy statements that may negatively affected foreign investment and employment in the mining sector in Tanzania.

Probe into Mineral Exports and Sackings of Senior Government Officials

The mineral exports saga in 2017 saw President Magufuli forming a probe team to look into the saga and provide recommendations.³¹⁸ The probe team produced two reports, indicating the containers of minerals impounded at the Dar es Salaam port had minerals worth approximately Tshs. 1.4 Trillion, which had been cleared for tax or recorded by the Tanzania Minerals Audit Agency (TMAA). In this regard, the

314 See Policy Statement 5.11 of the Mineral Policy of Tanzania, 2009.

315 Roger Nellist, *Controversial Presidential actions on mining*, Tanzania Affairs, Energy & Minerals, Issue 117, 1 May 2017, available at <https://www.tzaffairs.org/2017/05/energy-minerals-11/>, accessed 9th September 2017.

316 Ibid.

317 Summary of Report by the Presidential Committee probing into mineral sands and concentrates, available at <https://www.tanzaniainvest.com/wp-content/uploads/2017/05/Report-Investigation-Committee-contents-mineral-sands-concentrates-export.pdf>, accessed 14th October 2017.

318 Roger Nellist, THE MINERAL SANDS EXPORT SAGA, Tanzania Affairs, Issue 118, 1 September 2017, available at <https://www.tzaffairs.org/2017/09/the-mineral-sands-export/>, accessed 20th December 2017.

probe committee made a number of recommendations, including the export ban to be maintained, installation of effective scanners at the port, building of smelters in Tanzania and disciplinary action against TMAA and Ministry of Energy and Minerals officials.³¹⁹ The second report was produced to the President in June 2017, highlighting the economic impact of the mineral sands exports, estimating loss of government revenue in a two-decade period worth trillions of shillings, Acacia Mining Company being the main culprit. Among the recommendations made by the probe team are: legal action against public officers complicit in the revenue lost, review of mining laws and agreements, mining agreements to be made public and the Government taking stake in all large mines.³²⁰

The probe team reports attracted strong reactions from the Government, mining companies and members of parliament. The report took centre stage in parliamentary discussions and led to sacking of the Permanent Secretary of the Ministry of Energy and Minerals, suspension of the CEO of TMAA, dissolution of the TMAA Board and removal of the Minister of Energy of Minerals. It was also reported that after the report findings were made public Acacia's share price dropped by more than 15% within minutes.³²¹ Acacia, however, disputed the report findings, saying they were inaccurate and contained unfounded accusations, insisting that it has been abiding by the law. It also called for the export ban to be lifted as it was hurting its mining business in Tanzania.

Probe into Diamond and Tanzanite Mining Operations

The probe into export of mineral sands was followed by a probe into diamond and tanzanite mining operations. The parliamentary probe teams released their report, indicating substantial tax losses and missing revenues in ministry records.³²² The diamond probe team revealed discrepancies in diamond production statistics while the tanzanite probe team claimed that only 20% of tanzanite produced is legally exported.

Call for Review of Mining Contracts

The mineral sands and concentrates saga led to calls for the mining contracts to be reviewed and renegotiated, echoing the recommendation of the Controller and

319 Ibid.

320 Ibid.

321 Ibid; Summary of Report by the Presidential Committee probing into mineral sands and concentrates, available at <https://www.tanzaniainvest.com/wp-content/uploads/2017/05/Report-Investigation-Committee-contents-mineral-sands-concentrates-export.pdf>, accessed 14th October 2017.

322 Roger Nellist, *Important Agreement reached with Barrick Gold (Acacia)*, Tanzanian Affairs, Issue 119, 1 January 2018, available at <https://www.tzaffairs.org>, accessed 10th January 2017.

Auditor General (CAG) in his annual general report the audit of public authorities and other bodies for the financial year 2015/2016.³²³ This led to negotiations between the Government and Acacia's Barrick Mining Company and the Government in this regard as well as changes in mining law, as discussed below.

Negotiations with Acacia Mining Company

Following the release of mineral export probe reports, Acacia (Barrick) met with the Government to begin negotiations, geared towards resolving the problems between the two parties. The negotiations had two major outcomes. One, it was agreed that the Government would have a 16% stake in Acacia/Barrick mines, in line with the new mining law. Two, the two parties will now divide the profit equally (50/50). It was also agreed that the communities surrounding the mines deserve to benefit more from the mining activities in their areas and Acacia will make a good faith payment of USD 300 million to the Government.³²⁴

Changes in Mining Laws

In 2017, in the aftermath of the mineral sands and concentrates saga, a law was passed to amend mining laws. Through the Written Laws (Miscellaneous Amendments) Act of 2017, the Mining Act of 2010 has been amended to include a new part titled "PART VIII: LOCAL CONTENT, CORPORATE SOCIAL RESPONSIBILITY AND INTEGRITY PLEDGE."

A mineral right holder shall on annual basis, prepare a **credible corporate social responsibility** plan jointly agreed by the relevant local government authority or local government authorities in consultation with the Minister responsible for local government authorities and the Minister of Finance and Planning.

Section 105(1) of the Mining Act 2010 as amended in 2017

This part contains provisions under Section 105 which provide for a mandatory **corporate social responsibility (CSR)** in line with the Mineral Policy of Tanzania of 2009. It provides for a joint CSR plan between mineral right holder and local government authority, taking into account environmental, social, economic and cultural activities

323 See The United Republic of Tanzania, National Audit Office, *Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and other Bodies for the Financial Year 2015/2016*, p. 80, available at http://www.nao.go.tz/?wpfb_dl=226, accessed 17th October 2017.

324 Roger Nellist, *Important Agreement reached with Barrick Gold (Acacia)*, Tanzanian Affairs, Issue 119, 1 January 2018, available at <https://www.tzaffairs.org>, accessed 10th January 2017.

based on local government priorities of host community.³²⁵ Moreover, the plan must be submitted by mineral holder to the local government authority for approval, which shall have in place CSR guidelines.³²⁶

Apart from CSR, the law also requires mineral holder to give preference to goods and services produced or available in Tanzania,³²⁷ introduces the Mining Commission, insists on training and technology transfer,³²⁸ and introduces integrity pledge by mineral holder.³²⁹ Furthermore, the law now grants the

The Government will require companies to implement **credible corporate responsibility** policies.

Policy Statement 5.9(i) of the Mineral Policy of Tanzania, 2009

Government not less than 16 non-dilutable free carried interest (FCI)³³⁰ shares in the capital of a mining company³³¹ and 50% of net profit accrued. The law also increases royalty on diamonds and gemstones from 5 to 6% and on metallic minerals from 4 to 5%, following the amendments.³³²

Moreover, in 2017 Tanzania enacted two laws, the Natural Wealth and Resource Contracts (Review and Renegotiations of Unconscionable Terms) Act and the Natural Wealth and Resources (Permanent Sovereignty) Act. These laws **allow renegotiation of contracts with mining and energy companies**. In LHRC's opinion, renegotiation of these contracts is a good thing, in the wake of findings by the Controller and Auditor General (CAG) in his audit report released in March 2017 that he had noted significant weaknesses in the Mining Development Agreements (MDAs).³³³ Having reviewed several MDAs, including of Acacia's mines, the CAG noted that they contain "terms which undermine public interests." The CAG also highlighted weaknesses in entering MDAs, including the Government mainly relying on prospecting and feasibility

325 See the Written Laws (Miscellaneous Amendments) Act, 2017, Amendment of the Mining Act (s. 105(2)) at <http://parliament.go.tz/polis/uploads/bills/1498723111-EXTRACTIVE%20INDUSTRY%20AND%20FINANCIAL%20LAWS-4.pdf>

326 Section 105(3) & (4) of the Mining Act 2010 as amended in 2017.

327 Section of 102 of the Mining Act 2010 as amended in 2017.

328 Ibid, s. 104.

329 Ibid, s. 106.

330 Free Carried Interest (CFI) provisions imply that a state is granted equity interest free of charge, without paying cash.

331 Section 10(1) of the Mining Act 2010 as amended by s. 9 of the Written Laws (Miscellaneous Amendments) Act, 2017.

332 See s. 23 of the Written Laws (Miscellaneous Amendments) Act 2017, amending s. 87 of the Mining Act.

333 See The United Republic of Tanzania, National Audit Office, *Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and other Bodies for the Financial Year 2015/2016*, p. 80, available at http://www.nao.go.tz/?wpfb_dl=226, accessed 17th October 2017.

reports by license applicants.³³⁴

The Natural Wealth and Resource Contracts (Review and Renegotiations of Unconscionable Terms) Act 2017 stipulates that the natural wealth and resources are property of the people (held in trust by the President) and give the National Assembly powers to review and require the Government to renegotiate any arrangement or agreement over natural resources.³³⁵ Moreover, all natural resource contracts must now be made public.

6.3 Conclusion and Recommendations

LHRC welcomes the changes made in the mining law to incorporate compulsory CSR as this has been one of the issues it has been strongly advocating for, particularly through its annual human rights and business reports. LHRC commends the Government for taking the steps to safeguard the welfare of communities which host mining companies. However, while these laws are generally good and signal a turn in the right direction in Tanzania, they were enacted without allowing adequate time for parliamentary debate, a concern that was raised by opposition MPs, and analysis and recommendations by CSOs.

LHRC commends the efforts taken by the fifth phase Government in ensuring that it gets what it deserves from the mining companies and Tanzanians, including those residing in mining areas, benefit from their natural resources. However, the Government must take caution in addressing the contractual issues with mining companies, acting diligently so that Tanzania does get dragged in legal battles before international tribunals. All actions taken must be in line with the law, ensure mutual benefit and done in good faith so as to avoid unsettling or not attracting foreign investment.

334 Ibid.

335 See sections 4 & 5 of the Natural Wealth and Resource Contracts (Review and Renegotiation of Unconscionable Terms) Act 2017.

Chapter 7:

Rights of Vulnerable Groups

7.0 Introduction

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. These groups are women, children, persons with disabilities (PWDs), the elderly and persons living with HIV/AIDS. These groups consequently require special protection so that they can equally and effectively enjoy fundamental human rights; and as such there are laws and treaties which specifically provide for the human rights of these groups and ensure effective and equal enjoyment of their rights. These treaties and laws therefore provide additional protection of the rights of the members of these groups other than that provided generally by the international bill of human rights, which is composed of the ICCPR, ICESCR, and UDHR. This chapter looks at the situation of the rights of the members of these groups in 2017.

7.1 Women's Rights

While the international bill of rights³³⁶ provides for human rights of all groups, there are treaties that specifically provide for women's rights. These treaties include the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) of 1979 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). 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 the right to equality before the law and prohibits any form of discrimination, including based on sex and gender.³³⁷ All people in Tanzania, including women, thus ought to enjoy human rights provided for in the constitution equally, without any discrimination. In practice, however, women, who account for majority of Tanzania population, continue to face discrimination in enjoyment of their various basic rights, such as the right to own property, right to life and right to equality. Gender-based violence also continues to be among major violations of women's rights. The Tanzanian Government is obligated

336 International bill of rights comprises of 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).

337 See Article 13 of the Constitution of the United Republic of Tanzania 1977.

under CEDAW and Maputo Protocol to pursue all appropriate means to eliminate discrimination against women.

This sub-chapter discusses violence against women, discrimination, and gender equality as major issues affecting women's rights in 2017.

7.1.1 Violence against Women

According to the United Nations Declaration on the Elimination of Violence against Women of 1993, 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. It also includes threats with such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Examples of VAW are rape, sexual harassment at work, trafficking in women and girls, forced prostitution, trafficking in women, beatings, torture, and harmful traditional practices such female genital mutilation (FGM). VAW is a form of discrimination and constitutes human rights violation,³³⁸ 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.³³⁹

Police data for the year 2017 revealed that a total of 2,059 cases of rape were reported by March 2017 despite the existence of the National Plan of Action to end Violence against Women and Children (2017/18-2021/22).³⁴⁰ By the end of December, the number of reported cases was 8,039, a significant increase (394 incidents) compared to the 7,645 such incidents reported in 2016. As indicated in the figure below, incidents of rape have been on the rise in the past three years.

338 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 2016.

339 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 2016; 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 2016.

340 The National Plan of Action to end Violence against Women and Children (2017/18-2021/22) emphasizes on the actions needed for both preventing and responding to violence and recognizes that investing in violence prevention initiatives has a positive impact on inclusive growth.

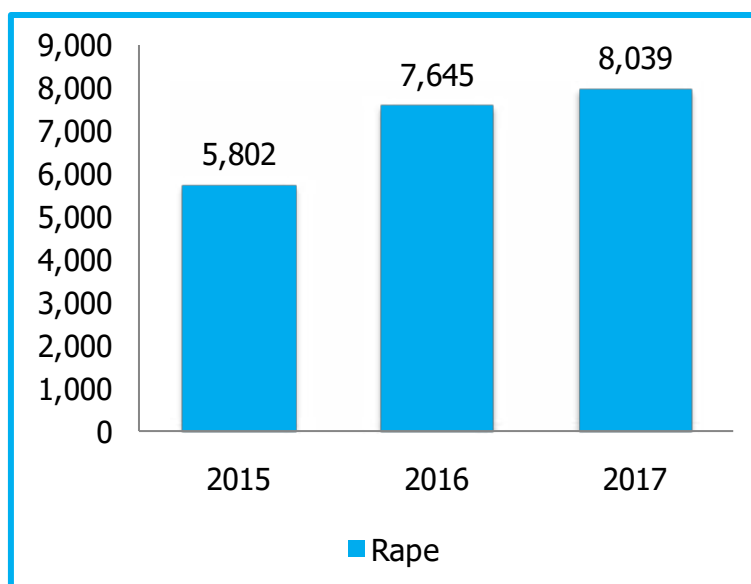


Figure 12: Incidents of rape documented by the Police Force 2015-2017

A survey on human rights conducted by LHRC across 20 districts in 2017, revealed that most common forms of VAW is sexual violence, especially rape, followed by physical violence, according to social welfare officers.³⁴¹ LHRC was also able to document many incidents of violence against women, through media survey. The media survey revealed at least 75 incidents of VAW, majority of them being physical violence, as indicated in the table below.

Table 12: Incidents of violence against women reported in 2017

Description	Source	Date
Rukwa: Two women were stabbed to death by their husbands. The women were attacked and killed because of jealousy. One of the husbands hanged himself after committing murder.	<i>Nipashe</i> Newspaper	16 May 2017
Bunda, Mara: A woman in Bunda District was brutally flogged 30 times and humiliated in public at a traditional meeting for allegedly suggesting that her mother was a witch.	<i>HABARILEO</i> Newspaper	13 Jan 2017

341 LHRC Human Rights Survey 2017.

Description	Source	Date
Dar es Salaam: Police hold a man, accused of killing his ex-lover because of jealousy in March 2017.	<i>HABARILEO</i> Newspaper	6 Apr 2017
Shinyanga: A 50-year old woman of Puni Village in Shinyanga Rural was attacked with machete and killed by a group of unknown assailants at her home.	<i>Nipashe</i> Newspaper	14 Apr 2017
Dar es Salaam: A businessman from Boko Chama area in Dar es Salaam killed his wife, accusing her of infidelity. He then hanged himself.	<i>Mwananchi</i> Newspaper	25 Feb 2017
Dar es Salaam: Another businessman attacked his ex-wife with a machete in public because of jealousy.	<i>Mtanzania</i> Newspaper	13 Feb 2017
Ileje: A 50-year old woman in Igumila Village was attacked by her husband with a machete and injured on her head, face, back and right arm for failure to cook meat for him.	<i>Mwananchi</i> Newspaper	23 Mar 2017
Nzenga, Tabora: A resident of Bekene Village in Nzenga District killed his wife and child of four months after the wife accused him of having extra-marital affair.	<i>HABARILEO</i> Newspaper	5 Jan 2017
Kyela, Mbeya: A resident of Mikumi area fled the district after allegedly killing his wife because of jealousy.	<i>Mtanzania</i> Newspaper	6 Jan 2017
Tunduru, Ruvuma: A man, Said Kassim (20), attacked his wife with a stick due to jealousy, after she had returned home late from farm. He attacked her while she was carrying their baby; and of the blows hit the baby on its head, resulting into its death.	<i>Nipashe</i> Newspaper	14 Mar 2017
Biharamulo, Kagera: A 39-year-old man from Kikomakoma Village was arrested by police for allegedly killing his wife and dumping her body in a toilet.	<i>The Citizen</i> Newspaper	18 Jun 2017

Description	Source	Date
Muheza, Tanga: A resident of Muheza District reportedly killed his lover by stabbing her with a knife in the stomach.	<i>Nipashe</i> Newspaper	5 Jan 2017
Biharamulo, Kagera: A woman, Sikujua Mongomu, died after being attacked by her ex-husband with a sharp object.	LHRC Human Rights Monitoring Data	20 Jun 2017
Tabora: Kapenziwa Fundikira (28) was stabbed to death by her husband due to jealousy.	<i>Mwananchi</i> Newspaper	30 Dec 2017
Itilima, Simuyu: Economic violence was mentioned to be among most common form of violence against women, whereby women are not afforded an opportunity to own property and benefit from income they generate.	<i>Mtanzania</i> Newspaper	26 Ce 2017
Pangani, Tanga: A total of 58 GBV incidents were reported by a local organization called UZIKWASA, most of them being rape and physical violence against women. Most GBV cases end with acquittal of perpetrators due to lack of evidence/ testimony.	<i>Mtanzania</i> Newspaper	21 Dec 2017
Urambo, Tabora: In September 2017, Resident Magistrate Court sentenced to 30 years in prison Peter Moshi (28) who was found guilty of raping a 6-month pregnant woman, resident of Igagala Village, in March 2017.	<i>HABARILEO</i> Newspaper	3 Sep 2017
Manyara: A Field Force Unit (FFU) police officer, Cosmas James, reportedly shot three times and killed his partner when she approached him at work to demand child support.	<i>HABARILEO</i> Newspaper	29 October 2017
Rorya, Mara: Police force is holding a man for killing his wife with a club, Miriam Opala, because of jealousy.	<i>Mwananchi</i> Newspaper	26 Oct 2017

Reasons for prevalence of violence against women include witchcraft beliefs (especially for the older women), drunkenness among men, jealousy and suspects colluding with

families of victims to hide evidence. For the case of witchcraft-related killings the elderly women are the major victims, especially those with red eyes.

16% of incidents of GBV reported by the media and documented by LHRC were jealousy-motivated.

LHRC Media Survey 2017

7.1.2 Gender Equality and Discrimination

Gender equality refers to equal enjoyment of rights and access to opportunities and outcomes, including resources, by women, girls and boys.³⁴² Rights to gender equality and non-discrimination are recognized under CEDAW, the Maputo Protocol and SADC Protocol on Gender and Development. One of the key principles of promoting gender equality is ensuring at least 50% of decision-making positions in the public and private sectors are held by women.³⁴³

Goal 5 of the **Sustainable Development Goals (SDGs)** calls for **achieving gender equality and empowering all women and girls**. To achieve this goal, the Government of Tanzania needs to end all forms of discrimination against women and girls;³⁴⁴ eliminate all forms of violence against women and girls;³⁴⁵ ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.³⁴⁶ To achieve gender equality and empower women and girls, the Government also needs to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.³⁴⁷

Over the years, the Government of Tanzania has taken several measures to achieve gender equality and empower women and girls. This includes increasing representation of women in decision-making bodies, towards achieving equal representation (50-50). However, female representation has decreased during the fifth phase government, as indicated in LHRC's Tanzania Human Rights Report of 2016. For instance, recent statistics indicate that there are only 5 female regional commissioners out of the 31 regions of Tanzania Mainland, only female 4 ministers and 8 female deputy ministers

342 Article 1(2) of the SADC Protocol on Gender and Development 2008.

343 Ibid, Article 12(1).

344 Goal 5.1 of the SDGs.

345 Goal 5.2 of the SDGs.

346 Goal 5.5 of the SDGs.

347 Goal 5.a of the SDGs.

out of 19 deputy ministers.³⁴⁸

Table 13: Women in some key Positions as of December 2016

Leadership Position	Number/Percentage	
	4 th Phase Govt (2015)	5 th Phase Govt (2016)
Judges	39%	41%
Minister & Deputy ministers	16 out of 57 (28%)	9 out of 35 (25.7%)
MPs	127 out of 357 MPs 21 elected MPs	141 out of 396 MPs (37%) 26 elected MPs
District Administrative Secretaries	40%	16%
Permanent & Deputy Permanent Secretaries	20 (37.7%)	10(20%)
Ambassadors	36%	9 out 33 (21%)
District Commissioners	53	25 out of 134

The Government has also continued to make reforms to give women equal rights to economic resources and ensure they have access and control over land, inheritance and natural resources. However, women are still faced with a lot of challenges in this regard, including denial of property ownership and inheritance. Widows continue to be denied their basic rights, such as the right to inheritance, owing to discriminatory customary laws and practices, and right to own and access land.

7.1.3 Conclusion and Recommendations

VAW and discrimination are the two major issues of concern affecting women's rights in Tanzania. The rate of sexual violence in the form of rape is alarming, as it continues to rise. Deliberate efforts must be taken by stakeholders to address these issues. In its 2016 human rights report, LHRC made a number of recommendations to improve women's rights in Tanzania. Most of these recommendations remain relevant. They include:

- 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;

348 See the Government Portal at <http://www.tanzania.go.tz>, accessed 20th January 2018; "Tanzania: New Regional commissioners , District commissioners Line-Up Named" *Daily News* Newspaper, 27 June 2016, available at <http://allafrica.com/stories/201606270320.html>, accessed 20th January 2018.

- 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 Ministry of Constitutional and Legal Affairs, to harmonize laws on administration of deceased's estates to address the problem of conflict of laws applicable during administrate of estate;
- 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 Ministry of Legal and Constitutional Affairs to ensure that courts prosecute and punish acts of gender-based violence; and
- The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.

7.2 Children's Rights

Internationally and regionally, rights of children are protected under various treaties, including 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. Under these treaties, Tanzania has an obligation 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.³⁴⁹ It also has an obligation to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.³⁵⁰

This sub-chapter discusses harmful cultural practices, sexual violence and physical and psychological violence against children as key issues affecting children's rights in 2017.

349 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.

350 Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.

7.2.1 Sexual Violence

Child Rape and Sodomy on the Rise

Police data for the year 2017 paints a picture of sexual violence being a major threat to girls, indicating that in 2017 a total of **13,457** incidents of violence against children were reported, **most of which were rape and sodomy cases**. This is a massive increase compared to those reported in 2016, which were **10,551**.

22,000+
Number of reported rape incidents from 2013 to March 2017, approximately 4,500 each year.

In 2017, LHRC media survey revealed that 85% of reported acts of violence against children are of sexual violence, particularly rape or sodomy. **Majority of the victims of sexual violence are primary school pupils aged 7 to 14 years, but even more sadly, one of the reported victims was as young as 2 years old!** LHRC's media survey also revealed at least 3 cases of children being raped by their own biological fathers. **7 of the incidents of child rape and sodomy reported by the media and documented by LHRC involved children victims aged 1 to 6 years.** Close relatives and neighbours continue to be among major perpetrators of sexual violence.

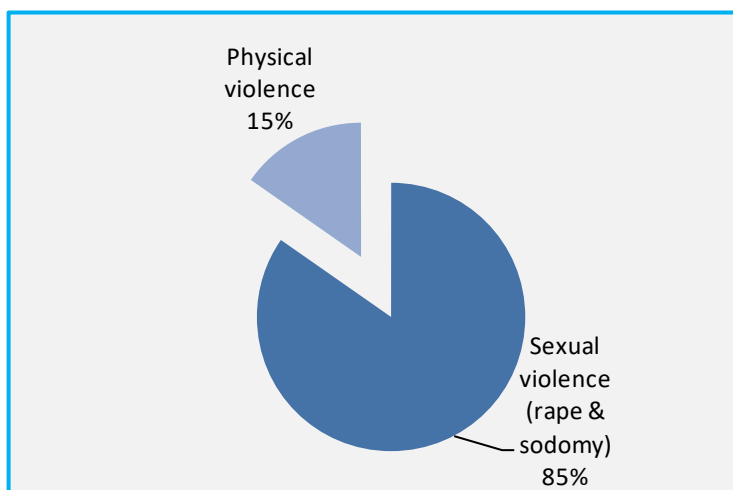


Figure 13: Percentage of incidents of VAW recorded by LHRC in 2017

Below are incidents of sexual violence against children documented by LHRC in 2017.

Table 14: Incidents of sexual violence against children reported and documented by LHRC in 2017

Description	Source	Date
Babati, Manyara: A standard seven schoolgirl (13) was reportedly raped by her own father in Babati. The father was apprehended by police but later released, allegedly boasting that they had paid the police 2 million to release him.	LHRC's Women and Children Data	13 Jun 2017
Kilwa, Pwani: A standard one pupil (7) was sodomized, killed and thrown into a water ditch. She was attacked by the assailant, Said Rashid, who has since been arrested, after she returned home from school. She was playing outside her home, her parents having gone to a nearby village to greet relatives. The assailant pulled her to a shrub nearby where she met her cruel fate.	<i>HABARILEO</i> Newspaper	30 Apr 2017
Hai, Kilimanjaro: A priest of Free Pentecostal Church of Tanzania, Emmanuel Mwikizu (42), was brought before the Hai District Court, accused of raping his 7-year old daughter on 17 th January 2017, causing her severe pain and excessive bleeding.	<i>Mwananchi</i> Newspaper	28 Jan 2017
Korogwe, Tanga: An elderly person (75), who is a traditional healer, was arrested for sodomizing a 12-year old child, while 'healing' him.	<i>HABARILEO</i> Newspaper	27 Jan 2017
Lushoto, Tanga: An elderly person (70) was arrested by police, accused of raping and sodomizing 10 primary school pupils, giving them Tshs. 300 – 1000 to lure them.	<i>HABARILEO</i> Newspaper	27 Jan 2017
Mbinga, Ruvuma: A prison officer was arrested by police, accused of impregnating a secondary school girl, who was expelled after it was revealed she was pregnant.	<i>Mtanzania</i> Newspaper	18 Apr 2017
Mwanza: A 12-year old child in Mwanza was reported raped and sodomized.	<i>Mwananchi</i> Newspaper	19 Jan 2017

Description	Source	Date
Korogwe, Tanga: A businessman in Korogwe was arrested by police, accused of raping a standard seven pupil (14).	<i>Nipashe</i> Newspaper	19 Jan 2017
Mpwapwa, Dodoma: A man (23), resident of Kamagai Ward, sodomized his sister's 8-year old child.	<i>HABARILEO</i> Newspaper	17 Jun 2017
Mlele, Katavi: A security guard at Ilela Secondary School (27) was accused of sodomizing a 16-year-old student at the school in January 2017.	<i>HABARILEO</i> Newspaper	24 Jun 2017
Tanganyika, Katavi: A standard six pupil (13) at Kipanga Primary School was raped to death by a gang on 10 th June 2017.	East Africa Television	11 Jun 2017
Arusha: 4 men were arrested by police for raping 10 children at the orphanage centre. The assailants were security guards at the centre.	<i>Mwananchi</i> Newspaper	11 Mar 2017
Bukomba, Geita: A teacher at Msonga Secondary School was found in his bed with his Form Four student, engaging in sexual intercourse.	<i>Mwananchi</i> Newspaper	5 Apr 2017
Mwanza: Police force in the region arrested Samweli Masumbuko (32), who was accused of raping a standard two pupil aged 10 years and causing her severe pain.	<i>Mtanzania</i> Newspaper	9 Apr 2017
Mwanza: Police force in the region arrested a 22-year-old man accused of raping a 5-year-old girl on 23 rd January 2017.	<i>Majira</i> Newspaper	25 Jan 2017
Mufindi, Iringa: A total of 53 incidents of violence against children were reportedly recorded by police in Mufindi District, including 27 child rape and sodomy cases.	LHRC Human Rights Monitoring Data	12 June 2017
Lushoto, Tanga: Police arrested a tailor, accused of raping and sodomizing 3 pupils of Lunguza Primary School and attempting to do so to 5 other pupils.	<i>Mwananchi</i> Newspaper	15 Feb 2017

Description	Source	Date
Ilemela, Mwanza: Police arrested 3 suspects and were looking for another, accused of gang-raping a 15-year old girl on 21st May 2017 in Kirumba Ward, causing her severe pain.	LHRC Human Rights Monitoring Data	12 June 2017
Iringa Urban, Iringa: Regional police reported incidents of 8 and 17-year-old girls who were raped in June 4 and 5 at Mwangata and Gangilonga areas respectively.	MatukioDaima Blog	13 June 2017
Geita: Police arrested a habitual sex offender, Kassmi Gamle (52), who was accused of abducting and raping children in December 2016 and January 2017. He was caught on 3 rd January while raping one of the children.	<i>Nipashe</i> Newspaper	6 Jan 2017
Nyamagana, Mwanza: A 32-year-old resident of Nyamagana District was arrested by police, accused of raping a 10-year-old standard two pupil and causing her grievous bodily harm.	<i>Nipashe</i> Newspaper	9 Apr 2017
Uvinza, Kigoma: A 50-year old man was taken to court for raping his 8-year-old granddaughter.	<i>Nipashe</i> Newspaper	26 Apr 2017
Nkasi, Rukwa: A resident in Itete Village in Kirando Ward (19) was found raping a 2-year old child.	<i>Majira</i> Newspaper	13 Feb 2017
Tandahimba, Mtwara: District Commissioner ordered arrest of 55 girls (students) who got pregnant as a way of 'improving the situation of education.'	<i>Mwananchi</i> Newspaper	30 Dec 2017
Arusha: Education authorities dissolved at least 80 arranged marriages that could have affected girls selected to join secondary school in January 2018.	<i>DAILY NEWS</i> Newspaper	26 Dec 2017
Tarime, Mara: Police arrested Said Selemani (40) for sodomizing a 4-year old child in December 2017.	<i>Mtanzania</i> Newspaper	26 Dec 2017

Description	Source	Date
Sinyanga: A father in Ndala Village chopped off the ears of a 24-year old man who reportedly defiled his 3-year old child.	<i>The Citizen</i> Newspaper	22 Dec 2017
Tarime, Mara: Police in the district arrested a primary school teacher, Samweli Bisendo (29), who was accused of raping 9 pupils in November and December 2017 after luring them to his house 'for tuition.' He was also accused of sexually harassing 3 other pupils.	<i>Mtanzania</i> Newspaper	23 Dec 2017
	<i>DAILY NEWS</i> Newspaper	
Bunda, Mara: Teacher at Nabubi Primary School, Willifred Fanuel, was arrested for raping and impregnating a pupil.	<i>Nipashe</i> Newspaper	2 Sept 2017
Kibaha, Pwani: A father in the district reportedly cut his 5-year old girl child for stealing 2 eggs.	<i>HABARILEO</i> Newspaper	11 Sept 2017
Kinondoni, Dar es Salaam: Norah Marealle, a pupil at Atlas Primary School was found defiled and dead outside her home in Sinza area.	<i>Global Publishers</i> Media	Jul 2017
Igunga, Tabora: Mtindi Nassoro (24) was sentenced to 20 years in prison for defiling a 5-year old girl.	<i>HABARILEO</i> Newspaper	16 Oct 2017
Ilala, Dar es Salaam: A police officers was arrested for raping a 6-year old girl.	<i>Nipashe</i> Newspaper	29 Oct 2017
Lindi: Musa Hassani (35) was sentenced to 60 years in prison and a fine of Tshs. 1 million in October 2017 for raping and impregnating a Standard Six pupil aged 13 in August 2017.	<i>Mtanzania</i> Newspaper	2 Oct 2017
Arusha Urban, Arusha: A resident of Daraja Mbili area in Arusha (38) was arrested and sent to court on charges of raping his two daughters aged 12 and 14 in May 2017.	<i>Daily News</i> Newspaper	15 Jun 2017

Sexual violence against children leaves them with a traumatic experience, severely affecting them emotionally and psychologically for the rest of their lives. Other than physical and psychological pain, this type of violence sometimes leads to death, as it was the case of one child victim who was brutally raped by a gang in Katavi Region in June 2017. Another gang-rape was reported in Mwanza Region. Furthermore, LHRC

received a sad case of a 3-year old child who was raped by her father in Arusha Region.



Picture 28: Body of a school girl who was reportedly gang-raped in Tanganyika-Katavi



Picture 29: Body of the late Noral Marealle (11), who was found brutally defiled and dead at Sinza-Dar es Salaam
(Picture by Global Publishers)

Iringa: Alarming Rate of Child Rape Incidents

121 child rape and attempted rape cases

In Iringa, from January to May 2017 a total of 139 cases of rape and attempted rape were reported, out of which 121 cases were child rape and attempted rape.

Iringa is one of the regions currently recording relatively high numbers of child rape incidents. As reported in LHRC’s 2016 human rights report, 373 children were reportedly raped in the region in 2015, while by July 2016, the number of child rape incidents reported were 76. From January to May 2017, a total of 139 rape and attempted rape cases were reported in the region. Major factor contributing to prevalence of rape in the region is belief in witchcraft, that when a man rapes a child he increases his chance of economic or financial success.

Judicial Action against Perpetrators of Sexual Violence

In combating the sexual violence against children, courts of law imposed sentences of up to 30 years in jail for perpetrators in 2017. The following are some of the sentences LHRC managed to document.

Table 15: Jail sentences for perpetrators reported by the media in 2017

Description	Source	Date
Nzega, Tabora: In March 2017, the Resident Magistrate Court of Nzega sentenced a 62-year old man, Resident of Ngonho Village, to life in prison for raping his 4-year old grandchild in April 2016.	<i>Mtanzania Newspaper</i>	5 Mar 2017
Singida: In March 2017, a 22-year old man was sentenced to 60 years in jail for raping and impregnating a 17-year old student of Chemchem Secondary School in October 2016.	<i>Mtanzania Newspaper</i>	11 Mar 2017

Description	Source	Date
Hai, Kilimanjaro: In April 2017, Hai District Court sentenced 22-year old man to 30 years in jail and five strokes for raping and impregnating a secondary school student aged 16 in 2015.	<i>The Citizen</i> Newspaper	15 Apr 2017
Dar es Salaam: In March 2017, a resident of Majohe Mji Mpya (28) was convicted and sentenced to 30 years in jail for raping his step-daughter aged 7.	<i>Mtanzania</i> Newspaper	2 Mar 2017
Maswa, Simiyu: In March 2017, the Maswa District Court sentenced a resident of Muhida Village (30) to 30 years in jail after convicting him of raping and impregnating a student in April 2016.	<i>Mtanzania</i> Newspaper	2 Mar 2017
Nkasi, Rukwa: In January 2017, the Nkasi District Court sentenced a 37-year old resident of Mombasi Village to 30 years in jail for raping a 13-year old girl.	<i>Majira</i> Newspaper	27 Jan 2017
Maswa, Simiyu: In January 201, the Maswa District Court sentenced a 21-year-old man to 30 years in jail for engaging in sexual intercourse with and impregnating a student.	<i>HABARILEO</i> Newspaper	21 Jan 2017
Nzega, Tabora: Nzega Resident Magistrate Court sentenced a 62-year old man, resident of Ngonho Village, to life in prison for sodomizing and molesting his 4-year-old grandchild.	LHRC Human Rights Monitoring Data	20 Jun 2017
Mpwapwa, Dodoma: In June 2017, a resident of Kamagai Ward (23) was sentenced to life in prison after confessing to sodomizing his sister's 8-year-old child.	<i>HABARILEO</i> Newspaper	17 Jun 2017

Description	Source	Date
Mlele, Katavi: In February 2017, Mlele District Court sentenced to life in prison a 20-year-old man after convicting him of molesting a 6-year-old child in September 2016.	<i>HABARILEO</i> Newspaper	25 Feb 2017
Mlele, Katavi: In June 2017, Mlele District Court convicted and sentenced to 30 years in jail a security guard at Ilela Secondary School for sodomizing a 16-year-old student in January 2017.	<i>HABARILEO</i> Newspaper	- 24 Jun 2017
Dar es Salaam: 3 people were sentenced to life in prison by Ilala District Court after being convicted of raping two girls.	<i>HABARILEO</i> Newspaper	26 Apr 2017
Maswa, Simiyu: In February 2017, Maswa District Court sentenced to 30 years in prison a 30-year-old man after convicting him or raping a 14-year-old in April 2016.	<i>HABARILEO</i> Newspaper	1 Mar 2017
Rungwe, Mbeya: Rungwe District Court sentenced Faraja Ramadhan (28), resident of Ndaga Village, to 30 years in prison for defiling a pupil aged 12.	<i>The Citizen</i> Newspaper	30 Mar 2017
Moshi, Kilimanjaro: A construction worker (23) was sentenced to life in prison for raping and sodomizing pupils of Msaranga Primary School in March 2016.	<i>Mwananchi</i> Newspaper	26 Apr 2017
Lindi: A resident of Matopeni Ward (45) was sentenced to 30 years in prison for raping an 11-year old girl in October 2016.	<i>Nipashe</i> Newspaper	26 Jan 2017

7.2.2 Harmful Cultural Practices against Children

Child Marriage Continues to Prosper Owing to Reluctance to Amend Marriage Law

Harmful cultural practices against children include child marriage and female genital mutilation. Under the Maputo Protocol, Tanzania is required to undertake appropriate national legislative measures to guarantee that the minimum age of marriage for women is 18 years,³⁵¹ while the African Children's Charter prohibits child marriage and calls for states to take legislative action to ensure 18 is the minimum age in marriage.³⁵² However, Tanzania is yet to make the legal reforms to protect children from child marriage, as the Law of Marriage Act 1971 continues to allow girls aged 14 and 15 to be married.

In 2016, the High Court of Tanzania delivered its judgment on the *Rebeca Gyumi case*,³⁵³ filed by 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; and currently the case is before the Court of Appeal. Meanwhile, girls continue to be vulnerable to child marriage, denying them their basic rights, such as education and equality. It also leaves them vulnerable to GBV.

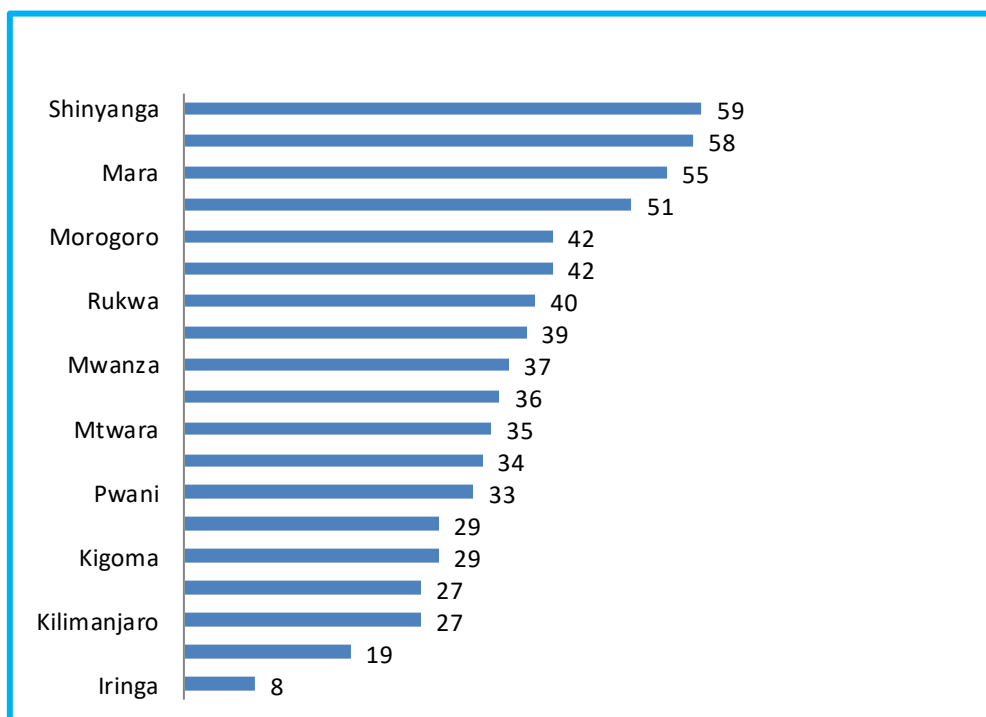


Figure 14: Regional Percentages of Child Marriage in Tanzania Mainland

351 Article 6 of the Maputo Protocol.

352 Article 21(2) of the African Charter on the Rights and Welfare of the Child.

353 *Rebeca Z. Gyumi v Attorney General* (Tanzanian Civil Cse No. 5 of 2016)

Efforts to end child marriage in Tanzania are spearheaded by the Tanzania Ending Child Marriage Network (TECMN), coordinated by Children's Dignity Forum (CDF). Other members of the network include *Msichana Initiative*, LHRC and TAWLA. The network advocates for amendment of the Law of Marriage Act 1971, adopting 18 years as minimum age of marriage.

Efforts by Stakeholders Helping to Reduce FGM

FGM is more prevalent in Manyara (58%), Dodoma (47%), Arusha (41%), Mara (32%), and Singida (31%) Regions.

FGM is a form of violence against women (and girls) and continues to be a challenge in 2017. Efforts by anti-FGM stakeholders, including the Government, LHRC and AMREF, have helped to reduce FGM

and rescue young girls around the lake zone from this harmful practice. LHRC has documented a number of incidents of FGM for the period of January and June 2017, including a young woman who almost bled to death in Manyara Region. Some of the findings revealed the secretive ways which are used to carry out the practice, including cutting of new-born babies or performing the practice at midnight in forest areas.³⁵⁴ In another incident, it was reported that police in Arusha were searching for parents of a girl who bled to death after undergoing FGM.³⁵⁵

7.2.3 Physical and Psychological Violence

Several incidents of physical and psychological violence against children were also reported in 2017. Some of these incidents were so brutal that they resulted into deaths of children as indicated in the table below. This type of violence mainly occurs through domestic violence, perpetrators mainly being parents and guardians.

Table 16: Reported Incidents of physical and psychological violence against children in 2017

Description	Source	Date
Tanganyika, Katavi: A standard two pupil (9) at Mnyamasi Primary School died after she was beaten by her drunken mother (27). It was reported that she used to regularly beat her child.	<i>Mtanzania Newspaper</i>	16 May 2017

354 LHRC report on case studies and best practices on FGM conducted in 9 districts in 2017.

355 LHRC (2017), Tanzania Bi-annual Human Rights Report 2017.

Bunda, Mara: A father was arrested and sent to court for cutting a large part of his son's genital, while attempting to circumcise him.	<i>Mtanzania Newspaper</i>	13 Jan 2017
Ujiji, Kigoma: A woman in Kigoma/Ujiji, Mariamu Issa (24), was arrested and sent to court for forcing a 15-year old girl into prostitution.	<i>Nipashe Newspaper</i>	14 Apr 2017
Arusha: A child in Arusha died after undergoing female genital mutilation	<i>Majira Newspaper</i>	19 Jan 2017
Muleba, Kagera: A student of Gwanseri Secondary School was reportedly killed by her father and buried in his house.	LHRC Human Rights Monitoring Data	3 Feb 2017
Mwanza: A man (35), resident of Kisabo Village, was held by police for killing his 6-year old child.	<i>Mtanzania Newspaper</i>	17 JUN 2017
Dar es Salaam: A standard one pupil at Bariadi Primary School was severely flogged by five teachers.	<i>Mtanzania Newspaper</i>	3 Feb 2017
Bariadi, Simiyu: A 60-year old woman was arrested by police for burning the hands of her grandchildren aged 15 and 13, whom she accused of stealing Tshs. 25,000, belonging to her 30-year-old son.	<i>Mtanzania Newspaper</i>	1 Apr 2017
Geita: A father killed his step child after his mother went to fetch some water.	<i>Mwananchi Newspaper</i>	5 Apri 2017
Mpwapwa, Dodoma: A woman (42), resident of Rudi Village, was arrested and sent to court for burning her grandchild in different parts of her body for eating some groundnuts without her permission.	<i>HABARILEO Newspaper</i>	29 Mar 2017
Mbulu, Manyara: A man was arrested for allegedly beating his 6-year old son to death for losing five goats he was tasked with grazing. The boy's body was found hidden in thicket.	<i>The Citizen Newspaper</i>	9 Jan 2017

Biharamulo, Kagera: A man (39) was arrested by police for killing his 8-year-old child and his wife and dumping their bodies in a toilet.	<i>The Citizen Newspaper</i>	18 Jun 2017
Songea, Ruvuma: A resident of Wino Village in Mabada Division (19) was arrested by police for killing her child with poison and attempting suicide.	<i>Majira Newspaper</i>	8 Feb 2017
Malinyi, Morogoro: A woman in Njiwa Village was arrested for killing her 17-year-old stepdaughter by hitting her on the head with a sharp object.	<i>Nipashe Newspaper</i>	11 Mar 2017
Kilwa, Lindi: A 9-year-old child from Miramba Village was reportedly burned on his hands by his mother for allegedly stealing Tshs. 7000.	<i>Mwananchi Newspaper</i>	10 Jun 2017
Kilolo, Iringa: Police arrested a head teacher, Robson Sanga (59), for caning a 13 year-old pupil and causing his death after arriving at school late.	<i>Mtanzania Newspaper</i>	4 Sep 2017
Musoma, Mara: Police in the region, in collaboration with Legal and Social Assistance Centre (LSCAC), arrested a man accused of hanging his 9-year old daughter on the house ceiling for 5 days for refusing to harvest maize.	<i>The Citizen Newspaper</i>	30 May 2017
Sumbawanga, Rukwa: Police in Sumbawanga arrested a 30-year old man for allegedly strangling his 2-yearl old step daughter to death, claiming he did not love her.	<i>The Citizen Newspaper</i>	29 May 2017

7.2.4 Conclusion and Recommendations

Incidents of VAC, especially sexual violence, significantly increased in 2017; and this indicates that there is need to strengthen protection mechanism for children and safeguard their human rights. The Government also remains reluctant to make the

changes in the Law of Marriage Act 1971 to prohibit child marriage, while on the other hand it continues to work with other stakeholders of FGM to combat the practice in Tanzanian communities. To improve the situation of children's rights, LHRC recommends the following:

- 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 Members of Parliament to increase pressure on the Government to amend provisions on child marriage under the Law of Marriage Act which have been declared unconstitutional by the High Court;
- The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children;
- 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; and
- Community members to perform their duties of protecting and safeguarding children's rights refraining from conducting acts of abuse to children.

7.3 Rights of Persons with Disability

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.³⁵⁶ Tanzania is party to this treaty and has an obligation to take measures to safeguard rights of PWDs. The treaty was domesticated in 2010 through the Persons with Disabilities Act. PWDs, especially children with disability, need special care to ensure they enjoy human rights equally with others.

This sub-chapter looks at discrimination and violence as major challenges faced by PWDs in 2017.

356 See CRPD.

7.3.1 Equality and Discrimination

Under the CRPD, Tanzania is required to guarantee the right of PWDs to work on equal basis with others and ensure their acceptance in the labour market and work environment that is open, inclusive and accessible to them.³⁵⁷ This right is safeguarded through various measures, including prohibiting discrimination on the basis of disability.³⁵⁸

In 2017, PWDs continued to face challenges related to discrimination, including access to health services, education and infrastructure. Most public facilities, including school and court buildings are not sensitive to the needs of PWDs in terms of accessible infrastructure. Domestically and within communities, PWDs continue to be subjected to discrimination and psychological violence, whereby name calling is common, according a 2017 report by a coalition of institutions and organizations advocating for PWDs' rights.

7.3.2 Violence

CRPD requires states to take all appropriate legislative, administrative, social, educational and other measures to protect PWDs from all forms of exploitation, violence and abuse, including GBV.³⁵⁹ PWDs are among the major victims of violence. Chapter Two of this report under the section of right to life discusses how Persons with Albinism (PWAs) are targeted for their body parts, although trend shows decline in attacks.

PWAs are the most affected vulnerable group among the PWDs. For PWAs, they also continue to live in fear, as highlighted above, due to attacks and killings for their body parts, despite no such killings being reported in 2016 and during the first half of 2017. PWDs are also more vulnerable to violence, especially physical and sexual violence. For instance, it was reported in Chunya District-Mbeya that a father (39) had been arrested by police for taking advantage of his PWD 19-year-old for two years, by turning her into his 'wife', sleeping with her. This incident was reported in February 2017.

In June 2017 PWDs who were peacefully demonstrating in Dar es Salaam's city centre were brutally attacked and beaten by police. Video clips circulating in social media showed police officers using excessive force in dealing with the PWDs, including pulling and beating them. The incident was condemned by human rights stakeholders,

357 Article 27(1) of CRPD.

358 Ibid, Article 27(1) (a).

359 Article 16(1) of CRPD.

including LHRC, representatives of PWD groups and the Commission for Human Rights and Good Governance (CHRAGG).³⁶⁰ In its statement, CHRAGG noted that although PWDs did not follow the procedures before demonstrating, the force used by the police was excessive and the PWDs were humiliated in the process of arresting them, in contravention of Article 13((6)(e) of the Constitution of the United Republic of Tanzania 1977.³⁶¹ It urged the police to refrain from using excessive force and respect human rights when enforcing the law. On the other hand, it urged PWDs to observe the procedures laid down by law before demonstrating.³⁶² Acknowledging that the police used excessive force when dealing with the PWDs, the Minister of Home Affairs, Hon. Mwigulu Nchemba, apologised and promised that such incident will not repeat.³⁶³

7.3.3 Conclusion and Recommendations

Discrimination and violence against PWDs are major challenges for PWDs in Tanzania. PWD children cannot easily access education to realize their right to education, while PWAs continue to live in fear due to attacks and violence against them, even when such attacks have declined in the past two years. Access to employment and economic opportunities also remains low for PWDs. Recommendations provided by LHRC in the 2016 human rights report remain relevant. As such, LHRC recommends that:

- The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities should ensure increased jobs and employment opportunities for PWDs;
- The Ministry of Home Affairs to ensure that police investigate and prosecute cases of violence against PWDs, especially PWAs;

360 John Namkwahe “ACT Condemns Police beating of disabled people” The Citizen Newspaper, 18 June 2017, available at <http://www.thecitizen.co.tz/News/ACT-condemns-Police-beating-of-disabled-people-/1840340-3975770-s14e4d/index.html>, accessed 10th August 2017; Tume ya Haki za Binadamu na Utawalal Bora, TAARIFA KWA VYOMBO VYA HABARI: THBUB yalaani watu wenye ulemavu kupigwa na kudhalilishwa, Juni 19, 2017 (Statement by the Commission for Human Rights and Good Governance condemning the beating of PWDs, released on 19th June 2017); Colnely Joseph “Waendesha babaji walemavu walaani wenzao kupigwa” Mwananchi Newspaper, 20 June 2017, available at <http://www.mwananchi.co.tz/habari/Waendesha-bajaji-walemavu-walaani-wenzao-kupigwa/1597578-3979110-a2u82z/index.html>, accessed 29th September 2017.

361 CHRAGG statement, *ibid.*

362 *Ibid.*

363 “Mwigulu Nchemba akiri, aomba radhi walemavu kupigwa” Nipashe Newspaper, 20 June 2017, available at <https://www.ippmedia.com/sw/habari/mwigulu-nchemba-akiri-aomba-radhi-walemavu-kupigwa>, accessed 29th September 2017.

- The Ministry of Constitutional and Legal Affairs to ensure that courts of law fast-track proceedings of violence against PWDs; and
- The Ministries responsible for housing and infrastructure to ensure that buildings and infrastructure built can be accessed by PWDs.

7.4 Rights of the Elderly

Rights of the elderly are provided for in various domestic, regional, and international legal laws. These include the Constitution of the United Republic of Tanzania 1977, the African Charter on Human and Peoples' Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs). Unlike other vulnerable groups, there is no specific law for the elderly.

Recent statistics indicate that Tanzanian Mainland has more than four million people who are considered to be the elderly.³⁶⁴ These are those who have attained the age of 60 years and above, with majority of them living in rural areas.³⁶⁵ They face a number of challenges, mainly violence and discrimination.

7.4.1 Violence

As indicated in Chapter Two of this report (civil rights), major victims of witchcraft-related killings are the elderly, especially women and particularly those with red eyes. Like in 2016, Tabora leads in these killings, whereby 23 such killings were reported in the region by June 2017. The elderly also face a challenge of being denied their right to own property. For instance, it was reported in December 2017 that police in Mbeya Region managed to help a 93-year old from being kicked out of her house by her grandchildren.³⁶⁶

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Number of victims of witchcraft-related killings, majority of whom are the elderly, from July 2016 to March 2017. Tabora Region leads with 57 killings, followed by Songwe (21), Njombe (17), Mwanza (13), Kigoma (12) and Shinyanga (11),

364 LHRC (2016), Tanzania Human Rights Report 2015.

365 See the Tanzania National Age Policy 2003.

366 "Polisi wamwoko kikonwe" Mwanza Newspaper, 22 December 2017.

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Number of victims of witchcraft-related killings reported from January to June 2017. Tabora leads with 23 killings.

7.4.2 Discrimination

In 2017 the elderly continued facing the challenge of accessing health services, whereby they face discrimination at health centres when accessing free healthcare services. They are usually not given a priority due to the fact that they are not paying for the treatment. For the elderly people living in rural areas, they also face a challenge of mobility and long distance to health centres. During the commemoration of International Day of Older Persons in Kigoma, some older persons complained about being harassed and discriminated against when seeking free health services.³⁶⁷

The elderly, who regularly fall sick, are the major victims of lack of health insurance among the majority of Tanzanians. The situation is worse for those who did not work in the formal sector. Despite the introduction of free healthcare services at public health centres by the Government, they face discrimination and disrespect. Only a few of them are covered by health insurance. In September 2017, the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Ummu Mwalimu, revealed that Ubungo Municipal Council had provided 7,299 older people in Dar es Salaam with identity cards for free healthcare services.³⁶⁸ Kinondoni Municipal Council also did the same in October 2017, providing more than 2500 older people with identity cards.³⁶⁹

7.4.3 Conclusion and Recommendations

The elderly face discrimination in accessing social services and violence from other members of the community. Recommendations made by LHRC in its 2016 report remain relevant. They include:

- 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;

367 "Wazee hatupati huduma bure" *HABARILEO* Newspaper, 2 October 2017.

368 Mary Geofrey "Wazee 7,000 kutibiwa bure" *Nipashe* Newspaper, 5 September 2017.

369 Yasini Ngitu "Siku ya Wazee Duniani: Wazee 2530 wapewa vitambulisho vya matibabu bure", available at <http://bongo5.com/siku-ya-wazee-duniani-wazee-2530-wapewa-vitambulisho-vya-matibabu-bure-10-2017/>, accessed 24th December 2017.

- 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;
- Local government authorities to ensure that older people enjoy free medical care and are not discriminated as directed by the Government; and
- CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.

7.5 Rights of Persons Living with HIV/AIDS

Persons living with HIV/AIDS (PLHIV) enjoy all human rights as other people, but as a vulnerable group, their rights are also provided for under the HIV and Aids (Prevention and Control) Act of 2008. This Act provides for various rights of PLHIV, including the right to non-discrimination and right to access social services.

About 1.4 million people in Tanzania were PLHIVs in 2016.³⁷⁰ According to the Tanzania HIV Impact Survey (THIS) 2016-2017 by NBS, prevalence of HIV in Tanzania is 4.7%, higher in Mainland (4.8%) compared to Zanzibar (0.4%).³⁷¹ Efforts to combat HIV/AIDS in the past decade have helped to reduce infection rate. Groups such as women, young/adolescent girls, sex workers and men who are mobile are more vulnerable to HIV infection. According to UNAIDS report released in 2016, HIV prevalence for women is 5.8%, while that for men is 3.6%.³⁷² The NBS survey report indicates that majority of people in Njombe Region are infected with HIV/AIDS compared to other regions in Tanzania Mainland. Prevalence rate for Njombe is 11.6%, Iringa 11.2% and Mbeya 9.2%. Regions with low infection rate are Unga 0%, Kaskazini Pemba 0%, Manyara 1.8% and Arusha 1.9%.³⁷³

370 Avert "HIV AND AIDS IN TANZANIA", available at <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania>, accessed 10th January 2018.

371 National Bureau of Statistics (2017), *Tanzania HIV Impact Survey (THIS) 2016-2017*, Summary Sheet: Preliminary Findings, available at http://www.nbs.go.tz/nbs/takwimu/this2016-17/Tanzania_SummarySheet_English.pdf, accessed 10th January 2018.

372 Avert "HIV AND AIDS IN TANZANIA."

373 "HIV/Aids infection rate is highest in Njombe Region – says report" *The Guardian*

7.5.1 Right to Non-Discrimination

The HIV and Aids (Prevention and Control) Act of 2008 provides for the right to non-discrimination for PLHIVs. It prohibits formation of a policy, enactment of a law or acting in a manner that discriminates PLHIV, orphans or their families.³⁷⁴ It also provides for a health practitioner to provide health services to PLHIVs without any kind of stigma or discrimination.³⁷⁵ Furthermore, the Act prohibits denying a PLHIV right to employment, travelling (freedom of movement), and admission into any institution and living at residence of choice.³⁷⁶ Discrimination of PLHIV attracts a penalty of fine of not less than Tshs. 2 million or imprisonment for a term not exceeding 1 year or both.³⁷⁷

Stigma and discrimination continue to be among factors affecting human rights of PLHIVs in Tanzania; and this is evident in the streets, at work, at health facilities and at school.³⁷⁸ Due to stigma and discrimination, most of PLHIVs lack equal access of realizing their human rights.

7.5.2 Right to Access to Health Services

As indicated in Chapter Five of this report, several challenges hamper accessibility of quality health services in Tanzania, including shortage of health workers and essential medicines and medical supplies. This also impacts PLHIV, who also need to constantly buy medication. Due to poverty, buying such medication regularly and eating properly is still a challenge for many people who are infected with HIV/AIDS. Under the HIV and Aids (Prevention and Control) Act, the Government is required to use available resources to ensure that every PLHIV, vulnerable children and orphans are accorded with basic health services.³⁷⁹ It also provides for rights and obligations of PLHIVs, including the right to the highest attainable standard of health and obligation to protect others from infection.³⁸⁰

Stigma, discrimination, ignorance about HIV/AIDS (problem of right to information), lack of or poor knowledge about laws and human rights, and shortage of health centres contribute to poor access to health services by PLHIVs. Stigma experienced by PLHIVs includes self-stigma and stigma and discrimination by health workers.

Newspaper, 22 December 2017.

374 Section 28 of the HIV and Aids (Prevention and Control) Act 2008.

375 Ibid, section 29.

376 Ibid, section 30.

377 Ibid, section 32.

378 Avert "HIV AND AIDS IN TANZANIA."

379 Section 19(1) of the HIV and Aids (Prevention and Control) Act 2008.

380 Ibid, section 33.

7.5.3 Conclusion and Recommendations

GBV also contributes to HIV/AIDS infection, especially with sexual violence incidents such as rape increasing, as indicated in Chapter Seven of this report. Moreover, increased cases of child pregnancies indicates that more young girls are engaging in unprotected sex and hence are more vulnerable to HIV infection. To improve the situation of the rights of PLHIVs, deliberate efforts must be taken by the Government and CSOs to education members of public about their rights, impact of stigma and discrimination and improve access to basic social services, especially health services. The Ministry of Health, Community Development, Gender, Elderly and Children must ensure that all health practitioners are familiar with the HIV and Aids (Prevention and Control) Act of 2008 and do not subject PLHIVs to any form of discrimination. Improved budgetary allocation for the health sector will also help to improve access to health services for PLHIVs.

Chapter 8:

Corruption, Good Governance and Human Rights

8.0 Introduction

Corruption can simply be defined as abuse of public power or officer for private gain or benefit.³⁸¹ According to the Prevention and Combating of Corruption Act (PCCA) of 2007, corruption includes: **soliciting**, accepting or obtaining, or attempting to obtain any **advantage** as **inducement** or **reward** for any agent, whether or not such agent has authority; and **giving**, promising or offering any **advantage** to any person for the benefit of that or another person as **inducement** or **reward** to agent with or without authority.³⁸² Two main forms of corruption exist in Tanzania, petty corruption and big or grand corruption.³⁸³ These forms are of different types including, bribery, embezzlement, extortion, favouritism and fraud.

Petty corruption, also called administrative or bureaucratic corruption, covers small-scale corrupt practices involving mid-level officials and is very common in places or institutions like hospitals, police, licensing authorities and taxing authorities. On the other hand, grand corruption, which is also known as political corruption, involves large sums of money.³⁸⁴ It is also called political corruption because it usually involves high profile political or government officials.

There is a close link between corruption, good governance and human rights. This is why the negative impact of corruption on the protection of human rights is highlighted in various international, continental and regional instruments.

381 See Transparency International's definition at http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/, accessed 28th December 2017.

382 Prevention and Combating of Corruption Act 2007, s. 15(a).

383 Stephanie von Wogau (2010), *Corruption in Tanzania*, p. 8, available at http://www.againstcorruption.eu/uploads/norad/Wogau_Corruption-in-Tanzania.pdf, accessed 28th July, 2017.

384 Ibid

8.1 Impact of Corruption on Human Rights

Corruption has serious negative impact on all categories of human rights – civil, political, economic, social and cultural.³⁸⁵

It also hinders realization of the right to development. In terms of economic, social and cultural rights, corruption

affects the ability of the Government to achieve progressive realization of these rights to the maximum of its available resources in line with the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁸⁶ Embezzlement and mismanage of public resources may hinder the Government from effectively safeguarding key social rights such as the right to education, right to health and right to water by delivering quality education, health and water services. Due to corruption, people may also suffer discrimination in accessing public services in favour of those who can bribe officials, given the fact that majority of people in Tanzania are poor.

Civil and political rights such as right to life, access to justice, right to equality before the law and right to fair trial are also affected by corruption. When the Government is unable to fully and progressively realize social and economic rights such as right to health, right to food and right to water, right to life is compromised. Corruption within the justice system creates corrupt police officers, investigators, magistrates and judges, who tend to deny rights to equality before the law and right to fair trial. It thus weakens judicial institutions. Rights of access to justice and effective remedy are also compromised by corruption in the justice system. Corruption during elections may also discourage people from exercising their political rights, such as right to vote.

Lack of faith in the justice system, usually due to corruption, is the major factor for people resorting to mob violence. Right to development, which is both an individual and collective human rights, is also affected by corrupt practices and transactions by government officials. Corruption in revenue collection means less revenue for the Government, which affects its delivery of social services and implementation of development projects. Good governance can be affected by corruption through weakening

Let us be clear. Corruption kills. The money stolen through corruption every year is enough to feed the world's hungry 80 times over. Nearly 870 million people go to bed hungry every night, many of them children; corruption denies them their right to food, and, in some cases, their right to life.

Navi Pillay, former United Nations High Commissioner for Human Rights (2008-2014)

385 Human Rights Council, Resolution 23/9. The negative impact of corruption on the enjoyment of human rights, available at <http://www.achrnepal.org/about/resolution-239-the-negative-impact-of-corruption-on-the-enjoyment-of-human-rights/>, accessed 10th October, 2017.

386 See Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966.

rule of law and undermining democracy. Corruption therefore poses a big threat to enjoyment of human rights in any country, particularly third world countries like Tanzania. Corruption is a major challenge in Tanzania, with the Government losing up to 20% of its budget to it annually.³⁸⁷

Corruption undermines democracy and the rule of law. It leads to violations of human rights. It erodes public trust in government. It can even kill -- for example, when corrupt officials allow medicines to be tampered with, or when they accept bribes that enable terrorist acts to take place.

Ban Ki-moon

Former United Nations Secretary-General

8.3 State of Corruption

Tanzania Government Lauded for its Anti-Corruption Initiative

Intensified efforts to fight corruption has seen the fifth phase Magufuli government receive praise both domestically and internationally. The anti-corruption drive includes establishment of the anti-corruption division within the High Court of Tanzania, to handle corruption cases. Impressed with the anti-corruption efforts, the European Union (EU) pledged to provide Tshs. 40 billion to enhance capacities of national accountability institutions, including PCCB.³⁸⁸

PCCB and the Fight against Corruption: Corruption Investigations and Cases in 2017

PCCB is the major body charged with combating corruption in Tanzania, established under the Prevention and Combating of Corruption Act of 2007. The body replaced the Prevention of Corruption Bureau (PCB). PCCB is mandated to examine practices of government and non-government actors to detect corruption; and investigate corruption allegations and, with the blessing of the Director of Public Prosecutions (DPP), prosecute corruption-related offences.³⁸⁹ It is also tasked with preventing corruption and educating community members about the negative impact of corruption.

387 Marie Chêne (2009), Overview of Corruption in Tanzania, U4 Anti-Corruption Resource Center, p. 6, available at <http://www.u4.no/publications/overview-of-corruption-in-tanzania/>, accessed 28th July, 2017.

388 DailyNews Newspaper "EU lauds Magufuli's anti-corruption drive and promises more support" 25 November 2017, available at <http://dailynews.co.tz/index.php/home-news/54456-eu-lauds-magufuli-s-anti-corruption-drive-and-promises-more-support>, 15th December 2017.

389 See section 7 of the Prevention and Combating of Corruption Act 2007.

In 2017, PCCB continued with its efforts of combating corruption whereby a number of investigations and prosecutions of cases were conducted and prosecuted respectively. Among the people who were charged with corruption-related offences in 2017 is Mr. James Rugemalira, who was implicated in the Tegeta Escrow Account saga, which was extensively covered in LHRC's Tanzania Human Rights Report of 2015.³⁹⁰ Another high-profile figure connected to the Tegeta Escrow Account saga, Mr. Harbinder Sethi, was also charged together with the Mr. James Rugemalira. The two were jointly charged with six counts of economic sabotage, occasioning the Government the loss of over Tshs. 300 billion siphoned from the Bank of Tanzania (BoT) between 2011 and 2014.³⁹¹ LHRC welcomes this arraignment as an important step in addressing corruption issues raised during the Escrow Account saga.

In October 2017, main opposition party (CHADEMA) leaders emerged with video clips showing the former Arumeru District Commissioner, Mr. Alexander Mnyeti, bringing the opposition party's ward councillors to quit and join the ruling party (CCM). The opposition party claimed that their ward councillors were bribed with money and a number of promises, including bank loans and jobs.³⁹² At a press conference, the opposition leaders showed what they claimed to be evidence and stated that they would present it to the PCCB for further action. In December 2017, the PCCB Director General, Mr. Valentino Mlowola, issued a press statement, noting that the investigations of corruption levelled against the former Arumeru District Commissioner, who had been appointed Manyara Regional Commissioner in late October, were ongoing.³⁹³

In December 2017, PCCB in Dodoma announced the arrest of the national chairperson of the ruling party CCM's youth wing, Mr. Sadifa Khamis.³⁹⁴ Mr. Khamis was arrested for allegedly bringing members of the wing's congress. The matter is under investigation by PCCB. In the same month, PCCB in Tanga announced arraignment of

390 LHRC questioned why Mr. James Rugemalira was not arraigned in 2015, while some people were charged with 'receiving bribe' from him.

391 "IPTL 'owners' finally charged" The Citizen Newspaper, 20 June 2017, available at <http://www.thecitizen.co.tz/News/IPTL--owners--finally-charged/1840340-3978586-cgj80az/index.html>, accessed 23rd December 2017.

392 Zephania Ubwani "MPs: How our councillors were bribed" The Citizen Newspaper, 2 October 2017, available at <http://www.thecitizen.co.tz/News/MPs--How-our-councillors-were-bribed/1840340-4120690-kxu2mbz/index.html>, accessed on 11th December 2017.

393 Kelvin Matandiko "Takukuru waendelea kuhangaika na jalada la Mnyeti" *Mwananchi* Newspaper, 12 December 2017, available at <http://www.mwananchi.co.tz/habari/Takukuru-waendelea-kuhangaika-na-jalada-la-Mnyeti/1597578-4224392-ijcd2w/index.html>, accessed on 11th December 2017.

394 Sharon Sauwa "UVCCM outgoing national chairman held over bribery allegations" The Citizen Newspaper, 10 December 2017, available at <http://www.thecitizen.co.tz/News/UVCCM-outgoing-national-chairman-held-over-bribery-allegations/1840340-4222184-psmy6l/index.html>, accessed 23rd December 2017.

two accountants at the Regional Commissioner's Office, Josiah Mwaipela and Julius Idana, for embezzlement of involving Tshs. 270 million between March 2012 and November 2013.³⁹⁵

Challenges: PCCB's effectiveness in combating corruption in Tanzania is hampered by a number of factors, including loopholes in the Prevention and Combating of Corruption Act of 2007, such as prosecution of cases only with DPP's consent and lenient sentences imposed for grand corruption offences. Other challenges include budgetary constraints and shortage of human resources, especially at district level.³⁹⁶ According to PCCB's Annual Report of 2014/15, punishment provided is usually not proportional to the loss occasioned to the state.

Corruption Perception Surveys: Has Corruption Decreased?

In 2017 a number of surveys on corruption in Tanzania were conducted, which generally indicate that the intensified efforts to fight corruption have led to decline of corruption, as perceived by members of the public. For instance, the survey conducted by Afrobarometer and REPOA involving 2400 respondents in May 2017,³⁹⁷ indicates that 72% of respondents said the level of corruption in Tanzania has decreased "somewhat" or "a lot" over the past year and 71% say the government is fighting corruption "fairly well" or "very well."³⁹⁸ The survey also indicates that approval for PCCB has somewhat increased, with 59% of respondents saying it is somewhat effective.³⁹⁹ Perceptions of corruption in key public institutions have also declined, but the people still see corruption in these institutions, especially police and judiciary. The survey also indicates that majority of respondents (72%) fear retaliation should they report corruption.

A mobile-phone survey on corruption perception conducted by *Twaweza* in 2017 also revealed that majority of citizens (85%) think corruption level has declined in recent years.⁴⁰⁰ Citizens are thus more positive about fighting and reducing corruption at the moment. The survey findings also indicate perceived less corruption in all sectors.⁴⁰¹ Majority of respondents also mentioned corruption to be very common among police

395 "Wahasibu ofisi ya RC Tanga kortinikwa kuchepusha Sh. Milioni 270" Mtanzania Newspaper, 21 Dec 2017.

396 "Takukuru yatoa kilio chake kwa Mkuchika" *Mwananchi* Newspaper, 25 October 2017.

397 Lulu Olan'g and Jamal Msami, *In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement*, Afrobarometer Dispatch No. 178, 6 December 2017.

398 Ibid.

399 Ibid.

400 *Twaweza, The untouchables? Tanzanians' experiences and views of corruption*, Sauti za Wananchi, Brief No. 45, October 2017, available at <http://www.twaweza.org/go/szw-corruption-2017>, accessed 23rd December 2017.

401 Ibid.

(60%) and in courts/judiciary (56%). In this study through, *Twaweza* cautions about perceptions of the people and the reality on ground, given the fact that majority of them were not aware of high profile corruption cases, which may affect their assessment of whether corruption is declining or not.

In November 2017, PCCB announced that the number of corruption cases in Local Government Authorities (LGAs) is decreasing.⁴⁰² The major reasons cited for this trend is the establishment of Public Expenditure Tracking Survey (PETS) units in district and municipal councils.⁴⁰³

Since 1996, Transparency International⁴⁰⁴ has been publishing Corruption Perceptions Index, ranking 180 countries worldwide depending on the level of corruption, using a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean.⁴⁰⁵ The Corruption Perceptions Index Report 2017 indicates that majority of countries made little or no progress in ending corruption in 2017.⁴⁰⁶ Tanzania scored 36 out of 100 and is ranked 103 in 2017, jumping 13 places compared to the ranking of 2016. The score is the highest in the past 5 years as indicated in the figure below.

Table 17: Tanzania's ranking in the Corruption Perceptions Indexes 2013-2017

Year	Ranking
2013	111
2014	119
2015	117
2016	116
2017	103

402 Sylvester Domasa "Corruption cases dropping - PCCB" DailyNews, 23 November 2017, available at <http://dailynews.co.tz/final/index.php/home-news/54427-corruption-cases-dropping-pccb>, accessed 27th November 2017.

403 Ibid.

404 A global civil society organization that seeks to combat global corruption.

405 See Transparency International website at https://www.transparency.org/news/feature/corruption_perceptions_index_2017, accessed 22nd February 2018.

406 Corruptions Perceptions Index Report 2017, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017, accessed 22nd February 2018.

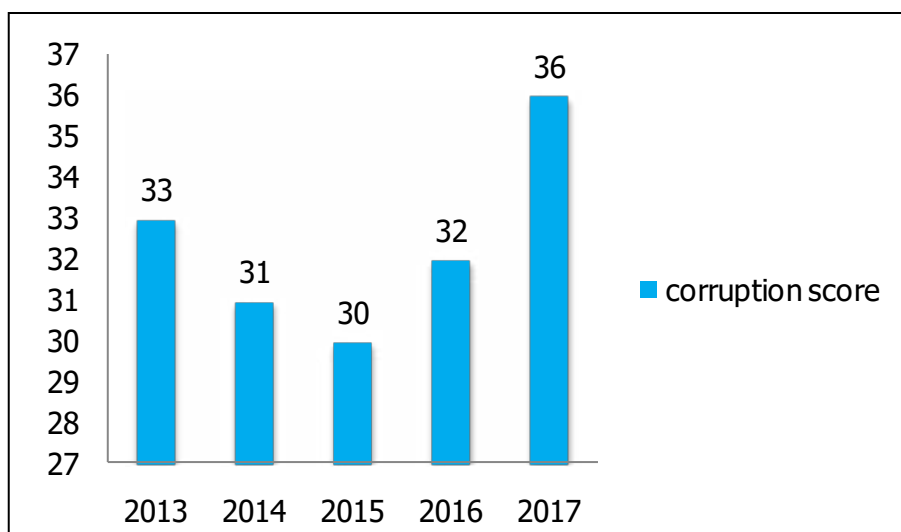


Figure 15: Tanzania's scores in the Corruption Perceptions Indexes 2013-2017

The improved score for Tanzania in the Transparency International's Corruption Perceptions Index 2017 is another indication that the Government did more to combat corruption in 2017, through PCCB. However, the score is not much higher and more needs to be done in the war against corruption.

Reduced Transparency and Restrictions on Freedom of Expression will Negatively Impact the Fight against Corruption

The fight against corruption requires the Government to be transparent and to safeguard basic human rights such as the freedom of expression, which includes right to information, freedom of opinion and media freedom. Effective anti-corruption strategies require transparent political system, media freedom, freedom of speech and access to information. Media outlets are important in exposing issues of corruption as are whistle-blowers amongst community members.

In September 2017, the Government decided to withdraw from the Open Government Partnership (OGP), an action that has faced criticism from domestic and international stakeholders. Among the reasons for withdrawal stated by the government are the enactment of the Media Services Act 2016, open data website (www.opendata.go.tz), and Tanzania being member of APRM 'which has similar objectives as OGP.'⁴⁰⁷ In LHRC's view, this step taken by the government is a backward step, which will reduce government transparency and accountability, leaving loopholes in the fight against

407 "Tanzania yaeleza sababu za kujitoka Mpango wa Uwazi Serikalini" *Mwananchi* Newspaper, 30 September 2017.

corruption. Restrictions of freedom of expression (as discussed in Chapter 2 of this report), especially media freedom, also hampers efforts to fight against corruption in the country.

8.4 Conclusion and Recommendations

LHRC commends the Government for intensifying efforts to combat corruption in Tanzania. Establishment of the anti-corruption division within the High Court is a remarkable achievement. But this is only a slight progress, as indicated in the Transparency International's Corruption Perceptions Index of 2017. There is still a long way to go in this war and as such, strengthening PCCB is very important, in order to also achieve key Millennium Development Goals (MDGs) such as eradicating extreme poverty and achieving free primary education. New constitution could also play a critical role in strengthening human rights and human rights mechanisms in Tanzania, strengthen good governance and increase accountability, all of which contribute to combat corruption. Moreover, the Government and PCCB can achieve more in terms of fighting corruption if the space for civil society is not restricted, democracy is left to prevail and basic human rights such as freedom of expression are fully safeguarded. PCCB must also look into all allegations of corruption and provide regular feedback to avoid perception of bias. More importantly, the Government, through the Ministry responsible for good governance, should make efforts to increase budgetary allocation for PCCB in order to increase its efficiency in combating corruption.

Chapter 9:

Human Rights Mechanisms

9.0 Introduction

This chapter looks at local, regional and international human rights mechanisms in Tanzania. These human rights mechanisms comprise of laws and institutions that protect and promote human rights. The national mechanisms highlighted in this chapter include the national human rights institution, 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.

9.1 National Human Rights Mechanisms

9.1.1 The Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance (CHRAGG) is an independent national human rights institution established under the Constitution of the United Republic of Tanzania of 1977.⁴⁰⁸ It has an overall mandate to promote, protect, and safeguard human rights and good governance in Tanzania. Among the functions of CHRAGG are sensitizing about preservation of human rights and duties and receiving complaints on human rights violations.⁴⁰⁹ CHRAGG is also tasked with advising the Government and its institutions on issues of human rights and good governance.⁴¹⁰

In the financial year 2016/2017, CHRAGG continued implementing its activities, including advising the Government and its institutions about human rights and good governance issues.⁴¹¹ CHRAGG raised awareness on human rights in different parts

408 See Article 129(1) of the Constitution of Tanzania 1977.

409 Article 130(1) of the Constitution of Tanzania 1977.

410 Ibid.

411 Speech by the Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba John Aidan Mwaluko Kabudi (MB), presented in Parliament during the budget session for the financial year 2017/2018 (Swahili), available at <http://www.judiciary.go.tz/wp-content/uploads/2017/04/HOTUBA-YA-WAZIRI-WA-KATIBA-NA-SHERIA.pdf>, accessed 27th December 2017.

of the country, including prisons in 15 regions; and visited 59 police stations and 5 juvenile prisons to check on adherence of human rights.⁴¹² It also received 7,101 complaints on violation of human rights, including cases of police framing suspects, delayed investigations, land disputes, corruption in the justice system and inheritance (probate).⁴¹³

CHRAGG was vocal about human rights violations in the country, including demolition of houses claimed to be within railway reserve. It noted that the demolition contravened the law as the reserve at Buguruni in Dar es Salaam indicated in the Railways Act indicated 15 metres of reserve, not 30 metres as claimed by Reli Asset Holding Company (RAHCO).⁴¹⁴ In the incident of the Dar es Salaam Regional Commissioner invading the office of a local media outlet, Clouds Media Group, CHRAGG also issued a statement condemning the act as contravention of Article 18 of the Constitution of the United Republic of Tanzania.⁴¹⁵

CHRAGG also continued coordinating the implementation of the National Human Rights Action Plan 2013-2017 in Tanzania. In its human rights report of 2016, LHRC indicated that most of the key objectives in the action plan are yet to be achieved and some have been partly achieved. A thorough analysis of the action plan to determine to what extent the human rights objectives have been achieved is needed.

While CHRAGG did a good job in implementing its activities in 2017, its efforts are hampered by a number of challenges as indicated in the National Human Rights Action Plan 2013-2017. These include insufficient budget, which hinders the institution from reaching majority of Tanzanians; shortage of staff; delays or failure to comply with its recommendations by the Government and other actors; and insufficient investigative and monitoring capacity, given the shortage of zonal offices.⁴¹⁶ As a way of minimizing the impact of these challenges, CHRAGG has been working closely with other human rights stakeholders, including CSOs.

9.1.2 Judiciary

Judicial organs are key in protection of human rights, interpretation of human rights laws, development of human rights jurisprudence, and providing remedies when human rights have been violated. The main judicial organs in this regard are courts

412 Ibid.

413 Ibid.

414 Ibrahim Yamola "Demolition of Buguruni houses illegal, rights commission says" 8 November 2017, available at <http://www.thecitizen.co.tz/News/Demolition-of-Buguruni-houses-illegal--rights-commission-says/1840340-4178424-trba0a/index.html>, accessed 27th December 2017.

415 TAARIFA KWA VYOMBO VYA HABARI, *THBUB yalaani uvamizi wa studio za Clouds Media*. (Press statement)

416 See LHRC (2017), Tanzania Human Rights Report 2016.

of law, which deal with criminal and civil cases. With regard to criminal cases, courts have a duty to ensure key human rights of the accused person such as rights to equality before the law, legal representation and bail are not breached. In civil cases, the courts and tribunals have a duty to ensure the rights of the parties involved are protected and provide the right to effective remedy. They conduct judicial review of laws and administrative actions, and in this way they have a role of ensuring that the Parliament and the Executive abide by the Constitution in order to protect people from laws and practices that infringe in their human rights. Courts, particularly the High Court, provide a forum for people whose rights have been violated to seek remedy.

As indicated in the chapters on civil rights and right of vulnerable groups above, courts of law continued to be play their role of providing remedies for violations of human rights in 2017. This includes provided strict sentences for violators of rights such as right to life and freedom from gender-based violence, entertaining human rights cases and granting rights to bail.

Like other organs, the judiciary faces a number of challenges in protecting and promoting human rights. A common challenge is shortage of resources, including court buildings, which hinders timely access to justice for majority of Tanzanians. Moreover, like other institutions, the judiciary is faced with a challenge of corruption, which serves to deny or delay justice for victims or persons seeking remedies in court.

9.1.3 Law Enforcement Organs

Law enforcement organs, particularly the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS) play an important role of protecting citizens and their properties. Police ensure justice is done through conducting investigations and taking suspected criminals to face justice. Prisons protect the society from convicted criminals and act to reform such individuals so that they can fit in back into the society, should they be released.

In 2017, the Police Force continued to carry out its mandate of protecting the people and their property as well as playing their role in the administration of justice. However, as discussed in chapters on civil and political rights in this report, some of the police officers were also implicated in human rights violations in 2017, through actions such as extrajudicial killings, arbitrary arrests, excessive use of force and arbitrary detentions. These actions are not effectively death with due to poor police accountability mechanism. In the chapter on corruption and human rights, the police force continues to be perceived to be among the most corrupt institutions, alongside the judiciary.

Challenges the Police Force continues to face in carrying out its mandate include

shortage of human and material resources, corruption, poor remunerations, shortage of housing, and corruption. LHRC has also observed that human rights education among police officers is still lacking, especially among junior officers who frequently engage with civilians.

On the part of Tanzania Prisons Services (TPS) the main challenge is prison overcrowding, affecting basic rights of prisoners. The prisons that are available are not sufficient to accommodate the prisoners. Currently, the capacity of prisons in Tanzania is to hold a total of 29,552 prisoners and remandees, while the number of prisoners is more than 33,000.⁴¹⁷ The Government has made a number of efforts to address the problem, including the use of alternative sentences such as parole, probation, and conditional sentences. However, increase of arbitrary arrests, delays of investigations, and denial of bail for bailable offences, particularly by police officers, is nullifying those efforts; and as a result, at least half of the people in prisons are remandees.

9.2 Regional and International Human Rights Mechanisms

Tanzania is involved in several regional and international human rights mechanisms, whereby it submits its report on protection and promotion of human rights. These include the Universal Periodic Review Mechanism (UPR) and committees established under various human rights treaties.

UPR is a unique mechanism of the Human Rights Council (HRC) aimed at **improving the human rights situation on the ground** of each of the 193 United Nations (UN) Member States.⁴¹⁸ Under this mechanism human rights situation of all UN Member States, Tanzania inclusive, is reviewed every 5 years to ascertain the extent states have taken action to improve human rights and fulfill their international human rights obligations.⁴¹⁹ The last UPR process was 2016, whereby Tanzania submitted its report and CSOs submitted shadow/stakeholder report. Several recommendations were made for Tanzania to improve human rights, whereby some accepted and some were rejected.⁴²⁰

Treaty bodies are established by the human rights treaties that have been ratified, with the aim of monitoring the implementation of such treaties by States parties. The provisions of the treaties require States parties to submit to the treaty bodies'

417 See budget speech by the Minister of Home Affairs, Hon. Mathias Chikawe (MP) for the financial year 2015/2016.

418 See United Nations Human Rights Office of the High Commissioner, Universal Periodic Review, at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>, accessed 29th December 2016.

419 Ibid.

420 See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016.

periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the 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, and the Committee on the Rights of Persons with Disabilities. Status of reporting to the treaty bodies is indicated in the annex section. At continental level, there is the African Commission on Human and Peoples' Rights – a quasi-judicial body that receives country reports and exercises jurisdiction over human rights violations complaints. There is also the African Court on Human and Peoples' Rights, based in Arusha-Tanzania. This is the judicial organ of the African Union, binding African countries that have signed the Protocol establishing the court, including Tanzania.

9.3 Conclusion and Recommendations

Domestic human rights mechanisms in Tanzania need to be strengthened in order to enhance their capacity to protect and promote human rights. Shortage of resources seems to be a cross-cutting issue, while corruption in the justice system (judiciary and law enforcement organs) is still perceived by members of the public as an obstacle in accessing justice. Another challenge is non implementation or partial implementation of some key international obligations by Tanzania.

Chapter 10:

Other Issues of Human Rights Concern

10.0 Introduction

This short chapter looks at issues of human rights concern other than those discussed under Chapters 2 to 9. The first issue looked at is political tolerance in Tanzania Mainland. The second issue is the responsibility of state and non-state actors in promotion and protection of human rights in Tanzania.

10.1 Political Tolerance

Political tolerance can be defined as accepting and respecting the basic rights and civil liberties of persons and groups whose viewpoints differ from one's own.⁴²¹ Duty to practice political tolerance is there for all people, including political leaders.⁴²² Political intolerance, which is the opposite of political tolerance, is a threat to democracy.

In 2017, LHRC observed lack of political tolerance through the tension between the leaderships and members of the ruling party (CCM) and those of opposition parties, especially the main opposition (CHADEMA). This tension can be attributed to a number of factors,

majority of which have been discussed above, including restrictions on basic human rights such as freedom of expression and freedom of assembly.

As a result, there has been a tendency of citizens who are members of these political parties to exchange bad words and

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 1 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

even hate each other because of political affiliations. This has also been observed in the Parliament, whereby members of parliament may not support each other on issues of national importance simply because of political ideology or affiliation. While

421 See Inter-Parliamentary Union website at <http://archive.ipu.org/dem-e/idd/tolerance.htm>, accessed 10th January 2018.

422 Ibid.

such tension existed even in previous years, LHRC has observed that the situation is worsening little by little, which is not a good indication for human rights protection.

Discriminatory statements made by some leaders, especially of the ruling party, are also not helping the situation. For example, some of the leaders stated that people should only choose local leaders who are members of the ruling party if they want government cooperation. During campaigns for by-elections in November 2017, some candidates and cadres of the ruling party were also heard telling voters that if they want an MP who will have the Government's ears they must choose the ruling party (CCM). In LHRC's view, this seed of discrimination is not healthy for our nations built by the late father of the nation, Mwalimu Julius Nyerere, on unity and solidarity. Mwalimu Nyerere once spoke strongly against the "sin of discrimination."

LHRC urges leaders and members of all political parties to refrain from any form of discrimination and put the people first, not their political parties. They should also unite on issues of national importance and encourage their members not to resort to hatred and violence.

10.2 Responsibility of the State and Non-state Actors to Promote and Protect Human Rights

Under international, regional and domestic law, States are charged with primary responsibility of promoting and protecting human rights and are required to refrain from interfering with them arbitrarily.⁴²³ This responsibility extends to individuals, groups and organs in the society as indicated by the UN General Assembly through its declaration called "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms."⁴²⁴ This Declaration provides for **the right to promote human rights** and highlights the responsibility of state and non-state actors in promoting and protecting human rights.

States must take necessary steps to create all conditions necessary for social, economic, political and other fields and adopt such legislative, administrative and other steps to ensure that human rights and freedoms are effectively guaranteed.⁴²⁵ "Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights

423 See various human rights treaties discussed above, such as ICCPR, CRC, ACHPR and Maputo Protocol.

424 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.

425 Ibid, Article 2(1).

and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.”⁴²⁶ They must also play a role in safeguarding democracy, promoting human rights and advancing democratic societies, institutions and processes.⁴²⁷

LHRC recognizes the role of the media in promoting and advancing protection of human rights in Tanzania, as well as exposing corrupt practices. As an important advocacy tool for promotion and protection of human rights, LHRC urges media outlets to increase investigation and reporting of human rights issues and provide more airtime for human rights-related programmes.

Individual citizens have a duty to obey laws and follow legal procedures, as well as to report crimes and incidents of human rights violations, and intervene to protect human rights when possible. They also have a duty to respect other peoples’ rights, which includes paying taxes in order to enable progressive realization of economic, social and cultural rights in the community.

Law enforcement officers also have a big role to play in promotion and protection of human rights. LHRC has noted with concern the tendency of police officers, especially of lower ranks, to either disregard or not take seriously issues of human rights, not knowing that they too may be victims of human rights violations someday and require protection or legal assistance. LHRC recognizes the challenges our brothers and sisters in uniform face in performing their duties, but they have a responsibility to serve and protect, which includes protecting and respecting human rights. Other actors like religious and traditional leaders must also play a big role in ensuring respect for human rights within communities, including by continually speaking out against human rights violations and urging community members to refrain from practices that violate such rights.

426 Ibid, Article 16.

427 Ibid, Article 18(2).

Annexures

Annex 1: Status of International Human Rights Ratifications in 2017

As of December 2017, 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.

	<i>Convention/Treaty</i>	<i>Ratification</i>
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
	Regional	African Charter on Human and Peoples' Rights 1981
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;
- ⊖ 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; and
- ⊖ Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011.

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. Members of the Parliament can play a key role in putting pressure on the Government to act fast and ratify these important human rights treaties.

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.</p> <p>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)	<p>Initial report submitted in December 2006.</p> <p>Consolidated 2nd, 3rd and 4th reports submitted in October 2015.</p>

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 Human Rights Cases

Rebeca Z. Gyumi v. Attorney General (Tanzania Civil Cause No 5 of 2016, Decided July 8, 2016)

World Org. against Torture v. Zaire, Comm. 25/89, 47/90, 56/91, 100/93, 9th ACHPR AAR Annex VIII (1995-1996)

Annex 4: List of International Human Rights Instruments

1. African Charter on Human and Peoples Rights (ACHPR)
2. African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)
3. African Charter on the Rights and Welfare of the Child (ACRWC)
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
5. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)
6. Convention on the Elimination of all forms of Racial Discrimination (CERD)
7. Convention on the Rights of Persons with Disabilities (CRPD)
8. Convention on the Rights of the Child (CRC)
9. Declaration on the Elimination of Discrimination against Women
10. 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.
11. Economic and Organized Crimes Act
12. International Covenant on Civil and Political Rights (ICCPR)
13. International Covenant on Economic, Social and Cultural Rights (ICESCR)
14. Universal Declaration of Human Rights (UDHR)

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

Part Two

LIST OF ABBREVIATIONS

AAKIA	Abeid Amani Karume International Airport
AAPAM	African Association of Public Administration and Management
AC	Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights (ACHPR)
ADB	Africa Development Bank
ADR	Alternative Dispute Resolution
AG	Attorney General
AIR	All India Law Report
ASP	Afro Shirazi Party
ASP	Afro-Shirazi Party
BADEA	Arab Bank for Economic Development in Africa
CAG	Controller and Auditor General
CCM	Chama Cha Mapinduzi
CHADEMA	Chama Cha Demokrasia na Maendeleo
CHRAGG	Commission for Human Rights and Good Governance
CJ	Chief Justice
CUF	Civic United Front
DNA	Deoxyribo Nucleic Acid
DPP	Director of Public Prosecutions
ERP	Economic Recovery Programs
FAWE	Forum for African Women Educationalists
GBS	General Budget Support
GBV	Gender Based Violence
GDP	Gross Domestic Product
GDP	Gross Domestic Product
GNU	Government of National Unity
GSO	Government Security Office
HC	High Court
HCD	High Court Digest
HCZ	High Court of Zanzibar
ICCPR	International Covenant on Civil and Political Rights
ICE	Institute of Continuing Education
ICSEC	International Covenant on Social Economic and Cultural Rights

IFMS	Integrated Financial Management System
IPU	World Future Council, the Inter-Parliamentary Union
ITUC	International Trade Union Confederation
JSC	Judicial Service Commission
JSC	Judicial Services Commission
JUMIKI	Jumuiya ya Uamsho na Mihadhara ya Kiislamu
LEGCO	Legislative Council
LRC	Law Review Commission
LRCZ	Law Review Commission of Zanzibar
LRT	Law Report of Tanzania
MACEMP	Marine and Coastal Environment Management Project
MCT	Media Council of Tanzania
MDG	Millennium Developments Goals
MKUZA	Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar
MoEVT	Ministry of Education and Vocational Trainings
MV	Marine Vessel
NGO	Non-Governmental Organization
NIDA	National Identity Card Authority
OAU	Organization of African Union
OUT	Open University of Tanzania
PVR	Permanent Voters Register
SACCOS	Saving and Credits Cooperatives Societies
SAP	Structural Adjustment Program
SC	Supreme Court
SEP	Structural Economic Programme
SMOLE	Sustainable Management of Land and Environment
SMZ	Serikali ya Mapinduzi Zanzibar
TAMWA	Tanzania Media Women Association
TANU	Tanganyika African National Union
TEMCO	Tanzania Election Monitoring Committee
TLR	Tanzania Law Report
TMA	Tanzania Meteorology Agency
TPDF	Tanzania People Defence Force
TWA	Trans World Aviation
UDHR	Universal Declaration of Human Rights

UN	United Nations
UNESCO	The United Nations Educational, Scientific and Cultural Organization is a specialized agency of the United Nations
UP	Umma Party
ZAA	Zanzibar Airports Authority
ZABEIPO	Zanzibar Strategy for Growth and Reduction of Poverty Zanzibar Education Implementation Project
ZACPO	Zanzibar Clove Producers Organization
ZAECA	Zanzibar Anti-Corruption and Economic Crimes Authority
ZAFELA	Zanzibar Female Lawyers Association
ZANGOC	The Zanzibar NGO Cluster for HIV and AIDS Prevention and Control
ZAN-ID	Zanzibar Identity Card
ZAPDD	Zanzibar Association of People with Development Disabilities
ZAT	Zanzibar Aviation Services & Travel Limited
ZATU	Zanzibar Association of Teachers Union
ZATUC	Zanzibar Association of Trade Union Confederation
ZAWA	Zanzibar Water Authority
ZBC	Zanzibar Business Council
ZBC	Zanzibar Broadcasting Corporation
ZCT	Zanzibar Commission for Tourism
ZEC	Zanzibar Electoral Commission
ZIFF	Zanzibar International Film Festival
ZIPA	Zanzibar Investment Promotion Authority
ZLR	Zanzibar Law Report
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba People's Party
ZSSF	Zanzibar Social Security Fund

CHAPTER 1:

CONTEXTUAL OVERVIEW

1.0 Introduction

Every human being has got 'rights' that are equal to the rights of each other. These rights include the rights to life, liberty, equality and dignity of his person. The rights are inherent in him merely because he is born human. These rights are so called *Human Rights* in the sense that they are naturally part and parcel of his '*being human*'. Human Rights are universal and every human being has right to enjoy them regardless their recognition and protection under their national Constitutions and laws of their lands.⁴²⁸

Despite the inherent nature of these rights, people have long ago been struggling for their recognition, respect and protection. The struggle has characterised numerous efforts taking place at different social stratifications both international (global and regional) and national wise. As a result, it is widely accepted that every human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴²⁹

Currently, human rights are legally guaranteed by human rights law, protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. Internationally, human rights law is expressed in treaties, customary international law, bodies of principles and other sources of law. The human rights law places an obligation on States to act in a particular way and prohibits States from engaging in specified activities.⁴³⁰ Under national legal systems, human rights law is ordinarily found in national bills of rights which mainly are entrenched in the country constitutions.

Tanzania on its side, apart from recognising the human rights norms in the International and regional treaties, it had emphatically recognised and protected them under the laws of the land. The Constitution of the United Republic of Tanzania for instance has recognised Human Rights and incorporated the Bill of Rights as the *Basic Rights and Duties* in the Part III.⁴³¹

Under the Constitution of Zanzibar 1984, the human rights have been protected under

428 Kassa G.A (2015), *The African Regional Human Rights System*, p.1.

429 United Nations, *Handbook for UN Staff*, p.2.

430 Ibid p.3.

431 Article 12 to Article 30 of the Constitution of the United Republic of Tanzania, 1977.

Part III of the Chapter One⁴³². Under these provisions of the Constitution, any one has got a right to defend his right before the Courts of law against any infringement done by any one.

1.1 Historical Overview

The light of human rights started where human beings began living together while acknowledging that a human being has got some matters that are righteous to him or her. Nevertheless, there were some persons who tended to violate the rights of others.

As far Zanzibar is concerned, it has been a home to human beings since the beginning of the late Stone Age. One can understand it on reading different scriptures, including Greco-Roman text and the Periplus of the Erythraean Sea which were written between the 1st and 3rd centuries BC, had mentioned the island of Menuthias which is believed to be Unguja,⁴³³ the main island that, together with Pemba, it forms Zanzibar.

The first settlements of Zanzibar are believed to have been established by immigrants from numerous sections of the African Mainland.⁴³⁴ At that time, there was contact between the people of Zanzibar and outsiders. The word Zanzibar is believed to be derived from Arabic word 'Zanjibar' which means coast of the blacks.

Autonomous African societies existed in Zanzibar since ancient times, before the isles became increasingly a good geographical and strategic location that attracted visitors from many foreign nations, some of whom established their political bases in the isles. Henceforth, the historical print of Zanzibar drew mainly from African settlers, Persians traders and invasion by foreign nationals. Persians and Arabs are said to be the first foreigners who settled in Zanzibar prior to the coming of Sultan of Oman.⁴³⁵

The interactions of the local people and foreigners had derived from the responses of development marked by indigenous African parallel with imported notions from other parts of Africa, the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia.⁴³⁶

During the 16th Century, the Portuguese who were the first foreign visitors arriving from the South to Zanzibar were also the first European power to gain control of Zanzibar from 1503 to 1698. The Portuguese established friendly relations with the

432 Section 11 to 25 of the Zanzibar Constitution of 1984.

433 Pearce F.B. Zanzibar (1920), the Island Metropolis of East Africa, p.120.

434 Michael F (1965), Zanzibar Background to Revolution, p.29.

435 Bhacher M.R (1994), Trade and Empire in Muscat and Zanzibar: p.5-6.

436 Ibid.

ruler and introduced Christianity in the Isles. However, the Muslim of Oman did start a forceful campaign along the coast against the Portuguese in the late of 17th Century. Consequently, the Portuguese were defeated and fell and thus, their colonial powers and Christian presence came to an end.⁴³⁷

The people of Zanzibar have also been socially influenced by the coming of Persians (Shirazi) who began landing in Zanzibar from about the 10th Century. It is common even nowadays to find a good number of Zanzibaris as “Shirazi” with the Persians origin⁴³⁸.

Politically, the people of Zanzibar have a long political relationship with Arabs from Oman.⁴³⁹ The Omani Arabs, who expelled the Portuguese from Muscat in 1650 and were the leading force against them in the entire region, gradually established at least nominal control over many settlements, including Zanzibar. After a lengthy turmoil of dynastic wars and losses and gains on the African coast, the ruling sultan of Oman, Said bin Sultan, decided to relocate his capital from Muscat to Zanzibar.⁴⁴⁰

Zanzibar then became an increasingly important part of the Omani empire due to its value as the main slave market of the East African coast. It was the slave trade which was originally responsible for generating the increased economic interest of the Omanis in the Swahili Coast. Universal Declaration of Human Rights condemns slavery as one of the violation of human rights, as this said “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁴⁴¹ It is the strength of international pressure as founded under the provisions of the international Bill of Rights that slavery was abolished in most countries that were practicing slavery, including Zanzibar.

The involvement of British rule in Zanzibar had led a human right agenda to take another shape in the islands. The British rule remained the colonial power with its well-established political presence signified by the abrupt redistribution of the Sultan’s inland territories. This was brought about by the Heligoland–Zanzibar Treaty (German: Helgoland-Sansibar-Vertrag; also known as the Anglo-German Agreement of 1890) which was an agreement signed on 1st July 1890, between Germany and Great Britain. Germany gained the small but strategic island of Heligoland, which its new navy needed for the control of the new Kiel Canal and approaches to Germany’s North Sea ports.⁴⁴²

437 J. Middleton and another (1965), Zanzibar, its society and politics, p.3-4.

438 Ibid.

439 S.C. Nicholls (1971), The Swahili Coast, Politics, Diplomacy and Trade on the East African Littoral, p.217.

440 <https://www.britannica.com/place/Zanzibar-island-Tanzania>.

441 Article 4 of UDHR.

442 https://en.wikipedia.org/wiki/Heligoland-Zanzibar_Treaty

Upon the approval of Sultan, the exchange agreement between the two allowed Zanzibar and its narrow coastal regions to be declared a British protectorate in 1890. The joint colonial leadership between British and Sultan took place for virtually 70 years from 1890. Their rule came to an end after the islands got their independence in 1963.⁴⁴³ Despite bringing into the end the Sultanate regime in Zanzibar, the social relationship between the people of Zanzibar and the Oman people continued to be significantly in existence. The main cause behind this social link appears to be inter-marriage and, therefore, blood relationships between Zanzibaris of African origin and Zanzibari of Arabs. However, the official link or tie between the Revolutionary Government of Zanzibar and Omani Government has been the 'ups and downs' topic.

For example, in 1932, the relationship between Oman and Zanzibar was strongly laid down by the Sayyid Said bin Sultan who made the two territories under his rule. Consequently, the link between Zanzibar and Oman was broken after death of Sayyid Said bin Sultan in 1856. Zanzibar remained an independent Arab state for sixty years until Great Britain, extending its own empire in East Africa, made Zanzibar its Protectorate.⁴⁴⁴

There are also a number of instances in which these kinds of links are demonstrated within the history of Oman and Zanzibar. Recently, in March 2015, the House of Representatives of Zanzibar conducted a quite bitter discussion on the disappearance of some vital historical documents from Zanzibar archives. At the end of the discussion, the House perceived the Oman Embassy and Zanzibar and some senior officials of the Zanzibar archives to be responsible for the loss of the documents. Hence, the House passed the resolution directing the Revolutionary Government of Zanzibar to necessarily take appropriate measures against the Omani Ambassador in Zanzibar and the responsible archives officials for the loss of the documents.⁴⁴⁵

On the other hand, in strengthening the socio-economic relationship between these two countries, Oman had been helping Zanzibar in a number of projects. It is Oman that assists the government of Zanzibar in health, education, culture and other economic support. It is in strengthening this relationship that, on Thursday 12, 2017, a delegation of 300 dignitaries from Omani Government representing King Sheikh Sultan Qabous bin Said had arrived in Zanzibar aboard a ship named 'Fulk Al Salamah' officially used by the royal family, with the view to strengthening the existing ties between the two sides.

443 Majamba H.I, (2007), Perspectives on the Kadhis' Courts in Zanzibar, p.2.

444 Zanzibar Human Rights Report, 2016.

445 Hansard of the House of Representatives of Zanzibar, dated on 15th March, 2015.

Directly from Muscat Oman to Malindi Port of Zanzibar, the delegation had been received by Second Vice President Hon. SeifAli Iddi who was accompanied by cabinet Ministers including Minister of State in the Second Vice president's Office, Mr. Mohamed Aboud Mohamed; Minister for Water, Energy, Land and Environment, Ms. Salama Aboud Talib; and Minister for Finance and Planning, Dr Khalid Salum Mohamed. Other ministers who participated in the delegation were Minister for Information, Tourism, Culture and Sports, Mr. Rashid Ali Juma, and Ms. Amina Salum Ali, Minister of Trade and Markets. Involved in the delegation was Regional Commissioner of the Urban Western Region of Unguja, Hon. Ayoub Mohamed Mahmoud.

Oman delegation which was led by Minister of oil and gas, Mr. Mohamed Al-ramh, had strengthened the diplomatic and economic relations of the two countries which shared a long history.⁴⁴⁶



Picture 30: The delegates are in 'Fulk Al Salamah' at Malindi Port of Zanzibar, 2017

On the history of human rights in Zanzibar, the independence of 10th December, 1963, had rewarded Zanzibar with the first and remarkable Constitution which had enclosed the Bill of Rights. The independence further made Zanzibar to become a member of the British Commonwealth and a member state of the United Nations on 16th December 1963. The Independence was possible on the coalition between the Zanzibar Nationalist party (ZNP) and its offshoot the Zanzibar and Pemba People's

446 The Citizen, Thursday, 12th October, 2017.

party (ZPPP), both of which principally represented the Arabs against the Afro-Shirazi party (ASP), whose followers were Africans.⁴⁴⁷

It was the Constitution that followed the Westminster model of government, since the ZPPP formed government, while the Sultan as Head of the State. However, one month later after that December independence, on 12th January 1964 the Revolution had overthrown the existent regime and abrogated the Independence Constitution of 1963.⁴⁴⁸

The Bill of Rights which was respected under the Independence Constitution of 1963 became the day dream under the Presidential Decrees which always become a signal of revolution. Political parties were abolished and the State made several changes, some of which are said to be positive and others negative. Within the first year of the Revolution, the President introduced several radical changes in the political, economic and social spheres. The liberty of the people was declared, land and other properties were confiscated, mortgages were cancelled, rickshaws publicly burned, all clubs and schools based on religion, race or wealth were nationalised or banned by the Government.⁴⁴⁹

The Legislative Power Law said to be the first law and acted as the Constitution of Zanzibar after 1964 revolution.⁴⁵⁰ Other more prominent legislations that had effects similar to that of the Constitution were 'Constitutional Government and the Rule of Law Decree, 1964' and, 'Equality, Reconciliation and Unity of Zanzibar People Decree, 1964.'⁴⁵¹ All legislations were passed by the Revolutionary Council which had both, the legislative and judicial powers and headed by Hon. Abeid Aman Karume as the Chairman and the First President post revolution of 1964.

Zanzibar united with Tanganyika to form one sovereign state, the United Republic of Tanzania with Mwalimu Julius Nyerere as president,⁴⁵² and Abeid Amani Karume as Vice President. A special session of the Tanganyika National Assembly approved the Articles of the Union on 25th April 1964 with no substantive discussion. The United Republic of Tanganyika and Zanzibar which was officially proclaimed on 26th April 1964 was renamed the United Republic of Tanzania on 28th October, 1964.⁴⁵³

447 <http://zanzibar.go.tz/index.php?rgo=history>

448 Martin E.B (1978), Zanzibar Traditional and Revolution, p.57.

449 Zanzibar Human Rights Report, 2016.

450 Uki A, The State of Constitutionalism in Zanzibar in 2010 in Odhiambo M, Annual state of Constitutionalism in East Africa, 2010 (Kampala: p.187.

451 Zanzibar People Decree, No.6 of 1964.

452 Kituo cha Katiba, (2003) p.21.

453 United Republic Declaration of Name Act, No.61 of 1964.

Since the formation of the union, Zanzibar has her own Executive headed by the President of Zanzibar who is also the Chairman of the Revolutionary Council, its own legislative body, namely, the House of Representatives which consist of two parts, the President of Zanzibar on one part and the House of Representatives on the other. It also has an independent High Court of Zanzibar headed by the Chief Justice and other judges of which not less than two are referred to as High Court Judges.⁴⁵⁴

In 1969, Revolutionary Council of Zanzibar had brought the fundamental changes on the Court system and human rights history by establishing the Peoples' Courts which came into effect on 1st January 1970.⁴⁵⁵ The Courts were presided over by lay people and some of them completely illiterate and were not bound by rules of evidence and procedure, but had to formulate their own regulations of the proceedings.⁴⁵⁶

The Human rights had started taking its merits in 1979 when the second president Hon. Aboud Jumbe had established the Constitution of Zanzibar in that year. One important development of this constitution was the separation of powers of the legislative from those of the executive. The House of Representative was for the first time established to pass all laws to be applied in Zanzibar. This Constitution brought remarkable development towards the strengthening of democracy and the rule of law.

The Zanzibar government introduced a new constitution, entitled *Katiba ya Zanzibar* 1984 which was enacted by House of Representatives in 1984. The Constitution had recognised the Bill of Rights under its Chapter III that had remained to date.

In 2010, Zanzibar had further developed its constitutional development though it had nether change any provision of Bill of Rights. The government had introduced for the first time, a Government of National Unity, where there are to be two Vice Presidents (the First Vice and the Second Vice Presidents);⁴⁵⁷ ministers and other members of the Revolutionary Council (i.e. the Cabinet as the President deems fit to appoint.

1.2 Geography and Population

Geographically, Zanzibar is located between 15 and 20 miles from Tanzania Mainland. Apart from two bigger islands, Zanzibar has many small islands surrounding. Between the two bigger islands, the Unguja which also known as Zanzibar is the Capital which shelter the most historical monument of the island an old quarter, called Stone Town-

454 Ibid.

455 Section 1 of the Presidential Decree, No. 11 of 1969.

456 Nassali Maria, (2008) *Reforming Justice in East Africa. A Comparative Review of Legal Sector Processes*, Fountain Publishers, Kampala, 1st Ed, p.177.

457 Section 39 of Zanzibar Constitution 1984.

which is one of the World Heritage Sites. And it was the Stone Town where the Slave Market was once upon a time located. After the Slave trade was abolished, the market was destroyed and an Anglican Cathedral was built at its place.⁴⁵⁸ Zanzibar is characterised by beautiful sandy beaches with fringing coral reefs, and the magic of the historic Stone Town - said to be the only functioning ancient town in East Africa.⁴⁵⁹



Picture 31: Beach view of Stone Town, Zanzibar

Zanzibar had been blessed with the brilliant white beaches round by the warm turquoise waters of the Indian Ocean, provide the perfect place to relax, soak up the sun and take a break from some busy sightseeing. One who finds and get relax in Zanzibar beaches, finds himself in paradise, intermingled with picturesque fishing villages, where the people live a simple way of life, unchanged over the years. There are more than 25 fantastic beaches in Zanzibar, and some are so peaceful and remote that the only noise breaking the silence is likely to be the ocean.⁴⁶⁰

Notwithstanding the God's bless of beautiful beaches in Zanzibar, the sea-level rise imperils them to be not in the same place in the future. If the Zanzibar beaches still exist throughout the sea-level rise, many of the buildings may not. Efforts therefore should be taken to save beaches, such as seashore armouring structures.⁴⁶¹ Sea-level

458 David Lawrence, D. (2009), *The Land Its People and Contemporary Life*, p.76-77.

459 Lugoe F.N (2012) *Land Diputes in Zanzibar for SMOLE* p.13.

460 <http://zanzibar.net/paradise-beaches/>

461 <http://coastalcare.org/sections/inform/sea-level-rise/page/3/>

rise in Zanzibar is caused by number of reasons, including the increase in global ocean volume due to thermal expansion from oceanic temperature and salinity changes; and the additional melting of land-based ice caps and glaciers, and the ice sheets of Greenland and Antarctica.⁴⁶²

It is further stressed that sea-level rise is a gradual process, with a much longer response time than for temperature. Newly detected rising sea-levels in parts of the Indian Ocean, including Zanzibar coastlines, appears to be at least partly a result of human-induced increases of atmospheric greenhouse gases. The sea level rise could have far-reaching impacts on both future regional and global climate.⁴⁶³

United Nations predicts that world population will be 9 billion by 2050, while massive areas of land are available throughout the interiors of many countries, the same rule that applied in the ancient times that people are attracted to settle near seas, oceans and rivers. And on that ground, about half of the world's population lives within 100 km of water, and this trend continues to grow.

The demand for additional land for housing, industry and recreation along the coasts is becoming steadily more acute. If cities can't grow outward, they grow upwards resulting in more congestion in terms of industry, roads and demand for services. While this trend might have at one time seemed impossible, from the 1970s onwards the dredging industry has developed new technologies for creating new land in the water. As a result, "buying" new land by "making" it through reclamation is turning out to be less expensive than developing old land.⁴⁶⁴

On the same situation to Zanzibar, her geographical location in particular beaches has been expanded through land reclamation. One of the common and great reclamation is that construction of a tourist resort at Mtoni, north of the Stone Town of Zanzibar, operated under Coastal Dredging & Construction Company Tanzania Limited (CDCC), of Bakhresa Group, incorporated in Zanzibar, with a motive to venture into the Dredging Business.⁴⁶⁵

By 2017, 70 percent of the project has so far been implemented and was expected to be completed in August 2018. For the purpose of human rights, the land reclamation at Mtoni has created jobs for thousands of Zanzibaris and several more are expected to be created once it is completed. The said land reclamation project is expected to consist 106 rooms, six of which will be presidential rooms that can accommodate the same number of Presidents at one go.

462 RoZ (2012), Technical Report on the Economics of Climate Change in Zanzibar: Projections of Climate Change and Sea Level Rise for Zanzibar, P.13.

463 <http://kibunango.blogspot.com/2010/07/indian-ocean-sea-levels-on-rise.html>

464 By René Kolman, *New Land by the Sea: Economically and Socially, Land Reclamation Pays*, p.1.

465 Tanzania Daily News, 21st June 2016.

The land reclamation with a height of 150 meters and width of 50 meters, after completion of the water park project, expected to accommodate at least 3,500 families in one go and the marine is expected to accommodate at least 30 boats of height 30 metres in one go.⁴⁶⁶

Zanzibar government had intended to change geographical view of Zanzibar with modern houses, by construction fourteen new cities in different areas in Zanzibar. The government in collaboration with different construction companies, including Engineering Consultants Group of Egypt, aimed at changing the geography of the islands to be *Smart City*.⁴⁶⁷ The construction of 14 Smart City will increase employment to the people of Zanzibar and as humans, they will be able to serve their lives. The construction will also enhance technology and making Zanzibar a destination for visitors.⁴⁶⁸

The Climate of Zanzibar is usually warm and humid (equatorial). However, there are four common and long climate changes experienced in Zanzibar. *Masika* is the longer and heavy rains and some time comes with consequences, normally occurs between March and May;⁴⁶⁹ *Kipupwe* which is cold season usually comes on June and August; the hot season is known as *Kaskazi* or *Kiangazi* always comes between December and February and the fourth is *Vuli* where short rains are experienced, usually happens on October and November.⁴⁷⁰

Administratively, Zanzibar is divided under five regions and eleven districts. Among the five, Unguja is divided to three which are Urban West, South Unguja and North Unguja. The urban west region has three districts which are Urban district, West A and West B districts. South Unguja region has Central and South districts. The North region of Unguja has North A and North B districts.

Pemba as the second part of Zanzibar is administered under two regions. The North Pemba and South Pemba regions. North Pemba has the two districts of Wete and Micheweni, while the South Pemba region has the two Districts of Mkoani and Chake Chake. Each district is divided into a number of smaller localities called 'Shehias'. There are 384 Shehias in Zanzibar.⁴⁷¹

466 <https://www.journalducameroun.com/en/tanzania-firm-embarks-on-us20m-land-reclamation-hotel-project/>

467 <http://zanzibar24.co.tz/2017/04/24/misri-kuisaidia-zanzibar-kujenga-miji-mipya/>

468 <https://nocompcommunitymedia.blogspot.com/2017/04/misri-kuisaidia-zanzibar-kujenga-miji.html>

469 Zanzibar Institute for Tourist Development (2014) p.33.

470 Zanzibar Human Rights Report, 2016.

471 Ibid.

The majority of Zanzibaris are Muslim of Sunni sect; however there are also Christians and Hindu followers. Zanzibaris are an eclectic mixture of ethnic backgrounds, indicative of the islands' colourful history. Widespread intermarriages between Shirazis and Africans gave rise to a coastal community with distinctive features, using a highly Arabicized form of language, known as Kiswahili, which is the country's national language. However, while the official languages are both Kiswahili and English, English generally is used as a medium of instruction in academic institutions. The language of the court and all official documents and public recordings is either Kiswahili or English.⁴⁷²

Around the late 11th or 12th Century, number of traders who had settled in Zanzibar had intermarried with the indigenous Africans. Ultimately, a hereditary ruler (known as the *Mwinyi Mkuu* or *Jumbe*), emerged from among the *Hadimu*, and a similar ruler, called the Sheha, was set up among the Tumbatu. With the coming of British in Zanzibar, the inhabitants were grouped mainly into Europeans, Arabs and African whereas the natives (Africans) were sub-grouped into *Wahadimu*, *Watumbatu* and *Wapemba*. The Swahili groups formed about eighty per cent of the total population, about ten per cent were Arabs, nine per cent Indo-Pakistanis, and the rest were Somalis, Comorians and Goans.⁴⁷³

The government had carried out the population census carried in August 2012, which indicates that Zanzibar has a population of about 1,303,569 people compared to that of 2002, which were 984,624. This is to say that the growth rate increased from 3.0 per cent in 1988 to 3.1 per cent during 2002 and then declined to 2.8 per cent in 2012. The population density of Zanzibar has increased from 400 person/sq. km in 2002 to 530 person/sq. km in 2012.

Despite Zanzibar having five regions, the most populated is the Urban West Region with the highest growth rates of 4.2 percent and a population of 593,678; while the region with the least population is South Region of Unguja with a population of 115,588. It is further indicated that the proportion of females has marginally increased compared to males.⁴⁷⁴

1.3 Economic Situation

It is a historical phenomenon for Zanzibar's economy to base on agriculture and tourism. In agriculture, Zanzibar grows and exports cloves as the first products and monopolised by the government seconded by coconuts, chilies, copra and seaweed.

472 Zanzibar Human Rights Reports, 2016.

473 Ibid.

474 Ibid.

Fishing on the seas surrounding Zanzibar, becomes the wealth for the local economy. Therefore, Zanzibar economy can be classified into four major sectors; the agriculture sector, production and construction sector, distribution sector, and services sector. These sectors are climate dependent and a large proportion of Gross Domestic Product (GDP), employment and livelihoods are associated with climate sensitive activities. Higher temperatures, unpredictable rainfall patterns and high tide levels can lead to droughts and floods which are likely to affect the Isles' economy and the GDP.⁴⁷⁵

Cloves which is the economic backbone of the island' economy, was historically introduced in Zanzibar by the Omani Arabs in the first half of the 19th Century and has been a major foreign exchange earner in Zanzibar for over a hundred years. Cloves were originally grown by Arabs on their large plantation with the manual labour being provided for by slaves. Despite hard labour was not at that time considered being a violation of the human rights, it had contributed to the change of legal system with the beginning of colonialism. During the British colonialism, private ownership as opposed to communal system was believed to be not only progressive but also absolutely necessary in order to ensure that slaves continue to work and contribute to clove economy.⁴⁷⁶

Cloves continued to be the main source of the national income until the time when the slavery was totally abolished and even after the revolution of 1964. The economy of Zanzibar, however, collapsed in 1970 because of a decline in clove exports.⁴⁷⁷ Efforts to boost the economy of Zanzibar were made in the late 1970s, enforced materially by the Revolutionary Government of Zanzibar in the mid-1980s and deepened during the decade of 1995–2005. This generated some positive results at the Macro-level.

Several reasons led to legal and economic reforms in Zanzibar, but the failure of the mission of the Government to adequately provide for basic social services was the driving reason for the legal sector reform.⁴⁷⁸ The legal economic reforms aimed at boosting the economy of Zanzibar. The government had to do all it could to meet the conditions of securing aid from IMF and WB. These included the Structural Adjustment Program (SAP) and Economic Recovery Programs (ERP) which underlined a market based economy⁴⁷⁹. These programmes encouraged privatization in the economy.

Ultimately, the main role of government was to ensure law and orders are formulated to enable public policies for the private sectors are flourished in economic development

475 SMOLE Report 2012 p.18.

476 Zanzibar Human Rights Report, 2016.

477 Martin (supra), p.60-67.

478 Moshi et al (2004) Zanzibar, Challenges of Globalization and Poverty Reduction, p.31.

479 Hartmann J (1994), the state of Tanzania, p.218-233.

and service delivery. The government had another role of ensuring promoting democratic governance, mobilizing resources for provision of public services and delivering effective and efficient public services. As a result, positive measures were taken by the government to promote private sector development include formulation of the investment policy, programmes to promote business entrepreneurship, creation of investment promotion institutions, as well as the establishment and operation of the Zanzibar Business Council (ZBC).

Despite reforms made, cloves still continued to contribute largely to Zanzibar economy, and therefore, the government had taken several measures to improve its production. From 2012 the government has been distributing, free of charge, clove seedlings in a bid to boost the clove cultivation.⁴⁸⁰

In spite of wide spread demands coming mostly from farmers and businessmen who want the Zanzibar government to liberalize the cloves trade, the government still monopolises clove industry in the Isles and maintains the law prohibiting anyone from transporting cloves without its permission.⁴⁸¹

Furthermore, the government still puts its efforts to revive the cloves by developing good business relations with the farmers. For example, up to 5th January 2018, the total tones of 8,182.04 of cloves which valued 114.14 billion shillings have been purchased from the farmers for the financial year 2017/2018. On the side of selling, the government had sold the total tones of 5,881 which valued 103.49 billion Tanzania shillings for the financial year, 2017/2018. The government in process to agree with the cloves farmers to pay them 80% of the world market price. For six years now, the government of Zanzibar has been buying the cloves on price of Tsh.14,000 per kilogram from the cloves farmers.⁴⁸²

Notwithstanding the government efforts on cloves and of being a major foreign exchange in Zanzibar for the last 150 years ago, there has been a noteworthy steady decline in production of cloves over the last decade from an annual average of about 16,000 tons in 1970s to a current average of between 1,500 to 3,500 tons. The decline in production is attributed to climate changes, insecurity of the three acre land tenure system, diseases, poor management and limited replacement and ageing of cloves trees.⁴⁸³

480 IssaYussuf (2015), Isles maintain a Higher Clove Price Despite Global Slam, p.12.

481 Ibid.

482 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

483 Zanzibar Human Rights Report, 2016.

To save national economy due to decline of cloves production, Zanzibar has moved from cloves dependency to tourism industry during the mid-80s. The tourism sector in Zanzibar had been in existence for a long time but was not regarded as a key factor to the economy of Zanzibar. It was not until the mid-eighties when tourism gained impetus. The enactment of Tourism Promotion Act of 1991 had promoted and strengthened tourism in the country. Tourism industry had been strengthened further eight years later, on the enactment of new Promotion of Tourism Act, of 1996 and repealed the former of 1991⁴⁸⁴ which, among other things, established the Commission for Tourism as independent body.⁴⁸⁵ Subsequently, this Act was repealed by the Zanzibar Tourism Act, 2009,⁴⁸⁶ as amended by the Zanzibar Tourism (Amendment) Act 2012.

Currently, Tourism is a major sector of Zanzibar's economy which generates foreign exchange earnings, employment opportunities, stimulates local economy, and supports other sectors such as agriculture, and small scale handcraft industry. Above all, it is a way of economic diversification. This move towards diversification was initiated in 1980's where the Structural Economic Programme (SEP), among other things, proposed a move towards a Free Economic Policy and Trade Liberalization. Thus, from mid-1980's, Zanzibar adopted liberalized economic policies in relation to the role of Private Sector Investments, Free Trade and liberal exchange rate.

For further promotion of tourism industry, the government had established Zanzibar Investment Promotion Authority (ZIPA) in 2004,⁴⁸⁷ for promotion and facilitation of investments in Zanzibar.⁴⁸⁸ The Authority had flourished tourism industry in Zanzibar and fastened it as a fast growing sector in the Zanzibar economy contributing around 80% of foreign exchange earnings and about 27% of the Growth Domestic Product (GDP). Tourism had further generated employment which is estimated to reach 12,500, out of whom 8,600 people are employed in hotels and guest houses subsector alone. The rest are employed in other tourist investments such as tourist shops and tour operators.

Tourism is estimated to drive economic development in Zanzibar by generating all employments over 50% by 2020. This is viewed under the National Growth Strategy (MKUZA II), which is based on both Zanzibar Vision 2020 and Millennium Developments Goals (MDG). In order to make this vision achievable, a series of goals and objectives have been devised to optimize the likelihood of achievement. Such goals and objectives embrace Zanzibar's rich natural assets; developing integrated

484 Section 35(1) of Act No.9, 1996.

485 Section 3(1) of Act No.9 of 1996.

486 Section 32(1) of Act No. 6 of 2009.

487 Section 3(1) of Act No. 11, 2004.

488 Ibid, section 4(1).

coastal experiences; promotion of special interest (niche) markets; targeting the most profitable prospects; applying a collaborative approach to marketing. It is envisaged that the expedited growth of tourism will lead to (a) higher GDP growth rates, (b) increased employment, (c) high Government revenue, and (d) better quality of life for all the people.⁴⁸⁹

Zanzibar currently has a substantial number of tourism offerings. The tourism sector had been flourishing every year. The number of tourists who find Zanzibar as a cute place for their visits has been increasing. For this year, 2017 the total number of 433,116 had increased from 379,242 for 2016. This makes the escalating of 14.2% for one year. The Government of Zanzibar has a goal to increase the number of tourists to 500,000 for 2020, which is probably will be reached before that year (2020).⁴⁹⁰

Tourism in Zanzibar also based on cultural activities. Museums, monuments, artisans and their handmade products are a large part of Zanzibar's culture and heritage. There are number of artisans in Zanzibar who craft goods and exhibit them at various places, but Zanzibar government has yet make centralised market for its own local arts and crafts, as well as its artisans.

Zanzibar had further been bestowed with natural and attractive beauty for tourism industry. Ngezi forest, Kiwengwa forest, natural caves, dolphin spotting and Jozani wilderness are some of the more popular lovely attractions in Zanzibar. There are other attractions such as Zanzibar Butterfly Centre that offers a unique view of nature and its various inhabitants.⁴⁹¹

In Pemba, a unique kind of hotel with underwater rooms marked another attraction for tourists. The Manta Resort is located 250 metres off the coast on Pemba Island, part of the Zanzibar archipelago off the coast of East Africa, has underwater rooms that forms part of a holiday retreat of the main island, and comprises of a three-storey floating structure with its lowest level positioned four meters beneath the water.

Another economic activity which helps to raise livelihood of people is seaweed farming. Seaweeds were introduced in Zanzibar from Philippines in 1988 and now had developed to form a local industry that provides employment opportunities to hundreds of Zanzibaris, particularly women. Seaweeds farms are generally located in shallow, calm and constantly warm waters, but only where the bottom is sandy. This farming has become well known and perfectly developed at different coastal areas

489 Zanzibar Human Rights Report, 2016.

490 The Speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

491 Zanzibar Human Rights Reports, 2016.

including Pwani Mchangani, Bwejuu, Jambiani, Michamvi, but mostly at Uroa.⁴⁹²

Zanzibar has a number of economic activities which are used to boost the economy and provide Zanzibar's income. The economy of Zanzibar keeps growing year by year thereby improving the living standards of the people. In 2017, for example, the total internal revenue was 548.571 billion as compared to 487.474 billion of 2016, and therefore the total of 61.097 billion (equal to 12.5%) had increased in comparison to the 2016.⁴⁹³

The budget of revolutionary government of Zanzibar had increased to the estimation of Tsh.2,827 billion for the financial year 2017 as contrary to Tsh.2,628 billion for financial year 2016/2017. The national income increased by 7.0% in comparison to 6.8 for 2016, while the individual income for the people of Zanzibar increased to Tsh.1,806,000 from 1,632,000 Tanzania Shillings for 2016. The inflation rate is 5.6% for 2017 from 6.7% of 2016⁴⁹⁴.

On business activities, goods valued 145.76 billion shillings were exported in 2017, when compared to 94.94 billion shillings of 2016. Imported goods were of value 211.42 billion shillings in 2016 when compared to 167.09 billion shillings of 2016. For the business activities between Zanzibar and Tanzania Mainland had also been increasing and well flourished. For this year, goods valued 32.32 billion shillings exported to Tanzania Mainland while the goods valued 184.84 billion shillings were imported in Zanzibar from Tanzania Mainland from January to December, 2017.⁴⁹⁵

Zanzibar government had been constructing its Abeid Amani Karume International Airports for years now with the purpose of keeping it in up-to-date working conditions so that more international flights will be attracted to choose Zanzibar as one of their destination. This went together with the construction of the new terminal which unfortunately is completed yet. The delay of construction for months had obviously affected the economic growth and deprived the public right to benefit with their national developments.

492 http://www.tourzanzibar.info/activities/seaweed_farming.html

493 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

494 Ibid.

495 Ibid.



Picture 32: Terminal II of International Airport, Zanzibar

The construction was to recommence by the end of 2017 and upon completion, the new terminal II is meant to meet the future growth on international arrivals by extending capacity to six million passengers per annum in a total terminal area of 60,000 square metres. This on the other hands will increase the number of tourists and other passengers since the terminal is expected to serve 1.6 million passengers.⁴⁹⁶

1.4 Political and Governance Systems

Political and governance system of Zanzibar had embarked very early in organised governance including political decentralization. Zanzibar governance system and its politics have been influenced by its history which is formally started on the coming of the British who declared it a British protectorate in 1890. Under the British, the Sultan was reserved for ceremonial purpose but most major decisions were made by the British Resident.

For the purpose of divide and rule governance system, the British led the formation of different associations based on ethnic groups which later were changed into political parties. The ethnic based associations categorised people as Shirazis, Arabs, Indians and other African tribes and created ethnic tensions that have plagued Zanzibar since.⁴⁹⁷ For the first time of its history, Zanzibar has witnessed the formation of political parties fighting for independence from British which included the Zanzibar Nationalist Party

496 The Guardian News letter, 20th November 2017.

497 ZLSC, Zanzibar Human Rights Report(2015) p.25.

(ZNP), Afro Shirazi Party (ASP) and the Zanzibar and Pemba Peoples Party (ZPPP) – these were all the products of ethnic associations.⁴⁹⁸

The ethnic based political parties were the core of dirty politics in the islands and led to many conflicts which continued even after independence, the revolution, the union and before Government of National Unity in 2010. Zanzibar attained its independence on 10th December, 1963 with the first government formed by a coalition of ZNP and ZPPP. However, the said government only survived for one month and was followed by bloody revolution led by John Okello on 12th January, 1964. Zanzibar united with Tanganyika soon after the revolution to form the United Republic of Tanzania on 26th April, 1964.⁴⁹⁹

The ruling party CCM remained the only political party until the multiparty system was reintroduced in Zanzibar in 1992. CCM was formed when the then existing parties, namely Tanganyika African National Union (TANU) merged with the Afro-Shirazi Party (ASP) on 5th February 1977. The first multi-party general election which was held in 1995 was marked with irregularities where the ruling party (CCM) was accused of having rigged the election for its own benefit. Since then, problems of political unfairness were reported election after election, normally followed by hatred among Zanzibaris and destruction of properties and even loss of life.⁵⁰⁰

In 2010, an agreement intended to solve the problem was reached after the discussions between the then Zanzibar President Amani Abeid Karume of the ruling party (CCM) and Maalim Seif Sharif Hamad, the Secretary General of the opposition party (CUF) to have power sharing. The Constitution of Zanzibar was amended after a referendum held in July 2010 to support certain features of the agreement.

The 10th constitutional amendment had, thus, introduced a power sharing in the government between the parties that has emerged the winner in the general election and the opposition party or parties, as the case may be. The tenth amendment has introduced two positions which are the first Vice President and the Second Vice President.⁵⁰¹ The President comes from the party that wins the election, the First Vice President may be appointed by the President from the party that holds second in presidency position during the general election,⁵⁰² while the second Vice President is nominated from the President's party⁵⁰³ to be head of government's affairs in the House of Representatives.⁵⁰⁴

498 Ibid.

499 Martin E.B. (1978) Zanzibar Traditions and Revolution, p.57.

500 Zanzibar Human Rights Report, 2016.

501 Section 39(1) of the Zanzibar Constitution, 1984.

502 Section 39(3) of the Zanzibar Constitution, 1984.

503 Section 39(6) of the Zanzibar Constitution, 1984.

504 Section 39(7) of the Zanzibar Constitution, 1984.

The cabinet which in Zanzibar referred as the Revolutionary Council is composed of by the President, the First and Second Vice Presidents and other members from parties which have representation in the House of Representatives, depending on the number of seats each party wins in the constituency elections for members of the House.⁵⁰⁵ The Attorney General of Zanzibar who is appointed by the President becomes an ex-officio member of the Revolutionary Council of Zanzibar.⁵⁰⁶

As said above, Zanzibar adopted multiparty system in 1992, and had gone through general elections five times from 1995 to date. For the first time of the elections history since 1992, Zanzibar had undergone two general elections within six months. It is because the entire general election of 2015 was nullified by the Chairman of Zanzibar Electoral Commission (ZEC) on the ground of irregularities and therefore, the election was re-run on 20th March, 2016. The issue whether the Chairman had power to nullify the entire election or the entire electoral process remained disputed, since there was no explicit provision for the same in any law of Zanzibar.⁵⁰⁷ The Civic United Front(C.U.F) who found itself as was the winner on the nullified election of 2015, despite no official results were declared by ZEC, did boycott the re-run election of 2016, and therefore, the ruling party, Chama cha Mapinduzi (CCM) is still ruling the country.

To solve the confusion happened in 2015, the government had established the new Elections Act (Act. No.4 of 2018) to repeal the previous Elections Act, No.11 of 1984. The New Elections Act among others had vested power to the Election Commission to nullify an entire election results or any part of it on the ground of irregularities, abuse or violation of election process. Section 14(1) and (2) of the said Act said:

“Where the Commission is satisfied prior to declare the election results that there has been irregularities, abuse or violation of elections process; or

Where there is a tying of results between the candidates who obtained the highest votes;

the Commission shall either suspend or nullify the elections or any part thereof, and shall declare another date for Re-run elections.”⁵⁰⁸

505 Section 43(1) and (2) of the Zanzibar Constitution, 1984.

506 Section 43(3) of the Zanzibar Constitution, 1984.

507 European Union Election Observation Mission, United Republic of Tanzania Final Report of General Elections 2015, p.42.

508 Section 14 of Act. No.4 of 2018.

CHAPTER 2:

CIVIL RIGHTS

2.0 Introduction

“Civil rights” and “civil liberties” are terms that are often used synonymously and interchangeably, but the terms are actually very distinct. The term ‘civil rights’ means personal liberties that belong to an individual, owing to his or her status as a citizen or resident of a particular country or community. They refer to the basic rights of an individual to be free from unequal treatment based on certain protected characteristics (race, gender, disability, etc.) in settings such as employment, education, housing, and access to public facilities.

Most civil rights laws are established through legislations or case laws. The various civil rights laws have made it illegal to discriminate on the basis of race, colour, religion, sex, age, handicap, or national origin. Discrimination that interferes with voting rights and equality of opportunity in education, employment, and housing is unlawful by civil right law. A civil rights violation occurs in designated situations where an individual is discriminated against on the basis of a legally protected civil right.⁵⁰⁹

Civil liberties, on the other hand, concern with basic rights and freedoms that are guaranteed either explicitly identified in the Bill of Rights and the Constitution, or interpreted or inferred through the years by legislatures or the courts. Civil liberties include: right to free speech; right to privacy; right to remain silent in a police interrogation; right to be free from unreasonable searches of your home; right to a fair court trial; right to marry; and right to vote.⁵¹⁰

However, generally stated, the ‘human rights’ in the Universal Declaration are commonly divided into civil and political rights, on the one hand, and economic, social and cultural rights, on the other. Civil and political rights are those that derive from the natural right philosophy of the late eighteenth century in Europe.⁵¹¹

509 See: Schmidt C.W (2016), *Civil Rights and Civil Liberties*, p.11. Also, “constitution.findlaw.com/bill-of-rights.html”, taken on the 28th September, 2017.

510 Ibid.

511 Harris, D.J., O’Boyle, M., and Warbrick, C., *Law of the European Convention on Human Rights*, London: Butterworths, 1995, p. 3.

Civil and political rights are a class of rights that protect individuals' freedom from infringement by governments, social organisations and private individuals. They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.⁵¹²

Civil and political rights form the original and main part of international human rights. They comprise the first portion of the 1948 Universal Declaration of Human Rights with economic, social and cultural rights comprising the second portion. The theory of three generations of human rights considers this group of rights to be "first-generation rights".⁵¹³

The civil rights and liberties are the actual determinant of human personality and humanity. The importance of these rights had been recognized even before the formal protection of the human rights for all. Looking at the sensitivity of this category of rights, the states party to the Covenant on Civil and Political Rights considered that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁵¹⁴

Civil rights include the ensuring of peoples' physical and mental integrity, life and safety; protection from discrimination on grounds such as race, gender, national origin, colour, age, political affiliation, ethnicity, religion, sexual orientation, gender identity, and disability and individual rights such as privacy and the freedoms of thought, speech, religion, press, assembly, and movement.⁵¹⁵

The Zanzibar Constitution does not have the terms '*Civil Rights*' in any one of its provision. Reading from section 11 to 25A of Part III, the terms *Civil Rights* are totally not found, but since these are the rights protect an individual liberty and have nothing to be treated as different from others only because of his race, gender, disability and other kinds of discrimination, no one can argue that the Zanzibar Constitution does condemn the civil rights.

However, in reading the minds of many Zanzibaris, the understanding of the Civil Rights is misused with the terms *Political Rights*. Politics in Zanzibar is in the inner hearts of many and therefore, they are more conversant in understanding '*Civil*

512 Paul Sieghart, *The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights*, Oxford University Press, 1985, p. 5. See, generally: https://en.wikipedia.org/wiki/civil_and_political_rights

513 https://en.wikipedia.org/wiki/civil_and_political_rights

514 Ibid.

515 Ibid.

Liberties rather than Civil Rights, since Civil Liberties as above said are more related to some political elements including that of right to speech and privacy.

In their practice, the people of Zanzibar do believe and respect the Civil rights and live within their spirits in everyday life, since the nature of these people is mostly influenced by their Islamic religion and civilised culture that both obey and respect the Civil rights. For instance, killing one without duly legal accepted reasons is a great sin in both, Islamic faith and Swahili culture. Furthermore, the people were built in the spirit of oneness and brotherhood that discrimination and unequal treatment of their civil rights on different race, religion and disability is sin that committing it will make the doer suffer curse of God and the people.

This chapter deals with matters relating to civil rights. It covers the following aspects:

2.1 Right to Life

Right to life is the most important of all human rights. This is the cornerstone of all rights with the other rights trailing after it. There is no doubt that if there were no right to life, there would be no point in having any other human rights. It is therefore understandable that all important human rights provide for the protection of the right to life.⁵¹⁶

The Universal Declaration of Human Rights gave primary emphasis to the protection of human life and made direct reference to everyone's right to life. Article 3 of the Universal Declaration of Human Rights of 1948, provides that:

“Everyone has the rights to life, liberty and security of person.”

This provision is re-echoed in even more elaborate terms in the International Covenant on Civil and Political Rights (ICCPR) 1966, which in its Article 6 (1) provides:

“Every human being has the right to life, the rights shall be protected by law and no one shall be arbitrarily deprived of his life”.

Regional human rights instruments also provide by various degrees protection of the right to life. The European Convention on Human Rights 1950, for example, does not provide for an absolute protection of the right to life. Article 2(1) of the Convention provides:

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

516 Chris Maina Peter, Human Rights in Tanzania: op. Cit., p. 25.

Under the Convention, life may be deprived, subject to the use of no more than absolutely necessary force, in defence of any person from unlawful violence, in order to give effect a lawful arrest or to prevent the escape of a person lawfully detained, and in action lawfully taken for the purpose of quelling a riot or insurrection.⁵¹⁷

The American Convention on Human Rights, 1969 more or less adopts (with some positive departure) position in the International Covenant on Civil and Political Rights, 1966 as far as right to life is concerned.⁵¹⁸ While urging States which maintain death penalty to restrict it to most serious crimes only, it goes on further to prohibit its extension to crimes to which it does not currently apply. In addition, States which have abolished death penalty are urged not to re-establish it.⁵¹⁹ Also, the Convention prohibits infliction of capital punishment for political offences or related common crimes.⁵²⁰ Furthermore, capital punishment should not be imposed on persons who are over 70 years of age. This is over and above restriction of this form of punishment on persons who are under 18 years and pregnant person.⁵²¹

In the African Charter on Human and Peoples' Rights 1981, the provision on the right to life is very brief, but to the point. It states:

Human rights are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.⁵²²

Though not so clearly put, right to life under the African Charter is not absolute. What seems to be prohibited under the Charter is an arbitrary killing. This position implies that right to life may still be deprived under certain circumstances which do not amount to arbitrariness.

As far the Zanzibar legal system is concerned, protection of right to life is covered under Section 13 of the Constitution of Zanzibar, 1984. The Section makes provisions that:-

13 (1) Every person has the right to the preservation of his life.

(2) Every person has the right to live and to the protection of his life

517 Article 2(2) of the European Convention on Human Rights, 1950.

518 See: Article 4 of American Convention on Human Rights 1969 (ACHR).

519 Article 4(3), ACHR.

520 Article 4(4), ACHR.

521 Article 4(5), ACHR.

522 Article 4, African Charter on Human and Peoples' Rights 1981.

by the society in accordance with the law.

The constitutional protection of right to life as covered under Section 13 of the Constitution of Zanzibar 1984 is compromised by a number of factors. Discussion of these factors is laid down herein below:

2.1.1 Mob Violence

The questions for understanding in this juncture are: (i) What is mob violence? (ii) What are the apparent causes of mob violence? and (iii) What are the apparent effects of mob justice in Zanzibar?

Mob violence (sometimes called 'Jungle Justice') refers to the act of a group of people taking the law into their own hands in exercising violent justice over an alleged criminal.⁵²³

One way to approach the understanding of the causes and effects of mob violence seems to be considering what would we expect if the ends of justice are met; and what the result would be, in the failure of legal, political and social systems to provide a means of realising justice?

But, to start with, let's consider why legal and political authorities give considerable weight to ensuring that just legal and political system is posited a priori. And, for this purpose, it sounds important to first look into what is justice, its means and goals or, rather, the result of its proper administration. Having well dealt with these issues, discussion on the three 'whats' raised above about the mob justice will properly be put focus.

There are various conceptualisations of the term 'justice' depending upon the approach from the view point of a person who defines it.⁵²⁴ For example, Roger Birds defines justice to mean the upholding of rights, and the punishment of wrongs, by the law.⁵²⁵ Under Roman law,⁵²⁶ justice is the constant and perpetual wish to give each man or woman his due. Chakravarti⁵²⁷ describes it to be an application of law to a particular case.

523 Zanzibar Human Rights Report 2016.

524 Chakravarti, K.P., *Jurisprudence and Legal Theory*, Calcutta: Eastern Law House, 1985, p. 374.

525 Bird, R., *Osborn's Concise Law Dictionary* (7th edn.), London: Sweet and Maxwell, 1983, p. 193.

526 Buckland, *Main Institutions of Roman Private Law*, 1931, p. 56.

527 Chakravarti, K.P. *op.cit.*

With these considerations in mind, one may find that 'justice' is not something which can be captured in a formula once and for all. It is a process comprising a complex and a shifting balance between many factors, and it is based on law.⁵²⁸ It implies, therefore, that law is the base on which justice rests, and that the end of law is justice.

One of the characteristic features of justice is that it presupposes the existence of individual and group relations and their relative interests. Roscoe Pound has classified these interests into three heads: individual interest (i.e. demands involved in individual life); public interests (i.e. demands involved in political organization); and social interests (i.e. demands involved in social life). His obvious explanation of these interests to the human nature is that they are conflicting interests. That is, while the interested parties are willing to act justly, they are not prepared to abandon their interests.⁵²⁹ The administration of justice, therefore, carries with it an undertaking in which every interested party is given his or her due. It follows, therefore, that the administration of justice consists of both the allocation and grant of rightful interest to an appropriate interest holder through courts.

Modern legal theories, especially in America, have explored the inner workings of the judicial system. The earlier attitude, and one which the newer jurisprudence has not altogether dispelled, is to regard the judiciary as the priests of the law, the repositories of its essence rules and traditions; and which make decisions by distilling them in a mysterious way.⁵³⁰

The role of a judge represents an entire institutional nexus of conduct. Every institution embodies some degree of consensus about how it is to operate.⁵³¹ There are a number of shared characteristics which define the role of the judge as an institution. Judges are part of the legal order, in that, they are part of a society in which human conduct is governed by rules.⁵³² Ideally, rules enable society to function smoothly and efficiently. There are, however, conflicts in the interpretation and application of rules. Judges are employed to resolve such conflicts.⁵³³

A society expects judges to settle cases taken before them, and are expected to solve disputes in a rational way. These expectations would not be met if a judge was to toss a coin. The paradigm of a rational decision is reached according to rules (including principles) and standards. Adjudication according to rules and standards means, therefore, that ad hoc decision-making is achieved through the interpretation of the rules and standards and applying them to a set of facts constituting a particular dispute.

528 Ibid.

529 Pound, R., *op.cit.*, p. 42.

530 Lloyd, L. and Freeman, M. D. A., *op. cit.*, p. 1095.

531 Ibid., p. 1097.

532 Aubert, V., *Elements of Sociology*, 1970, pp. 40 – 41.

533 Ibid.

The requirement that judges must conform to established rules does not mean that the judge has a mechanical job of merely interpreting and applying the existing rules applicable to a new set of facts. It is well understood that there may not be a rule; or the rule itself may be expressed in an open-ended way, directing a judge to do what is 'fair' or 'reasonable'. Nevertheless, a judge will be obliged to decide the way in which justice prevails.⁵³⁴

Though, ordinarily, adjudication is made upon interpretation of rules that have force of law, there is insistence that this requirement must not be taken too literally.⁵³⁵ In fact, there are a number of intuitive principles that are both developed and developing to govern in one way or another, the courts' basic functions of interpretation and application of rules. The aim being to see that the ends of justice are met in each case. Moreover, there are trite principles of law that: 'justice needs not only be done, it must be seen to be done'; and 'justice delayed is justice denied'.

It suffices to say that the justice system of Zanzibar is now considered almost collapsed. Corruption (including favouritism), incompetence and irresponsible tendencies, among other factors, demonstrated in exercises of judicial part of Government have resulted into failure of the country's criminal justice system.⁵³⁶

Many law enforcers in Tanzania have failed to deliver and people have to live with the fear that they are not well protected. Corruption has affected the police department, the courts and other government agencies dealing with administration of justice in one way or another. When a suspected criminal is apprehended and handed over to the police, many are able to either negotiate their way out using the intricacies of the law or through corruption. This further alienates the public who think that the police and courts favour criminals.

It is, thus, properly contended that when the legal system cannot be trusted due either to a feeling of social inequalities or corruption, angry and disenfranchised people become frustrated and, henceforth, they resort to mob violence. One of the obvious explanations of mob violence in Zanzibar is that there is a deep socially in-built perception that it is almost futile to handover such criminals to the existing justice system and instead take the law into their own hands.

One reason behind the apparent rampant increase in crimes such as sexual violence against women and children, robbery and stealing, road traffic offences, among others, is perceived to be the failure of the country's justice system; with its natural result to

534 Ibid.

535 See: Hart, H.L.A., *op.cit.* p. 153 – 163.

536 See: "How Corrupt, Failed Criminal Justice System Fuels Mob Killing", an Article in The Citizen (Tanzania News Paper), Friday, February 21, 2014.

having social groups developed to dispense their own systems of mob justice.

Mob violence is a great evil and an outright violation of human rights, seriously degrading of humanity inherent in a human being. Jungle justice, by itself, reduces human life and dignity to zero and this is why some people can afford to call barbarians those who engage in this kind of behaviour. There is therefore a need for Zanzibar society to find right responses to see that justice is done, and mob violence perishes.

2.1.2 Extra-judicial Killings

The original definition of the term 'extrajudicial killing' is related to homicides that are committed outside the legal system with no prior judgment of a court. The term comprises a large amount of killings with different motives, victims and executors. For instance, acts that are predominantly seen as vigilante killings or lynching, carried out by privately organized groups can be called an extrajudicial killing as well as homicides that are committed by the state without legal proceedings.⁵³⁷

Extra Judicial Killings in relation to political affairs is also involves State or at least tacitly accepts the commission of the killings. Upon using the term Extra Judicial Killings in relation to this meaning, is almost synonymous to the term "political killings" except for the fact that political killings can be committed with or without state involvement whereas the term extrajudicial killing implies some degree of state involvement at all times. Politically motivated extrajudicial killings are intended and well-organized murders that give the victim no chance to defend itself and that the doer remains unidentified. This is achieved by either wearing face covering masks or by committing the acts swiftly with an immediate escape after the murder is committed, possibly during night time or in a lonely surrounding. There can even be the attempt of the doers to make the killing look like a suicidal act.⁵³⁸

It is acceptable all over the world that extra judicial killings are violation of human rights, as this is identified under international law, regional and municipal laws of many countries. In curbing the extra judicial killings, the International laws oblige the respective state to bring to justice people who have been identified as having participated in extra-judicial killings and other unlawful killings committed in their states.⁵³⁹ And the superior officers or other public officials who did not obey the said laws, shall be held responsible, since they knew or have known that their subordinates are resorting or have resorted to the unlawful use of force and firearms, and they did not take measures in their power to prevent, suppress or report such use.⁵⁴⁰

537 OBSERVER (2010), A Journal on threatened Human Rights Defenders in the Philippines Volume 2, p.4.

538 Ibid.

539 See: Principle 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

540 Ibid.

Extra Judicial Killings happen in different forms. In Zanzibar, the extra judicial killings take different forms subject to the time and history. For 2017 the killings and abuse of people's rights executed by the Zombies whom allegedly to be a group of security enforcers from the special departments and sometimes the police. To pronounce the term Zombies is intimidating but to point a figure to a particular group of people are involved as Zombies is mostly dangerous that imperils the life and safety of the speaker. But since the group has been conducting violent acts to the extents of causing death at different occasions with the same features of their acts with extra judicial killings, tend to believe the Zombies of Zanzibar are involved. The government and the police, has strongly denied these allegations and in fact saying that there are no Zombies. But the killings of some prominent people including Mr. Ali Juma who was kidnapped and beaten to death by the Zombies and he died the next day in hospital when admitted, makes the necessity of having a strong reply on who is really responsible against all incidents.

2.1.3 Death Penalty

The death penalty is a government sanctioned practice whereby a person is put sentenced to death by the state as a result of conviction and punishment passed by the court in a criminal case. It is also called capital punishment. In Zanzibar, the death penalty is recognized as one of the punishments which are provided for under the law. It is inflicted when a person is convicted of offences either of murder, treason or any other such offences punishable by death sentence.⁵⁴¹

Death penalty is considered to be one of the most controversial issues in almost all judicial and political systems. There are movements almost all over the world both for abolition, retention or introduction of this form of punishment.⁵⁴²

Death penalty entails taking away of the life of a convicted person. This is done using various methods. These usually include hanging by neck until the convict is dead; use of the gas chamber; use of the lethal injection; use of electric chair, and so on.

The debate on the death penalty is complicated one on the fact that most States consider this form of punishment to be a purely municipal or domestic issue which is best dealt with under the respective criminal regime.

Those arguing for the retention of the death penalty say that this form of punishment is the only means of dealing with incorrigible individuals and a general deterrent

541 LHRC and ZLSC, Tanzania Human Rights Report, 2016.

542 Chris Maina Peter, Human Rights in Tanzania: ..., op. cit., p.27.

from crime.⁵⁴³ This penalty has also received ideological justification from the main religions, in our case Christianity and Islam. Many believers would not wish to question anything which they consider to have been sanctioned by their religion as taught by their religious leaders.⁵⁴⁴

In penological terms, capital punishment is a reflection of retributive justice, embodying the ancient maxim of 'an eye for an eye, a tooth for a tooth.' It is based on vengeance channelling public outrage into a legalized form of punishment. It is argued by its proponents that, in its absence, outraged people may be forced to seek vengeance through mob justice or individualized forms of revenge. These are, however, mere impressions not supported by any data.⁵⁴⁵

For those arguing against the death penalty and its abolition argue that this form of punishment is unacceptable as it is irrevocable once it has been carried out, even by judicial mistake. Death penalty also found unacceptable as being a cruel, inhuman and degrading punishment; and that it offends the right to human dignity in the course of executing the sentence; the death penalty infringes the right to life; and it is not in public interest.⁵⁴⁶

The execution of the death penalty is also condemned by UN Resolution No. 50/1984. The resolution urges states not to execute the death penalty to groups of people below the age of 18, pregnant women or insane people and the punishment should only be carried out after legal process with all possible safeguard of fair trial including legal assistance.⁵⁴⁷

In fact, there have been concerted efforts at international and national levels to abolish or at least to restrict application of death penalty. The most illustrative and helpful international instrument is the International Covenant on Civil and Political Rights, 1966. The Covenant does not outlaw the death penalty as such, but instead authorises its imposition in very restrictive terms.⁵⁴⁸

Recently, the list of abolitionist states has grown steadily from a handful of abolitionist states in 1940s to approximately half the countries of the world de facto or de jure

543 Jayewardene, C.H.S., *The Penalty of Death: The Canadian Experiment*, Lexington: Lexington Books, 1977, p. 9.

544 Simon Coldham 'Criminal Justice Policies in Commonwealth Africa: Trends and Prospects' Vol. 44 No. 2 (2000) *Journal of African law*, OUP 218-238

545 Ibid.

546 Chris Maina Peter, *Human Rights in Tanzania: ...*, op. cit., p.29 and p. 43.

547 www.unodc.org

548 See: Article 6 of ICCPR, 1966.

rejecting the death penalty. Even the countries which retain the death penalty are under increasing international pressure to abolish it. The immediate focus is on narrowing as much as possible, offences which carry the death penalty, particularly to limit it to murder only.⁵⁴⁹

The Constitution of Zanzibar, 1984 recognises the right to life as one of the fundamental rights and freedoms. It should, however, be noted that the safeguard accorded to this right is not absolute. Its enjoyment and protection is subject to the laws. Interestingly, two consequences arise from this observation: First, no human life can be taken unless the law so provides and it is so ordered by a competent judicial authority. Secondly, human life can be lawfully taken where the court imposes death penalty to a convict of a capital offence.

In Zanzibar, the death penalty is executed through hanging the convict to death.⁵⁵⁰ Limitations however are imposed, without prejudice to any law, with pregnant women and children below the age of 18 being exempted from suffering the death penalty.⁵⁵¹ In addition, the execution of the death penalty cannot be implemented without the approval of the President,⁵⁵² who would quite often refrain from signing the approval when asked so to do.

To mark World Day against the Death Penalty and to promote the abolition of capital punishment in Zanzibar, ZLSC held a death penalty dialogue on 10th October, 2017 at Tumbatu Island. The Centre invited numerous stakeholders joined with people from Tumbatu, students and representatives from various organizations to discuss the abolition of the death penalty and the current challenges of the death penalty in Zanzibar. The event was attended by 115 participants (53 male and 62 female). A lecture on death penalty was presented by Dr. Mohammed Makame from the Faculty of Law and Shariah of University of Zanzibar. In his lecture, Dr. Makame examined the challenges relating to the implementation of this punishment and the psychological effects on the people. The lecture, which was followed by questions and comments, was generally well received by the members of public in Tumbatu.

549 Chris Maina Peter, *Human Rights in Tanzania: ...*, op. cit., p. 42.

550 Section 305(1) of Zanzibar Criminal Procedure Act, No.7/2004

551 Ibid, Section 305(2)

552 Ibid, Section, 310



Picture 33: Participants during the celebration of World Day against Dr. Mohammed Makame while elaborating the Death Penalty in Unguja Challenges of implementing Death penalty

2.1.4 Road Accidents

The problem of road accidents in Zanzibar is very serious. These accidents claim the lives of people virtually every day. Road accidents in Zanzibar have been increasing from year to year and so also has the rate of resultant deaths. It has been reported that road accidents take peoples' lives more than diseases which are normally treated in Zanzibar hospitals.

According to Abdullah Msuya⁵⁵³ Available statistics that the Traffic Police released during the National Road Safety Week last week showed that 130 people died in road accidents between January and September 2017. It's a 14 per cent increase from the 112 deaths reported during same period last year. The number of accidents also soared, rising from 386 in the first nine months last year to 442 in the corresponding period.

The police report mentioned the main sources of accidents as speeding, drunkard driving, and reluctance to observe traffic laws and regulations as well as poor roads. But, the government officials and safety advocates contend that more than anything elsewhere, leniency in enforcement of the road traffic laws is to blame for increased deaths.

President Ali Mohamed Shein has repeatedly expressed deep concern over the consistent increase in road accidents that claim several lives and maim many others, calling on relevant authorities to act tough against the problem. Safety advocates have as well been urging the government to enact more restrictive legislations.

553 Daily News on 25 October, 2017.



Picture 34: One of the serious road accidents at Fumba road on 3 May 2017



**Picture 35: President Shein meeting with Inspector General of Police (IGP),
Simon Sirro**

Zanzibar President Ali Mohamed Shein has expressed deep concern over the consistent increase in road accidents that claim several lives and maim many others, saying more should be done to minimise the problem.

The sentiments featured in remarks he made at the State House yesterday, during a meeting with Inspector General of Police (IGP) Simon Sirro, who paid a courtesy call on the President. Mr. Sirro replaced Mr. Ernest Mangu in May last month. “We commend the Police Force for fighting crime and ensuring that peace and stability is

maintained in the country, but road accidents remain a challenge that must be addressed seriously,” Dr. Shein told the IGP.

The Zanzibar Road Transport Act⁵⁵⁴ that provides for regulation of traffic of motor vehicles on roads and for other matters related thereto, has either not been fully implemented or otherwise it is not well applicable. A number of road users have expressed their concern on the implementation of the Zanzibar Road Transport Act, where some of them shift the blame to the traffic police for their laxity and not being committed or loyal in performing their duties. Others find corruption practices apparent in the working of some of members of traffic police force result in having most of serious violators of road traffic laws to be improperly dealt with. There are also claims that corruption also affects administration of criminal justice at the levels of investigation and adjudication of traffic cases, among others.

Road accidents are caused by a number of factors including distracted driving, driving under the influence of liquor, reckless driving during rains, running or driving through red traffic lights, ignoring or driving past Stop Signs and other road signs, use of mobile phones whilst driving and teenage or inexperienced and unqualified drivers, paying no attention to conditions of roads. These accidents are really disastrous in Zanzibar. They produce a number of detrimental effects including deaths, destruction of property, and disabilities. Nobody appears to be responsible to see that damages caused by the road traffic accidents are properly controlled. ZLSC urges that this is one of the area in which serious concern of the Government required.

2.1.5 Conclusion and Recommendations

Rule of law is a vehicle that people do among others, expressing their issues and get feedback, as the laws of their community direct. At this stage, Rule of law creates good relationship between citizen and government, as it does between citizens themselves because, rule of law provides the process through which that relationship is conducted. If that is the case, rule of law is a solution of curbing mob violence, extrajudicial killings, witchcraft-related killing, death penalty and road accidents.

Zanzibar is one of the country that rule of law is dully respected, though there are some challenges facing the authorities that have been vested with the duty to observe it as some times become the habit of some people to violate the laws through their hands. It is time for Revolutionary Government of Zanzibar to enhance rule of law for the purpose of flourishing the welfare of the society. It is a good voice to speak on justice, but as above said, justice does not depend on one formula as it is not what

554 Act No.7 of 2003.

merely to be granted to the citizens, while they do violate rule of law, and find mob justice and witch-craft killings as the best way to solve their conflicts.

One of the eight characteristics of Good Governance is that Rule of Law, which requires that the legal frameworks to be impartial without fear no fever to anyone, in particular the government authority. The Rule of Law is available on the protection of human rights, the emphasis on those of minorities. To enable the legal framework including judiciary to be impartial, it is a duty of the government to make it independent and enable the law enforcers, here means, the police force to act on the principles of rule of law, it also a duty of the government therefore, to make police force impartial and incorruptible.

2.2 Freedom of Opinion and Expression

Freedom of expression is defined as a right to communicate one's opinions and ideas to anyone who is willing or entitled to receive them. It includes any act of seeking, receiving and imparting information or ideas regardless of the medium of the information used.⁵⁵⁵

The Universal Declaration of Human Rights (UDHR), 1948 has recognized the right to freedom of opinion and expression; and it laid down standard protection of this right. Under its Article 19, the UDHR makes provision that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This standard right under the UDHR is given legal force under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which provision states:

“Everyone shall have right to hold opinions without interference and everyone shall have right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers either orally, in writing or in print..”

Under the African Charter on Human and People's Rights (ACHPR) 1981, this right is provided as follows:

1. Every individual shall have the right to receive information.

555 ZHRR 2015, P.73

2. Every individual shall have the right to express and disseminate his opinion within the law.

As it appears here, the standard set under the UDHR in respect to this right has accordingly been given protection under the terms of the ICCPR. The protection has, however, not been couched the like standards under the terms of the ACHPR, in that, the Charter protection of the right of expression and dissemination is made subject to the law. Worse still, there is no indication in the Charter as to what law is the 'law' for restricting individual's right to freedom of opinion and expression. On the face of it, the provision seems to be quite undemocratic.

Appearing to follow the terms of protection of the right of opinion and expression provided under the Charter, Section 18 of the Constitution of Zanzibar 1984 makes the following provision:

- (1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.
- (2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.

As stated in the above provision, the protection under this section is undermined by the draw-back clause '*without prejudice to the relevant laws of the land*'. This clause has the effect to subject or restrict enjoyment of freedoms of opinion and expression to the provisions of ordinary laws of the land without any other constitutional or legal safeguard; especially where, particularly in Zanzibar, recourse to court of law for testing constitutionality and legality of such certain legal provision is outlawed.⁵⁵⁶ This style of curtailing basic rights and freedoms of an individual is still a matter of grave concern.

Several principles of international and constitutional laws allow for some restrictions on such rights and freedoms but only where they meet certain thresholds restrictive conditions. As such, any such interference with the right to freedom of opinion or freedom of expression has to qualify as being "necessary in a democratic society" and to the extent strictly required to achieve the legitimate aim sought to be achieved." In other words, a state must not only demonstrate that its interference with a person's

⁵⁵⁶ For example, Section 119(13) of the Constitution of Zanzibar 1984, in relation to the exercise of powers of the Zanzibar electoral Commission.

right meets a “pressing social need” but also it is proportionate to the legitimate aim pursued, which appears to be necessary in a democratic State.⁵⁵⁷

Thus, the Constitution of Zanzibar 1984 fails to satisfy the three restrictive international law criteria with regard to protection of the right to freedom of opinion and expression. As the result, several laws are enacted now and then with the effect to unjustifiably limit or even derogate some fundamental individual rights and freedoms that are constitutionally protected.

These laws include the registration of News Agents, Newspaper and Books Act 1988, which provides discretionary power to the Minister concerned to ban or close down any newspaper under given circumstances.⁵⁵⁸

Also in the year 2017, the freedom of expression in Zanzibar has been highly controlled as the police force banned political rallies. Until the end of 2017, political rallies had not yet been allowed in Zanzibar. Allegedly, the ban was ordered as a means to maintain peace and security in the Isles.

ZLSC has raised deep concerns about arbitrary measures to prevent freedom of expression especially on political matters, knowing that the exercise of the right to freedoms of opinion and expression is the basis for realisation of democratic governance, peace and social development.

2.2.1 Media Freedom

Under Article 19 of the United Nations Declaration of Human Rights 1948, freedom of expression is recognized to be one of the fundamental human rights.⁵⁵⁹ Under the provision, everyone has the right to freedom of opinion and expression. This right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Furthermore, Article 19 of the International Covenant on Civil and Political Rights (ICCPR)⁵⁶⁰ guarantees the right to freedom of opinion and expression in very similar terms to the UDHR. These guarantees are not absolute. They allow some restrictions on the right to freedom of opinion and expression, but only to the extent that is prescribed by law, in pursuance a legitimate aim, and is necessary in a democratic society.

557 ZHRR 2015, p.74

558 Section 30(1) of the News Agents, Newspaper and Books Act, 1988.

559 UN General Assembly Resolution 217A (III), adopted 10 December 1948.

560 UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.

As narrated in the preceding part, in Zanzibar, the right to freedoms of opinion and expression is provided for under Section 18 (1) of the Constitution of Zanzibar 1984. The question is, then, whether the right to freedom of press may be inferred from the existing provision on the right to the freedom of expression? Othman Masoud,⁵⁶¹ in his paper titled “*Legal and Regulatory Framework of the Media in Zanzibar*”, having cited several decided cases from India, concluded that freedom of speech and right of information enshrined in the Zanzibar Constitution 1984 cover also the right to free press.

It is well noted that Subsection (2) of section 18 of the Zanzibar Constitution 1984 guarantees every citizen with a right to be informed of various events in the country and in the world at large which are important to the society. Thus, right to excess of information is impliedly part and parcel of the fundamental right to freedoms of opinion and expression, under section 18 of the Zanzibar Constitution 1984. But, how restricted is the right to freedom of information under the Zanzibar legal system?

Restriction to the freedom of imparting and receiving information in Zanzibar can be found in the ways and circumstances:-

- (i) There has been self censorship in the media. Several practicing journalists working with the privately and government owned electronic media have accepted the fact that self-censorship is a problem in the newsrooms. The prevailing political conditions in Zanzibar seem to have created a sort of fear to the Isles journalists and they take too much time and extra care to think of the repercussion of the news or programmes to the media owners and themselves. Frankly speaking, the journalists from both the government and private sectors are not restricted from exercising their press freedom by the media owners but, on their own, they have developed a state of fear bearing in mind the media owners have their own political inclinations. “The current political situation has psychologically pushed us to the level of afraid of losing our jobs. We have to think of what will appease the media owners.” explained the journalists interviewed.
- (ii) Lack of prescriptions on the right to information has contributed to a long chain of bureaucracy in search of information. The enactment of the two laws relating to journalism; (i) the right to information and (ii) the media law is a matter of paramount importance, “These two laws will help journalists to get information and protect them from any form of harassments,” explained the

561 Othman Masoud Othman, “*Legal and regulatory framework of the Media in Zanzibar*”, pg. 1 and 2, a paper presented in the Media Council office of Tanzania Zanzibar Office on the Occasion of World Press Freedom Day 3rd. May 2008.

Commissioner of the Commission of Human Rights and Good Governance (CHRGG) based in Zanzibar, Mr. Mohammed Khamis, when interviewed on this matter.

- (iii) Lack of balanced information. The collapse of GNU and the opposition's reluctant to comment on the government activities has made the people not to get balanced political information as it was the case in the past. As a result, most of the newspapers have either little or no information from the main opposition political party.

During the GNU in Zanzibar, the opposition members had been critics of the government in power and expressed sensitive issues in the proceedings of the House of Representatives. This situation helped the journalists to make close follow-ups of the issues and evenly report them to the public through their respective media.

2.2.2 Government Media Outlets

The Zanzibar Broadcasting Policy recognises that Government owns media outlets. The Policy fails to earmark that these media outlets should be independent from government and they are protected against interference; especially political and economic interference.⁵⁶²

Admittedly, the Zanzibar Broadcasting Policy to some extent is in line with the International Standard as far as the establishment of the Public Service Broadcasting is concerned. It, however, contains a number of positive provisions on freedom of press and expression.

While the Policy recognizes the undisputed reality that government controls broadcasters; it is silent on the need of the independence of broadcast regulatory body. It should conform with the African Commission on Human and People's Rights which adopted a Declaration of principles on Freedom of Expression in Africa, as well as the African Charter for Broadcasting 2001 which require any public authority that exercises powers in the areas of broadcast or telecommunications regulation be independent and adequately protected against interference, particularly of a political or economic nature. It is well established that international and constitutional guarantees of freedom of expression prohibit government or party control over public media. The Supreme Court of Ghana provides a succinct and powerful statement of this principle:

⁵⁶² The comment base on the Declaration of Principles on Freedom of Expression in Africa, Principle VI.

*The state-owned media are national assets: they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham.*⁵⁶³

ZLSC would, thus, recommend that the Policy should make a commitment in both law and practice:

- To transform all government media into public service media;
- The public service media should be independent from government interference, protected against political and commercial interference;
- Public media outlets should be governed by a board which is protected against interference;
- Public media outlets should be established and regulated through the legislature rather than the government;
- The editorial independence of public service media should be guaranteed; and
- The policy shall specify the time limit for the establishment of the public service media.

It is well accepted that Press Freedom and Freedom of Information are the founding principles for good governance, development and peace; and that the new technology can provide enormous information benefits, but the later should be underpinned by measures that empower people to make use of it. It is therefore essential for Government in power to commit itself to remove all obstacles to Press Freedom so as to improve conditions for independent and professional journalism, and to empower citizens to engage in public debate.⁵⁶⁴ It is therefore recommended that the Zanzibar Media Services Act, as well as the Freedom of Information Act be enacted for better implementation of the policy.

2.2.3 Protection of Confidential Sources of Information

Whereas in human right context there are explicit recognition of the importance for the freedom of expression in journalists not disclosing confidential information; in Zanzibar, the protection of journalists' sources are not accorded specific protection in the Constitution, legislations and in the Policy. In *Goodwin v United Kingdom*

⁵⁶³ *New Patriotic Party v. Ghana Broadcasting Corp.*, 30 November 1993, Writ No. 1/93, p. 17.

⁵⁶⁴ Koichiro Matsuura, Op cit.

(1996) 22 EHRR 123, the European Court of Human Rights held that *the protection of journalistic sources is one of the basic conditions of press freedom*. However, the Court did not rule out disclosure completely and in all circumstances, instead it imposed very strict conditions; based on 'necessity' and 'proportionality (i.e. the restriction must be proportionate to the legitimate aim pursued)'. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest, and limit the ability of the media to function effectively.

The goodness of Zanzibar Information Policy provides for the non-disclosure of the sources of information as the journalist responsibility under the code of ethic. However it fails to provide it as a right and also it limits non-disclosure for the true information only.⁵⁶⁵ This limitation is contrary to the international standards which impose very strict conditions on limiting the human rights based on 'necessity' and 'proportionality'.

It is recommended that the Policy shall explicit provide the protection of confidential sources of information as a journalist and media outlets right, and commit itself for the legislative protection of the confidential source of information and review law which is contrary to this right.

2.2.4 Access to Information

From the discussion just concluded herein above, it is firmly acknowledged that the guarantee of freedom of expression applies with particular force to the media, including the broadcast media. It is the mass media that make the exercise of freedom of expression a reality.⁵⁶⁶

It is almost given that press freedom and access to information feed into the wider development objective of empowering people by giving them the information that can help them gain control over their own lives. It is this empowerment that supports participatory democracy by giving citizens the capacity to engage in public debate and to hold governments and others accountable.⁵⁶⁷

This observation emphasizes that freedom of expression is both a fundamental human right and also key to democracy. Democracy can flourish only in societies where information and ideas flow freely. However, such flow of communication does not happen automatically, but has to be fostered by a free, pluralistic, independent and professional media, and through national policies founded on four key principles, which

565 See section 8.3(v) of the Zanzibar Information Policy.

566 Official Statement made by Koichiro Matsuura, Director General of UNESCO, On the Occasion of World Press Freedom, 3 May 2008..

567 Ibid.

are freedom of expression, quality education for all, universal access to information and knowledge, and respect for linguistic.⁵⁶⁸

The UN bodies have noted the public's right to know and to access information held by public authorities, as an aspect of the right to freedom of expression. For example, in his 1998 Annual Report, the UN Special Rapporteur on Freedom of Opinion and Expression declared: "[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems...."⁵⁶⁹

In his 2000 Annual Report, the Special Rapporteur made the following observations on the nature of the right to freedom of information:

44. On that basis, the Special Rapporteur directs the attention of Governments to a number of areas and urges them either to review existing legislation or adopt new legislation on access to information and ensure its conformity with these general principles. Among the considerations of more importance are:

- Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information;
- "Information" includes all records held by a public body, regardless of the form in which it is stored;
- Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
- As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information;
- The law should also provide for a number of mechanisms to address the problem of a culture of secrecy within government;
- A refusal to disclose information may not be based on the aim to protect governments from embarrassment or the exposure of wrongdoing;
- A complete list of the legitimate aims which may justify non-disclosure

568 Ibid.

569 Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and Expression*, UN Doc. E/CN.4/1998/40, 28 January 1998, Para. 14. These views were welcomed by the Commission on Human Rights. See Resolution 1998/42, 17 April 1998, Para. 2.

should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;

- All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information;
- The law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal;
- The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
- The law should establish a presumption that all meetings of governing bodies are open to the public;
- The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;
- Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body".⁵⁷⁰

Zanzibar, though part of this world, has no specific legislation or provision for provision of information as a statutory duty. As the result, government officials have been reluctant to afford citizens access of public information due to regulation 109 of Public Services Regulations, 2014 (known in Kiswahili as "*Kanuni za Utumishi wa Umma*") which that, the regulations gives a wide power to the government to abstain from releasing public information.

Unlike the early post revolution era, it is apparent that the participation of people of different profession and education levels, through all the types of media, in official and non official forums, to air their views and receive information on economic, social and political issues to have taken the lead. However, this progress notwithstanding, a lot more needs to be done to improve the media performance in the Isles with the view

570 Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and Expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, Para. 44.

to see that the electronic and print media development pace reflect the reality of life.

The people appears to have low level of confidence on Zanzibar's private and government owned media operations, and majority of the people are questioning the quality of the media reports. This chapter has, therefore, zeroed down on Zanzibar's mass media and social media performance in 2017 to evaluate the state of the media in line with the country's development pace and the tangible expectations of the people.

It was complained that life has never been easy for the media players in 2017 in Zanzibar. Some of journalists have experienced professional hazards in the performance of their professional duties.

2.2.5 Conclusion and Recommendations

The ZLSC would therefore recommend that the Government should commit itself by developing appropriate policy directives and, then, by adoption of an effective freedom of information law, that will be in line with the UN standards on Freedom of Opinion and Expression (as stated herein above) so as to ensure that public information is easily accessible, guaranteed by law, to all citizens, including journalists.

2.3 Rights to Equality before the Law and Effective Remedy

Equality before is one of the basic characteristics of the rule of law doctrine. Equality before the law entails that no one is above the law. That is every man, whatever his rank or position or place in society is subject to the law of the land and amenable to the jurisdiction of the courts and tribunals established by law.⁵⁷¹

In other words, the rule of law demands further that all subjects should be treated equally before the law. Equality before the law then means that all classes of people in a civil society should be treated alike by the law itself and before all law enforcement bodies and agencies which are created by the law. The law both in text and practice should be made neither to benefit a particular section of the society nor to disadvantage another.⁵⁷²

Equality before the law has been taken to be a rule requiring all functions of the State which are likely to affect the basic right of the people to be subjected equally before the law. The rule of law demands that the State and its organs should act according to and within the authority conferred by the law. In the same vein, the law should not give unnecessary privileges and cushions to the State and its organs This rue is strict

571 Chris Maina Peter, Human Rights in Tanzania ..., op. cit., p. 304.

572 Ibid, p. 377.

n the sense that, apart from a State being 'a subject' of law as juridical person, if State will accord such privileges, it will abandon its duty to acting within the law and the rights of the individuals will be at stake, and without remedies in cases of excesses.⁵⁷³

For rule of law to have any meaning at all, there should be an independent judiciary to oversee that each and every person or institution is treated equally before the law and without any unjustified restriction or hindrance. The judiciary should thus be protected against undue influence in its work.⁵⁷⁴ All this is to ensure that judges properly handle cases of individuals and provide them with even handed justice without fear or favour.

Based on this background, this part earmarks analysis of difference dimensions where realisation of equality before the law explains the basis for achieving effective judicial remedies.

2.3.1 Access to Justice

The right to equal access to justice is one aspect in the explanations of the equality before the law which is one of the characteristics of rule of law, being a basic constitutional principle. The equality before the law principle is founded upon the fundamental truth that all human beings are equal in dignity and have to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. Founded under these considerations is the principle that all human beings are equal before the law and have the right to equal protection and benefit of the law. It is this principle that has been enshrined in the Universal Declaration of Human Rights 1948 in the following words:

“All people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.⁵⁷⁵

The Constitution of Zanzibar, 1984 guarantees the equality before the law principle under section 12. The section provides that: “All people are equal before the law and they are entitled, without any discrimination, to be protected and provided with equal right before the law”.

Access to justice enables individuals to make use of the laws in the protection of their rights. However, this can only be enjoyed if there is an established sound institution and

573 Ibid, p. 377 - 8.

574 Ibid.

575 See: Article 7 of the Universal Declaration of Human Rights 1948.

legal framework that would guarantee all people access to the law and a judicial which is free. Zanzibar, like other developing countries, faces problems in the realisation of access to justice which in one way or another hinders people's enjoyment of their constitutional rights of equality before the law.⁵⁷⁶

2.3.2 Right to Legal Representation

It is well established that in Zanzibar, the right to legal representation before the court of law is provided via two arms, namely, constitutional rights and statutory rights. A trial becomes a nullified one in the circumstance where the constitutional and statutory rights of the appellant were denied legal representation.

There is still a problem of the legal representation as a move to get people closer to access to justice. The government offers legal representation support to those persons accused of serious crimes only, but it does not do the same to the person accused with lesser serious offences or even for people found to be in serious need legal support. However, the good working relationship to different CSOs which providing free legal aid in the Isles accommodate the needs. For instance, ZLSC, ZAFELA and ZLS provide legal representation and pro bono cases. ZLSC provides legal assistance and representation to 56 children have been attended to and assisted in the Institute of Education for Offenders by the Centre's Officers in Unguja.

People with mental illness and psychiatric disabilities face similar issues of lack of legal representation within the criminal justice system as people with intellectual disabilities, whether suspects or victims. Most people would appreciate if people with disabilities are, to a much higher degree, given the right to access of justice and legal representation like other groups such as victims of crime. This is often because they are vulnerable and find themselves in situations that are dangerous and violent.

In addition, the law still imposes fees for indigent civil litigants even if they are poor unless a special procedure to file a case on the basis on the incapacities is applied. There is also the challenge of sign language at the court and other offices when dealing with the administration of justice. It can therefore be submitted that the lack of legal representation and legal aid contribute to the denial of the right to justice.

2.3.3 Rights to Fair Trial and Effective Remedy

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic

⁵⁷⁶ Zanzibar Human Rights Reports, 2016.

rights and freedoms, the most prominent of which are the right to life and liberty of the person.⁵⁷⁷ It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁵⁷⁸

The fundamental importance of this right is illustrated not only by the extensive body of interpretation it has generated but, most recently, by a proposal to include it in the non-derogative rights provided for in Article 4(2) of the ICCPR.⁵⁷⁹

Due to the specifics of each individual case and the interests of monitoring organizations, a detailed rendition of trial observation aims is not feasible. The key general goals may be summarized as follows: to make known to the court, the authorities of the country and to the general public the interest in and concern for the trial in question; to encourage a court to give the accused a fair trial. The impact of an observer’s presence often changes the atmosphere in the courtroom and facilitates defense by, *inter alia*, making the court more cognizant of the defense’s arguments, encouraging defense counsel and the defendant to be more forceful in contesting the prosecution’s claims, in attracting media attention to the trial, etc; to obtain more information about the conduct of the trial, the nature of the case against the accused and the legislation under which s/he is being tried; and to collect general background information about the political and legal circumstances leading to the trial and possibly affecting its outcome.⁵⁸⁰

2.3.4 Conclusion and Recommendations

Treating people equally does not end with writing the same in our noble books of laws that always are called differently in the legal profession, but treating people equally before the laws should be further in practice rather than in words. Zanzibar is one of the countries that all people are constitutionally guaranteed to be treated equally with others, and the government should make more efforts to make it believable and granted. By that doing, there will be no lamentations from its people.

577 Lawyers Committee for Human Rights, “What is a fair Trial?”, A Basic Guide to Legal Standards and Practice, Issued in the United State of America, New York, 2000, p. 7. See, also, [<http://www.lchr.org>] and [<http://witness.org>].

578 International Covenant on Civil and Political Rights [ICCPR], UN General Assembly resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976.

579 See Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*, Oxford: Clarendon Press, 1994, at 415.

580 Ibid.

On the other hands, justice should be accessed to all people as this is granted in our Constitution of the country and laws of the land. The role to make this practicable is to both, government and the citizens of this country. The laws should be made without discrimination and should be enforced without discrimination of any kind. This would upgrade justice in our society as would bring love and tranquility in our nation.

2.4 Right to Liberty and Personal Security

Liberty denotes the fullness of individual existence. It is freedom from restraint and it goes hand in hand with the power to what one desires without restriction or influence from without. The right to liberty is provided for in Section 14 of the Constitution of Zanzibar, 1984. The provision guarantees the right of every person to be free and to live like a free person.⁵⁸¹ In order to preserve the personal liberty of an individual, in essence, the provision prohibits for any person to be arrested, jailed, kept in custody, detained, forcibly deported, or to be deprived of his freedom.

The overall purpose of this Section is to ensure that no one should be dispossessed of his liberty in an 'arbitrary fashion'. The right also safeguards the individual against the illegal deprivation of liberty conducted in contrary to Section 14 of the Constitution of Zanzibar 1984. This constitutional provision also takes care of a situation where an individual does not exist alone, but as part of the community and hence the need to be sensitive of the rights and freedoms of the rest members of the society.⁵⁸² This means that the right to liberty is not an absolute.⁵⁸³ Though the right is not an absolute one, its curtailment can only be done in limited circumstances. These include where it is expressly provided by law, or in the process of implementing a judgment or order or a punishment imposed by a court of law following a conviction.⁵⁸⁴

2.4.1 Freedom from Arbitrary Arrest and Detention

The meaning of the term detention differs from one jurisdiction to another and from different points in time.⁵⁸⁵ Essentially, it involves deprivation of personal liberty before

581 See: Section 14 (1) of the Zanzibar Constitution 1984.

582 C.M. Peter, *Human Rights in Tanzania: Selected Cases and Materials*, Koln: Rudiger Koppe Verlag, 1997, p. 524.

583 D.J.Harris, M. O'Boyle, and C. Warbrick, *Law of the European Convention on Human Rights*, London: Butterworths, 1995, p. 97.

584 Section 14 (2)(a) and (b).

585 Saito, Toyoji, "Preventive Detention in Japan" in Frankowski, S. and Dinah, Shelton (eds.), *Preventive Detention: A Comparative and International Law Perspectives*, London: Martinus Nijhoff Publishers, 1992, p. 169.

conviction and, in most jurisdictions, it relates to pre-trial incarceration of the suspect or the accused person. For example, the accused is detained in police custody without being sent to court. That is, detention without trial.⁵⁸⁶

Article 9(1) of the ICCPR provides that “everyone has the right to liberty and security of person.” The liberty of a person has been interpreted narrowly, to mean freedom of bodily movement, which is interfered with when an individual is confined to a specific space such as a prison or a detention facility.⁵⁸⁷

Security has been taken to mean the right to be free from interference with personal integrity by private persons. Under Article 9(2) “No one shall be subjected to arbitrary arrest or detention” and “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The principle of legality embodied in the latter sentence both substantively (“on such grounds”) and procedurally (“in accordance with such procedure”) mandates that the term “law” should be understood as referring to an abstract norm, applicable and accessible to all, whether laid down in a statute or forming part of the unwritten, common law. The prohibition of arbitrariness mentioned in the previous sentence serves to ensure that the law itself is not arbitrary, i. e. that the deprivation of liberty permitted by law is not “manifestly unproportional, unjust or unpredictable, and [that] the specific manner in which an arrest is made must not be discriminatory and must be able to be deemed appropriate and proportional in view of the circumstances of the case.”⁵⁸⁸

In Zanzibar, there are several laws that ‘legalise’ detention without trial. These laws authorise certain category of functionaries in the executive arm of the State to detain individuals for specific period(s) or indefinitely for imagined commission of offences.⁵⁸⁹ For example, under Section 13 of the Regional Administration Act (No. 8), 2014, there is provided powers of the Regional Commission and District Commissioner to effect arrest and detention of individuals without trial under certain circumstances. The Section provides as follows:

“13 (1) ... Regional Commissioner may order to be arrested any person if he has reason to believe that:

(a) Such a person is likely to commit breach of peace or disturb the public tranquillity; or

586 C.M. Peter, op. cit., p. 579-580.

587 Nowak, Manfred, *Covenant on Civil and Political Rights: CCPR Commentary*, Ailing: N.P. Engel, 1993, p. 244.

588 Ibid, p. 258.

589 C.M. Peter, op. cit., p. 594.

- (b) To do any act that may probably lead to breach of peace or disturb the public tranquillity; and
 - (c) That, the breach cannot be prevented in any way other than by detaining that person in custody; may order police officer verbally or in writing signed by him to arrest such person.
- (2) District Commissioner shall have the same power given to the regional Commissioner under this section and shall act according to the provisions of this Section.
- (3) A person arrested under this Section shall be informed of the reason of his arrest.
- (4) A person arrested under this section as soon as practicable be released or sent to court, under no circumstance shall be kept under such custody for more than twenty four hours under the order of either regional Commissioner or District Commissioner.”

As indicated in this legal provision, the detention herein envisaged cannot exceed twenty four hours in duration. After the lapse of twenty four hours, the detainee must either be released or sent to court. Also, the arrest and detention under this section shall be made with reasons that have to be reduced into writing and signed by the Commissioner issuing the order.

Entitlement of a detainee to be given reason(s) behind his or her detention has its basis in Article 9(2) of the ICCPR providing that: “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.” These provisions have been interpreted to mean that anyone who is arrested must be informed of the general reasons for the arrest “at the time of arrest,” while subsequent information, to be furnished “promptly,” must contain accusations in the legal sense. Furthermore, such information must be sufficient to permit the accused to challenge the legality of his or her detention. A written arrest warrant is not unconditionally required, but the lack of a warrant may, in some cases, give rise to a claim of arbitrary arrest.⁵⁹⁰

The reasons for arrest, and the explanation of any other rights (for example, the right to legal counsel), must be given in a language that the person arrested understands. Accordingly, the accused has a right to a competent interpreter in the event that

590 Nowak, Manfred, *Covenant on Civil and Political Rights: CCPR Commentary*, op. cit, p.259. See, also, 1992 Resolution on the Right to Recourse Procedure and Fair Trial of the African Commission on Human and Peoples’ Rights, Paragraph 2(B) (<http://www1.umn.edu/humanrts/africa/achpr11resrecourse.html>).

he or she does not understand the local language. This right extends to all pre-trial proceedings.

The right to be provided and communicate with counsel is the most scrutinized specific fair trial guarantee in trial observation practice, because it has been demonstrated to be the one that is most often violated. This right is particularly relevant in case of pre-trial detention. An individual's right to choose counsel thus begins to run when a suspect or accused is first taken into custody, regardless of whether s/he is formally charged at that moment.

In Zanzibar legal system, the requirement to this effect is founded under Section 12 (6)(f) of the Constitution of Zanzibar 1984 which makes provisions that any person suspected of a crime shall be given opportunity to be defended by an advocate of his choice. Although literatures on Zanzibar practice in these aspects are not apparently available, there also seems to be no record of allegations of open violations of the individual's rights as discussed in this part.

2.4.2 Right to Bail

Bail may generally be defined to mean a temporary release of an accused person upon certain conditions pending the finalisation of court proceedings.⁵⁹¹ It is like a conditional discharge in the sense that person's liberty at that particular time is tied up with bail conditions.

There are three types of bail. These are the police bail, bail pending trial and bail pending appeal. Under all situations, bail is considered to be a right of the person whose liberty is at stake pending the due process of the law. Though righteous in essence, the right to bail is not an absolute one as it granted in the exercise of court's discretion.

Bail as an aspect of criminal justice has a long history. While its origin could be traced in medieval justice, in the modern times, it is traced to the Magna Carter which provided, inter alia, that no free man shall be arrested or detained in prison unless by the law of the land.⁵⁹² In England, bail has also been related to Petition of Right of 1628; the Habeas Corpus Act of 1679 and the Bill of Rights of 1689.⁵⁹³

591 Chris Maina Peter, Human Rights in Tanzania: ..., op. cit., p.527.

592 Magna Carter, Chapter 39.

593 Shaughnessy, E.J., Bail and Preventive Detention in New York, Washington D.C.: University Press of America, 1982, p.13.

The grant of bail stands as a practical exercise of presumption of innocence. Peter, on his part, sees that the right to bail and presumption of innocence are two complementary concepts; whereas the former is the basic right of any accused person in any criminal case, the latter is the rationale for the former.⁵⁹⁴

Presumption of innocence is one of the pillars of the rule of law doctrine. In substance, rule of law is one of the cardinal principles of the Zanzibar constitution which enshrined under Section 12(6)(b) of the Constitution of Zanzibar, 1984. The Section makes provisions that:

“no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence”.

This principle is built upon the requirement of natural justice principle that “no person should be condemned unheard”. Despite this quite sensible constitutional principle, the tendency in most criminal justice systems has been to categorize offences between bailable and non-bailable ones. Offences are so categorized, more often, based on their severity; that is, what are considered to be more serious offences, or they threaten the violation of peace, or are more likely to cause the accused to temper with due processes of law, are categorised as non-bailable offences. However, whatever the offence is categorised (i.e. either bailable or non-bailable), the higher judiciary (a country’s high court or court of appeal) is free under right circumstances to exercise its discretion in granting bail.

This is an area where court’s discretion is to be exercised so judiciously in weighing out and determining upon difference strength that exist in two competing public interests in question – first, a public interest based under the constitutional principle that ‘no person shall be condemned unheard’; and, secondly, a public interest that ‘every matter before the court shall reach a just end’.

For practical purposes, the two competing interest considered at this point are to be perceived as the public interests. This perception seems to be very important for avoiding inherent difficulty, almost impossibility, involved in striking a balance between competing ‘private’ or ‘individualistic’ and ‘public’ interests - as to which among the two outbalances or, rather, outweighs the other. In essence, under normal circumstances, an individual interest can hardly outweigh the public one. After all, a matter which finds its place in a country’s constitutional provision (i.e. presumption of innocence) becomes no longer a matter merely of a ‘private’ or ‘individualistic’ concern. On the other hand, when two competing public interests are considered, the matter is readily resolved by considering what interest is accorded primacy under the

594 Chris Maina Peter, *Human Rights in Tanzania: ...*, op. cit., p. 529.

existing legal and factual circumstances.⁵⁹⁵

Another public claim or move that apparently is steadily increasing with time is the need to disallow bail in some categories of offences. To mention the most apparently public disturbing offence in these days is the sexual violence category of offences. If one peruses in the Hansard of the Zanzibar House of representatives (ZHoR); i.e. record of proceedings of the ZHoR, there are common claims in each meeting of the ZHoR that person who allegedly have committed sexual offence against women and children shall not be released on bail.⁵⁹⁶ Members of the ZHoR have gone further to call upon the Revolutionary Government of Zanzibar to prepare a bill for statutory amendment for mending the Penal Act, 2004 with the effect of making unailable.

The reasoning so advanced is that rate of commission of these offences is badly increasing. Three cases can hardly pass without informing coming out publicly that a woman or a very one person (female or male) has been raped. An alleged culprit might be noticed. Sometimes caught and sentence to a police station. In some of the events, police force releases this person on bail. But, sometimes, bail is grated at the court level, and that marks the end of the story. The alleged culprit continues moving around villages and towns streets looking for the right chances to destroy another or persons. Based on these circumstances, the members of ZHoR have kept on urging and directing the Government that proper initiatives be taken to make unailable the sexual violence offence.

Apparently, the ZHoR and the general public have not taken trouble to clearly understand at what point in its criminal justice system is not delivering services to satisfaction of the system itself and the public in general. This point noted, ZLSC would like to warn out that any deficiency in the country's criminal justice system cannot be rectified or remedied by depriving an accused person his right to bail. It should also always be remembered that behind the right to bail, there an irrebutable presumption of an accused person's innocence until proved guilty. Under Zanzibar legal system this presumption is constitutionally founded under Section 12(6) of the Zanzibar Constitution 1984.

595 See the reasoning by Lord Bridge of Harwich in his judgment in the case of R. v. Secretary of State for Home Department, exp. BRIND [1981] 1 A.C. 696; [1991] 2 W.L.R. 588; [1991] 1 All E.R. 721 (House of Lords).

596 In the ZHoR Hansard (official record of the House debate), dated on the 22nd February, 201 where several members of the ZHoR lamented that from the terrible increase in the commission of sexual violence offences, there is a need to make these offences unailable. Members who in that debate took this concern, include: Hon. Ali Suleiman Ali, Hon. Abdalla Ali Kombo, Hon. Zulfa Mmaka Omar, Mohammed Said Mohammed, Khadija Omar kibano, and Hussein Ibrahim Makungu.

Furthermore, and as Professor Peter has correctly observed that:

The power of the court of law to be able to determine whether or not to grant bail as based on the doctrine of separation of powers in a State. It is improper for the other branches of the State that is the Executive and the Legislature to set out limits in the work of the court by specifically providing in legislation for situations in which courts cannot grant bail. This will amount to interference with the independence of the judiciary. Courts of law and particularly the higher judiciary should be left free to exercise their wisdom depending on concrete facts available in each case before them.⁵⁹⁷

It remains, and it shall advisable always remain, provides tenets or requirements of 'justice' remains constant, bail determination is always the matter for courts of law (especially the higher judiciary) in the proper discharge of their adjudicatory functions.

2.4.3 Conclusion and Recommendations

The right to liberty is everyone fundamental right that prohibits the state and other individual to detain others without due process of law. Detention as contrary to liberty, on the reasons provided and subject to the provisions of law, may be applied to deter the liberty of others, should not be misused to deter the rights of others.

On the other hands, the right to bail is among the constitutional right that guarantees the freedom of liberty. Any criminal offender has the right to bail unless the bail is prohibited by law on the nature of the offence he committed. The bail in Criminal law is granted by police and the court, but the problem lies to our society that becomes difficult to differentiate between setting the criminal free and having granting his right to bail.

This should among others be curbed by increasing public awareness to make our society having more knowledge on what happens before the court and police. This would also minimize the mob violence and being dishonest to their government.

2.5 Freedom from Torture and inhuman or Degrading Treatment

There are several definitions of torture. The internationally accepted definition of torture is that set out under Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) 1984:

⁵⁹⁷ Chris Maina Peter, *Human Rights in Tanzania: Selected Cases and Materials*, Koln: Ridiger Koppe Verlag, 1997, p. 529.

'... torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the investigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

The Tokyo Declaration made by the World Medical Association (WMA) in 1975 defines torture as:

The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the order of any authority, to force another person to yield information, to make a confession or for any other reason.⁵⁹⁸

With reference to the above definitions, it can be said that torture is the intentional infliction of severe mental or physical pain or suffering by or with the consent of the state authorities or by an individual or group of persons for a specific purpose. It is often used to punish, to obtain information or a confession, to take revenge on a person or persons or create terror and fear within a population.⁵⁹⁹ Some of the most common methods of physical torture include beating, electric shocks, stretching, submersion, suffocation, burning, rape and sexual assault. It can also include psychological forms of torture and ill-treatment, which very often have the most long-lasting consequences for victims and commonly include isolation, threats, humiliation, mock executions, mock amputations, and witnessing the torture of others.⁶⁰⁰

Although torture is sanctioned by some states, it is prohibited under international law and the domestic laws of most countries. Although widely illegal and reviled there is an ongoing debate as to what exactly is and is not legally defined as torture. It is a serious violation of human rights, and is declared to be unacceptable (but not illegal) under different human rights instruments including UDHR 1948,⁶⁰¹ ICCPR 1966⁶⁰² and ACHPR 1981.⁶⁰³ Also, signatories of the Geneva Conventions of 1949 and

598 Sorensen, Bent, "Medical Aspect of torture", in Cassese, Antonio (ed.), *The International Fight against Torture*, Baden-Baden: Nomos Verlag, 1991, p. 11.

599 [www.irct.org/definiton of torture](http://www.irct.org/definiton%20of%20torture) (accessed on 20/11/2017).

600 Ibid.

601 Article 5 of the Declaration.

602 Article 7 of the Covenant.

603 Article 5 of the Charter

the Additional Protocols I and II of 8 June 1977 officially agree not to torture captured persons in armed conflicts, whether international or internal. Torture is also prohibited for the signatories of the United Nations Convention Against Torture, which has been ratified by 158 countries.

National and international legal prohibitions on torture derive from a consensus that torture and its similar ill-treatments are immoral, as well as impractical, and information obtained by torture is far less reliable than that obtained by other techniques. Despite these findings and international conventions, organizations that monitor abuses of human rights (e.g., Amnesty International, the International Rehabilitation Council for Torture Victims, Freedom from Torture, etc.) report widespread use condoned by states in many regions of the world.⁶⁰⁴

Reasons for torture can include punishment, revenge, political re-education, deterrence, coercion of the victim or a third party, interrogation to extract information or a confession irrespective of whether it is false, or simply the sadistic gratification of those carrying out investigation.⁶⁰⁵ Alternatively, some forms of torture are designed to inflict psychological pain or leave as little physical injury or evidence as possible while achieving the same psychological devastation.⁶⁰⁶

Torture has been carried out or sanctioned by individuals, groups, and states throughout history from ancient times to modern day, and forms of torture can vary greatly in duration from only a few minutes to several days or longer, depending upon the aim pursued. In other cases, the torturer may be indifferent to the condition of the victim.

2.5.1 Torture by State

People face torture in many countries. Some are targeted for criticizing the authorities or because they take part in peaceful political activities, such as protesting or leafleting, or even because a friend or relative had done so. Other individuals are targeted because of aspects of their identity, like their originality, affiliation, sexuality, etc. It has been established that wherever and whenever torture happens, it intends to intimidate, silence and break people.⁶⁰⁷

While the global fight against torture requires the active support of all people, the government of a given territory is ultimately held responsible for any torture that

604 https://www.freedomfromtorture.org/page/where_does_torture (accessed on 18th October, 2017).

605 https://www.rightsinfo.org/torture_human-rights-prevent-remedy/ (accessed on 26th June, 2017).

606 Ibid.

607 Ibid.

occurs within its boundaries. Individual governments, therefore, must take it upon themselves to take part in the struggle against torture. Ratification of the Convention is often a necessary first step in this process. At the international level, Article 5 of the UDHR and Article 7 of the ICCPR, as well as Article 5 of the ACHPR, condemns the acts of torture, inhuman or degrading treatment of human beings.

Torture is illegal under international law and various studies have demonstrated it to be an ineffective interrogation technique, including studies by the United States Senate into the CIA's "Enhanced interrogation" methods.

Tanzania, Zanzibar being a part, has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment 1984, and State agents are therefore required to respect the UN ambition to respect people's rights. Based on this requirement, there are several domestic laws enacted to protect the suspects' rights in Zanzibar. The most important ones are the Constitution of Zanzibar, 1984 and the Criminal Procedure Act (No 7), 2004. The procedure set under the Act provides a mechanism for handling a suspect before arrest, during arrest and after arrest. Also the Police Force and Auxiliary Service Act 1958⁶⁰⁸ explains the police powers and its limitations over the suspects and arrestees. However, despite all of these provisions, acts of torture in Zanzibar have been reported several times, especially during the time of public elections.

It is believed that freedom from torture is amongst the most important aspect of the rights to life. Amplifying the constitutional provisions on the right to dignity of human persons, Section 13(3) of the Constitution of Zanzibar 1984 provides that:

"It is prohibited for a person to be tortured, inhumanly punished or to be given punishments which are degrading and humiliating".

In essence, this provision appears to guarantee the protection against all forms of torture in Zanzibar. However, this protection is apparently only well captured in theory. In obvious contravention of this constitutional theory, there have been some claims of torture that took place in Zanzibar in 2017. It has been established that the police force and special departments organised themselves to exercise torture on the people in Zanzibar. The exercise of torture by State agents is generally believed to be a means of intimidating (creation of terror and fear) people, silence them and break their unity in a given particular direction.⁶⁰⁹ For Zanzibar politics, in specific, torture is apparently used as a device to ease people's tension resulting from the ever competitive politics.⁶¹⁰

608 Chapter 322, R:E 2002.

609 https://www.freedomfromtorture.org/page/where_does_torture (accessed on 18th October, 2017).

610 Noyes A (2017), AFRICA WATCH: The Threat of Violent Extremism in Tanzania, p.1

In this regard, the torture was exercised in Zanzibar in 2017 which was characterized by *Mazombi* beatings inflicted upon innocent individuals this has been common allegations which can be traced back during general elections in Zanzibar since 2010 who were at that time known as *Janjaweed*. Thus increasing of political tension after 2015 general election, still there are reported complains on violation and torture incidences caused by *Mazombi* and unknown people. In the exercise of the said torture, *Mazombe* were allegedly found moving in different lorries with their faces by masks, wearing the uniform like those used by members of Special Departments of Zanzibar and others wearing normal clothing, and carrying sticks, big knives (i.e. pangas) and fire arms; and wondering in Zanzibar streets. One of the famous incidents of Abdallah Ahmed Juma of Mtoni a business man was tortured and his commodities, mobile phone and money seized by alleged Mazombies⁶¹¹ In the streets, *Mazombe* used to ambush people their leisure talks at their local places known as *Vibaraza*.⁶¹² These kind gatherings are common all around Zanzibar islands however the police through the Regional Police Commander deny the allegations of the Zombies and unknown people attacks.⁶¹³ Moreover, there are no official information and updates shared to the public on the complaints filed in police stations concerning the events.



611 Interview published by Zaima Tv on 14th June, 2017.

612 Ibid.

613 Interview conducted by Mohammed Khelef of Duetche Welle at Kinaga Ubaga Programme published on 3rd October 2017.



Picture 36: Victim of torture by *Mazombe*

At the Vibaraza, *Mazombe* used to beat individuals using sticks and even swords (*mapanga*). When some of these persons get chance to from *Mazombe*, the *Mazombe* ran after them, broke their houses' doors, entering inside, beating them and robbing money and other valuable items found within. In the case of the late Ali Juma Suleiman was quoted saying that people with firearms surround his house and some broke in his house with their face covered with mask took him to him to unknown place and tortured him, which was noted to be the course of death.



Picture 37: The late Ali Juma at Mnazi Mmoja Hospital before his death

2.5.2 Torture by Individuals

It is hard to find one precise definition of the term torture by individuals as it is simple to relate it by the state. In practice, torture can be carried out by individuals, as it is done by the group of people and by the state. The individuals can inflict torture against individual human being or against the group, as the same group of non state officials can torture the individual, on several reasons including that of punishment, revenge, deterrence and coercion. Since every individual has the equal right to the respect of his dignity inherent in a human being and to the recognition of his legal status, any form of torture, whether is done to the individual by the state or by his fellow individual is prohibited.⁶¹⁴

It is common to get information of torture by state if you peruse the information relating to Zanzibar, but it is almost not common to get knowledge on what happens in the Zanzibar community on how the individuals are tortured by other individual persons or group. This might be caused by several reasons, not forgetting the culture of the people reside in Zanzibar are very kind and shy. It is hard for instance to get information on what and how wives are tortured by their husbands, but it is shame to find a husband narrating how he is tortured by his wife or wives⁶¹⁵.

It is also dangerous and become very tough for an employee working in private sector to report on how he is illicitly treated by his employer, yet is it a reason to get his job off, if a house girl or boy for instance provide how he is tortured by his or her boss while he or she still expects to rely on the same job. The same case found in the government officials to report on how they are even psychologically tortured by their bosses, and still having their cake to eat.

Matters have taking the different shapes, as the days go on. The change of people perceptions and be aware of their rights, have become a way of changing their attitudes. There are some reported matters though the welfare of victims and the reporters becomes in danger, yet they do report on what torture they have experienced for the welfare of the community and having combating against torture.

Torture against individual has been reported by Mussa Ramadhan Said, an employee of Cloves Buds Industry of Pemba which is under the Ministry of Trade, Industry and Markets of the Revolutionary Government of Zanzibar. Mr. Mussa had been alleged to steal cloves buds at Cloves Buds Industry and secretly furnished it to Mr. Said Haji Hamad to export the same from Zanzibar and having selling it elsewhere. The said buds have been seized on 15th November, 2017 at Kipapo Chinga in Pemba.

614 Article 5 of the African Charter of Human and Peoples Rights.

615 JUMAZA

On 17th November, 2017 around 6:00pm while Mr. Mussa was at home, the Office Driver was ordered by the Officer in charge of Cloves Buds Industry, Pemba to pick him to the Office. While he was in the Cloves Buds Conference room, Mr. Mussa was officially informed on the event he was alleged with.

In the conference room, Mr. Mussa met Officer in charge with four guys whom he did not know them before. Mr. Mussa was directed in a while, by the Officer in charge to be submissive in interrogation on theft of cloves buds by those four guys. Mr. Mussa was later on coerced to enter into the car around 7:30 pm, where he met other two guys with one woman inside the car.

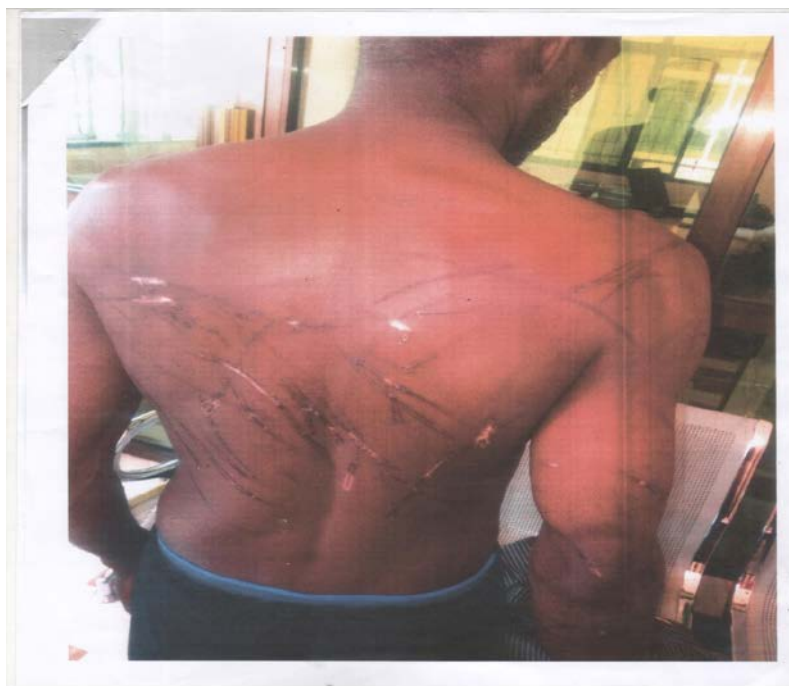
Once the car was getting out of the gate of that Clove Buds Industry, the guys starting beating and torturing Mr. Mussa and laid him down inside the car. They put off his shirt and hat and wrapping him on his eyes with the black wrap that Mr. Mussa could not know where he was taken.

Once the guys come close to where they wanted, they put Mr. Mussa into the house and wrapped him on the pillar of such house and continued torturing him. They have also hanged him, beating him heavily that he became unconscious with pains. It took more than three hours that Mr. Mussa starting to recover and found himself bloody with whole of his body. Fortunately he had a mobile phone in his pocket and therefore, starting to call his relatives acknowledged them where he was and what happened to him.

One thing persuaded Mr. Mussa to believe he was safe to enter into the said car, was the directions of Officer in charge that he will be safe and his matter had been reported to Police Station at Chake Chake, where he was sure that the car together with those guys will drop him at that station for police preliminary inquiry.

As results, Mr. Mussa was threatened by those guys and warned neither to report the matter to neither Police nor to attend hospital for any treatment; otherwise he will be killed.⁶¹⁶

616 The Victim official letter to Officer in charge on the matter, 28/11/2017. ZLSC was given a copy of the said letter by Mr. Mussa Ramadhan Said.



Picture 38: Picture of torture against Mussa Ramadhan Said

Another incidence on torture by individuals happens in Zanzibar is in the tourism industry, in particular on Hotel investments. It became the habits of some owners of the tourist hotels to torture their staff on the ground of poverty and cruelty. The employees at Hotels which are common for tourism in Zanzibar have nothing to protest and fight for their rights on any kind of torture committed against them. They are helpless and have nowhere to go for their rights.

These employees have been working more than their working hours, have been psychologically tortured on being treated as slaves in their own country; have been working daily, tireless as if there is no difference between the working days and holidays, yet they are working without contracts of services between them and their employers. For those who had tried to claim their rights in particular before the Trade Unions, have found themselves jobless and in trouble.

The women workers are common to be given permission from their hotels at midnight, while that doing endangers their safety and security. And this is committed by some big companies of the five stars hotels in Zanzibar. Some of women and other workers are not given transport, and if women are given for instance, they found themselves landed far from their place of living, at night. This is particularly a psychological and physical torture that many employees of Hotels in Zanzibar experience in the land.⁶¹⁷

617 Mwananchi, Daily News Paper, Wednesday 24, January, 2018.

2.5.3 Conclusion and Recommendations

Zanzibar is among the lands that rights to civil rights and liberty become crucial. It is this because of the nature of its people and history of its existence. Zanzibar society had experienced the civil and political life since the coming of British who despite their merits, had divided people on political base and having granting their civil rights on the division of their wish. The political life that the people of Zanzibar do have today has been to its high percentage influenced by the past.

Fortunately, Zanzibar is a democratic society, that every individual is granted and guaranteed his right by the Constitution and the laws of the country. The only emphasis needed is to put those civil rights and liberty into practice. It is because, Zanzibaris as other Human beings by their natural inclination demand these rights for a life worthy of humanity. The Zanzibar society, amongst other responsible human societies, must take measures to protect them. The government of Zanzibar is reminded to protect these rights as much as possible; knowing that protecting human rights is not only the duty, but also the target and sign of civilization for the government concerned.

CHAPTER 3:

POLITICAL RIGHTS

3.0 Introduction

In the explanation of binding international provisions of human rights, two packages of rights (i.e. civil and political rights) are referred to as the first generation of human rights.

Political rights are those rights that involve participation in the establishment or administration of a government; right to exercise franchise; right of holding a public office; and the right to engagement in political activities, generally. These rights are very important as they explain a sense of individual's right to belong to a given society.

Political rights which are recognized and protected under International Instruments are the right to take part in governance, freedom of peaceful assembly and freedom of association. The International Instruments (relevant to Zanzibar being part of Tanzania) which recognize and protect these rights include Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1966, and African Charter on Human and Peoples Rights (ACHPR) 1981.

Article 20 of the UDHR sets international standards for the exercise of righteous freedom of peaceful assembly and association. While Article 20(1) of the UDHR makes provision for the right of freedom of peaceful assembly and association; sub-article (2) of this Article prohibits compelling any one to belong to an association. Therefore, this Article guarantees the right to assembly and association to every individual.⁶¹⁸ But such assembly and association must be lawful, peaceful and should be exercised as of right or freedom and not under compulsion.

Furthermore, UDHR guarantees everyone the right to take part in the government of his country.⁶¹⁹ It may be directly or through any one freely chosen representative. It also guarantees that everyone has the right to equal access to public service of this country. It finally provides that the will of the people shall be the basis of the authority of the government. It requires that the will of the people shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage; and shall be held by secret vote or by equivalent free voting procedure.

618 Article 20(2) of UDHR, 1948.

619 Article 21 of UDHR, 1948.

The rights stated above are also reflected in the ICCPR (i.e. the Covenant) where they are given force of law under Article 21 of the said Covenant. The Covenant provides this aspect rights as the right to peaceful assembly. Under the provision, each State party shall ensure that no restriction may generally be placed in the exercise of this right. The restrictions may be imposed in conformity with law, and that is necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or moral or the protection of the right of others.

Article 22 of the Covenant provides for freedom of association. It includes protection of the right to form and join trade unions for the protection of joint interest, and it also allows limited restrictions on the exercise of these rights which are in conformity with the law and they are necessary in a democratic society in the interest of national security, public safety, public order, the protection of public health or moral or the protection of the right of others. The Article further permits imposition of lawful restrictions on members of the armed forces and of the police in the exercise of this right.

Under its Article 25, the Covenant guarantees the right and opportunity to take part in the conduct of public affairs directly or through freely chosen representative. It also provides for the right to vote and to be voted or elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors. It finally reflects the right to have access to public service in the country on general term of equality. This right is required to be exercised without unreasonable restrictions and without distinction or discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status.⁶²⁰

The above aspects of rights have been transformed in the Africa region in the like manner. Article 10 of the ACHPR makes provisions that guarantee freedom of association whereby it prohibits compelling a person to join an association. On the other hand, Article 29(4) of the Charter makes every individual to be under duty to maintain solidarity in the society. Article 11 provides for ever individual to have the right to assemble freely. The right is, however, subject to necessary legal provisions especially in the interest of national security, the safety, health, ethics and rights and freedom of others.

Relevant to this part is also the provisions of Article 13 of the Charter guaranteeing the right of every citizen to participate in the government of the country (directly or indirectly) in accordance with law; equal right to have access to a country's public service; right of access to public property and service strictly on equality basis before

620 See: Article 25(a), (b) and (c) of ICCPR, 1966.

the law.⁶²¹

3.1 Freedom of Assembly and Association in Zanzibar

Real democracy means involving individuals in the determination of issues relevant to their daily life and the future of their country. That is, for any democracy to work, it is important for the people to have a realistic say in how their existing and future lives are to be managed.⁶²²

As introduced herein above, democracy is invariably a good thing; though it is easily said than implemented. In most of the developing countries, the majority of the people are not at all involved in the main affairs of their countries. This is apart from ritual of going to vote every five or so years for a new government. In most of African countries, it becomes the duty of the 'wise' leaders to think and determine for and on behalf of their people. All the people have to do is to be loyal to their leaders.⁶²³

Over time, people have refused to accept this arrangement and are agitating for wider democratization of their societies and for wider responsibilities in handling what is happening in their societies and determining how their lives should be organized. It was the people's determination combined with some pushes from donor community that resulted into widening democratic initiatives in Tanzania, in general, and Zanzibar, in particular.⁶²⁴

As a matter of principle, freedom of assembly, sometimes used interchangeably with the freedom of association, is the individual right to gather with other persons and collectively express, promote, pursue, and defend their ideas.⁶²⁵

The terms *freedom of assembly* and *freedom of association* may also be used to distinguish between the freedom to assemble in public places and the freedom to join an association. Freedom of assembly is often used in the context of the right to protest, while freedom of association is used in the context of labor rights. In the Constitution of the United States of America, for example, freedom of assembly is interpreted to mean both the freedom to assemble and the freedom to join an association.⁶²⁶

Section 20(1) of the Constitution of Zanzibar, 1984 makes provisions that, save in his own free will, no person shall be prevented to exercise his freedom to assemble

621 Article 13 (1), (2) and (3) of the Charter, respectively.

622 Chris Maina Peter, Human Rights in Tanzania: ..., op. cit., p. 655.

623 Ibid, p. 656.

624 Ibid.

625 https://en.wikipedia.org/wiki/Freedom_of_assembly#cite_note-1

626 https://en.wikipedia.org/wiki/Freedom_of_assembly#cite_note-2

and associate with other persons in whatever manner he likes, and especially for establishing and become a member of workers' unions, human rights organizations, or other useful associations and that are legally accepted. That is, the right to associate and to assemble is voluntary, in the sense that one is allowed to form and join trade union, human right associations and any other association for his or her benefit.

However, Section 20(2) provides for limitations in the exercise of these two rights. The provision states that:

(2) "Nothing contained in or made under any law shall be construed to be inconsistent with or contrary to this Section (in the extent the parent Act prescribes):

(a) matters related to the interest of defense and security of the citizens, health aspects and those of society;

(b) matters related to the preservation of right and freedoms of other persons;

(c) matters related to certain limitations for government officials, military personnel or any other persons appointed on their free will.

3.1.1 Restrictions on the Freedom of Assembly

We have seen that Section 20 (1) of the Constitution of Zanzibar 1984 guarantees, *inter alia*, the right of freedom of assembly. However, Section (20) (2) makes provision that the right to freedom of assembly may be restricted based on a number grounds. The grounds include those relating to national security and public safety, protection of environmental and social safety, protection of the freedom of others and on some other restrictions relating to government officers, members of the army or people doing works in which they have voluntarily been appointed.

There are several restrictions legally imposed that have been calculated to fall under these categories of restrictions. The brief discussion that follows below gives examples of laws that impose restrictions on the right of freedom of assembly and the restrictions they impose.

To start with the Political Parties Act. No.5 of 1992. The Act applies to two sides of the United Republic of Tanzania and, in one way or another; it affects individual's right to freedom of assembly. Under the Act, a political party cannot organize or exercised without a permit from police authority as per section 11(4) of Political Parties Act,⁶²⁷ or under section 43 (1) of the Police Force and Auxiliary Services Act. Also the police

⁶²⁷ Chapter 258, RE 2015.

force has been given power to refuse issuing permits for exercising the freedom of assembly and procession in Tanzania. The reason for the exercise of such power by the police force includes the likelihood of the breach of peace by the intended assembly.

Despite the requirement of the permit from Police Force for any political party to be allowed to conduct a procession or public meeting, in Zanzibar, the freedom to exercise the right to assemble publicly has been completely suspended since Thursday 7th June 2016, when the President of United Republic of Tanzania barred public assembly. Until 31st December 2017 the suspension was still in effect. The suspension has in particular, the effect of barring assemblies by political parties, while at the same time freedom of assembly by political parties in the private places and in house meetings were barred.

Another enactment relevant to this aspect is the Penal Act, 2004.⁶²⁸ Under its sections 55 to 57, the Act criminalises unlawful assembly and riot. While section 55(1) of the Act defines the offence of unlawful assembly to be constituted by the conduct of three or more person to assemble with intent to commit an offence or to commit a breach of the peace or to provoke other person(s) to commit a breach of the peace; section 55(3) defines the offence of riot in that where an unlawful assembly results into a breach of peace or terror on the part of the public defines riot.

While punishment for the offence of unlawful assembly is provided under section 56 provides to be up to one year imprisonment; punishment for riot is imprisonment of up to two years, as provided for under section 57 of the Act.

Section 58 of the Act authorizes a magistrate or, in his or her absence, a superior police officer or any commissioned officer in the military force of Zanzibar to make or cause to be made a proclamation to command twelve or more persons assembled within his views to disperse peaceably; disobedience of which is an offence under section 60 of the Act.

In the case of JUMAZA, where they had organized a demonstration against GBV. The demonstrations were scheduled to take place on the 2nd of December, 2017. But after JUMAWAZA had notified the police, before the demonstration date, they received a letter from the police that they could not continue with the demonstrations due to security reasons.

There is also the Information and Broadcasting Policy 2008, adopted by Zanzibar government. The Policy is generally progressive in outlook for the functioning of the information and broadcasting sectors in Zanzibar. It contains a number of positive provisions on freedom of press and expression which to some extent is in line with the International Standard as far as the establishment of the Public Service Broadcasting

628 Act No. 6 of 2004.

is concerned. It, however, also includes some provisions which are incompatible with International Standards and Zanzibar Constitution which guarantee the freedom of expression.

The Policy provides some restrictions such as prohibition of provocative language⁶²⁹ and censorship of programmes before being broadcasted for the protection of customs, values and culture.⁶³⁰ This is a good thing to have in the policy. However, the experience shows, in executing the censorship programme, political parties use to claim openly that they are not given equal right in government broadcasting. The Policy unsatisfactory rectifies the same but recognizes the realization of this right during the General election only.⁶³¹

The policy exhibits the undisputed reality that government controls broadcasters. The policy is silence on the issue of the independence of broadcast regulatory body. In principle, it should conform with the African Commission on Human and People's Rights which adopted a Declaration of principles on Freedom of Expression in Africa, as well as the African Charter for Broadcasting 2001 which requires any public authority that exercises powers in the areas of broadcast or telecommunications regulation to be independent and adequately protected against interference, particularly of a political or economic nature.

It is therefore imperative that the Policy should explicitly guarantee the establishment of the independent broadcasting regulatory body so as to conform to International Standards on the protection of the freedom of expression and of the broadcasting, as provide by the Charter on African Broadcasting 2001.

On the other hand, policy alone does not suffice in protecting press freedom and freedom of expression. A legal instrument is urgently needed to be enacted (i.e. Zanzibar Media Services Act), for better implementation of the policy.

3.1.2 Conclusion and Recommendations

It is different to the formulation widely used in restricting freedoms of assembly and association in well-organized societies (i.e. by defining situations in respect of which law may be enacted to restrict these freedoms). In democratic societies, restriction of these freedoms may be placed only where the authority can show that its action is lawful, necessary and proportionate in order to: (i) protect national security or public safety; (ii) prevent disorder or crime; (iii) protect health or morals; or (iv) protect the

629 Paragraph 5.1(a) (Strategy).

630 Paragraph 5.2 (a).

631 Paragraph 4.1: Policy objectives.

rights and freedoms of other people.⁶³²

Also, action may be said to be 'proportionate' when it is no more than necessary to address the issue concerned.⁶³³

3.2 Restriction of the Right to Freedom of Association

As indicated above, Section 20 (1) of the Constitution of Zanzibar 1984 guarantees the right of freedom of association, as well. However, this right may be restricted by law on the basis of national security and public safety, protection of environmental and social safety, protection of the freedom of others and on some other restrictions relating to government officers, members of the army or peoples who are doing work that, out of their free will, they have been appointed to do.⁶³⁴

The following is brief analysis of restrictions that have been laid down under Section 20(2) of the Constitution that in one way or another affect the exercise of right to freedom association.

3.2.1 Restrictions in Forming Political Parties

Multiparty democracy in Tanzania was introduced in 1992.⁶³⁵ The Political Parties Act 1992 was enacted to govern and regulate political parties in the country. The Act, among other things, provides for the establishment of the office of the Registrar of Political Parties; forms of registration of political parties; disciplining of political parties; and other regulations governing operations of political parties. Every political party formed in any part of the United Republic of Tanzania (including Zanzibar) is required to apply to the Registrar to be registered as a political party.⁶³⁶

Following formation of multi-party system, the Constitution has closed the door to independent candidates. Each and every candidate for presidency,⁶³⁷ and also candidates for both of Union Parliament⁶³⁸ and Zanzibar House of Representatives,⁶³⁹ among other leadership posts, has to belong to a political party. This is open violation of the very Constitution of the United Republic of Tanzania 1977 which, as discussed herein above, provides the right of the individual to associate and specifically says that

632 Ibid.

633 Ibid.

634 See: Section 20(2) of the Zanzibar Constitution 1984.

635 See: The Political Parties Act (No. 5), 1992.

636 Section 7(1) of the Political Act, 1992.

637 Article 39(1)(c) of the Constitution of the United Republic of Tanzania (URT), 1977.

638 Articles 77(3)(a) and 78 of the URT Constitution, 1977'

639 Article 79 of the URT Constitution, 1977.

no person shall be compelled to belong to any association.⁶⁴⁰ Therefore, by barring independent candidates in effect it amounts to compelling them to join parties in order to take part in politics.⁶⁴¹

3.2.2 Civil Society

The role of Civil Society Organisations (CSOs) cannot be ignored in ensuring an effective National Human Rights Protection Mechanism. This is because CSOs provide contribution in the mechanism through several ways. These include the role of countervailing power to the State; participation of CSOs enacting laws and policy making; CSOs are involved in monitoring and reporting on human rights violations and raise individual cases; CSOs raise awareness about human rights within the society; CSOs directly and indirectly contribute to development, especially those CSOs dealing with education, economic and health issues. CSOs contribute peacefully and actively to the implementation of Universal Declaration of Human Rights and as such are recognized as Human Rights Defenders⁶⁴² Having strong and independent Civil societies in Zanzibar noted to play greater contribution on legal, civic and human rights awareness and advocacy in urban and rural areas. However, improper monitoring system of CSOs from the office Registrar of Civil societies lead registration of unnecessary CSOs and networks in Zanzibar which others are reported to work against the law and their registered objectives. This has been alleged by Urban Regional Commander when arrested 12 female and 08 males on suspicions of conducting and advocating of the rights of LGBTIQ in which is against laws and morality in Zanzibar.⁶⁴³ Further the Commander alleged that the Bridge Initiative Organization (BIO) was mobilizing same sex marriage.⁶⁴⁴

3.3 Right to Take Part in Governance

This part examines two important governance issues relating to Zanzibar political society. These two issues are (i) right to vote and (ii) right to participate in political life

3.3.1 Right to Vote

The right to vote is provided for under Section 7 of the Constitution. There is universal suffrage in the exercise of this right to those who have attained the age of 18 years.⁶⁴⁵

640 Article 20(4) of the Constitution of the URT, 1977.

641 Chris Maina Peter, Human Rights in Tanzania: ..., op. Cit., p. 657.

642 Tanzania Human Rights Report, 2015 p.215.

643 Nipashe Jumapili 17th September 2017.

644 Ibid.

645 Section 7 of the Constitution of Zanzibar 1984.

The right to vote is subject to a number of limitations as provided under the Constitution. For example, one must prove, among other things, his residence, age and be in possession of a voter's identity card. The House of Representatives has been empowered to enact law(s) to regulate all matters necessary for the election to be conducted and the exercise of the right to vote.⁶⁴⁶

However, the right to vote was observed in 2017 by-election in Dimani Constituency where by 11 political parties contested on the position of Member of Parliament which CCM emerged the winner. In this Constituency, registered voters were 9,275 and those who casted their votes were 6,406. This shows that there was no full participation of voters because of political tension which has been observed in the previous general elections especially the nullification of 2015 elections.

3.3.2 Right to Participate in Political Life

Section 9 of the Constitution of Zanzibar 1984, though providing a directive principle that cannot be upheld by courts,⁶⁴⁷ it deals with government and the people. It declares Zanzibar to be a democratic society. It acknowledges that the basis of government powers is the people of Zanzibar themselves; and that the Constitution of Zanzibar shall guarantee that people participate in the governance of their society. It further guarantees that the structure of the Revolutionary Government of Zanzibar shall be Government of National Unity (GNU) and it will perform its functions to ensure national unity and democracy.⁶⁴⁸

Section 21 of the Constitution provides among other things that the right to freedom of participating in public affairs including public services, in that, every Zanzibari is guaranteed the right to participate in the decision making for matters that affect him/herself or the interest of the nation. Also every Zanzibar is guaranteed the right to participate in the governance of Zanzibar either directly or through representatives who are voluntarily elected.⁶⁴⁹ Thus, the Constitution of Zanzibar makes meaningful provisions that their implementation has brought some kind of peoples' participation in different capacities of the country leadership.⁶⁵⁰ The GNU well applied under these constitutional premises between 2010 and 2015.

The second attempt to form a Government of National Unity was in July 1963 after the final elections before the independence it was said that two leaders of ASP; Othman Sharif and Hasnuu Makame requested the Prime Minister Mohamed Shamte to form a

646 Zanzibar Human Rights Report, 2016.

647 Section 10A of the Constitution of Zanzibar 1984.

648 Section 9 of Zanzibar Constitution, 1984

649 Section 21 of Zanzibar Constitution, 1984

650 Zanzibar Human Rights Report, 2016.

Government of National Unity involving ZNP, ZPPP and ASP but Shamte refused.⁶⁵¹

It was in 2009 when the two leaders, the then President of Zanzibar Amani Abeid Karume and Seif Shariff Hamad, met at the Zanzibar State House on 5th November, 2009 to discuss and agree on principles to govern the political future of Zanzibar.⁶⁵² Following the agreement of the two leaders which were never made public, the Referendum Act No. 10 of 2010 was passed by the House of Representatives, giving an opportunity to the Zanzibaris to hold referendum to ascertain the view of votes on any question or issue. The Referendum which was held on 31st July, 2010 resulted with 66.4 per cent of the voters accepting the GNU. Subsequently, the tenth amendment of the Constitution of Zanzibar of 1984 was carried out with the result of, among other things, incorporating the formation of GNU into the country's Constitution.⁶⁵³

With GNU, Zanzibaris witnessed right initiatives of reconciliation. With renewed and shared leadership, Zanzibaris celebrated the pattern of Zanzibar leadership they wished to see long ago in the political history of Zanzibar. In fact, GNU was right basis for building up a new Zanzibar with a strong foundation for prosperity and social progress; for creation of new political climate based on mutual respect; and to establish confidence in electoral institutions among the supporters of major political parties. These political reforms and policies were obviously needed to bring about necessary changes to achieve the shared goal of a more peaceful, prosperous and free nation.

However, all the hopes were badly damaged in the aftermath the 1995 general elections. Shortly thereafter the entire nullification of the October 2015 Zanzibar general elections, a political disagreement between CCM and CUF had broken out when the main opposition CUF claimed victory. It is on record that with the exception of 2010 Zanzibar elections, the opposition had never accepted the election outcome right from the first post revolution multi party elections in 1995, 2000 and 2005. Following CUF's call for a vote recount failed, ZEC went ahead conducting the fresh elections on 20th March, 2016. CCM emerged winner in the re-run, sweeping the presidency and boasting of the majority in the Zanzibar House of Representatives.

651 Ibid.

652 Chris Maina Peter, "Recent Developments in Zanzibar: From Miafaka to Maridhiano and Government of National Unity, in PETER, Chris Maina and Immi Sikand (eds). Zanzibar: The Development of the Constitution, Zanzibar, Zanzibar Legal Services Centre, 2011, pg 215; Uki, Ali, "Maridhiano and Government of National Unity: Its Impact in Elections and Constitutionalism in Tanzania", in PETER, Chris Maina and Immi Sikand (eds) Zanzibar: The Development of the Constitution, Zanzibar, Zanzibar Legal Services Centre, 2011, pg. 245. Also, Hamad, Yahya Khamis, "The Constitutional Premises of the GNU in Zanzibar", in PETER, Chris Maina and Immi Sikand (eds) Zanzibar: The Development of the Constitution, Zanzibar, Zanzibar Legal Services Centre, 2011, pg. 236.

653 Ibid.

Most significant, since in 2016, is the collapse of the Government of National Unity (GNU) between CCM and CUF in Zanzibar. The Constitution of Zanzibar of 1984 does not specify political parties to form the GNU under the prevailing circumstances, giving a breathing space to the Zanzibar President to go ahead and nominate three members of the small opposition parties to the House of Representatives and one of them was given the ministerial portfolios and the rest were appointed as the ministers' without portfolio.

The participation of small parties in the fresh elections is considered as a justification of the government in power to invite few representatives of small parties to the cabinet as one way of the application of the principle of proportional representation in constituting cabinet is concerned.

This step marked the end of the idea of formation of GNU as an instrument devised to properly handle political crisis and tensions in Zanzibar, that was mooted long ago but it was not attained until 2010. From 1995 to date, this hope passed intestate.

The participation in political life in 2017 was practised with limited restrictions to political parties. Political parties were freely enjoying their rights by participating in election campaigns and indoor political meetings. This has been observed in the Dimani by-elections whereby all political parties had access to free open campaigns whereby Dr. Mohammed Shein was the guest of honour in the CCM opening campaign and Seif Shariff Hamad was in the CUF campaign.



Picture 39: CMM's Dr. Mohamed Shein (left) and CUF's Seif Shariff Hamad (right) election campaigns in 2017

3.3.3 Conclusion and Recommendation

By way of conclusion, from all it has been discussed in this chapter, ZLSC would like to remind that lessons should remain learnt that Zanzibar's multiparty elections, going back to late colonial periods, have always featured two political camps with nearly equal numbers of supporters. Denying the losing side any voice in government leads to frustration, alienation and a bitterly contentious political climate. Also, that political tension impedes development. Political in Zanzibar damages the international reputation of Tanzania as a whole and, by discouraging tourism and investment, damages the economy.

CHAPTER 4:

ECONOMIC RIGHTS

4.0 Introduction

As it was for civil and political rights which fall under the first generations of human rights, an economic rights fall under the second generation of human rights. Economic rights include right to own property and right to work.

And since economic rights are human rights, they are rights belonging to all human beings by virtue of our humanity. That means that *all* humans have an inherent right to the resources necessary for a minimally decent life. Economic rights may mean more than that, but they surely mean at least that.⁶⁵⁴

4.1 Right to Own Property

The right to own property as sometime referred to the right to ownership, this is among the human right which is often classified as a right for natural persons on their possessions. As a human right, this kind of right is mostly referred to private property rather than owned by legal persons (i.e. corporations) and it is usually used for production rather than consumption.⁶⁵⁵

A right to property is recognized in Article 17 of the Universal Declaration of Human Rights, that requires everyone to have a right to own property alone as well as in association with others, and he shall not be deprived that right arbitrarily by no one.⁶⁵⁶

Despite this right is recognized under the Universal Declaration of Human Rights, it is not recognized in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. “Peaceful enjoyment of his possessions”, subject to the “general interest or to secure the payment of taxes”⁶⁵⁷

654 Among the many who view economic rights primarily as assuring a minimum floor are Shue (1996), Copp (1992), and Beetham (1995).

655 A. A. Berle, “Property, Production and Revolution”, 1965, Vol. 65, pp 1.

656 Article 17 of the Universal Declaration of Human Rights,

657 The European Convention on Human Rights, in Protocol 1, Article 1.

Right to own property in Tanzania is a Constitutional Right;⁶⁵⁸ however the right to own property is highly despite presence of Penal Laws that protect such right for instance the *Penal Code* protects right to property by creating offences related to property ownership for instance theft. The right to own property has been also a subject to judicial discussion in especially on land ownership.⁶⁵⁹

In Zanzibar, the right to own property is guaranteed under the Constitution of 1984. Section 17 of the Constitution guarantees protects anyone's property not to be deprived by other, except and upon compliance with some three main provided conditions, as follow:

- (a) That the acquisition and occupancy of the property is of utmost importance for defense and security of the people health requirement, town planning and any other development in the public interest;
- (b) That the need to acquire the property in question is absolutely important to the extent that it legalises its acquisition even if it be to the detriment of its owner;
- (c) That there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.⁶⁶⁰

4.1.1 Right to Acquire and Own Property

The right to acquire or own property is a right for every citizen in Zanzibar, however on its practice, this right is too often takes precedence of the people to be treated unequally and have unequal opportunities to enjoy the same.

Although there are different properties, movable and immovable, the usage of term in relation to right is often referred to the land. Right to acquire land in Zanzibar is governed under different laws. The main laws are the Constitution of Zanzibar 1984, the Land Tenure Act 1992, the Land Acquisition Decree of 1909, the Acquisition of Land (Assessment of Compensation) Decree 1949 and the Town and Country Planning Decree 1955. Section 17 of the Constitution of Zanzibar declares that the government shall not acquire any private property, which in this sense includes immovable properties, unless that the acquisition is of 'utmost importance' and 'absolutely important' to legalise acquisition of a person's property.

The concept of 'acquisition' is not perfectly described in the Constitution of Zanzibar, rather than mentioning it in relation to the private property. Again the concept is not found in the Land Tenure Act 1992 rather than being dominated with the concept of

658 Article 24, of the Constitution of United Republic of Tanzania 1977.

659 Tanzania Human Rights Report, 2015, p.130.

660 Section 17 of the Constitution of Zanzibar, 1984.

termination of a right of occupancy. Property rights, under the Land Tenure Act 1992, can be terminated only in exclusive cases with the reason being the need for national interest or the right of occupying the land contradicts the covenant.

Instead, section 56 of the Land Tenure Act 1992 provides the rule of acquisition and not the termination of property rights in general. The section creates a relationship of government and holder of a right of occupancy being brought to an end through termination. As land ownership in Zanzibar vests solely on the President, people are given a right to use land and they are termed under the Land Tenure Act 1992 as a 'holder' and not owners.⁶⁶¹

Under the confusion of the concept of acquisition and ownership of land in Zanzibar, the common ways of acquiring the land falls under one of the following: a grant from the Minister; recognition of a rightful interest following an adjudication carried out under the Land Adjudication Act and subsequent registration under the Registered Land Act; inheritance of a lawful registered interest; purchase of a lawful registered interest; or gift of a registered interest from a bona fide holder of a right of occupancy.⁶⁶²

However, to acquire the land property in Zanzibar needs one to fulfill certain legal conditions including to be a Zanzibari of over the age of eighteen and to follow the process of the acquisition including the registration of the same under the proper authorities.⁶⁶³ Since the Act provides rights to occupancy of land only to Zanzibaris over the age of eighteen years, the non Zanzibaris have no rights to own land in Zanzibar. However, non-Zanzibari can be given right to occupy and use the land on a given terms. The Act prohibits the transfer of land to non-Zanzibari and once proved somebody has transferred his rights, the Minister responsible for land shall terminate the transfer.⁶⁶⁴

Land registration is a very important factor in land administration and in securing land rights. It guarantees the acquisition and ownership of the land for individuals, legalizes transfers of land and can be used to acquire loans. However, most Zanzibaris are not aware of the land registration process and its benefits.⁶⁶⁵

The Revolutionary Government of Zanzibar has the absolute power of acquiring and ownership of land in Zanzibar, in exception to compensate on the grounds of acquiring the same for the national interests. And it is the government that grants the right to land to individual person or institution. Ownership and control can be two different matters. It is possible to own but not able to control and to be able to control but not to own. But possession is only a case to the people of Zanzibar not their government.

661 Abdul-Nasser Hikmany, *Legal Issues of Land Acquisition in Zanzibar*, Conference Paper, September 2015.

662 Section 7 of the Land Tenure Act, 1992.

663 Ibid, Section 8.

664 Tanzania Human Rights Report, 2014, p.424.

665 Zanzibar Research Agenda, 2015-2020, p.43.

The Government had declared the ownership of all land under the state by Decree No. 13 of 1965, as the same under Land Tenure Act and other related laws. From that time all land was declared public property and the government took responsibility to redistribute land among the landless in the rural area.⁶⁶⁶

Any Ministry or government office within the meaning of the 'Revolutionary Government of Zanzibar' as per section 56 of the Land Tenure Act 1992 can therefore terminate a right of occupancy on grounds of national interest. Though administration of the Land Tenure Act 1992 is upon the Minister of Lands, no specific power is given to the Ministry of Lands in regard to termination for national interest; rather, it is given to the whole government. It would be proper for the Ministry of Lands to take lead, and where any other Ministry needs to terminate a right of occupancy on grounds of national interest, it is worth to get the recommendation of the Ministry of Lands prior to a final termination order.⁶⁶⁷

Although the Constitution of Zanzibar 1984 directs the government, when it acquires the private lands for public interest, has to compensate a holder fairly and adequately,⁶⁶⁸ there exists no interpretation on what constitutes fair and adequate compensation. The Land Tenure Act 1992 declares that a holder would be compensated according to the market value and unexhausted improvements.⁶⁶⁹ Where a right of occupancy is of a grant from the Minister, then an alternative land would be given to the deprived land holder. In the case of *Attorney General v. Lohay Akonaay and Joseph*,⁶⁷⁰ the Court of Appeal of Tanzania declared that fair compensation is to be paid on unexhausted improvement and value of land. In other irregular acquisition, the government only pays what it sees necessary.⁶⁷¹

The government is constitutionally bound to compensate anyone whose interest or right of his land property has been affected for the public interest, but there are number of claims against it condemning its behavior of acquiring the land without paying the compensation to the people. Hon. Hamza Hassan Juma, the Chairman of the Standing Committee of Communication and Construction on his presentation of Committee's report before the House of Representatives, had complained to the Department of Roads Construction which is under the Ministry of Communication and Works that it has yet paid any compensation to the people neighboring the Wete - Chakechake main roads in order to enable

666 Tanzania Human Rights Report 2014, p.423.

667 Hikmany, op.cit.

668 Section 17 of the Constitution of Zanzibar, 1984.

669 Section 56 of the Land Tenure Act, 1992.

670 Court of Appeal of Tanzania, at Arusha, Civil Appeal No. 31 of 1994; reported in [1995] 2LRC 399.

671 Hikmany, op.cit.

the commencement of the construction of the main road project. The total of amount of 1,700,000,000 billion Shillings has been budgeted for the same⁶⁷² but still no one has been compensated.

The issue of compensation is sometime is misused by some people to frustrate and cheat their government. As results, the government is condemned for not compensating them while the land has been compensated for years ago. This was affirmed by the Deputy Minister of Ministry of Construction, Communication and Transportation, when he was analysing on the matter before the House of Representatives of Zanzibar.⁶⁷³

4.1.2 Conclusion and Recommendations

It takes time to build a just society in particular on rights of property. This is due to human behaviour who always fights to acquire property more and more and deprive others even if his brothers from owning and enjoying the same. The right to acquire and own property particularly land in Zanzibar faces number of challenges including the nature of the island itself. Zanzibar is small while the number of its inhabitants increasing daily, although this is not in the mind of its residents.

Everyone has the same legal right of acquiring and owning the land, but in reality, there is a great scarcity to benefit everyone. The Land laws of Zanzibar in realising the need for the right to acquire and own land, has granted everyone the right to own two grants of urban land for residential purposes,⁶⁷⁴ but in practice the matters are different. The normal citizens, particularly the poor own nothing, while the rich and some government officials do own more than two grants of urban land. The laws remain in writings while its practice cheats its people. The one of the best recommendation of the same is to execute our laws fairly and faithfully.

4.2 Right to Work

The right to work implies the opportunity and freedom of working and engages in productive employment without being deprived of such doing by any one. The right to work is important as it relates to very survival of the individual and the society in general. It is close to right to life itself and thus requires legal protection. For the right to work to be sustained, it requires that opportunities be set open so that members of the society can strive their material necessities of life. As this was held in *Augustine Masatu v. Mwanza Textile Ltd*⁶⁷⁵ that:

672 Hansard Report of the House of Representatives of Zanzibar, 1st March, 2017, p.48.

673 Hansard of the House of Representatives of Zanzibar, 21st February, 2017, p.38.

674 Section 39(1) of the Land Tenure Act, of 1992.

675 High Court of Tanzania at Mwanza, Civil CASE no. 3 of 1986, Unreported.

“For this right to exist (the right to work) in a real sense, it is necessary that economic, political and legal order of the society assure everybody who is capable of working of the possibility of participating in building his society through work in accordance with his capacity and education and the right to earn an income proportional to the quantum of his work. And so job-security is the hall-mark of the whole system.”

Article 22 of the Constitution of United Republic of Tanzania provides the right to work as follows:

- “(1) Every person has the right to work.
- (2) Every citizen is entitled to equal opportunity and right to equal terms to hold any office or discharge any function under the state authority.”

The right to work is an absolute right in Tanzania and is one which is not accompanied by a claw back clause. This right goes hand in hand with the right of every citizen to be afforded equal opportunity and with equal conditions to occupy any position in the service of the United Republic.⁶⁷⁶

Universal Declaration of Human Rights had recognized this right to everyone on his free choice to work and find employment he finds fit for running his life.⁶⁷⁷ The right to work is parallels with working on favourable conditions and not to be discriminated on his work, but importantly to have a right to equal pay for equal work.⁶⁷⁸ In order to protect his interests in relation to his employment, anyone has a right to form and join trade unions of his choice.⁶⁷⁹

Under International Covenant on Economic, Social and Cultural Rights (ICESCR) the State Parties have to recognize the right to work in their domestic legislations, which shall contain among others, the provisions that shall give everyone the opportunity to gain his living by work on his free will had accepted. The provisions that shall give everyone the appropriate steps to safeguard his right once has been violated and infringed.⁶⁸⁰

The Constitution of Zanzibar had recognized the right to work and protects it as other fundamental rights to every person, on the condition that, one to work must be eligible of working. Another condition is that, under the laws of Zanzibar is obviously that is influenced by the culture of the people of island, any illegitimate work is not counted as a legal work and therefore, it is neither protected by the Constitution nor the laws

676 Peter, C.M, (1997) Human Rights in Tanzania: Selected Cases and Materials, p.169-170.

677 UDHR, Article 23(1).

678 Ibid, Article 23(2).

679 Ibid, Article 23(4).

680 ICESCR, Article 6(1).

of the country, for instance, there are some works, including prostitution and Lottery which are not legal and thus are not recognised as the legal works in Zanzibar even if are legal to some other countries.⁶⁸¹

The right to work is a right to every Zanzibari who also is entitled to equal opportunity to participate on governance of any office of the government,⁶⁸² and having the equal opportunity to lead his private entity. The government of Zanzibar in protection the right to work had established different legislations that have protected the right of workers. The common laws relating to works are the Employment Act, No.11 of 2005; The Labour Relations Act, No.1 of 2005; The Public Service Act, No.2 of 2011; The Zanzibar Social Security Fund, Act no.2 of 2005; The Occupational Safety and Health Act, No.8 of 2005; and The Worker's Compensation Act, No.15 of 1986.

Since the government is one to implement the laws,⁶⁸³ in ensuring the law relating to works is perfectly implemented in Zanzibar, it had established a special Ministry to execute the labour related legislations in Zanzibar. The Ministry of labour, empowerment, elders, youths, women and children is vested with the duty to coordinate performance of public servants, and continue playing its core role of coordinating the implementation of labour laws, employment policy, youth employment action plan and job creation programmes.⁶⁸⁴ Furthermore, the Ministry coordinates all necessary steps in promoting jobs and employments domestically and internationally.⁶⁸⁵

4.2.1 Right to Gain Living by Work

The right to gain living by work is commonly referred as the right to earn salary or wages at the end of your work. Salary or wages is what is earned in form of periodic payment from an employer to an employee, which may be specified in an employment contract. The contract is what has been agreed between these two, whereby the employee agrees to work while the employer promises in return of the remuneration, salary or wages on the work done by the employee.⁶⁸⁶ The agreement between the employer and employee may either be oral or written,⁶⁸⁷ though the written is so common and enforced before any court of law of any country.

Gain living by work also means wages, which means earnings, which is designated or calculated, capable of being expressed in monetary terms fixed by law or by mutual

681 See section 10(7) of the Constitution of Zanzibar, 1984.

682 Ibid, Section 21(3).

683 Section 5A of the Constitution of 1984.

684 Zanzibar Human Rights Report, 2016.

685 Ibid.

686 Section 3(1) of Act No.11 of 2005.

687 Ibid.

agreement payable by virtue of a written or unwritten contract of service to an employed person for work done or to be done or for service rendered or to be rendered.⁶⁸⁸

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was ratified by General Assembly resolution 2200A (XXI) of 16 December 1966, and came into force on 3rd January 1976, the Right to work means and intended to give everyone the equal opportunity with the others to gain his living by his work done. The right to gain living by work done by employee or servant is very difficult and needs to be enforced by laws, since it obliges the employer or one who had provides his work to be done to provide income to one whom served him. That is why, the member states are not only obliged under ICESCR to recognise it but importantly to take appropriate steps to safeguard it.⁶⁸⁹

Furthermore, the member states shall ensure this right to gain living by work is absolutely known by the workers and employers of their countries by conducting various vocational guidance and training programmes; by making different policies and apply different techniques to achieve steady economic, social and cultural development. The member states shall further ensure they provide productive employments to their people under conditions of safeguarding their fundamental rights including political and economic freedoms to each.⁶⁹⁰

The Constitution of Zanzibar recognises the right to work as parallel with given salary or wages. One who works in any particular work, should be given his gain in accordance with the work done.⁶⁹¹ It is very common to find the people of Zanzibar favour to gain their living under the government employments. To them, to work under the government provides security of their works and gain for 55 years or 60 years of their age. On contrary, to serve the private sector is uneven and one is not sure of gaining living by his work, since the nature of private works are not secured compared to government.⁶⁹²

In ensuring the Public Servants gain their living by the works done, the government had increased the salaries for 2017 at different levels and grades. It is fourth time to increase salary under Hon. Dr. Ali Mohammed Shein, the seventh president of Zanzibar. The minimum wages has been increased to 100% to all Public Servants of Zanzibar. To the Private Sectors, the employers have also increased the income of their employees as ordered by the government. This has been a dream of the government to see the public servants and employees of the private sectors stabilise their gain of

688 Ibid.

689 Article 6(1) of ICESCR.

690 Ibid, Article 6(2).

691 Section 21(4) of Zanzibar Constitution, 1984.

692 Zanzibar Human Rights Report, 2016.

living.⁶⁹³

The increasing of workers' gain of living by work done is in vain if the price of the basic commodities is not controlled. The frequent increase in the prices of basic commodities that are caused, sometimes, by the fluctuation of the currency or self efforts of enrichment by the businessmen has led the life of the ordinary people to become extremely difficult. It always becomes almost impracticable for a civil servant or employee of private sector who receives minimum salary to survive with only that salary, without any additional income.⁶⁹⁴

It is common for instance to find fluctuation of the basic commodities during Ramadhan, the common fasting month for Muslims who are the majority of all people of Zanzibar. The citizen always mourn against those businessmen who find Ramadhan as their harvesting month and self enrichment, despite the government had condemned the habit and order the businessmen to stabilize the price of their commodities, particularly those preferred during the month.⁶⁹⁵

Government of Zanzibar has been working with the private sectors to ensure they amplify the wages of their employees. Since 2011, the private sectors have not increased the remuneration of their employees, but the government had ordered to increase minimum wages in 2017. Although this was hard to be implemented by all private sectors in Zanzibar, on the efforts done under the Labour Commission of Zanzibar, the number of private sectors has been well working on the government order.⁶⁹⁶

The Ministry of Labour, Empowerment, Elders, Youths, Women and Children on 2nd July 2017 had ordered the new rates of minimum wages for the employees of the private sectors, from Tsh.145,000/- to 300,000/-. The order was issued under Government Gazette as the Legal Notice No.68 that enforces the order to be effective on the 1st July, 2017.

The order was issued as per Employment Act, No.11 of 2005 that directs as follows:

“The Minister may, after the proclamation of the minimum wages by the President, by order published in the Gazette provide for the payment of the minimum wages or rates of minimum wages by employers in respect of the public or private sector, as the case may be; Provided that an employer is not

693 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

694 Zanzibar Human Rights Report, 2016.

695 Zanzibar 24, 29th May 2017. See further on <http://zanzibar24.co.tz/2017/05/29/wananchi-walalamikia-kupanda-kwa-bei-za-vyakula-katika-mwezi-huu-wa-ramadhani/>

696 Zanzibar Leo, 5th September, 2017.

prohibited from paying his or her employee or employees wages above the minimum wages or rates of minimum wages.”⁶⁹⁷

Despite the efforts made by the government on the increasing the gain for living by works done by its people, the number of natives who gain employment in particular to the professional levels in tourism industry including Hotels, is still low. It is to say, the tourism industry have more benefited the foreigners than the natives of Zanzibar. The foreigners from Europe, Asia, Kenya and Uganda are employed to the higher ranks but the Zanzibaris are mostly employed to uneducated grades with the low pay, including Clerks, gardeners, and others.⁶⁹⁸

The Employment Act of 2005 obliges any employer not to employ a foreigner except where there is no Tanzanian with the required qualification is available for the post and where the vacant position is a management position for which the employer is allowed to employ a person of his or her choice under the provisions of the Zanzibar Investment Promotion and Protection Act 2004.⁶⁹⁹ Surprisingly, the provisions remained unimplemented since there are number of qualified personnel from Zanzibar whom are not employed on the professional posts.⁷⁰⁰

In realizing the unemployment, the government has taken efforts to empower the youths and women. From 2014 to December 2017, the total of 1419 loans with value of 2.5 billion was granted to youths, women and entrepreneur groups. The total 221 of loans with values of Tsh. 569.31 million shillings were provided to 3,149 borrowers from Unguja and Pemba. The total employment opportunities 949 of government sector and 1,644 of private sector have been provided in 2017.⁷⁰¹

Despite the government’s efforts on diminishing the problem of unemployment in the country, it is yet to be resolved. The large number of graduates from national and international universities has increased. Most of these graduates always prefer to gain living from employment under the government rather than private sectors. Some university graduates move outside Zanzibar Islands in search for employment,⁷⁰² though there are other foreign professionals who come to Zanzibar and earn the employments that some can also be served by the native graduates, in particular at private sectors.

It is obvious become visible that the public and private sectors in Zanzibar cannot

697 Section 97(1) of Employment Act, No.11 of 2005.

698 See Daima Media Network, 13th July 2017.

699 Section 36(1) of Employment Act, No.11 of 2005.

700 Daima Media Network, 13th July 2017.

701 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

702 Zanzibar Human Rights Report, 2016.

absolutely solve the problem of unemployment in the country. Favouritism and nepotism seems to be the order of the day in getting employment especially in the public sector, while corruption seems to be an open gate of getting employment in particular at the private sectors. It is believed that interviews are a mere formality but not a determining factor in getting a job. Furthermore, the introduction of the General Security Office (GSO) which was intended to scrutinize the suitability of people who seek for employment in public services is allegedly used merely for serving political purposes.⁷⁰³

The Motorcycle commonly referred as *Boda boda* serve as motorcycle taxis which are used throughout Africa and beyond. The term *boda boda* is specific to East Africa, which have been presence in East African cities on the grounds of number of factors including an increasing demand for public transport, the ability to purchase motorcycles on credit, and an influx of cheap imports from Indian manufacturers like Bajaji, or Rickshaw and as the cheap imports from China. In the countries where they are present, *boda boda* can provide vital job opportunities for entrepreneurial young men who lack skills lifting their incomes and brightening their lives while at the same time resulting in an increase in road accidents and unnecessary deaths.⁷⁰⁴

The Regional Commissioner of Urban and West Region of Zanzibar, Hon. Ayoub Mahmoud prohibited *Boda boda* in Zanzibar on the ground of increasing of theft and road accidents.⁷⁰⁵ In emphasizing the same, the Planning Officer at Department of License Zanzibar, Haji Ali Zuberi in making the reference to the Road Transport Act, No.7 of 2003 had further prohibited *Boda boda* in Zanzibar and warned anyone who violates the law will be prosecuted.⁷⁰⁶

Despite the government officials have prohibited *Boda boda* to operate in Zanzibar, the practice is different; the *Boda boda* are operating in Zanzibar day and night. *Boda boda* are common to be found at almost every part in Urban West Region of Unguja, particularly at Kiembe Samaki, Mbweni, Masingini, Roundabout areas, at *daladala* stands commonly at *Matobo Mawili*-Michenzani, and they always wait for their passengers around bars and night clubs.

Boda boda are important in creating self employment to the youths, but yet are risky and a source of different criminal acts. In regarding the side of their merits, *Boda boda* riders have asked the government to change the laws and admit this kind of transport

703 Ibid.

704 https://en.wikipedia.org/wiki/Boda_boda

705 <https://lemutuz.com/2017/12/07/rc-ayoub-amaliza-ziara-kwa-kishindoapiga-marufuku-bodaboda-zanzibarafungia-ukumbi-wa-bwawani/>

706 Nipashe, 25th February, 2017.

in Zanzibar, but on the other side of its effects, the government has condemned it.⁷⁰⁷ The government has to make a wise decision on the matter by considering both sides of coin.



Picture 40: Some of Boda boda transport in Zanzibar

Although the people of Zanzibar cry against the unemployment in their country, a large number of young people who are jobless, spend most of their time at “vijiwe” or commonly called *Maskani*, playing cards, watch Televisions, speaking rumour and play other non profitable games. This on the other hands encourages youth to engage in criminal acts and use narcotic drugs. It is time for government to take responsibility by introducing centres where young people can employ themselves and hence to rescue this young generation from total collapse.⁷⁰⁸

4.2.2 Right to Just and Favourable Working Conditions

The right to work goes together with working on favourable conditions. The right to just and favourable conditions of work is applied to all workers in all types regardless of their gender, colour, age; nature of formal and informal sectors, foreign and native workers, workers from ethnic and other minorities, self-employed workers, agricultural workers, refugee workers and unpaid workers.⁷⁰⁹

707 Ibid.

708 Zanzibar Human Rights Report, 2016.

709 <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work>

The International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizes the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, the following:

(a) Remuneration which provides all workers, as a minimum, with:

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”⁷¹⁰

The right to remuneration, wages and salary as per Article 7(a)(i) of ICESCR has been exhausted above on analyzing the right to gain living by work and therefore, there is still need to analyse the rest from Article 7(b)(c) and (d).

Establishing a safe and healthful working condition requires every employer, government or private and every worker to make safety and health a top priority. A country may establish a Committee, Agency or at any name to deal with matters relating to safe and healthy working conditions in their country. For example, United States of America had established Occupational Safety and Health Administration (OSHA) as an agency of the United States Department of Labour under the Occupational Safety and Health Act to ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by provide training, outreach and other education programmes to help the workers and their employers understand and taking care on safe and healthful working environment.⁷¹¹

The Occupational Safety and Health Authority (OSHA) of Tanzania is the Government Executive Agency established by the Executive Agencies Act, No.30 of 1997 to (among others) advise the government on all matters related to occupational safety and health activities in Tanzania mainland by enforcing the Occupational Safety and Health Act No.5 of 2003.

710 Article 7 of ICESCR.

711 https://en.wikipedia.org/wiki/Occupational_Safety_and_Health_Administration

In Zanzibar, the Occupational Safety and Health Committee has been established to hear and determine any complaints from decisions on safety and health condition on workplaces⁷¹² as made by the Director who is also the Chief Inspector of workplaces.⁷¹³ Any employer has a duty to protect his workers from injury and illness on the workplace; however this is hard to be done voluntarily without legislation. To cure on the ground of accidents and injuries is more expensive and many workers are not affording the costs. Furthermore, many employers are reluctant to care their workers but Occupational Safety and Health Committee or the Occupational Safety and Health Administration (OSHA) can help.⁷¹⁴

On the other hands, accidents, fatalities and ill-health which result from work can be prevented through management systems which rely on controlling the hazards and risks in the workplace. It is a shared responsibility, calling for governments' vision and commitment and an active role by employers and workers in the improvement of working conditions. This includes the value we place on being safe and healthy.

Occupational health should aim at promoting and maintaining the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize, the adaptation of work to man and of each man to his job.⁷¹⁵

Despite the government of Zanzibar recognizes the right to work to everyone, there are still challenges on the working conditions that affect the worker's safety. The public servants and employees of the private sectors do suffer bad working conditions on their workplaces. Many public servants work in the old and dangerous buildings at Stone Town of Zanzibar. However the government tries to build new office buildings at Mazizini and other parts in Unguja and Pemba, working in the old and corroded buildings at Stone town and other areas, does endanger the health and safety of the public servants.

There are some workers in Zanzibar perform their duties without wearing the safety gloves, rain boot and other safe equipments; there are some workers get accidents while performing their duties and others get injuries and become disabled on working under dangerous and unhealthy working conditions.⁷¹⁶

712 Section 13(1) of the Occupational Safety and Health Act, No.8 of 2005.

713 Ibid, section 3.

714 <https://www.mbda.gov/news/blog/2012/05/establishing-safe-and-healthy-working-environment>

715 ILO, (2009) Health and life at work: A basic human rights p.4.

716 Zanzibar Leo, 23rd February, 2017.

Part IV of the Occupational Safety and Health Act, No.8 of 2005 of Zanzibar provides safety, health and welfare provisions that obligated the employer to provide for health, safety and welfare for all his workers and ensure that anyone who intentionally or recklessly interferes with or misuse anything provided in the interests of them commits an offence.⁷¹⁷ In order to protect his employees' safety and health, the buildings and other premises that these workers gather to perform their duties, have to be built as sound and kept in a good state of repair that every worker is protected from the weather that absolutely affects his health. The buildings or offices have to be built with water-tight roof to enable the employee escaping from any danger if happens in his workplace. The building exactly should be good and healthy to protect health and welfare of the workers. And have to be constructed that the workers with disability of any kind, shall easily access them.⁷¹⁸

The employers have to provide information, instruction and training to the workers to enable them having the adequate knowledge of maintaining safe and healthy workplace. If, for instance an employee has been assigned to work on machines or at any process, but upon working of that machine or process is likely to cause bodily injury or injury to health of that employee, then the said employee have to be trained and dully instructed on the dangers likely to arise in connection with the process or machine.⁷¹⁹

Every employer has to provide and maintain safety devices in every workplace. The workers should use and being capable to use those devices to be safe from radiations, irritants, hazardous machinery and equipments, or harmful animals and insects, or infectious agents or allergies, or hazardous chemicals; or hazardous environments while doing their works.⁷²⁰

Employer must also ensure proper cleanliness; supply of clean and safe drinking water⁷²¹; sufficient and suitable sanitary conveniences; adequate washing facilities; accommodation for clothing; first aid facilities; and suitable seating at rest time.⁷²² Preventive and protective measures should be taken after proper risk assessment (at least once a year) to ensure that all chemicals, machinery, equipment, tools and processes are safe and without risk to health and comply with the requirements of safety and health provisions in this Act.⁷²³

717 Section 55 of Act No.8 of 2005.

718 Ibid, section 27(1).

719 Ibid, section 68(1).

720 Ibid, section 61.

721 Ibid, section 28.

722 Ibid, section 32.

723 Ibid, section 34.

4.2.3 Conclusion and Recommendations

The phrase “right to work” can be misleading. Just as the “right to health” cannot guarantee every person to be healthy, the right to work cannot guarantee all people of working age a job. No government can realistically guarantee such a right. Instead, the “right to work” encompasses the right of all people to the opportunity to earn a living by freely choosing or accepting work, and to undertake that work in safe and favourable working conditions. This meant to all youths of Zanzibar to rethink on entrepreneurship and shaping their minds from depending on government jobs. Youths should use their time and other resources to benefit from the present opportunities, despite not being employed by the government or private sectors.

Many people especially youth, who are capable of working, should attempt to engage in private and entrepreneurial projects where they can create their own jobs or become self-employed. To remain with the mindset that the government can serve all youth with employment, is truly a day dream. Despite Zanzibar being bestowed with lot of opportunities for jobs, including surrounding sea and fertile land, the majority of youth allure to be employed by the government or at least have white collar jobs, while they have no more time to wait for lunch from the sky.

Furthermore, there has been a long time lamentation against the strangers who hold the higher posts at tourism and other sectors in Zanzibar, but the sme are not held by the Zanzibaris. To cure this, it is hereby recommended to Zanzibar youth to upgrade their professions and work hard in foreign languages to enable them acquire and having the capacity to lead the posts. Cry without working hard can do nothing as equal to nepotism and corruption help nothing in upgrading the welfare of the people.⁷²⁴

724 Zanzibar 24, 10th June 2017.

CHAPTER 5:

SOCIAL AND CULTURAL RIGHTS

5.0 Introduction

These are human rights, such as the right to education, right to housing, right to adequate standard of living, right to health and the right to science and culture. Social and Cultural rights are recognized and protected in the International and Regional human rights instruments.

The Universal Declaration on Human Rights (UDHR) recognizes number of social and cultural rights⁷²⁵ and the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal source of social and cultural rights.⁷²⁶ The Convention on the Rights of the Child⁷²⁷ and the Convention on the Elimination of All Forms of Discrimination Against Women recognizes and protects many of the social and cultural rights recognized in the ICESCR in relation to the children and women.⁷²⁸

The Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination on the basis of racial or ethnic origin in relation to a number of social and cultural rights.⁷²⁹ The Convention of the Rights of Persons with Disabilities also prohibits all discrimination on the basis of the disability including refusal of the reasonable accommodation relating to full enjoyment of social and cultural rights.⁷³⁰

5.1 Right to Education

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to education as a right to free compulsory primary education for all. It is an obligation to develop secondary education accessible to all, in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction

725 Article 22 of UDHR.

726 Article 3 and 6 of ICESCR.

727 Article 4 of the Convention on the Rights of the Child.

728 See Convention on the Elimination of All Forms of Discrimination Against Women.

729 Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination, 1965.

730 Article 4(2) of the Convention of the Rights of Persons with Disabilities.

of free higher education.⁷³¹ Education is said to be a key of life. This implies among others that, it is education the key in the fight and protection of one's right because it gives people the ability to be aware of their rights.⁷³²

In spite of this right to be internationally recognized under the international instruments, it is neither directly mentioned in the Constitution of United Republic of Tanzania nor the Constitution of Zanzibar of 1984. Instead, it is indirectly mentioned under section 10(f) of the Zanzibar Constitution as a political objective of the Revolutionary Government of Zanzibar. The section is read:

“For the purposes of promoting unity and development of the people and social welfare in the country, it shall be the responsibility of the Revolutionary Government of Zanzibar to ensure:

(f) that every person has access to adequate health care, equal opportunity to adequate education for all and that Zanzibar culture is protected enhanced and promoted.”

Therefore, the above said provision of the Constitution of Zanzibar enforces the government to ensure it create the equal opportunity to all persons to adequate education in Zanzibar. The right to education is provided for under the Education Act of 1982⁷³³ which provides for free and compulsory education.⁷³⁴ The Education Act provides for obligation on the part of parents or guardians to ensure that the child regularly attends school until he or she completes the basic education. Basic education is defined to mean basic primary and junior secondary which every child in Zanzibar is entitled to be provided with.⁷³⁵

Zanzibar still adopts the policy of free education for all, as one of the token of protecting the Revolution of 1964. Under this policy, every eligible child is enrolled and attending school, and that the children are entitled under Government commitment to be provided with quality and relevant education and with equal educational opportunities. Under the Zanzibar education system, there are 12 years of compulsory education to everyone, from nursery education to Form II as secondary education. On the other hands, 12 years of compulsory education in Zanzibar encompasses two years of nursery education, six years of primary education and four years of secondary schooling.⁷³⁶

731 Article 13(1) and (2) of the ICESCR, 1966.

732 Zanzibar Human Rights Report, 2016.

733 Act No. 6 of 1982.

734 Section 19 of Act No. 6 of 1982.

735 Ibid, Section 20 (1-2).

736 Revolutionary Government of Zanzibar, Zanzibar Education Policy 2006.

5.1.1 Right to Access Education

Right to access education to all Zanzibaris had been an immediate goal soon after the 1964 Revolution. It just took only seven months after January Revolution that the Government of Zanzibar had officially declared free education for all, regardless of race, colour, ethnicity and gender. From that declaration, Zanzibar has been attaching a significant importance to education as a tool to self-sufficiency in technical manpower and to the general national development. In this regard the education system has since then been expanding in its scope and objectives.⁷³⁷

In striving education is accessed for all in Zanzibar, the government under the Ministry of Education had adopted the Education Policy in 2006. It was a new education policy that ever developed since revolution of 1964 and still survives today. In the development of such policy, the Ministry involved all stakeholders responsible for education in the country, including government bodies, private sectors, Non-Government Organizations (NGOs), Community Based Organizations (CBOs), development partners and the community at large. The said involvement aimed at making those partners having the ownership of the Education Policy and enhances cooperation in reforming the education system of the country.⁷³⁸

The said Policy among others had developed several education reforms in Zanzibar, with the main intention of ensuring that education is accessed for all. Among the common reforms therefore, was extending the basic education from 10 years to 12 years, with pre-primary education being part of basic education; The number of pre-primary years was reduced from three to two, with entry age at 4 years, and reducing primary education from seven to six years and entry age at 6 years. Thus, the structure of formal education system in Zanzibar was revised to 2-6-4-2-3+, i.e. 2 years of pre-primary education, 6 years of primary education, 4 years of secondary education, 2 years of higher secondary education and 3 years or more of university education.⁷³⁹

The policy also recommended English to be used as the language of instruction beginning at primary 5 and Kiswahili to continue as the medium of instruction in public pre-primary and primary schools except for Mathematics, General Science and Social Sciences. English language is very vital in Zanzibar education yet many teachers and students in secondary schools lack adequate English proficiency required for teaching and learning purposes. While secondary students who have learned and used English as medium of instruction for many years still have not mastered that

737 Ministry of Education and Vocational Training, (2014) Education For All Assessment 2001-2013, Zanzibar.

738 Madina M. Mwinyi, et al, (2016) SACMEQ IV Report Zanzibar, p.5.

739 Ibid.

language.⁷⁴⁰

The policy had strengthened education inspection as autonomous monitoring and therefore the former Department of Education Inspectorate was renamed as the Office of the Chief Inspector of Schools (OCIS). The policy had further established the Zanzibar Examination Council which among other was endorsed with the responsibility of assessing education achievement at primary and lower secondary levels. The policy had further established the Zanzibar Institute of Education (ZIE) which was assigned the responsibility of ensuring curriculum review and the development and all other reforms related to curriculum change.⁷⁴¹

The President of Zanzibar and Chairman of the Revolutionary Council had praised the achievements of accessing education for all Zanzibaris for 54 years since revolution of 1964, that the education facilities for Zanzibaris have been prospered if it is compared before revolution. The Primary schools have been enhanced seven times, fifty three times for secondary schools and the number of students for primary and secondary schools have increased fourteen times, from the total number of students 25,372 in 1963 to 378,211 in 2017. And all Zanzibaris have an access to enter secondary schools and achieve the higher education, the golden opportunity that they had not enjoyed before revolution.

In enhancing the right to access education for all, for 2017 the government had commenced construction of nine storey building secondary schools for Unguja and Pemba. The government further deals with the purchase of school desks for all schools of Unguja and Pemba, by donating the funds and therefore, it expects the problem will be reduced in future. It is expected from July 2018, the government aims to strengthen the it policy of free education for primary and secondary schools to maintain the objective of Zanzibar Revolution of 1964.⁷⁴²

5.1.2 Right to Quality Education

It might be difficult to have the precise definition of what does quality mean in the context of education, yet there are many definitions, testifying to the complexity and multifaceted nature of the concept. The terms efficiency, effectiveness, equity and quality have often been used synonymously. However according to UNICEF quality education includes:⁷⁴³

740 Haroun Ayoub, (2015) The Replacement of Swahili Medium of Instruction by English from Grade 5 in Zanzibar: from Complementary to Contradictory, p.46

741 Ibid p.6.

742 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

743 UNICEF, (2000) Defining Quality in Education, A paper presented for the International

- Learners who are healthy, well-nourished and ready to participate and learn, and supported in learning by their families and communities;
- Environments that are healthy, safe, protective and gender-sensitive, and provides adequate resources and facilities;
- Content that is reflected in relevant curricula and materials for the acquisition of basic skills, especially in the areas of literacy, numeracy and skills for life, and knowledge in such areas as gender, health, nutrition, HIV/AIDS prevention and peace;
- Processes through which trained teachers use child-centred teaching approaches in well-managed classrooms and schools and skilful assessment to facilitate learning and reduce disparities;
- Outcomes that encompass knowledge, skills and attitudes, and are linked to national goals for education and positive participation in society.

Therefore, right to education is not only the right to access education but also the right to receive an education of good quality. Education must be available and accessible but also acceptable and adaptable.⁷⁴⁴

According to international law, everyone has the right to receive an education of good quality. Zanzibar on its own has to ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent.⁷⁴⁵

In addition, the government of Zanzibar is obliged to adopt minimum educational standards to ensure that all schools, public and private, offer the same quality education.⁷⁴⁶ Quality education has to be the same for boys and girls.⁷⁴⁷

One of the common problems facing the quality of education in Zanzibar is inadequate of the professional and competent teachers, in particular for science and mathematics subjects. This had forced the government of Zanzibar to continue their engagement with the Nigerian government in admitting the volunteer teachers from Nigeria to come and teach in Zanzibar. In the year 2017, 14 teachers from Nigeria are still teaching in Zanzibar and the Government expecting more teachers to come in 2018.⁷⁴⁸

Working Group on Education Florence, Italy, p.4.

744 Ibid.

745 Article 4(b), UNESCO Convention against Discrimination in Education, 1960)

746 Article 13, ICESCR, 1966.

747 Article 2, UNESCO Convention against Discrimination in Education, 1960.

748 Hansard Report of the House of Representatives, Zanzibar 16th February, 2017, p.17.

Furthermore, the Government has employed 324 teachers between January and September 2017 intends to employ 700 employees which include 258 teachers, 200 librarians, 200 laboratory technicians and 42 other officers in the sector in 2017/2018.⁷⁴⁹

The Ministry of Education and Vocational Training of Zanzibar had declared the examination results for Standard VI, Standard VII and Form II that had better performance compared to the last years. Hon. Riziki Pemba Juma, the Minister of Education and Vocational Training had affirmed the total examined students 34,458 had passed their exams of Form II out of whom Ladies are 20,793 and boys are 13,665 that the performance had increased for 3.88% if compared to the examinees 17,581, equal to 70.1% for 2016.⁷⁵⁰

It is very vital to balance the quality of education of primary and secondary education examined in Zanzibar (from Standard I to Form II) and the quality of education of Ordinary Secondary School and Advanced schools. Since the higher education is a Union matter,⁷⁵¹ the schools of Zanzibar always get lower positions of the national examination results for years now. For 2017 for instance, subject to the declaration of the national examination results for Form IV, had augmented several accusations and lamentations against the quality of education provided in the government and private schools of Zanzibar.

Some people are on the opinion that, the failure of Zanzibar schools in the final national examinations for Form IV and Form VI, justify that the education provided by Zanzibar schools is in low quality compared to what is provided by the secondary schools of Tanzania Mainland. For 2017 in particular, Zanzibar schools have been fell down to 10 worst failed schools over all schools of Tanzania. Shockingly Zanzibar had six schools out of 10 worst failed schools in the national examination results of 2017.⁷⁵²

749 Hansard Report of the House of Representatives, Zanzibar 11th October, 2017, p.7.

750 <http://zanzibar24.co.tz/2018/01/29/matokeo-ya-mitihani-zanzibar-wanafunzi-wa-kike-vinara/>,(accessed on 29/01/2018).

751 Article 4(3) of the Constitution of the United Republic of Tanzania, 1977.

752 <http://www.zanzibarleo.co.tz/2018/02/20/mikutano-ya-wema-zatu-itatu-changamoto-za-elimu/>, (accessed on 20/02/2018).



Picture 41: Zanzibar Girls Students sitting for their exam

In realizing the matter, Hon. Jaku Hashim Ayoub, a Member of the House of Representatives from Muyuni Constituency, had put question asking the quality of Zanzibar education in relation to the failure to the top least of all schools of Tanzania. The Member wanted to know the grounds led the failure of Zanzibar school in the national examination for Form IV and Form VI. Despite the Ministry of Education and Vocational Training of Zanzibar denied the drop down of quality of Zanzibar education provided by its schools, had agreed on the fact and therefore provided the following main grounds; the lack of professional teachers in particular for the science subjects and mathematics; the lack of teaching tools including laboratory equipments; in-conducive learning environment in most of the government schools, the existence of two contrary teaching schemes of primary and secondary schools between the schools of Zanzibar and those of Tanzania Mainland.⁷⁵³

5.1.3 Conclusion and Recommendations

Right to access education should not be a conclusive effort of the government to achieve it to its people, but the quality of education is to be a great concern. Zanzibar government had improved in building schools, primary and secondary that the children and youths of Zanzibar have got a chance to access their right to education as the citizens of the country. Yet the more efforts should be directed to quality of their education to enable them being competitive experts in East African countries and world at large.

753 Hansard Reports of the House of Representatives of Zanzibar. 15th February, 2017, p.21.

One of the best ways of improving the quality of education of any country is to improve the life standard of the teachers who toil their time and efforts in preparing their students. Having good teachers and qualified in their professions, is having the qualified students who later on become the good leaders, engineers, lawyers, and other professions. To improve the quality of education of Zanzibar is to advance the life standards of the school teachers.

Zanzibar Government had made its efforts, but that is not enough. It had increased the monthly salary of school teachers, but still there are many problems facing their life. The life of teachers in Zanzibar is as if a voluntary profession, as a charity and choosing to be a teacher is choosing being poor for life. This is not supposed to continue, and can be changed by government, parents and society at large.

5.2 Right to Health

The right to health is the economic, social and cultural right to a universal minimum standard of health to which all individuals are entitled. The concept of a right to health has been enumerated in international agreements which include the Universal Declaration of Human Rights,⁷⁵⁴ International Covenant on Economic, Social and Cultural Rights⁷⁵⁵ and the Convention on the Rights of Persons with Disabilities.⁷⁵⁶

The Right to health was firstly mentioned in the preamble to the Constitution of the World Health Organisation where it is provided as ‘a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of all human beings without distinction to race, colour, and religion.’⁷⁵⁷

This right has also been provided under Article 25 of the Universal Declaration of Human Rights as “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”.⁷⁵⁸

Furthermore, Article 12(1) of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2) also lays down broad guidelines regarding the necessary steps to be taken by the member states in order to achieve the full realisation of this right. Other UN treaties that directly tackle the right to health include the Convention on the Rights of the

754 Article 25(1) of UDHR.

755 Article 12(1) of ICESCR.

756 Article 25 of CRPD.

757 Zanzibar Human Rights Report, 2016.

758 Article 25(1) of the Universal Declaration of Human Rights 1948.

Child (CRC),⁷⁵⁹ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁷⁶⁰ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁷⁶¹

In addition to the above mentioned instruments, there are others whose provisions indirectly or implicitly impact on the right to health. A good example is the International Covenant on Civil and Political Rights (ICCPR), Article 6(1) which guarantees the right to life and Article 7 which prohibits medical or scientific experimentation on anyone without his free consent.

The African Charter on Human and People's Rights imposes an obligation on states parties to provide health care to their nationals. It provides that:

“Every individual has the right to enjoy the highest attainable state of physical and mental health”.⁷⁶²

The Charter obliges state parties to take necessary measures to protect the health of their people and to ensure that they receive medical treatment when they are sick.⁷⁶³

Upon reading sub article(1) and (2) of Article 16 of the African Charter as provided above, one finds both suggest the state parties to provide health care services to their people at all times. But this should be understood clearly that, the right to health does not mean the right to be healthy as such, but embodies an obligation on the part of the government to create the conditions necessary for individuals to achieve their optimal health status.⁷⁶⁴

Zanzibar Constitution of 1984 had recognized the right to health as one of political objectives of the Revolutionary Government of Zanzibar that is aimed at sustaining development of the people and social welfare in the country. In spite of the right to health is not directly mentioned as other fundamental rights recognized under Chapter III of the Constitution, it does not mean the right to the health is not respected in the laws of the country and is not enforced. Instead the government of Zanzibar must direct its policy toward ensuring that every person has access to adequate health care in the country.⁷⁶⁵

759 Article 24, Convention on the Rights of the Child (CRC).

760 Article 12 CEDAW.

761 Ibid.

762 Article 16(1) of the African Charter on Human and People's Rights 1981.

763 Article 16 (2) of the African Charter on Human and People's Rights.

764 Zanzibar Human Rights Report, 2016.

765 Section 10(f) of the Zanzibar Constitution, 1984.

5.2.1 Right to Access Health Services

It is a duty of any government to ensure that health services are functional and are available in sufficient quality. That is, there should be, for instance, adequate well motivated human resources and that health care facilities, goods and services are accessible to everyone.⁷⁶⁶

Over the past decade, access to health services has improved in Zanzibar, especially in urban areas where private-sector involvement in provision of health services has developed. In rural areas, however, inadequate medicine supplies and too few skilled health providers continue to plague the country's health sector. Improvement in health requires the greater support of the government and since it a cross-cutting issue, there is a need of cooperation and coordination, especially between the Ministries of Education and Culture; Agriculture and Food Security; Water; and Community Development, Women, and Children, as well as nongovernmental organizations.⁷⁶⁷

Zanzibar island's main public hospital is Mnazi Mmoja General Hospital. Mnazi Mmoja is now the referral hospital⁷⁶⁸ in Zanzibar and is established under Act. No.3 of 2016 as the Government Agency.⁷⁶⁹ The Hospital performs its functions under the advice of the Hospital Advisory Board and the supervision of the Minister of health.⁷⁷⁰ Administration of the Hospital is under the Executive Director who apart from Mnazi Mmoja, he also administrate other hospitals in Zanzibar, including Muembeladu Maternity Hospital and Kidongo Chekundu Hospital.⁷⁷¹

During the island's revolutionary heyday Mnazi Mmoja was called the Lenin hospital, but this title has now been changed. Like many hospitals in developing countries, the staffs are dedicated but the wards of the old building are badly under-funded, under-supplied and in very poor condition. But this does not mean to the new buildings which are in good conditions and well-founded and furnished.

Mnazi Mmoja has been built with several buildings and multifunctional departments. The new buildings have been well furnished and good enough to serve the patients with several treatment equipments, but there are old buildings with old wards which some have been renovated but others still are bad and not hygienic to the patients and their people. The services provided under this hospital found as the last and the best, however some of the patients are transferred to Muhimbili National Hospital of

766 Kinney, E (2001) The international human right to health.

767 Melissa Thaxton, Integrating Population, Health, And Environment In Tanzania, p.4.

768 Section 4(1)(a) of Act No.3 of 2016.

769 Ibid, Section 3(1).

770 Ibid, Section 3(2).

771 Budget Speech for the Ministry of Health, 2017/2018, p.48-49.

Tanzania Mainland, Apollo and other Hospitals of India, Israel and other countries since the services provided by Mnazi Mmoja referral hospital are not enough.⁷⁷²

The government still expands its efforts of enhancing health services in Zanzibar. In implementing Zanzibar Health Policy of 2014 and the main purpose of 1964 revolution, the government keeps on providing free health services to its people. At time present, there are 12 government hospitals out of 5 and 158 clinics out of 36 that existed before revolution of 1964. The government further uses its Special Departments to provide health services to its people.

Despite its efforts in extending its health services, the Zanzibar government hospitals and its clinics lack the adequate professional doctors and other professional health experts. For instance it was reported by the Deputy Minister of Health in the House of Representatives seating that there are only 33 professional doctors of different specialization in Zanzibar.⁷⁷³ For example there is only one doctor who has specialized in skin diseases and that doctor usually has its clinic scheduled on every Wednesday, where he treats from 50 to 90 patients per day.⁷⁷⁴ Professionally this number of patient is more than the average number of patients a doctor should examine. Though the minister explained that they are making efforts to encourage other doctors to specialize in their masters degrees in different medical specialization, she further explained that the ministry has sponsored 3 doctors who are specializing in skin and once they complete their masters degree they will be distributed in Unguja and Pemba. This still makes the number of skin specialists to be very low in ration of Zanzibar population which is about 1.3 million. The government needs to put more effort to make sure that Zanzibar has more specialists.

However, it was alleged in the March 2017 in the seating of the House of Representatives that one doctor serves 8592 patients compared to the last year that a doctor was serving 9000 patients.⁷⁷⁵ Maternal mortality had decreased from 237/100,000 for 2016 to 195/100,000 in 2017. Infant mortality rate had decreased to 54/1,000 from 2010/2011 to 43/1,000 for 2016/2017.⁷⁷⁶

Furthermore, in minimizing this problem, the government increases employment of these professionals from different universities and colleges.⁷⁷⁷ The government also trains its health care experts annually; that for 2017 it had trained 46 medical doctors

772 Hansard Report of the House of Representatives of Zanzibar, 1st March 2017, p.23.

773 Hansard Report of the House of Representatives of Zanzibar, 11th October 2017, p.24.

774 Ibid.

775 Zanzibar Human Rights Report, 2016.

776 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

777 Hansard Reports of the Representatives of Zanzibar, 17th February, 2017, p.46.

for Master Degree, and 340 for the First Degree out of whom 195 are taking their studies at State University of Zanzibar (SUZA) and 1,416 taking their first Degree and Diploma in and outside Zanzibar.⁷⁷⁸

The non communicable diseases have been increasing. In combating against the same, the Ministry of Health had increased the government clinics from 8 in 2012 to 49 for 2016. The main purpose of such doing was to keep near the health services to the people. The Ministry had bought nine different types of inspection apparatuses for non communicable diseases and had supplied them to those forty nine clinics. The Ministry had trained 200 staff from new and old government clinics on how to observe the non communicable diseases in Zanzibar. The Ministry also provides public awareness on how to protect themselves from those diseases and build self health check culture.⁷⁷⁹

The Ministry further encourages the public to build culture of having self exercise, concentrate on balanced diet and avoid all types of tobacco usage and liquor. The number of Zanzibaris who do not make self exercise is 18%(amongst the interviewees) subject to the Ministry of Health Research of 2011, while the only 2% eat balanced diet and the tobacco users are 7.3% and liquor is 1.7%. Despite the efforts made to combat the non communicable diseases in Zanzibar, the Ministry has no capacity to curb the same if the people themselves are not ready in making exercise and avoid three above mentioned factors.⁷⁸⁰

The government of Zanzibar has yet established Health Insurance to its Public Servants, despite some of them work under hard and dangerous working conditions. The Minister of Health on his submission of the budget speech before the House of Representatives of Zanzibar had insisted that his Ministry is in the final process to complete the establishment of the Health Insurance in Zanzibar.⁷⁸¹

The government for several years is expecting to establish its own health insurance under Zanzibar Social Security Funds in cooperation with the Ministry of Health, but this still plan has been executed yet. As results, some of its institutions in particular the Independent Institutions, including the Office of Audit General, the Office of the House of Representatives of Zanzibar and others had joined with some National Health Insurance Fund (NHIF) operating under the government of the United Republic of Tanzania. To enable the staffs of these Institutions enjoy the insurance, they have to contribute 100% from their monthly salary.⁷⁸²

778 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

779 Hansard Report of the House of Representatives of Zanzibar, 1st March 2017, p.23.

780 Iibid.

781 Budget Speech for the Ministry of Health, 2017/2018, p.70.

782 Hansard Report of the House of Representatives of Zanzibar, 3rd October 2017, p.89.

Apart from the Public Servants, majority of workers in Zanzibar work and live without having access to occupational health services, including that Health Insurance. The employees have to serve themselves from their own income, while their employers benefit from their labour works. Working in Zanzibar whether formal or informal, paid or unpaid plays a central role in the lives of people of Zanzibar as the same across the world. Through work, women and men define themselves and their roles in society. Yet while many jobs provide both income and personal satisfaction, they may also pose hazards and risks to health and safety.

This situation exists in spite of the fact that several authoritative bodies, including the International Labour Organization (ILO), the World Health Organization (WHO) and numerous professional organizations and the organizations of workers have, already for several decades, emphasized the need for occupational health services to all workers. The Revolutionary Government of Zanzibar emphasizes that accessibility to health care is a fundamental human right that must be available to all citizens. However, the coverage of occupational services, i.e. the proportion of workers and workplaces with access to services, is today diminishing rather than expanding.⁷⁸³

In Zanzibar, there is no national or designated occupational safety and health laboratory for carrying out analytical or assessment work related to determination of workers' exposures to various occupational hazards. There are currently no laboratory services for chemical analysis and other occupational safety and health diagnostic procedures such lung function testing. Again, there is currently no designated research institute dealing with occupational safety and health research activities. However, students from institutions of higher learning such State University of Zanzibar, Karume Institute of Science and Technology, Colleges of Health Sciences do conduct research projects in areas of occupational safety and health as a part of the academic requirements for their diplomas and degrees.⁷⁸⁴

5.2.2 Right to Quality Health Services

Right to access to comprehensive, quality health care services is important for promoting and maintaining health, preventing and managing disease, reducing unnecessary disability and premature death, and achieving health equity for all people of Zanzibar. The Zanzibar Vision's healthy policy emphasizes the provision of basic health services for all the people without discrimination. Priority is given to preventive services, combating epidemics, special maternal and child care services

783 International Labour Office, Geneva Ministry responsible for Labour, Economic Empowerment and Cooperatives (2013), Profile on Occupational Safety and Health in Zanzibar, p.27.

784 Ibid, p.29.

and the dissemination of health education for all.⁷⁸⁵

Through Vision 2020, the government of Zanzibar had aimed at attaining the paramount quality health services to its people by implementing several provided goals including raising the health and nutritional standard of the Zanzibar Community generally and specifically for women and children; enhancing efficient provision of health services together with careful utilization of the meager resources available; providing standard basic health services for all within community vicinities; promoting safe delivery system, planned motherhood and child survival; giving priority on the provision of child immunization and others.⁷⁸⁶

The fight against Malaria has been a long time propaganda organized by the Ministry of Health of Zanzibar. The fight has been for years successful that by 2017, Zanzibar has experience less than 1% of Malaria in the country, the success that is hardly achieved by the affected countries. In opening the propagating day against Malaria, Director of Cure and Health Awareness, Dr. Fadhil Abdalla, said the achievement was the result of cooperation with different organizations and other stakeholders. For years now, Zanzibar has been fumigating anti Malaria bacteria through households and thus has achieved the goal of anti Malaria program in the country. The anti Malaria fight also achieved on the increasing the make use of the mosquitoes nets that have been provided to the people. The use of the said nets intended to increase to 82% as intended by World Health Organization while and up to November 2017, the people who have been using the same was 57%.⁷⁸⁷



Picture 42: Participants of Anti Malaria campaigns at Workshop organized at Anti Malaria Control Unit, Mwanakwerekwe Zanzibar

785 Zanzibar Vision 2020.

786 Ibid.

787 Zanzibar 24, 24th November 2017.

The right to quality of health services in Zanzibar is among the main goal of the government and it had been in day to day efforts to achieve it. The Chairman of the Social Welfare Standing Committee of the House of Representatives of Zanzibar which among others has the duty to oversight the Ministry of Health of the country has applauded the quality of health services provided by the health centers in Pemba. However, there are common problems facing these centers that they hardly provide the quality services to the people. The shortage of funds has been mentioned as among the enormous challenge facing these centers⁷⁸⁸ that accelerating the shortage of operational apparatuses. Having the mere buildings of health centers therefore, is one step towards achieving health quality but make them operating and providing the intended services in the best quality is one among the common challenges that among others is caused by the above mentioned reasons.⁷⁸⁹

The admission of the private hospitals in Zanzibar is among the way of escalating the quality of health services in Zanzibar. The private hospitals have been supporting the government hospitals in Zanzibar for more than decade. However, there are some disloyal doctors who have either established some of these private hospitals or have been part timely engaged to serve them apart from their main employment at Mnazi Mmoja referral hospital. These doctors and other medical practitioners have been spent more time to serve at private hospitals than at government hospitals. The situation that sounds the quality of health services provided by these private hospitals is better rather than what is provided under the government hospitals.⁷⁹⁰

The quality of health service provided under the private hospitals though good and supportive to the people of Zanzibar, some of private hospitals have behaved as the centres for money making rather than services providers. This became among the common problem that the poor people of Zanzibar do suffer. Some of private hospitals in Zanzibar and some time is caused by number of reasons, including that being highly taxed by the government, have become the centres of making business rather than providing services.⁷⁹¹

5.2.3 Conclusion and Recommendations

Despite the efforts taken by the government of Zanzibar, the health sector faces many challenges, including the shortage of human resources for health which sternly hampers the implementation of health activities at all levels, which vehemently affect the providing of the quality of health services in Zanzibar. The government had increased its efforts of building hospital buildings, yet there is shortage of staff accommodation

788 Hansards Report of the House of Representatives of Zanzibar, p.24.

789 Ibid, p.25.

790 Ibid, p. 26.

791 Ibid, p.27.

at rural health clinics and hospitals that hinders adequate distribution of staff especially in remote areas. All of these impediments have nothing step forwards, except the availability of funds. However, the government funding continues to be inadequate, inconsistently disbursed, and actual releases fall short of budget expectations. The government has to pull up its socks in increasing the budget of Ministry of Health, but the more efforts should be taken by the proper authority in ensuring the funds available within the Ministry, are properly expended.

5.3 Right to Water

Water is the essence of life. Safe drinking water and sanitation are necessary to sustain life and health, and fundamental to the dignity of all. Yet, 884 million people do not have access to improved sources of drinking water, while 2.5 billion lack access to improved sanitation facilities. While these numbers shed light on a worrying situation, the reality is much worse, as millions of poor people living in informal settlements are simply missing from national statistics. The roots of the current water and sanitation crisis can be traced to poverty, inequality and unequal power relationships, and it is worsen by social and environmental challenges, that including accelerating urbanization, climate change, increasing pollution and depletion of water resources.⁷⁹²

Several national constitutions protect the right to water or outline the general responsibility of the State to ensure access to safe drinking water for all. Courts from various legal systems have also adjudicated cases related to the enjoyment of the right to water, covering issues such as the pollution of water resources, arbitrary and illegal disconnections, or lack of access to sanitation.⁷⁹³

In spite of its necessity, access to clean water has become a problem in many nations with a number of people lacking access to safe drinking water. On minimising the said problem, there are numerous international instruments have been passed to ensure that a human being conquers his right to clean water. The said instruments including the 1979 Convention on the Elimination of Discrimination against Women (CEDAW)⁷⁹⁴ and the 1989 Convention on the Rights of the Child (CRC).⁷⁹⁵

Furthermore, on 28th July 2010 United Nation had passed Resolution A/HRC/15/L.14 to formally acknowledge the right to drinking water and sanitation as a human right by the General Assembly Resolution (Ref. A/64/L.63/Rev.1) (the “GA Resolution”). As results, the General Assembly called upon UN member states and international

792 World Health Organisation, Rights to Water, Fact Sheet No.5, p.1

793 World Health Organisation, op.cit p.1

794 Article 14(2)(h) of CEDAW

795 Article 24(2)(c) of CRC

organisations to provide funding and other resources to aid poorer countries in their efforts to supply clean drinking water. It also suggested that a UN Independent expert report to the GA on an annual basis setting out the progress towards the target of halving the number of people without safe drinking water by 2015, as set out within the Millennium Development Goals.⁷⁹⁶

Drastically, on 30th September 2010, the UN Human Rights Council confirmed in its first UN Human Rights resolution, Resolution A/HRC/15/L.14 (the “UN Resolution”), that the right to water and sanitation is legally binding: “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.” The UN Resolution affirms the UN Human Rights Council’s recognition that the right to water derives from Article 11(1) of the ICESCR, the right to an adequate standard of living, and by so doing ensures that the right to water is legally binding and therefore enforceable.⁷⁹⁷

At regional level, the matter is different that the African Charter on Human and Peoples Rights did neither mention the right to water in any of its provision, however the African Charter on the Rights and Welfare of the Child (African Children’s Charter), had recognized the adequate nutrition and safe drinking water as human right and dignity to the children of Africa.⁷⁹⁸

At national level, the right to water is not directly mentioned in the Constitution of Zanzibar, though it is well mentioned and recognised under other national Constitutions including of South Africa.⁷⁹⁹ The Revolutionary Government of Zanzibar, however had taken various efforts to ensure the right to water is enjoyed for all. This including having legislating on the matter under the Water Act, No. 4 of 2006, formulating different policies, strategies, plans, programmes and projects to address on the issue of water in Zanzibar. These included the Water policy of 2004, Forest policy of 1996, Education policy of 2006 and Tourism policy of 2005.⁸⁰⁰

5.3.1 Right to Access Water

Everyone is entitled to sufficient and reliable sources of water for personal and domestic uses. International standards indicate that personal and domestic uses include water

796 Zanzibar Human Rights Report, 2016

797 Ibid.

798 M Craven (2006), some thoughts on the emergent right to water’ in E Riedel & P Rothen (eds) *The human right to water*, p.39.

799 Section 27(1) (b) of the Constitution of South Africa 1996.

800 Zanzibar Human Rights Report, 2016.

for drinking, sanitation, and food preparation. Under this standard, water must be available in quantities necessary to meet an acceptable standard of living, taking into account individual circumstances and needs, such as health issues or work conditions. Sufficient amounts of water should be available in various contexts, including home, school, and work. In the allocation of water, personal and domestic use should be prioritized over other uses, such as agriculture and industry.⁸⁰¹

Having access to safe drinking water and sanitation is central to living a life in dignity and upholding human rights, that everyone struggles to attain in his life. Yet billions of people still do not enjoy these fundamental rights. The rights to water and sanitation require that these are available, accessible, safe, acceptable and affordable for all without discrimination. These elements are clearly interrelated. While access to water may be guaranteed in theory, in reality, if it is too expensive, people do not have access.

Having a tap which does not or it delivers unsafe water does not improve one's access to his right to water. Human rights demand a holistic understanding of access to water and sanitation. The rights to water and sanitation further require an explicit focus on the most disadvantaged and marginalized people, as well as an emphasis on participation, empowerment, accountability and transparency.⁸⁰²

Water is the essence of life. Without water, human beings cannot live for more than a few days. It plays a vital role in nearly every function of the body, protecting the immune system – the body's natural defences – and helping remove waste matter. But to do this effectively, water must be accessible and safe. Lack of safe water is a cause of serious illnesses such as diarrhoeal diseases, which kill over 2 million people every year (the vast majority children, mostly in developing countries). Contaminated water, whether drunk or used to cook food, harms people's health. Water is also essential for hygiene, growing food, keeping animals, rest, exercise and relaxation and for a variety of social and cultural reasons.⁸⁰³

Regardless rich or poor communities, water is essential for farming and for manufacturing services. Making more water available to communities can improve families' incomes, for instance by boosting crop production and the health of livestock. Water sources have been put under great pressure by population increases in developed and developing countries, through pollution by agricultural, domestic and industrial waste, and by environmental change.⁸⁰⁴

801 University of California, Berkeley, School of Law, (2013), The Human Right to Water Bill in California: An implementation framework for state agencies, p.7.

802 (accessed on 29th December 2017) through <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>,

803 World Health Organization (2003), The Right to Water, p.6.

804 World Health Organization (2003), The Right to Water, p.6-7.

In Zanzibar, Zanzibar Water Authority (ZAWA) which is established under section 3(1) of Act No. 4 of 2006 is the government executive agent with the duty to produce clean and safe water in the island. The authority is responsible for formulating water policies, supply of clean water⁸⁰⁵ and collect fees for water supplied and services offered to consumers.⁸⁰⁶ ZAWA has a duty to advise the government in formulation of policies relating to the development and conservation of water,⁸⁰⁷ and it is ZAWA develops and maintains waterworks plan and execute new projects for supply of water in Zanzibar.⁸⁰⁸

Although the Revolutionary Government of Zanzibar had taken the great efforts to ensure the right to clean and safe water is accessible for all, there is still a scarcity of that resource in Zanzibar. The total liters million 234.45 of water are needed for daily consumption in Unguja and Pemba, while the daily production of the same is 162.82, as equal to only 67% availability of safe and clean water. To Urban and West Region of Unguja, water is available for 63%, while for Northern Region of Unguja is available at 48% and 50% of water is available for Southern Region of Unguja. And for Pemba, the Northern Region acquires 83% of water while 87% is available to the Southern Region of Pemba.⁸⁰⁹

To reduce water scarcity in Zanzibar as above mentioned, the Government implements different water projects. The government undertakes the Water Projects for Urban and West Region of Unguja, which is worth USD 23.673 of loan from Africa Development Bank (AfDB). Under that project which is supervised by STECOL of China, the total new nine wells have been excavated and twenty three old wells have been renovated. The completion of the said project will minimized the problem of scarcity of clean and safe water in the country from that 67 million of liters to 81 million of litres, the increasing of 20.9%.⁸¹⁰

Another water project is that supervised by CRUCS of India which is worth of USD 92 Millions of loans from Exim Bank of India. The CRUCS has already commenced visibility study of the project. The project will benefit Western Districts, A and B of Urban West Region of Unguja. There also a third water project which is implemented by First Highway Engineering Company of China for villages of Southern and Northern Regions of Unguja. This project has completed on December, 2017. The government had further curbing the water scarcity in the country subject to drilling 150 water wells

805 Section 5(1)(b) of Act No.4 of 2006.

806 Ibid, section 5(1)(g).

807 Ibid, section 5(1)(f).

808 Ibid, section 5(1)(c).

809 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

810 Hansard Report of the House of Representatives of Zanzibar, 11th October 2017, p.5.

in different areas of Unguja and Pemba, under the aid of Ras al Khaimah, while the total 26 wells have already been completed and operational while 14 are in progress.⁸¹¹

5.3.2 Right to Clean Water

Having the right to access right to water is in vain if the water is not characterized with its quality. Having quality water refers to the minimum standards acceptable to consumer of water that implies the water is free from pollution and other harmful substances. Quality is important because safe drinking water is an essential part of the human diet and is necessary for survival, and should therefore be within acceptable standards with regards to potability (taste, odour and appearance). It should be safe enough for food preparation, bathing, for washing laundry and other human consumptions.⁸¹²

It becomes important to any State to provide clean drinking water for human consumption, conserve water and provide basic services for sanitation for the protection of the environment. Water is essential for human survival and must be protected against contamination and unhygienic environmental practices for drinking purposes.⁸¹³

Despite its importance, the right to quality of water is not explicitly recognized under a number of international and regional instruments. Instead, most of the instruments provide for the right to an adequate standard of living for the health and wellbeing of the individual and family. For instance, the Universal Declaration of Human Rights (UDHR), had recognized the right to adequate standard of living for health and well being under Article 25; the International Covenant on Economic Social and Cultural Rights (ICESCR) had recognized the same under Article 11, while at the regional level the African Charter on Human and Peoples Rights had recognized it under Article 16(1).

Instead, the right to 'adequate water' is specifically provided for in the International Convention on the Elimination of All forms of Discrimination against Women (CEDAW)⁸¹⁴ and Draft Protocol to the African Charter on the Rights of Women.⁸¹⁵ CEDAW recognises the right of women in rural areas to enjoy adequate living conditions, particularly in relation to sanitation and water supply.

Despite the fact that the Constitution of Zanzibar did not directly recognize the right to quality of water as a part of fundamental rights and individual freedom in Chapter three of the Constitution, yet it is imposed to the Zanzibar Water Authority as one of its

811 Ibid.

812 World Health Organisation, Rights to Water, Fact Sheet No.5, p.12.

813 Ibid.

814 Article 14(2)(h) of CEDAW.

815 Article 15 of Draft Protocol to the African Charter on the Rights of Women.

functions a duty to specify standards of water quality, effluent and water equipments.⁸¹⁶ Under Vision 2020, Zanzibar government had aimed at achieving the availability and sufficiency of quality of water in the country to all people with 100%.⁸¹⁷

In 2017, it was reported that there is a shortage of 30% of water supply in Zanzibar and this has been caused by bad infrastructures which noted to be hindered the right to access clean water in Zanzibar.⁸¹⁸ Though the government has shown encouraging efforts to make sure that its citizens have access to clean water, but still water problem is a challenge in Zanzibar. The infruscture of water supply sometimes are either mixed or in either way come into contact sewages. This causes the spread of communicable disease such as Cholera outbreak every now and then in Zanzibar.

Right to quality water in Zanzibar has been a challenge for many decades now. Many parts in Zanzibar have been facing a critical shortage of water, which does force many people, mainly women and children to go out looking for water, sometimes waking up very early in the morning. The ongoing shortage of fresh water has been attributed to decay of the water infrastructure including leaking pipes, and decrease of water from spring and other sources due to impact of climate change. Also cutting down of trees at water source because of unplanned expansion of human settlements is one of the main reasons of continuing shortage of water in Zanzibar although the people mount pressure and blame to their government.⁸¹⁹



Picture 43: Some residents of Stone Town of Zanzibar fetching water for their personal use

816 Section 5(1)(h) of Act. No.4, 2006.

817 Zanzibar Vision 2020, p.7.

818 Omar, A. Zanzibar 24 available at <http://www.tanzaniatoday.co.tz/news/zanzibar-yakumbwana-upotevu-wa-maji-kwa-30> (accessed on 10 November 2017). Also see Hansard Report of the House of Representatives of Zanzibar, 11 October 2017, p.58-59

819 <http://unpo.org/article/18056>, accessed on 12th February, 2018.

In shortening the water scarcity in Zanzibar, the Zanzibar Water Authority (ZAWA) struggles hard to keep its water supply network in operation. But it faces the challenge of reaching its efforts into urban areas only, yet the residents have to face the constant threat of impurities and breakdowns of fresh supply. The Authority struggle further to supply the same by water trucks, in particular during the month of Ramadhan, yet is not reliable and sufficient. Supplying water by water truck can be an alternative way of curbing water shortage, but can only be afforded by those with stable incomes.⁸²⁰

The Revolutionary Government of Zanzibar has been raising hope to people in the Islands that the current water problems will end in the near future because of the ongoing workable plans. Some of the initiatives being taken by the government to overcome shortage of water are to protect environment particularly at water sources, construct boreholes and water wells, minimize wastage of water by fixing consumption meters, and improve infrastructure.

Several development partners including China, Japan, and Ras al-Khaimah are supporting Zanzibar in solving water problems on the Islands. The projects have helped increase the number of people who access water. But seawater desalination is found as an alternative water supply to thousands of Zanzibar people without water, particularly residents living close to the sea. The developments in desalination technologies are specifically aimed at reducing energy consumption and cost, as well as minimizing environmental impacts. Solar energy is used in all the desalination plants.⁸²¹

5.3.3 Conclusion and Recommendations

Since Zanzibar had been colonised by different foreigners, their coming and going had influenced Zanzibar community politically rather than economically. As results, socio-economic rights are making slow progress in Zanzibar compared to civil and political rights. This among others affects the growing of socio-economic rights including the right to water. The slow progress of this right is slowing progress of economic developments. Since revolution of 1964, Zanzibar has made success in areas like education, water and health, despite there are challenges facing the same. It is still the duty of the government to support its people with socio-economic rights to enable Zanzibar growing faster.

The community should support their government on not invading areas near water reservoirs and water infrastructures that lead to shortage of water in some areas. They

820 GIZ, Development Partnership with the Private Sector Potable Water for Zanzibar's Poor Small-scale Seawater Desalination is a Feasible Option for Clean Water Supply. See further on <https://www.giz.de/expertise/downloads/giz2011-en-factsheet-moerk-water-solutions.pdf>, (accessed on 21st February, 2018)

821 Ibid.

should further pay their water bills on time and report those who sabotage water infrastructures in their communities. The government should increase public awareness on the importance of water control in Zanzibar, since there are lost thousands of litres of water through old leaking pipes, unattended water or broken taps, unattended water tanks, and storage of much more water than what is actually needed.

5.4 Right to Adequate Standard of living

An adequate standard of living is human rights recognized under international human rights instruments and is understood to establish a minimum entitlement to food, clothing and housing at an adequate level. Under Universal Declaration of Human Rights (UDHR), this right is stated under Article 25(1) as follow:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Again the right has been recognized under the International Covenant on Economic, Social and Cultural Rights (ICESCR), as:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”⁸²²

The right to an adequate standard of living requires, at a minimum, that everyone shall enjoy the necessary subsistence rights which are an adequate food and nutrition, clothing, housing and the necessary conditions of care when required. Under this right, everyone is expected to be able to be a full participant in ordinary, everyday interaction with other people. Thus, people should be able to enjoy their basic needs in conditions of dignity. But no one should have to live in conditions of satisfying his needs only by indulging himself in the illegal deeds including begging, prostitution or forced labour.⁸²³

822 Article 11(1) of ICESCR.

823 <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>, (accessed on 31st December 2017).

Implementation of the right to an adequate standard of living depends on a number of other economic, social and cultural rights, including the right to property, the right to work, the right to education and the right to social security. There have been a number of proposed policies to guarantee people a basic standard of living through the concept of offering a basic income guarantee essential gifting all citizens a basic level of free money in order to meet basic needs such as food and shelter.⁸²⁴

5.4.1 Right to Food

The right to food is a human right that protects the right of all human beings to live in dignity, free from hunger, food security and malnutrition.⁸²⁵ Contrary to what is common in the minds of many, this right as human right does not oblige the governments to hand out free food to everyone who wants it, or a right to be fed, though the government is under the duty to feed its people upon being deprived accessing the food for the reasons beyond human capacity, including detention in times of war or upon happening the natural disasters.⁸²⁶

In 2006, the government had established the Zanzibar Food, Drugs and Cosmetics Board (ZFDCB) which in 2017 was renamed to be The Zanzibar Food and Drug Agency (ZFDA)⁸²⁷ as an independent entity to regulate all matters relating to quality, safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics in Zanzibar.⁸²⁸ The Board has also a duty to regulate the importation, manufacture, labeling, marking or identification, storages, promotion, sell and distribution of food, drugs, cosmetics, herbal drugs and medical devices or any materials or substances used in the manufacture of products.⁸²⁹

ZFDA has been working to stop importation of counterfeits and expired foods in Zanzibar. Since its establishment in 2007 under Act No.2 of 2006 and continuing until its renamed in 2017, ZFDA officers have been working hard to ensure that only genuine goods are imported and sold to the consumers. Thousands of tonnes of goods have been confiscated and destroyed as one of the Agency' objectives for ensuring Safety and Quality of Food, Drugs, cosmetics, medical devices and related products for the people of Zanzibar.

824 https://en.wikipedia.org/wiki/Right_to_an_adequate_standard_of_living, (accessed on 31st December 2017).

825 <http://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>, (accessed on 1st December, 2017).

826 https://en.wikipedia.org/wiki/Right_to_food, (accessed on 31st December, 2017)

827 Section 4 of Act. No.3 of 2017.

828 Section 4(1)(a) of Act No.2 of 2006.

829 Ibid, section 4(1)(b).



Picture 44: ZFDA destroyed 11.6 tons of milk and other good which are claimed to be not fit for human use in November 2017

In strengthening war against substandard, counterfeit and expired products, ZFDA in collaboration with Zanzibar Bureau of Standards (ZBS) had been working to stop the same to be imported in the country and therefore had announced Pre-Export Verification of Conformity (PVoC) to ensure the quality of products, which must also meet health, safety and environmental standards for the people in the islands and therefore, the imported foods are required a Certificate of Conformity (CoC), which is a mandatory clearance document for each consignment.

This was for the first time for Zanzibar to introduce the standards program after several countries such as Tanzania mainland, Uganda, Kenya, Rwanda, and Burundi, in the region already using PVoC. Now an exporter is liable for any legal or economic consequences arising for goods shipped without the cover of a CoC and that the responsibility of compliance lies with the supplier/exporter.

5.4.2 Right to Shelter

The right to shelter as the same referred to the right to housing is what has been recognized under the Universal Declaration of Human Rights as part and parcel of the right to adequate standard of living. The article states:

Everyone has the right to a standard of living adequate for the health and well-being

of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control

The same recognition of this right is found under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that guarantees the right to shelter to anyone. The Article says:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

The right to housing is not only guaranteed to normal persons, it is the same enforced internationally to the disabled, who have the same rights as other human beings. Under the Convention on the Rights of Persons with Disabilities, any State Parties is obliged to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. And furthermore, the States Parties have to take appropriate steps to ensure the realization of above said right, is recognized to the effect of the essential importance of international cooperation based on free consent.⁸³⁰

In Zanzibar the right to shelter is primarily subjective to the right of occupying a land which is either through the grant from the Minister responsible for land matters; recognition of a rightful interest following an adjudication carried out under the Land Adjudication Act and subsequent registration under the Registered Land Act; inheritance of a lawful registered interest; purchase of a lawful registered interest; or gift of a registered interest from a bona fide holder of a right of occupancy.⁸³¹

Occupying the land to be legally recognized, a Zanzibari has to be granted the land registration document commonly known as Title Deed, by the Ministry of Land affairs. By 2017, the government had granted the Title Deeds of the land occupancy of 1,400.⁸³²

830 Article 28(1) of the Convention on the Rights of Persons with Disabilities.

831 Section 7 of Act No.12, 1992.

832 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

In 2017, the President of Zanzibar and Chairman Revolutionary Council had awarded a plot of land for free each Member of the 32 football team of Zanzibar Heroes for finishing second chance at the 2017 CECAFA Senior Challenge Cup. Hon. President had further rewarded each member of the team with cash of USD 1,350 as equivalent to Tsh. 4.8 Million, for building a resident house for each member and to assist running their life. The football team of 2017 had kept Zanzibar to make a history of reaching second half final at the Council of East and Central Africa Football Association (CECAFA) Challenge Cup, since 1995 when it won a Championship.⁸³³



Picture 45: Zanzibar players celebrate a goal at CECAFA 2017

5.4.3 Conclusion and Recommendations

Rights to food and shelter are important to everyone. No human survival except having food to eat, having a house or shelter to sleep and having somebody's privacy. The Revolutionary Government of Zanzibar for years has been ensuring its people to have food for eating and shelter for sleeping. Their promise takes progress though the efforts should be further taken to ensure the people get adequate and balance diets. The Zanzibar is green in nature that every place is fertile. However, the increasing of urbanization makes farming and cultivation becomes no place to grow. The government under this situation should take more efforts to curb urbanization or building unplanned areas that make the land inadequate for farming.

833 <https://www.kawowo.com/2017/12/26/zanzibar-president-rewards-cecafa-team-cash-land/>, (accessed on 21st December, 2017).

5.5 Right to Culture

It is noticeable to anyone that the nature of human cultures varies greatly and strongly, determining the beliefs and outlooks of its people. Although universal human rights recognize and respect most of these differences, the most basic rights are still universal. Because of right to culture for instance, one could seriously believe that the slavery, torture, abuse of women, or a dictator having his troops shoot peaceful protestors is immoral in one culture but moral in another. It is here understood that, Human rights are intended to guard only the basic ingredients necessary for individuals to live civilized lives, and this become possible by leaving a wide room for cultural differences.⁸³⁴

Cultural rights are those rights relating to art and culture,⁸³⁵ which are intended to guarantee people and their communities having an access to their culture and participating in the culture of their choice. Therefore, it is clear that Cultural rights become human rights since they ensure all the people having the equal rights in enjoyment of culture and its components in conditions of equality, human dignity and non-discrimination. They are rights related to different cultural themes, including the language; rights of the people to participate in cultural life, cultural and artistic production; cultural heritage; intellectual property rights (IPR); author's rights and rights of minorities and access to culture.

In relation to groups, cultural rights focus on groups such as religious and ethnic minorities and indigenous societies that are in threat of becoming damaged. The groups in cultural rights have the rights to preserve their own ways of life, including child rearing, continuation of their languages, and security of cultural economic base in the nation in which it is located.⁸³⁶

Among the nature and historical characteristic of Culture as it is observed by the Anthropologists, is its behavior of transmitting through a highly complex process comprising a mixture of material and nonmaterial components. To them, culture can be reflected and expressed through the type of housing that people choose to live in with the other people whom share the housing; the type of food they grow or eat, and how they grow or eat it; the type of music they play or listen to, and how they play or listen to it; the religion they identify with; and the landholding patterns in their society. Culture is reflected in and expressed through the people's relationships with their parents, children, relatives, friends and strangers as well as with other cultures

834 McFarland,(1998) Science and Human Rights Coalition. Human Rights 101: A Brief College-Level Overview, Western Kentucky University,p.3.

835 F Jaffeson (2000), Human Rights in Africa, p.34

836 Zanzibar Human Rights Report, 2016.

and with the physical world around them.⁸³⁷

Cultural rights at international level have been recognized under the Declaration on the Principles of International Culture Cooperation; the Declaration on the Rights Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Rights to Development; the International Convention on the Protection of the Rights of Migrant Workers; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal People.

To mention the few, the Universal Declaration of Human Rights under Article 27 had given anyone a right to participate freely in his cultural life of his community. As it says:

“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.⁸³⁸

International Covenant on Economic, Social and Cultural Rights (ICESCR) had also asked its Member states to recognize the right to take part in cultural life as a free right to every one of their citizens. As this says:

“The States Parties to the present Covenant recognize the right of everyone:

To take part in cultural life; To enjoy the benefits of scientific progress and its applications; To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.⁸³⁹

Article 1 of UNESCO Principles on International Cultural Co-operation, had recognized culture of everyone as his dignity and value that each one has to respect the culture of another. The Article says:

“Each culture has a dignity and value which must be respected and preserved. Every people have the right and the duty to develop its culture. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.”⁸⁴⁰

837 *ibid.*

838 Article 27 UDHR.

839 Article 15 (1) of ICESCR.

840 Article 1 of the Declaration of Principles of International Cultural Co-operation.

Apart from the above mentioned international instruments, the rights to culture have also been recognized under the regional legal provisions including the African Charter on Human and Peoples' Rights as follow:

“Every individual shall have the right to education. Every individual may freely take part in cultural life of his community. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”⁸⁴¹

The Charter had further the right to cultural development of people and that have the equal enjoyment of the common heritage of their humanity, as follow:

“All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”⁸⁴²

Domestically, the cultural rights are recognized under the Zanzibar Constitution of 1984 that requires the Revolutionary Government of Zanzibar to promote unity and development of the people and social welfare in the country by directing its policy in ensuring the Zanzibar culture is protected, enhanced and promoted.⁸⁴³ Subject to that Constitutional directive, the government had among others protected, promoted and enhanced the culture by establishing the specific Ministry dealing with culture. The Ministry of Information, Culture, Tourism and Sports, has been vested with the powers of ensuring the culture of Zanzibar is duly protected, enhanced and promoted in and outside Zanzibar.

For that doing, the people and communities of Zanzibar had further enhanced their access to culture of their own and therefore, can participate in the culture of their own country. Since Zanzibar culture is unique, its people enjoy it and this had assisted in promoting unity, equality, dignity and fraternity of their own, yet live in peace and stability for ever.⁸⁴⁴

5.5.1 Right to Participate in Cultural Life

As observed above, the right to participate in cultural life is guaranteed under Article 27 of the Universal Declaration of Human Rights as it is confirmed in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights on its Article 14 that everyone has the right to take part

841 Article 17 of the African Charter on Human and Peoples' Rights.

842 Ibid, Article 22.

843 Section 10(f) of the Constitution of Zanzibar, 1984.

844 Zanzibar Human Rights Report, 2016

in the cultural and artistic life of his community. The same right is guaranteed under Article 17 (2) of the African Charter on Human and Peoples' Rights.

Rule 10 of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that States must ensure that persons with disabilities are integrated into and can participate in cultural activities on an equal basis. And the World Programme of Action concerning Disabled Persons in its paragraph 135 provides that States should commit themselves to ensure that disabled persons have the opportunity to utilise their creative, artistic and intellectual potential to the full, not only for their own benefit but also for the enrichment of the community. To this end, access to cultural activities should be ensured.⁸⁴⁵

The United Republic of Tanzania became a State Party to the 2003 convention for the safeguarding of the Intangible Cultural heritage on 18 January 2012 and then joined the list of other countries that have so far ratified the convention. Since Zanzibar is part of the Tanzania, the Ministry of Information, Youth, Culture and Sports have progressively worked towards the smooth implementation of that convention.⁸⁴⁶

In preserving the Zanzibar Culture, there are several prizes are occasionally provided for by the government and other private entities to several artists and other cultural pioneers who preserve, promote and enhance the culture of Zanzibar. For instance, A Board Member of Zanzibar Emerson Foundation, Mr. Said El Ghethy, in providing the Award of Junior Artists of Zanzibar Films had encouraged the Artists to promote culture for developing the tourism industry in Zanzibar. He further said that, the Artists are not supposed to be part of destruction of Zanzibar Culture which has a major role in tourism sector in Zanzibar.⁸⁴⁷

845 <http://www.un.org/esa/socdev/enable/discom407.htm>, accessed on 12th November 2017

846 [http://www.unescodar.or.tz/unescodar/index.php?option=com_content & view = article & id=411 & Itemid =5 16](http://www.unescodar.or.tz/unescodar/index.php?option=com_content&view=article&id=411&Itemid=516)

847 Also, Mr. Said had also insisted that, if the Films makers and other Artists of Zanzibar observe their culture, will promote the tourism attractions and thus will develop the flourishing of tourism in the islands. One among the roles of these Artists is to perform their works in considering the culture of their country. For instance, the Zanzibar Films makers will have publicize the Zanzibar Culture if they act their movies in complying with the moral standard of Zanzibar culture. Thus, the Cultural Award to the Artists under Zanzibar Emerson Foundation would have achieved its goal. The said movies are also intended to be part of Zanzibar International Films Festivals (ZIFF), and if are acted and performed in considering the moral standard of Zanzibar culture, will also promote the Culture internationally. The total of eight Films of Zanzibar have been competing to be awarded in 2017 were *Usiku wa Kiza*, *Binti Zanzibar*, *Kijana wa Zanzibar*, *Samira*, *Son of Sin bad*, *Keeping the Beat*, *Arts of Monsoon* and *Sokota*



Picture 46: One of the performances of Maulidi ya home in the 2017 Zanzibar International Film Festivals in Stone Town Zanzibar

The cultural rights to the people of Zanzibar among others manifested in many elaborately carved wooden doors which are common to be found at Stone Town of Zanzibar. The carved wooden doors are commonly known as Zanzibar Doors are the mixing of Arab, Indian and Swahili traditions. Their masterpieces tell stories of the social status, religion, profession and generally the way of life of the residents of Zanzibar.

The Zanzibar Doors have become common to the tourists who find Zanzibar as a unique destination of their purpose. Zanzibar Stone Town has become a real luxury for tourist's photographers, in particular all door lovers. By preserving the Zanzibar culture through different of its characteristics, the Stone Town has become a paradise destination, with mixing of elements of Zanzibar culture including the colored doors which make a perfect background for rustic urban scenes. Walking in the streets of Stone Town, enable tourists to find how the people of this area are kind to animals including cats which are stretching out and chasing each others in the doorways.

Playing *bao* which is a common cultural men's play, found at Stone Town that men are gathering at street corners to drink coffee while talking in fine Swahili accents, sometimes in loud debates or sitting outside their houses playing *bao* inertly. Also in preserving Zanzibari culture the Government of Zanzibar has prioritizing the protection of Zanzibar culture as an identity and the source of income through tourism sector and entrepreneurship. In 2017 various activities and festival has been supported by Government like Zanzibari Festival conducted 19 July 2017, Mikate party which

was conducted in October 2017, ZIFF in July 2017 and Makunduchi food Festival *Tamasha la Vyakula vya Asili vya Makunduchi* which was conducted in August 21, 2017.



Picture 47: Second Vice President Balozzi Seif Ali Iddi, visited one of the booths in the Zanzibar Cultural festival, 2017

5.5.2 Conclusion and Recommendations

Culture is dynamic not static. It changes as the change of time and people happen. It takes differences as par time goes. The Culture of 1960s is not the same as we have today in 2017. Zanzibar Culture is one influenced to change and it is more affected by the integration and intermingle of different people in the country. The tourism sector had played a big role in destruction of Zanzibar culture, though it has minor positive inputs to it.

Some tourists walk half naked in the streets, at Stone Town and other places, while this is very shame to the people of Zanzibar. The increasing of illicit drugs in the isles among others is because of tourism industry, as the increasing of sexual offences, including rape, prostitution, indecent assaults and others among others caused by the increasing and flourishing of tourism industry in Zanzibar. The government has a role to play to ensure the tourists preserve the people's culture of Zanzibar and the public on its side, has to ensure it cooperate with their government in preserving and promoting their culture.

CHAPTER 6:

COLLECTIVE RIGHTS

6.0 Introduction

Collective rights which are also called group rights or solidarity rights are the third generation of human rights which are entitled to individuals as part of the group or certain community. These rights include environmental rights, right to development, the right to peace and security, right to separate identity and the right to self-determination.

Despite being important, collective rights were not at first included in the list of human rights of the world, but subject to the long fight in particular by the third world countries, because of socio economic and political marginalization in such countries, Collective rights have at last being recognised as other fundamental rights. On the African continent, these rights are well reflected in the African Charter on Human and Peoples Rights 1981. The Charter made significant contributions to the development of these rights by making provisions for them.⁸⁴⁸ The rights which have been given priority in Africa falling in this category include children's rights, women's rights,⁸⁴⁹ refugee rights, minority rights and the rights of indigenous peoples among others.

Collective rights have been differently perceived in various theories, one of whom is R. Joseph who argued that, the only rights and what is to possess a right is a collective rights. Thus, according to him, if one has a right to something, it cannot be a right unless he has an interest in that something. An interest translates into a right only if it is an interest of sufficient moment, all things considered, to justify imposing a duty upon another.

Another theory is the corporate theory. The main difference between these conceptions is that, while the collective conception ascribes moral standing only to the individuals who jointly hold the group right, the corporate conception ascribes moral standing to the group as such.

848 Robinson, M, "Protecting Human Rights: the Role and Responsibilities of the Independent Bar," being a keynote address delivered at the inaugural World Conference of Barristers and Advocates, Edinburgh 28th June, 2012.

849 Article 18(3) of African Charter on Human and Peoples Rights.

Thus, under the corporate conception, the holder of the right is the group conceived as a single, integral entity. Morally, the group might be said to constitute a right-bearing "individual." The right is held not jointly by the several individuals who make up the group, but by the group as a unitary entity; the right is its right rather than their right.

Although it is still a debate on whether group rights are really human rights, governments have been taking different measures to protect them. The Revolutionary Government of Zanzibar has been taking various initiatives to enforce these rights in its jurisdiction.⁸⁵⁰

6.1 Right to Development

The right to development is embedded in the right of the people and their entitlement to participate, contribute and enjoy economic, social, cultural and political development. A full realization of the right to self-determination is dependent on the human right to development wherein the human person remains the fulcrum, the subject and the beneficiary of the development.

Right to development cannot be achieved without considering other related rights including the right to self-determination and the right to natural wealth or resources. By considering its importance, the two conventions have considered the right to self-determination as vital point to the right of development as follows:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."⁸⁵¹

If one reads the above Article of two different conventions with the similar words and meaning; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), he understands that, a nation cannot achieve development without being independent to determine freely its political, social, economical and cultural development.⁸⁵² On the other hands, to enable people of any nation to enjoy their right to development, they should have unquestionable and inalienable right to self-determination. And therefore, they should determine freely their political status and pursue their economic and social development according to the policy of their choice.⁸⁵³

850 ZLSC Human Rights Report, 2016.

851 Article 1 of ICCPR and ICESCR.

852 Ibid.

853 Article 20(1) of Africa Charter on Human and Peoples Rights.

As above said, the right to development is legally recognised as other human rights, internationally, regionally and locally. At international level, apart from the two conventions above, the right to development is recognised under Universal Declaration of Human Rights as follow:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”⁸⁵⁴

At regional level, the right to development regionally recognised under African Charter on Human and People’s Rights as follow:

“All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.”⁸⁵⁵

At local level, the Constitution of Zanzibar did not directly mention the right to development by its name, but there are other rights relating to this right that is recognised under the Zanzibar Constitution. Section 21(3) and (4) of the Constitution of Zanzibar for example granted the right to every Zanzibari to participate in the economic activities by having the right and opportunity to work and enjoy his remuneration without any discrimination of any kind.

Section 22 of the Constitution has also granted the right to development in the isles since it had recognised the major source of the economic, political and social development of the people. Under this section, the right and freedom to work had been acknowledged as a sole foundation of economic wealth in the society, is the basis of the social welfare of the citizens and a criterion of humanity.

By that emphasis of the above section, to enforce people to enjoy their right to development, they have among others to participate by their own efforts in any legal work and economic activities.⁸⁵⁶ In production and participation of their development, the people have to respect their works and economic activities and by the maximum of their efforts, have to toil to attain their individual reproductive goals and of their communities as provided by the law.⁸⁵⁷

854 Article 22 of the UDHR.

855 Ibid.

856 Section 22(1)(a) of the Zanzibar Constitution, 1984.

857 Ibid, section 22(1)(b).

For bringing right to development in the country, the government had introduced the Zanzibar Investment Promotion and Protection Act, No.11 of 2004 to encourage the investments in Zanzibar. In that purpose, the government had declared Free Economic Zones at Fumba in Unguja and Micheweni in Pemba. The main rationale of such declaration was to influence the investors to invest in Zanzibar, and therefore, to enforce the right to development for all. In persuading the investors, the government had entered into contract with Bakhressa Group of Companies at Fumba Free Economic Zones to build a new and modern city.

Under this project, the total of 13 kilometres of the main roads have been constructed that will costs 15.6 billion shillings, and the feeder roads of 20 kilometres shall be constructed for 20 billion Tanzania shillings. The major projects to be constructed in Fumba including Fumba Satellite City, Fumba Town Development (at Nyamanzi), New City for resident and business houses and Fumba Uptown Living.⁸⁵⁸

The right to development had been further enforced by the government in several projects, in particular from January to September 2017, the government had authorised 25 projects that will cost USD 276.84 Million. The completed projects are expected to provide not less than 915 of employment opportunities. Furthermore, the total of 170 new houses has been constructed under Fumba Satellite City project and 60 houses under Fumba Town Development at Nyamanzi.⁸⁵⁹



Picture 48: The expected new city at Fumba, Zanzibar

858 Hansard of the House of Representatives, Zanzibar. 5th April 20016, p.9-10.

859 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.



Picture 49: The construction of a new city at Fumba in progress

In developing the country, the Municipal Council of Zanzibar expected to spend 79 Million Shillings for establishment of a new *Daladala* Stand at Kijangwani to reduce corrugation at Kisiwandui which is a temporary *Daladala* stand.⁸⁶⁰ On completion of the new *Daladala* Stand at Kijangwani, all *Daladala* which have a route to Zanzibar Town shall not be allowed to go to their destination at Town, but have to end their route at that new Stand, at Kijangwani.

In knowing how the passengers will be in trouble since Stand is far away from Stone Town which is the centre of Zanzibar that almost all *Daladala* passengers go to town intend to reach there, the Municipal Council intends to engage special buses that will carry the passengers from Kijangwani Stand to Stone Town. The said plan intends to make Zanzibar Town a calm place and will increase the government revenues that will be expended to make the people of Zanzibar enjoying their right to development.⁸⁶¹

860 <http://www.zanzibarleo.co.tz/2018/01/21/vifaa-vyachelewesha-ujenzi-kituo-cha-daladala-kijangwani> (accessed on 21st January 2018).

861 <http://www.zanzibarleo.co.tz/2017/09/22/ujenzi-kituo-cha-daladala-kijangwani-waanza/> (accessed on 22nd October 2017).



Picture 50: The New Daladala Stand at Kijangwani, Zanzibar

Despite the good intention and efforts of the Municipal Council to build a modern *Daladala* Stand at Kijangwani, the said construction which was expected to end in 2017, had yet completed, contrary to what was planned before. The Director of the said Council (Urban), Mr. Aboud Serenge said, the construction equipments which were to be used to construct that Stand were sent to Pemba for road construction in Pemba and thus, the Kijangwani *Daladala* Stand would complete upon the arrival of the said equipments, by February 2018.⁸⁶²

However the shifting the route of all *Daladala* to Kijangwani Stand will of course affects the passengers who always follow the services available at Zanzibar Town. Most of these passengers in Zanzibar Town go to Mnazi Mmoja Referral Hospital or Darajani. The shifting of Daladala Stand at Kijangwani will costs the passengers who are almost the poor, with no private transports, a double *Daladala* fare, whereby now either spends 300, 400 or 500 Shillings from their area of living to their destination, at Kisiwandui.

862 <http://www.zanzibarleo.co.tz/2018/01/21/vifaa-vyachelewesha-ujenzi-kituo-cha-daladala-kijangwani/>(accessed on 21/01/2018).

6.2 Right to Enjoy and Benefit from Natural Resources

The right to benefit from natural resources is another kind of human right that every human being has to enjoy. In Zanzibar the right to Natural resources includes land, sea and forests. These resources form the backbone of the economy by contributing through economic activities like tourism and farming. Natural resources are materials extracted or purified from their natural state as opposed to materials produced through human effort; and they are used by manufacturing industries, mining industries, and the tourism industry.⁸⁶³

The right to natural resources is recognized under international and regional Human Rights laws, as the same is recognised under the municipal laws in Zanzibar. Under the International Human Rights Laws, this right is covered under the United Nations General Assembly Resolution 1803 of 1962 called “Permanent Sovereignty over Natural Resources”, which provides four guiding principles for the exploitation of natural resources, which are:

- i. Individual and state sovereignty over natural resources;
- ii. Exploitation of natural resources for the benefit of the people;
- iii. Necessity to reach consensual agreements to exploit natural resources; and
- iv. Utilization of natural resources for the purposes of human development.⁸⁶⁴

Again, under the International Human Rights Laws, this right also is recognised under both International Covenants on Civil and Political Rights (ICCPR) as the first generation of human rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as the second generation of the human rights. Both covenants have recognised this kind of human right in the same Article and with the same words and meanings. These two covenants which were adopted on the same day by the United Nations General Assembly on December 19 in 1966, state that:

“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”⁸⁶⁵

This right is connected to the right to development and right to self-determination. The international recognized principle of permanent sovereignty over natural resources

863 Tanzania Human Rights Report (2014), p.215.

864 Ibid.

865 Article 1(2) of ICCPR and ICESCR.

recognizes that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.⁸⁶⁶

At the Regional level, the right to natural resources is well recognized and protected under Article 21 of the African Charter on Human and Peoples' Rights, which provides that:

1. *All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.*
2. *In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.*
3. *The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.*
4. *States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.*
5. *States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources*

At the municipal level, the right to enjoy and benefit from natural resources is Constitutional right and duty that the people of Zanzibar have the responsibility of protecting their resources of their country and uniting together in combating against any kind of corruption and embezzlement against their natural resources. For enabling the people to protect their resources, they also have to run their country's economy to the high extent of reasonability as the decision makers of their country in future.⁸⁶⁷

The constitutional wisdom of protecting the natural resources to its people, glances Zanzibar as a nation richly endowed with remarkable of natural resources and cultural heritage. Zanzibar has been a centre of trade, agriculture and cultural exchange for thousands of years. Since the land as one of the natural resources of Zanzibar is a limited space, any action of using the same, including extraction of building materials for instance sand and stones faces many environmental and social challenges. Fortunately, a good deal of progress has been made to wisely manage its natural resources, and the

866 Human Rights Report of Tanzania (2015),p.162.

867 Section 23(3) of the Zanzibar Constitution of 1984.

government is taking action to ensure that Zanzibar's valuable natural, cultural and economic assets remain intact and are used in a sustainable manner for the benefit of all people.

In ensuring the people of Zanzibar enjoy and benefit from their natural resources, the Revolutionary Government of Zanzibar had developed copious policies and plans to boost Zanzibar on a path towards poverty reduction, sustainable development and a healthy environment. The plans including Zanzibar's Vision 2020, the Zanzibar Biodiversity Strategy and the Zanzibar Poverty Reduction Plan (ZPRP). The Zanzibar Vision 2020 serves the foundation for development and links to all sectors of society, environment and economy.⁸⁶⁸ The ZPRP is a plan of action for implementing various socio-economic improvements, and the Biodiversity Strategy outlines the way forward for managing conservation and utilization of natural resources.⁸⁶⁹

The Right to enjoy and benefit from Natural Resources in Zanzibar has been further expanded subject to the enactment of the Oil and Gas (Upstream) Act, No.6 of 2016. The Act had opened a door of discovering oil and gas in the country. And therefore, in 2017, the government had commenced negotiations with RAS Gas of Ras Al Khaimah for the purpose of instigation survey on oil and gas exploration. The first phase of the said survey was conducted on March 2017 by using the survey aircraft of Bell Geospace Enterprises Company of United Kingdom. The second phase of the said survey was conducted from 27th October 2017 under BGP Explorer Company of China, the survey that was conducted on seashore. The government further will proceed with oil and gas exploration in 2018, depending on report provided by the experts as par surveys were made and it shall provide the official information of the results of such oil and gas exploration survey, for the interests of the country.⁸⁷⁰

868 The Zanzibar Vision 2020.

869 ZPRP.

870 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.



Picture 51: BGP Explorer arrived in Zanzibar and ready to be launch for the survey of oil and gas resources in the islands on 26 October 2017

Since the issue of exploration and extraction of oil and natural gas is a right to enjoy and benefit from the natural resources, the Ambassador Iddi cautioned some politicians on misleading the public on the issue since the exploration of the resources has no political affiliation. Notwithstanding the efforts of the government on the issue of oil and natural gas to make it under the full control of Zanzibar, the Constitution of United Republic of Tanzania must be amended to remove the oil and natural gas from the list of union matters. Unless otherwise, the efforts will counter the drawbacks of its prosperity and attaining its purpose.

The Vice-President described the survey that is expected to last five years as an important step in the oil and gas extraction. He said the government has had extensive negotiations with the Ras Gas and finally the talks have led to the commencement of the survey, appreciating the Arabic company as the true development partner of Zanzibar.⁸⁷¹

Therefore, the discovery and extraction of oil in Zanzibar is expected to develop Zanzibar rapidly. The reason behind is that oil is one among lucrative income generating resources in the world. Zanzibar economy will now depend on three sectors which are tourism, agriculture (coconut and cloves), and oil. Since Zanzibar is small in terms of geography and population, the coming of this new economic sector

⁸⁷¹ <http://www.azaniapost.com/economy/zanzibar-started-oil-exploration-h1762.html>, (accessed on 30th December, 2017).

will increase income and employment for the people of Zanzibar and hence boost Zanzibar's developmental dreams.

The Revolutionary Government of Zanzibar is trying to take several steps to ensure that the national resources are protected. For instance, the remaining high forests of Zanzibar, such as Jozani and Ngezi, are under good formal protection. These forests have increasing tourism value and sustainable management plans are in place. However, Zanzibar's increasing population is placing pressure on other forest resources for building supplies and fuel wood.⁸⁷²

The Department of Forest and Non Renewable Natural Resources has as a duty of protecting, conserving and developing forest resources for the social, economic and environmental benefit of present and future generations in Zanzibar. The activities of the Department of Forest and Non Renewable Natural Resources are guided by the Zanzibar National Forest Resources Management Plan (2010 – 2020), and the Forest Resources Management and Conservation Act, No.10 of 1996.⁸⁷³

Sand has been one of the common scarcities of non-renewable resource in Zanzibar. In 2012, the then Department of Environment carried out an Environmental Assessment of Excavation of Non-renewable Natural Resources in Zanzibar with an objective of understanding the environmental impacts and actual situation of increasing degradation as a result of non-renewable natural resources excavation. The Report's conclusions and recommendations gave Zanzibar a wakeup call on what is happening on the ground as regard to excavation of non-renewable natural resources.⁸⁷⁴

The Department of Environment started to exist in 1996 on the establishment of the Environmental Management for Sustainable Development Act, No. 2 of 1996. The Department was responsible for environment in Zanzibar, including on non-renewable natural resources.⁸⁷⁵ It had performed its duties on the regulations made under the Act in particular on the management system of sites' approval, rules and regulation of excavation of non-renewable natural resources in Zanzibar.⁸⁷⁶ The enactment of Zanzibar Environmental Management Act, No. 3 of 2015, had Act No. 2 of 1996, which however had saved the regulations made under the repealed Act, but had

872 Tanzania Human Rights Report, (2014), p.472.

873 <https://thereddesk.org/countries/actors/department-forest-and-non-renewable-natural-resources-zanzibar-tanzania> (accessed 25/11/2017).

874 <http://forestryznz.or.tz/index.php/component/content/category/2-uncategorised>, (accessed on 25th December 2017).

875 Section 16 of Act No. 2, 1996.

876 Ibid, section 118.

established Zanzibar Environmental Management Authority (ZEMA)⁸⁷⁷ to replace the then Department of Environment. The New Act had further devoted part VII of the Act for the management of non-renewable natural resources only.⁸⁷⁸

The Act among others prohibited any excavation of sand without a permission of Institution responsible for non-renewable natural resources in Zanzibar.⁸⁷⁹ The Act had come into operation while Zanzibar is suffering from the shortage of sand as the important non-renewable natural resource for construction and other uses in the country. The shortage of sites for sand excavation as well increasing demand of sand for construction purposes, had forced the government to conduct a full research on sand availability and amount of sand so far excavated and future requirement. As results, on 29th January 2017 the Minister responsible for Natural Resources announced via Press Conference that Zanzibar is running out of sand.⁸⁸⁰

By February 2017, the government closed the last excavation site owned by private land owner and reported that all remaining approved sites have not fully passed environmental criteria. Sand mining stopped for almost a month. However, the Government announced on the 3rd March 2017 that sand mining will start on the 6th March 2017 under new arrangement and directly supervised by the Government. The Government action was not merely a takeover but also announced a package of Directives and Management Guidelines.⁸⁸¹

At this time, sand is available on paying directly to the Bank Account and it is scarce resource that the construction costs and other building materials depend on sand had tremendously increased. The construction of a house particularly for the poor has become a heavy burden that led the life standard of the people of Zanzibar who have used to build and own their own houses, become tough.

877 Section 14 of Act No.3 of 2015.

878 Ibid, section 29 to 36.

879 Ibid, section 33(1).

880 <http://forestryznz.or.tz/index.php/component/content/category/2-uncategorised>, (accessed on 25th December 2017).

881 Ibid.



Picture 52: Sand excavation in Zanzibar

On the other side, pressures on Zanzibar environmental conservation continue and in some cases are expanding. The environment is being more heavily utilized than ever before and parts are rapidly degraded. Zanzibar is at a critical stage in terms of deciding the directions it will take into the future. Will it become a sustainable group of islands with a healthy population and vibrant natural, cultural, and economic or not? The survival of the people of Zanzibar largely depends on natural resources taking into consideration that Zanzibar is not an industrial country.

6.3 Conclusion and Recommendations

The government trying to develop and protect the collective rights in the country, in particular the right to development and right to enjoy and benefit from Natural Resources. These rights are important and should be equally enjoyed by anyone. Having one developed area of the country while despising the other will always lead lamentation and dissatisfying of the people against their government and their leaders.

This is possible if the government leaders try their best to sacrifice their apparent selfish tendencies and thus, prioritising strong and sustainable developments in the country's enforcement of economic, social and cultural rights for all.

CHAPTER 7:

RIGHT TO VULNERABLE GROUPS

7.0 Introduction

The Universal Declaration of Human Rights was proclaimed and adopted by the United Nations General Assembly, in 1948. The Declaration among others emphasised freedom, equality, dignity and rights of every human being to another in a spirit of brotherhood.⁸⁸² Under this Declaration, everyone is entitled to all the rights and freedoms, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. And therefore, no distinction to be made to anyone including the vulnerable groups, on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.⁸⁸³

Notwithstanding the guaranteeing of the Human Rights under the Universal Declaration as mentioned above and other International, Regional and national Instruments that all rights are enjoyed equally to anyone, including the vulnerable group, the standard definition of the concept or classification of the list of people who belong to the vulnerable groups, is not clear.⁸⁸⁴ Ultimately the freedom, rights, dignity and equality of the vulnerable groups as the same with the other human beings have been mostly violated.

It is simply born in our minds that Vulnerable groups are those groups of people who find themselves to physical or emotional injury, or subject to systemic marginalization or less valuable members of the society and include women, children, and people living with disabilities. Also included in this group are refugees, stateless persons and victims of war.

The vulnerable groups have been placed in a position where they cannot have reliable access to the majority of socio-economic opportunities. And therefore, they are normally at a higher risk of suffering from the effects of poverty and social exclusion than the general population.⁸⁸⁵

882 Article 1 of the Universal Declaration of Human Rights, (1948).

883 Ibid, Article 2.

884 Zanzibar Human Rights Reports, (2016).

885 Ibid.

It is hard to find the term 'vulnerable or disadvantaged group' in the international, regional and national instruments, but they are commonly known through the common principles of equity, dignity, non discrimination and others, found within these instruments. It is therefore, apart from International level, these categories of rights have also been realised under the African Charter on Human and Peoples Rights; African Charter on the Rights and Welfare of the Child and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

In its preamble, the African Charter on Human and People's Rights has intended that freedom, equality, justice and dignity are essential objectives for achievement of the legitimate aspirations of the African peoples. This means that all Africans, regardless of their vulnerability, have the same rights with others. To make this objective workable, all African Member States of the Organization of African Unity have to recognize the rights, duties and freedoms of all Africans including the vulnerable groups and that shall undertake to adopt legislative or other measures to give effect to their rights.⁸⁸⁶

Therefore, in maintaining the basic principles governing the protection of the rights of vulnerable and disadvantaged, all African States shall combat all forms of discrimination against vulnerable and disadvantaged people in their respective states by ensuring that every individual have the duty to respect and consider his fellow beings without discrimination. The states shall further maintain relations amongst its people for promoting, safeguarding and reinforcing mutual respect and tolerance.⁸⁸⁷

At national level, the Constitution of Zanzibar on has protected the rights of vulnerable groups despite the nonexistence of the specific provision on the matter. Under section 12 of the Constitution of Zanzibar, for instance, the rights of these groups can be traced as the same with other people in all matters relating to the equality before the law, as this is read:

“that all persons are equal before the law and are entitled without any discrimination, to protection and equality before the law; that no person shall make any provision that is discriminatory either of itself or in its effect; that the civic rights, duties and interests of every person shall be protected and determined by the courts of law, state organs and others organs established by the law; that no person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions of any state office or by any management of any party and its organs; that ... Except that the word “discrimination” shall not be construed in such a way as

886 Article 1 of African Charter on Human and People's Rights. In reading the Charter, one finds all Articles speak the same language of equality, justice, freedom and dignity for all without any discrimination.

887 Ibid, Article 28.

to restrain the Government from taking necessary measures with the aim of rectifying peculiar problem in the society.”⁸⁸⁸

Upon recognising of those rights, Zanzibar has been struggling to protect the rights and interests of vulnerable and disadvantaged people in adopting the international, regional and national legal instruments. And therefore, Zanzibar as part of Tanzania adopts the Universal Declaration of Human Rights, The African Charter on Human and People’s Rights; the Convention on the Elimination of all Form of Discrimination Against Women 1979; Convention on the Rights of the Child 1989; United Nations Convention of the Refugees 1951; International Convention on the Protection of the Rights of all Migrant Workers 1990 – 2003; and United Nations Declaration on the Rights of Disabled Persons 1978.

Subject to above international, regional and municipal instruments, the protection of the rights of vulnerable and disadvantaged people in Zanzibar have been further protected and therefore, the government has taken a number of positive measures with the view to protect the rights of vulnerable and disadvantaged people. Current efforts taken by the Revolutionary Government of Zanzibar is the execution of the Zanzibar Poverty Reduction Strategy MKUZA II in which one of its goals deals specifically with the poor and vulnerable⁸⁸⁹ and is to - “improve safety net and social protection for poor and vulnerable groups.⁸⁹⁰”

7.1 Women’s Rights

Women’s rights are those human rights intended to benefit persons of female gender, including girls.⁸⁹¹ Women’s rights have been protected under the international human rights instruments, regional and national constitutions that all together provide principles of equality, justice and dignity of women as equal to all individuals within a state. There also different Conventions that prohibit discrimination of any kind against women, the common is the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) that among others requires governments to ensure that women are not discriminated against in any sphere of life.⁸⁹²

888 See: Provisions of Section 12(1) to (5), respectively, of the Constitution of Zanzibar 1984.

889 MKUZA II, p.57.

890 Zanzibar Human Rights Report (2016).

891 Article 1 of Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

892 Article 1, 2,4,7,8,10,11,12,13,14,16 and 17 of CEDAW.

7.1.1 Women's Rights are Human Rights

Women's rights have been respected and violated at different levels depending on a society concerned. In Zanzibar law books and other documents, women are found to have the same rights as men, but in matter of practice, women's rights takes different reality as per the Zanzibar society is concerned.

Equality, dignity and respect of women which items are in the central concern of human rights agenda, their protection is subjected to serious arguments in Zanzibar society. It is true that, many women in Zanzibar do not have the same opportunities as men in different areas of life. For example, in education, boys and other men complete their primary and secondary education on time while number of girls and women face several impediments on the same. As it is said in particular poor families that, boys' education tends to be valued more than girls and that girls may be taken out of school to assist with domestic responsibilities or to marry.⁸⁹³

Furthermore, women have a hard opportunity to access the right to education, since it is among the social norms that bind women to spend more time in caring for the family rather than working outside the home, and therefore, many women tend to be fully economical dependent on men or tend to work part-time and still depend on their husbands financially. Women's economic activities also tend to be in addition to full workloads at home, as their husbands rarely helping with domestic chores.⁸⁹⁴

However, the government and some members of Zanzibar society have been working hard to curb violation of women's rights. This becomes possible on increasing of consciousness of women's rights and war against gender discrimination that have been propagated for years now. On the side of government, through national legal instruments, has taken various measures to ensure that women's rights are protected, including that of making the Constitution which guarantees equal rights for all the people regardless their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life.⁸⁹⁵

The government had further made number of legislations that have been protecting women's rights. These laws include the Penal Act No 6 of 2004, Criminal Procedure Act No 7 of 2004, Spinster and Single Parents Children Protection No 4 of 2005, and Employment Act No 11 of 2005.⁸⁹⁶

893 USAID,(2008) Gender-Based Violence in Tanzania: An Assessment of Policies, Services, and Promising Interventions, p.8.

894 Ibid.

895 Section 12(5) of the Zanzibar Constitution 1984.

896 Zanzibar Human Rights Report, 2016.

The above laws have been assigned to provide different features on women's rights in Zanzibar. They have among others prohibited the gender discrimination, violence against women and other kinds of infringement of women's rights. For example, section 10(1) of the Employment Act had totally prohibits the employers to discriminate women in any kind of the discrimination, as it says:

“No employer may discriminate, directly or indirectly against an employee, in any employment policy or practice on any ground including race, gender, colour, religion, social origin or status, age, place of origin, national extraction, political opinion, marital status, pregnancy, disability, HIV/AIDS status real or perceived.”⁸⁹⁷

The Act further obliges the public employers to promote equal opportunities in workplaces, eliminate discrimination in employment policy or practice, and have to provide equal remuneration for men and women for work of equal value.⁸⁹⁸ The government had further taken specific measures on Employment Policy that encourages the increasing of the level of education and skills of women to enable them to compete equally with their male counterparts in the labour market.⁸⁹⁹

The government had further acknowledged the women rights in establishing the Ministry responsible for women's affairs (though it also deals with other matters relating to children, youths and elders). The women affairs are the top Ministry's priority in strengthening the government's format of coordination; monitoring and evaluation of the broad programme of protection the women's rights, among other vulnerable groups.⁹⁰⁰

The Ministry on behalf of the government has made efforts to reduce unemployment for the youths and women by empowering them economically and granting the loans through Economic Empowerment Fund. From 2014 to December 2017, the total numbers of 1419 of loans with valued 2.5 billion Tanzania Shillings have been granted to youths, women and different entrepreneur groups. In 2017, the total loans of 221 with valued of 569.31 million shillings have been granted as loans to borrowers 3,149 of Unguja and Pemba. Furthermore, the employment opportunities 949 were provided for the government and 1,644 for private sectors for 2017.⁹⁰¹

On the side of some members of Zanzibar society who have awoken women to know their rights, are Zanzibar Legal Services Centre (ZLSC), Zanzibar Female Lawyers

897 Section 10(1) of Act No.11 of 2005.

898 Ibid section 10 (2) (a) and (b).

899 Zanzibar Human Rights Report, 2016.

900 Ibid.

901 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

(ZAFELA) and Tanzania Media Women Association (TAMWA) –Zanzibar Office. These non-governmental organisations have been working to provide education and awareness in various ways on rights of women in Zanzibar. And have been struggling to assist women for their rights before the courts of law and outside the courts.⁹⁰²

7.1.2 Violence against Women

Violence against Women (VAW) refers to any action that results in or is likely to result in physical, sexual or psychological harm or suffering occasioned to women including acts of threats of such harm or suffering, coercion, or arbitrary deprivation of liberty whether occurring in public or private life.⁹⁰³ Violence against Women constitutes one of the most serious human rights abuses and public health problems in the contemporary world. It may occur in various locations such as in families, school, religious institutions, work places and others.

The Revolutionary Government of Zanzibar recognizes the empowerment of women is one way of curbing violence against them. However to transform the concept from VAW to empowerment is a critical to economic and social achievement of National development goals.⁹⁰⁴ As results, the violence remains a reality of everyday life for momentous numbers of women in Zanzibar.⁹⁰⁵

Data from National Household Surveys report high levels and an increasing trend of physical, sexual and emotional violence experienced by women. According to the 2015–2016 Tanzania Demographic Health Survey and Malaria Indicator Survey (TDHS-MIS 2015-16), 14 per cent of women survey respondents in Zanzibar aged 15–49 experienced physical violence since the age of 15. This represents a significant increase from 2010 when 10 per cent of women reported physical violence. Ever-married women who have experienced physical violence since age 15 most commonly report husbands/partners as perpetrators of violence. Never married women who have ever experienced physical.⁹⁰⁶

Violence since age 15 most commonly report the perpetrator to be a teacher or a relative. Instances of physical violence decline sharply with increasing wealth and education. The TDHS-MIS 2015–16 also reported that almost 1 in 10 women (9 percent)

902 Zanzibar Human Rights Report (2016).

903 Ministry of Labour, Empowerment, Elders, Youth, Women and Children. National Plan of Action to end Violence Against Women and Children 2017-2022, p.6.

904 See Cluster III of MKUZA II, Goal No. 2, the core cluster strategies associated to goal two of cluster three, No.vii, p.100.

905 Smee S. (2012), Wall of Silence: A look at Violence Against Women in Northern Zanzibar, p.2.

906 Ministry of Labour, Empowerment, Elders, Youth, Women and Children. National Plan of Action to end Violence Against Women and Children 2017-2022, p.14.

surveyed in Zanzibar aged 15–49 had experienced sexual violence (representing an increase from 6.5 per cent in the previous National Survey in 2010). Sexual violence is most frequently committed by persons with whom women have a close personal relationship.⁹⁰⁷

Less than half of women who ever experienced sexual or physical violence sought help to stop violence and 29 per cent of women never sought help and never told anyone about their experience. Furthermore, violence against women is reported to be normalized within communities' social norms and practices. According to the TDHS-MIS 2015–16, 36 per cent of women and 35.5 per cent of men surveyed in Zanzibar agreed that wife-beating by a husband is justified in specific situations like burning the food, arguing with him, going out without telling him or neglecting children.⁹⁰⁸

Women are also victims of sexual violence. Sexual violence is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the survivor, in any setting, including but not limited to home and work.⁹⁰⁹

Women in Zanzibar are not safe from the sexual violence. They are the main victims of rape and other sexual assaults. The events of sexual violence in Zanzibar are increasing day to day. The numbers which are reported to the Police and other authorities are low compared to what are hidden behind the veil. The Minister of Trade, Industries and Markets, Hon. Ambassador Amina Salum Ali had affirmed the increasing of number of women whom are raped on picking the cloves in Pemba.

The Minister's answer had based on the claims from the people on the increasing the rape and other sexual violence against women who peak the cloves commonly known as *Mpetu*, which resulted the Revolutionary Government to curb the same and seriously taking any legal action against anyone who violates the same. This has been done to decrease such sexual violence events against the women in Zanzibar.⁹¹⁰

Although the violence against women has increased, as above noted, the efforts that government takes appears to be well appreciated as the proper ones. For instance, the Zanzibar Vision 2020 which was planned by the government has directed the equal access to the opportunities that improve the women's socio-economic status and enable them to have equal opportunity to participate in the development of their

907 Ibid.

908 Ibid.

909 USAID, op.cit, p.2.

910 Mwananchi Daily Newspaper, Monday October 2, 2017.

country.⁹¹¹ Therefore, the main Vision's policy objective is to improve and maintain high education standards and skills cost effectively accessed to education by the women.⁹¹²

Among the common efforts taken by the Revolutionary Government of Zanzibar were to adopt a national campaign 'Say No to Violence against Women' which was launched in 2008 and endorsed by the President. Also to set up a National Gender-based violence (GBV) Committee and District Gender-based violence (GBV) Committees. These committees offer counseling services and encourage the reporting of Violence against women cases in the community. The government had further introduced a Police gender desk to fast track all initiatives relating to GBV.⁹¹³ One among other task of the desk is to make follow up on the GBV cases reported to police for the best interest of women and children who were most vulnerable. The figure below shows the number of GBV cases reported in the Police Gender Desk.

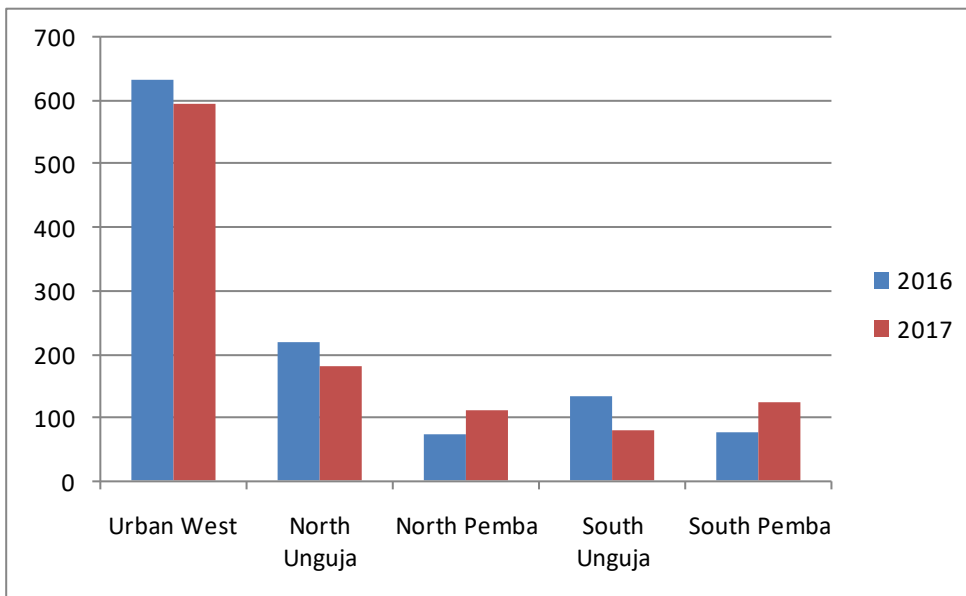


Figure 16: Number of GBV Cases reported at the Police Gender Desk

A one stop centre for survivors of Gender based violence (GBV) was further opened at the Mnazi Mmoja Hospital in Zanzibar in May 2011. This centre offers holistic support to survivors of GBV including healthcare, psychosocial support, criminal investigation and the collection of forensic evidence. Additional one stop centers are planned at other locations including the Chake Chake Hospital on the island of

911 Zanzibar Vision 2020, p.28.

912 Ibid, p.30.

913 Smee S, op.cit.

Pemba.⁹¹⁴ In 2017 the total of 1013 cases reported to one stop centres compared to 1372 cases reported in 2016.⁹¹⁵

The government had furthermore introduced the Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA III) which sets out the National development agenda for the next five years 2016–2020 and recognizes that the empowerment of women is critical to economic and social transformation. MKUZA III includes specific outcomes and targets on gender equality and equity and on the prevention and response to violence against women.⁹¹⁶

The Revolutionary Government of Zanzibar has previously developed a National Plan of Action on Violence Against Children (2011–2015) and a National Multi-Sectoral Strategy and Action Plan for Preventing and Responding to Gender-Based Violence (GBV) in Zanzibar (2011). However, in implementing MKUZA III, there is a need to need to review and update existing National plans in order to give a clear direction in how commitments made in addressing violence against women will be met.⁹¹⁷

There are problems which hinder the efforts of fighting violence against women in Zanzibar and these can be evidenced in different areas. Firstly, there are loopholes in the laws which protect violence against women. For instance, all laws protect violence but have failed to provide the standard to prove what constitutes violence and the number of offences essentially making it difficult to charge anyone with the crime.

Secondly, the investigation process in sexual violence cases is not satisfactory. Criminal law requires Attorneys to prove beyond reasonable doubt for conviction. For that there must be solid evidence to prove a case. State Attorneys in the Office of the Director of Public Prosecutions blame the police for failure to collect strong evidence and as a result they stand in an awkward position to win a conviction especially when the accused persons are represented by competent advocates.⁹¹⁸

Thirdly, Violence against women is a sensitive topic which can impact on the willingness of reporting the matter by women themselves. However most women are not ready to participate in providing the formal or informal information when it needed. Factors such as a lack of privacy, time limitations and traumatic memories of past events may all impact on a women's willingness to participate. Women who are living in a situation of violence may be less willing to participate in a study or may be

914 Ibid.

915 Zanzibar Leo, 03 February 2018.

916 Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA III), p.7.

917 Ministry of Labour, Empowerment, Elders, Youth, Women and Children. National Plan of Action to End Violence Against Women and Children 2017-2022, p.18.

918 Zanzibar Human Rights Report, 2016.

less accessible if they are living with relatives or confined to the household. There is a culture of silence around VAW which makes the collection of accurate information on the matter particularly challenging. The possibility of under-reporting of violence, therefore, cannot be ruled out in any survey and some of the information seekers noted that they did not feel women felt completely free to speak about violence.⁹¹⁹

Fourthly, Zanzibar has for long time lacked DNA equipment, a problem that exists to date. The result of this is that where there is a need for DNA testing, those who need the service should travel to Dar es Salaam where majority fail to do so because of the high costs involved. As DNA service is only available in Dar es Salaam, it is expensive and it takes time to have the results obtained, thus frustrating those who want proof for their cases. Lastly, there is a shortage of medical doctors to investigate sexual harassment issues and this is still a big challenge for Zanzibar. It is still recommended for the government to take serious measures to deal with gender violence cases.⁹²⁰

7.1.3 Gender Equality and Discrimination

Gender equality is the concept that all human beings, regardless of sex, are equal in dignity and rights and free to develop their personal abilities, pursue their professional careers and make choices without discrimination and limitations set by stereotypes, rigid gender roles and prejudices.⁹²¹ Gender equality therefore, as different from gender equity refers to the same or identical treatment of men and women. It takes into actual circumstances of men and women and is to be treated in exactly the same manner to redress discrimination or to take account of women's biological differences.⁹²²

The term discrimination may be defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁹²³

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights and United Nations values. Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women's human rights has not always been a priority. Achieving equality between women and men requires a comprehensive

919 Smee S, op.cit, p.16.

920 Zanzibar Human Rights Report, 2016.

921 Ministry of Labour, Empowerment, Elders, Youth, Women and Children, op.cit p.6

922 United Nations, (2014) Women Rights are Human Rights. United Nations Publication, p.34.

923 Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination.⁹²⁴

At the outset of the modern human rights movement, the UN Charter emphasized the importance of non-discrimination. The principle was incorporated into the UDHR's Article 2, which mandates that all persons are entitled to all human rights "without distinction of any kind," including gender, race, sex, religion, political opinion, national and social origin, among others.⁹²⁵

Since the discrimination against women is rampant around the globe and a still reality in most families,⁹²⁶ the drafting of the UDHR on one way was important in curbing the discrimination. It is clear, for example, that especially in the underdeveloped and developing countries of the world, women suffer disproportionately from hunger, malnutrition, lack of access to education and health care; they are subjected to domestic violence, rape during peacetime and war, and sexual abuse and harassment; they suffer from unequal pay and other discriminatory treatment. In many cases there are substantial barriers against women to participate in politics of their societies and they often suffer from unequal treatment before the law.⁹²⁷

In 1995, the UN Commission on the Status of Women organized the Fourth World Conference on Women (the Beijing Conference). 17,000 participants and 30,000 activists from around the globe attended the opening of the conference. The conference was held for the purpose of ensuring gender equality and empowerment of all women around the globe.⁹²⁸ The Beijing Conference adopted the Beijing Declaration and Platform for Action that to be used as a framework for change and had comprehensive commitments under 12 critical areas of concern, which are women and environment; women in power and decision making; the girl child; women and the economy; women and poverty; violence against women; human rights of women; education and training of women; institutional mechanism for the advancement of women; women and health; women and the media; and women and armed conflicts.⁹²⁹

Both Constitutions of Tanzania guarantee equality to all persons by affirming the same of being born free, equal and entitled to recognition and respect for their dignity. This implies that, the Constitutions prohibit discrimination based on nationality, tribal

924 Ibid, p.1.

925 Article 2 of the Universal Declaration of Human Rights, 1948.

926 Mwinula M.M, *Combating Violence Against Women, Gender Violence And UNESCO Role In The Establishment of National Gender Research And Documentation Centre in Tanzania* P.107.

927 Cotula L.et al (2008), *The Right to Food and Access to Natural Resources*,p.51.

928 Tanzania Human Rights Report, 2014, p.183.

929 Tanzania Human Rights Report, 2014, p.183-184

identity, political ideology, race, religion, gender, or social status.⁹³⁰

Gender equality and Discrimination also found on inheritance and marriage whereby the laws do not provide for equality for women, and therefore women's rights often are not totally respected. Discrimination against women was most acute in rural areas. Rural women had little opportunity to attend school or obtain wage employment. Women in the private sector sometimes faced discrimination from employers who believed that household obligations were a professional liability. The law gives individuals the right to use, transfer, and occupy land without distinction of gender and recognizes women's occupancy rights (all land in the country legally belongs to the government), but implementation become difficult because most women are unaware of the law.⁹³¹

In fighting for gender equality and against discrimination to women, the Constitution of Zanzibar has granted them the right to take part in decision making, as the same right granted to men. The same right is granted to everyone in the society as it is read:

“Every Zanzibari shall have the right to take part in the conduct of the government of the country, either directly or indirectly through freely chosen representatives”.⁹³²

Despite this constitutional guarantee, it has been reported that women participation in the decision making process still remains low. The main reason being attributed to the low participation of women is lack of education, cultural and historical factors including the religious beliefs and lack of exposure.⁹³³

Participation of women in political posts is through contesting in the general elections, or being appointed by the president⁹³⁴ or after being elected or nominated to special seats for women to join the United Republic Parliament⁹³⁵ or House of Representatives.⁹³⁶ Despite these different avenues for women to participate in public leadership, their number is still unsatisfactory.

930 Article 12 of the Constitution of United Republic of Tanzania, 1977 and Section 11 of the Zanzibar Constitution, 1984

931 Tanzania Human Rights Report, 2012, p.30

932 Section 21(1) of the Constitution of Zanzibar, 1984.

933 ZLSC, Zanzibar Human Rights Report 2016.

934 Section 61 (2) of the Constitution of Zanzibar, 1984.

935 Article 66(1)(b) of the Constitution of United Republic of Tanzania, 1977.

936 Section 67(1) of the Constitution of Zanzibar, 1984.

7.1.4 Conclusion and Recommendations

In a social norms context there is the perception that women in the marriage are belong to their husbands rather than having their freedom and rights as their husbands in their legal marriages. Being treated as belongs, always found as a step of discriminate and humiliate women in their life. In terms of behavioural and societal norms, men are socially and economically dominant, resulting in perceptions that women are not equal making parity in the gender arena difficult to achieve.

This is compounded by limited awareness and knowledge of the social, economic, and legal rights of women and men, girls and boys afforded by international, regional, and national laws. But, it a role of government and society to fight against these norms that increase violence against women and that are often associated with stigma, fear, and social alienation.⁹³⁷

7.2 Children Rights

To understand children vulnerability on how their rights are violated is one way of understanding the children's rights in the society. And the implementation of children's rights is so crucial since the children are the source of human generation and their welfare must be protected and preserved as a basis to human development in the society. The foundation of children's rights is provided in the International and Regional Conventions on human rights, laws and policies of the country, customs and traditions of the people living in any society.⁹³⁸

Norms and values that support Children's rights are so valued and have to be supported by the government and society at large. And those harmful socio-cultural norms and practices that harm the Children's rights should be condemned. Instead, the state, families, schools, medical facilities and other entities have to try to meet their obligations in ensuring that children get their rights to live, to grow and to develop by putting into consideration the best interest of the child.⁹³⁹

The United Nations Declaration on Human Rights, 1948 incorporates different types of rights that are, civil and political rights, and economic, social and cultural rights.⁹⁴⁰ These rights are the basis of human dignity, freedom, peace and law in the societies.

937 Ministry for Health, Community Development, Gender, Elderly and Children (2016) National Plan of Action to end Violence against Women and Children in Tanzania, 2017/18 – 2021/22, p.5.

938 UNICEF Tanzania, (2009) Violence Against Children in Tanzania Findings from a National Survey 2009, p.110

939 Ministry of Labour, Empowerment, Elders, Youth, Women and Children , p.37

940 Article 2 of UDHR

The United Nations Convention on the Rights of the Child (CRC) is built on basic human rights with special reference to the needs of children. Tanzania has ratified the International Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. In doing so Tanzania as a national state has accepted international and regional obligations and mainly recognizes the child as an individual with dignity, rights, views and needs. National laws, policies and regulations should demonstrate the real commitment to obligations.⁹⁴¹

As a party of Tanzania that is obliged to those ratified international and regional conventions on the interest of a child, Zanzibar children are protected by different international, regional and domestic legal instruments. The Convention of the Rights of the Child (CRC) 1989, the African Charter on the Rights and Welfare of the Child 1990, the Optional Protocol on the Involvement of Children in Armed Conflicts of 2000, Optional Protocol on the Safety of Children 2000, the Child Prostitution and Child Pornography 2000, the Constitution of the United Republic of Tanzania 1977, the Constitution of Zanzibar 1984 and the Children's Act (No 6) of 2011 are the best instruments used as the references on how the children have to be behaved.⁹⁴²

The enactment of Children's Act on 6th July 2011 and being formally gazetted in May 2012, made Zanzibar in a great success on the rights of children, since the Act incorporates key international child rights standards (particularly those contained in the UNCRC and ACRWC) into domestic law and is the principal legislation relating to children in Zanzibar. Furthermore, the Children's Act introduced a number of far reaching reforms that establishes a national framework of legal standards and procedures that specifically apply to children in need of care and protection and children in conflict with the law.⁹⁴³

Focusing on the International, Regional and domestic instruments, one may understand that Zanzibar is a paradise for the protection, promotion and sustaining the Children's rights. However Zanzibar is not in a satisfactory standard to be a real place that welfare of the Child is highly maintained, promoted and protected. That does not mean, one has to ignore the efforts taken by the Revolutionary government of Zanzibar and how the people toil in the proper maintenance of the welfare of the children, but a lot still needs to be done.⁹⁴⁴

941 Tanzania Human Rights Report, p.218

942 Ljungman, C.M et al, Evaluation of Save the Children's Child Rights Governance and Protection Projects in Tanzania – Zanzibar project (2014), p.12

943 Ibid.

944 ZLSC Human Rights Reports, 2016.

7.2.1 Harmful Cultural Practices against Children

All violations of children's rights may be described as harmful practices, but there are particular forms of violence against them which are defended on the basis of tradition, culture, religion or superstition by some community members. These are often known as 'harmful traditional practices'. They are largely carried out without the consent of the children involved and thus constitute a violation of human rights as set out in the Universal Declaration of Human Rights⁹⁴⁵ and violation against all instruments mentioned above.

Harmful traditional practices occur in different forms depending on the tradition of society concerned. There are some common in one state but rare in another, yet there are some common in all states or many of them. In Zanzibar, for instance female genital mutilation/cutting is rare to find but is common in almost all African countries.⁹⁴⁶ However, you can find early/forced marriage is common in the eyes and ears of Zanzibaris, yet is rare to be reported as a harmful traditional practice against girls and sometime boys living in the islands.⁹⁴⁷

Another incident for harmful practice to children in Zanzibar is the use of excessive corporal punishment in schools and *madrasa*. A vivid example is that of a child of 11 years old, the resident of Limbani Wete Pemba who is at Standard Four at Laureate International School of Ole Kianga, the District of Chake Chake Pemba, had died after being brutally and physically tortured by his teacher.⁹⁴⁸ As a result, the child had fallen down while he was cleaning the toilet and injured which is noted to be the source of death.

The Minister responsible for education in Zanzibar, Hon. Riziki Pembe Juma had cursed the cruel punishment against the child as contrary to his age. Hon. Maudline Castico, the Minister responsible for Works, Empowerment, Elders, Youths, Women and Children in Zanzibar said the punishment provided by teachers of beating and injuring the student is humiliation and urged the responsible legal authorities to take the legal action against the responsible teachers.⁹⁴⁹

945 https://www.ippf.org/sites/default/files/harmful_traditional_practices.pdf.(accessed on 8/12/2017)

946 UNICEF, Children and Women in Tanzania, p.92.

947 Ibid.

948 It was reported from the child's family that, their child's mattress plastic cover was torn and therefore he went to take a wrapper to wrap a playing tool for preparatory students. The teacher whom her playing tool has been destroyed by the victimised child, whose name known as Teacher Shamsa, in association with Teacher Jafar had punished the child by heading the said mattress and forced him to pass through 13th classrooms and was sticking him at the same time. The teachers forced the dead child to clean five school's toilets and corridor.

949 www.masaa24.com

7.2.2 Sexual Violence

The increasing of child abuse in Zanzibar, particularly in recent years, has made the society become more aware of the problem and the need for further investment in child care and family support services to respond to child abuse and welfare concerns. In 2009 the Revolutionary Government carried out the first survey on violence against children in Zanzibar. The findings of this survey, launched in 2011, report that violence against children, sexual exploitation and abuse are a significant problem and occur at home, in communities and at school.⁹⁵⁰

Though it was atypical to speak out of the Zanzibar communities that over one in 20 of females and almost one in ten males experiencing at least one incident of sexual violence before the age of 18, it is now become common among the people of the island on the fact. For instance it is rare to listen *Mawio*, the daily Morning Radio Programme of Zanzibar Broad Casting Radio, without having heard at least one of the sexual violence incidences against the Children of Zanzibar.

The changes to more awareness of the rights to children against abuse are not only found in the communities, but also to the government. It was obvious in the past years to find the child protection response in Zanzibar, was uneven and uncoordinated with no clear identified primary reference point and services stretched across different ministries, departments and national agencies, including police, hospitals, schools and community organisations, at the moment matter have changed. The significant progress has been made recently in an effort to develop a more strategic approach towards building a national child protection system.⁹⁵¹

The enactment of the Children's Act in 2011 justifies the point that the primary focus of the legislation is to develop a coordinated child protection system to effectively respond to cases of violence and abuse and to better promote and protect the rights of children in conflict with the law.⁹⁵² The Act also contains provisions relating to custody, access and maintenance, foster care and adoption, children and health services, guardianship and children in residential establishments.⁹⁵³

The new Children's Act establishes procedures and outlines the roles and responsibilities of national institutions and professionals in providing child protection services. It seeks to provide a clear route of access for referral and coordinated responses in cases of children in need of care and protection. The Act also seeks to link the child welfare and care system and criminal matters so as to better protect and promote the rights of

950 UNICEF, op.cit, p.117.

951 Ibid.

952 See Part V of Act No.6, 2011.

953 See the Act in particular Part III, IV, V, IX, X, XI, XII and XIII

all children.⁹⁵⁴

Furthermore, the development of National Guidelines for the Protection and Welfare of the Children by the Department of Social Welfare which is under the Ministry of Labour, Empowerment, Elders, Youths, Women and Children had created a clear route of referral for cases of abuse concerning children in Zanzibar.⁹⁵⁵ The Ministry among others, protects the children's rights and fights against their abuse through empowering the stakeholders to the Children's rights against their abuse in Zanzibar. It also coordinates the implementation of five years Work Plan against the Children's and Women Abuse in Zanzibar. And for the proper implementation of the same, the ministry had budgeted Tsh.55,100,000/- for this year.⁹⁵⁶

The establishment of Child Protection Unit in 2010 had assisted the awareness of the reporting the matters on the Child abuse in particular against sexual violence since the Unit provides psychological support to child victims of abuse and their parents. The providing of counselling to victims arises the awareness of the problem and it creates a way to solve the problem in the future.⁹⁵⁷

Despite the efforts taken by the Government, the incidents of sexual violence against the children are increasing in Zanzibar. Zanzibar has become a place that the children are not safe from sexual abuse, particularly boys. It has become a time that the kindness and politeness of the people of Zanzibar had changed to enemy and antagonism that no parent is sure of what will happen to his child at home, school, community and elsewhere. For instance in 2017, it was reported that, Mr. Mzee Abdalla Mkanga had sexually assaulted a six years child. The mother of that child, Mkasi Haji had narrated the happening of such event on 13th February 2017 at 5:00pm by the child's nearly relative, a step father of the child who was given a duty to take care of the child after the mother going to shop. The mother therefore, had recovered the incidence after coming back from the shop and finding the child lying, slacking while his mouth became red and his secrets parts were dirty. The mother had found his child lying and lost his consciousness.⁹⁵⁸

954 Ibid, Part II, IV, VI and IX.

955 UNICEF, op.cit, p.117.

956 Budget Speech of Ministry of Labour, Empowerment, Elders, Youths, Women and Children, 2017/2018.

957 Tanzania Ministries Responsible for Children, (2012) Tanzania 3rd 4th and 5th Reports on the Implementation of the Convention on the Rights of the Child (CRC) 2005-2011, p.108.

958 Zanzibar Lew Daily Newspaper, 17th February 2017, p.3.

7.2.3 Physical and Psychological Violence

The importance of peace and social tolerance is one way of stabilizing gender equality and welfare of the children in the society. On contrary, their failure is so dangerous to women and children whom their vulnerability is obvious in their daily life. When social norms allow or encourage violence and when norms perpetuate unequal relations based on gender, women and children are the primary victims. They become more vulnerable to physical, sexual and psychological violence in their homes and in their communities. They are more likely to be victims of abusive practices, such as female genital mutilation or child marriage.⁹⁵⁹

Violence against children has been a long time problem in Zanzibar. There are different forms of violence to children including physical and psychological violence that mostly happen from family members and the society at large. A number of non-governmental organizations at national and international levels have offered assistance to check this vice. An aggressive awareness campaign is being conducted to change the mind-set of the people to value the rights of children and to do away with violence to children.⁹⁶⁰

Notwithstanding the efforts taken, the violence against children still exists in a high rank. The reported events of violence against the children still increasing in Zanzibar, yet there are many others are hidden in the customs and traditions of the people. For example, it has been reported the incidence that a child of seven years old has been hospitalized at Micheweni Hospital, the Northern Region in Pemba, after being fired on his hands by his uncle known as Hamad Juma Shineni, the resident of Chamboni Micheweni, only because the child has been alleged to steal Ten thousands Tanzania shillings (10,000/) as it is shown in the below picture.⁹⁶¹



Picture 53: A child who was cruelly burnt for stealing Tshs. 10,000

959 Ministry for Health, Community Development, Gender, Elderly and Children p.18.

960 ZLSC Human Rights Reports, 2016.

961 Zanzibar Leo Daily Newspaper, 24th January 2017, p.6.

7.2.4 Conclusion and Recommendations

Tanzania has ratified and domesticated international and regional conventions on children's rights and Zanzibar as part of Tanzania has to implement the same in a manner the ratification is concerned. This form of ratification affects the proper implementation of the international and regional instruments on the rights of a child as unified in one sovereign state but with two different countries in one union, in particular the matter concerning the children is non-union matter.

This affects the implementation of minimum standards for all children in Tanzania as specified in the African Charter on the Rights and Welfare of the Child (ACRWC). This leads to the lack of consistency in delivery of services for children as for example in education, school girls who fall pregnant are allowed to go back to school in Zanzibar, but in the Tanzania Mainland this right is unattainable. Lack of consistency is also noted with regard to monitoring of children rights in which both sides of the Union have separate mechanisms for monitoring implementation of the Charter, although reporting is done as a country. This overall, creates parallel structures of accountability for children rights within one state party to the Charter.⁹⁶²

7.3 Rights of Persons with Disabilities

Disability is the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to temporary or permanent physical, mental or social barriers. Such a loss or limitation could be aggravated by community's perception of disabled people.⁹⁶³

Under the related Act, the term is defined as a state of restricted participation that results from the interaction between persons of impairments, conditions, health needs or similar situations, and environmental, social, and attitudinal barriers, where the impairments, conditions, health needs or similar situations may be permanent, temporary, intermittent or imputed, and include those that are inter alia, physical, sensory, cognitive, psychosocial, neurological, medical or intellectual or a combination of those.⁹⁶⁴

For thousands of years in every culture and society physical and mental differences have been ascribed special meaning. This was usually negative and often persists today, resulting in stigma, negative attitudes and stereotypes. People were thought to be disabled because they or their parents had done something wrong and because

962 Tanzania Child Rights Forum, (2016), The Tanzania's 2nd, 3rd and 4th State Report on the Implementation of the African Charter on the Rights and Welfare of the Child, p.4.

963 Ministry of Labour, Youth Development and Sports,(2014), National Policy on Disability, p.1.

964 Section 3 of the Act No.9, 2006 of the Laws of Zanzibar.

all-powerful gods, deities or fate had made them disabled (karma or sin). Disabled people were often subjected to inhuman treatment. Being seen as bringing shame on their families, they were locked away. Euthanasia was widely practiced on babies born with significant impairments. Such children were often abandoned and had to rely on begging to survive.⁹⁶⁵

Since the term may be differently defined in the context of the culture, perception and practice of the society, the preamble of Convention on the Rights of Persons with Disabilities (CRPD) acknowledges that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.⁹⁶⁶

The Convention referred above is the most prominent international instrument providing for the rights of the people with disability in which Tanzania is a signatory and Zanzibar has to implement it on being a part of Tanzania. In such doing, Zanzibar has enacted the Persons with Disabilities (Rights and Privileges) Act, No.9 of 2006 which provides for the rights and privileges of people with disabilities, and obliges anyone to take efforts to the maximum realisation of the rights of disabilities in Zanzibar.⁹⁶⁷

Under the Act, any disable person in Zanzibar has the right to education,⁹⁶⁸ right to employment,⁹⁶⁹ right to medical care,⁹⁷⁰ accessibility and mobility.⁹⁷¹ As said earlier, the realisation of rights of disable persons has one step of success but the Act had further obliged anyone to realise them.⁹⁷²

In such realisation, the government of Zanzibar had made its efforts to realise the rights of disabled persons in Zanzibar and further obliged others to realise them by documenting other important documentations apart from the legislation in particular having made the Zanzibar Education Policy 2006, that focus on improving access to education for children with disabilities and the Zanzibar Strategy for Growth and Reduction of Poverty, 2006-2020.⁹⁷³ Furthermore, the Revolution Government

965 Rieser R.(2012) Implementing Inclusive Education: A Common Guide to Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities, p.33

966 See Preamble of the Convention on the Rights of Persons with Disabilities of 2006

967 Section 5 of Act No.9, 2006.

968 Ibid, section 9.

969 Ibid, section 7.

970 Ibid, section 11.

971 Ibid, section 12.

972 Ibid, section 5.

973 Zanzibar Human Rights Report, 2016.

of Zanzibar has set a special department which is under the Office of Second Vice President of Zanzibar to be responsible for dealing with matters relating to people with disabilities.⁹⁷⁴

Apart from government institutions there are a number of non-governmental organizations dealing with the promotion and interests of people with disabilities of different types. There are more than ten non-governmental organizations dealing with people of different disabilities. These include the Zanzibar Association of the Blind (ZANAB), Zanzibar Association for People with Developmental Disabilities (ZAPDD), the Organization of People with Disabilities in Zanzibar (UWZ), Zanzibar Centre for Disability and Inclusive Development (ZACEDID) and others.⁹⁷⁵

7.3.1 Equality and Discrimination

To discriminate the persons with disability means to accord different treatment to different person solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass persons with disabilities and include to limit, segregate or classify in a way that adversely affects the opportunities or status of a person with disability.⁹⁷⁶

Inequality and discrimination to the persons with the disability can happen in their ability to work, study, perform domestic responsibilities and participate in community activities. As the same can be practised in accessing transport, information, and healthcare. People with disability are more vulnerable than others to illness, theft of their property, and even accusations of witchcraft.⁹⁷⁷

The discrimination can be found in different ways. For example, in using the public roads, the persons with disability are discriminated from using them as other people can do since the roads are not constructed as user friendly to persons with disability. Hon. Mwantatu Mbaraka Khamis, in her contribution to the Department of Transport and Licence which is under the Ministry of Communication and Works of the Revolutionary Government of Zanzibar, the Ministry which is responsible to deal with all road constructions in Zanzibar, had argued on the equality of using the public roads as the fundamental right of every one in Zanzibar.⁹⁷⁸

974 Budget Speech of the Second Vice President of Zanzibar, 2017/2018.

975 Zanzibar Human Rights Report, 2016.

976 Section 2 of Act No. 9, 2006 of the Laws of Zanzibar.

977 Revolutionary Government of Zanzibar, (2013) Zanzibar Social Projection Policy, Final Draft p.13.

978 Hansards of the House of Representatives of Zanzibar, of 10th March 2017, p.101.

In spite of the efforts of road construction by the Government, the Ministry does not construct the roads in Zanzibar as passable and user friendly to the persons with disability. This is one way of discriminating them from the right of using the public roads as other people do.⁹⁷⁹

This contravenes the provisions of the Persons with Disabilities (Rights and Privileges) Act which states as:

“Persons with disabilities shall be entitled to a barrier-free and disability friendly environment to enable them to have access to public buildings and facilities for public use, roads, other social amenities, assistive devices and other equipment to promote their mobility.”

“The provision of subsection (1) of this section, shall come into effect and bind owners of the existing public buildings and facilities for public use, roads and other social amenities, 12 months after this Act comes into force.”⁹⁸⁰

People with disabilities have been facing discrimination and denial of their rights in employment, education, health and better life. The rights of people with disabilities are derived from constitutional principles just like any other rights. By acknowledging this, the Members of the House of Representatives of Zanzibar have been raising their voices to ask the Government considering the rights of persons with disability in employment and education, and therefore, the Public Service Commission has to consider their rights as other persons to be employed in the Public Sectors.⁹⁸¹

The government on its side had enhanced participation of people with disability on various economic and social activities in the country. The government for that purpose had established People with Disability Fund in 2002. The Fund that now had got 166 Million Tanzania Shillings had been aimed at assisting the people with disability by granting them the cheap loans to empower them on their activities, including self employment. The government is in the final process to finalise People with Disability Policy that would provide a good procedures on dealing with their matters.⁹⁸²

The rights of people with disabilities are found in the constitutional provision which forbid all forms of inequality and discrimination based on race, nationality or sex. The rights of Persons with Disability are also put forward under international human right instruments, such as the Universal Declaration of Human Rights, 1948 and the

979 Ibid.

980 Section 12(1) and (2) of Act No.6 of 2006.

981 Hansards of the House of Representatives of Zanzibar of 2nd March 2017, p.40.

982 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018.

International Convention on the Rights of People with Disabilities.⁹⁸³ Therefore, to combat against inequality and discrimination against the persons with disability in Zanzibar is mandatory to everyone.

7.3.2 Violence against Persons with Disabilities

People with mental disabilities are subjected to sexual violence and some of them are raped and impregnated. This happens in Zanzibar despite in the low reporting rate as compared to other places in the world. Violence against persons with disabilities happens under different grounds including the state of their vulnerability.⁹⁸⁴

Under whatever ground of prevailing violence against persons with disabilities in the islands, Zanzibar has to take measures to fight against it as such doing is to comply with the provision of Convention of taking the all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.⁹⁸⁵

In combating against the violence done to the persons with disabilities, Zanzibar has to take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring among other, education on how to avoid, recognize and report instances of exploitation, violence and abuse. Since education is better way of raising awareness on the rights of persons with disability, to educate the persons with disability is the best.

However, Zanzibar faces main challenges for providing education to children with disabilities. It is this on the shortage of trained teachers; shortage of appropriate teaching and learning materials; inadequate supply of teaching tools and equipment for learners with disabilities, inaccessible school buildings (no ramps, narrow corridors and doors, poorly designed toilets); distances from home to the nearest school; negative community attitude towards people with disabilities and low awareness and sensitivity to disability issues by government policy makers and other stakeholders.⁹⁸⁶ All of these making fight against violence against persons with disabilities a hard task to achieve in Zanzibar.

983 Tanzania Human Rights Reports, 2015, p. 154.

984 Sida, (2014) Disability Rights in Tanzania, p.1.

985 Article 16(1) of the Convention on the Rights of Persons with Disabilities (CRPD).

986 The 7th and 8th Periodic Report on the Implementation of CEDAW of 2008-2014.

7.3.3 Conclusion and Recommendations

The aim of human rights instruments at this angle is to protect the vulnerable groups from violations of their fundamental human rights. There are particular groups for various reasons, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights. The protection of vulnerable group in Zanzibar is not satisfactory, despite all the efforts that are taken to ensure their welfare.

To justify this, one can find a well done efforts of the introduction the specific department dealing with the rights of people with disability under the Second Vice President, yet the funds allocated to this department is not enough to enable it perform its duties accordingly. It is hereby recommended further to the government to allocate enough funds to support activities and projects of people with disabilities.

Again, he can realise different problems facing persons with disability including that large number of public buildings constructed in Zanzibar are not accessible to people with disabilities; most of the families of people with disabilities live below the poverty line and hardly meet the basic needs of life; there is also the problem of some families of people with disabilities to try and hide them and keep information about them a secret and yet discrimination in employment is another serious problem that cannot be overlooked.

To overcome these challenges, the government has complete and proper implement a policy for people with disabilities that is expected to protect their rights and ensure their welfare.

7.4 Rights of the Elderly

Human rights are universal. They apply to all human beings everywhere, regardless of their sex, age, religious affiliation, disability, sexual orientation and other distinctions. Thus, the human rights of all people, including older persons are tacitly protected in the Bill of Rights.⁹⁸⁷

It is hard to find a single provision for the right of elderly in the convention of Universal Declaration of Human Right and other International Human Rights instruments, yet their rights are protected and well recognised as other human beings who have the same rights and duties regardless their gender, race, religion and other differences.⁹⁸⁸

987 Fredvang Marthe and Simon Biggs (2012), The Rights of Elder persons, Social Policy Working Paper no. 16, p.10.

988 FrédéricMégret (2006), The Human Rights of the Elderly: An Emerging Challenges, p.45.

At regional level, matter is different. In reading the regional convention of European Union, one understands that the Convention recognizes and respects the rights of the elderly to live a life of dignity and independence and to participate in social and cultural life.⁹⁸⁹

The African Charter has also recognised the rights to elderly as it states:

“The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.”

At local level, the rights to elderly are recognised under the Zanzibar Constitution as one of the responsibilities of the government to ensure it assist and enable to be assisted any disadvantaged groups such as the elderly, the sick, children and disabled persons.⁹⁹⁰ These rights are not incorporated under Bill of Rights of the Constitution that is Part III, but can be argued to be recognized as other rights in that manner of being recognized under section 10(g) of Zanzibar Constitution of 1984.

In implementing its responsibility, the government made several efforts to protect the welfare of elderly people. The establishment of special homes for the elderly in Unguja and Pemba, is one of the unforgettable effort made by the government. There are number of elders who live under government support at Sebleni and Welezo for Unguja; Limbani and Makundeni for Pemba. These elders among others are monthly paid Tsh.20,000/- to those attained from 70 years old. The government had developed the life of these elders in maintaining the houses and support them to the extent the elders praise their government and are willing to stay in those houses for the rest of their life.

However, paying elders Tsh.20,000/- is not satisfactory since the costs of life had raised and these elders are dependent to the government. The government had started paying these elders from April 2016 and the implementation of such payment has been challenged by the Women's Development, Information and Tourism Standing Committee of the House of Representatives of Zanzibar that paying Tsh.20,000/- to the elderly with 70 years of age and above is unclear and controversial, since there is no specific number of elders whom were registered.

This makes difficulty to estimate the exact amounts of funds that has been used to benefit the elders whom are not exactly known by their current number, the number of those who had died before and that increasing for each month. This challenge has been observed by the said House Committee after getting unclear and controversial analysis

989 Article 25 of the Charter of Fundamental Rights of the European Union.

990 Section 10(g) of the Constitution of Zanzibar, 1984.

from the responsible Ministry on the expenditures of the said allocated funds.⁹⁹¹

The government further has to think on granting the elders the Health Insurance to enable them getting the access to health quality. Health Insurance will guarantee the elders on their right to get treatment for any disease they suffer, in considering that they are at the age of being victims to different diseases than anybody else.

7.4.1 Violence against Elderly

Despite the efforts done by the Revolutionary Government of Zanzibar to protect the rights of elderly and the prevalence of religious belief among the Zanzibaris on being mercy to the elders, the elderly are also vulnerable to attacks and being violated their human rights. The elders have become the victims of torture, attacks and killings due to the different reasons including that of superstitious beliefs, though are not to the extent of being killed as happen in Tanzania mainland. The elders in Zanzibar are victims of lack of proper social protection, including health care and food security. This situation forcing them to totally rely on the mercy of their children, other family members, relatives, or strangers on the streets.

Zanzibar like Tanzania and other countries has an obligation of taking care of all its own citizens, especially those who belong to the vulnerable groups. However, this has not been the case due to several reasons, among them lack of statistics of people in these vulnerable groups, which are supposed to be considered in different national plans and policies designed to provide protection to vulnerable groups. Such policies do not take into account the demographics of people in these groups, making it difficult to properly implement such plans and policies.⁹⁹²

The elderly also face the challenge of being abused verbally and physically. Older people especially women, face discrimination because of the negative aspect of ageing within the society. As a result they end up mistreated by family members and care givers.⁹⁹³

7.4.2 Discrimination against Elderly

The elderly have the right to be free from discrimination. They have to be treated equally favourably, regardless of health status or disability, as other age groups. The right is applied to all aspects of life, including, but not limited to, employment, access to education, accommodations, and other facilities.

991 Hansards of the House of Representatives of Zanzibar of 27th February, 2017, p. 57

992 Tanzania Human Rights Reports, 2014, p.175.

993 Tanzania Human Rights Reports, 2015, p.160.

To be discriminated against is a violation of one's of the elder's human rights. Yet many older persons are routinely treated differently because of their age. Social ageism is a specific prejudice against and stereotyping of persons based on their age, which is particularly found in later life. Ageism can both interpersonal and a result of institutional practice. Where countries have prohibited age discrimination by law, this usually only relates to employment and not other areas such as social care, healthcare or other services.⁹⁹⁴

7.4.3 Conclusion and Recommendations

Among the recommendable efforts taken by the Government of Zanzibar is that of paying the pensions to the elders from 70 years of age and above. However there is a need for the House of Representatives to oversight the Government on proper implementation of this effort. On the other hands, the Government has to take actions against those officers whom were found misused these funds for the purpose of enhancing the welfare of the elders in Zanzibar.

7.5 Rights of Persons Living with HIV/AIDS

Acquired Immune Deficiency Syndrome (AIDS) is a disease caused by infection with the Human Immune Deficiency Virus (HIV). HIV is spread only when infected body fluids enter the bloodstream of a non-infected person. The dominant modes of transmission of the HIV are unprotected penetrative or oral sexual intercourse where the exchange of bodily fluids takes place through the accidental or deliberate shared use of HIV-contaminated needles or skin cutting/piercing instruments (in and out of health care settings) or from infected mothers to infants.⁹⁹⁵

The terms 'Sexual health rights' are rare to be found in the international instruments but they are integrated to the right to health, which is recognized and enshrined by United Nations (UN) human rights instruments such as the Universal Declaration on Human Rights (UDHR),⁹⁹⁶ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁹⁹⁷ the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁹⁹⁸ and the Convention on the Rights of the Child (CRC).⁹⁹⁹ It is also enshrined in the African regional and sub-regional human rights instruments including the African Charter on Human and Peoples' Rights.¹⁰⁰⁰

994 Fredvang Marthe and Simon Biggs, op.cit p.17.

995 University of Cape Town (2006) Policy on HIV Infection and AIDS.

996 Article 25 of UDHR.

997 Article 12 of ICESCR.

998 Article 14 of CEDAW.

999 Article 14 of CRC.

1000 Article 12 of African Charter on Human and Peoples' Rights.

In the world we have today, HIV/AIDS is one of the principal public health problems, that affecting all nations in particular the poor countries. A joint United Nations Programme on HIV/AIDS (UNAIDS) Report of 2015 indicates that since 2000, about 38.1 million people were infected with HIV AND 25.3 million people have died of AIDS- related illness.

In 2015, there were about 36.9 million PLHIV in the world and in 2014 it was estimated that about 1.2 million people have died of AIDS worldwide¹⁰⁰¹. It was estimated that the HIV prevalence for the Sub Saharan African (SSA) region in 2015 was 4.7% but varies greatly between countries within SSA. Southern Africa is claimed to be the worst affected region¹⁰⁰².

The first case of HIV/AIDS in Zanzibar was reported in 1986. From that time onwards, the country has continued to witness a growth in the cumulative number of HIV and the HIV epidemic has spread to all districts in Zanzibar but at unequal pace, levels and magnitude.¹⁰⁰³

In realisation of the problem and on considering the right to health to its people, the Zanzibar government passed the Zanzibar HIV and AIDS Prevention and Management Act No.18 of 2013, to provide among others the prevention and management of HIV and AIDS in Zanzibar and for the protection and promotion of the human rights of persons living with or affected by HIV and AIDS.¹⁰⁰⁴ The Act prohibits any kind of discrimination directly or indirectly against people living with HIV.¹⁰⁰⁵

The Act had reinforced the established Zanzibar AIDS Commission which was established under the Zanzibar Aids Commission Act, No.3 of 2002 as a separate administrative organ to deal with this pandemic.¹⁰⁰⁶ The Zanzibar AIDS Commission is one of the major players for HIV/AIDS in Zanzibar. This Commission which was working under the First Vice President of Zanzibar since the establishment of the Government of National Unity in 2010, is currently working under the Office of the Second Vice President of Zanzibar whose main responsibility is to coordinate the national multi-sectoral response to this pandemic.¹⁰⁰⁷

1001 The Third Zanzibar National HIV and AIDS Strategic Plan 2016.2017- 2020/21

1002 Ibid.

1003 Zanzibar Human Rights Report, 2016.

1004 See the long Title of the HIV and AIDS Prevention and Management Act No.18 of 2013.

1005 Ibid, section 23.

1006 Ibid, section 3.

1007 Budget Speech of the Second Vice President, 2017/2018

The Commission among its functions is to organize the national awareness of HIV/AIDS and enhance public awareness by ensuring the accessing of all necessary facilities to all people without humiliation to achieve 90-90-90 (90%) of all infected with HIV/AIDS. The aim of this 90% goal is to ensure those infected with HIV/AIDS are aware of their conditions, and are using ARVs to minimize the infection of HIV/AIDS.¹⁰⁰⁸

Apart from the government efforts on fighting against HIV/AIDS in Zanzibar, there are other non-governmental organizations dealing with HIV/AIDS in an attempt to contain the disease from further spreading in the society. Zanzibar Association of People with HIV/Aids (ZAPHA+) and the Zanzibar NGO Cluster for HIV and AIDS Prevention and Control (ZANGOC) are umbrella organizations comprising of forty five HIV and AIDS related NGOs, Community Based Organizations (CBOs) and Faith Based Organizations (FBOs) in Zanzibar (41 in Unguja and 4 in Pemba).¹⁰⁰⁹

Fighting against HIV/AIDS in Zanzibar cannot succeed without curbing sexual intercourse, especially heterosexual sex, because it causes the disease for more than 91% of HIV transmission in Zanzibar. Apart from sexual intercourse, there are other common accounts for HIV/AIDS transmission in Zanzibar, the others are through body fluids and blood products in hospital, and through piercing and other surgical invasive equipment accounts for approximately 7% of all HIV transmission.¹⁰¹⁰

Furthermore, the disease is transmitted at the estimation of 5% for mother to child transmission, inclusive of breast-feeding period. While the HIV transmission among the injecting drug user's counts 15.1%.¹⁰¹¹

7.5.1 Discrimination against people with HIV

Although the International, regional and local legal instruments condemn discrimination against People living with HIV and AIDS, the people living with HIV/AIDS in Zanzibar are victims of their human rights violation and are victims on being discriminated by their societies. The discrimination prevail in Zanzibar societies said mostly caused on insufficient knowledge of the public on how these people are to be treated equal to others.¹⁰¹² Zanzibar society which is influenced with the religious belief, perceive HIV/AIDS as curse from God to anyone affected and since the 91% of those victims are said had affected on the ground of sexual intercourse, which is a

1008 See Part III of Act No. 18, 2013

1009 Zanzibar Human Rights Report, 2016

1010 *ibid*

1011 *ibid*

1012 ZLSC, Zanzibar Human Right Report 2015, p.125.

great sin against their religious belief, the people living of HIV/AIDS in Zanzibar are mostly suffer from discrimination.

People living with and affected by HIV continue to face stigma and discrimination in many countries across the globe, and Zanzibar is one amongst those countries. They are more likely to be discriminated against health services than people with most other health conditions. Such exclusion has a significant impact on societies and the life of these victims. Stigma and discrimination against these people undermines the efficiency of national efforts to prevent and control the epidemic as noted in many papers.¹⁰¹³

In practice, HIV-related stigma and discrimination in Zanzibar is high and acts as a barrier to voluntary counseling and testing as well as to the effectiveness of HIV prevention and care services. Stigma can have a major impact on people living with HIV and those at risk of infection and has been shown to be associated with stress, depression, and lower perceived quality of life among those people living with HIV/AIDS in Zanzibar. Stigma can manifest itself in a number of ways from loss of employment and denial of health care to social isolation and lack of family support. People living with HIV can also be blamed by their families for becoming infected because of the burden that the disease places on the family.¹⁰¹⁴ Increasing of stigma in Zanzibar is usually caused by lack of awareness and stereotype about HIV & AIDS and people live with it.¹⁰¹⁵

7.5.2 Access to Health Services

People living with HIV/AIDS are the first priority among the citizens of the country to be granted their right to access to health services from the disease they suffer. However, the matter is different in Zanzibar. These people experience stigmas from the health service providers. Some are being denied health services and also mistreated by the health providers. As result, number of those people living with HIV/AIDS have decided to avoid the health facilities and some with their wealth ability decided to travel to Tanzania mainland to find those services, for fear of being stigmatised or discriminated due to their status in Zanzibar.¹⁰¹⁶

The health care providers in Zanzibar have been coerced some people living with HIV/AIDS on their condition instead of using their profession on counselling them

1013 Kassile T. et al, HIV/AIDS-Related Stigma and Discrimination in Workplaces in Tanzania, *Rwanda Journal Series F: Medicine and Health Sciences Vol. 2 No. 1, 2015* p.31.

1014 ZAPHA+ (2010), People Living with HIV Stigma Index Assessment, Zanzibar, p.8.

1015 Ibid, p.9.

1016 Ibid, p.57.

properly. Many of these people are coerced not to have a child or children something is unprofessional, and therefore, some of them are being coerced by health care providers to get sterilised because of HIV status on infant feeding practices and methods of giving birth.¹⁰¹⁷

7.5.3 Conclusion and Recommendations

People living with HIV/AIDS have been discriminated and their right to access health facilities has been in trouble. However, the more days go on, the public awareness on the matter is increasing. This had among others been caused by the efforts taken by the government and the non-governmental organizations of Zanzibar which strive to ensure the rights of people living with HIV/AIDS are recognized and duly respected.

Among the sources of increasing HIV/AIDS in Zanzibar is Tourism industry. Tourism sector is responsible for generating 10 per cent of the world's GDP, and 1 in 11 jobs, according to the UN's World Tourism Organization. With increasing tourism, including in Africa. There needs to be an awareness of the contributing risk factors for HIV transmission, according to the UN International Labour Organization (ILO).¹⁰¹⁸

In Zanzibar, tourism sector is one which accelerating HIV/AIDS since it engages the tourists in fun and pleasure. Therefore, there are number of sex tourists who find Zanzibar as their best destination. This increases this epidemic disease. The government has to be ready to control the effects of tourism in particular those acts contravene the moral behaviour of its people.

1017 Ibid, p.58.

1018 <https://newint.org/web-exclusive/2017-08-09/zanzibar-shows-tourism-spreads-hiv>, (accessed on 2nd December, 2017).

CHAPTER 8:

CORRUPTION, GOOD GOVERNANCE AND HUMAN RIGHTS

8.0 Introduction

Under the Zanzibar legal system, the term corruption is defined broadly and includes all the crimes covered in Part V of the Zanzibar Anti-Corruption and Economic Crimes Act, 2012. These offences include bribing agent of the ZAECA; secret inducement for advice; deceiving principal; fail to disclose conflict of interests; improper benefits to trustees for appointment; bid rigging; misappropriation of property and revenue; misappropriation of assets; tax evasion; smuggling; hoarding; ant-trust and syndication; wrongful use of official information; money laundering; drug trafficking; counterfeit goods and currency; scheme intended to unlawfully manipulate exchange rate; abuse of office; transfer of proceeds of corruption; corruption in election; bribery of foreign official; sexual favours and abetment.¹⁰¹⁹

As part of the United Republic of Tanzania, Zanzibar has come up with this broad definition of 'corruption' which encompasses a broad range of practices and behaviour in its efforts to implement the United Nations Convention Against Corruption of 2003; the African Union Convention on Preventing and Combating Corruption of 2003; SADC Protocol Against Corruption of 2001, and so many other similar treaties which Tanzania is a signatory. It is from this background that issues of corruption in Zanzibar have been examined in this report.

8.1 Common Forms of Corruption in Zanzibar

Diagnosis of the nature of corrupt practices was drawn primarily from the stakeholders interviews conducted as part of the baseline assessment in which most respondents identified common forms of corruptions in Zanzibar as including: nepotism and favourism especially in employment; abuse of government property especially vehicles and misappropriation of government funds and resources, money laundering, and using state resources personal gains. They also identified specific sites and arenas in which corruption is pervasive, in particular procurement offices; land titling; the police, and identity card processes.¹⁰²⁰

1019 Sections 36 to 59 of the Zanzibar Anti-Corruption and Economic Crimes Act (No. 1), 2012.

1020 *See:* The Revolutionary Government of Zanzibar (RGoZ) (Ministry of State for Public Service and Good Governance in office of the President), Final Report of Baseline Assessment of Anti-Corruption Activities in Zanzibar, (Conducted by Wachira Maina and

In their totality the forms of corruption in Zanzibar have be categorised to fall into three broad categories: (i) Corruption driven by personal and communal affiliations (i.e. Favourism and nepotism); (ii) Corruption arising from influence peddling and abuse of office by those in power; and (iii) Need driven corruption (i.e. Bribery in Service Delivery) – generally found at the points of service to the public.¹⁰²¹

8.1.1 Location of Corruption

According to Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017 – 2022)¹⁰²² nepotism, favouritism, abuse of power, peddling influence, and bribery in service delivery all take place in political and bureaucratic processes. Nevertheless, the circumstances in which they take place as well the severity of their effects may vary from one agency to another.

On the basis of stakeholders interviews and review of relevant documents (in the preparation of ‘Integrated Strategy’ document), there are areas that have been earmarked and described as corruption-prone.¹⁰²³ These sectors and areas that have been found to deserve priority attention are listed in the table below:

S/N	Sector	Specific Area
1.	Administration of access to justice and rule of law	<ul style="list-style-type: none">• The court and its administration of justice.• Law enforcement.• Criminal investigation.
2.	Administration of state public finance and property	<ul style="list-style-type: none">• Limited revenue collection in tourism and land leasing.• Limited culture of issuing and demanding receipts involving official government payments or financial transactions.• Limited government expenditure management.• Corruption loopholes in the procurement law and procedures and limited capacity of ministries, departments and agencies (MDAs) to implement the procurement law and procedures.

Clarence Kipobota), October, 2012, p.8.

1021 Ibid, p. 15.

1022 The RGoZ (President’s Office, Constitutional, Legal Affairs, Public Service and Good Governance), Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017-2022), p. 13.

1023 Ibid, p. 14.

S/N	Sector	Specific Area
3.	Human resources management	<ul style="list-style-type: none"> Some pockets of nepotism and favourism in recruitment in recruitment and promotion of civil servants as opposed to merit of performance management.
4.	Administrative service delivery	<ul style="list-style-type: none"> Administrative procedures for birth registration, legal service, and Zanzibar ID.
5.	Economic development	<ul style="list-style-type: none"> Business-related procedures and processes (including procedures for land titles, construction permits issuing, bank loans, and migration for employment.
6.	Public and social services	<ul style="list-style-type: none"> Informal payments in education, health care, traffic management, entry point management (airports harbours), employment, environment protection enforcement, and application for water and electricity. Services provided at the grassroots level

8.2 Good Governance and Anti-Corruption

The Constitution of Zanzibar, 1984 (as amended) provides the framework of governance within which political governance and associated principles of transparency and accountability are given prominence. To give weight to these principles, Section 10 of the Constitution spells out the political objectives of the country, including total eradication of corruption and abuse of power.

In 2011, the government issued the Good Governance Policy document which defines six principles of good governance. The principles are: (i) Accountability and Transparency; (ii) Rule of law and human rights; (iii) Combating corruption; (iv) Efficiency and effectiveness; (v) Participation; and (vi) Responsive to the people's needs.

Anti-corruption is considered an element of good governance and occurrence of corruption signifies violation of good governance, in that it jeopardises accountability, transparency, rule of law, efficiency and effectiveness and, thus, diminishing socio-economic development within a society.

In efforts to ensuring that the good government principles are fully implemented, RGoZ has established oversight institutions such as Controller and Auditor General, Director of Public Prosecution Office, Public Service Commission and ZAECA.

8.3 The Exercise of ZAECA Functions

Under Act No. 1 of 2012, ZAECA's mandate lies on prevention, education, and investigation of corrupt activities. However, currently ZAECA activities have focused on public awareness raising (i.e. educative role), investigation, and capacity building.

8.3.1 ZAECA's Educative Role

ZAECA has extended public education on the impact and fight against corruption and economic crimes through twelve educational programmes that have been aired via radio.¹⁰²⁴

Opening one in the series of ZAECA trainings in Pemba on December 10th, 2017, Regional Commissioner of Pemba South Region, Hemed Suleiman Abdulla, made a point that ZAECA officials should not be perceived as an enemy of the people in Zanzibar. ZAECA official work with the deliberate aim of making sure that the rights and interests that the RGoZ extends to its people reach them as expected, instead of allowing only some of the persons with upper hands to grab them. Shown below is the event where the RC was insisting on that point.¹⁰²⁵



Picture 54: Hon. RC Hemed Suleiman Abdulla (Pemba South) giving an opening speech in one of the series of training meetings that ZAECA conducted in Pemba South region. This event took place at Chake Chake, on December 10th, 2017

1024 The RGoZ (President's Office, Constitutional, Legal Affairs, Public Service and Good Governance), Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017-2022), p. 21.

1025 For more information follow this link: [December 10, 2017 Manager Mwanzo 0](#)

However, despite several efforts taken by ZAECA in raising people's awareness on bad sides of corruption and the role of ZAECA in combating corrupt practices and some other crimes, the Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017-2022) has noticed the following:

- i) Citizen awareness of the need for anti-corruption has remained limited. Public awareness-raising session conducted by ZAECA had varying attendance. Despite encouragement, some citizens have not reported on the instances of corruption they have encouraged.
- ii) Current attitude is lax toward petty, everyday corruption. As a matter of fact, though involving small amounts of money, it has a detrimental impact. The accumulated amount is large. Its pervasiveness also erodes the rule of law and trust in the government.
- iii) Education efforts have merely targeted the general public. There is a need for leadership and public sector management-specific educational interventions. Additionally, the private sector, professional organizations, non-governmental organisations, and youth should also be involved.
- iv) Public education by ZAECA seems to be inclined to the rural areas. Both rural and urban areas need to be given attention.¹⁰²⁶

8.3.2 ZAECA's Investigation Role

In the area of investigation, ZAECA has worked on investigating several cases in the 2017. After completing its investigations, ZAECA use to pass the findings to the Office of the Director of Public Prosecutions to review, and for prosecution. The process of prosecution follows the framework provided in the Criminal Prosecution Act (No. 7), 2004.¹⁰²⁷

ZAECA has also undertaken capacity building for its staff. In this context, ZAECA has organised basic and preliminary training on anti-corruption investigation for its twenty-eight staff members aimed at improving their work performance. A shorter course for ten staff members on combating and controlling money laundering has also been organised.¹⁰²⁸

It has been reported that in 2017 the total of 187 complaints has been received in ZAECA, 121 are still in investigation stage, 21 closed and 37 are at DPP's office and 5 are filed and continue in different courts.

1026 Ibid, p. 22.

1027 Ibid., p. 21.

1028 Ibid, pp.21-2.

8.3.3 ZAECA and its Prevention Role

Prevention of corruptions incidents is one of the important measures to prove a form of control to development of corrupt practices. However, based on several challenges, ZAECA is still yet to effectively and efficiently discharge its corruption prevention role. The apparent challenges have been characterised as follows:

- i) The legal frameworks that serve as hygiene factors for corruption of corruption have remained limited. These include frameworks on information access and witness and victim protection;
- ii) Public knowledge about the legal obligations of public officials and their own rights is limited. Citizens to not know that they can demand a particular quality of service, how long the service they are demanding will take, what to do and who to report to if the public official they are dealing with demands a bribe or sexual favour, and whether it is legitimate or legal to pay for services they are demanding. Also, ineffective complaint mechanisms further open opportunities for public inaction;
- iii) Legal frameworks contain loopholes, creating opportunities for malpractice;
- iv) Key legal frameworks that support prevention measures, especially those related to codes of conduct, asset declaration, and internal controls are still works in progress;
- v) Prevention measures have not reached the grassroots level where services are provided by shehas who act as gatekeepers for virtually all the services that Zanzibaris need;
- vi) No systematic research or intervention has been undertaken to prevent corruption in the private sector;
- vii) Prevention measures have not systematically included the use of incentives and the method of balancing incentives with sanctions;
- viii) The implementation of prevention measures remains uncoordinated in their reinforcement of one another.

8.4 Challenges Facing Anti-Corruption Work in Zanzibar

Overall, despite a combination of efforts to prevent, educate, and combat corruption, there remain challenges in the implementation of ant-corruption activities within the

context of the Good Governance Policy. The Challenges include: (i) Limited public education work; (ii) Inadequate framework for prevention; (iii) Institutional constraints of ZAECA in its combating work; (iv) Weak management of anti-corruption work; and (v) Lack of clear linkages with other reforms¹⁰²⁹.

8.4.1 Institutional Constraints of ZAECA in Conducting Combating Work

In this aspect, the integrated strategy has noticed the following challenges:

- i) As a newly established institution, the capacities of ZAECA are limited. Constraints include: a small number of staff, inexperienced and skills staff, poor working infrastructure (including information technology) in fulfilling its mandate, and few financial resources;
- ii) Detection, investigation, and conviction work is confronted with certain institutional constraint and authority to handle cases is scattered in various institutions, and requires effective coordination to have an impact;
- iii) There is not yet a systematic approach towards combating organised crime and corruption elections assigned to ZAECA.

8.4.2 Management of Anti-Corruption Work

In this area, the challenges have been presented as follows:

- i) Although the report on Baseline Assessment of Anti-corruption in Zanzibar (2012) describes the state of corruption in Zanzibar, there remains a lack of sector-based studies;
- ii) The private sector and non-governmental/professional organisations have not yet been involved in the design, planning, implementation, and monitoring of anti-corruption
- iii) There is no coordination framework for agencies involved in anti-corruption work to reinforce planning, monitoring or information sharing
- iv) Tracking success, reporting and disseminating information on anti-corruption is not systematic

1029 The RGoZ, Ministry of State for Public Service and Good Governance in office of the President, Final Report of Baseline Assessment of Anti-Corruption Activities in Zanzibar, (Conducted by Wachira Maina and Clarence Kipobota), October, 2012, p. 22.

- v) There is also a lack of an explicit and formalised forum devoted to the discussion of corruption.

8.4.3 Political Will in the Exercise of ZAECA's Roles

As noted in the baseline survey to be the worries of stakeholders, and confirmed by comparative experience, that good institutions are a necessary but not sufficient condition for elimination of corruption. The key access ingredient is the commitment of the political leadership, especially the office of the President.¹⁰³⁰ The baseline Assessment has also noted that, though many African countries have anti-corruption agencies, many of these have been rather tame and ineffectual, especially in dealing with high-level corruption. Few high level prosecutions have taken place in Kenya. In Sierra Leone, not a single minister or senior official has been sent to prison before foreign judges were hired. Even though Zambia had good anti-corruption institutions and laws, only after the late President prioritized anti-corruption reform, the former 420 big fish were dealt with in the proper way.¹⁰³¹

In the current Integrated Strategy for Integrity in the anti-corruption system in Zanzibar, one of the major risks has been identified to be limited commitment, limited political will, and the view that anti-corruption strategy and its efforts in general.¹⁰³²

Based on its planned implementation approach, the political good will and commitment on the part of the RGoZ is typically essential. Under the approach, the Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017-2022) shall be implemented jointly by the ministry responsible for anti-corruption, ZAECA, national public agencies, local government bodies, civil society organizations, and individuals. The RGoZ will support the implementation of the strategy by:

- (i) Providing budgets for all levels;
- (ii) Addressing human resource issues;
- (iii) Timely harmonising of legal acts to support the implementation of the strategy;

1030 The RGoZ, Ministry of State for Public Service and Good Governance in office of the President, Final Report of Baseline Assessment of Anti-Corruption Activities in Zanzibar, (Conducted by Wachira Maina and Clarence Kipobota), October, 2012, p. 38.

1031 Ibid.

1032 The RGoZ, President's Office, Constitutional, Legal Affairs, Public Service and Good Governance, Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017-2022), p. 47.

- (iv) Ensuring identification of responsibility for corrupt offences and unbiased application of the law;
- (v) Providing assistance to the media in broad, unbiased coverage of the status of anti-corruption measures;
- (vi) Facilitating and encouraging engagement of political parties, national associations and other civil society organisations.¹⁰³³

With this crucial role the RGoZ seems to have committed itself, at least verbally, for successful implementation of the strategy, however it will be demonstration of a political will on its part that will be a decisive factor. In the nutshell, one may find it unrealistic for the RGoZ to be in a position to willingly realise these commitments, given its deep rooted 'muhali' (i.e. social cohesion) syndrome and maladministration practices as openly synchronised in official discrimination against 'Wapemba'.

The instances of overt official discrimination against 'Wapemba', among others, are many. For example, in the year 2017 eight senior technical officials were removed from different posts they held in the employment of the Zanzibar House of Representatives without any reasonable explanation, known publicly that they were merely hailing from Pemba. Included in the tragedy was the Clerk of the House (by then) who also, at a time, used to be the Clerk of the Constituent Assembly of Tanzania 2014, Dr Yahya Khamis Hamad. As an open signal of discriminatory practice, all the eight 'Wapemba' removed from the House employment were replaced by eight persons hailing from Unguja part of Zanzibar. Worse still, some of those removed from the House employment (notably Dr Yahya Khamis Hamad), had not been given any other assignment in the Revolutionary Government of Zanzibar, until the end of 2017, despite his very high academic and work experience profiles.

Although discriminative practices in Zanzibar have a long history and attained its maturity with emergence of multi-party politics around 1992, but allegedly, the overall architecture and superintendent of the current discriminative measures against 'Wapemba' in the entire employment of the Revolutionary Government of Zanzibar is the Chief Secretary of the Revolutionary Council and Katibu Mkuu Kiongozi, Dr Abdulhamid Yahya Mzee.¹⁰³⁴

1033 Ibid, p. 49.

1034 Interview, on the 25th June, 2017 with some of the persons who had been removed from the employment of the House of Representatives whose names can be revealed only if necessary.

8.5 Conclusion and Recommendation

We have seen, in this chapter, brief account of matters relating to corruption and good governance within human rights perspectives. Within this account lies the role of ZAECA in taking measures that are aimed at preventing, detecting, and detecting corruption and economic crimes in the country. These measures will by themselves not be enough to curb corruption and combating economic crimes. Governance measures that are designed to address macro-structural problems, organisational management practices, and individuals' motivated participation will help reinforce anti-corruption work.

Generally, it has correctly been observed that, the existing mechanisms have not effectively addressed the various forms of corruption in Zanzibar. There is a need to design prevention, education, and combating measures that will contribute to the reduction of favouritism and nepotism, curb the phenomenon of influence peddling and abuse of power, and minimize informal transactions at the point of service delivery. Involvement of stakeholders from the government sector, the business community, and civil society will be a crucial measure, but, more importantly, existence of the political will.

CHAPTER 9:

HUMAN RIGHTS MECHANISMS

9.0 Introduction

The protection of human rights in Zanzibar has had a long history and can be traced back to 1963 when Zanzibar got independence from the British. The first Constitution of Zanzibar, “The Constitution of the State of Zanzibar, 1963”, that came in force on December 10, 1963, incorporated the Bill of Rights¹⁰³⁵.

The Constitution of the State of Zanzibar, 1963 was short-lived. It had been abrogated by the January 12th 1964 Revolution of Zanzibar.¹⁰³⁶ Following the abolition of the 1963 Constitution, Zanzibar had no any constitution for 15 years and there was no mention of the Bill of Rights. During that time, Zanzibar was ruled by the Presidential Decrees promulgated in the name of the Revolutionary Council. In addition, the first-post Revolution Constitution of Zanzibar 1979 contained no Bill of Rights provisions.

It is the Constitution of Zanzibar, 1984 that, in its Chapter Three, has incorporated the provisions protecting individual human rights. Protected under this Chapter are the rights to equality of human beings; right to equality before the law; right to life; right to personal freedom; right to privacy and personal security; right to freedom of movement; right to freedom of expression; right to freedom of religion; right to freedom of association; right freedom to participate in public affairs; right to work; right to just remuneration; and right to own property.¹⁰³⁷

Under Chapter Three of the Constitution of Zanzibar 1984, apart from the protected human rights, the Constitution provides for duties that an individual is constitutionally bound to observe. These are the duty to participate in work; and the duty to abide by the laws of the land, to safeguard public property and defence of the nation.¹⁰³⁸

There are special mechanisms provided under the Constitution of the United republic of Tanzania 1977, the Constitution of Zanzibar 1984, and some other laws that are earmarked for the protection of these rights. Presented herein below are the mechanisms that have been devised to implement the human rights norms in Zanzibar legal

1035 Chapter 2, the Constitution of the State of Zanzibar, 1963.

1036 www.ssembly.go.tz/history.php (accessed on 22nd November, 2017)

1037 Sections 11 of the Constitution of Zanzibar, 1984.

1038 Sections 22 and 23, respectively, of the Constitution of Zanzibar, 1984.

system. For more informed understanding of the existence of several mechanisms of implementing human rights norms under different legal systems, presentation is also made herein below on mechanism of implementation of human rights under different legal stratifications.

9.1 National Human Rights Mechanisms

9.1.1 Judicial Mechanism

The basic principle regarding implementation of the constitutional human rights norms in Zanzibar legal system is provided for under Section 24(3) of the Zanzibar Constitution, 1984. The provision reads as follows:

Any person claiming that any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been, in being or is likely to be violated by any person anywhere in Zanzibar, may institute proceedings for redress in the High Court.

The Constitution, however, stipulates a caution in terms of the limitations in the enjoyment of human rights in Zanzibar. It says that enjoyment of such rights shall not be exercised in such a way that it results in the violation of rights of any other persons. This provision could be said to posit a priori in the enjoyment of collective rights as against the individualistic ones.¹⁰³⁹ The Provision provides further that limitation may also be provided by laws enacted by the House of Representatives for various purposes.¹⁰⁴⁰

The enforcement mechanism per se is provided for under Section 25A of the Constitution of Zanzibar 1984. The provision states that such enforcement shall be through institution of a case before the High Court of Zanzibar. When a case is instituted, it will be heard by one judge of the High Court. The appeal from decision of such kind of cases shall be preferred before the same High Court but now sitting with three judges. The decision of the High Court in the appeal is final. That is, there shall be no appeal that will lie in this regard from the decision of the Zanzibar High Court to the Court of Appeal of Tanzania in any matter relating to interpretation of the Constitution of Zanzibar 1984.¹⁰⁴¹ This means that the Court of Appeal of Tanzania has got no jurisdiction to entertain cases relating to the enforcement of the Bill of Rights under the Constitution of Zanzibar, 1984.

1039 Section 24(1) of the Constitution of Zanzibar 1984.

1040 Ibid.

1041 Section 24 (3), Constitution of Zanzibar, 1984.

Enforcement of the Bill of Rights in Zanzibar is subject to a number of criticisms. The most obvious one is that there is no specific legislation enacted to regulate enforcement of the Bill of Rights under the Constitution of Zanzibar 1984. It is uncertain what procedure or format human rights cases should take in Zanzibar. This lacuna has resulted into some procedural constraints on the enforcement of the Bill. One direct effect of this procedural vacuum is that until the end of the year 2017, there was not a single case instituted before the High Court of Zanzibar seeking enforcement of the constitutional Bill of Rights in Zanzibar.

Despite the existence of an ineffective court for protection of individual rights and freedoms in Zanzibar, there is also no specific institution established in Zanzibar to deal with human rights protection. The Revolutionary Government of Zanzibar after the March 2016 election formed a Ministry called Ministry of State, President Office, Constitution, Legal Affairs, Public Service and Good Governance. Although this Ministry has various departments, unfortunately it has no department which deals with specifically with human rights protection.

Enforcement of human rights may also be effected under the right provisions of the Constitution of the United Republic of Tanzania 1977. This Constitution falls under the union matters and as such is applicable in Zanzibar. It provides for the Bill of Rights in its Chapter three, as well. The rights which are provided in this chapter are basically the similar to those found under the Constitution of Zanzibar 1984. The United Republic of Tanzania Constitution 1977 provides two ways which are relevant to protecting individual's human rights and freedoms in Tanzania. First is by enforcement of the Bill through court of law, and secondly, by using a commission for human rights.

The High Courts of both Tanzania and Zanzibar have jurisdiction to deal with enforcement of the Bill of Rights under of the United Republic of Tanzania 1977. The enforcement process is required to be instituted in the form of petition. Three High Court judges are required to sit to hear the petition. But, in all two jurisdictions, petitions shall have to take place after the court has granted leave for instituting a particular petition.

When enforcement takes place through the High Court of Tanzania, appeal may lie with the Court of Appeal of the United Republic of Tanzania. In the year 2017, there was no any human rights case originating from Zanzibar that is known to have been instituted before the High Court of the United Republic of Tanzania for enforcement of the Bill of Rights under the provisions of the Constitution of the United Republic of Tanzania 1977.

9.1.2 CHRAGG and Implementation of Human Rights

The Commission for Human Rights and Good Governance (CHRAGG) has been established under Article 129 (1) of the said Constitution as amended by Act No. 3 of 2000. The Commission is charged with the role of overseeing implementation in the protection of human rights and good governance in the country. This commission which has been established as an independent government institution is the national focal point institution for the promotion and protection of human rights and duties, as well as good governance issues, in Tanzania.

The Commission started its operations on the 1st July 2001 following the coming into force of the Commission for Human Rights and Good Governance Act No7 of 2001 as amended by Act No 16 of 2001.¹⁰⁴² The Commission was officially inaugurated in March 2002 following the appointment of first Commissioners by the President of the United Republic of Tanzania.

CHRAGG plays the dual role of an ombudsman and a human rights commission. Although, being a union matter, this institution had to operate in both the Mainland and Zanzibar Tanzania from its inception. However, Zanzibar authorities initially prevented it from functioning in Zanzibar. The main argument was that human rights is not within the list of the union matters and that, under the prevailing circumstances at the time, its application in Zanzibar would offend the provisions of Section 132(1) of the Constitution of Zanzibar, 1984. However, after some consultations and undertakings, in May 2006, the authorities in the Union and Zanzibar Governments agreed that the quasi-governmental CHRAGG be permitted to operate in the same way on both the sides of the United Republic of Tanzania. As a result, CHRAGG extended its function and opened its office in Zanzibar since 2007, and recently it has opened its office in Pemba as well.

In its operation, the Commission has been highly criticized on grounds that its independence is not apparently realistic. For example, the commissioners of the Commission are presidential appointees¹⁰⁴³. They may be removed from office because of a number of reasons listed in its Act of establishment. They may also be removed from office for any reason. No person could figure out what constitutes “any other reason” that would lead to the removal of a commissioner at a point of time. This means that commissioners of the Commission always operate at the risk, if not the danger, of being removed from their offices at any time and for any reason.

1042 See: Government Notice No. 311 of 8th June 2001.

1043 Article 130 of the Constitution of the United Republic of Tanzania of 1977.

The performance of the commission has also been highly criticised especially in Zanzibar where its impact is insignificant and not even noticeable. In 2017, there have been various allegations on matters of mal-administration in general, and that of violations of human rights in particular, but nothing has been heard as being done in the execution of the roles of the Commission. In fact, the Commission has been very passive in responding to human rights violations in Zanzibar.

9.1.3 The Role of Law Review Commission of Zanzibar (LRCZ)

Another National Human Right Mechanism in the country is Law Review Commission Zanzibar (LRCZ). This commission was established in 1986. It was a result of recommendations of Law Review Commission commonly known as the “Msekwa Commission”, as led by Hon. Pius Msekwa. It was the idea of the Mskewa Commission that there are various laws which are outdated in Zanzibar and do not reflect the existing situation in the society. Hence, there is a need to establish a permanent organ to deal with law review. LRCZ was established under Zanzibar Law Review Commission Act No. 16 of 1986. The main function of the Commission is to review the laws of Zanzibar and to propose necessary amendments so as to make sure that they respond to timely changes as taking place in Zanzibar.

In 2016, ZLRC completed its review of Evidence Decree, Cap.5 which is now waiting for assent of the President of Zanzibar. Other laws which had previously been reviewed by this Commission are Criminal Procedure Act (CPA) No.7/2004 and Penal Act No.6/2004 and Civil Procedure Act Cap 8/ 1917. Review of such laws is a very important step as far as human rights are concerned for keeping laws up to date. This step is so fundamental for realisation of the rule of law as it provides right information of the existing laws including the laws regarding the safeguard of individual rights and freedoms.

9.1.4 Role Played by the DPP Office

The Office of the Director of Public Prosecution as the National Human Rights Mechanisms in Zanzibar was established in 2002, following the 8th amendment of the Constitution of Zanzibar 1984.¹⁰⁴⁴ The fundamental role of the DPP office is the administering of criminal cases by charging and prosecuting persons charged with criminal cases. The DPP has constitutional powers to institute, prosecute, discontinue and take over any criminal case in all courts in Zanzibar other than martial courts.

This office performs its functions in accordance with the Constitution of Zanzibar 1984, the office of Director of Public Prosecutions Act (No. 2) 2010, the Prosecution Manual

1044 1984 Section 56A.

of 2005 as revised in 2015. The four constitutionally founded core values of the DPP Office are independence, impartiality, integrity and truthfulness.

The DPP office administers criminal cases by prosecuting all criminal cases in all courts of Zanzibar from District Courts, Regional Magistrates courts, High Court and the Court of Appeal of Tanzania cases that are filed in Zanzibar. It also coordinates all prosecution services in primary courts. The office is also responsible in educating members of society on matters relating to criminal justice. The office was established under the idea of civilianization of prosecution where prosecution services are to be delivered by civilians and not police force.

As far as human rights and good governance are concerned, the DPP office performs its responsibilities under two main slogans. The first is that investigation should precede prosecution and the second is that no conviction without evidence. From these two slogans, the DPP office always requires police to admit suspects to bail until such time where an investigation of a given case is completed and where prosecution can then be formally initiated.

9.1.5 The Role of Police Force

Police force, as well, has very important role to play in the exercise of rule of law generally. By dealing with evidential issues that are important for prosecution, the Police Force helps to prevent prosecution from being changed to persecution. There is no room thus to arrest and charge a person without evidence as doing so is to violate constitutional rights by having a person unreasonably charged with a criminal offence.

Tanzania Police Force which falls in the list of Union matter is involved in the National Human Rights Mechanisms in Tanzania. Police officers are employed by the Government of United Republic of Tanzania. They work either in Mainland Tanzania or Zanzibar according to the internal arrangements of the Force. The current Police system in Tanzania has its origin from colonial heritage from England. The basic function of the Police Force is the protection of peace and security of citizens and their property. They officials are part of the armed force machinery and one of the state apparatus. The police in Tanzania, in the performance of its responsibilities are governed by laws and also special police guidelines covered in 'the Police General Orders (PGO)'. The very nature of the functions of the police force necessitates that, in the performance of their roles, police officers should work in a friendly matter with the people - knowing that they are key protectors of the individual's human rights.

9.2 International Human Right Mechanisms

The International Bill of Human Rights refers to a collection of three international documents: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (with its Optional Protocol¹⁰⁴⁵); and the International Covenant on Civil and Political Rights (with its two Optional Protocols¹⁰⁴⁶).

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), establishing the vision and principles which recognize the interdependence and indivisibility of all human rights: a vision that guarantees people civil and political freedom as well as economic and social well-being. Together with establishment of international law standards covering civil, political, economic, social and cultural rights, these international treaties have set up specific mechanisms for implementing the standards so set. The following is a brief discussion of the said human rights implantation mechanisms.

9.2.1 The United Nations Office of the High Commissioner for Human Rights

The role of the OHCHR is to protect and promote human rights. It is the main office in the United Nations that deals with human rights and it works to ensure that human rights standards are applied in all of the UN's activities. It collaborates with governments to strengthen their human rights capabilities, encourages states to develop policies and institutions that are conducive to human rights, and provides advice and technical assistance to achieve these goals.¹⁰⁴⁷

9.2.2 The United Nation Human Rights Committee

Article 28 of the International Covenant on Civil and political Rights 1966 provides for the setting up of the Human Rights Committee, which thus becomes the principal organ of implementation of the Covenant on Civil and Political Rights. This contrasts with the Covenant on Economic, Social and Cultural Rights, where no new body was created and implementation was assigned to the existing Economic and Social Council.¹⁰⁴⁸

1045 Optional Protocol to the Covenant on Economic, Social and Cultural Rights

1046 (a): Optional Protocol to the International Covenant on Civil and Political Rights

(b): Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

1047 <http://www.ohchr.org/English/bodies/hrcommission/> (accessed on 22nd November, 2017)

1048 A.H. Robertson and J.G. Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, 4th edn., Manchester: Manchester University Press, 1996, p.39.

Reporting procedure is the principal measure of implementing the ICCPR, while the inter-State procedure is optional. Potentially, therefore, the submission of reports by States and their examination by the Human Rights Committee is of cardinal importance in the implementation of the Covenant, and so the practical and theoretical merits of such a system deserve careful study.¹⁰⁴⁹

The obligation of States to report relates to – (i) the measures they have adopted to give effect to the rights set out in the Covenant; (ii) the progress made in the enjoyment of those rights; and (iii) the factors and difficulties, if any, affecting the implementation of the Covenant.¹⁰⁵⁰ The report is to be presented within one year of the entry into force of the Covenant for the States parties concerned, and thereafter when the Committee so requests.¹⁰⁵¹

It is well appreciated that reports in themselves are an unreliable method of control. What matters is how the reporting system functions in practice and, in particular, whether appraisal of States' reports is possible. To give the desired effect, the Committee uses to request additional information from governments and, if needed, inviting them to send representatives to discuss their reports with the Committee and answer questions.

However, some governments are extraordinarily sensitive about anything in the nature of international examination of their human rights records, invoking arguments about national sovereignty and Article 2(7) of the UN Charter, and it was therefore a distinct achievement to get them to accept to get them to accept even modest measures just described. In practice, therefore, when a State submits either an initial report or a subsequent periodic report, examination of it usually extends over several meetings and may produce dozens, if not hundreds, of questions from the members of the Committee to the States' representatives.¹⁰⁵²

9.2.3 United Nations Human Rights Council

The Human Rights Council replaces the Commission on Human Rights as the main UN body charged with monitoring and evaluating conditions of human rights in countries around the world and identifying major areas of concern. This includes a system of special procedures, expert advice, and a complaint procedure.

Composed of 47 Member States elected by the UN General Assembly, the Council serves as a round-table for governments and civil society groups to raise concerns

1049 Ibid, pp. 41-2.

1050 Article 40(2) of the ICCPR.

1051 Article 40(1) of the ICCPR.

1052 A.H. Robertson ad J.G. Merrills, Op Cit, p. 44.

about human rights abuses in particular countries, as well as thematic areas of concern. The Council meets at least three times a year and also functions through a series of working groups and special procedures. These include the Open-ended working group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would include an individual complaint mechanism.¹⁰⁵³

Special procedures with thematic mandates include Special Rapporteurs on Adequate Housing, the Right to Education, the Question of Human Rights and Extreme Poverty, the Right to Food and the Right to Health, who are able to receive information on specific allegations of human rights violation and send urgent appeals or letters of allegation to governments asking for clarification, as well as reporting on visits and investigations which uphold the basic principles and core values of economic, social and cultural rights.

The following are the seven Human Rights Treaty Bodies that monitor the implementation of the core international human rights treaties:¹⁰⁵⁴

- (a) Human Rights Committee (HRC);
- (b) Committee on Economic, Social and Cultural Rights (CESCR);
- (c) Committee on the Elimination of Racial Discrimination (CERD);
- (d) Committee on the Elimination of Discrimination Against Women (CEDAW);
- (e) Committee Against Torture (CAT);
- (f) Committee on the Rights of the Child (CRC); and
- (g) Committee on Migrant Workers (CMW).

9.3 Regional Human Rights Implementation Mechanisms

Regional human rights systems, consisting of regional instruments and mechanisms, play an increasingly important role in the promotion and protection of human rights. Regional human rights instruments (e.g. treaties, conventions, declarations) help to localise international human rights norms and standards, reflecting the particular human rights concerns of the region. Regional human rights mechanisms (e.g. commissions, special rapporteurs, courts) then help to implement these instruments on the ground. Currently, the three most well-established regional human rights systems exist in Europe, America and Africa.

1053 <http://www.ohchr.org/English/bodies/hrcouncil/> (accessed on 22nd November, 2017).

1054 <http://www.escr-net.org/.../human-rights-enforcement-mechanism...> (accessed on 22nd December, 2017).

9.3.1 European Human Rights Implementation Mechanisms

The regional arrangements for protecting human rights in Europe are extensive, involving the Council of Europe, the European Union and the Organisation for Security and Cooperation in Europe. Each of these intergovernmental organisations has its own regional human rights mechanisms and instruments. Some of the most longstanding and developed of these exist in the Council of Europe, with instruments including the European Convention on Human Rights (ECHR),¹⁰⁵⁵ the European Social Charter¹⁰⁵⁶ and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and corresponding mechanisms such as the European Court of Human Rights, the European Committee of Social Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹⁰⁵⁷

The European system also has a Commission against Racism and Intolerance, and a Commissioner for Human Rights.¹⁰⁵⁸ The European Court of Human Rights, which is located in Strasbourg, has jurisdiction over Council of Europe member States that have opted to accept the Court's optional jurisdiction. Once a state has done so, all Court decisions regarding it are binding. The Court accepts applications of instances of human rights violations from individuals as well as States.¹⁰⁵⁹

9.3.2 The American Human Rights Implementation Mechanisms

In the America, a regional human rights arrangement (the inter-American system for the protection of human rights) exists within the intergovernmental organisation known as the Organisation of American States (OAS).¹⁰⁶⁰ As with the United Nations (UN) human rights system, the inter-American system features a declaration of principles (the 1948 American Declaration on the Rights and Duties of Man adopted seven months before the Universal Declaration),¹⁰⁶¹ a legally-binding treaty (the American Convention on Human Rights, which entered into force in 1978), as well as Charter-based and treaty-based implementation mechanisms (the Inter-American Commission

1055 http://www.echr.coe.int/Documents/Convention_ENG.pdf (accessed on 13th August, 2017).

1056 <http://www.echr.coe.int/T/DGHL/Monitoring/SocialCharter/> (accessed on the 13th August, 2017).

1057 <http://www.echr.coe.int/en/documents/ecpt.htm> (as accessed on the 13th August, 2017).

1058 <http://www.echr.coe.int/t/Commission> (as assessed on 13th August 2017).

1059 <Http://www.escr-net.org/.../human-rights-enforcement-mechanism...> (accessed on the 21st August 2017).

1060 <http://www.oas.org/en/default.asp> accessed on the 22nd August 2017/ (accessed on the 21st August 2017).

1061 [http://www.cidh.oas.org/Basicos/English/Basic2.america Declaration.htm](http://www.cidh.oas.org/Basicos/English/Basic2.america%20Declaration.htm) (accessed on the 22nd August 2017).

on Human Rights¹⁰⁶² and the Inter-American Court of Human Rights¹⁰⁶³ respectively).

The Charter-based system applies to all member states of the OAS, while the Convention system is legally binding only on the States parties to it. The two systems overlap and interact in a variety of ways. The Inter-American Commission (based in Washington DC) was established under the OAS Charter (Chapter XV) to promote and protect human rights in the American hemisphere. It is composed of seven independent members (Commissioners) who serve in a personal capacity. It receives individual petitions, monitors the human rights situation in member States and addresses priority thematic issues. The Inter-American Commission has created several Rapporteurships, one Special Rapporteurship and a Unit to monitor OAS States' compliance with inter-American human rights treaties.¹⁰⁶⁴ This includes: a Rapporteurship on the Rights of Women, a Rapporteurship on the Rights of the Child, a Rapporteurship on the Rights of Indigenous Peoples, a Rapporteurship on the Rights of Persons Deprived of Liberty, a Rapporteurship on Migrant Workers and their Families, a Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination, a Rapporteurship on Human Rights Defenders, and a Special Rapporteur for Freedom of Expression. This last position is the only Special Rapporteur ship at the IACHR, meaning that the mandate-holder is dedicated full-time to the job (all other mandates are held by Commissioners). A Unit on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons was created in 2011.

The Inter-American Court of Human Rights (based in San Jose, Costa Rica) has two main responsibilities. First, to hear cases submitted to it by the Commission or a State Party to the Convention and judge whether or not a violation has been committed. The sentence is binding and cannot be appealed, but the system does not provide for means of enforcement. Second, the Court gives advisory opinions interpreting the American Convention or other international agreements relevant to the protection of human rights in the Americas. All OAS member States, the Commission, and OAS organs to a limited extent, can ask the Court for an advisory opinion. The member States can also ask for an opinion on the compatibility of national law with international instruments.¹⁰⁶⁵

1062 <http://www.oas.org/en/iachr/> (accessed on the 22nd August 2017).

1063 <http://www.corteidh.or.cr/> (accessed on the 22nd August 2017).

1064 <http://www.oas.org/en/iarch/mandate/rapporteurships.asp> (accessed on the 22nd August 2017).

1065 .Ibid.

9.3.3 The African Human Rights Implementation Mechanisms

The African regional human rights system has been established within the intergovernmental organisation known as the African Union.¹⁰⁶⁶ The main regional human rights instrument in Africa is the African Charter on Human and Peoples' Rights, 1981 and the main mechanisms are the African Commission on Human and Peoples' Rights and the recently-established African Court on Human and Peoples' Rights.¹⁰⁶⁷ The African Charter (which entered into force in 1986) incorporates universal human rights standards and principles, but also reflects the virtues and values of African traditions. Thus, the African Charter is characterised by the concept of a reciprocal relationship between the individual and the community, linking individual and collective rights.

The African Charter established an African Commission for Human Rights, located in Banjul, Gambia. It is a quasi-judicial body made up of eleven independent experts and tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent (by receiving periodic reports from States Parties on the implementation of the Charter's provisions) as well as interpreting the African Charter and considering individual complaints of violations of the Charter.

The African Commission has also established several Special Mechanisms including six Special Rapporteurs who monitor, investigate and report on allegations of violations in member states of the African Union, and eleven working groups, committees or study groups that monitor and investigate human rights issues under the purview of the Commission.¹⁰⁶⁸ The Special Rapporteur mandates cover: Extra-judicial, Summary or Arbitrary Execution; Freedom of Expression and Access to Information; Human Rights Defenders; Prisons and Conditions of Detention; Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; and Rights of Women.

The Working Groups cover specific issues related to the work of the African Commission; Indigenous Populations/Communities in Africa; Economic, Social and Cultural Rights; Rights of Older Persons and People with Disabilities; the Death Penalty; Extractive Industries, Environment and Human Rights Violations; Fair Trial; and Communications. And finally, there is a Committee for the Prevention of Torture in Africa; a Committee on the Protection of the Rights of People Living with HIV; and a Study Group on Freedom of Association.

1066 <http://www.au.int/en/> (accessed on the 30th August 2017).

1067 <http://www.achpr.org/mechanisms> (accessed on the 30th August 2017).

1068 Ibid.

The African Court on Human and Peoples' Rights was established in 2004 following the entry into force of a Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol, and any other relevant human rights instrument ratified by the States concerned.¹⁰⁶⁹

1069 Ibid.