

TANZANIA HUMAN RIGHTS REPORT 2021

**Calls for Reform of Criminal
Justice System to Safeguard
Human Rights**

**NOT FOR
SALE**



**PART ONE: TANZANIA MAINLAND
LEGAL AND HUMAN RIGHTS
CENTRE (LHRC)**



**PART TWO: ZANZIBAR
ZANZIBAR LEGAL SERVICES CENTRE
(ZLSC) & ZANZIBAR FIGHTING
AGAINST YOUTH CHALLENGES
ORGANIZATION (ZAFAYCO)**



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PART ONE:
**TANZANIA MAINLAND
LEGAL AND HUMAN RIGHTS
CENTRE (LHRC)**

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Anna Aloys Henga (Advocate)
LHRC Executive Director



LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AYAS	Adolescent and Young Adult Stakeholders Group
AIDS	Acquired Immune Deficiency Syndrome
CAG	Controller and Auditor General
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCM	Chama cha Mapinduzi
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CORI	Coalition on the Right to Information
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
CSE	Comprehensive Sexuality Education
DC	District Commissioner
DPP	Director of Public Prosecutions
ESA	East and Southern Africa
FGM	Female Genital Mutilation
H.E.	His/Her Excellency/Her Excellency
HIV	Human Immunodeficiency Virus
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
LGAs	Local Government Authorities
LHRC	Legal and Human Rights Centre
MDG	Millennium Development Goal
MoH	Ministry of Health
MPs	Members of Parliament



NAAIA	National Accelerated Action & Investment Agenda for Adolescent Health & Wellbeing
NBS	National Bureau of Statistics
NEA	National Elections Act
NEC	National Electoral Commission
NEC	National Electoral Commission
NPS	National Prosecutions Services
PCB	Prevention of Corruption Bureau
PCCA	Prevention and Combating of Corruption Act
PCCB	Prevention and Combating of Corruption Bureau
PLHIV	Persons living with HIV/AIDS
PWAs	Persons with Albinism
PWDs	Persons with Disabilities
RC	Regional Commissioner
SADC	Southern African Development Community
SDG	Sustainable Development Goal
SRH	Sexual and Reproductive Health
SRHR	Sexual and Reproductive Health Rights
STIs	Sexually Transmitted Infections
THIS	Tanzania HIV Impact Survey
THRDC	Tanzania Human Rights Defenders Coalition
TLS	Tanganyika Law Society
TPF	Tanzania Police Force
TPS	Tanzania Prisons Services
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
UPR	Universal Periodic Review
URT	United Republic of Tanzania
VAW	Violence against Women
WHO	World Health Organization



ABOUT LHRC

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-governmental, non-partisan and non-profit sharing organization envisioning a just and equitable society. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar. It has four offices, two in Dar-es-Salaam, one in Arusha and another in Dodoma. The Head Office is located at the Justice Lugakingira House in Kijitonyama Area Dar-es-Salaam.

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



MAJOR DEVELOPMENTS IN 2021

Tanzania's first ever female President – a boost for women's political participation and representation.
President Samia's plea: speed up investigation of criminal cases to protect rights of accused persons.
Calls for criminal justice reforms by senior government leaders, including the President, and other stakeholders to address challenges in the criminal justice system.
Pregnant girls and young mothers finally allowed back to school following the Government's re-entry policy.
Continued calls for death penalty to be abolished.
Alarming rate of intimate partner violence and killings.
Alarming rate of violence against children, including sexual violence and child trafficking.
Amendments of Online Content Regulations and EPOCA Radio and Television Regulations.
Appointment of 28 new Judges, including 7 Justices of Appeal, a new record.
Calls for bail to be open for all offences, like in the neighbouring Kenya, but with the Judiciary given the final say on a case-by-case basis.
Increased public and stakeholder concerns over lengthy pretrial detention.
Calls for reform of the juvenile justice system.
Development of the new National Anti-Trafficking in Persons Plan of Action 2021-2024
Tanzania's human rights record examined for the third time by the UN Human Rights Council's Universal Periodic Review (UPR) mechanism.
Appointment of women leaders in key cabinet positions.
"Launching of the National Accelerated Action and Investment Agenda for Adolescent Health and Wellbeing (2021/22- 2024/25)"
Adoption of the CHILD JUSTICE: THE SECOND FIVE-YEAR STRATEGY FOR PROGRESSIVE REFORM 2020/21 – 2024/25 by the Ministry of Constitutional and Legal Affairs in March 2021.
Access to a healthy environment, declared a human right by UN Human Rights Council.



KEY HIGHLIGHTS IN 2021

1	Criminal justice	<ul style="list-style-type: none"> Persons accused of crime may spend over 6 years in prison awaiting trial. Incarcerated women are disproportionately affected by poor prison conditions. Prior emotional, physical, and/or sexual abuse largely contributes to women's criminal behaviour. True impact of female detention is felt by children who are imprisoned with their mothers, or who remain alone on the outside.
2	IPV Killings	<ul style="list-style-type: none"> Women constitute the overwhelming majority of IPV killing victims. Nearly 9 out of 10 people killed due to IPV were women.
3	Covid19 Impact	<ul style="list-style-type: none"> Covid19 had a huge impact on realization of human rights in 2021, especially social and economic rights. Overall, women and children were affected the most.
4	Will	<ul style="list-style-type: none"> Only 1 out of 10 Tanzanians has written a will. Most people, especially in rural and semi-urban areas, believe writing a will means inviting death (superstitious).
5	Press freedom	<ul style="list-style-type: none"> Tanzania maintained its 124th rank in the World Press Freedom Index 2021, having fallen 31 places from 2018 to 2020.
6	Human trafficking	<ul style="list-style-type: none"> Women and girls are the major victims of human trafficking in Tanzania. In Sub-Saharan Africa, including Tanzania, children have been trafficked to work on plantations, in mines and quarries, on farms, as vendors in markets and on the streets. Female victims trafficked for domestic servitude suffer extreme harm.
7	Widows' rights	<ul style="list-style-type: none"> Forced eviction and property grabbing is serious concern for widows and their children. Legal reforms are needed to safeguard their property and inheritance rights.
8	Violence against the elderly	<ul style="list-style-type: none"> Older people are becoming increasingly at risk of violence/ attack by their own children over property inheritance, especially sons. Majority of the people killed over witchcraft suspicion are older people, especially older women.
9	Mental health	<ul style="list-style-type: none"> Youth constitute the majority of suicide victims (42%). 4 out of 10 people who committed suicide in 2021 were youth (15-35 years of age).
10	Violence against Children (VAC)	<ul style="list-style-type: none"> 89% of VAC incidents reported by media were sexual VAC. Burning hands is becoming the preferred method of punishing children by parents/guardians.



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EXECUTIVE SUMMARY

Introduction

This is the 20th human rights report to be produced by LHRC since 2002. This year's report covers both Tanzania Mainland and Zanzibar, whereby Part I covers the former and Part II covers the latter. The report assesses the situation of human rights in Tanzania in line with international human rights standards and covers all three generations of human rights, namely: civil and political rights; economic, social, and cultural rights; and collective rights. These categories of human rights are covered in separate chapters, but there are other chapters that cover contextual overview, rights of vulnerable groups, human rights mechanisms, status of implementation of recommendations made in previous reports, and conclusion and recommendations.

Information and data used to prepare this report was obtained from primary and secondary sources. Primary data was mainly obtained through human rights survey, conducted in 20 regions across Tanzania Mainland; LHRC's engagement with beneficiaries of its programmes; and human rights monitoring. Secondary data was obtained through review of various credible sources, including reports and statements by government and non-government actors. LHRC's media survey also provided an important data source for this report, enabling triangulation of data, and laying a foundation for further research.

Below are some key findings on the situation of human rights in Tanzania Mainland for the year 2021.

Key Findings

1. Civil & Political Rights

In 2021, the situation of civil and political rights slightly deteriorated compared to the year 2020. The impact of Covid19 on civil and political rights was significant.

Right to Life

In 2021, mob violence/justice, witchcraft-motivated killings, extrajudicial killings, and intimate partner (IPV) killings continued to violate or threaten the right to life, although trends show a slight decrease in



reported incidents. Other concerns for the right to life in 2021 included imposition of death penalty and violence against persons with albinism.

Mob violence was responsible for 239 deaths in the period of January to August 2021 alone. By December 2021, the number had risen to 473, increasing by 30 incidents (6.8%) compared to the year 2020.

Majority of community members who responded to LHRC's human rights survey said mob violence is a moderate (49%) and a serious (23%) problem in their community. Regarding reasons for mob violence, lack of faith in the police (57%) was cited as the biggest. Other factors include justice taking too long; accused person being seen roaming the streets; lack of faith in courts; and low awareness about bail. LHRC documented a total of 22 incidents of mob violence, the same number as in the year 2020. These incidents were reported in Mwanza, Pwani, Rukwa, Lindi, Songwe, Katavi, Njombe, Morogoro, Manyara, Rukwa, Dodoma, Dar es Salaam, Shinyanga, and Tanga Regions

In 2021, LHRC also documented nine reported incidents of extrajudicial killings, majority of them committed by members of local law enforcement groups (sungusungu), especially in Dar es Salaam. These incidents are five more than those reported and documented by LHRC in 2020. LHRC also documented at least four incidents of violence against law enforcement officers, including the killings of at least four police officers and attack of one, reported in Dar es Salaam and Arusha Regions.

Witchcraft-motivated killings continued to be a human rights concern in 2021, especially for the older people. In the period of January to August 2021, the police recorded a total of 84 people killed over witchcraft-suspicion. By December 2021, the number of reported incidents stood at 155, equal to an increase of 43 incidents (38.4%).

Through human rights monitoring and media survey, LHRC documented at least 36 reported incidents of witchcraft-suspicion killings in 2021, having documented 15 incidents in 2020. These incidents were reported in Dodoma, Kagera, Kagera, Mbeya, Arusha, Katavi, Tabora, Songwe, Njombe, Kigoma, Rukwa, Manyara, and Shinyanga Regions. 20 of the 36 victims (55%) were women, majority of them aged above 50 years old.

While the situation had significantly improved in the period of 2015 to 2020, with no reported killings during this time, in 2021 killing of



persons with albinism (PWAs) re-emerged, as a child with albinism, aged around 4 to 7 years, was found brutally killed and his body violently mutilated in Uyui District, Tabora Region. LHRC also documented one incident of vandalism of PWA grave.

Death penalty continues to be imposed as punishment in Tanzania, despite the three previous Presidents refusing to execute death row inmates. In 2021, LHRC documented 24 death sentences, imposed by courts in Mara, Geita, Iringa, Njombe, Mbeya, and Kigoma Regions, which are 6 fewer than those documented in 2020.

Intimate partner violence (IPV) and killings increased in 2021, with women constituting the overwhelming majority of victims killed by their partners. A total of 35 incidents were documented by LHRC in 2021, increasing from 32 in 2020. The incidents were reported in 16 regions of Tanzania Mainland and women constituted 89% of the victims. Jealousy continued to be the main driving factor, with 72% of the victims attacked and killed because of jealousy. Majority of the respondents of the human rights survey, over a third (37%), said IPV and killings due to jealousy are a moderate problem in their community.

Disappearances were also a key right to life issue in 2021. LHRC documented at least 12 cases of people reportedly taken away by unknown people and disappeared in 2021. These cases were reported in Lindi and Dar es Salaam Regions. All of the victims were male. Several cases of disappearances remain pending, with no definitive answers provided yet by the authorities, including that of Azory Gwanda, Ben Saanane, and Simon Kanguye.

Road accidents and resulting deaths continued to decrease in 2021, largely due to efforts of the traffic police. Road accidents declined from 10,297 incidents in 2016 to 2,924 in 2019. In 2020, the Tanzania Police Force reported a total of 1,933 road accidents, which resulted into 1,384 deaths, while in 2021, the number of road accidents decreased to 1,864 (3.6%) and resulting deaths also decreased to 1,368 (1.2%).

Majority of road accidents (91.6%) are caused by human error, and among such accidents, the majority of them (34.89%) are caused by driver negligence, followed by negligence of bodaboda drivers (17.91%), and driving too fast/over speeding (15.87%).

Freedom of Expression

Very little change was evident in promotion and enjoyment of



freedom of expression, especially press freedom, as Tanzania maintained its 124th rank that it scored in 2020 in the World Press Freedom Index 2021. Key concerns for press freedom in 2021 included laws and regulations containing restrictive provisions, which are arbitrary and not in conformity with international human rights standards; arbitrary arrest, intimidation, and detention; and access to information. Freedom of expression laws which contain restrictive provisions include the Media Services Act of 2016, the Cybercrimes Act of 2015, and the Electronic and Postal Communications (Online Content) Regulations of 2020. In 2021, LHRC documented a total of seven incidents of arbitrary arrests and detention of journalists, reported in Dar es Salaam, Mwanza, Kilimanjaro, and Katavi Regions.

Journalists who were engaged by LHRC as respondents of the human rights survey indicated that they face various challenges in carrying out their duties, including low awareness about media laws and regulations, whereby LHRC observed that half of the respondents (50%) could not correctly mention at least three media laws. Half of the respondents also cited restrictive laws and regulations as a serious problem in their current working environment, while nearly a half

(48) also mentioned taking away or destruction of their equipment as a moderate problem. Press freedom (77%), right to information (68%) and freedom of opinion (64%) were mentioned as the top three most violated rights of journalists.

On a positive note, H.E President Samia Suluhu Hassan directed the government authorities to lift bans on some of the media outlets which had been suspended in previous year(s). There were also positive amendments of the Online Content Regulations 2020 and EPOCA Radio and Television Regulations, although for the former, most other key concerns remain unaddressed.

Freedoms of Assembly and Association

Several laws continue to be a thorn on freedoms of assembly and association in Tanzania, including the Political Parties Act, as amended in 2019, and the Basic Rights and Duties Enforcement Act (BRADEA), which was amended in 2020. As a result, the situation of these fundamental freedoms slightly deteriorated in 2021, considering also the ban on political rallies outside one's constituency that was imposed in 2016, which is yet to be officially lifted.

In 2021, LHRC also documented at



least three incidents of arbitrary interference with the freedoms of assembly and association of political parties, all involving CHADEMA, the main opposition party in Tanzania. These incidents were reported in Dar es Salaam, Iringa, and Mara Regions.

Rights to Equality before the Law and Effective Remedy

Despite progress made by the Government and the Judiciary to promote and protect the rights to equality before the law and effective remedy, several challenges persist. In 2021, key issues affecting rights to equality before the law and effective remedy included: laws that hinder effective enjoyment of the right to equality before the law; barriers to access to justice, including shortage of judicial staff, delays in investigations, and duration of cases; and criminal justice challenges, including lengthy detention of remandees in prisons, investigations and adjournment of cases, prison and police cell overcrowding, plea bargaining, prompt presentation of accused persons in court, rights of prisoners and remandees, non-bailable offences, and videoconferencing in criminal proceedings vis-à-vis the right to fair trial.

Amendment of BRADEA in June 2020 was met with criticism within and beyond Tanzania for failure to

meet international human rights standards. In 2021, the effects of the amendment continued to be felt in terms of access to justice, as the law prevented CSOs from filing cases on behalf of victims of human rights violations, limiting their role of promoting and enhancing protection of human rights.

In terms of access to justice, in 2021, the Government and the Judiciary continued to take various measures to improve access to justice, including construction and renovation of court buildings, appointment of new Judges and Justices, use of ICT to enhance access to justice, and implementation and proposed expansion of the mobile courts programme. However, several barriers to access to justice persist, as identified by community members who responded to LHRC's Human Rights Survey 2021. Corruption was mentioned as the biggest barrier, with 79%, followed by duration or length of proceedings/cases in courts of law (48%), low awareness of laws among citizens (47%), and legal representation costs (37%). Lengthy legal procedures (cumbersome procedures) and language of the court/law (English) were also mentioned as barriers by a quarter of the respondents. Nearly two thirds of the respondents (62%) said shortage



of judicial staff is a problem in their community in terms of access to justice. Currently, the Judiciary is faced with a shortage of 4,728 workers (46%), which has affected timely administration of justice. Despite the good work done by stakeholders, including paralegal centres, access to legal aid also remains limited in some rural areas (remote). This was mentioned as a barrier to access to justice by 23% of the respondents.

In criminal justice, lengthy pre-trial detention was mentioned as the biggest challenge facing remandees. In August 2021, H.E. President Samia Suluhu Hassan noted that prolonged remanding of accused persons is not only a burden to the Government but also amounts to the violation of basic rights and freedoms. Majority of the respondents of the Human Rights Survey 2021, including community members, lawyers, and NGO officials, pointed out that lengthy pre-trial detention of remandees is a serious challenge in Tanzania, contributing to prison overcrowding and violation of fundamental rights of accused persons. In 2021, LHRC documented at least 11 cases of people who are in prison for up to 6 to 12 years awaiting trial/hearing before the court. Through social media monitoring, LHRC also monitored and documented additional eight cases/allegations

of lengthy pre-trial detention, which has largely contributed to prison overcrowding in Tanzania.

Pre-trial detention undermines the chance of a fair trial and the presumption of innocence. It also puts remandees at a greater the risk of coercion through torture or ill-treatment and poor legal representation, especially where the accused person is poor. Socio-economic impact of excessive pre-trial detention includes loss of a breadwinner or caretaker, family disruption or break up, loss of livelihood and home, loss of social security contributions, education interruption, stigma, depression, and long-term unemployment or underemployment. For the community and State, negative effects include undermining of the rule of law, furthering corruption, lost human potential, overcrowding of detention facilities, and loss of faith in the justice system.

Other challenges in the criminal justice system identified in 2021 include: delays in investigations and constant adjournment of cases; overcrowding in detention facilities; misuse of and loopholes in plea-bargaining; delays in taking accused persons to court; violations of rights of prisoners and remandees; lack of dedicated interventions and adequate resources for social re-integration



of ex-offenders and remandees; and denial of bail for non-bailable offences. Currently, 53% of prison population in Tanzania is pre-trial detainees. Key concerns regarding plea bargaining include coercion of accused persons; misuse of power due to the leverage enjoyed by the prosecutor; reducing the role and influence of magistrates and judges; and the risk of accused persons pleading guilty for crimes they did not commit, just so they can taste freedom again.

Right to Liberty and Personal Security

During this reporting period, right to liberty and personal security was mainly affected by arbitrary arrests and detentions; denial of bail; trumped-up charges; lack of police presence/stations in some wards across Tanzania Mainland; concerns over safety and security of women and children; delays in conducting and completing investigations; personal security concerns, including for bodaboda drivers; and human trafficking.

Lack of police presence/stations in some wards is contributed by gaps in development plans and shortage of police officers. For instance, while the standard police to civilian ratio is one police officer for 450 civilians (1:450), currently there is one police officer for 2,000 civilians (1:2,000). As of December 2020, regions which were leading

for shortage of police officers, based on the police to civilian ratio, were Simiyu (1:3,465), Tabora (1:2,768); Geita (1:2,457), Songwe (1:2,417), and Kigoma (1:2,342).

LHRC documented a total of eight incidents of attacks and killings of the bodaboda drivers in 2021, which are three more than those reported and documented in 2020. The incidents were reported in Kilimanjaro, Dar es Salaam, Mara, Mbeya, Lindi, Pwani, and Tabora Regions.

Regarding arbitrary arrests, in 2021 LHRC documented at least eight reported incidents of arbitrary arrests and detention, including five against journalists, an increase of 1 incident compared to those documented in 2020.

Regarding bail, majority of respondents of the human rights survey (46%) indicated that denial of bail is a moderate problem, followed by those who feel it is a serious problem (35%). Community members also expressed mixed views on whether all offences should be made bailable.

Majority of community members who responded to the human rights survey (49%) said trumped-up charges is a serious problem in their community, followed by those who feel it is a moderate problem (38%). In 2021, H.E President Samia



Suluhu also expressed concerns over various criminal justice challenges, including trumped-up or fabricated charges. In May 2021, PCCB announced that it had dismissed 147 cases that are thought to have been fabricated against innocent civilians. In 2021, LHRC documented at least three incidents of trumped-up charges, reported in Arusha and Tabora Regions.

Human trafficking is a threat to right to liberty and personal security. It is also a threat to other rights and freedoms such as right to life, right to non-discrimination, freedom from slavery, freedom from torture, freedom from violence, freedom of association, freedom of movement, right to health, right to just and favourable conditions of work, right to adequate standard of living, and right to social security. In 2021, the Covid19 pandemic increased vulnerability to human trafficking globally.

The most recent police data on human trafficking in Tanzania shows that in the period of 2016 to 2020, a total of 151 incidents of human trafficking were reported. These include 19 incidents reported in 2020, which are one more than those reported in 2019. In 2021, LHRC documented at least 20 incidents of human trafficking, reported in Dar es Salaam,

Morogoro, Mara, Dodoma, Mbeya, Shinyanga, and Geita Regions. In the period of July 2020 to March 2021 a total of 163 Tanzanians were reportedly rescued from human trafficking by government and non-government actors, including two in Iraq and Malaysia.

97% of human trafficking in Tanzania is conducted internally, with children in the ages of 12 to 17 being the major victims. Women and girls are the major victims of human trafficking, and child trafficking, particularly child labour trafficking and child sex trafficking, is said to be common. 74% of the victims are girls. Regions where human trafficking is common include Dar es Salaam, Dodoma, Mwanza, Kigoma, Kagera, Geita, Singida, Arusha, Manyara, Shinyanga, Simiyu, Lindi, and Mtwara.

Trafficking in PWDs for purposes of begging is becoming a serious human trafficking issue. In July 2021, 15 people in Dar es Salaam, including a businessperson, were accused of trafficking 37 PWDs, including children with disabilities aged 7 to 11 years, from Tabora and Shinyanga Regions and taking them to Dar es Salaam to beg and generate income for them.

Right to Take Part in Governance

Right to take part in governance is also known as a right to take



part in public affairs or right to participate in the government. It includes citizens' right to vote and be voted for public office and the right to participate in political life. Over the years, the Government has taken various legal and institutional measures to enhance political participation, including affirmative action. However, several barriers were found to hinder effective realization of the right to stand in election and participate in political life. These barriers are found in the Constitution of the United Republic of Tanzania of 1977 and electoral laws, including the Political Parties Act, Cap. 258 (R.E 2019). For instance, the Constitution does not recognize private or independent candidates, and prohibits challenging presidential election results in court. Amendments made in the Political Parties Act have further impacted the right to freely participate in political life, given the excessive and intrusive powers of the Registrar of Political Parties. For women, gender-insensitive electoral laws pose a big challenge for them to effectively realize their right to participate in public affairs.

As the country heads towards the General Elections of 2025, several key lessons can be taken from the Malawi presidential elections of 2019 and re-run presidential

election of 2020. These include independence and role of the Judiciary in safeguarding electoral justice; challenging presidential results court; and independence and integrity of electoral management bodies (EMBs).

Freedom from Torture and Inhuman or Degrading Treatment

In 2021, LHRC documented at least 47 incidents of torture and/or inhuman or degrading treatment. These incidents include torture of accused persons under police custody (detainees) and child torture. Incidents of torture of persons under police custody were reported Mara, Dodoma, and Dar es Salaam Regions.

Freedom from Violence

Different forms of violence perpetrated against women, children, men, PWDs, and the elderly in 2021, infringed their right to freedom from violence. Regarding violence against men, while the majority of respondents of the human rights survey (71%) said it is only a minor problem and not at all a problem, a quarter of the respondents acknowledged that it is a moderate problem in their community, while 4% said it is in fact a serious problem.

Incidents of violence against men were reported in Dar es Salaam, Songwe, Mara, Shinyanga, where



at least four men were killed by their lovers or wives, 3 of them because of jealousy.

2. Economic, Social, & Cultural Rights

In 2021, the situation of economic, social, and cultural rights slightly deteriorated/worsened, mainly due to the impact of Covid19, which exacerbated existing challenges which continue to hinder effective realisation of social, economic, and cultural rights, including budgetary constraints; delays in disbursement of funds; partial disbursement of funds; poor working conditions; unemployment; shortages of workers; and shortages of equipment, tools, and facilities.

In 2021, the residents of Buhigwe and Muhambwe constituencies in Kigoma Region exercised their right to vote during the by-elections, conducted following the death of Muhambwe MP, Eng. Atashasta Justus Nditiye, in February 2021 and the appointment of the Buhigwe MP, Dr. Phillip Mpango, to position of the Vice-President of the United Republic of Tanzania. LHRC observed the by-elections, which were generally found to be free and fair, in the absence of evidence of serious breach of electoral standards. However, there were concerns such as internal party democracy, voter

apathy, and gender equality in policy documents of political parties.

Right to Education

While the Government continued to take various measures to ensure progressive realisation of the right to education, including implementation of the fee-free education policy, various challenges continued to hinder effective realisation of this fundamental right in 2021. These challenges included:

- concerns over quality of education, contributed by poor working and learning environment; gaps in curricula; medium of instruction; shortage of teachers, including science and special education teachers; budgetary constraints; shortages of classrooms, desks, and toilet holes; long distance from home to school; access to sanitary pads and menstrual hygiene facilities; reluctance of some parents to send their children to school; school dropout; violence against schoolchildren, especially sexual violence; and child marriage and pregnancy. Gaps in provision of comprehensive sexuality education (CSE) was also identified as a challenge in realization of the right to education. Key barriers to provision of CSE



include inadequate funding, avoidance and omission of key topics, and lack of adequate training and support for teachers.

- Acts of violence against children, especially sexual violence (rape and sodomy), continued to be a big challenge for schoolchildren, especially girls. Teachers were among the perpetrators of such violence. In 2021, LHRC documented 10 incidents of teachers accused of sexual VAC. In the period of 2019 to 2021, LHRC documented 39 incidents of teachers implicated in sexual VAC.
- Child marriage and child pregnancy cases have also been increasing during the Covid19 pandemic era.

One of the positives for girls' right to education in 2021 was the Government's decision to allow them back to school through introduction of the re-entry policy for pregnant schoolgirls. There is also hope for the fight against child marriage as the Government has indicated that it is going to comply with the decision of the Court of Appeal of Tanzania in the Rebecca Gyumi case and amend the Law of Marriage Act of 1971 to outlaw child marriage.

Right to Health

In 2021, the Government took

various measures to facilitate progressive realisation of the right to health and address some of the challenges in the health sector, including provision and distribution of essential drugs, medicines, and medical supplies, as well as construction and renovation of health facilities. However, key challenges in realization of the right to health that persisted include budgetary constraints; shortage of healthcare workers; mental health and suicide; violence against women and girls; shortage of equipment, medicines, and medical supplies; and sexual and reproductive health challenges.

- In 2021, the health sector was faced with a shortage of 52% of health workers, as the available health workers only constituted 48% of the required number. In Dodoma, it was reported that Dodoma Region had 67% shortage of health workers.
- Shortage of health facilities forced some community members, especially in rural areas, to walk or travel long distances to access health services.
- Shortage of health workers, shortage of spaces for pregnant women, shortage of health facilities, long distance to health facilities, and violence against women and children (VAWC) were



said to be among the barriers to access to quality maternal healthcare in 2021. In 2021, LHRC documented at least two incidents of domestic violence in which pregnant women were subjected to physical violence by the partners. In some cases, domestic violence has even caused miscarriage among pregnant women.

- Maternal and child mortality are a challenge, especially at health centres in rural areas, where majority of deaths occur. Child marriages and early pregnancies also affect health conditions of adolescent girls and young women, putting them at an increased risk of maternal mortality.
- Suicide continued to be a serious mental health concern in 2021. The number of suicide incidents documented by LHRC increased from 22 in 2020 to 45 in 2021. Reasons for committing suicide included: husband being released from police custody; lover rejection; being reported to police by wife; accusation of stealing; debt; non-recognition by a pastor in church; wife threatening to leave husband; jealousy; finding a partner has HIV; being HIV positive; denial of due wages; and economic hardship.
- Overwhelming majority of the suicide victims in cases documented by LHRC in 2021, over two thirds (76%), were male. In terms of age category, LHRC's assessment of the reported cases of suicide, documented through media survey and human rights monitoring, the majority of the suicide victims fell (42%) in the age category of 15-35 years (youth).
- Lack of health insurance also presented a challenge in realization of the right to health in 2021, as over half of Tanzania remain uncovered by health insurance.
- Realization of sexual and reproductive health and rights, especially among youth, is affected by challenges such as violence against children and youth; negative perception of certain aspects of sexual and reproductive health; and limited access to accurate and age-appropriate information.
- Other barriers to SRH services in Tanzania include shortage of health workers, which is a big concern; long queues; negative attitude of healthcare workers, including being judgmental; stigma and discrimination; religious norms; and misconceptions around reproductive health and HIV prevention services.
- Over 90% of teachers at primary and secondary school levels think sexual and



reproductive health and rights content lacks broadness and depth, hence insufficient.

Right to Water

Despite the efforts to ensure progressive realization of the right to water, in some parts of Tanzania Mainland some people could not effectively realize this fundamental right because of various challenges. These challenges include partial and/or delayed disbursement of funds; lack of access to clean and safe water in some areas in Mwanza, Kigoma, Kilimanjaro, Kagera, Shinyanga, and Mara Regions; illegal connections; and water leakages and loss.

Right to Work

In 2021, key issues which affected the right to work for Tanzanians included: PAYE and loan board payments burden for workers; shortage of workers in health and education sectors; poor working conditions; inadequate rest for workers; and violations of labour rights of workers, aggravated by the Covid19 outbreak.

- In 2021, the burden of PAYE and loan board payments continued to be a challenge for workers, in both public and private sectors, contributing to excessive monthly deductions below the statutory requirement of deductions not exceeding two thirds of

salaries, especially among Local Government Authorities (LGAs) staff.

- Workers in sectors which provide social services, such as teachers and health workers, were mainly affected by poor working conditions. For instance, for teachers, shortages of classrooms, teachers, and teacher houses had negative impact on their work, consequently compromising the quality of teaching.
- Reports of workers being overworked and getting little time to rest were revealed widely in the human rights and business survey conducted in 15 regions of Tanzania Mainland by LHRC in 2021. Those working in the transportation, security, and hospitality industries, such as bus and truck drivers, hotel workers, and security guards, were the major victims in this regard.
- Labour rights violations and disputes also increased in 2021, largely contributed to the Covid19 pandemic.
- Labour rights of journalists were also said to be often violated by their employers. Journalists who responded to LHRC's Human Rights Survey 2021 cited lack of employment contract (73%) as their biggest challenge in



this regard, followed by low pay (68%), threats (56%), unfair dismissal (55%), and breach of employment contract by employer (54%). Sexual harassment/sexortion of female journalists was also cited as a serious problem (42%) and moderate problem (40%)

Right to Own Property

In 2021, key issues affecting the right to property included: land conflicts/disputes; infringement of women’s access, control and ownership of land; property grabbing from widows and older persons; and writing of wills to secure property and inheritance rights.

- Reported violations of the right to own or inherit property included: targeting of older people to grab their property; children demanding property or inheritance from older people, even resorting to killing them; and property grabbing from widows.
- Women’s access to, use of and control over land continued to be limited in 2021, especially in rural areas, where customary laws are applied.
- Land conflicts/disputes, including between farmers and pastoralists, also jeopardized realization of the right to property in 2021. LHRC documented land disputes

reported in Kagera, Morogoro, Dodoma, Tanganyika, Manyara, and Lindi Regions.

- Over a third of land disputes (39%) related to non-payment of compensation, usually by public institutions.
- While majority of Tanzanians think writing of a will is important (91%) to safeguard the right to property, only 11% have written a will. Reasons for not writing will include lack of awareness (66%), perception or belief that writing of will means inviting death (37%), and perception that one is too young to write a will (28%).

3. Collective Rights

In 2021, progress made in ensuring realization of collective rights was greatly reversed by the impact of the Covid19 pandemic.

Right to Development

Considerable progress that had been in realization of the right to development prior to the Covid19 pandemic, was reversed during the pandemic era. As this right is dependent on realization of the civil, political, social, economic, and cultural rights, the impact of the pandemic on the realization of this right also affected realization of the right to development.

- Freedoms of expression, assembly, and association continued to be negatively affected by restrictive



legislation, exacerbated by various amendments made in 2019 and 2020. These restrictions, coupled with arbitrary actions by state agents, have caused political development to stall in the past three years.

- Covid19 had a negative impact on social development, including by restricting access to education, access to health services, and through loss of income and employment.
- Covid19 also affected human development in various ways, including loss of income and employment.

Right to Enjoy and Benefit from Natural Resources

In 2021, the Government continued to take steps to ensure realisation of the right to enjoy and benefit from natural resources, including through collection of revenue in key sectors such as the mining sector in order to support national development. However, the Covid19 pandemic ensured that this right to not effectively enjoyed and realized in 2021, including in key sectors such as tourism and manufacturing. Corruption, tax avoidance, and tax evasion, especially in the extractive sector, also contributed to this situation.

Right to Clean and Healthy Environment

The right to a healthy environment

requires a healthy human habitat, including clean water, air, and soil that are free from toxins or hazards that threaten human health. In 2021, the United Nations (UN) Human Rights Council recognised, for the first time, that having a clean, healthy and sustainable environment is a human right.

In Tanzania, several measures have been put in place by the Government to manage, preserve, and protect the environment. However, over the years, enjoyment of the right to a clean and healthy environment has been infringed due to the problem of environmental pollution, especially caused by individuals and businesses. In the period of 2020/21, LHRC documented at least 15 incidents of water pollution, air pollution, noise pollution, and land degradation in regions such as Dar es Salaam, Shinyanga, Dodoma, Mara, Tanga, Geita, Mtwara, Mbeya, and Pwani Regions

4. Rights of Vulnerable Groups

In 2021, key issues that hindered effective realization of the rights of vulnerable groups included different forms of violence and discrimination. Violations of the rights of these groups were greatly compounded by the Covid19 pandemic, which among others, resulted into increased domestic violence, child marriage,



child pregnancy, FGM, and loss of income and employment. Loss of income increased vulnerability of these groups in various ways, including vulnerability to different acts of violence.

Women's Rights

In 2021, key issues affecting women's rights included: physical violence; sexual violence in the form of rape and sodomy; psychological violence; and sexual corruption.

- Police data for the year 2021 show that a total of 17,874 VAW incidents were reported, a decrease of 8,670. Despite this increase, the problem is still big, as it represents an average of 1,490 women subjected to VAW each month across Tanzania. This equals to 50 women being subjected to different forms of VAW every day. It should also be considered that many incidents go unreported.
- About half of the respondents of the human rights survey (52%) perceived violence against women to be a serious problem in their community, closely followed by those who perceived it to be a moderate problem (41%).
- Common forms and acts of violence against women in 2021 were rape, sodomy, wife or partner beating (domestic violence), verbal abuse/

humiliation, being badly injured or killed by intimate partner due to jealousy, being killed over witchcraft suspicion, denial of inheritance/property ownership, unwarranted touching of body parts or sexual harassment, and sexual corruption/sextortion.

- Most women suffer violence at the hands of their intimate partners, either a husband or a lover. Family members, especially relatives of a deceased husband, are also perpetrators of violence against women, especially widows.
- Poverty or lack of income for women continues to be a key driver of violence against women, as some women feel that they do not have many options rather than to stay in a violent relationship or marriage due to lack of income and/or resources. Other drivers include patriarchy; excessive alcohol consumption; preference of settling VAW at family level; belief in witchcraft; low awareness about human rights and GBV; discriminatory customs and traditions, including those which deny women the right to inheritance and land ownership; extra-marital affairs; and condoning of violence.
- IPV and killings were a key human rights concern



for women in 2021. LHRC documented a total of 35 reported incidents of IPV killings through human rights monitoring and media survey, with the overwhelming majority of the victims (89%) being women. In total, LHRC documented 31 incidents of women killed by their intimate partners, a decrease of 1 incident compared to the incidents documented in 2020. Out of the 35 killings of women and men by their intimate partners, overwhelming majority (72%) were motivated by jealousy.

- During this reporting period, LHRC also documented at least 70 incidents of physical violence against women, which are 3 times those reported in 2020. The incidents were reported in different regions, including Katavi, Kilimanjaro, Geita, Tabora, Shinyanga, Dar es Salaam, Arusha, Mwanza, Pwani, and Mara. The victims suffered physical abuse for different reasons, including witchcraft suspicion and belief in witchcraft, sexual intercourse, jealousy, child custody, long illness, and alcoholism.
- Over half of the community members who participated in the Human Rights Survey 2021 (54%) also said that domestic violence is a serious problem

in their community.

- Sexual violence also continued to be a serious problem for women in different parts of Tanzania in 2021. During this reporting period, LHRC documented at least 51 incidents of sexual violence, through human rights survey, human rights monitoring, and media survey. This equals to 19 incidents less than those documented by LHRC in 2020 across Tanzania Mainland. Most of these incidents were of rape, reported in different regions, including Mwanza, Dar es Salaam, Morogoro, Lindi, Mara, Tabora, Dodoma, Pwani, Mbeya, Katavi, Manyara, and Tanga.
- In 2019, the number of reported rape incidents was 7,837, which slightly decreased to 7,263 incidents in 2020. In 2021, the number of rape incidents recorded by the police further decreased to 6,305, equal to a decrease of 958 incidents (13.2%).
- Sexual harassment was also identified as a common form of violence against women, including female journalists. Over a third of the community members who responded to the human rights survey conducted by LHRC (35%) said that this is a serious problem in the community, while nearly a half (43%) said it is a moderate



problem.

- Apart from the media sector, in 2021 sexual corruption was also found to be pervasive in the job market, higher learning institutions, and when accessing services. LHRC documented at least four reported incidents of sexual corruption or sextortion, reported in Kilimanjaro, Kagera, Dodoma, and Morogoro Regions. However, most of such incidents go unreported, especially where the sex bribe has not been given. Nearly half of the community members who responded to LHRC's Human Rights Survey 2021 (42%) acknowledged that sexual corruption/sextortion is a serious problem in the community.
- Regarding violence against women in the media sector, particularly female journalists, majority of the journalists who participated in the human rights survey, nearly half of them (42%) said it is a serious problem for female journalists, followed by 40% who said it is a moderate problem. Common acts of sexual violence against female journalists include being asked for a sex bribe; unwarranted touching of body parts, especially breasts and buttocks; flirting, making sexually offensive gestures or remarks, inappropriate or unwanted touching of arms or brushing up against a woman, blocking the way or standing in the way, making sexually offensive facial expressions, unwelcome sexual advances, and repeatedly asking for dates or hook ups.
- Editors and human resources officers were mentioned the most as perpetrators of sexual violence against female journalists. Other perpetrators include managing directors/managers, media owners, and sources. Consequences of rejecting unwelcome or unwanted sexual advances include non-employment, difficult working environment, a story not being published, and unfair dismissal.
- In 2021, different forms of economic violence against women were reported across Tanzania Mainland. LHRC documented at least 77 incidents reported in this part of Tanzania. They include interference with women's rights over ownership and control of property, withholding access to money, and denial of inheritance. In 2020, LHRC recorded at least 27 reported incidents of economic violence against women through human rights monitoring.
- In 2021, eviction of women from marital/matrimonial



home was also reported as a common form of economic violence against women. Through human rights monitoring and media survey, LHRC documented at least 23 incidents of eviction of women from their marital homes. These incidents were reported in Mwanza, Manyara, Songwe, Mara, Morogoro, Mwanza, Mbeya, and Rukwa Regions.

- In Tanzania, property grabbing from widows is a common practice, especially in rural areas where restrictive customary laws are commonly applied. In the past two years (2020 and 2021), LHRC has documented at least 42 incidents of infringement of widows' property and inheritance rights, through forced eviction of widows from their marital homes and denial of inheritance. Of these, 16 incidents were reported in 2020 and 26 incidents were reported and documented in 2021.
- 26 years on from the Beijing Declaration, progress has been made in safeguarding women's political rights and enhance their political participation. In Tanzania, we now have H.E President Samia Suluhu Hassan, who has made history by becoming the country's first female president. However, progress

made in enhancing women's political participation has been slow and uneven as countries, including Tanzania, continue to struggle to reach key gender equality targets in political participation and electoral process.

- Major barriers to women's effective participation in the electoral process in Tanzania include: gender gaps in electoral laws, including the Constitution of Tanzania of 1977; violence against women in elections/politics (VAWEP); customs, traditions, and gender stereotypes; finances and resources; lack of adequate support from political parties and exclusion from decision-making party structures; gender gaps in political party policy documents and practices; and inadequate media coverage/negative portrayal of female political candidates.
- Economically empowering women remains an important weapon in the fight against GBV. In Tanzania, women's economic empowerment includes provision of interest-free loans to women, as part of a 10% interest free loans for the groups of women, youth, and persons with disabilities (PWDs) provided by district/municipal/city councils. Some of the challenges that have



been identified in provision of the 10% interest free loans include slow pace of or non-repayment of loans, lack of entrepreneurship skills, mistrust and quarrelling among group members, and political interference.

- Women are disproportionately affected by challenges in the criminal justice system in various ways, including access to justice, prison conditions, and failure to address their gender specific needs. For instance, limited access to resources and economic violence leaves women more vulnerable to poverty and hence by extension unable to afford costs such as for bail and legal representation.

Children's Rights

For the year 2021, key issues affecting children's rights included: sexual violence; physical and psychological violence; child labour and exploitation; child trafficking; child marriage; and predicament of child pregnancy.

- Police statistics for the year 2021 indicate that incidents of violence against children (VAC) decreased from 15,870 in 2020 to 11,499 in 2021, a decrease of 27.5%. Out of the 11,499 reported incidents, 85% involved female victims and the remaining 15% were male

victims.

- Girls constituted the overwhelming majority of VAC victims. From 2017 to 2021, there has been a total of 57,076 female VAC victims. Compared to 13,921 male victims during this period, the number of female victims is four times that of male victims.
- 2,993 out of the 11,499 reported incidents of VAC (26%) for the year 2021 were recorded in Arusha, Tanga, Shinyanga, Mwanza, and Ilala Police Regions..
- Over half of the respondents of the Human Rights Survey 2021 (55%) said VAC is a serious problem in the community, followed by 37% who felt it is a moderate problem. Child neglect was mentioned as the most common act of VAC (60%), followed by beating/torture (54%), verbal abuse/humiliation (50%), and rape (48%).
- In 2021, LHRC's Media Survey 2021 showed that 89% of VAC incidents reported by the media were sexual VAC, while 11% were physical and emotional VAC. Most of these incidents were reported in the Lake Zone Regions, Dar es Salaam, Kilimanjaro, and Morogoro. Victims of sexual VAC ranged from 3 to 17 years of age.
- Community members who



responded to LHRC's Human Rights Survey 2021 mentioned relatives/family members as major perpetrators of VAC (66%), followed by fathers (47%), mothers (35%), bodaboda drivers (31), unknown people (30.3%), and neighbour (27%). They also noted that VAC often occurs in home settings (73%), followed by streets (70%), and on the way to school (38%).

- Factors contributing to VAC include lack of cooperation from the victim's family as they prefer to settle the matter at home 'as a family,' long distance from home to school, children being left alone at home (neglected), poor parenting, alcoholism, economic hardships, child marriage, parental separation and belief in superstition/witchcraft.
- Child online abuse was also found to be a key concern for children's online safety in 2021. A study by End Child Sexual Exploitation (ECPAT), the International Criminal Police Organization (INTERPOL); and the United Nations Children's Fund (UNICEF), revealed that approximately 200,000 children were victims of grave instances of online sexual exploitation and abuse in Tanzania in 2021. For instance, 3% of internet-using children aged 12-17 surveyed

were offered money or gifts to engage in sexual acts in person; 2% of the surveyed children were offered money or gifts in exchange for sexual images; and 3% were asked to share images and videos showing their private parts to others.

- In 2021, sexual violence against children (sexual VAC), especially in the form of rape and sodomy, was again the biggest threat to children's rights. Victims of sexual VAC included children as young as 3 years of age.
- Both the survey conducted in the 20 regions and the media survey found people close to children to be the major perpetrators of sexual VAC. These include family relatives, uncles, stepfathers and fathers. Bodaboda drivers and teachers were also implicated in sexual VAC in 2021. In 2021, LHRC documented 10 incidents of teachers accused of sexual VAC.
- In extreme cases, one girl (14 years) in Katavi was gang-raped and sodomized, while other three girls, aged 5, 14, and 6 were raped and killed in Manyara, Mara, and Mbeya Regions respectively.
- Commercial sexual exploitation of children (CSEC) was also reported as form of sexual violence suffered



- by girls. LHRC documented allegations of such incidents in Dar es Salaam and Morogoro Regions, whereby some parents and guardians were implicated in using their female children in sexual activities remunerated in cash.
- Boys are also vulnerable to sexual abuse, especially in the form of sodomy. In 2021, LHRC documented at least 14 incidents of sodomy of boys, reported in Tanga, Katavi, Mara, Manyara, Dodoma, Dar es Salaam, Morogoro, and Njombe. Four of these incidents were reported in Katavi Region, where in one of the incidents the victim (13 years) was thereafter killed by the perpetrator.
 - Child on child sexual violence was also reported in 2021. During this reporting period, incidents of child-on-child sexual violence were reported in regions such as Kagera, Dar es Salaam, Mbeya, and Lindi. LHRC documented at least 12 incidents in total.
 - In 2021, physical violence was the second most common form of VAC, followed by psychological violence. During the human rights survey, incidents of physical and psychological VAC were reported in all surveyed regions including Pwani, Morogoro, Kagera, Mara, and Geita.
 - Though media survey and human rights monitoring, LHRC also documented at least 57 incidents of physical and psychological VAC. These incidents were reported in Kagera, Rukwa, Mtwara, Ruvuma, Singida, Kilimanjaro, Dar es Salaam, Geita, Shinyanga, Mbeya, and Arusha Regions. The incidents included acts such as burning, whipping/caning, and hacking. Most of these acts of violence were perpetrated by parents.
 - Most parents and guardians resort to burning of hands as a preferred method of punishment for their children. In 2021, the Deputy Minister of Home Affairs, Hon. Khamis Chilo, revealed during a parliamentary session that a total of 130 children (33 male, 97 female) were physically abused by burning their hands in the period of January to September 2021. In the period of January to December 2021, LHRC documented at least 17 such incidents, reported in the regions of Mara, Mtwara, Singida, Shinyanga, Katavi, and Dar es Salaam.
 - In extreme cases physical VAC resulted into death in 2021. LHRC documented at least six incidents/cases of physical violence against children which resulted into death. These incidents were reported



in Katavi, Manyara, Tabora, Kigoma, Shinyanga, and Mara Regions. Majority of the victims were boys.

- In recent years, incidents of parents killing their children (filicide) have been reported severally in different countries across the world, including Tanzania. In 2021, LHRC documented at least two incidents of filicide, reported in Geita and Simiyu Regions.
- Severe corporal punishment in schools remains a challenge in Tanzania, like in most other African countries. In 2021, LHRC documented seven incidents/cases of severe corporal punishment imposed on students by their teachers in Kilimanjaro, Mwanza, Morogoro, Dar es Salaam, Shinyanga, and Ruvuma Regions. The punishment, mostly using a cane, resulted into severe pain/bodily harm (5), and death (2). Of the seven victims, four were female and three were male.
- In 2021, respondents of the human rights survey in regions such as Dar es Salaam, Morogoro, and Kagera, said child labour and exploitation is a problem their community. A survey on business and human rights, conducted by LHRC in March and April 2021, also found that child labour incidents were mostly reported

in Manyara, Tabora, Singida, Mbeya, Geita, Shinyanga, and Dodoma.

- In 2021, through media survey and human rights monitoring, LHRC documented 48 incidents of child labour and exploitation reported in nearly all regions of Tanzania Mainland, including Morogoro, Iringa, Dodoma, Dar es Salaam, Geita, Mbeya, Tanga, and Songwe.
- In Tanzanian context, child neglect is a form of child abuse, which is associated with failure to provide for a child's basic needs such as adequate food and clothing and failure to protect a child from violence. In 2021, child neglect and abandonment continued to be a key human right concern for children. During the survey, child neglect was mentioned as the most common form of VAC (60%). During interviews with key informant, child neglect and abandonment was also mentioned as a major challenge in all surveyed regions.
- Through media survey and human rights monitoring, LHRC documented 24 reported incidents of child neglect reported in different parts of Tanzania Mainland, including Dar es Salaam, Shinyanga, Tanga, Kigoma, and Katavi Regions.



- In 2021, the Law of Marriage Act, 1971 remained unamended, more than two years since the decision of the Court of Appeal of Tanzania, calling for amendment of the law to abolish child marriage. However, the national report of Tanzania before the UPR Working Group revealed that the Government was in the process of reviewing the law.
- Through media survey and human rights monitoring, LHRC documented 37 incidents of child marriage, two more than those documented in 2020. These incidents were reported in regions such as Katavi, Shinyanga, Mara, Mtwara, Lindi, Kilimanjaro, Dodoma, Kigoma, and Rukwa. Most of the girls who were subjected to child marriage were in the age category of 13 to 16 years.
- Dowry was observed to be the biggest motivation for parents to force their children to get married and the main perpetrators in this regard were fathers. The youngest victim, who was rescued from child marriage, was 11 years old. Nearly half of the incidents (46%) were reported in the Lake Zone (20%), especially in Mara Region, followed by the Western Zone, especially Katavi Region. Most of the perpetrators were arrested in connection with the incidents.
- In Mara, FGM was identified as a key driver of child marriage as girls who undergo FGM are considered ready for marriage and to start a family of their own.
- In 2021, incidents of child pregnancy, involving female children as young as 13 years, continued to be widely reported in different regions across Tanzania Mainland. Through human rights survey, media survey, and human rights monitoring, LHRC documented at least 2,166 incidents of child pregnancy in the period of January to December 2021. Majority of these incidents were reported in Kigoma, Mwanza, Morogoro, and Shinyanga Regions.
- Factors contributing to child pregnancy include child neglect and abandonment; peer pressure; social media; parents using their children to generate income; lack of sexual and reproductive health education; lack of life skills; poverty/economic hardships; long distance to school; parental separation; FGM; poor parenting; and lack of self-awareness.
- Child trafficking was also found to be a threat to children's rights in 2021. Children in Tanzania are mostly trafficked for labour and sex, with girls



found to be more vulnerable to child trafficking. Children in the age category of 12-17 are the major victims, and girls account for 74% of them.

- In 2021, LHRC documented 20 incidents of human trafficking, reported in various regions of Tanzania Mainland. Half of these incidents involved children as victims of trafficking. The incidents were reported in Dar es Salaam, Morogoro, Mbeya, Arusha, and Iringa Regions.
- Most of the trafficking incidents reported in 2021 were on child labour trafficking, child sex trafficking, and trafficking of PWDs, including children with disabilities (usually for begging).

Rights of Persons with Disabilities

Tanzania has taken various measures to promote and protect rights of person with disabilities (PWDs), including enactment of the Persons with Disabilities Act in 2010. In 2021, majority of the community members who responded to the human rights survey conducted by LHRC (57%) indicated that rights of PWDs in Tanzania are somewhat protected. However, interviewed community members and local officials revealed that PWDs continue to face various challenges, including discrimination in employment,

lack of employment and economic opportunities, stigma, lack of access to buildings, discrimination in education, and violence.

- Forms of violence against PWDs reported by community members and documented by LHRC in 2021 include trafficking and economic exploitation; sexual violence; violence against persons with albinism; and neglect of children with disabilities. In 2021, at least 37 PWDs were reportedly trafficked and one person with albinism (a child) was brutally killed in Tabora.
- PWDs, especially children with disabilities, are also vulnerable to different forms of sexual violence, including rape and sodomy. LHRC documented at least three such incidents, reported in Dar es Salaam, Mara, and Arusha.

Rights of the Elderly

Unlike women, children, and PWDs, there is no international human right convention specific for the elderly. Domestically, there is also no legislation for the protection of the elderly, unlike in Zanzibar. Over half of the community members who participated in the Human Rights Survey 2021 indicated that the rights of the elderly are somewhat protected. However, interviews with other community members, including older people



themselves, revealed that the elderly face various challenges, including access to quality health services, violence, and lack of social protection.

- Challenges faced by older people when accessing health services include concentration of hospitals or clinics in urban areas, far from where most of them live; transportation costs; inability to afford fees for services or drugs; lack of information about services and entitlements; lack of medical personnel trained in older peoples' health care; and negative attitudes of medical staff.
- Access to health services was mentioned as a key challenge for the elderly in all surveyed regions.
- In 2021, LHRC documented at least 16 incidents of violence against the elderly, including physical violence, sexual violence, and neglect. These incidents are double those documented by LHRC in 2020.
- In 2021, Older persons face physical violence for different reasons, including witchcraft suspicion and inheritance disputes. In most regions, children were cited as the major perpetrators of physical violence against the older persons (their parents).
- LHRC documented at least two incidents of sexual

violence against older women, reported in Iringa and Mara Regions.

- In all surveyed regions, including Arusha, Katavi, Mara, and Mbeya, some of the children were accused of neglecting their elderly parents, by not providing them with any financial support to help them meet their basic needs.
- Interviewed older persons in some of the regions, such as Dar es Salaam, Rukwa, and Kagera, complained about their children interfering with their property rights, including forcing them to give them their 'inheritance.' These situations have been known to cause quarrels and misunderstandings, sometimes culminating to violence acts against the elderly, including killings. In 2021, LHRC documented two incidents of parents killed by their children, reported in Geita and Rukwa Regions, both motivated by property inheritance.
- Some of the interviewed respondents, including older persons, stated that there is a tendency of some children 'dumping' their children on their grandparents, who become 'parents for the second time' and take care of their grandchildren.



- Social protection provides secure incomes for people in old age and pensions are a crucial form of social protection. During the survey, lack of pension for older persons was mentioned as a challenge in nearly all surveyed regions.

Rights of Persons Living with HIV

In 2021, stigma and discrimination were identified key challenges that PLHIVs face in the community, hindering effective realization of their rights. The settings in which this occurs includes family, school, and workplace. In Kagera, it was reported that some parents whose children are living with HIV had prevented them from attending school because ‘they can die any time.’

Rights of Refugees

Traditionally, Tanzania has been one of the countries that are very welcoming to refugees in the world, which has earned it accolades within the international community. Over the years, political instability in neighbouring countries such as Burundi and the Democratic Republic of Congo (DRC) has seen Tanzania become a second home for many refugees and asylum seekers. In 2021, the major issue concerning refugees hosted in Tanzania that came into light is the issue or allegation

of forceful return of refugees to their home countries, particularly Burundian refugees.

Youth Rights

In Tanzania, various measures have been taken to address various challenges faced by youth and promote their rights. In 2021, the launch of the NATIONAL ACCELERATED ACTION AND INVESTMENT AGENDA FOR ADOLESCENT HEALTH AND WELLBEING (2021/22- 2024/24), was a positive development in terms of enhancing realization of youth rights. However, more efforts are needed to address the various challenges that youth face, including limited knowledge about sexual and reproductive health and rights; harmful cultural practices such as FGM and child marriage; human trafficking; unemployment and underemployment; poverty; child labour and exploitation; and mental health.

5. Human Rights Mechanisms

National Human Rights Mechanisms

In 2021, national human rights mechanisms, including the Commission for Human Rights and Good Governance (CHRAGG) and the Judiciary, continued to play their role in promoting and protecting human rights. However, they were faced with various challenges, including



shortage of staff, corruption, delays in investigations and conclusion of cases, and budgetary constraints.

Regional and International Human Rights Mechanisms

The year 2021 was special for Tanzania as found itself on the spotlight before the international community. Tanzania's human rights record was yet again examined by the UN Human Rights Council's Universal Periodic Review (UPR) Working Group for the third time on 5th November 2021. During the interactive dialogue, 92 delegations made statements. Tanzania supported 43% of the recommendations, noted 52%, and promised to examine 5%.

Key Recommendations

- Legal reforms, including in the criminal justice system
 - » Laws which need to be amended to safeguard human rights in line with international human rights standards include: Cybercrimes Act, 2015; Media Services Act, 2016; Online Content Regulations, 2020; Basic Rights and Duties Enforcement Act (BRADEA); customary laws (to safeguard women's inheritance and property rights); all electoral laws (to address gender gaps/

gender equality issues and mainstream gender to enhance women's political participation); and the Political Parties Act, to safeguard rights of political parties, especially freedoms of association and assembly.

- Government and non-government actors and individuals to refrain from arbitrary interference with human rights
- A new constitution is desirable to protect human rights in conformity with international human rights standards
- Ratification of key human rights instruments yet to be ratified
 - » These include: the African Charter on Democracy Elections and Governance (ACDEG), 2007; Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- Enforcement of laws, regulations, rules, and policies to safeguard human rights
- Enactment of laws to protect vulnerable groups
- This includes an elderly rights



- law and domestic violence/ GBV law.
- Increasing budgets for key sectors such as health and education in line with Tanzania's international commitments.
 - Ensuring accountability of law enforcement officers when they violate human rights
 - » Formation of an independent police oversight body is important in this regard.
 - Learning through state practice
 - Addressing challenges faced by national human rights mechanisms
- Increasing public awareness on human rights issues
 - Collaborative efforts to safeguard the rights of PWAs
 - Setting aside adequate resources/budget for the implementation of the National Plan of Action to End Violence Against Women and Children
 - Review of education system and curricula to address gaps and improve quality of education
 - Fast-tracking introduction of pensions for older people



CHAPTER 1: INTRODUCTION

1.1. Contextual Overview

1.1.1. Historical Overview

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

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



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

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

Like many African States, post-colonial Tanzania did not prioritize human rights, seeing them as 'delaying' economic development. Process of economic development **was considered to be** one that did not necessarily promote or respect human rights. But the constitutional amendments of 1984, which saw incorporation of the Bill of Rights into the Constitution of Tanzania, gave a new hope of human right-



based approach to development and increased protection of human rights in Tanzania. This was a remarkable achievement, a long struggle demanding for its inclusion.

1.1.2. Population

The Population of the country is rapidly growing, at the rate of 2.7 per annum. Estimation of the population according to the National Population and Housing Census of 2012 is 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, whereupon women making the majority at 51.3% and male at 48.7%.¹ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 **females**.² 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.³ 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 421,456.⁴

The country's literacy rate is 71 percent, which suggests that education has improved in terms of provision and accessibility in line with the Sustainable **Development Goals (SDGs)** 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.

1.1.3. Economic Situation

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

1 URT 2012, the National Population and Housing Census.

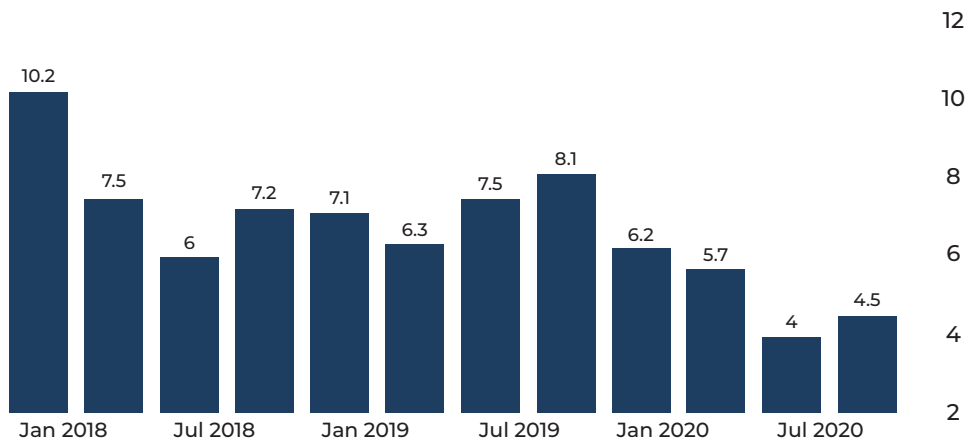
2 See National Bureau of Statistics (NBS), Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and Housing Census, available at http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf, accessed 18th December 2017.

3 Ibid.

4 Ibid.



quarter of 2009.⁵ Services sector account for 40% of GDP, while primary sector (agriculture) accounts for 30% of GDP



SOURCE: TRADING ECONOMICS.COM | NATIONAL BUREAU OF STATICS (NBS) - TANZANIA

Figure 1: GDP annual growth rate

Economic growth in Tanzania is affected by both internal and external factors. Internal factors include inadequate funds; land ownership conflicts; inadequate participation of the private sector; high rate of population growth; environmental degradation and climate change. External factors that were mentioned to be the reason behind deterioration of the economy and the GDP included regional and global economic and political shocks; natural calamities and spatial politics that can breed wars and conflicts.⁶ In July 2020, the World Bank (WB) declared Tanzania to be a middle-income country, categorizing it as a lower-middle income country.⁷ This was made possible after the Gross National Income (GNI) increased from \$1,020 in 2018 to \$1,080 in 2019.⁸ In 2020, GNI per capita for United Republic of Tanzania was 1,100 US dollars.⁹

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

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

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

8 Ibid.

9 Knoema “United Republic of Tanzania - Gross national income per capita in current prices” at <https://knoema.com/atlas/United-Republic-of-Tanzania/topics/Economy/National-Accounts-Gross-National-Income/GNI-per-capita>.



1.1.4. Political and Governance Systems

Political Background

Since 1962, Tanzania has been governed by six presidents, namely: the late Julius Kambarage Nyerere (1962-1985), Ali Hassan **Mwinyi** (1985-1995), the late Benjamin William Mkapa (1995-2005), Dr. Jakaya **Mrisho** Kikwete (2005-2015), Dr. John Pombe **Magufuli** (2015-2021), and Samia Suluhu Hassan (2021 to date).

Governance System

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

The Executive

The Executive arm of the state is composed of the President, who is the Head of State, Head of Government and the Commander in Chief of the Armed Forces and the cabinet.¹⁰ The Government of the United Republic of Tanzania **is in charge of** all union matters and all matters **of Tanzania Mainland**.¹¹ 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 is the principle organ of the United Republic with the authority to oversee and advise the Government and all its institutions/agencies in discharging their respective duties or responsibilities.

The Parliament is vested with legislative powers in relation to all Union Matters and in relation to all other matters concerning Mainland Tanzania. Legislative powers on matters which are not Union Matters

¹⁰ Article 33 of the Constitution of the United Republic of Tanzania 1977.

¹¹ Ibid, Article 34.



are vested in the House of Representatives (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.¹²

The majority **of MPs are** elected members from their constituencies.¹³ Other members are of the special seats category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.¹⁴ The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.¹⁵ The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.¹⁶ 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.¹⁷ **The** House of representative has powers to enact laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and the Mainland Tanzania is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

The Judiciary

The Judiciary is a constitutional organ and an arm of the State. The Judiciary is the authority with final decision in dispensation of justice in the United Republic of Tanzania.¹⁸ Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.¹⁹ The judicial hierarchy in Tanzania Mainland (in descending order) consists of the

¹² Ibid, Article 64; and Article 132 (1) and (2) of the Constitution of the Revolutionary Government of Zanzibar 1984,

¹³ Article 68(1) (a) of the Constitution of the United Republic of Tanzania 1977.

¹⁴ Ibid, Article 68 (1) (b).

¹⁵ Ibid, Article 68(1) (c).

¹⁶ Ibid. Article 68(1) (d).

¹⁷ 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.

¹⁸ Article 107(A) of the Constitution of United Republic of Tanzania, 1977.

¹⁹ 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].



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.²⁰ Magistrates are appointed directly by the Commission.²¹ The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the Corruption and Economic and Organised Crime Control Act of 1984 was amended to establish the Corruption and Economic Crimes Court Division of the High Court (*Mahakama ya Mafisadi*).²²

Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.²³ 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.²⁴ 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.²⁵

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.²⁶ 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

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

21 Ibid, Article 113(1).

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

23 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].

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

25 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.

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



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

1.2. Report Preparation, Objectives, and Structure

1.2.1. Report Preparation & Objectives

The report covers the situation of human rights in Tanzania for the period of January to December 2021. The main objective of this report is to highlight the situation of human rights in Tanzania Mainland during the period under review and discuss reported human rights violations and acts that promote or infringe human rights. The report is also meant to be used as an advocacy tool, seeking to provide evidence to support advocacy, inform the duty bearers and rights holders about relevant human rights standards, remind duty bears of their human rights obligations, promote behaviour change in the society and provide key data on human rights issues to inform interventions by government and non-governmental actors. This report is also a tool for raising awareness and promote understanding of human rights and human rights issues, identifying legal and human rights for further research, and act as a starting point in human rights-related research.

1.2.2. Sources of Data

1.2.2.1. Primary Data

Information and data used to prepare this report was obtained from primary and secondary sources. Primary data was mainly obtained through human rights survey, LHRC's engagement with beneficiaries of its programmes, legal aid data, and human rights monitoring.

The field survey was conducted in 20 regions of Tanzania Mainland.²⁷ Targeted respondents were community members, judicial officers, social welfare officers, NGO/CBO officials, lawyers, journalists, and Covid19 victims. Both qualitative and quantitative approaches were employed to gather relevant data, using questionnaire, interview, key informant interview, and observation methods. Purposive and random sampling techniques were inclusively used to identify respondents. A total of 1,941 people were reached in line with the sampling determination made

²⁷ Dar es Salaam, Pwani, Mtwara, Morogoro, Dodoma, Tabora, Singida, Tanga, Kilimanjaro, Arusha, Iringa, Mbeya, Njombe, Kagera, Mwanza, Mara, Geita, Rukwa, Kigoma, & Katavi.



using Raosoft.

Table 1: #Respondents reached by the Human Rights Survey 2021

Respondents	Target	Reach
Community members	1,500	1,101
Judicial officers	60	28
Social Welfare Officers	60	60
NGO/CBO officials • Including from PWDs and elderly organizations, paralegal units	129	132
Lawyers/practicing advocates • Including LGA attorneys	171	180
Journalists	201	240
Covid19 victims	379	200
TOTAL	2,500	1,941

Source: Field Data, 2021

The Human Rights Survey 2021 focused on the following thematic areas:

- Right to life
- Juvenile justice/Children in conflict with the law
- Property rights
- Violence against women and children
- Child marriage & Child pregnancy
- Criminal justice
- Access to justice
- Rights of PWDs
- Rights of the elderly

A total of 20 experienced research assistants (10 male, 10 female) were engaged and deployed by LHRC to assist with data collection. Prior to commencement of fieldwork, the research assistants underwent a two-day training, which also covered ethical considerations and quality assurance.

Data collected during fieldwork was analysed using the Statistical Package for Social Scientists (SPSS) analysis software and LHRC-RMS, establishing frequencies and key variables. These data were further analysed and transformed into tables and figures by using Microsoft

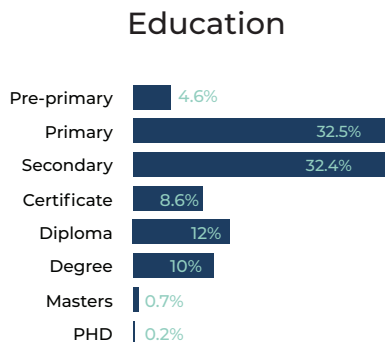
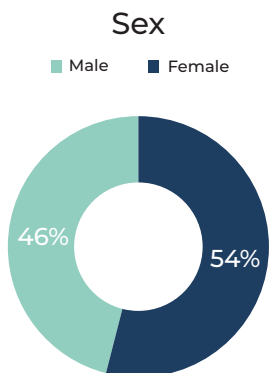


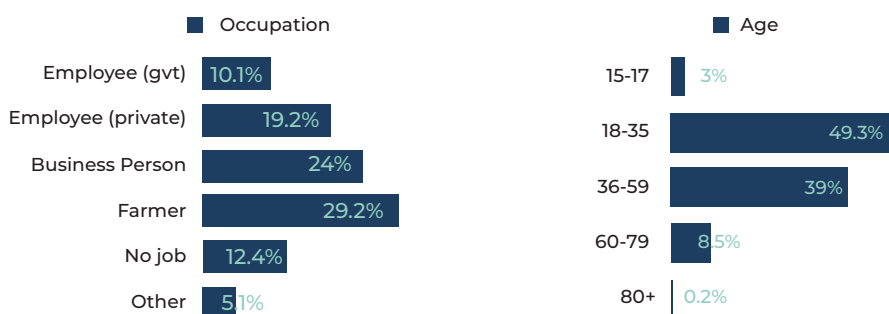
Excel and Microsoft Word. Qualitative data were grouped and analysed by the report writers based on the various themes developed.

1.2.2.2. Secondary Data

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

1.2.3. Demographic Characteristics of Respondents





1.2.4. Report Structure

Chapter One: Introduction	Provides a short introduction to Tanzania, constitutional and human rights developments, and government structure.
Chapter Two: Civil & Political Rights	Covers situation of key civil and political rights, including freedoms of association, assembly and expression; rights to equality before the law and effective remedy; and right to life.
Chapter Three: Economic, Social, and Cultural Rights	Covers economic, social and cultural rights, including right to work, right to education, right to health, right to water, and right to property.
Chapter Four: Collective Rights	Looks at and discusses realisation of right to development, right to benefit from natural resources, and right to a clean and healthy environment.
Chapter Five: Rights of Vulnerable Groups	Covers rights of women, children, PWDs, the elderly, PLHIVs, youth, and refugees.
Chapter Six: Human Rights Mechanisms	Looks at human rights mechanisms at domestic, regional, and international levels and discusses their role in human rights protection.
Chapter Seven: Implementation of Previous Recommendations	Assesses the status of implementation of the recommendations made in the previous human rights reports.
Chapter Eight: Conclusion and Recommendations	Provides general conclusion and recommendations to enhance promotion and protection of human rights in Tanzania.

1.2.5. Overview of Human Rights Situation in 2021

- Based on the assessment of human rights issues vis-à-vis international human rights standards, the overall situation of human rights in Tanzania slightly deteriorated in 2021 compared to the



previous year of 2020. This was mainly contributed by violations of civil and political rights and rights of vulnerable groups.

- Like it was the case in the previous report, majority of the reported human rights violations were violations of civil and political rights.
- Regions where most human rights issues and incidents were reported included:

	Region	Major Issue(s)
1	Arusha	GBV, VAC, labour rights violations, killings of women (connected to belief in witchcraft), sexual violence, sexual corruption, FGM
2	Dar es Salaam	GBV, mob violence, IPV violence & killings, press freedom violations, violations of fair trial rights, sexual corruption, human trafficking (including trafficking of PWDs), child labour & exploitation, commercial sexual exploitation (major destination for trafficked girls), labour rights violations, sexual violence, denial of inheritance, child on child sexual violence
3	Dodoma	GBV, VAC, human/child trafficking, child labour and exploitation, sexual violence, sexual corruption, child pregnancy, child marriage, FGM
4	Tanga	GBV, VAC, child trafficking, child labour, sexual violence (including sexual harassment by police officers), spousal sodomy, labour rights violations, child on child sexual violence, child neglect
5	Katavi	VAC, witchcraft-motivated killings, sexual violence, child pregnancy, child marriage
6	Shinyanga	VAC, child labour, child marriage, IPV violence & killings, child neglect, child pregnancy, witchcraft-motivated violence & killings
7	Mwanza	VAC, physical VAW, press freedom violations, sexual corruption, IPV violence & killings, child pregnancy, witchcraft-motivated violence & killings
8	Morogoro	VAC, Commercial sexual exploitation, land disputes/conflicts, sexual exploitation of women by their spouses/partners, economic violence against women, denial of inheritance rights, child labour, child pregnancy
9	Mara	VAC, Physical VAW/domestic violence, IPV violence & killings, economic violence against women, denial of women's inheritance and property rights, child marriage, FGM, discrimination of children with disabilities
10	Mbeya	VAC, child labour and exploitation, IPV violence & killings, sexual violence, child trafficking, child neglect



The most documented human rights issues were different forms of violence against women and children. For women, most common forms of violence that were reported in 2021 were physical violence and economic violence. For children, sexual violence, especially in the form of rape and sodomy, was their biggest human rights concern, followed by child pregnancy and marriage.

- Other key human rights issues for the year 2021 included violations of rights of journalists, mob violence, witchcraft-motivated killings, IPV violence and killings, violations of fair trial rights (especially lengthy pre-trial detention), human and child trafficking, child neglect, child labour and exploitation, FGM, and violations of property and inheritance rights of women (including widows).



CHAPTER 2: CIVIL AND POLITICAL RIGHTS

Civil and political rights are rights that protect peoples' freedoms from infringement by governments, institutions and private individuals. These rights involve citizens' participation in the establishment of a government and participation in political life; and protect individuals' freedoms from interference by state actors, promote participation in civil society and are essential component of democracy. These rights are protected and guaranteed under international²⁸ and regional²⁹ human rights instruments, as well as the Constitution of the United Republic of Tanzania.³⁰

This chapter discusses the situation of civil and political rights in Tanzania Mainland in 2021, looking at violations, issues, and positive developments. The focus is on the Right to Life, Freedom of Expression, Right to Equality before the Law and Effective Remedy, Right to Liberty and Personal Security, Freedoms of Assembly and Association, Freedom from Violence, Right to Take Part in Governance, and Freedom from Torture and Inhuman or Degrading Treatment.

In 2021, the situation of civil and political rights slightly deteriorated compared to the year 2020. Several contributing factors are discussed in this report, key among them right to life violations, laws and regulations containing restrictive provisions, and barriers to access to justice and criminal justice, for both men and women.

2.1. Right to Life

28 Key instruments include the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; UN Convention on the Rights of Persons with Disabilities (CRPD) of 2006; the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979; the UN Convention on the Rights of the Child of 1989; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.

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

30 The Constitution contains the bill of rights, which guarantees fundamental human rights such as right to life, freedom of expression, freedom of assembly, right to liberty and personal security, and right to take part in governance.



Right to Life & Key Applicable Standards

- Most fundamental human right and enshrined in all major human rights treaties.
- Imposes upon States the duty to: abstain from arbitrarily killing individuals; take appropriate care in the planning and conduct of an operation; carry out an effective official investigation when individuals have been killed or 'disappeared': take 'reasonable' measures to protect individuals whose lives are in danger because of criminal acts of other individuals; take adequate measures to protect the lives of individuals held in state custody; and ensure provision of effective remedy where it has been found complicit in right to life violation.
- Key applicable standards include: Article 3 of the Universal Declaration of Human Rights (UDHR), 1948; Article 6 of the International Covenant on Civil and Political Rights (ICCPR), 1966; Article 6 of the UN Convention on the Rights of the Child (CRC), 1989; Article 4 of the African Charter on Human and Peoples' Rights (Banjul Charter), 1981; Article 5(1) of the African Charter on the Rights and Welfare of the Child (ACRWC), 1990; Article 4(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; and the Constitution of the United Republic of Tanzania, 1977.

In 2021, key right to life violations included mob violence/justice, witchcraft-motivated killings, extrajudicial killings, and intimate partner (IPV) killings.

2.1.1. Mob Violence

2.1.1.1. Police statistics

On average, over 700 people have been killed by angry mobs each year in Tanzania (both Tanzania Mainland and Zanzibar) in the period of 2015 to 2020. In 2020, police recorded 443 incidents of people killed by angry mobs. In 2021, the Tanzania Police Force stated that a total of 239 mob killings had occurred in the period of January to August 2021.³¹ By December 2021, the number had risen to 473, increasing by 30 incidents compared to the year 2020, as shown in the figure below.

³¹ LHRC Media Survey 2021.



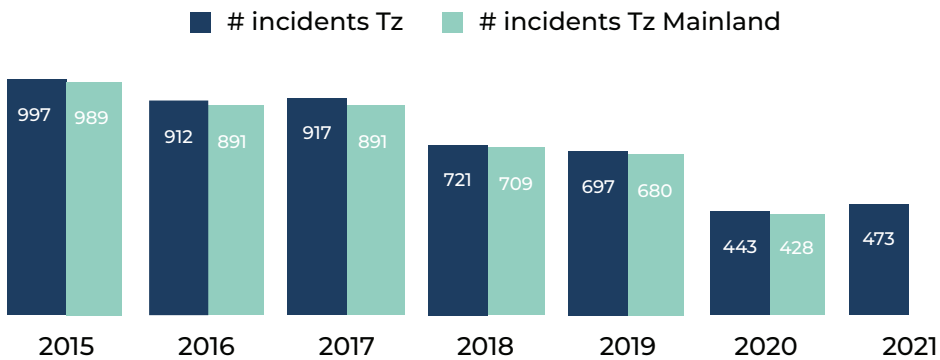


Figure 2: #Mob violence killings in Tanzania, 2015 to 2021

Source: Tanzania Police Force Data

Over 95% of incidents of mob violence and killings occur in Tanzania Mainland.

2.1.1.2. Perceptions on mob violence/killings: Human Rights Survey 2021 findings

In the human rights survey, conducted in 20 regions of Tanzania Mainland in 2021, community members who participated in the survey were asked to provide their views on mob violence/killings in their community. Nearly a half of the respondents (49%) said mob violence is a moderate problem in their community, followed by nearly a quarter (23%) who said it is a serious problem, and 20% who felt it is only a minor problem. Only 8% of the respondents said mob violence is not at all a problem in their community, as indicated in figure 3 below.



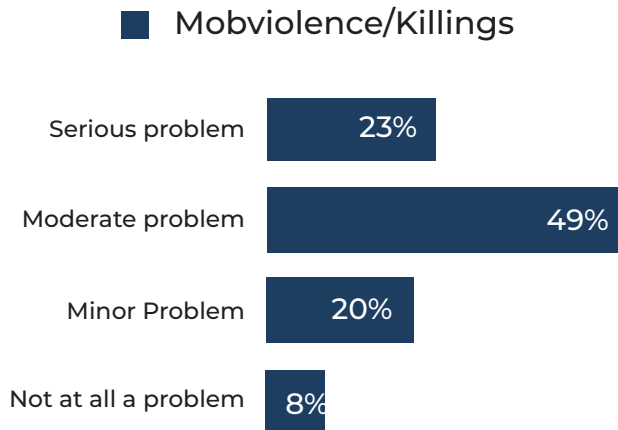


Figure 3: %Survey participants' views on mob violence (N=1,094)
 Source: *Field data, 2021*

Community members who responded to the survey were also asked whether they had witnessed or heard about any incident of mob violence in 2021 and reasons for mob violence. Nearly half of the respondents (46%) claimed to have witnessed or heard about an incident or incidents of mob violence in their areas of residence or community in the year 2021, while the other half (54%) said they had not.

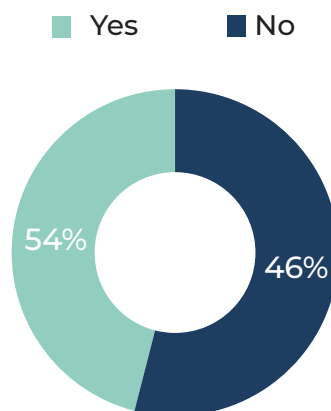


Figure 4: %Responses of respondents on witnessing or hearing about mob violence incident in 2021 (N=1,092)
 Source: *Field data, 2021*



Regarding reasons for mob violence, lack of faith in the police (57%) was cited as the biggest reason, followed by perception that justice takes too long (44%). An accused person being seen roaming the streets was also cited as a contributing factor by 34% of the respondents, while 28% and 27% of the respondents also cited lack of faith in the judiciary and low awareness about bail respectively.

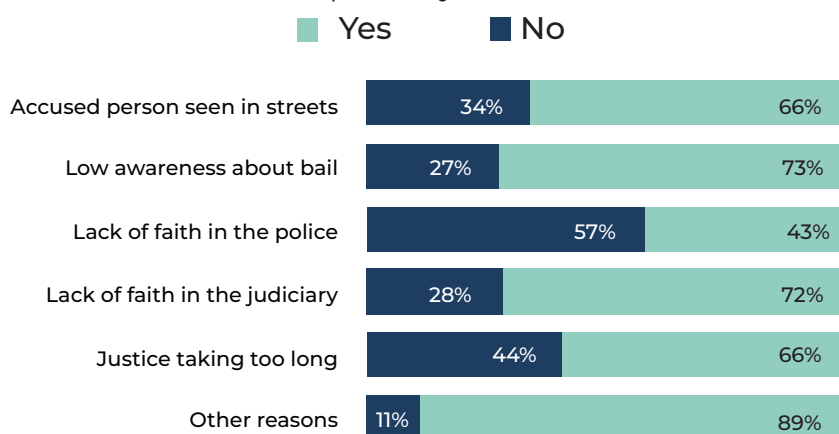


Figure 5: %Responses on reasons for mob violence (N=1,092)

Source: *Field data, 2021*

Some of the community member quotes on reasons for mob violence

“The people who steal from us are the people we know, we live with them in our streets, we have grown together. So, we try to follow the law and take them to the police station, but in just a couple of days you see them again on the streets picking up where they left off. Therefore, when they continue stealing, the only thing that is left is to deal with them (kill them).”

Adult male, Dar es Salaam

“...the problem of mob violence is largely contributed by the police themselves, as they usually let the offenders go free when people report them. For instance, just recently a child of my co-wife was raped, and we arrested the perpetrator and took him to the police station, together with all the evidence. But to our surprise, he was released soon after and there was no case that was built against him. In situations such as these, what do you expect us to do? We have to deal with such people ourselves.”

Adult male, Mara



“.....there are too many thieves in our village and too petty crimes. Every time they get arrested their families bribe the police officers and get them released back to the streets. We have burnt to death two thieves as a lesson for others.”

Adult male, Pwani

2.1.1.3. Incidents of mob violence / killings documented by LHRC

Through human rights monitoring and media survey, LHRC documented 22 incidents of mob violence in 2021, the same number as those documented in 2020. These incidents, **which** constituted only a small fraction compared to those usually documented by the police, were reported in Mwanza, Pwani, **Rukwa**, Lindi, Songwe, Katavi, **Njombe**, Morogoro, Manyara, Rukwa, **Dodoma**, **Dar es Salaam**, Shinyanga, and Tanga Regions. All of **the victims were male**. Among those killed by an angry mob include two ex-convicts who had been pardoned by H.E President Samia Suluhu Hassan in April 2021. They were killed in **Pwani** Region in May 2021. Table 2 below provides a summary of some of incidents of mob violence documented by LHRC in 2021.

Table 2: Some of the reported incidents of mob violence documented by LHRC – January to December 2021

Incident	Report Date
Mwanza: Angry residents in Nyamagana District attacked and killed a man, Richmond Benet (32) for killing his father Benet Karange (66) and his sister Renatha Benet (42).	18 January 2021
Pwani: Two ex-convicts pardoned by President Samia Suluhu Hassan in April 2021, Ramadhan Mohammend (28) and Idd Hamis (30), were killed by an angry mob for stealing, attacked with stones, machetes, and sticks. The incident occurred on 8 th May 2021.	11 May 2021
Rukwa: Alon Cardius (27), resident of Sumbawanga Municipality, was killed by an angry mob for hacking his child to death.	15 Jul 2021
Lindi: A man in Lindi District, Udongo Nguruwe (19), was killed by a group of students at Mbekenyera Secondary School for stealing a mattress at their school.	15 Jul 2021



Songwe: Eliya Jason Mwalonde (39), resident of Utambuli-la Village in Mbozi District was killed by an angry mob for allegedly stealing chicken.	8 Apr 2021
Pwani: Angry citizens in Mafia District attacked and killed Lucas Tereka (30), who was accused of stealing chicken and money.	13 Aug 2021
Katavi: Angry citizens in Majalila Village in Tanganyika District attacked and killed Hamis Hassan (30) after accusing him of stealing a bicycle.	27 Jan 2021
Njombe: Sijali Atilio (27), resident of Maguyani Ward in Makambako Town Council, was attacked and killed by an angry mob in March 2021. He was accused of stealing a sack of maize.	9 Mar 2021
Morogoro: Hamis Malimbu (23), resident of Kisawasawa Ward in Kilombero District, was killed by an angry mob in March 2021, following accusation of stealing a motorcycle.	15 Mar 2021
Rukwa: Erick Joseph Sinkala (18), resident of Kishai Vilalge in Sumbawanga District, was attacked and killed by an angry mob in October 2021. He was accused of stealing an unknown item.	11 Oct 2021

Source: Human Rights Monitoring & Media Survey, 2021

LHRC's View & Call: People resorting to mob violence is mainly driven by lack of faith in the criminal justice system. In this regard, it is important to make relevant criminal justice reforms to restore their faith. Awareness-raising on criminal justice and rights of an accused person will also help to change the negative perceptions or mindsets of community members. Members of the public need to refrain from mob violence and let the criminal justice system take its course. Awareness on the relevant criminal justice laws and regulations, as well as the dangers/impact of this practice needs to be enhanced, and this sort of behaviour must be discouraged.

2.1.2. Extrajudicial Killings and Violence against Law Enforcement Officers

2.1.2.1. Extrajudicial Killings

The primary duty of law enforcement officials is to protect and safeguard the lives of people. These obligations are well stipulated in regional and international human rights instruments, which also call for police use of force to be necessary, proportional and lawful (reasonable use of force). These principles of necessity, proportionality and legality are echoed in the United Nations Code



of Conduct for Law Enforcement Officials of 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.³² When law enforcement officials fail to adhere to the three key principles highlighted above, resulting into deaths of civilians or suspected criminals, they commit extrajudicial killings.

In 2021, LHRC documented nine reported incidents of extrajudicial killing, majority of them committed by members of local law enforcement groups (*sungusungu*). These incidents are five more than those reported and documented by LHRC in 2020. The incidents, which include a police officer killed by fellow officers in Kilimanjaro, are summarized in table 3 below.

Table 3: Incidents of extrajudicial killings documented by LHRC – January to December 2021

Incident	Report Date
Kigoma: Local militia in Kibondo District in Kigoma Region, reportedly beat with sticks and killed Liberatus Mohamed (40) on 23 rd May 2021 in Kumhasha Village. It was reported that they did so after intervening in his altercation with his wife.	29 May 2021
Kilimanjaro: A plain-clothes police officer from Mwangi District, Linus Nzema, was reportedly killed by fellow police officers outside a bar in Ndafu Village. At least nine police officers were questioned by police in connection with the incident by end of May 2021.	2021
Kilimanjaro: Emmanuel Mallya, a Suma-JKT military officer, was reported shot four times and killed a fellow officer in Moshi District.	14 Dec 2021
Dodoma: Alpha Nassor Lemje (30), resident of Ilembule Ward in Mpwapa District, was allegedly severely beaten while under police custody and taken to hospital four days later and died at the hospital two days later. The incident occurred in June 2021.	20 Jun 2021
Dar es Salaam: Gilbert Shongole (23), resident of Mabibo Ward in Ubungo District, was reportedly attacked and killed by members of the local law enforcement group (<i>sungusungu</i>) in March 2021. He was accused of stealing a gas cooker.	18 Mar 2021

³² 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 2021.



Songwe: Musa Mwamlima (17), resident of Mlowo Village in Mbozi District, was reportedly beaten to death by a member of the local law enforcement group (sungusungu), Wazili Mdolo (25) for stealing Tshs. 40,000. The perpetrator fled the village after the incident, which occurred in March 2021.	24 Mar 2021
Mara: Baraka Manyanda (22), resident of Turwa Ward in Tarime District, was reportedly severely beaten by police officers at a police station after he had initially resisted arrest. He reportedly died while receiving medical treatment in February 2021.	27 Feb 2021
Dar es Salaam: Monja Liseki (20), resident of Mazense Ward in Ubungo District, was reportedly beaten to death by a member of the local law enforcement group (sungusungu), Abdallah Ponela, in September 2021.	21 Sep 2021
Dar es Salaam: Jumanne Jongu (20), resident of Mabi-bo Ward in Ubungo District, was reportedly beaten to death by a group of local law enforcement group (sungusungu). The incident occurred in September 2021.	28 Sep 2021

Source: Human Rights Monitoring & Media Survey, 2021

During the human rights survey, community members who participated in the survey also commented on extrajudicial killings. Below are some of the comments they made regarding the conduct of law enforcement officers.

Some of the community member quotes on extrajudicial killings

“Police officers have been using excessive force during arrests and sometimes even place the accused persons under their cars while beating them on their backs and chests so that they confess to crimes. In one incident one accused person died while under police custody but police refused to acknowledge responsibility.”

Adult male, Dar es Salaam

“The local law enforcement groups (sungusungu) have been implicated in various incidents of mob justice, especially in Mabibo, Magomeni, Tandale (Kwa Mtogole), and Manzese areas. They usually beat accused persons to death.”

Adult female, Dar es Salaam

LHRC’s call: Police officers to refrain from using excessive force when apprehending criminal suspects and when such suspects are under police custody, in line with domestic and international standards, including Tanzania Police General Orders and the United Nations Code



of Conduct for Law Enforcement Officials. A police oversight body is also desirable to investigate incidents or allegations of extrajudicial killings.

2.1.2.2. Violence against law enforcement officers

During this reporting period, LHRC also documented killings of at least three police officers, all male, during a shooting with a suspected terrorist, Hamza Mohammed. The incident occurred outside the French Embassy in Dar es Salaam in August 2021. In another incident, more than 20 remandees (all male) at Maturubai Police Station in Mbagala, Dar es Salaam, attacked a police officer and escaped from custody. The incident occurred in September 2021. In July 2021, another police officer, PC Damas from Mbughuni Police Station in Arusha was brutally attacked with a machete and killed while carrying out his duties.³³ On 26th July 2021, LHRC issued a statement condemning the killing and calling for community members to refrain from committing acts of violence against law enforcement officers.³⁴

LHRC's call: Community members must refrain from attacking law enforcement officers, as this behaviour is illegal and violates their rights as human beings.

2.1.3. Extrajudicial killings and the case for an independent police oversight body

In its various Tanzania Human Rights Reports,³⁵ LHRC has reiterated the need to have in place an independent police oversight body to address and investigate cases such as extrajudicial killings and other misconducts by law enforcement officers. This is one of the recommendations which is yet to be taken aboard by the Government.³⁶ The independent oversight body shall investigate and hold accountable police officers in case of criminal misconducts such as extrajudicial killings. We can borrow a leaf from Kenya and South Africa, which have put in place independent civilian police oversight bodies.³⁷ The police oversight bodies in the two countries are summarized in table 4 below.³⁸

33 LHRC Media Survey & Human Rights Monitoring 2021.

34 See LHRC, *TAMKO LA KULAANI MAUAJI YA ASKARI POLISI MKOANI ARUSHA YALIYOFANYWA NA RAI*, 26 July 2021, at <https://www.humanrights.or.tz/posts/b/media-release/tamko-la-kulaani-mauaji-ya-askari-polisi-mkoani-arusha-yaliyofanywa-na-raia>.

35 Including the 2016, 2019, and 2020 reports.

36 See LHRC (2021). Tanzania Human Rights Report 2020. [www.humanrights.or.tz]

37 See Hope, Kempe. (2019). Civilian oversight of the police: The case of Kenya. *The Police Journal: Theory, Practice and Principles*. 93. 0032258X1986072. 10.1177/0032258X19860727.

38 Source: AFRICAN POLICING CIVILIAN OVERSIGHT FORUM (APCOF) [<https://apcof.org/country-data/kenya/>] & [[HTTPS://APCOF.ORG/COUNTRY-DATA/SOUTH-AFRICA/](https://apcof.org/country-data/south-africa/)]



Table 4: Independent police oversight bodies in Kenya and South Africa

Police Oversight Bodies in Kenya and South Africa [External]		
KENYA		
Oversight Body	Establishment	Mandate
Independent Policing Oversight Authority (IPOA)	Established through an Act of Parliament to provide for civilian oversight over the work of the police in Kenya	<p>IPOA Act mandates the Authority to undertake the following key functions:</p> <ul style="list-style-type: none"> ■ To investigate deaths and serious injuries caused by police action. ■ To investigate police misconduct. ■ To monitor, review and audit investigations and actions by internal affairs unit of the police. ■ To conduct inspections of police premises. ■ To monitor and investigate policing operations and deployment. ■ To review the functioning of the internal disciplinary process. Reporting.
SOUTH AFRICA		
Oversight Body	Establishment	Mandate
Civilian Secretariat of Police (CSP) & Interdependent Police Investigative Directorate (IPID)	The Constitution provides for the establishment of the Civilian Secretariat of Police and for an independent police complaints body to investigate allegations of misconduct and abuse by its members.	<p>Mandate includes:</p> <ul style="list-style-type: none"> ■ To investigate complaints involving the police as well as any deaths that occur as a result of police action or while a person is in police custody.



2.1.4. Witchcraft-motivated Killings and Violence against PWAs

2.1.4.1. Witchcraft-motivated Killings

Witchcraft-motivated killings continue to be reported in different parts of Tanzania Mainland, especially rural and semi-urban areas. In 2020, a total of 112 incidents were recorded by the police. In 2021, it was reported that in the period of January to August 2021, the police had recorded a total of 84 people killed over witchcraft-suspicion.³⁹ By December, the number of reported incidents stood at 155, equal to an increase of 43 incidents (38.4%).



Figure 6: #Incidents of witchcraft-suspicion killings recorded by police – 2015 to 2021

Source: **Tanzania Police Force Data**

Participants of the human rights survey, conducted by LHRC in 20 regions of Tanzania Mainland in 2021, were asked whether killings motivated by witchcraft belief were a problem in their community. While a third of the respondents (34%) said it is only a minor problem, nearly a third (30%) said it is a moderate problem, while 17% said it is a serious problem. Only 20% of the respondents indicated that such killings are not at all a problem in their areas of residence. And when asked whether they had witnessed or heard about an incident or incidents of people killed over witchcraft suspicion in 2021, only 16% said they had.

³⁹ LHRC Media Survey 2021.



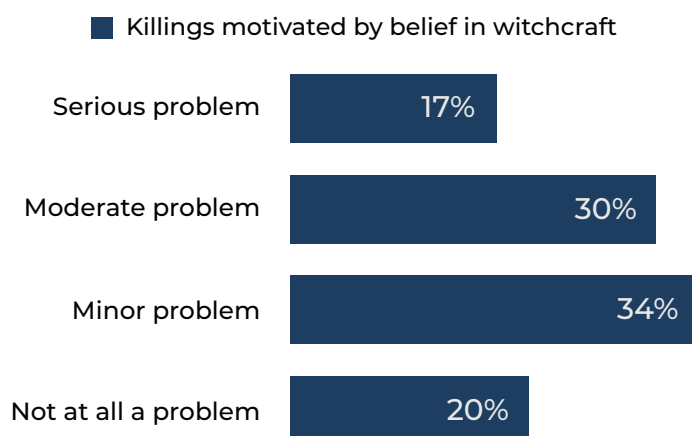


Figure 7: %Responses on extent of problem of witchcraft-motivated killings (N=1,094)

Source: *Field data, 2021*

Through human rights monitoring and media survey, LHRC documented at least 36 reported incidents of witchcraft-suspicion killings in 2021, having documented 15 incidents in 2020. These incidents were reported in Dodoma, Kagera, Mbeya, Arusha, Katavi, **Tabora**, Songwe, **Njombe**, Kigoma, Rukwa, Manyara, and **Shinyanga** Regions. 20 of the 36 victims (55%) were women, majority of them aged above 50 years old. Some of the reported incidents are summarized in table 5 below.

Table 5: Some of the reported incidents of witchcraft-motivated killings documented by LHRC – Jan to Dec 2021

Incident	Report Date
Tabora: Modesta Lushunga, a 49-year-old woman, resident of Ndembezi Ward in Igunga District, was attacked with a machete and killed by a man, Madulilu Ghembe (33) over witchcraft suspicion in April 2021. The man accused her of bewitching his wife, who died a few days before the incident.	15 Apr 2021
Kagera: Three people, including two from the same family, were arrested by police for killing their mother, Flazia Rukela (99), over witchcraft suspicion. The accused persons are Laurent Frances (60), Alexander Frances (55), and Agness Gidioni (70), all residents of Nyakiburungo Village in Kyerwa District.	11 Jul 2021
Mbeya: Police in Mbeya Region arrested Daniel Manga, resident of Iheha Village in Mbarali District, for hacking to death his father, Victor Manga (79), over witchcraft suspicion.	28 May 2021



Katavi: Police in Katavi Region arrested Nestory Nzigiymana (62), accused of killing his wife, Farazia Nzigiymana (60), over witchcraft allegation. The incident occurred on 25 th May 2021 in Kabang Village, Tanganyika District.	26 May 2021
Tabora: An older woman and her grandchild, residents of Ibambangulu Village in Nzega District, were brutally hacked to death in a savage attack by unknown people in the village over witchcraft allegation.	11 Aug 2021
Katavi: Lucia Bundala (65), a woman and resident of Misunkumilo Ward in Mpanda District was killed by Msimbuka Biluba (47) over witchcraft suspicion. The incident occurred in February 2021.	24 Feb 2021
Njombe: A woman, Maria Joseph Banda (58), resident of Masasi Ward in Ludewa District, was attacked and killed by her brother, Joseph Mmanda and 3 other people, over witchcraft suspicion in January 2021.	3 Jan 2021
Njombe: A woman, Victoria Gowele Nyamasi (68), resident of Ludewa Ward in Ludewa District, was killed by her son, Pyza Mangula (36), over witchcraft suspicion, alleging that she had killed his siblings by using witchcraft.	4 Jan 2021
Rukwa: A man, Thomas Mremi (85), resident of Chenji Ward in Sumbawanga District, was reportedly killed by his son, Erick Mremi (33), over witchcraft suspicion in July 2021.	29 Jul 2021
Songwe: An older woman, Funyaji Sikafunje (70), resident of Mlowo Ward in Mbozi District, was brutally attacked and killed by angry citizens for allegedly being a witch. The incident occurred in March 2021.	17 Mar 2021
Shinyanga: A woman, Limi Kulwa (30), resident of Ilunga Village in Shinyanga, was brutally attacked with a machete and killed following accusations of bewitching and killing her father-in-law, Lusana Kulwa (60), who had died of natural causes in July 2021.	29 Jul 2021
Manyara: Samason Daudi (26), resident of Mutuka Village in Babati District, killed Peter Buu (48) for allegedly bewitching him so that his would not complete construction of his house. The incident occurred on 5 September 2021. He was told by a witchdoctor that it the victim was bewitching him.	7 Sep 2021

Source: Human Rights Monitoring & Media Survey, 2021

In February 2021, it was reported in **Arusha** that in the past three years, there have been killings of women Matevesi and Olmoti Wards in Arusha reported to be motivated by belief in witchcraft.⁴⁰ During this period, 9 women have been murdered under suspicious and similar

⁴⁰ LHRC Human Media Survey & Human Rights Monitoring, 2021.



circumstances.⁴¹ The most recent victim is Anna Ng'ida, who was killed in late January 2021. Due to these killings, some women in the district have taken to streets to protest and demand better protection and for the perpetrators to be brought to justice.⁴² In **Dodoma**, it was reported in July 2021 that several people had been arrested by the Police Force in different parts of Tanzania Mainland in connection with several crimes, including 23 people, who committed killings motivated by belief in witchcraft.⁴³

2.1.4.2. Violence against PWAs: Brutal killing of a child with albinism in Tabora

Coordinated efforts made by the police, CSOs and the Commission for Human Rights and Good Governance (CHRAGG), have significantly contributed to enhancing protection of persons with albinism (PWAs).⁴⁴ Consequently, no incidents of killings of PWAs were reported up to 2020, as was the case since the year 2015.

In 2021, brutal killing of a child with albinism, aged around 4 to 7 years, occurred in May 2021 in Tabora Region. LHRC received information about the incident and made follow in the region in collaboration with the Tabora Vision Community (TAVICO). The young boy with genetic condition of albinism was savagely murdered, with his body found violently mutilated and organs and limbs savagely harvested, very likely for sale to witch doctors, according to Under the Same Sun.⁴⁵ The body was found in Utemini Village in Ndono Ward, Uyui District, and according to sources interviewed by LHRC and TAVICO, the victim was not from the ward, so he was probably killed somewhere else and then his remaining body parts dumped in the ward. The brutal killing of the child was met with strong condemnation by human rights stakeholders, including LHRC and Under the Same Sun (Canada), which made several calls to the Government, including ensuring relevant authorities widely disseminate this information to the public in Tanzania in hopes of identifying the victim's family so they may attend the place of his burial; ensuring that a fully transparent and comprehensive investigation into this heinous crime is conducted and the perpetrators are handed over to state authorities; and the Home Affairs Minister Hon.

41 Ibid.

42 Ibid.

43 Ibid.

44 See LHRC (2020), Tanzania Human Rights Report 2019, at www.humanrights.or.tz.

45 LHRC Human Rights Monitoring 2021.



George Simbachawene to conduct an in-depth follow-up and issue a government statement to the Parliament with the hope of stopping the killings of persons with albinism which have now recently re-emerged.⁴⁶

In another incident relating to PWAs, LHRC documented one incident of vandalism of a grave of a PWA, reported in Lushoto District, Tanga Region in November 2021. It was reported that the victim had died in July 2020 and buried in the district.⁴⁷ LHRC, Tanzania Albino Society (TAS), and Tanzania Human Rights Defenders Coalition (THRDC), issued a joint statement condemning this heinous act, dated 1st November 2021.

LHRC's View: The incident of brutal killing of a boy with albinism in Tabora is particularly alarming as there has not been a killing of this type reported in Tanzania since 2015. This represents a setback in terms of promotion and protection of rights of PWAs.

LHRC's Call: Renewed collaborative efforts are needed to protect PWAs in Tanzania. The national human rights institution (CHRAGG), should lead these efforts as it did in the past, bringing together both government and non-government actors to address violence and killings of PWAs in Tanzania.

2.1.5. Death Penalty

Tanzania's penal laws, both in Tanzania Mainland and Zanzibar, include a death sentence as one of the punishments for commitment of crimes, including murder. Nevertheless, Tanzania continues to be one of the countries which are abolitionist in practice, as the last recorded execution was in 1994 under President Ali Hassan Mwinyi. No execution warrants were signed by the late H.E President Benjamin William Mkapa, H.E Dr. Jakaya Mrisho Kikwete, and the late H.E John Pombe Magufuli. In 2021, courts of law continued to impose death sentences, but no execution warrant was signed by H.E. President Samia Suluhu Hassan. In December 2020, the late H.E John Pombe Magufuli made history by commuting the sentences of 256 death row inmates into life imprisonment.⁴⁸ **This followed** his stance since coming **into power** that he was not going to sign warrants to execute death row inmates

46 See "MAUAI YA ALBINO TABORA, LHRC WAJA JUU" Watetezi TV, 17 May 2021, at <https://m.facebook.com/wateteziTV/photos/a.356458218324560/820850818551962/?type=3&source=57>; UNDER THE SAME SUN, CONDEMNING THE RECENT BRUTAL WITCHCRAFT RELATED MURDER OF A YOUNG BOY WITH ALBINISM IN TANZANIA, 21 May 2021, https://www.underthesamesun.com/May2021_PressRelease.

47 See LHRC, TAS, & THRDC, TAMKO LA KULAANI UFUKUAJI WA KABURI LA MAREHEMU HERI SHEKIGENDA KIJANGWA, at <https://www.humanrights.or.tz/posts/b/media-release/tamko-la-kulaani-ufukuaji-wa-kaburi-la-marehemu-heri-shekigenda-kijangwa>.

48 See LHRC (2021), Tanzania Human Rights Report 2021, at www.humanrights.or.tz.



and solidified Tanzania's place in the category of countries which do not execute death penalty (abolitionist state).⁴⁹

During the year under review, LHRC documented 24 death sentences, imposed by courts in Mara, Geita, Iringa, Njombe, Mbeya, and Kigoma Regions.⁵⁰ These sentences are 6 fewer than those documented in 2020. All of the death sentence convicts were male.⁵¹

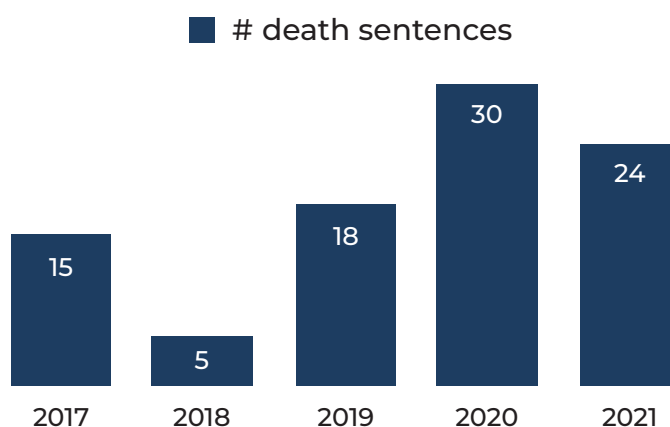


Figure 8: #Death sentences documented by LHRC – 2017 to 2021

Source: Field data, 2021

Table 6: #Death sentences documented by LHRC in 2021

Incident	Report Date
Mara: The High Court of Tanzania – Mwanza Zone, sitting in Mara, sentenced to death by hanging six people after convicting them of killing 17 people of the same family 10 years ago.	16 Jan 2021
Geita: High Court of Tanzania - Mwanza Zone, sitting in Geita, sentenced to death Magina Ruhanga (51) after finding her guilty of murdering his mother-in-law, Holo Budeba.	29 Apr 2021
Njombe: Five people were sentenced to death by hanging after they were found guilty of killing a resident of Usalule Village in Njombe Region. The convicts are James Msumule, Emmanuel Ngailo, Izack Ngailo, Anitha Mbwilo, and Upendo Mligo.	1 Apr 2021

49 Ibid.

50 LHRC Media Survey & Human Rights Monitoring, 2021.

51 Ibid.



Njombe: High Court of Tanzania - Iringa Zone, sitting in Njombe Resident Magistrate Court, sentenced to death by hanging, Kwapulise Mfikwa (29) and Manase Mhada (25) after finding them guilty of murdering Eva Mgaya(28). The incident occurred on 8 th May 2015 in Ihanga Village, Njombe Region.	28 Dec 2021
Geita: High Court of Tanzania – Mwanza Zone, sitting in Geita, sentenced to death by hanging Pius Makeja (42), resident of Kilombero Village in Geita District, after convicting him of murdering Mary Shija in 2016.	14 Dec 2021
Mbeya: Mbeya Resident Magistrate Court imposed a death sentence on Mateso Wilson (34), resident of Mbeya District, after finding him guilty of killing his wife, Zaina Mela, and removing her breasts and ears in April 2017. The body parts were to be sent to witchdoctor, who would make a potion to help him get rich.	21 Oct 2021
Kigoma: Two people, residents of Gwanumpu Village in Kigoma Region, were sentenced to death by hanging after they were found guilty of killing a 12-year-old child that they had abducted for a Tshs. 5 million ransom.	24 Sep 2021
Kigoma: High Court of Tanzania – Kigoma Zone, sentenced three people to death by hanging after finding them guilty of killing a security guard, Richard Chinja, in Kasulu District.	17 Jun 2021
Iringa: High Court of Tanzania – Iringa Zone, sentenced to death Fred Nyagawa, Isaya Mgimba and James Mteleke after finding them guilty of murdering Mchape Mkosa in December 2015.	13 Nov 2021

Source: Human Rights Monitoring & Media Survey, 2021

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

LHRC's Call: Being an abolitionist state in practice, Tanzania should join a global movement against death penalty and abolish it altogether. Only about 53 countries in the world have retained death penalty and execute death row inmates, while 29 are abolitionist in practice,⁵² including Tanzania. Neighbouring countries like Rwanda and Mozambique are among the over 106 countries in the world that have abolished death penalty, and Tanzania can take a step further and do

⁵² See Death Penalty Information Center "Abolitionist and Retentionist Countries" at <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries>.



the same. In July 2021, **Sierra Leone** made history by becoming the 110th country in the world to abolish the death penalty for all crimes, through the unanimous passing of the Abolition of the Death Penalty Act 2021 in Parliament.⁵³ It becomes the latest African country to abolish death penalty after our neighbours **Malawi** in April 2021.⁵⁴

2.1.6. Intimate Partner Violence and Killings

Overview

Intimate partner violence (IPV) refers to physical, sexual, or psychological harm by a current or former partner or spouse.⁵⁵ According to the World Health Organization (WHO), women bear the overwhelming global burden of IPV, which is the one of the most common forms of violence against women.⁵⁶ It includes physical, sexual, and emotional abuse and controlling behaviours by an intimate partner and occurs in all settings.

Trends: 2019 to 2021

In Tanzania, IPV, especially in the form of Intimate Partner Femicide (IPF), has become a serious concern, with implications on the right to life, right to health, and freedom from violence. Women have been the major victims of IPV and killings. For instance, in 2019 and 2020, LHRC documented a total of 44 incidents of women who were killed by their intimate partners. Jealousy has been the main driver of such killings, with 23 out of 32 incidents (72%) documented in 2020 motivated by jealousy.

In 2021, LHRC documented a total of 35 reported incidents of IPV killings through human rights monitoring and media survey. These incidents were reported Dar es Salaam, Dodoma, Singida, Kagera, Mara, Lindi, Mbeya, Iringa, Geita, Kilimanjaro, Tabora, Songwe, Katavi, Njombe, Mtwara, and Shinyanga Regions. Overwhelming majority of the victims (89%) were women. Four men were killed by their lovers or wives in Dar es Salaam, Shinyanga, and Mara Regions.

53 See University of Oxford Faculty of Law “Sierra Leone abolishes the death penalty” at <https://www.law.ox.ac.uk/news/2021-07-27-sierra-leone-abolishes-death-penalty-0>, accessed 20 January 2021.

54 Ibid.

55 See CDC “Intimate Partner Violence” at <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>, accessed 20 January 2022.

56 See WHO “Intimate partner violence” at https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf, accessed 20 January 2022.





Figure 9: Women victims of IPV killings

Out of all these reported incidents of IPV killings, 25 incidents (72%) were motivated by jealousy. Among these incidents, male victims were 3 and female victims were 22. Table 7 below summarizes some of the reported incidents of IPV killings documented by LHRC in 2021, including those motivated by jealousy.

Table 7: Some of the reported incidents of IPV killings documented by LHRC in 2021

Incident	Report Date
Dar es Salaam: Police in Dar es Salaam arrested Grace Mushi (25) for burning to death her lover, Khamis Abdallah (25) because of jealousy. She poured petrol around the house and torched it while locking her lover inside.	18 Jul 2021
Singida: Police in Singida Region arrested Juma Shabani (45), resident of Ndulungu Village in Iramba District for killing his wife, Moshi Rashid (40), who had asked for some of the money they obtained from selling maize so that she can pay for their child’s school fee.	23 Jul 2021
Mara: Happy Bebe (18), resident of Iseresere Village in Serengeti District, was arrested by police for killing her husband, Bebe Mbogo (26), slitting his throat while asleep. She was reportedly not happy with the marriage and was forced into it. She lost it after the husband demanded they have sex. The incident occurred on 14 th April 2021.	16 Apr 2021
Lindi: Police in Lindi Region arrested Said Naguwili (49), resident of Mandawa Village, for killing his wife, Rafa Omari (40), because of jealousy.	14 May 2021



Mbeya: Police in Mbeya Region arrested Godlove Pimbi (50), resident of Lusonjo Village in Kyela District, for attacking and killing his wife, Elizabeth Mwaike (22), because of jealousy.	14 May 2021
Mara: Prina Paulo Otita (57), resident of Muhare Village in Serengeti District, was attacked and killed by her lover, Nyan-chama Mgendi (22), because of jealousy. The incident occurred in April 2021.	10 Apr 2021
Njombe: A woman, Aida Mgaya (30), resident of Makamba-ko Ward in Njombe District was brutally attacked with a knife and killed by her boyfriend, Gwamalie Gwisye (35) in a jealous rage, stabbing her in different parts of her body, including private parts. The incident occurred in October 2021.	28 Oct 2021
Kilimanjaro: A woman, Fausta Silayo (22), resident of Samanga area in Rombo District, was killed by her husband in July 2021 for refusal to have sexual intercourse. It was reported that the woman had recently given birth and was therefore not in a condition to engage in sexual intercourse.	25 Jul 2021
Kilimanjaro: Augustino Moshi (37), reportedly killed his wife, Atanasia Augustine (31) and then committed suicide over jealousy.	20 Dec 2021
Kagera: Police in Kagera Region arrested Emmanuel Mdende (51) for attacking and killing his wife, aged 47, over jealousy. The incident occurred in October 2021.	14 oct 2021

Source: Human Rights Monitoring & Media Survey, 2021

In July 2021, it was reported that in the period of two months, police had arrested 275 people implicated in murders, including 21 incidents of killings of intimate partners motivated by jealousy.⁵⁷

Community perceptions on IPV and killings: Human Rights Survey findings

Participants of the human rights survey in Tanzania Mainland were asked about the extent to which intimate partner violence and killings motivated by jealousy are problem in their community. Nearly two thirds of the respondents (60%) were of the view that IPV and killings are a serious or moderate problem in their community, with the majority among them (37%) saying it is a moderate problem. Only 40% of the respondents said it is either a minor problem or not at all a problem, as shown in figure 10 below.

⁵⁷ LHRC Media Survey 2021.



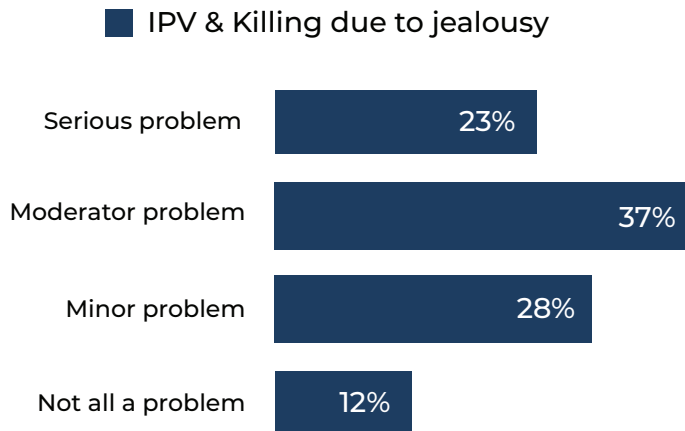


Figure 10: %Responses on extent of the problem of IPV & killings motivated by jealousy in the community (N=1,094)

Source: *Field data, 2021*

Some of the community members who responded to the survey also commented on IPV killings. Below are some of the comments they made.

“In Masasi, there have been at least three incidents of women who were raped and killed by their intimate partners in the period of 2020/21 and the cases were filed in court, although the men (suspects) fled.”

Adult male, Masasi – Mtwara

“..jealousy is the leading cause of domestic/intimate partner killing...the Kurya men are very jealous with their lovers and if they suspect that they are cheating on them beating them to death is normal..”

Adult male, Mara

LHRC’s View: Since 2019, cases of women killed by their intimate partners have been increasing, and there are fears that there could be more unreported cases or cases of such crimes which have not been categorized as femicide. An increase of such incidents is a worrying sign in terms of protecting women’s right to life, right to health, and right to personal security. This solidifies the findings of the United Nations Office on Drugs and Crime (UNODC) in their global study on homicide report, released in 2018, which concluded that home is the most dangerous place for women, with the majority of female homicide



victims worldwide killed by partners or family.⁵⁸

LHRC's Call: All stakeholders, both government and non-government, need to come together and devise strategies to enhance protection of women from intimate partner violence and domestic violence. Enactment of a GBV or domestic violence law to enhance protection for survivors and potential survivors would be a good point, since it has been established most of the violence occurs at home. Another strategy would be conducting awareness-raising and education campaigns on intimate partner violence and impact of such violence at personal/individual, family, community, and national levels.

2.1.7. Disappearances

Under international human rights law, States have a duty to carry out an effective official investigation when individuals have been killed or 'disappeared.'⁵⁹ This is one of the obligations that arises out of the right to life, requiring States to carry out an 'effective' official investigation by an appropriate and impartial body when there is a case of disappearance in circumstances that may involve a violation of the right to life.⁶⁰

In Tanzania, several cases of disappearances remain pending, with no definitive answers provided yet by the authorities. Among these cases is the disappearance of Azory Gwanda, a journalist for the privately-owned media company Mwananchi Communications Ltd, who disappeared under mysterious circumstances in Pwani Region in November 2017. It was widely reported that he was picked up by unknown people in a white vehicle and has never been heard from ever since. Nearly five years later, we are not closer to knowing what happened to Azory than we did in November 2017. In November 2021, Tanzania Editors Forum (TEF) Secretary, Deodatus Balile, demanded that the police force should provide updates on the investigation in line with Article 18(d) of the Constitution of the United Republic of Tanzania. The police indicated that the investigation of the disappearance Azory and of other people who disappeared in a similar manner were underway.

Another notable disappearance case is that of Ben Saanane, a political activist and personal secretary to the CHADEMA Chairperson (Mr. Freeman Mbowe), who was abducted by unknown people in 2016. Five

58 See UNODC "Home, the most dangerous place for women, with majority of female homicide victims worldwide killed by partners or family, UNODC study says" at <https://www.unodc.org/unodc/en/frontpage/2018/November/home-the-most-dangerous-place-for-women-with-majority-of-female-homicide-victims-worldwide-killed-by-partners-or-family--unodc-study-says.html>.

59 Sepulveda, M. M., Van, B. T., Gudmundsdottir, G. D., & Chamoun, C. (2004). Universal and regional human rights protection: Cases and commentaries. Ciudad Colon: University for Peace.

60 Ibid.



years later, his fate is still unknown, and his family still wonders what happened to him. In July 2017, the Chairperson of Kibondo District Council and a ward councillor in Kibondo District, Simon Kanguye, was also reported to have gone missing under suspicious circumstances after he was abducted by unknown persons. In Mara, Wilson Damas and Richard Kayanda, members of CHADEMA and part of the campaign team of the then CHADEMA parliamentary candidate for Tarime, Urban Esther Matiko, reportedly went missing since late October 2020.⁶¹



Picture 2: Azory Gwanda (left) & Ben Saanane (right) who remain missing

Credit: Mwananchi Communications Ltd

In 2021, LHRC documented at least 12 cases of people who were reportedly taken away by unknown people and disappeared in 2021. These cases were reported in **Lindi** and **Dar es Salaam** Regions. In November 2021, it was reported that five people in Lindi (all of them men) had been taken away by unknown armed men in the night of 30th October 2021.⁶² The victims' names are Ismaili Uwesu Yahaya, Shazir Mohamedi Chileu, M'Baraka Ally Maliki, Hamisi Said Liendeko, na Mussa Fukutu, residents of Rutamba and Michee Villages. Eyewitnesses stated that the armed men barged into the houses, handcuffed the men and took them away, and they have been missing ever since. Village

⁶¹ See "People Go Missing in Tanzania. Authorities Seem Not To Care Much About It" The Chanzo Initiative, 24 February 2022, at <https://thechanzo.com/2022/02/24/people-go-missing-in-tanzania-authorities-seem-not-to-care-much-about-it/>.

⁶² LHRC Media Survey 2021.



Chairperson, Abdulrahman Bakari Awadhi, confirmed the occurrence of the incident and stated that a similar incident occurred in January 2021, whereby two men were abducted and taken to unknown location and have not been heard from or seen since.⁶³ The police force in Lindi Region stated that investigation into the disappearances was underway.

In January 2022, another incident of disappearance involving five men was reported in Dar e Salaam.⁶⁴ The five young men, who were reported missing since Boxing Day in December 2021, are Tawfiq Mohamed, Seif Swala, Edwin Kunambi, Hemed Abass and Rajabu Mdoe .The police in Dar es Salaam stated that the they had already launched a search for the missing persons and urged for their families to be calm.

LHRC's View: The disappearances of people and lack of regular updates on their whereabouts or what might have happened to them constitutes a breach of a duty of the Government to carry out an effective official investigation when individuals have been killed or 'disappeared.' Four or five years without answers to what really happened to the victims does not bode well for the Government and the Tanzania Police Force in particular in terms of the Tanzania's human rights obligations under the right to life, which is the most fundamental human right.

LHRC's Call: The Government and the Tanzania Police Force to step up investigations into the disappearances of Azory Gwanda, Ben Saanane and other missing persons and provide regular updates. This shall help the families of the victims to get the much-needed closure and pave way for legal action against the perpetrators of the abductions. We also advise the President of the United Republic of Tanzania to form a commission of inquiry, where appropriate, seek help from jurisdictions/ organs/agencies with good records in criminal investigation, particularly on the issue of disappearances.

2.1.8. Road accidents

Overview

Road accidents become a human rights issue when negligence is involved in terms of drivers of vehicles and quality of roads. Road safety is an essential human right linked to the right to life. Because of these

⁶³ Ibid.

⁶⁴ LHRC Human Rights Monitoring & Media Survey 2021.



accidents, communities bear the burden after losing their loved ones, including breadwinners and children, and the poorer section of the community is more vulnerable as passengers of public transport and pedestrians. Those who survive the accidents, including *bodaboda* drivers, are left with disability and permanent injuries, hence becoming less productive. Families of the victims of road accidents become more vulnerable to poverty, and this also affects poverty reduction initiatives at individual, family, and national levels. As part of efforts to safeguard road safety, in 2021 the Government amended the Road Traffic Act through the Road Traffic (Amend) Act, 2021.⁶⁵

Trends: 2016 to 2021

Efforts by the Police Force and other stakeholders have seen road accidents decrease from 10,297 incidents in 2016 to 2,924 in 2019. The number of resulting deaths has also decreased from 3,381 in 2016 to 1,536 in 2019.⁶⁶ In 2020, the Tanzania Police Force reported a total of 1,933 road accidents, which resulted into 1,384, while in 2021, the number of road accidents decreased to 1,864 (3.6%) and resulting deaths also decreased to 1,368 (1.2%). Figure 11 below shows the status of road accidents and resulting deaths in Tanzania in 2020 and 2021.

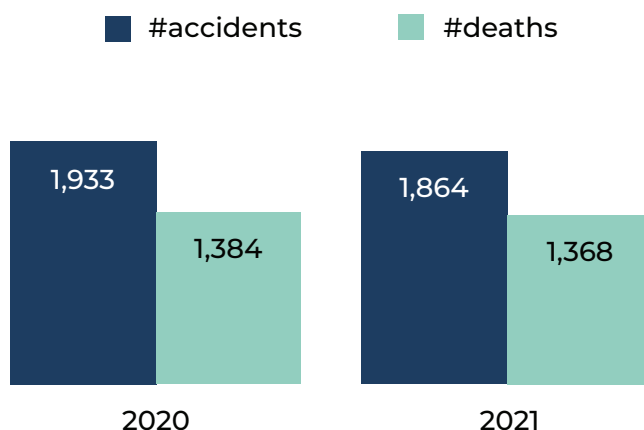


Figure 11: #Road accidents and resulting deaths in Tanzania, 2015 to 2021

Source: Police Force Data 2021

⁶⁵ See the Road Traffic (Amendment) Act, 2021, at [http://www.parliament.go.tz/polis/uploads/bills/1625133277-document%20\(10\).pdf](http://www.parliament.go.tz/polis/uploads/bills/1625133277-document%20(10).pdf).

⁶⁶ Tanzania in Figures, 2020.



Causes of road accidents

The report by the Tanzania Police Force and the National Bureau of Statistics, covering the situation of crimes and road accidents in the period of January to December 2020, released in 2021, revealed that road accidents in 2020 were mainly caused by human error, vehicle defects, and environmental factors.⁶⁷ According to the report, human error contributed to 91.6% of road accidents in Tanzania Mainland in 2020, followed by vehicle defects (5.7%), and environmental factors (2.7%).⁶⁸

Causes of road accidents - 2020

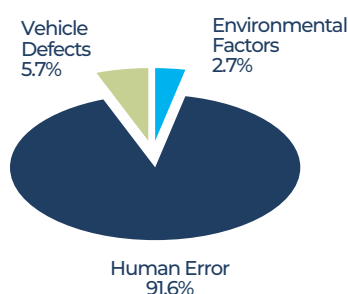


Figure 12: %Causes of road accidents in Tanzania Mainland, 2020

Source: Police & NBS statistics, 2020

Among the road accidents caused by human error in 2020, the majority of them (34.89%) were caused by driver negligence, followed by negligence of *bodaboda* drivers (17.91%), and driving too fast/over speeding (15.87%).⁶⁹ Dangerous driving was also identified as another form of human error leading to road accidents (9.57%). Regarding accidents caused by environmental factors, poor road infrastructure constituted 1.75% of causes of road accidents in the year 2020.⁷⁰

Among the road accidents that occurred in 2021, which points to the negligence of drivers is the incident that occurred in **Pwani** Region in August 2021. Five students from Kimange **Secondary School in**

67 Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, Januari – Disemba 2020.

68 Ibid.

69 Ibid.

70 Ibid.



Chalinze District died after a motorcycle they were on collided with a car. The accident occurred along the Chalinze-Arusha Road, and the accident was exacerbated by the fact that five people had boarded a single motorcycle, which meant it was easy to lose balance.⁷¹

In November 2021, H.E President **Samia** Suluhu Hassan mentioned that young people are the major victims of road accidents.⁷² **She also** mentioned that 90% of road accidents are caused by human negligence, including over speeding, not wearing seatbelt, and dangerous overtaking.⁷³

LHRC's View: While the number of road accidents and the resulting deaths have been on the decline since 2016, the death toll is still high and has a huge impact on the community and the national economy. Drivers of lorries/trucks and passenger buses which travel to different parts of Tanzania Mainland have usually been implicated in contributing to road accidents. Being overworked and given tight deadlines, hence deprived of much-needed rest, contributes to the accidents, as they drive while being nearly asleep.⁷⁴

LHRC's Call: The Police Force and other stakeholders such as road agencies to intensify efforts to ensure road safety and prevent road accidents. Proper implementation of road use and safety laws, including the Road Traffic Act, is important in preventing and further reducing road accidents in Tanzania. Owners of transportation vehicles should also be encouraged and required to refrain from putting unnecessary pressure on bus and lorry drivers, and community members must be encouraged and reminded from time to time to abide by the road use laws and regulations and refrain from practices and behaviour that cause road accidents, such as drink-driving, speeding, reckless overtaking and not wearing seat belt.

⁷¹ LHRC Media Survey 2021.

⁷² LHRC Media Survey 2021.

⁷³ Ibid.

⁷⁴ See LHRC (202), Human Rights and Business Report 2020/21, at www.humanrights.or.tz.



2.2. Freedom of Expression

Meaning & Key Applicable Standards

- Defined as **freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.**
- One of the participation rights - rights essential for enjoyment of the right to participate in governance - others being freedom of assembly and freedom of association. It is essential for good governance and democracy strengthening.
- Includes press/media freedom, right to information and freedom of opinion.
- Key applicable standards include: the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the UN Convention on the Rights of the Child (CRC) of 1989, Convention on the Rights of Persons with Disabilities (CRPD) of 2006 the African Charter on Human and Peoples' Rights (ACHPR) of 1981, and African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. Others include: the Declaration of Principles on Freedom of Expression in Africa, African Declaration on Internet Rights and Freedom, and Joint Declaration on Freedom of Expression and the Internet. Domestically, the major applicable standard is the Constitution of the United Republic of Tanzania, 1977.

In 2021, effective enjoyment of freedom of expression was hindered by several factors, including existence and application of restrictive laws and regulations, ban and suspension of media outlets, harassment of journalists, and arbitrary arrests and detention.

2.2.1. Restrictive provisions in laws and regulations government freedom of expression

Existence of restrictive provisions in laws and regulations that government freedom of expression such as the Media Services Act of 2016, the Cybercrimes Act of 2015⁷⁵, and the Electronic and Postal Communications (Online Content) Regulations of 2020⁷⁶,

⁷⁵ For instance, provisions providing for: publication false information (s. 16); lack of clear definition of key terms, phrases and offences (e.g. misleading information, "inaccurate information,"); offences and severe punishments (Part II); extensive search and seizure powers for law enforcement officers (s. 31 & ss. 32, 33, 34, & 35); and intentionally and unlawfully receiving unauthorised computer data (s. 7 (2) (b)).

⁷⁶ For instance, words/phrases such as "hate speech", "use of disparaging or abusive words", "cultural sensitivities", content that causes annoyance", "bad language", "hate propaganda", and "content likely to mislead or deceive the public", are not clearly defined and/or highly subjective, leaving loopholes for arbitrary restrictions on freedom of



continues to be a major barrier to enjoyment of freedom of expression. Analysis of these laws by LHRC and other stakeholders has revealed failure of the laws to meet international standards on freedom of expression, particularly the tests for restrictions of this fundamental human right. Press freedom is particularly an issue of greater concern, as journalists and media houses have been affected more by existing legal framework, leading to increased self-censorship and fear of severe punishment for failure to abide by the existing laws and regulations.

A study on press freedom and access to information conducted by MCT has shown that 3 out of 5 journalists (58%) experienced press freedom violations in the period of 2019 to 2021.⁷⁷

Violations included threats, confiscation of equipment, intimidation, denial of access to information and to a lesser extent arrest by police. Most of the respondents said stories that they found difficult to report included political and economic stories that are critical of the government, COVID-19, stories giving visibility to the Opposition, human rights issues and conflicts.

In 2021, Members of the Coalition on the Right to Information (**CoRI**), including LHRC, continued to push for reforms of freedom of expression laws, including the Media Services Act, 2016. In March 2019, the East African Court of Justice (EACJ) found various provisions within the Act to be in violation of freedom of expression and Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community. The Court directed that the Government takes such measures as are necessary, to bring the Media Services Act into compliance with the Treaty for the Establishment of the East African Community. The Government has not complied with the decision of the Court as the law is yet to be amended.

expression. Most of these words/phrases are contained in Regulation 3 and the Third Schedule of the Online Content Regulations, 2020 on prohibited content. There are also sweeping powers for TCRA under Regulations 7, 8, and 19; unfair burden on content providers to moderate and filter content and identify source of content under Regulation 9, which infringes right to privacy and affects whistleblower protection; licensing requirements for bloggers, which according to the African Commission on Human and Peoples' Rights, "...may negatively impact the ability of users to gain affordable access to the Internet, which goes against States' commitment to protect the right of every individual to receive information, as well as the right to express and disseminate one's opinion within the law which is provided under Article 9 of the African Charter on Human and Peoples' Rights."; Severe and uniform punishment for failure to comply with regulations (Regulation 21(1)); and criminalization of defamation.

⁷⁷ Media Council of Tanzania, The Right to Know FACT FINDING MISSION REPORT ON PRESS FREEDOM AND ACCESS TO INFORMATION SITUATION IN TANZANIA, March 2021, <https://mct.or.tz/wp-content/uploads/2021/05/Fact-Finding-Mission-Report.pdf>, accessed 29 December 2021.



Sections in the Media Services Act of 2016 found to violate freedom of expression and EAC Treaty: sections 7(3) (a), (b), (c), (f), (g), (h), (i) and (j); sections 19,20 and 21; sections 35,36,37,38,39 and 40; sections 50 and 54; sections 52 and 53; and sections 58 and 59.

- Judgment of the East African Court of Justice, March 2019

Some of the legislations on freedom of expression, such as the Cybercrimes Act 2015 and the Online Content Regulations 2020, also restrict freedom of expression online. These laws have been said to contribute to decline of internet freedom by criminalising freedom of expression online, including through introduction of licensing requirements for internet users, including bloggers and citizen journalists.

Exercising the powers vested in this Court by Articles 30(5) of the URT Constitution and section 13(2) of the Basic Rights and Duties Enforcement Act, we direct the Government through the Attorney General within the period of twelve (12) months from the date of this Order to correct the complained anomalies in Section 50 of the Cybercrime Act failing which the provision should be scrapped off the statute books for infringing the fundamental right to be heard under Article 13(6)(a) .

- Judgment of the High Court of Tanzania (Jebra Kambole vs. Attorney General), December 2016

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

LHRC's Call: The Government and the Parliament to facilitate amendment of the Media Services Act of 2016 in line with the judgement of the East African Court of Justice of March 2019, in order to safeguard freedom of expression in Tanzania. Other laws hindering effective realization of freedom of expression should be reviewed and brought in line with international standards of freedom expression.

2.2.2. Amendment of the Online Content Regulations 2020

In 2021, the Government made amendments to the Online Content



Regulations of 2020, which had replaced the Online Content Regulations of 2018. Analyses by LHRC and other stakeholders, both domestic and international, have found both 2018 and 2020 Regulations to be generally restrictive to freedom of expression and falling short of international human rights standards, including permissible restrictions.

Amendment of the 2020 Online Content Regulations has been praised for addressing some of the concerns raised in the past, including repealing Regulation 13, which provided various unrealistic obligations to internet café owners.⁷⁸ Analysis made by ARTICLE 19⁷⁹ has shown that other positive amendments include amendment of Regulation 8, which imposed obligation on content service providers to use moderating tools to filter 'prohibited content,' Regulation 18 concerning protection of children by internet cafes, and Regulation 10, which prohibits any mainstream content service provider with district or regional licence from simulcasting content using online platform.⁸⁰

However, most other key concerns raised over the 2020 Regulations, including sweeping powers of TCRA and overly broad terms which are subject to abuse, are yet to be addressed.⁸¹ Consequently, a consensus has been reached that the Online Content Regulations 2020 should be repealed entirely.⁸²

2.2.3. Amendment of the EPOCA Radio and Television Regulations

In 2021, apart from the amendment of the Online Content Regulations of 2020, amendments were also made in the Electronic and Postal Communications (EPOCA) Radio and Television Regulations.⁸³ According to the amendments to the Regulations, hook-up is now only subject to notification and not approval from the Tanzania Communications Regulatory Authority (TCRA). Progress made compared to the previous Regulations, which required approval by TCRA.⁸⁴

78 See Regulation 11 of the Electronic and Postal Communications (Online Content) (Amendment) Regulations, 2021, at <https://tcra.go.tz/uploads/newsdocs/en-1629801878-Draft%20-%20Amendmend%20Online%20Content%20Regulations%2018%20August%202021.pdf>.

79 INGO that advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems.

80 See ARTICLE 19, THE ELECTRONIC AND POSTAL COMMUNICATIONS (ONLINE CONTENT) (AMENDMENT) REGULATIONS, 2021 SUBMISSION TO THE TANZANIA MINISTRY OF INFORMATION, CULTURE AND SPORTS, at <https://www.article19.org/wp-content/uploads/2021/09/Submission-to-Tanzania-ministry-of-information-culture-and-sports.pdf>

81 Ibid.

82 Ibid.

83 See THE ELECTRONIC AND POSTAL COMMUNICATIONS (RADIO AND TELEVISION BROADCASTING CONTENT) (AMENDMENT) REGULATIONS, 2021, at <https://tcra.go.tz/uploads/newsdocs/en-1629801878-Draft%20-%20Amendmend%20Online%20Content%20Regulations%2018%20August%202021.pdf>.

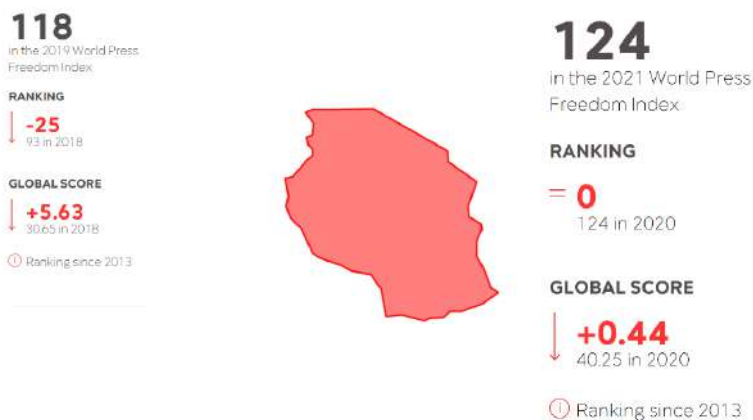
84 Ibid, Regulation 3, amending Regulation 37 of the EPOCA Radio and Television Regulations.



Again, we welcome these developments in safeguarding freedom of expression, but we urge the authorities to continue taking measures to address all provisions in freedom of expression laws that have been found to be not in conformity with international human rights standards and thereby arbitrarily infringing or restricting free expression. LHRC and other stakeholders under the Coalition on the Right to Information (CORI) are ready to provide relevant assistance to achieve this objective.

2.2.4. Performance in World Press Freedom Index

Existence and implementation of restrictive freedom of expression laws, including media laws, has ensured that Tanzania continues to perform poorly in the World Press Freedom Index. In the World Press Freedom Index 2021, prepared by Reporters Without Borders (RSF), Tanzania has maintained its 124th rank that it scored in 2020. Trends show that Tanzania has been dropping steadily in the index since 2016. For instance, it dropped 10 places in the world rankings, from 83rd in 2017 to 93rd in 2018. In 2019, Tanzania further dropped 25 places to sit at the 118th position in the world rankings and in 2020 it further dropped six places. Since 2016, Tanzania has fallen 53 places in the rankings, with no other country suffering such a big fall in recent years.⁸⁵



Picture 3: Tanzania's rank and score in press freedom in 2021

Source: *RSF World Press Freedom Index 2021*

⁸⁵ See RSF, Tanzanian cartoonist detained over cartoon of president, 7 October 2021 at <https://rsf.org/en/news/tanzania-suspends-newspaper-one-month>.



2.2.5. Ban and suspension of media outlets

Stakeholders within and outside Tanzania, including LHRC, have voiced concerns over the Online Content Regulations, both of 2018 and 2020, because of failing to meet international human rights standards. The Regulations have been used to impose bans and suspension of media outlets. For instance, in January 2021, the Tanzania Communications Regulatory Authority (TCRA) imposed a six-month ban **on Wasafi TV** for allegedly violating regulations, a move which was seen by media stakeholders, including the Tanzania Editors Forum (TEF) Chairperson, **Deodatus Balile**, as unfair and violation of press freedom.⁸⁶ The media outlet apologized for the incident, appealed against the decision, and managed to reduce the punishment to one month. The six-month ban is indeed too severe a punishment.

In April 2021, H.E. President **Samia** Suluhu Hassan directed the government authorities to lift bans on some of the media outlets⁸⁷ which had been suspended. She made the statement during the swearing-in ceremony for Ministry, Department, and Agency (**MDA**) officials on 6th April 2021.⁸⁸ However, on the same day, the Permanent Secretary of the Minister of Information, Culture, Arts, and Sports, Dr. Hassan Abbas, revealed during an interview that the President's directive only targeted online media and not mainstream media like newspapers. This stance was reiterated by the Government spokesperson, Gerson **Msigwa**, and later, the Minister of Information, Culture, Arts, and Sports, Hon. Innocent **Bashungwa**, **invited banned newspapers to his ministry** to negotiate.

In September 2021, the Government Spokesperson, Gerson Msigwa, announced that **Rai Mwema** Newspaper was being suspended for 30 days for allegedly identifying the man who killed three police officers and a French Embassy security guard in August as a member of the ruling party (CCM).⁸⁹ The decision was deemed arbitrary and excessive, given the fact that there was indeed evidence of pictures showing the suspected terrorist in **CCM's** colours.⁹⁰

86 LHRC Media Survey 2021.

87 Mawio, Mwanahalisi, Mseto, Tanzania Daima.

88 Ibid.

89 Reporters Without Borders "Tanzania suspends newspaper for one month" 10 September 2021, at <https://rsf.org/en/news/tanzania-suspends-newspaper-one-month>, accessed 10 December 2021.

90 Ibid.



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

2.2.6. Arrests, Intimidations, and detentions of journalists

Arbitrary arrests and detentions of journalists, including a political cartoonist, were reported in 2021. On 24th September 2021, Optatus Fwema, a political cartoonist, was arbitrarily arrested at his home in Dar es Salaam over cartoon of the President, which portrayed the influential role of former President Kikwete in Tanzanian politics. The cartoon was deemed offensive, but media and cartoon stakeholders said that it is an ordinary satirical cartoon of country's leader.⁹¹ It was also reported that the cartoonist was not initially informed of true charges against him when he was arrested and was also initially questioned by police in the absence of his lawyer while detained at Oysterbay Police Station. Police indicated that he was being investigated on cybercrime offences.

The arrest and detention of Fwema was condemned by local and international media stakeholders, including the Tanzania Human Rights Defenders Coalition (THRDC);⁹² Reporters Without Borders (RSF);⁹³ the Committee to Protect Journalists (CPJ);⁹⁴ KATUNI, the East African Cartoonists' Society; and Cartooning for Peace,⁹⁵ an international network of press cartoonists. Among other things, the stakeholders condemned the fact that he was held well beyond the 48 hours required by law and was denied bail. In its statement, KATUNI equated the arrest and incarceration of Fwema as a blatant attack on press freedom and individual rights and demanded immediate release of the cartoonist.⁹⁶

In another incident, which also widely attracted public attention, Harold

91 See statement by the RSF Africa desk head, Arnaud Froger at <https://rsf.org/en/news/tanzanian-cartoonist-detained-over-cartoon-president>.

92 See THRDC, STATEMENT CONDEMNING ARBITRARY ARREST AND DETENTION OF CARTOONIST OPTATUS FWEMA, 7 October 2021, at <https://twitter.com/THRDCOALITION/status/1444961468139646980?s=20>.

93 See RSF, Tanzanian cartoonist detained over cartoon of president, 7 October 2021 at <https://rsf.org/en/news/tanzania-suspends-newspaper-one-month>.

94 See CPJ, Tanzania police arrest cartoonist, journalists on cybercrime and illegal assembly allegations, 7 October 2021, at <https://cpj.org/2021/10/tanzania-police-arrest-cartoonist-journalists-on-cybercrime-and-illegal-assembly-allegations/>.

95 See Cartooning for Peace, Tanzania alert – Cartooning for Peace condemns the arrest and imprisonment of cartoonist Optatus Fwema for cartoon., 4 October 2021, at <https://www.cartooningforpeace.org/en/soutiens/alert-tanzania-optatus-fwema/>.

96 See KATUNI, PRESS STATEMENT: ARREST AND INCARCERATION OF CARTOONIST OPTATUS FWEMA, 4 October 2021, at <https://www.cartooningforpeace.org/wp-content/uploads/2021/10/PRESS-STATEMENT-ON-OPTIPUS-FWEMA-2.pdf>.



Shemsanga, a journalist with *Mgawe TV* (YouTube TV), was arrested on 2nd October 2021 while he was interviewing BAWACHA (women wing of the CHADEMA political party) members following a jogging event in Kawe, Dar es Salaam.⁹⁷ According to Shemsanga, police officers at Kawe Police Station confiscated his devices including a camera and laptop; reviewed footage of his interviews; and locked him up in a cell and the police later revealed that he had been arrested over suspicion of illegal assembly. In addition, police officers arrested Earnest Mgawe, the media outlet's owner, as he was seeking bail for Shemsanga.⁹⁸ Both men were released on 4th October 2021 and were ordered to report periodically to the Mbweni Police Station, where they had been transferred from Kawe.⁹⁹

Five other incidents of arbitrary arrest, detention, and intimidation of journalists were reported in April 2021 in Dar es Salaam, Mwanza, Kilimanjaro, and Katavi Regions in Tanzania Mainland, as well as Zanzibar. In the first incident, which occurred on 12th April 2021 in **Dar es Salaam**, two journalists, Christopher James (ITV & Radio One) and Dickson Bilikwija (Island TV), were detained under orders of the Director of Temeke Municipality, Lusabilo Mwakabibi, after accusing them of gate-crashing his meeting.¹⁰⁰ Three days earlier, on 9th April 2021, it was reported in **Mwanza** that the Nyamagana District Commissioner, Dr. Philis Nyimbi, had threatened to take action against ITV journalist, Mabere Makubi, for allegedly reporting on a issue that jeopardized her employment.¹⁰¹

On 12th April 2021, another incident of arbitrary arrest and detention occurred in **Kilimanjaro** Region, where a freelance journalist based in Moshi, James Lanka (reporting for the *Guardian Newspaper*), was arrested and put under police custody for 3 days without being charged after he had pursued a story on the arbitrary arrests of businessmen.¹⁰² In **Katavi**, another journalist, Pascal Katona (Channel 10), was harassed and attacked by worshippers while covering election of an Imam at a mosque.

97 CPJ, Tanzania police arrest cartoonist, journalists on cybercrime and illegal assembly allegations, 7 October 2021; THRDC, STATEMENT CONDEMNING ARBITRARY ARREST AND DETENTION OF CARTOONIST OPTATUS FWEMA, 7 October 2021.

98 CIVICUS "SYSTEMATIC CRACKDOWN ON DISSENT CONTINUES" 30 November 2021, at <https://monitor.civicus.org/updates/2021/11/30/systematic-crackdown-dissent-continues/>.

99 CPJ, Tanzania police arrest cartoonist, journalists on cybercrime and illegal assembly allegations, 7 October 2021.

100 See MCT statement in "MCT CONDEMNS LATEST HARASSMENT OF SCRIBES" at https://web.facebook.com/mediacounciltanzania/posts/mct-condemns-latest-harassment-of-scribes-the-media-council-of-tanzania-mct-has-/3938949539524857/?_rdc=1&_rdr.

101 Ibid.

102 Ibid.



On 21st April 2021, a journalist working with Mwananchi Newspaper, Jesse Mikofu, was reportedly harassed and beaten by police in **Zanzibar**. His equipment was also destroyed, and he claimed that he was made to suffer the fate for taking pictures of the arrest and evacuation of vendors from Darajani area in Unguja.¹⁰³

Regarding the arrest and detention orders of two journalists made by the Director of Temeke Municipality, Lusabilo Mwakabibi, on 13th April 2021, the then Minister of Information, Culture, Arts, and Sports, Hon. Innocent Bashungwa, took to Twitter to announce that his ministry was following up on the incident.¹⁰⁴ On 26th April 2021, the former Minister of State in the President's Office for Regional Administration and Local Government (PO-RALG), Ummu Mwalimu, suspended the director from his duties for abuse of power and improper conduct, to pave way for an investigation.¹⁰⁵ In August 2021, it was reported the director was arraigned before the Kisutu Resident Magistrate Court in Dar es Salaam on abuse of office charges following investigation by the anti-corruption body, PCCB.¹⁰⁶

2.2.7. Journalists, Freedom of Expression, and Other Human Rights: Human Rights Survey 2021

2.2.7.1. Introduction

The Human Rights Survey 2021, conducted by LHRC across 20 regions of Tanzania Mainland, also probed on the situation and rights of journalists in Tanzania. This was motivated by various challenges that journalists face that have been reported in recent years, including issues around the legal environment, labour rights, and violence. A total of 240 journalists were reached across 15 regions of Tanzania Mainland,¹⁰⁷ of whom 128 were male and 112 were female. A questionnaire for journalists was developed to cover the following areas:

- Awareness about laws and regulations governing press free-

103 See "CONCERNS OVER MEDIA FREEDOM REMAIN DESPITE POSITIVE PRESIDENTIAL SIGNALS" CIVICUS, 29 April 2021, at <https://monitor.civicus.org/updates/2021/04/29/concerns-over-media-freedom-remain-despite-positive-presidential-signals/>.

104 "Bashungwa atoa kauli sakata la mkurugenzi Temeke kuwaweka chini ya ulinzi wanahabari" Mwananchi Newspaper (online), 13 April 2021, at <https://www.mwananchi.co.tz/mw/habari/kitaifa/bashungwa-atoa-kauli-sakata-la-mkurugenzi-temeke-kuwaweka-chini-ya-ulinzi-wanahabari-3360872>.

105 "CONCERNS OVER MEDIA FREEDOM REMAIN DESPITE POSITIVE PRESIDENTIAL SIGNALS" CIVICUS, 29 April 2021.

106 See "ALIYEKUWA MKURUGENZI MANISPAA YA TEMEKE LUSABILO MWAKABIBI AFIKIKISHWA MAHAKAMANI" 20 August 2021, at <https://www.youtube.com/watch?v=YREDaWRymX0>.

107 Dar es Salaam; Pwani; Mtwara; Mogorogo; Dodoma; Tabora; Singida; Tanga; Kilimanjaro; Arusha; Iringa; Kagera; Mara; Mwanza; and Geita.



- dom, labour rights, and working environment
- Challenges and Violence at Workplace
- Violations of Rights and Action Taken
- Accountability and Adherence to Laws and Ethics
- Recommendations

The summary of findings in each of these areas is provided below. Detailed findings on the situation and rights of journalists can found in the detailed report available at LHRC website.¹⁰⁸

2.2.7.2.Awareness about laws and regulations governing press freedom, labour rights, and working environment

Regarding awareness about laws and regulations governing press freedom, labour rights, and working environment, the survey generally showed that:

- When asked whether they know laws governing the media industry, overwhelming majority of the respondents (86%) said they do, while only 4% said they did not and the remaining 10% said they were not sure. However, among those who claimed to be aware of media laws (86%) only half of them (50%) could correctly mention at least three media laws.
- Majority of the respondents (43%) said that they are somewhat aware of media/press freedom laws, followed by a third of the respondents (31%) who claimed they were moderately aware, and 13% who said they are extremely aware.
- Majority of respondents (38%) also said they were somewhat aware of their labour rights, followed by 37% who said they were moderately aware. Only 14% of the respondents claimed that they are extremely aware of their rights as workers, while 10% said they were slightly aware, and only 1% said they were not at all aware.
- In terms of the working environment, over a third of the respondents (34%) described it as poor/difficult, followed by 29% who described it as fair. Only 19% and 18% of the respondents described their working environment as very good and good respectively, who are slightly over a third of the respondents.
- Majority of the respondents, over half of them (58%), said they feel somewhat free working in the current legal environment, followed by 21% who said they feel free, and 15% who said they do not feel free.

108 www.humanrights.or.tz.



2.2.7.3. Challenges and Violence at Workplace

Regarding challenges and violence at workplace, the survey generally showed that:

- Lack of employment contract was cited as the biggest challenge or serious problem for journalists (73%), followed by low pay (68%), threats (56%), unfair dismissal (55%), breach of employment contract by employer (54%), and restrictive laws and regulations (50%). Media outlets ban (47%), sexual harassment/sexortion of female journalists (42%), and arbitrary arrests/detention (41%) were also identified as serious problems by nearly half of the respondents.

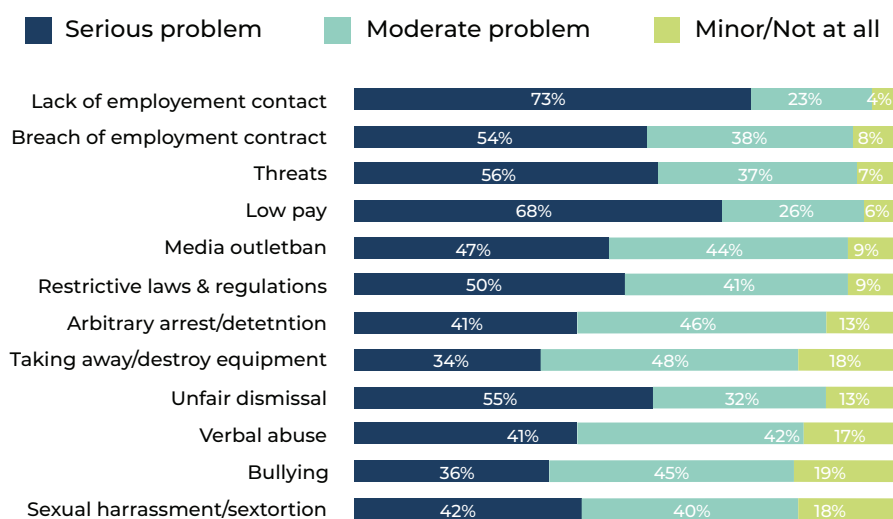


Figure 13: %Responses of respondents on challenges they face (N=240)

Source: Field data, 2021

- Regarding restrictive laws and regulations, half of the respondents (50%) said it is a serious problem, closely followed by 41% of the respondents who said it is a moderate problem. Only 9% of the respondents said it is either a minor problem or not at all a problem. In terms of laws and regulations that negatively impact their work as journalists, majority of them mentioned the Media Services Act of 2016 and the Online Content Regulations, although most of them mentioned the 2018 Regulations while new Regulations were introduced in 2020.
- Majority of respondents (46%) identified arbitrary arrest and/or detention as a moderate problem, followed by 41% who said it is a



serious problem.

- Majority of the respondents, nearly half of them (48%), said taking away or destruction of their equipment is a moderate problem, followed by 34% who felt that it is a serious problem.
- Majority of the respondents, nearly half of them (42%) said sexual harassment/sextortion against female journalists is a serious problem for female journalists, followed by 40% who said it is a moderate problem. 14% of the respondents said it is a minor problem, while 4% said it is not at all a problem
- 43% of the respondents said they had had witnessed or heard about any incident of sexual violence or sextortion against a journalist in the past year.
- Common acts of sexual violence against female journalists include being asked for a sex bribe to be employed or for a story to be published or aired and unwarranted touching of body parts, especially breasts and buttocks. Young women doing fieldwork or internship were said to be more vulnerable in this regard as they seek employment
- Examples of sexual harassment faced by female journalists include flirting, making sexually offensive gestures or remarks, inappropriate or unwanted touching of arms or brushing up against a woman, blocking the way or standing in the way, making sexually offensive facial expressions, unwelcome sexual advances, and repeatedly asking for dates or hook ups. Others include looking at a woman's body up and down (persistent staring) and telling sexually offensive jokes
- Editors and human resources officers were reported the most as perpetrators of sexual violence against female journalists. Other perpetrators include managing directors/managers, media owners, and sources. Male journalists, especially older or experienced one, were also mentioned by some of the respondents as perpetrators of sexual violence against female journalists, especially sexual harassment.
- Consequences of rejecting unwelcome or unwanted sexual advances include non-employment, difficult working environment, a story not being published, and unfair dismissal.
- Challenges experienced by journalists as a result of the Covid19 pandemic include: difficulty in obtain information and travelling to seek or balance stories; reduced income; retrenchment and loss of employment; difficulty in obtaining information and interviewing sources/people; delays in payment of wages/salary; and lack of allowance given when a journalist goes out to collect stories. Other challenges include difficulty in creating radio/TV programmes; increased expenses due to use of ICT to get information; and discrimination against women in newsroom (newsroom gender disparity).
- Other challenges and press freedom and right to information violations suffered by journalists include: lack of cooperation from



sources, especially government leaders and officials and police; lack of gender equality/parity in media institutions; threats and intimidation by government leaders, powerful/influential members of the community, law enforcement officers, and government officials; denial of information and access to meetings, especially by government/council media officers; sources, especially citizens, being afraid of commenting on stories; financial challenge when seeking stories, especially in rural areas; and hefty licensing and annual fees for online streaming and provision of online content services.

The various challenges faced by journalists above were also confirmed by interviewed officials and members various media institutions including the MISA Tanzania,¹⁰⁹ Union of Tanzania Press Clubs (UTPC), and Tanzania Media Women's Association (TAMWA).¹¹⁰ They additionally noted that:

- Labour rights violations are a daily reality for many journalists in Tanzania. However, the main issue is effective implementation and enforcement of labour laws and regulations by government authorities.
- The media environment has improved, but legal reforms are needed to guarantee and safeguard press freedom and bring freedom of expression laws in line with international human rights standards.
- Low awareness about laws and regulations governing the media profession and labour as well as media ethics among journalists is also contributed by reluctance of some journalists to take trainings seriously.
- Some female journalists create an environment for sexual corruption by demanding preferential treatment and favours from their supervisors. Others also engage in sexual relationships with sources, such as District Commissioners, Police Officers and community leaders. Some journalists do this for purposes of easily getting information and comments.
- Some journalists leak information regarding journalists' welfare and jeopardize steps that need to be taken to address certain situations.
- Majority of journalists do not have employment contracts, whether written or oral. However, majority of them work as freelance journalists and only have certificates and are reluctant. The requirement of diploma as a minimum qualification for professional journalism has hit journalists with certificates hard.
- Most journalists are reluctant to pursue further education in journalism, which would boost their employability.

¹⁰⁹ Tanzania chapter of the Media Institute of Southern Africa.

¹¹⁰ LHRC Human Rights Survey 2021: Interviews with members and officials from media institutions in Dar es Salaam, Tanga, Mwanza, Kilimanjaro, and Dodoma Regions.



2.2.7.4. Violations of Rights and Action Taken

Regarding violations of rights of journalists and action taken afterwards, the survey generally showed that:

- Press freedom (77%), right to information (68%) and freedom of opinion (64%) were mentioned as the top three most violated rights of journalists.
- Majority of respondents (65%), said experienced any violation of their rights in the past year, while 27% said they had not. Among those who said they had experienced violation of their rights (65%), majority of them (42%) said their press freedom had been violated 2 to 5 times, followed by 35% who said it had been violated 5 times or more, and 23% who said it had been violated one time.
- When asked who violated their rights, majority of the respondents (27%) mentioned law enforcement officers, followed by supervisor (22%), media house owner (19%), and government official (13%).
- Majority of respondents (32%) said they reported to their boss or media house owner when their rights had been violated, followed by 28% who said they did not take any action, and 15% who said they reported the incident to a media institution or a press club. 9% of the respondents said they informed a family member or relative about the incident(s), while 8% said they reported to the police.

2.2.7.5. Accountability and Adherence to Laws and Ethics

Regarding accountability and adherence to laws and ethics, the survey generally showed that:

- Majority of respondents (54%) said lack of professional integrity by journalists is a moderate problem, followed by 43% who acknowledged that it is a serious problem.
- Low awareness about laws/regulations and media ethics was mentioned as the biggest factor contributing to lack of professional integrity (81%), followed by lack of regular training (71%), and education/profession (66%). Nearly half of the respondents (46%) also mentioned forced circumstances as a contributing factor.

2.2.7.6. Recommendations

Recommendations to improve situation and realization of the rights of journalists provided by the respondents included:

- LHRC and other human rights and media stakeholders to



continue raising human rights awareness and conduct trainings for journalists.

- Amend of restrictive freedom of expression laws to improve journalist welfare and safeguard freedom of expression.
- Establishment of a special media gender desk that will address issues of gender-based violence in the media sector.
- Government leaders, especially DCs, to refrain from misusing their powers of arresting and detaining people for 48 hours to arbitrarily arrest and detain journalists.
- Government to put pressure on media owners to comply with labour laws and protect labour rights of journalists, including by providing employment contract, paying wages timely, and refraining from unfair termination of employment.
- Journalist to observe and abide by media ethics.

LHRC's View: Journalists are faced with various challenges which hinder effective realization of their human rights, including freedom of expression. Most of these challenges are rooted in existence and implementation of laws and regulations which contain restrictive provisions, particularly those governing the media sector. Other challenges, especially labour-related challenges, are largely due to poor implementation of relevant laws and regulations, including labour laws and regulations. For female journalists, sexual violence, especially sexual corruption, remains a big challenge.

LHRC's Call: The Government needs to amend all laws and regulations that hinder effective realization of freedom of expression, including press freedom. Ministry responsible for media, regulatory authorities and media stakeholders to work together to promote and protect labour and other rights of journalists. However, in the long run, an environment should be created for journalists and media to regulate themselves, considering international best practices. Additionally, journalists should be encouraged to report incidents of sexual violence they witness or encounter.

2.2.8. Arbitrary restrictions on workers' freedom of expression at companies: Human rights and business survey findings

In recent years, LHRC has also observed arbitrary restrictions on freedom of expression at workplaces, including companies. For instance, in the survey on business and human rights conducted by LHRC in 15 regions of Tanzania Mainland in 2021, freedom of expression was found to be one of the human rights of workers that were violated at surveyed



workplaces.¹¹¹ This mainly materialized through threatening workers who expressed concerns over their working environment and labour rights and demanded improvements.¹¹²

2.3. Freedoms of Assembly and Association

Meaning & Key Applicable Standards

- Freedom of assembly ensures people can gather and meet, both in public and private, and peacefully hold meetings and engage in peaceful protest.
- Freedom of Association ensures one the right to form and participate in association, either formally or informally. It covers any form of organized groups and professional organizations like political parties, trade unions, public associations and non-governmental organisations. It involves an ability to seek and receive resources for organization for peaceful promotion and respect of human rights.
- Key applicable standards include: the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; the UN Convention on the Rights of the Child (CRC) of 1989; Convention on the Rights of Persons with Disabilities (CRPD) of 2006; the African Charter on Human and Peoples' Rights (ACHPR) of 1981; and African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. Others include the Guidelines on Freedom of Association and Assembly in Africa of 2017 and the Freedom of Assembly and Association and the Internet of 2016. Domestically the major applicable standard is the Constitution of the United Republic of Tanzania, 1977.
- The only restrictions allowed are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others, according to ICCPR (necessity, legality & proportionality).
- Key for realization of the right to take part in governance.

In 2021, key issues that hindered effective realization of freedoms of assembly and association include existing restrictive laws and regulations and pending ban on political rallies outside politician's constituency.

2.3.1. Laws Restricting Freedoms of Assembly and Association

Several laws continue to be a thorn on freedoms of assembly and association in Tanzania, including the Political Parties Act, as amended in 2019, and the Basic Rights and Duties Enforcement Act (BRADEA), which was amended in 2020. The amendments made on these two laws have been faulted for adhere to international standards on freedoms of assembly and association, particularly the tests of necessity, legality, and proportionality under the International Covenant on Civil and Political Rights (ICCPR) of 1966 and other key human rights standards

111 See LHRC (2021), Human Rights and Business Survey 2020/21, at www.humanrights.or.tz.

112 Ibid.



such as the African Charter on Human and Peoples' Rights of 1981 and the Guidelines on Freedom of Association and Assembly in Africa, published by African Commission on Human and Peoples' Rights on 10th November 2017.

Analysis of the amendments made in the Political Parties Act raises several concerns vis-à-vis freedoms of assembly and association, key among them granting of excessive and intrusive powers to the Registrar of Political Parties,¹¹³ contrary to international human rights standards. The powers include monitoring of intra-party elections and finances, suspension of party member, and requiring membership register. The amendments also include provisions which are not clear, hence subject to abuse by authorities or government actors.¹¹⁴

Amendments made in the Basic Rights and Duties Enforcement Act (BRADEA) in 2020 raised eyebrows in Tanzania and beyond, given its ramifications for human rights protection, including its curtailment of freedom of association. In June 2020, the UN Special Rapporteur on the rights to freedoms of peaceful assembly and association expressed concern over the amendments, noting that he feared the amendments gravely limit the ability of civil society and individuals to defend the rights of vulnerable individuals, groups, and communities and are in violation of Article 22 of ICCPR (freedom of association).¹¹⁵ He noted that public interest litigation forms part of freedom of association, especially for CSOs working to protect or defend human rights and playing an important role in the society by making the voice of the voiceless heard.¹¹⁶ He also rightly noted that the amendments contradict the national jurisprudence on public interest litigation, making reference to Articles 13(6), 26(2), and 30(3), as well as the 1994 High Court decision in the case of *Rev. Christopher Mtikila v. Attorney General*.¹¹⁷

The Non-Governmental Organizations Act of 2002 also contains provisions which curtail the freedom of association of NGOs. The key concern is provisions which grant too much power to the Registrar

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

114 Ibid.

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

116 Ibid.

117 Ibid.



of NGOs and threaten NGOs' freedom of association, including deregistration of NGOs.¹¹⁸

The Non-Governmental Organizations Act (Rights and Duties of Assistant Registrars) Regulations of 2019 also grant intrusive powers to the Office of Registrar of Political Parties and infringes freedom of association by requiring objectives of programmes and projects to be in line with government objectives and priorities. The Regulations give the Assistant Registrars power to “ensure that, a Non-Governmental Organization implementing a project whose funding contract value is more than twenty million (20,000,000 Tshs) has letter of approval from the Registrar as prescribed in the First Schedule to the Non-Governmental Organizations Act,2004.”¹¹⁹

LHRC's View: Since 2019, LHRC and other human rights stakeholders have been making repeated calls for these laws to be reviewed and brought in line with international standards on freedoms of assembly and association. However, they laws are yet to be amended to safeguard these fundamental rights.

LHRC's Call: The Government to take measures to review and amend the laws to bring them in line with international human rights standards and the Constitution of the United Republic of Tanzania of 1977.

2.3.2. Arbitrary Restriction of Freedoms of Assembly and Association

In 2021, the opposition parties continued to complain about arbitrary restrictions on freedoms of assembly and association, including the ban on political rallies that was imposed in 2016.¹²⁰ The ban has not been officially lifted, a situation which continues to be contrary to international human rights standards, particularly those on freedoms of assembly and association. It is difficult for other parties to grow if they can only conduct political rallies within their constituencies and even more difficult for new and smaller parties. There is also no justification for the ban under the Constitution of the United Republic of Tanzania, 1977, which guarantees freedoms of assembly and association.

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

119 Regulation 4(1)(e) of the The Non-Governmental Organizations Act (Rights and Duties of Assistant Registrars) Regulations, 2019.

120 See Pius Msekwa “Tanzania: Ban Imposed On Political Rallies - a Critical Lesson in Political Education” DailyNews Newspaper (online), 7 July 2016, at <https://allafrica.com/stories/201607070729.html>. accessed 20 January 2022.



In October 2021, it was reported that police had arrested and detained several members of CHADEMA's women wing, BAWACHA, along with a journalist from *Mgawe TV* over suspicion of illegal assembly.¹²¹ The women's wing members had organised a jogging event in Kawe area in **Dar es Salaam**, with several women at the events wearing printed T-Shirts with the words "Tume Huru" ("Independent Commission") in reference to CHADEMA's campaign for electoral reforms.¹²² In statement released to the public, BAWACHA claimed that several CHADEMA leaders who had followed up on the arrest were also arrested at Mbweni Police Station.¹²³



Leo Jumamosi tarehe 02 Octoba, 2021 majira ya asubuhi, Jeshi la Polisi Mkoa wa Kinondoni unaoongzwa na RPC Ramadhan Kingai wamewakamata Wanawake wa Chadema Jimbo la Kawe waliokuwa wanafanya mazoezi (jogging) na wameendelea kuwashikilia katika Kituo cha Polisi cha Mbweni, Dar Es salaam pamoja na kwenda kupekuliwa majumbani mwao.

Jeshi hilo pia linamshikilia mwandishi wa habari wa Kituo cha Mgawe TV ambacho kinarusha matangazo yake mtandaoni aliyekuwa eneo la tukio akitimiza wajibu wake wa kutafuta na kutoa habari.

Aidha, viongozi wa Chadema walipoenda kufuatilia kuhusu waliokamatwa wakiongozwa na Mwenyekiti wa Bawacha Jimbo la Kawe na Mwenyekiti wa Chama Jimbo la Kibamba nao wamekamatwa na kushikiliwa na Jeshi Hilo.

Idadi ya waliokamatwa haijajulikana mpaka sasa kwani Polisi hawatai ushirikiano na viongozi wanaofika kituoni Mbweni nao wanakamatwa na kushikiliwa.

Tunataani matendo haya ya Jeshi la Polisi na ambayo yanaonyesha ubaguzi mkubwa dhidi ya Chadema, kwani hivi karibuni wanawake wa CCM Mkoa wa Dar Es salaam walifanya mazoezi kama hayo na hawakukamatwa wala kubugudhiwa na Jeshi la Polisi.

Jeshi la Polisi wanaendelea na utamaduni wa kuvunja Haki za Binadamu Kwa makusudi Kwa sababu hakuna wanaowajibishwa kutokana na matendo Yao hayo .

Tunazifika mamlaka zichukue hatua kutokana na matendo ya uvunjifu wa sheria unaofanywa na Jeshi la Polisi nchini dhidi ya raia ambao hawana makasa.

Kitendo cha Polisi kumshikilia mwandishi wa habari ni Kinyume cha sheria ya huduma ya habari na ni kutuma ujumbe Kwa Waandishi nchini kuwa hawako salama wanapatimiza majukumu yao kihalali na Kwa mujibu wa sheria.

Tunatoa Mwito Kwa asasi za kiraia, Waandishi wa Habari na taasisi zote za ndani na Kimataifa kupaza sauli zao na kukemea uovu huu unaofanywa na Jeshi la Polisi nchini.

Imetolewa Leo Jumamosi tarehe 02 Oktoba 2021 na:

Picture 5: A statement released by BAWACHA following arrest of some of its members in Dar es Salaam

In July 2021, CHADEMA party in **Iringa** lamented arbitrary interference

121 CIVICUS "SYSTEMATIC CRACKDOWN ON DISSENT CONTINUES" 30 November 2021, at <https://monitor.civicus.org/updates/2021/11/30/systematic-crackdown-dissent-continues/>, accessed 20 January 2022.

122 Ibid.
123 Ibid.



with their freedom of association after their scheduled meeting was blocked by the law enforcement authorities for allegedly being against Covid19 protocols.¹²⁴ However, during a press conference held on 24th July 2021 the regional party leadership said while they were forced to cancel their meetings, the ruling party (CCM) had an ongoing regional National Executive Committee (NEC) meeting, and MPs holding meetings in different districts. The regional party chairperson complained against the ‘double standard’ and expressed that the laws appear to apply differently to the two political parties.¹²⁵ In September, it was reported that police in **Mara** Region blocked a planned symposium on constitutional change, organized by CHADEMA’s youth wing and arrested nine party members.¹²⁶

LHRC’s View: The ban on political assembly and persistent blockage of opposition party meetings by police constitute arbitrary restrictions on freedoms of assembly and association.

LHRC’s Call: The Government to officially lift the ban on political rallies and allow all political parties to peacefully assemble. The police force should also refrain from arbitrarily interfering with political rallies and meetings.

2.4. Rights to Equality before the Law and Effective Remedy

Meaning & Key Applicable Standards

- Right to equality before the law requires all persons to be treated equality before the law, without discrimination, regardless of wealth, social status or political power. All laws should be applied equally to everyone.
- Equality before the law includes access to justice, presumption of innocence, right to legal representation, right to fair trial, and right to effective remedy.
- Right to effective remedy includes bringing perpetrators to justice and providing reparation to victims. It is closely associated to the right to fair trial.
- Key applicable standards include: the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; the UN Convention on the Rights of the Child (CRC) of 1989; Convention on the Rights of Persons with Disabilities (CRPD) of 2006; the African Charter on Human and Peoples’ Rights (ACHPR) of 1981; African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; and Constitution of the United Republic of Tanzania, 1977.

124 See statement by the party’s regional leadership at <https://www.youtube.com/watch?v=tdnoN5lfdtU>, accessed 22 January 2022.

125 Ibid.

126 See TRT World “Tanzania police arrest opposition party members in latest crackdown” 4 September 2021, at <https://www.trtworld.com/africa/tanzania-police-arrest-opposition-party-members-in-latest-crackdown-49712>, accessed 22 January 2022; Aljazeera “Tanzania main opposition party says several members arrested” 4 September 2021, at <https://www.aljazeera.com/news/2021/9/4/tanzania-in-new-crackdown-on-opposition-party>, accessed 22 January 2022.



In 2021, key issues affecting rights to equality before the law and effective remedy included: laws that hinder effective enjoyment of the right to equality before the law; barriers to access to justice, including shortage of judicial staff, delays in investigations, and duration of cases; and criminal justice challenges, including lengthy detention of remandees in prisons, investigations and adjournment of cases, prison and police cell overcrowding, plea bargaining, prompt presentation of accused persons in court, rights of prisoners and remandees, non-bailable offences, and videoconferencing in criminal proceedings vis-à-vis the right to fair trial.

2.4.1. Laws that Hinder Effective Enjoyment of the Right to Equality before the Law

In 2021, the Basic Rights and Duties Enforcement Act (BRADEA) was identified as a law that hinders effective enjoyment of the right to equality before the law, which includes access to justice. This follows amendments made under the Written Laws (Miscellaneous Amendments) (No.3) Act, 2020, especially a provision which requires a person to have been personally affected in order to file an application for human rights violation before the High Court of Tanzania. The relevant provision reads *“An application under subsection (1) shall not be admitted by the High Court unless it is accompanied by an affidavit stating the extent to which the contravention of the provisions of Articles 12 to 29 of the Constitution has affected such person personally.”*¹²⁷ This amendment prevents CSOs from filing cases on behalf of victims of human rights violations and limits their role of promoting and enhancing protection of human rights through the Judiciary. It has a very negative impact on public interest litigations, which have proven to be essential in safeguarding human rights in different parts of the world, including protection of human rights of vulnerable groups and ensuring States comply with their treaty human rights obligations. The law also limits the parties able to seek legal redress (limitation of legal standing in constitutional cases) and against which a petition can be brought against, in contravention of Constitution of the United Republic of Tanzania, 1977 and international human rights standards.

The amendments made in BRADEA have drawn criticism from human rights stakeholders in Tanzania and beyond for failure to meet international human rights standards.¹²⁸ For instance, in July 2020, the

¹²⁷ Section 4 of BRADEA as amended under Part II of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2020.

¹²⁸ See Amnesty International “Tanzania: Planned law amendments to prevent solidarity lawsuits must be rejected” 5 June 2020 at <https://www.amnesty.org/en/latest/news/2020/06/tanzania-planned-law->



UN human rights experts¹²⁹ expressed concerns over amendment of BRADEA, noting that it gravely limits the ability of CSOs and individuals to defend vulnerable groups and other community members.¹³⁰ They also expressed that the measures constitute violation of freedom of association and serve to further curb civic space.¹³¹ In 2020, LHRC and other human rights stakeholders called upon the Government to amend BRADEA to bring it in line with international human rights standards, including removing the requirement of personally suffering harm to file a petition. Nevertheless, no changes have made in the law. **LHRC's Call:** The Government to review BRADEA and amend it to bring it in line with international human rights standards and safeguard the right to equality before the law. The amendment contravenes Article 13 of the Constitution of the United Republic of Tanzania, which guarantees the right to equality before the law.

2.4.2. 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.**”¹³²

2.4.2.1. Action to improve access to justice

In 2021, the Government and the Judiciary continued to take various measures to improve access to justice, including construction and renovation of court buildings, appointment of new judges and justices, use of ICT to enhance access to justice, and implementation and proposed expansion of the mobile courts programme.

amendments-to-prevent-solidarity-lawsuits-must-be-rejected/, accessed 13th October 2020.

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

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

131 Ibid.

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



Court construction and renovation

Regarding court construction, in October 2021, construction of court buildings in Uvinza, Buhigwe, and Kakonko Districts in Kigoma Region commenced, expected to be completed by 30th April 2022.¹³³ The new courts shall reduce the challenge faced by residents of the districts, who have to travel long distances to access court services in Kasulu, Kigoma, and Kibondo Districts.¹³⁴



Picture 6: Principal Judge of the High Court of Tanzania – Kigoma Zone, Judge Lameck Mlacha (in suit) inspecting ongoing construction of court buildings in Kigoma

Picture credit: Judiciary of Tanzania

Appointment of judges

In May 2021, it was reported that 21 High Court Judges and 7 Justices of Appeal were appointed and sworn in by H.E. President Samia Suluhu Hassan, taking the total number of Judges to 91 and Justices of Appeal to 24.¹³⁵ According to the Chief Justice, Prof. Ibrahim Juma, the increase in the number of Judges will enable reduction of cases assigned to each Judge from 342 to 257 per year.

¹³³ Festo Sanga “JAJI MLACHA AFANYA UKAGUZI MIRADI YA UJENZI WA MAHAKAMA KIGOMA” Judiciary of Tanzania, 7 February 2022, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=796>, accessed 10 February 2022.

¹³⁴ Ibid.

¹³⁵ LHRC Media Survey 2021; See also Judiciary of Tanzania, RAIS SAMIA SULUHU HASSAN AFANYA UTEUZI WA MAJAJI WAPYA WA MAHAKAMA YA TANZANIA, 12 May 2021, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=410>.



Establishment of integrated justice centres

Establishment of integrated justice centres is one of the key measures taken by the Judiciary to enhance access to justice in Tanzania. Currently, there are a total of six centres, established in five regions of Tanzania Mainland, namely: Dar es Salaam, Dodoma, Arusha, Morogoro, and Mwanza. In Dar es Salaam, there are two such centres.

Mobile courts

In July 2021, it was reported that the mobile court had heard and concluded 1,208 cases and provided mobile legal services to 13,668 people since it was established. According to the mobile court coordinator, Moses Ndelwa, those cases were heard and concluded in the period of July 2019 to May 2021 in Mwanza and Dar es Salaam Regions, and the Judiciary seeks to expand its mobile court services to other regions. The mobile court cases are expected to be concluded within a 30-day period. In August 2021, H.E President Samila Suluhu Hassan called for the mobile courts to be introduced in other regions, following successful pilot in Dar es Salaam in order to expedite legal services.¹³⁶

In the human rights survey conducted by LHRC in 20 regions of Tanzania Mainland, community members who participated in the survey were asked whether they had seen or heard about mobile courts. A quarter of the respondents (25%) said they had seen or heard about the mobile courts, majority of them (60%) in Dar es Salaam Region.

¹³⁶ Ibid.



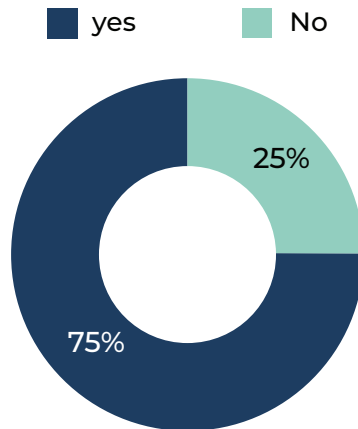


Figure 14: %Responses on whether respondents had seen or heard about mobile courts (N=1,089)

Source: Field Data, 2021

Mixed views on mobile courts

When asked about mobile courts during key informant interviews, lawyers and magistrates who participated in the human rights survey across 20 regions of Tanzania Mainland had mixed views on the issue of mobile courts vis-à-vis access to justice. Majority of them supported the idea of mobile courts and called for expansion of the programme to further enhance access to justice, noting that the courts have the potential to bring legal services closer to the people. Other indicated that the Government should invest more on court buildings rather than spending too much on mobile courts.

“I think these courts (mobile courts) have the potential reach people in remote areas and have definitely helped to bring justice closer to the people by ensuring quick resolution of disputes, and save time.”

Resident Magistrate, Mwanza

“The mobile court system is good as it enables reaching of more people with judicial services. What needs to be done is to ensure all needed resources, including human and financial resources, are available to ensure smooth running of the courts.”

Lawyer, Kagera



“In my opinion, these courts should be abolished, and funds relocated to construct and strengthen primary courts.”

Advocate, Mwanza

Laws and judgements in Swahili

In February 2021, the Minister of Lands, Housing, and Human Settlements Development, Hon. William Lukuvi, directed the chairpersons of District Land and Housing Tribunals to prepare their judgements in Swahili, as directed by President John Magufuli.¹³⁷

In February 2021, the Parliament of Tanzania passed a bill for amendment of laws to introduce Swahili as the official language of the court and laws.¹³⁸ In April 2021, the President assented to the amendments made in the Interpretation of Laws Act (CAP 1).¹³⁹ Section 84 of the Act is amended to state that “The language of the laws of the United Republic shall be Kiswahili” and that “Laws of the United Republic that are currently in the English language shall be translated into Kiswahili.”¹⁴⁰ Additionally, the law now provides that where circumstances require, laws enacted in Kiswahili may be translated into English.¹⁴¹ Where a written law is translated and then there is a conflict or doubt as to the meaning of any word or expression, the law requires the language of the enacting version to take precedence.¹⁴²

Mixed views on translating laws in Swahili: Human Rights Survey 2021

Lawyers and judicial officers who participated in the survey had different views on the Government’s decision to make the Swahili language the language of laws and plan of translating existing laws. Those who are in favour or partly in favour of the decision argue that the Swahili Language does not have enough vocabularies to accommodate the provisions in the laws, noting that it will be a big challenge to get the Swahili words for some of the legal terms, some of which are in Latin. They also noted that the lawyers and other legal practitioners will find it more difficult to understand the Swahili terms.

¹³⁷ Ibid.

¹³⁸ LHRC Media Survey 2021.

¹³⁹ Made through the Written Laws (Miscellaneous Amendments) Act, 2021, published through Government Gazette on 30th April 2021.

¹⁴⁰ Section 4(a) & (b) of Written Laws (Miscellaneous Amendments) Act, 2021.

¹⁴¹ Ibid, Section 4(b).

¹⁴² Ibid, Section 4(d).



“The Swahili Language does not have enough vocabularies to accommodate legal terms like the English Language, which we have inherited from the colonialists. Using Swahili Language shall create difficulties in interpretation and implementation of laws. Secondly, the legal profession is a profession like any other, so this move shall undermine the profession.”

Advocate, Mwanza

“In my opinion, we should not change anything. Let’s continue using English as the Swahili Language has difficult vocabularies. It will be very difficult to get a proper Swahili word for every legal term.”

Lawyer, Mara

“Translating the law is not a solution to the existing challenges, because even at the moment we use Swahili Language during court proceedings...the solution would be to provide legal education from primary school...the same should be done for human rights education, so that community members are aware and can demand their own rights...translating the laws into Swahili is one thing and understanding them is another.”

Lawyer, Dar es Salaam

Those who are in favour of the Government’s decision argued that the move shall help to enhance access to justice as people will be able to easily understand the laws. They added that when people have a better understanding of laws it will be easier for them to effectively participate in legal processes and proceedings in courts of law.

“It is a positive step on the part of the Government, which shall enable many people to understand laws and how they are applied.”

Resident Magistrate, Mwanza

“Translation of laws into Swahili Language shall definitely enhance access to justice as approximately 75% of Tanzanians only understand the language.”

Judicial officer, Mwanza

LHRC’s View & Call: Despite the good work done by the Government and Judiciary to address challenges that hinder adequate access to justice, several barriers to access to justice persist, as discussed further below. Coordinated efforts between the Executive, Judiciary, and Parliament are needed to effectively address the barriers and further enhance access to justice in Tanzania.



President Samia's record appointment of judges and repeated calls for reforms in the criminal justice system

In May 2021, H.E. President Samia Suluhu Hassan made record by appointing 28 new judges, including 7 Justices of Appeal. Shortage of judges has been highlighted as a key access to justice issue by the Chief Justice, LHRC, and other human rights stakeholders in recent years, so this is a welcome development and definitely a step in the right direction in terms of improving access to justice.

President Samia, like her predecessor, has also made repeated calls for reforms in the criminal justice system, including speeding up criminal investigations to ensure timely delivery of justice. She has also stated that prolonged remanding of accused persons constitutes violation of their fundamental human rights.

LHRC Recognition



2.4.2.2. Barriers of access to justice

Despite efforts to enhance access to justice, several barriers persist. In the Human Rights Survey 2021, respondents were asked about common barriers of access to justice in their community. Corruption was mentioned as the biggest barrier, with 79%, followed by duration or length of proceedings/cases in courts of law (48%), low awareness of laws among citizens (47%), and legal representation costs (37%). Lengthy legal procedures (cumbersome procedures) and language of the court/law (English) were also mentioned as barriers by a quarter of the respondents, as indicated in figure 15 below.



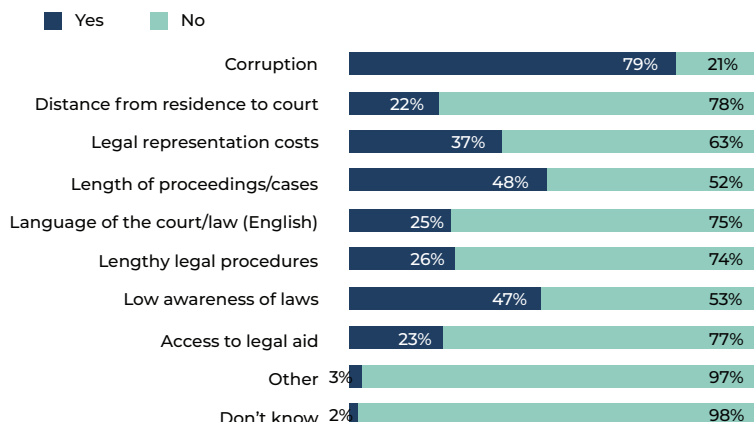


Figure 15: %Responses on barriers to access to justice (N=1,092)

Source: Field Data, 2021

Shortage of judicial staff

In the human rights survey conducted across 20 regions of Tanzania Mainland, nearly two thirds of the respondents (62%) said shortage of judicial staff is a problem, with majority among them (35%) saying it is a moderate problem, while 27% said it is a serious problem. Only 29% and 9% of the respondents said shortage of judicial staff is a minor problem and not at all a problem respectively.

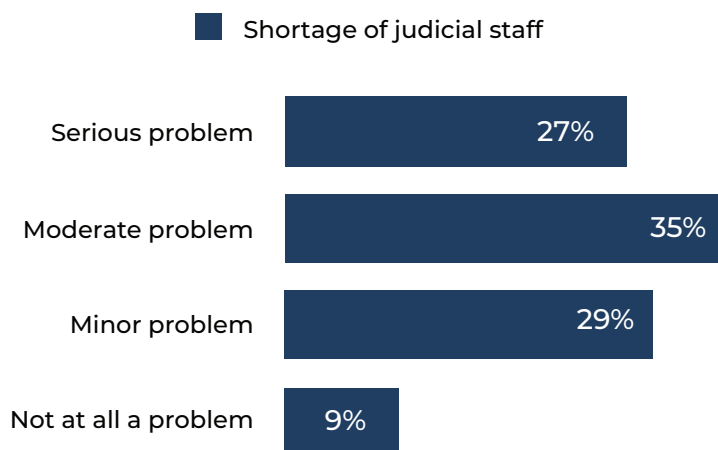


Figure 16: %Responses on extent of the problem of shortage of judicial staff (N=1,089)

Source: Field Data, 2021



In February 2021, the Chief Justice of Tanzania, Prof. Ibrahim Juma, revealed that the Judiciary was faced with a shortage of 4,728 workers (46%), which has affected timely administration of justice. Shortage of judicial staff has created a big burden for the available staff, contributing to court delays.

“Shortage of judicial staff is one of the key barriers to access to justice. There is need to increase more judicial workers.”

Judicial officer, Mwanza

Delays in issuance of copies of judgements

In recent years, stakeholders have expressed concern over delays in issuance of judgment copies. For instance, in 2020, the Head of the High Court in Arusha, Judge Moses Mzuna, noted during the commemoration of the Law Day that there had been many complaints from citizens about delays in receiving copies of judgements from courts of law.¹⁴³ Despite the existence of this challenge, the Judiciary has played its role to ensure copies of judgements are provided, through development and adoption of guidelines for sentencing and provision of copies of judgements. In 2021, survey participants were asked about this issue and the extent to which it is a problem. Majority of the respondents, nearly half of them (43%), said it is a moderate problem, followed by nearly a third (29%), who said it is only a minor problem, and 21% who said it is a serious problem. Only 7% of the respondents said delays in issuing judgment copies is not at all a problem in their community.

143 LHRC Media Survey 2020.



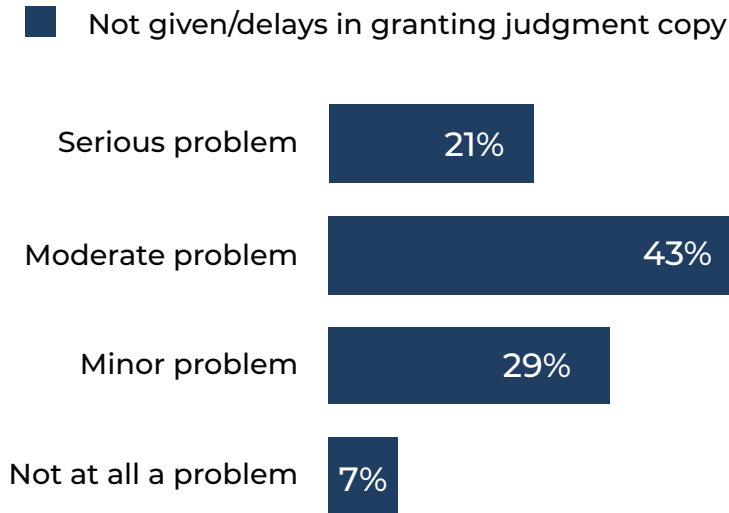


Figure 17: %Responses on extent to which delays in granting judgment copies is a problem (N=1,089)

Source: Field Data, 2021

Limited access to legal aid, especially for women in rural areas, and inmates in prisons

Right to legal aid is implied under the right to equality before the law¹⁴⁴ and is essential in enhancing access to justice. In Tanzania, legal aid is provided by government and non-government stakeholders, including CSOs. Despite the good work done by stakeholders, including paralegal centres, access to legal aid remains limited in some rural areas (remote) and in correctional facilities (prisons). Women are particularly more affected in terms of limited access to legal aid in rural areas because of low awareness about legal aid and patriarchal gender norms and values.¹⁴⁵ Gender balance of legal aid providers also presents a challenge for women in some communities in terms of readiness to confide in male legal aid provider and providing him with sensitive and intimate information.¹⁴⁶ Nevertheless, inmates in correctional facilities are affected by the bureaucratic procedures that legal aid providers face when seeking permits to enter prisons for legal aid provision.¹⁴⁷ This is associated with the colonial nature of prisons.

¹⁴⁴ See for instance the Principles and Guidelines to a Fair Trial and Legal Assistance in Africa, the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, and the Kampala Declaration on Community Paralegals.

¹⁴⁵ Interview with an advocate in Tanga Region in August 2021.

¹⁴⁶ Ibid.

¹⁴⁷ LHRC Human Rights Survey 2021: Dar es Salaam Field Report.



Limited access to legal aid is also contributed by shortage of paralegals in some parts of Tanzania Mainland. For instance, in **Kagera** Region, it was found in the human rights survey that shortage of paralegals stands at 26.7%.¹⁴⁸ In **Pwani** Region, shortage of paralegals was also said to be big problem, especially in Kisarawe and Kibaha Districts.¹⁴⁹

Paralegals across Tanzania Mainland are also faced with various challenges which hinder them from effectively providing legal aid services and reaching some of the (remote) areas. These challenges include budgetary constraints, lack of regular trainings, shortage of working tools/equipment, limited cooperation from local authorities, and poor working environment. The paralegal organizations that were visited by LHRC in 2021 called upon stakeholders, including LHRC, to ensure they regularly provide refresher trainings to paralegals and land tribunal members.

Concentration of legal aid providers (paralegals) in urban and semi-urban areas, presents a challenge for people residing rural areas to access legal aid, while mobile legal aid is an expensive undertaking. In **Iringa**, the survey found that most paralegal organizations are located in urban and semi-urban areas, making it difficult for rural community members to access legal aid services.¹⁵⁰ The few paralegals working in the interior parts of the region are faced with financial difficulties that hinder them from effectively providing legal aid.¹⁵¹

Corruption

As stated above, corruption was identified as the biggest barrier to access to justice by the majority of respondents in the human rights survey (79%). Interviewed respondents indicated that some people are afraid of pursuing justice because of corruption and called for the Government to strengthen anti-corruption efforts in the justice system.

148 LHRC Human Rights Survey 2021: Kagera Field Report.

149 LHRC Human Rights Survey 2021: Pwani Field Report.

150 LHRC Human Rights Survey 2021: Iringa Field Report.

151 Ibid.



“Corruption is a big obstacle for access to justice. Some people are afraid of seeking justice because of corruption.”

Community member, Dar es Salaam

Some of the interviewed respondents particularly singled out Primary Courts and District Courts as corrupt. This claim was especially made by some of the interviewed respondents in Geita, Morogoro, Kigoma, and Mbeya Regions.

“Corruption is very prevalent in rural areas...for instance, one may be asked to pay Tshs. 100,000 to file a case...this is especially an issue in primary and district courts.”

CBO officer, Geita

In **Kagera**, paralegals who were interviewed in Kayanga Ward in Karagwe District mentioned that some community members in the ward believe that they cannot get justice without bribing court officials. One of the paralegals said:

“Some community members promote the culture of corruption as they believe that in order to get justice, they must offer bribes.”

Paralegal, Karagwe-Kagera

In **Iringa**, one of the legal practitioners who was interviewed shared a story of a young man in the region who was asked for a Tshs. 1 million bribe by a magistrate to free him from rape charges. When the young man failed to produce the money, he was sentenced to life in prison.¹⁵² In **Morogoro**, corruption in land tribunals was identified as an issue of concern in land cases. 62% of the community members who participated in the survey in the region mentioned corruption as a big barrier to access to justice.

“The main challenge faced by the land tribunals is corruption, as some of the tribunal members solicit bribe to change outcomes of cases, causing miscarriage.”

Paralegal, Gairo-Morogoro

Some of the interviewed respondents, especially lawyers, said that corruption in the lower courts, Primary Courts and Districts, is contributed by poor working environment for magistrates, including

152 LHRC Human Rights Survey 2021: Iringa Field Report.



low wages and non-payment of allowance.¹⁵³ They mentioned that while judges are well paid and have many benefits, the situation is quite different for magistrates. Corruption within the justice system has also led to directives from senior judicial or law enforcement officials to magistrates, especially at primary level, to rule differently in cases or face relocation to areas with harsh/difficult working condition.

In 2021, LHRC also documented at least three incidents of corruption in the justice sector, reported in Arusha, Manyara, and Tabora Regions. In April 2021, seven police officers in Arumeru District, **Arusha** Region, were arrested for soliciting a bribe of Tshs. 100 million. The police officers reportedly colluded with three civilians to solicit the money from a businessman in the district, the whole plot being orchestrated by one of the civilians, who was the former employee of the businessman. They threatened charge the businessman with illegal possession of ivory if he did not comply. In the same month, a state attorney in **Manyara** Region was arrested by the PCCB in the region for soliciting and receiving a bribe of Tshs. 5 million. He was arrested on 23rd April 2021. However, he was later found not guilty and acquitted.

In **Tabora**, it was also reported in April 2021 that PCCB in the region arraigned a court clerk from Sikonge Primary Court, Mariam Sizya, on charges of soliciting and receiving a bribe of Tshs. 100,000 from a civilian who had a case at the court.

Legal representation costs

Majority of the interviewed respondents in the human rights survey said they find it difficult to seek justice when their rights have been violated because of the high costs of legal representation. Some of them mentioned that the high costs demanded by lawyers, coupled with the stress of walking around the court corridors for long periods of time make them lose hope that justice will ever be done or done so timely.¹⁵⁴

“Many people are reluctant to pursue justice because of high costs of legal representation. Most people cannot afford the costs because of poverty.”
Community member, Dar es Salaam

¹⁵³ Interviews with lawyers in Iringa and Tanga Regions.

¹⁵⁴ Interview with respondents in Dar es Salaam and Arusha.



“Following-up cases in court is expensive, that’s why sometimes we don’t file cases, considering our low income. It is also expensive to hire lawyers.”

Community member, Mtwara

Distance of the court from ordinary home

Despite government action to improve access to justice, residents in some parts of the country, especially in rural areas, find it difficult to reach judicial authorities because of the distance. For instance, this concern was raised in the human rights survey in Geita, particularly in Mbogwe, Nyang’wale, and Katoro Districts, which lack district courts.

“The Bukombe District Court is serving two districts of Bukombe and Mbogwe. Residents of Mbogwe find it difficult to access court services because there are 40 kilometres between them and the court.”

Advocate, Bukombe, Geita

In **Kagera**, it was revealed during a key informant interview in Karagwe District that, while the district has 23 wards, there are only two courts – the District Court and District Land and Housing Tribunal. Citizens in some areas, such as Nyabugila Village, therefore, have to walk for up to 4 kilometres to access the services of the tribunal in Ndama Ward. In **Morogoro**, a Primary Court magistrate and a social welfare officer revealed during interviews that there is no district court in Gairo, thus residents of the district must go to Kilosa District Court.

“We don’t have a district court in Gairo, we use the Kilosa District Court, which is too far, something which sometimes cause witnesses to give up on attending court sessions.”

Magistrate, Morogoro

In **Singida** and **Tabora** distance to the court was also said to be one of the barriers to access to **justice**. Interviewed community members said that some of the villagers spend up to Tshs.20,000 to reach the court.¹⁵⁵ This discourages them, especially women, from continuing with a case or regularly attending hearings.¹⁵⁶

Lack of qualified officials in tribunals

¹⁵⁵ LHRC Human Rights Survey 2021: Singida & Tabora Field Report.

¹⁵⁶ Ibid.



In **Kagera**, the survey found that there is a challenge of lack of qualified personnel to run the land tribunals. For instance, in Karagwe DC, a lawyer revealed during an interview that tribunal officials lack the necessary legal education background to effectively administer justice, largely contributed to the fact that the only qualification required is knowing how to read and write and lawyers are not allowed in tribunals. A paralegal operating in Ndama Ward in the district also mentioned that most of the tribunal members have never attended training or refresher courses in the past five years.¹⁵⁷

In **Morogoro**, the survey also found that many tribunal members lack adequate awareness of laws and regulations.¹⁵⁸ Fame and influence in the community is the key criterion for one to be elected member, leaving them to rely on the traditions to decide cases, instead of laws and regulations. They tribunals were also accused of being corrupt.¹⁵⁹

Cases taking too long in court

As stated above, length of cases or proceedings in court was mentioned as a big challenge by nearly a half of the respondents in the human rights survey (48%). This issue was also raised during interviews with some community members, lawyers, and officials. For instance, in **Geita**, an official of a CBO mentioned that most cases take too long to conclude, sometimes up to three years. In **Kagera**, one of the interviewed community members said:

“People come from distant places to attend court sessions but when they get there, they are told their cases have been adjourned. This way they waste resources, including time and money.”

Community member, Kagera

In May 2021, the Chief Justice of Tanzania, Prof. Ibrahim Juma, acknowledged that there have been delays in determination of cases, noting that at the Kisutu Resident Magistrate alone there were 310 cases which had exceeded their time limit, causing case backlog.¹⁶⁰ He called upon the magistrates, DPP, and PCCB to work together to address the situation.

¹⁵⁷ LHRC Human Rights Survey 2021: Kagera Field Report.

¹⁵⁸ LHRC Human Rights Survey 2021: Morogoro Field Report.

¹⁵⁹ Ibid.

¹⁶⁰ LHRC Media Survey 2021.



Delays in issuance of copies of judgements

In the human rights survey, interviewed advocates, judicial officers, and paralegals also expressed concern with the delaying in granting copies of judgements. For instance, in Mara an advocate claimed that delay in granting a copy of the judgement has left had client languishing in jail.

Explaining one of the reasons for delays in granting copies of judgements, a magistrate in **Morogoro** mentioned shortage of judicial staff as a contributing factor.¹⁶¹ She noted that because of the shortage, the few available judicial officers struggle to carry the burden of at least three required judicial officers.

Fear of justice mechanisms, especially police, due to unfriendliness to victims

In the human rights survey, an interview with a community development officer (CDO) in Singida revealed that fear of justice actors is one of the barriers to access to justice in the region. He mentioned that justice actors, especially police officers, are sometimes unfriendly to victims of human rights violations.¹⁶² LHRC has also observed this as a challenge, especially for victims of violence against women and children. For instance, in recent years this issue has been raised as a concern for victims of rape, perpetrated by a group of young men called *Teleza*, in Kigoma Region.

During the interview, the CDO in **Singida** also mentioned that justice should be a cross-cutting issue, such that each service provider should ensure that their output is justice for the citizens.¹⁶³ He called upon the Ministry of Constitutional and Legal Affairs (MOCLA) to develop a framework for harmonization of all justice actors and a national strategy on access to justice.¹⁶⁴ LHRC understands that the process is underway to implement this recommendation, with MoCLA leading the efforts. What remains is final approval by the Government.

2.4.3. Lengthy detention of remandees and other Challenges in Tanzania's Criminal Justice System

2.4.3.1. Overview

In recent years, there have been calls by various government

¹⁶¹ LHRC Human Rights Survey 2021: Morogoro Field Report.

¹⁶²

¹⁶³ LHRC Human Rights Survey 2021: Singida Field Report.

¹⁶⁴ Ibid.



and non-government actors to address several challenges in the administration of justice, especially criminal justice.¹⁶⁵ Among the government actors who have expressed their concerns in recent years include senior figures in the government such as the President and ministers. For instance, regarding the challenge of delays in crime investigations, in February 2020, the late President John Magufuli expressed concern over the slow pace of investigation that was causing unnecessary suffering to remandees and delays of cases in courts, thereby adversely affecting persons who are otherwise innocent.¹⁶⁶ He noted that delays not only frustrate court operations, but also result in unnecessary congestions in remand jails that could easily be avoided.¹⁶⁷ During the commemoration of the Law Day in February 2020, the Chief Justice, Hon. Prof. Ibrahim Juma, revealed that proceedings of many cases of corruption and economic crimes have stalled due to delays in completing investigations.¹⁶⁸

In 2021, LHRC further looked into this and other challenges in administration of criminal justice in Tanzania Mainland and made the findings below, particularly with regards to lengthy detention of remandees in prisons; investigations and adjournment of cases; prison overcrowding; plea bargaining; prompt presentation of accused person before a court of law; non-bailable offences; and impact of lengthy detention of remandees on human rights.

2.4.3.2. Lengthy detention of remandees in prisons

In 2021, lengthy detention of remandees in prisons continued to be a subject of public debate and discussion. In August, H.E. President Samia Suluhu Hassan directed the Tanzania Police Force to address the challenge of prolonged remanding of persons accused or suspected of committing a crime.¹⁶⁹ She noted during a meeting with senior police officers that prolonged remanding of accused persons is not only a burden to the government but also amounts to the violation of basic rights and freedoms. She called upon the Police Force to sit down with other stakeholders to examine the possibility of amending relevant

¹⁶⁵ Administration of criminal justice refers to the performance of functions such as investigation, apprehension, detention, prosecution, adjudication of accused persons or criminal offenders.

¹⁶⁶ LHRC Media Survey 2020.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ See "Samia criticizes prolonged remanding of alleged criminals" The Chanzo Initiative, 25 August 2021, at <https://thechanzo.com/2021/08/25/samia-criticizes-prolonged-remanding-of-alleged-criminals/>, accessed 20th January 2022.



laws to address this problem.¹⁷⁰ Various human rights and justice stakeholders and politicians, including the former Executive Director of UN-HABITAT, minister and MP, Prof. Anna Tibaijuka, congratulate the President for speaking out against this challenge and calling for action to be taken to address it.

In the Human Rights Survey 2021, majority of interviewed respondents, especially lawyers and NGO officials, pointed out that lengthy pre-trial detention of remandees is a serious challenge in Tanzania, contributing to prison overcrowding and violation of fundamental rights of accused persons. They emphasized on the need to complete investigations before taking accused persons to court. In **Morogoro**, one of the advocates had this to say regarding the pre-trial detention:

“Most prisons are full, not because there are many prisoners but because there are many remandees who are mixed with and treated as prisoners. Most of them have been detained to pave way for investigations, while investigations should be completed first before they are detained. There are also petty crimes for which non-custodial sentences would be best suited, but petty offenders are also languishing in jail. This has largely contributed to prison overcrowding.”

Advocate, Morogoro

In 2021, LHRC documented at least 11 cases of people who are in prison for 6 to 12 years awaiting hearing before the High Court of Tanzania, Dar Es Salaam.¹⁷¹ All of the remandees are detained at Segerea Prison in Dar es Salaam and their cases are summarized in table 8 below.

¹⁷⁰ Ibid.

¹⁷¹ LHRC Human Rights Monitoring 2021.



Table 8: Some of the victims of lengthy pre-trial detention at Segerea Prison in Dar es Salaam

Name	Case No. [District Court]	Hearing [High Court]	Years in Prison	Re-arrests
Juma Ally Kalowe	PI 16/2016	CS 21/2019	6	
Sylvester John Mayugi	PI 15/2016	CS 112/2019	6	
Nassoro Shaban Ahmed	PI 30/2016	CS 103/2019	6	
Ramadhan Ramadhan	PI 32/2016	CS 72/2019	6	
Idd Mussa & 2 others	PI 24/2015	CS 93, 2020	7	
Deus Josian Kilala & 4 others	PI 20/2014	CS 109/2019	8	
Peter Joseph Mushi & 2 others	PI 16/2014 PI 6/2019	CS 110/2016 CS 248/2019	8	Arrested in 2014, released in 2019 then got rearrested
Renad Mathias Mampunda & 2 Others	PI 19/2013 PI 26/2018	CS 92/2014 CS 62/2019	9	Arrested in 2013, released in 2018 then re-arrested
Fika Edwin Kabuje & 2 others	PI 8/2011 PI 6/2018	CS 53/2013 CS 125/2019	11	Arrested in 2011, released in 2018 then re-arrested
Jackson Zebedayo Wambura & 2 others	PI 6/2010	CS/31/2014	12	
Jumanne Adiadi Omary & 6 others	PI 24/2010 PI 31/2017	CS 87/2014 CS 7/2017	12	Arrested in 2010, released in 2017 then re-arrested.

Source: LHRC Human Rights Monitoring 2021


“Sometimes, accused persons, especially those charged with murder and drugs possession, have to wait for up to one year before they get a court hearing before the High Court. There are also remandees who wait for up to three years to get a court hearing. The Judiciary should increase judicial resources, both human and financial, to facilitate court hearings.”

Lawyer, Dar es Salaam







Through social media monitoring, LHRC also monitored and documented additional eight cases/allegations of lengthy pre-trial detention, as highlighted in the comments in table 9 below.



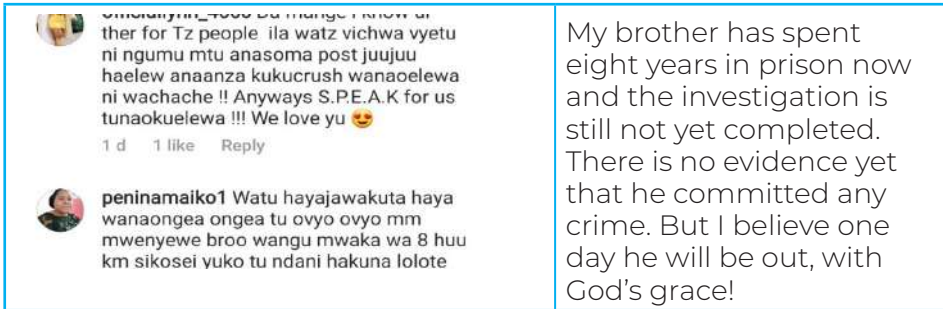
Table 9: Other reported cases of victims of lengthy pre-trial detention

Comment	Translation
<p>hajahukumiwa anasota jela.Hiyo sio haki. Kungekuwa na dhamana Bara kama ilivyo Zanzibar wale Masheikh wa uamsho wasingekaa ndani miaka 8 bila kuhukumiwa na bila kesi kusikilizwa.</p> <p>View all 1,282 comments</p> <p>rosejenne Nina rafiki yangu anaitwa Judith ni mwaka wa Tisa yuko ndani Segerea kesi inasubiri ushahid toka mwaka 2012... huwez kumuelewaaa mange Mpaka yakukute 🙄🙄🙄</p> <p>mohamedasha403 Mi nalia tu kwa kweli Mange leo umenigusa kwa kweli mwanangu yuko ndani leo mwaka wa 8 kesi si kesi uchunguzi gani usio kamilika? Hata angeuwa pia anfejulikana moja. Unovu jamani jamani</p> 	<p>My friend called Judith has spent nine years now in Segerea Prison as investigation is still under way since 2021.</p>
<p>dhamana au la.Hata hii ya Mbowe kama alifanya ugaidi au hakufanya ilibidi hakimu apewe nafasi aamue kama Mbowe apewe dhamana au la wakati kesi ikiendelea. Mbowe atakimbia aende wapi? Lazma hakimu angempa dhamana.Point yangu ni kwamba isiwe tu automatic kwamba kosa la Mbowe halina dhamana.Mtu hajahukumiwa anasota jela.Hiyo sio haki. Kungekuwa na dhamana Bara kama ilivyo Zanzibar wale Masheikh wa uamsho wasingekaa ndani miaka 8 bila kuhukumiwa</p>	<p>My son has spent nearly eight years in prison, and they are telling us they are still investigating. The investigation has taken too long, it's not fair!</p>
<p>mangekimambi_ @almadotwenty We nae, hakimu anaangalia situation akiona huyu ni mtu wa kukimbia then hatoi dhamana au anaweka dhamana kubwa ambayo hawezi kuafford au hata akiweza kuafford hatokimbia ili asipoteze pesa yake aliyoweka dhamana. Nachoongelea mimi hapa si kwamba Tanzania Bara kama</p>	<p>My relative was arrested in February 20217 and has just been released on bail this past week. I would like to congratulate the President (for speaking out against lengthy detention of remandees).</p>



<p> officialhasanimapenzi We aCha tu hii serikali mungu ndio namuachia kaka yangu alikamatwa 2017 yupo magereza ya mtwala na hawajawqhi sema anashitakiwa kea kesi gani toka 2017 mpaka sasa anapandishwa mahakamani kila baada ya wiki mbili na akifika mahakamani inatajwa kesi kisha akipanda kizimbani anapangiwa tarerh bila kutaja kosa Yani inashangaza sana miaka mitatu kwenda wa nne ndugu hatujui kosa la ndugu yetu wanadai wanafanya upelelezi kisha watasema tulienda kea DPP Dodoma alicho tujibu mungu ndio anajua yani hata siku nilisikia yule DPP kafa naweza kwenda toa sadaka KWA watoto yatima kiufupi serikali yetu ni kandamizi sana hajjali maumivu ya familia zinazo teseka KWA ndugu zao kuwekwa ndani KWA bila kuwa na kesi yoyote toka lini kesi upelelezi miaka 4 ila cha ajabu kesi ya hamza upelelezi wiki Moja tu kajulikana kuwa ni gaidi ila kaka yangu upelelezi bado so sad 🥹🥹🥹🥹🥹🥹 @mangekimambi_ @mama_samia @ikulu_mawasiliano @ikulu_mawasiliano @dpp_ppni @owm_tz</p> <p>2 d 1 like Reply</p>	<p>My brother was arrested in 2017 and we still don't know the charges against him. He is taken to court every two weeks only for mention and then a date for the next mention. It is nearly four years now and we still don't know what he did. They claim they are still investigating and when the investigation is complete, they will tell us.</p>
<p> precious_chard Yaniii @mangekimambi_ munguu ndio anajuaa yanii mdg anguu kasingiziwa kesii Na haitoshii wakamnyima dhaman sasa anasota tuuh mahabusu kijana wa miaka 18 Na watuhumiwa wanajulikana wapo njee wanakula maisha wana wangamiza vijana wasiohusikaa ni hudhunii kiukweli kumchukua mtu kama shahidii baadae kumbambikiza kesii Tanzania 🥹🥹 mapolice wanadhambii mnoo</p>	<p>Oly God knows! My sibling is only 18 years old and is languishing in jail for a crime he did not commit, while the real culprits are enjoying life as free citizens.</p>
<p> eliviamushongi 🥹🥹🥹🥹</p> <p>2 d Reply</p> <p> corleone_cjs Ukweli Mtupu🥹</p> <p>2 d Reply</p>	<p>Our relative has been in remand prison for six years now.</p>
<p> thner for iz people Iia watz vicnwa vyetu ni ngumu mtu anasoma post juujuu haelew anaanza kukucrush wanaoelewa ni wachache !! Anyways S.P.E.A.K for us tunaokuelewa !!! We love you 🥹</p> <p>1 d 1 like Reply</p> <p> peninamaiko1 Watu hayajawakuta haya wanaongea ongea tu ovyo ovyo mm mwenyewe broo wangu mwaka wa 8 huu</p>	<p>Our family was disrupted and went through a very difficult path because of a non-bailable offence he was charged with. He spent three years in prison before he was released.</p>





Source: A post by a prominent U.S.-based Tanzanian social media activist, Munge Kimambi and comments by followers in 2021

Update.
 Kabla hamjaanza ooh unatetea mafisadi naomba mnielewe point yangu. Kama Rugemalila aliiba au hakuiba hiyo mimi sijui, yawezekana ni kweli alihujumu uchumi. Ila point yangu ni kwamba hata kama alihujumu uchumi ilibidi apewe dhamana wakati kesi yake inasikilizwa. It doesn't matter kama kweli mtu katenda kosa au hajatenda cha msingi ni makosa yote yawe na dhamana alafu hakimu ndo aamue kama mtu anastahili dhamana au la. Hata hii ya Mbowe kama alifanya ugaidi au hakufanya ilibidi hakimu apewe nafasi aamue kama Mbowe apewe dhamana au la wakati kesi ikiendelea. Mbowe atakimbia aende wapi? Lazma hakimu angempa dhamana. Point yangu ni kwamba isiwe tu automatic kwamba kosa la Mbowe halina dhamana. Mtu hajahukumiwa anasota jela. Hiyo sio haki. Kungekuwa na dhamana Bara kama iliyo Zanzibar wala Mochaikh

Picture 8: A post by Munge Kimambi which triggered an online discussion on right to bail and pretrial detention

In December 2021, Tanzania Prison Services (TPS) Commissioner General, Suleiman Mzee, pointed out to the Minister of Home Affairs, Hon. George Simbachawene, several challenges it faces, including prison overcrowding caused by a large number of remandees. He also mentioned that most remandees stay too long in prison because their cases are not heard¹⁷².

¹⁷² LHRC Media Survey 2021.



LHRC's View: According to the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Lengthy detention of remandees therefore constitutes violation of their right to equality before the law, which is constitutionally guaranteed and protected under regional and international human rights instruments, as well as the principle of presumption of innocence. Being detained for too long 'pending completion of investigation' is a violation of the right to presumption of innocence and right to a fair trial. It also amounts to punishment without trial, contrary to international human rights standards. A deeper assessment of pretrial detention in Tanzania vis-à-vis international human rights standards is made below.

LHRC's Call: The Office of the DPP to perform an oversight role of checking the quality and extent of evidence before admitting cases to court. This will reduce the backlog of cases which stay long in courts while the same authority, in collaboration of the DCI, working on completion of investigation. The Ministry of Constitutional and Legal Affairs and the Judiciary should take measures to address this problem, including having net controls against abuse of investigation processes, such as requiring completion of investigation before a case is brought to court and demanding increased pace of investigation by setting minimum time within which a case has to be heard from the date when it was filed.

2.4.3.3. International human rights standards and pretrial detention

In line with international human rights standards, pretrial detention is only legitimate and justified where there is a reasonable suspicion that a person has committed the crime and such detention is **necessary** and **proportionate** to prevent such person from absconding, committing another crime/offence, or interfering with the course of justice¹⁷³.

¹⁷³ Penal Reform International (PRI) & Association for the Prevention of Torture (APT), Pre-trial detention: Factsheet, Detention Monitoring Tool, 2nd ed. 2015.



The principles of **legality**, **necessity**, and **proportionality** are therefore key considerations in this regard, and when not fully complied with detention becomes excessive.

Long delays associated with criminal trials in Tanzania constitute violations of Articles 9 (1), (3) & (4) and 14(3)(c) of ICCPR. They also violate Articles 13(6)(a) & (b) 15(1) of the Constitution of Tanzania of 1977.

Given its severe and often irreversible negative impact, in line with international human rights law,¹⁷⁴ pre-trial detention is expected to be **the exception** and **not the rule (last resort measure)**.¹⁷⁵

This resonates with the International Covenant on Civil and Political Rights (ICCPR), which states that “**..It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.**”¹⁷⁶ ICCPR also provides that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”¹⁷⁷ It further guarantees the right to compensation for a victim of unlawful arrest or detention.¹⁷⁸

In the absence of unusual circumstances trial proceedings of more than a few years constitute a violation of Articles 9(3) and 14(3)(c) and lack of adequate budgetary appropriations for the administration of criminal justice does not justify unreasonable delays in the adjudication of criminal cases.

F UN Human Rights Committee

Other less intrusive and alternative measures such as bail, seizure of travel documents, periodic reporting to law enforcement authorities, and condition to appear before the court when

174 Key references in this regard are: International Covenant on Civil and Political Rights (ICCPR), 1966; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988; UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012; UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990; Revised UN Standard Minimum Rules for the Treatment of Prisoners (1955); UN Basic Principles on the Role of Lawyers, 1990; UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2010; UN International Convention for the Protection of All Persons from Enforced Disappearance, 2007; and Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines), adopted by the African Commission on Human and Peoples’ Rights in May 2014.

175 See Penal Reform International, Pre-trial Detention: Key Facts, at <https://www.penalreform.org/issues/pre-trial-justice/key-facts/>.

176 Article 9(3) of ICCPR, 1966.

177 Ibid, Article 9(4).

178 Ibid, Article 9(5).



required, are encouraged.¹⁷⁹ More importantly, **pre-trial detention should only be applied for the shortest possible time and suspects are entitled to a trial ‘within a reasonable time’¹⁸⁰.**

In the 1988 case of *Fillastre, Bizouarn v. Bolivia*, the Human Rights Committee noted that what constitutes “reasonable time” is a matter of assessment for each particular case.¹⁸¹

In that particular case, the Committee found four years before trial against a detained person to constitute prolonged detention and not a trial ‘within a reasonable time.’ The Committee then concluded that there had been a violation of Article 9(3) of ICCPR.¹⁸²

It further stated that **considerations of evidence-gathering do not justify such prolonged detention and lack of adequate budgetary appropriations for the administration of criminal justice alluded to by the State party does not justify unreasonable delays in the adjudication of criminal cases.**¹⁸³

In Africa, the African Commission on Human and Peoples’ Rights has also weighed in on the issue of what constituted prolonged detention.¹⁸⁴

For instance, in the case of *Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa), Amnesty International (on behalf of Orton and Vera Chirwa) / Malawi*, the court concluded that the 12-year detention of Aleke Banda, a prominent political figure, constituted violation of Article 6 of the Banjul Charter (right to liberty and personal security).¹⁸⁵ In *Alhassan Abubakar v. Ghana, Communication 103/93*, the Commission found detention without charge or trial for 7 years of Alhassan Abubakar, a Ghanaian citizen, constituted violation of Article 6 of the Banjul Charter.¹⁸⁶

LHRC’s View: Based on this brief assessment of international human rights standards applicable to pretrial detention and interpreted by human rights mechanisms, it is evident that the practice of pretrial

179 Penal Reform International (PRI) & Association for the Prevention of Torture (APT), Pre-trial detention: Factsheet, Detention Monitoring Tool, 2nd ed. 2015.

180 Penal Reform International, Pre-trial Detention: Key Facts (supra).

181 See *Fillastre, Bizouarn v. Bolivia*, Communication No. 336/1988, U.N. Doc. CCPR/C/43/D/336/1988 at 96 (1991), at <http://hrlibrary.umn.edu/undocs/html/dec336.htm>.

182 Ibid.

183 Ibid.

184 See Icelandic Human Rights Centre, The Right to Liberty, at <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-liberty>.

185 See *Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi*, African Commission on Human and Peoples’ Rights, Comm. Nos. 64/92, 68/92, and 78/92 (1995) at <http://hrlibrary.umn.edu/africa/comcases/64-92b.html>.

186 See *Alhassan Abubakar v. Ghana*, Communication 103/93, at file:///C:/Users/fwazambi/Downloads/achpr20_103_93_eng.pdf.



detention in Tanzania is largely illegitimate. Putting people in detention facilities/prisons for up to twelve years without conviction does not resonate with the requirement of a suspect being tried 'within a reasonable time' and therefore, as President Samia has pointed out, prolonged remanding of accused persons in Tanzania amounts to the violation of their basic rights and freedoms.

LHRC's Call: The justice machinery in Tanzania and the Ministry of Constitutional and Legal Affairs to heed President Samia's call and calls repeatedly made by human rights and criminal justice stakeholders over the years to make the relevant reforms in the criminal justice system to eliminate excessive pretrial detention and reduce the use of pretrial detention. The President has called upon the law enforcement authorities to sit down with other stakeholders to examine the possibility of amending relevant laws to address this problem. As a human rights and criminal justice stakeholder, LHRC is ready to participate in this process.

2.4.3.4. Impact of excessive pre-trial detention

Excessive pre-trial detention has a negative impact on the fundamental human rights of an accused person. These rights include the right to a fair trial and the right to liberty and personal security, both of which are guaranteed under international and regional human rights conventions and enshrined in the Constitution of the United Republic of Tanzania, 1977.

Studies have shown that pre-trial detention undermines the chance of a fair trial and the presumption of innocence.¹⁸⁷ Additionally, the longer an accused person stays in prison the greater the risk of coercion through torture or ill-treatment and poor legal representation, especially where the accused person is poor.¹⁸⁸

Such person is therefore under pressure to plead guilty just so the case be brought to a conclusion, occasioning in miscarriage of justice. It should also be noted that for a developing country like Tanzania, the advocate-population ratio is low.

¹⁸⁷ *bid*; Catherine Heard and Helen Fair, PRE-TRIAL DETENTION AND ITS OVER-USE EVIDENCE FROM TEN COUNTRIES, Institute for Crime & Justice Policy Research, NOVEMBER 2019 at https://www.prisonstudies.org/sites/default/files/resources/downloads/pre-trial_detention_final.pdf.

¹⁸⁸ UN Subcommittee on Prevention of Torture (SPT), Report on Paraguay, 7 June 2010, CAT/OP/PRY/1, para 64, cited in Penal Reform International (PRI) & Association for the Prevention of Torture (APT), Pre-trial detention: Factsheet, Detention Monitoring Tool, 2nd ed. 2015.



In July 2020, the number of advocates in Tanzania reached 9,962 after 601 new advocates were sworn in.¹⁸⁹

By September 2021, it was reported that there at least 10,436 registered under the Tangayika Law Society (TLS).¹⁹⁰

In December 2021, at least 313 new advocates were sworn in.¹⁹¹ There are therefore about 10,749 advocates currently, translating into one lawyer for every 5,362 people or one lawyer for every 2,681 adults, based on the 55,966,030 population projections.¹⁹²

To put things into perspective, in India, where it is claimed there is shortage of lawyers, there is one lawyer for at every 1,800 people, while in US there is one lawyer for every 200 people, as of 2018.¹⁹³

The poor and the marginalized, including women and children, are disproportionately affected by excessive pretrial detention.

Apart from violation of accuse person's rights, various studies have shown the socio-economic impact of excessive pre-trial detention. For instance, a 2011 study by the Open Society Foundations revealed that pretrial detention has negative impact on individuals, their families, communities, and States.¹⁹⁴ Another study by Penal Reform International has shown that excessive pretrial detention has some serious consequences for a family, including loss of a breadwinner or caretaker, family disruption or break up, and loss of livelihood and home.¹⁹⁵

The negative effects of excessive pretrial detention, including socioeconomic effects, are briefly discussed below and summarized in table 10.¹⁹⁶

189 See Lydia Churi "JAJI MKUU AWATAKA MAWAKILI WAPYA KUTENDA HAKI" Judiciary of Tanzania, 10 July 2021, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=224>.

190 See "Mawakili 3,190 Tanzania kikaangoni, kisa ada" Mwananchi Newspaper, 8 September 2021, at <https://www.mwananchi.co.tz/mw/habari/kitaifa/mawakili-3-190-tanzania-kikaangoni-kisa-ada-3542914>.

191 Faustine Kapama & Innocent Kansha "JAJI MKUU AWAONYA MAWAKILI" Judiciary of Tanzania, 10 December 2021, at <http://tanzaniajudiciary.blogspot.com/2021/12/jaji-mkuu-awaonya-mawakili.html>.

192 See National Bureau of Statistics, Tanzania in Figures 2020, at https://www.nbs.go.tz/nbs/takwimu/references/2020_Tanzania_in_Figure_English.pdf.

193 See Pratinid Bureau "India has one lawyer for 1,800 people": CJJ Ranjan Gogoi" TIME, 6 October 2018, at <https://www.pratinidintime.com/national/india-has-one-lawyer-for-1800-people-cji-ranjan-gogoi>.

194 Open Society Foundations (2011), The Socioeconomic Impact of Pretrial Detention, Open Society Justice Initiative, at <https://www.justiceinitiative.org/uploads/84baf76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-detention-02012011.pdf>.

195 Penal Reform International, Pre-trial Detention: Key Facts, at <https://www.penalreform.org/issues/pre-trial-justice/key-facts/>

196 Key references are: Open Society Foundations (2011), The Socioeconomic Impact of Pretrial Detention, Open Society Justice Initiative, at <https://www.justiceinitiative.org/uploads/84baf76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-detention-02012011.pdf>; and Catherine Heard and Helen Fair, PRE-TRIAL DETENTION AND ITS OVER-USE EVIDENCE FROM TEN COUNTRIES, Institute for Crime & Justice Policy Research, NOVEMBER 2019 at https://www.prisonstudies.org/sites/default/files/resources/downloads/pre-trial_detention_final.pdf.



Interference with/infringement of fundamental rights of detainee/accused person

- [Right to fair trial and presumption of innocence](#): Pretrial detention infringes the right to be presumed innocent until proven guilty as being in prison compromises one's ability to consult a lawyer and prepare a defence, raising the risk of miscarriage of justice. Being in custody also increases risk of justice actors like police and prosecutors pressurizing a person into confessing or accepting a plea deal, raising risk of wrongful convictions.
- Additionally, if one has spent so much time in detention their appearance and demeanour are more likely to be compromised, thus fail to inspire confidence and likely not considered suitable for a suspended sentence, probation, or a fine. On the other hand, released suspects have freedom and time to engage with a lawyer, continue working, getting or keeping jobs, and supporting their families.
- [Right to liberty and personal security](#): Prolong pretrial detention constitutes a violation of the right to liberty, which incorporates a right not to be detained arbitrarily. A person can be detained for years before trial, which is too long a period. Personal security is also compromised in the case of dangerous prison environment.
- [Right to private and family life](#): Even short periods in detention disrupt family and private life. The International Covenant on Civil and Political Rights (ICCPR) guarantees the freedom from arbitrary or unlawful interference with one's privacy, family, home, or correspondence.¹⁹⁷
- [Right to work](#): Pretrial detention may also disrupt the ability to work and earn a living, with potentially long-term consequences.
- [Freedom from torture and inhuman treatment](#): Remandees awaiting trial are at greater risk of torture, violence, and inhuman treatment in overcrowded and insanitary prisons or detention facilities and usually have no access to work, education, or rehabilitation.

Overcrowding of detention facilities

- Excessive and/or arbitrary use of pretrial detention contributes to the chronic, costly, and counterproductive overcrowding of detention facilities. Excessive use of pretrial detention leads to overcrowded, unhygienic, chaotic, and violent environments where pretrial detainees – who have not been convicted – are at risk of contracting disease.

Undermining rule of law

- Excessive pretrial detention undermines the rule of law and is directly in conflict with the presumption of innocence, which is guaranteed

¹⁹⁷ Article 17(1) of ICCPR.



under the Constitution of the United Republic of Tanzania, 1977¹⁹⁸ and regional and international human rights instruments.

Furthering corruption

- Corruption flourishes in pretrial phase, given the less scrutiny, with police, prosecutors, magistrates and judges able to arrest, detain, and release individuals based on their ability to pay bribes. The poor are disproportionately affected by corrupt environment.
- Corruption, coupled with power to detain, leads to other bad outcomes such as arbitrary arrest and unnecessary detention, increased public health costs, wasted resources, stunted development, and increased poverty.

Loss of faith in the justice system

- People may lose faith in the justice system when they see that innocent people are arrested, detained for long periods of time, and even convicted for crimes they probably did not commit. Excessive and arbitrary use of pretrial detention may also actually promote criminality, with prisons acting as breeding or recruitment groups and people detained for minor offences becoming hardened criminals.

Lost human potential

- Lost human potential is one of the main results of excessive pretrial detention. Poor people or communities are more likely to feel the impact of wasted human potential.

Miscarriage of justice

- Securing the right to pretrial release depends not only on the nature of charges, but also on being able to argue for that option. Those with little education are less likely to understand and advocate for their rights. Those with little family or social support are more likely to lack the means to secure no-custodial options, including bail. Those without employment or property are less likely to meet conditions for sureties.

Disproportionate impact on marginalized groups, including women

- The impact of excessive pretrial detention on marginalized populations, including women, is severe and disproportionate. Despite constituting a small minority of the pretrial detention population, particular needs of female detainees are often neglected, considering the physical, emotional, and social consequences of their incarceration. Vast majority of female pretrial detainees are also accused of petty or non-violent offences, for which they should be eligible for pretrial release.

Disproportionate impact on the poor

- Pretrial detention disproportionately affects poor individuals and families as they are more likely to come into conflict with the criminal

¹⁹⁸ Article 13(6) (c) of the Constitution of Tanzania, 1977.



justice system, more likely to be detained awaiting trial, and less able to make bail or pay bribes for their release.

Loss of employment and income

- Employment and income loss as a result of excessive pretrial detention affect the detainee's family. The impact is especially severe in poor, developing countries.
- Persons detained awaiting trial cannot work or earn while detained, and frequently lose their jobs – often after only a short period away from their work. Those who are self-employed – common to people working in much of the developing world – are at risk of bankruptcy, losing their goods through theft, missing sowing or harvesting season, or foregoing their trading space at the local market.

Long-term unemployment or underemployment

- Pretrial detainees are not only at risk of losing their employment at the time of detention, but also risk long-term unemployment or underemployment after release. The stigma of detention, combined with lost education or training opportunities, severely limits detainees' lifetime incomes. This is exacerbated by the fact that most pretrial detainees are between ages 20 and 40 – their wage-earning peak. Income lost at this point in their lives almost certainly cannot be regained.

Lack of social protection

- When a person loses their job because of pretrial detention their social security contributions cease, hurting them later in life.

Loss of livelihood and family property/belongings

- For the already poor, the loss of income can be crippling. If, for example, the detainee and his spouse are subsistence farmers, it is likely impossible for the spouse to take on any additional work. In such a scenario, the spouse may be forced to sell the family's belongings, hastening the descent into abject poverty.

Disruption of education and limitation of lifetime earning potential

- Many pretrial detainees are young adults, some of whom will have their education interrupted as result of their detention. Other detainees may have their job training interrupted, making it harder to find a job upon release and limiting their lifetime earning potential.
- The education of children is often disrupted when a parent is detained. These children have to take new roles, including providing domestic, emotional, or financial support from other family members.
- Children whose mothers are detained are more likely to fail or drop out of school and engage in criminal activity.

Adjusting to a more difficult life following detention of income earner

- In addition to lost income, the families of pretrial detainees must



wrestle with legal fees, the cost of bribes to corrupt criminal justice officials, and other expenses. When an income-earner is detained, family members must adjust not only to the loss of that income but also the costs of supporting that family member in detention, including travel to visit the detainee, food and personal items for the detainee, and, often, bribes to guards. Adjustment can be more difficult psychologically for children.

Depression and anxiety among children

- Excessive pretrial detention may lead to depression and anxiety among children.

Spread of diseases

- For pretrial detainees who contract disease or who are damaged physically or psychologically by torture during their detention, the long-term effects are so great as to be nearly incalculable. Detainee may transmit diseases, including HIV, and the diseases will cost their family in the form of medical bills and wages they forfeit while caring for them, which is a nightmare for a poor family.
- An additional impact on communities comes in the form of communicable diseases contracted in pretrial detention centres and spread to the community when detainees are released. Diseases such as HIV/AIDS, hepatitis C, and TB are common in many pretrial detention centres, spread quickly both within and beyond the prison walls, and impose massive costs on the communities they affect.

Depriving community of parents, professionals, role models, and leaders

- The over-use of pretrial detention in the community harms not only those detained, but the community as a whole, depriving it of parents, income-earners, teachers, role models, and political leaders. The community impact of excessive pretrial detention furthers the social exclusion of marginalized groups, increases their poverty, and decreases their political power.

Increased costs for the State/Government

- Pre-trial detention has also proven to be expensive when compared with non-custodial alternatives.¹⁹⁹ For the Government, every pretrial detention means increased expense (direct costs), reduced revenue (indirect costs), and fewer resources for other programmes (opportunity costs).

¹⁹⁹ Penal Reform International, Pre-trial Detention: Key Facts, at <https://www.penalreform.org/issues/pre-trial-justice/key-facts/>.



A more rational use of pretrial detention would enable governments to reduce overcrowding and channel associated costs into crime prevention, legal aid, and education.

- Open Society Justice Initiative

- The direct costs to the State of pretrial detention include operating detention facilities (including prison guards and administrators), warehousing detainees (including food, clothing, beds, and healthcare – assuming these are provided), and pursuing cases against detainees (including the investigation and judicial process).
- Indirect costs include lost productivity, reduced tax payments, or diseases transmitted from prison to the community when detainees are eventually released.
- All governments have limited resources, and all policy decisions have costs. Money spent on pretrial detention by the detainee, his family, and the community could have been used differently.
- Under international human rights law, people arbitrarily detained for long periods of time and later found not guilty or wrongfully charged are also entitled to compensation, which can be a burden to the Government.

Table 10: Negative impact of excessive pretrial detention

Level	Impact
Individual	<ul style="list-style-type: none"> ■ Infringement of fundamental rights, especially the right to fair trial, right to be presumed innocent until proven guilty, right to liberty and personal security, right to private and family life, right to work, and freedom from torture and inhuman treatment. ■ Loss of liberty/freedom ■ Miscarriage of justice – justice delayed is justice denied! ■ Torture ■ Corruption ■ Spread of disease ■ Guilty plea to escape from overcrowded, unhygienic, chaotic, and violent environment ■ Greater risk of long-term unemployment ■ Loss of social security contributions ■ Suicidal tendency/behaviour ■ Education interruption ■ Job training interruption ■ Limitation of lifetime earning potential ■ Stigma, Anxiety/depression ■ Lack of social protection/security ■ Long-term unemployment or underemployment



Family	<ul style="list-style-type: none"> ■ Family break-up/disruption ■ Loss of breadwinner/family caretaker ■ Family, including children, having to find work to make up for lost income. ■ Selling family belongings/property to support detainee. ■ Nervous breakdown and loss of hope ■ Pushing family towards poverty/abject poverty ■ Disrupting education and damaging income potential of children ■ Eviction from family home e.g. due to lack of rent ■ Depression and anxiety, including among children
Community & State	<ul style="list-style-type: none"> ■ Undermining rule of law ■ Furthering corruption ■ Lost human potential (wasted human potential) and productivity ■ Loss of workforce and professionals ■ Spread of communicable diseases ■ Increased expense (direct costs) for the State ■ Reduced revenue (indirect costs) for the State ■ Fewer resources for other programmes (opportunity costs) ■ Spread of diseases ■ Overcrowding of detention facilities ■ Loss of faith in the justice system ■ Miscarriage of justice

LHRC's Call: The Government to take measure to ensure reduced use of pretrial detention, which should only be used when no reasonable alternative can address genuine risks of flight or danger to the community. In the case of monetary bail, regard to be given to the poor, who constitute the majority of those incarcerated, such that monetary bail should be proportionate to their incomes and circumstances.

2.4.3.5. Investigations and adjournment of cases

Different stakeholders have continued to make calls for speeding up of investigations and completion of investigations before a person accused or suspected of committing a crime is sent to court. Among them was the Principal Judge of the High Court of Tanzania – Dar es Salaam Zone, Judge Amir Mruma. Recently, in February 2022, the Principal Judge stated that there need to review and amend some laws to reduce congestion of remandees in prisons.²⁰⁰ He expressed concern with taking an accused person to court before completion of investigation, asking key questions such as **“What happens**

200 Magreth Kinabo “JAJI MRUMA: ATAKA BAADHI YA SHERIA ZIBADILISHWE KUONDOA MLUNDIKANO WA MAHABUSU” Judiciary of Tanzania, 2 February 2022, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=778>, accessed 10 February 2022.



when the investigation is completed, and it is determined that the accused person is not guilty?” and “Who shall pay the accused person compensation?”



Picture 9: Principal Judge Amir Mruma, who has called for legal reforms to safeguard the rights of accused persons and reduce prison overcrowding

Picture credit: Judiciary of Tanzania

In May 2021, remandees and prisoners detained in Mbozi Prison in Songwe Region, called for the Government to consider enacting a law that provides for a time limit for investigations in order to ensure timely administration of criminal justice.²⁰¹ They said that introduction of such law of limitation shall help to reduce congestion in prisons.²⁰² However, the Criminal Procedure Act, CAP 20 [RE 2019] has provided some remedy for some of the criminal offences through limiting the amount of time adjournments can be made, providing for the duration for which the Court may commit the accused person to police custody, and providing the court with discretion to release the accused person pending trial.²⁰³ For instance, as a general rule, no adjournment is allowed for more than 30 clear days or if the accused person has been committed to prison, for more than 15 clear days.²⁰⁴ The Court also allowed not to commit an accused person to prison

201 LHRC Media Survey 2021.

202 Ibid.

203 See 225 of the CPA, CAP 20 [RE 2019].

204 Ibid, Section 225(2).



for more than 15 clear days at the request of the accused person.²⁰⁵ The Criminal Procedure Act also provides that the court of law shall adjourn a case for offences specified in the First Schedule to the Act for an aggregate of 60 days, unless where a Regional Crimes Officer, State Attorney, and the Director of Public Prosecutions (DPP), have filed a certificate stating the need and grounds for further adjournment²⁰⁶. However, adjournment under these circumstances should not exceed 24 months since the date of first adjournment, and after this period the court may discharge or release the accused person.²⁰⁷

In the human rights survey, conducted in 20 regions of Tanzania Mainland, adjournment of cases was also raised as barrier to access to justice, and a major factor contributing to the long duration of cases/proceedings.

“We must set a time limit for criminal investigations. An excuse of non-completion of an investigation is often used to adjourn most cases..”

A lawyer, Chato - Geita

“..there is a problem of charging and prosecuting accused persons before the investigation has been completed. The general rule should be “investigate, arrest, prosecute.” We can also say the court has failed on its part to ensure justice.”

Lawyer, Dar es Salaam

In **Tanga** Region, during interviews with prosecutors, it was revealed that one of the key challenges that contributes to delays in investigations and prosecution is shortage of budget. One prosecutor stated that one police station might have only one car, which is expected to assist police officers to carry out duties such as arrest, inspection, and collecting and taking dead bodies to mortuary. For prosecutors, prepping witnesses and complainants is also often a challenge as some of them cannot afford fares to attend cases regularly.

“We also face many challenges, although we are usually blamed. Can you imagine, I have to prepare my witnesses, who sometimes do not even have a bus fare, so you have to give them...the money for food as well. You are also dealing with a police investigation officer, who is telling you he or she is tired of using their own airtel to make follow upon the case.”

Prosecutor, Tanga

²⁰⁵ Ibid, Section 225(3) (c).

²⁰⁶ Ibid, Section 225(4).

²⁰⁷ Ibid, Section 225(4) (c).



LHRC's View: Keeping an accused person in remand prison pending completion of an investigation violates their right to personal liberty, equality before the law and more importantly the principle of presumption of innocence. In Zanzibar, since 2018 for summary offences, accused persons are not taken to court until investigation has been completed while for unbailable offences the law sets time (six months) within which investigation must be completed failure of which puts an accused person at the pleasure of applying for bail.

LHRC's Call: Tanzania Mainland should borrow a leaf from Zanzibar and make the necessary legal reforms to safeguard the rights of accused persons and control the due process by addressing the problems of delays in investigation and constant adjournment of cases.

2.4.3.6. Prison and police cell overcrowding

Prison overcrowding has been identified as the key contributing factor to poor prison conditions in different countries around the world, creating a big challenge for prison systems.²⁰⁸ It has negative implications on service provision to prisoners as well as their rights, especially in the Covid19 context. According to *Penal Reform International* (PRI),²⁰⁹ prisons in over 118 countries around the world exceed their maximum occupancy rate and this is largely contributed by criminal justice policy rather than rising crime rates.²¹⁰ Overcrowding undermines the ability of prisons to provide basic needs to prisoners, including healthcare, food, and accommodation, and even affects rehabilitation, training, and recreational activities. PRI notes that excessive use of pre-trial detention and non-use of non-custodial measures has largely contributed to prison overcrowding and violations of right to privacy, freedom from violence, and right to health.²¹¹ Problems such as mental health have also been exacerbated by the high population rates in prisons, resulting into increased violence, self-harm and suicide. Overcrowding has also ensured that detainees do not have the minimum space requirements in line with international standards.²¹² It has also increased the risk of transmission of Covid19 and other diseases

208 See Penal Reform International, Overcrowding, at <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>.

209 An independent international non-governmental organisation that works to promote criminal justice systems that uphold human rights for all and do no harm.

210 Penal Reform International, Overcrowding, at <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>.

211 Ibid.

212 Ibid.



such as TB and HIV/AIDS. Access to fresh air, healthcare, and sufficient food are also compromised where there is prison overcrowding, as is availability of adequate sanitation facilities and room for exercise.²¹³

These problems have a negative impact on the physical and mental health of detainees, both remandees and prisoners.

PRI's Proposed Strategies to Address Prison Overcrowding

- Investing in non-custodial alternatives to detention both pre-trial and post sentencing
- Diverting minor cases out of the criminal justice system altogether
- Investing in long-term strategies for crime prevention and reduction
- Reducing high rates of pre-trial detention by improving access to justice
- Making special or alternative arrangements for vulnerable groups, such as children, mothers with dependent children and people with mental health issues.

In Tanzania, prison overcrowding continues to be one of the key challenges in administration of criminal justice, with over half of the detainees being remandees. In December 2021, Tanzania Prison Services (TPS) pointed out to the Minister of Home Affairs, Hon. George Simbachawene, several challenges it faces.²¹⁴ These challenges include overcrowding in prisons caused by a large number of remandees, and shortage of prison officers. According to the TPS Commissioner General, Suleiman Mzee, there are currently 16,000 remandees and 14,000 prisoners. He also mentioned that most remandees stay too long in prison because their cases are not heard, a situation which contributes to prison overcrowding.²¹⁵

In Mpanda District, Rukwa Region, it was reported in January 2021 that Mpanda Prison, which was constructed in 1974 to accommodate 100 prisoners, is now facing the problem of overcrowding as it accommodated 300 prisoners, which is three times its capacity.²¹⁶

213 See Penal Reform International, Pre-trial Detention: Key Facts, at <https://www.penalreform.org/issues/pre-trial-justice/key-facts/>.

214 LHRC Media Survey 2021.

215 Ibid.

216 Ibid.



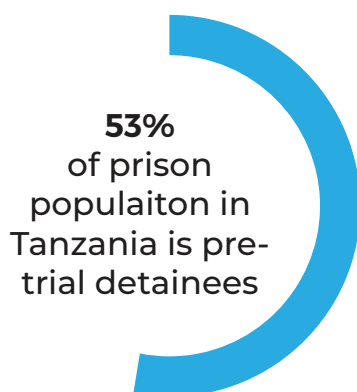


Figure 18: %Detainees among prison population

In 2021, overcrowding in police cells also emerged as a key issue in **Singida**, where it was revealed that police cells in the region were too small, which presents a big challenge in terms of accommodating detainees and ensuring they have access to fresh air.²¹⁷

Considering the Covid19 predicament, ventilation and space is very important for people held in police cells.²¹⁸

LHRC's View: Despite measures to reduce the number prisoners in Tanzania, including through presidential pardons, prison overcrowding remains a big challenge because new people are sent to prison while awaiting trial due to never-ending investigations and denial of bail. Deliberate measures need to be taken to reduce the problem of prison and police cell overcrowding and the proposed strategies made by PRI above are a good starting point.

LHRC's Call: The Government to invest and focus in non-custodial measures or alternatives to detention in order to reduce prison overcrowding and safeguard rights of remandees and prisoners. Other durable solutions include making bail a universal right for all accused persons. This will help limit the number of remandees who spend time in prison awaiting determination of their cases.

²¹⁷ LHRC Human Rights Survey 2021: Singida Field Report.
²¹⁸ Ibid.



2.4.3.7. Plea bargaining: The good and the bad

Overview

In many parts of the world, trials are being replaced by legal regimes that encourage suspects to admit guilt and waive their right to a full trial.²¹⁹

The trial waver systems, including plea-bargaining, are widely used in different parts of the world, including in U.S.A, Russia, Scotland, Australia, China, Colombia, Nigeria, Italy, Spain, Poland, Estonia, England and India.²²⁰

In 2019, Tanzania followed suit by introducing plea bargaining in its criminal justice system via the Written Laws (Miscellaneous Amendments (No. 4) Act of 2019, amending the Criminal Procedure Act (Cap 20). Plea bargaining is defined as “a negotiation in a criminal case between a prosecutor and the accused whereby the accused agrees to-

- a. plead guilty to a particular offence or a lesser offence or to a particular count or counts in a charge with multiple counts; or
- b. (cooperate with the prosecutor in the provision of information that may lead to a discovery of other information relating to the offence or count charged, in return for concession from the prosecutor which may lead to a lenient sentence or withdrawal of other counts.”²²¹

Accused persons can now enter plea agreements²²² with the Director of Public Prosecution (DPP), with either party allowed to initiate the plea-bargaining after notifying the court. The consequences of such an agreement are such that One, the accused person may be charged with a lesser offence or prosecutor may withdraw other counts or take other measure as seen appropriate, depending on the circumstances. Two, the accused person may enter a guilty plea to the offence charged or to a lesser offence or to a particular count or counts in a charge with multiple counts in exchange for withdrawal of other counts. Three, an accused person may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question. Following the amendments, the Criminal Procedure Act (Cap 20) now contains a list offences that are not subject to plea-bargaining, which are: sexual offences whose punishment exceeds five years or involving victims under eighteen years; treason and

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

220 Ibid.

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

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



reasonable offences; possession or trafficking in narcotic drugs whose market value is above Tshs. 20 million; terrorism; and possession of Government trophy whose value is above Tshs. 20 million without the DPP's written consent.

Plea bargaining practice and challenges

In 2021, LHRC's analysis of the plea-bargaining system concluded that the system has its advantages and disadvantages and is different in practice compared to other trial waver systems. While the system is credited for ensuring speedy disposal of cases and reducing pre-trial detention, and being less costly, it is associated with various concerns which may affect the rights of the accused person. These concerns include: **coercion of accused persons; misuse of power due to the leverage enjoyed by the prosecutor; reducing the role and influence of magistrates and judges;** and the **risk of accused persons pleading guilty for crimes they did not commit.** To mitigate these risks, a number of procedural safeguards have been recommended. These safeguards are:²²³

Mandatory access to lawyer: Accused person must speak to a lawyer before agreeing to waive their right to a trial

More disclosure: Accused persons should know the case against them and be able scrutinize prosecution's case

Timing of agreements: Accused person should be afforded time to think and make a decision (no coercion)

Judicial oversight: Judges should be involved in negotiations, as is the case in Singapore. In our case, as indicate above, the court (meaning magistrates and judges) is barred from participation in the negotiations. This will also help to prevent double punishment.

Enhanced recording/data collection: Record of negotiations should be kept in order to improve transparency. Shining a light on deals done by prosecutors behind closed doors would help the public to trust the system and the outcome, and avoid claims of corruption

Limitations of benefits: There should not be a huge gulf between the sentence if one goes to trial and the sentence for a guilty plea as it can distort how people act.²²⁴

Introduction of Plea-Bargaining Rules 2021

In February 2021, the Chief Justice of Tanzania, Prof. Ibrahim Juma, published the Criminal Procedure (Plea Bargaining Agreement)

²²³ See Fair Trials (2017), The Disappearing Trial: Towards a rights-based approach to trial waiver systems, at https://www.fairtrials.org/sites/default/files/publication_pdf/Report-The-Disappearing-Trial.pdf accessed 2nd March 2020.

²²⁴ According to Fair Trials, in Germany, courts and legislators have identified that a significant sentence differential between agreement and trial can act as an 'illegal influence' on the defendant's free will.



Rules, 2021²²⁵. The Rules are made under section 194H of the Criminal Procedure Act, (CAP. 20) and published vide Government Notice No.180 on 5 February 2021²²⁶. Among other things, the Rules prescribe the scope of the plea agreement, timeframe for negotiation and conclusion of plea agreement, compensation arrangement for the victim by an accused person, consequences of plea agreement rejection, and sentencing recommendations.²²⁷ The Rules also require the prosecution to disclose to the accused evidence against them to enable them make informed consent for the plea agreement. They also allow any party to the agreement to withdraw from it at any stage of the proceedings²²⁸.

One of the positive aspects of the Rules is protecting the interests of the victim and the community at large.²²⁹ According to the Rules, the prosecution is required to take into consideration the interests of the victim and the community before entering into a plea agreement. Key considerations in this regard are: the nature and circumstances relating to the commission of the offence; the criminal record of the accused, in any; the loss or damage suffered by the victim or complainant as a result of offence; the interests of the community; and any other relevant information.²³⁰ The Rules also require the plea agreement to include a clause for compensation payable to the victim by an accused person.

The Court shall not participate in plea negotiations between the parties. Rule 8, Criminal Procedure (Plea Bargaining Agreement) Rules, 2021

However, unlike the judicial oversight recommendation made by LHRC in the Tanzania Human Rights Report 2020, the Court is barred from participating in plea negotiations. This is one of the key procedural safeguards that are recommended to protect the rights of an accused person.²³¹

225 See Faustine Kapama “CJ PUBLISHES PLEA BARGAINING RULES” DAILYNEWS Newspaper (online), 14 February 2021, at <https://dailynews.co.tz/news/2021-02-14602928d7f2895.aspx>; FB Attorneys “Plea Bargaining Rules now in force” Legal Update – 10 February 2021, at <https://fbattorneys.co.tz/plea-bargaining-rules-now-in-force/>.

226 See the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021 at <https://fbattorneys.co.tz/wp-content/uploads/2021/02/GN-180-MAHAKAMA.pdf>.

227 Ibid.

228 Ibid, Rule 6(1).

229

230 Ibid.

231 Ibid, Rule 10(2).



Human Rights Survey 2021: Mixed views on plea-bargaining law and implementation

In 2021, LHRC sought views of different stakeholders on the plea-bargaining law and its implementation, two years on since plea bargaining was introduced in 2019. Overall, respondents expressed mixed views on plea-bargaining and its implementation so far.

Majority of interviewed respondents, especially lawyers, were against plea-bargaining. Their biggest argument is that plea bargaining raises the possibility or increases the risk of an accused person pleading guilty for crimes they did not commit. For this, they said the practice is unfair and puts the poor at a disadvantaged position.

“This law is coercive as it encourages and pushes accused persons to confess to crimes, while not free. The accused person is in a detention facility, and that’s where the plea-agreement is reached.”

Lawyer, Kagera

Another key argument made against plea bargaining is that it undermines the integrity of the criminal justice system by taking the administration of justice out of the hands of the Judiciary or judges and magistrates. Interviewed respondents pointed out that the Office of Director of Prosecution (DPP) is given too much power by the plea-bargaining law, permitting prosecutors to determine the outcome of the case.²³² One of the respondents said this is contrary to Article 107A of the Constitution of Tanzania, which confers upon the Judiciary the powers to administer justice, including determining the outcome of a case.

“I think this plea-bargaining system is undermining the independence and role of the Judiciary as well as that of law enforcement bodies such as the police and PCCB (anti-corruption body).”

Advocate, Dar es Salaam

Additionally, respondents who opposed plea bargaining indicated that the practice is unfair because it forces the accused persons to forfeit some of their fundamental rights, including the right to a trial in court and right to appeal. Others argued that the plea-bargaining system

²³² Interview with an advocate in Mwanza.



is prone to abuse by the DPP office, given leverage enjoyed by the office; furthers corruption; and is used by the Government as a source of revenue. They argued that the practice is more money-driven than justice-driven.

“Bargaining is an extortion, because it is done when a person is left with no other option, because they cannot risk going to or continuing with trial because they do not know when the investigation will be completed. Also, the focus of the DPP has been the money, and they are getting a lot of that.”

Lawyer & former detainee, Dar es Salaam

Some of the respondents who are against plea bargaining claimed that it is used by politicians as a weapon used to hurt people, especially the poor.²³³ They recommended for plea bargaining to be abolished and victims to be compensated.²³⁴ One of the respondents noted that the environment within which plea bargaining operated makes it to be coercive in nature.²³⁵ He said that for someone who has spent five years in prison without neither trial nor prospect for trial they shall have no other option than “buying their freedoms.” He added that it is challenging that this remedy does not accommodate bargaining of a sentence, but rather focuses on harnessing of monies and in settings such as this where it is the only option, it becomes more of extortion.²³⁶

The plea-bargaining system was also faulted by some interviewed respondents for imposing a permanent criminal record on an accused person and double punishment. One of them said:

“Most people do not know that when you have confessed to a crime and paid fine then your record shows you been jailed before and that record stays with you forever. The record taints your reputation and hinders or limits your participation in some of the economic and political activities, including contesting for leadership positions.”

Lawyer, Dar es Salaam

Three respondents, including a magistrate, also said that plea bargaining promotes criminality. One of them said:

“I don’t see any benefit with plea-bargaining, rather than promoting criminality, including economic crimes. This matter seems to be more politically-motivated.”

Lawyer, Geita

²³³ Interviews with lawyers in Dar es Salaam.

²³⁴ Ibid.

²³⁵ Interview with a lawyer in Dar es Salaam.

²³⁶ Ibid.



“This law is bad because it encourages people to commit crime because they know they will just use their money to buy themselves out of trouble and will not have to go to jail.”

Magistrate, Morogoro

Respondents who were in favour of plea bargaining mentioned that the practice helps to reduce caseload for the courts and prosecutors; saves resources of the Judiciary; enables quick disposition of cases, which is a plus for an accused person; reduces overcrowding in prisons; and saves the prosecution, courts, and the accused person the costs of going to trial.

“This law is good, if it will be used correctly and adequate procedural safeguards will be place. It will help to reduce prison congestion.”

Lawyer, Dar es Salaam

“Plea-bargaining comes with many benefits. In fact, we are late, as other countries, like Kenya, introduced plea-bargaining a long time ago. The main challenge that I see now is that people do not understand what plea-bargaining is and its benefits. There is thus a need to increase awareness.”

Prosecutor, Tanga

LHRC’s View: For the interests of justice, implementation of the plea-bargaining system should proceed with caution. The safeguards highlighted above should be considered. Accused persons should not be coerced in any way and the law should not be applied discriminatively in any way.²³⁷ There is also a need to enhance public understanding of plea bargaining.

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

2.4.3.8. Prompt presentation of accused person before a court of law

Prompt presentation of an accused person before a court of law is in line with Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), which provides that anyone arrested or detained on a criminal charge should be promptly brought before a judge or

²³⁷ See LHRC’s statement on plea bargaining issued on 25th September 2019 at <https://www.humanrights.or.tz/posts/b/news/ufafanuzi-wa-kisheria-kuhusu-makubaliano-ya-kukiri-kosa-plea-bargaining>, accessed 2nd March 2020.



magistrate and is entitled to a trial within a reasonable time or to release. This provision is closely linked to the right to a fair trial, which is guaranteed under the Constitution of the United Republic of Tanzania, 1977.²³⁸ As a general rule, under the Criminal Procedure Act, an accused person has to be taken to court within 24 hours following arrest.

Community members who participated in the survey were asked the extent to which lack of prompt presentation of an accused person to court is a problem in their community. Nearly half of them (44%) said that this is a moderate problem in their society, followed by a third of the respondents (34%), who said it is a serious problem. This means that over two thirds of the respondents were of the opinion that it is a problem in the community. Only 18% of respondents said it is only a minor problem, while 4% said it is not at all a problem.

■ Taking too long to take accused person to court

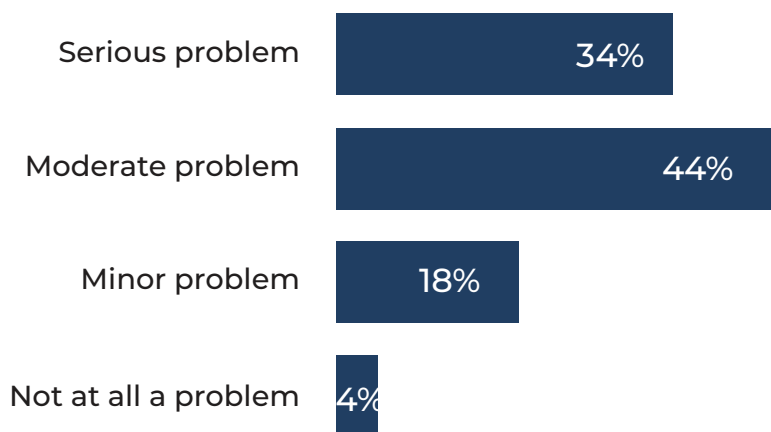


Figure 19: % Responses on the extent to which lack of prompt presentation of accused person to court is a problem (N=1,089)

Source: Field Data, 2021

Interviewed respondents expressed their views on the problem of accused persons not being promptly presented before the court. They mentioned that most accused persons are retained under police custody for longer than 24 hours without being taken to court. For instance, in **Mara**, it was revealed that accused persons can be detained by police for up to five to seven days before being taken to court.²³⁹

²³⁸ Article 13(6)(a) of the Constitution of Tanzania, 1977.

²³⁹ LHRC Human Rights Survey 2021: Mara Field Report.



Similar concerns were also raised in most other regions, including Kagera, Dar es Salaam, Dodoma, Katavi, Mbeya, and Njombe.

“It has become a common practice for accused persons to be held for more than 24 hours by police without being taken to court. This constitutes a violation of accused person’s rights.”

Lawyer/NGO official, Kagera

2.4.3.9. Prisoners’ and remandees’ rights

Rights of prisoners and remandees are protected under various international human rights instruments, including those specific for them. Key among them is the International Covenant on Civil and Political Rights (ICCPR) of 1966, the African Charter on Human and Peoples’ Rights (Banjul Charter) of 1981, the Basic Principles for the Treatment of Prisoners of 1990,²⁴⁰ and the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955.²⁴¹

Prisoners’ rights include the right to enjoy the best attainable state of physical and mental health, which has been extended to prisoners, detainees, and other persons deprived of their liberty under the Banjul Charter.²⁴²

Right to health includes the right to medical services. Other fundamental rights of prisoners include the right to be treated with respect and dignity as human beings, right to take part in cultural activities, freedom of religion, right to work/employment, right to non-discrimination, right of young prisoners to be kept separate from adults, right to sanitary conditions, right to clean clothing and bedding, right to food and clean drinking water, and right to exercise and recreational activities.²⁴³

Prisoners are also entitled to freedom from torture and cruel, inhuman or degrading punishments. They are also entitled to access to information and contact with the outside world, including family and friends.

240 Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

241 Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

242 See 19 Resolution on Prisons in Africa - ACHPR/Res.19(XVII)95, The African Commission on Human and Peoples’ Rights meeting at its 17th Ordinary Session held from 13 to 22 March 1995, Lomé, Togo, at <https://www.achpr.org/sessions/resolutions?id=24>.

243 See the Basic Principles for the Treatment of Prisoners, 1990; the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955.



Remandees' rights include the right to a fair trial within a reasonable time, right to bail, right to be kept separate from convicted prisoners, freedom from torture, right to be presumed innocent until proven guilty, right to prompt access to a lawyer, and right not to confess or testify against oneself. These rights are provided for under the ICCPR, Banjul Charter, and other regional and international human rights instruments, as well as the Constitution of Tanzania, 1977.

Adequate nutrition should be considered one of prisoners' basic human rights, especially as many have poor health. Healthy, nutritious meals will enable them to take their medication properly and prevent the development of life-threatening infections such as HIV/AIDS and tuberculosis. Also, vulnerable population groups in prisons – such as pregnant and breastfeeding women, substance users, teenagers and elderly people – have specific dietary requirements.

WHO

In 1995, the African Commission on Human and Peoples' Rights noted that “..the conditions of prisons and prisoners in many African countries are afflicted by **severe inadequacies including high congestion, poor physical health and sanitary conditions; inadequate recreational, vocational and rehabilitation programmes, restricted contact with the outside world, large percentages of persons awaiting trial**, among others.”²⁴⁴ 26 years later, these concerns remain valid in most African countries, Tanzania inclusive, and in the human rights survey most of these concerns were raised by respondents.

Among the key concerns regarding rights of prisoners and remandees that were raised by the respondents is poor and nutritionally inadequate food. According to the World Health Organization (WHO), adequate nutrition food is essential and should be considered as a basic human right to prisoners.²⁴⁵ The quality and quantity of food available in a prison has a major

244 See 19 Resolution on Prisons in Africa - ACHPR/Res.19(XVII)95, The African Commission on Human and Peoples' Rights meeting at its 17th Ordinary Session held from 13 to 22 March 1995, Lomé, Togo, at <https://www.achpr.org/sessions/resolutions?id=24>.

245 WHO Europe “Prison and health: Nutrition” at <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/focus-areas/nutrition>.



influence on the quality of a prisoner's life.²⁴⁶

"Prisoners and remandees do not effectively enjoy their fundamental rights such as right to privacy and intimacy with their partners, right to good/quality food, right to health, right to adequate standard of living, and freedom from violence."

Advocate, Dar es Salaam

Poor sanitary conditions were also mentioned as a problem in prisons, affecting prisoners' rights to health and clean drinking water. In **Mwanza**, a lawyer mentioned that prison conditions need to be improved to ensure access to good food and medical services.²⁴⁷

"Generally, our prison services fall short of human rights standards. A prisoner is also entitled to rights, including the right to privacy. However, they often do not get quality/nutritious food. I happened to visit one prison in Ngara, where inmates were almost living like animals."

Advocate, Geita

Other concerns regarding the rights of prisoners and remandees in prisons include poor access to lawyers, lack of legal representation, lack of privacy, violence, prison overcrowding, denial of education opportunities, and limited access to information. A prosecutor in **Tanga** also complained that most remandees appear in court very dirty, suggesting they are not provided with hygiene essentials such as soap and water and consequently do not bathe or shower.²⁴⁸

"It appears prisoners and remandees are not provided with basic needs, including papers. Every day they ask me for papers so that they can write to the DPP."

Resident Magistrate, Geita

Regarding lack of legal representation for remandees, one advocate in **Dar es Salaam** said:

"For most prisoners and remandees, access to quality legal representation is a big challenge because most of them cannot afford good lawyers and even those lawyers who work pro-bono do not put in a good shift because they are not paid. Sometimes pro-bono lawyers do not even appear in court."

Advocate, Dar es Salaam

In **Dar es Salaam**, a lawyer and former detainee expressed concern over inadequate recreational, vocational and rehabilitation programmes in

²⁴⁶ Ibid.

²⁴⁷ LHRC Human Rights Survey 2021: Mwanza Field Report.

²⁴⁸ LHRC Human Rights Survey 2021: Tanga Field Report.



prisons. He noted that the imprisonment is focused on punishment, while in essence it should focus on rehabilitation and social reintegration of prisoners.

“The situation of prisoners is not good, as they are subjected to torture and the facilities are too physical rather than correctional. The main goal is to punish and not reform. This situation has actually contributed to radicalization and hardening of petty offenders, including juveniles, who are mixed with adults and subjected to sexual violence.”

Lawyer & former detainee, Dar es Salaam

Some of the interviewed lawyers and advocates also pointed out that many people in prison lack legal representation and are not aware of their rights, including right to bail.²⁴⁹ They usually continue to languish in prison because they have no one to bail them out.

2.4.3.10. Social re-integration of ex-offenders/convicts and remandees

Overview

According to the World Health Organization (WHO), people who are in prison have the same right to healthcare as everyone else and as such prison administrations have a responsibility to ensure prisoners receive proper healthcare and prison conditions are favourable in this regard.²⁵⁰ Mental health has become urgent issue in prisons due to unfavourable prison conditions, which affect mental health, especially where there is overcrowding.²⁵¹ Studies have established that prison overcrowding contributes to development of mental illness.²⁵² Mental health issues in prison underscore the importance of social-reintegration²⁵³ services for prisoners and remandees, as well as released prisoners and remandees. There are therefore compelling arguments in favour of “improving health outcomes for ex-prisoners on human rights, public health, criminal justice, and economic grounds.”²⁵⁴

The purpose of prisons is to rehabilitate offenders, setting them in the

249 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.

250 See Andrew Coyle “Standards in prison health: the prisoner as a patient” in Stefan Enggist et al (eds), *Prisons and Health*, World Health Organization, 2014, at https://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf.

251 See The Parliament of the Republic of Trinidad & Tobago, *Sixth Report of the Joint Select Committee on Human Rights, Equality, and Diversity, Third Session of the Eleventh Parliament (2017/2018), on an Inquiry into the impact on Mental Health and Family Life of the Remandees at the Remand Prisons*, at <http://www.ttparliament.org/reports/p11-s3-j-20180307-HRED-r6.pdf.pdf>.

252 Ibid.

253 According to the United Nations (UN), social reintegration means “the support given to offenders during re-entry into society following imprisonment.” However, the broader definition encompasses the period starting from prosecution to release and post-release support.

254 Kinner SA, Wang EA. The case for improving the health of ex-prisoners. *Am J Public Health*. 2014;104(8):1352-1355. doi:10.2105/AJPH.2014.301883.



right path. As such, prisoners should leave prison in a better condition and not worse than when they entered.²⁵⁵ But the reality in different prisons in most countries around the world, especially developing countries, where access to adequate health and social re-integration services is a challenge for prisoners and remandees, as well as for released prisoners and remandees.²⁵⁶ According to the United Nations (UN), social reintegration includes “imposing alternative sanctions instead of imprisonment, where appropriate, and thereby facilitating the social re-integration of offenders within the community, rather than subjecting them to the de-socializing and harmful effects to undergo unnecessarily.”²⁵⁷ It also includes programmes that assist prisoners with moral, vocational, and educational development; programmes addressing special needs of offenders; favourable prison environment; and opportunities provide for prisoners’ gradual re-entry into society.²⁵⁸ For accused persons found guilty and sentenced to prison, social rehabilitation, which is part of social re-integration, has to start on the first day of incarceration and continue until they are released.²⁵⁹ When they are released, post-release reintegration must be designed to enable them to gradually and systematically transition from prison to life outside. This includes social, psychological, and other support that can be provided to help them settle back into the community.²⁶⁰ Probation and parole services are important in this regard, but where they do not exist, especially in majority of developing countries, then the role of other institutions and organizations of civil society becomes very important.²⁶¹ However, the UN emphasizes that social re-integration cannot succeed by using the laws and institutions alone, but also support from families of offenders and the community at large.

In practice, the UN has observed that in many countries social re-integration needs of offenders are usually given a low priority due to factors such as lack of resources, prison overcrowding, and inadequate attention to the post-release needs of ex-offenders.²⁶² Governments do not typically prioritize assisting prisoners with post-release care

255 “Standards in prison health” (supra).

256 See United Nations (UN), *CUSTODIAL AND NON-CUSTODIAL MEASURES: Social Re-integration*, Criminal Justice Assessment Toolkit, United Nations, New York, 2006, at https://www.un.org/ruleoflaw/files/4_Social_Reintegration.pdf.

257 Ibid.

258 Ibid.

259 *CUSTODIAL AND NON-CUSTODIAL MEASURES: Social Re-integration* (supra).

260 Ibid.

261 Ibid.

262 Ibid.



and in prisons the available resources are usually used to improve security, safety and order rather than investing in trainings, workshops, educational facilities, sports and recreation.²⁶³ According to UN, this situation is driven by the mindset and mistaken belief that security can be achieved by using more restrictions and disciplinary measures rather than improving prison environment.²⁶⁴ Due to lack of resources for social re-integration of offenders, there is a greater risk of recidivism (re-offending).²⁶⁵

Legal framework on social re-integration

Internationally, the legal framework on re-integration of ex-offenders and remandees include the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the United Nations Basic Principles for the Treatment of Prisoners of 1990, the UN Standard Minimum Rules for the Non-Custodial Measures of 1990 (Tokyo Rules), and the UN Minimum Standard Rules for the Administration of Juvenile Justice of 1985 (Beijing Rules). For instance, the ICESCR provides for “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁶⁶ This applies to prisoners and remandees.

The UN Basic Principles for the Treatment of Prisoners require prisoners to have access to the health services available in the country without discrimination on the groups of their legal situation.²⁶⁷ The Basic Principles further provide that “With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the **reintegration of the ex-prisoner into society under the best possible conditions.**”²⁶⁸ The goal is to enable the ex-offender to lead a law-abiding and self-supporting life.

Perceptions on social re-integration of ex-offenders in Tanzania: Human Rights Survey 2021 findings

Respondents of the Human Rights Survey 2021, conducted across 20 regions of Tanzania Mainland, were asked to comment on prisoners’ rights. Some of them expressed concerns with provision of social-reintegration support or services for released prisoners and remandees.

263 CUSTODIAL AND NON-CUSTODIAL MEASURES: *Social Re-integration* (supra)..

264 Ibid.

265 Ibid.

266 See Article 12 of ICESCR, 1966.

267 Principle 9 of the UN Basic Principles for the Treatment of Prisoners, 1990.

268 Ibid, Principle 10.



They noted this as a human rights, criminal justice, and public safety and security concern. One of the respondents in Tanga mentioned that prisoners usually return to the community in worse condition than they were in and expressed concern that instead of getting rehabilitated they become hardened criminals and at a greater risk of recidivism (re-offending). In this regard, one of the respondents provided an example of five prisoners who were pardoned by the late H.E Dr. John Pombe Magufuli, and released from prison, who were killed by 'angry mobs' after resuming the life of crime immediately after release.

"Most prisoners and remandees return to the community unreformed and are to given psycho-social support. This challenge is also experienced by juvenile offenders in children's homes. There should be a process of providing the ex-convicts and remandees counselling/psychological support."

Journalist, Tanga

Another respondent in Dar es Salaam stated that even civil society organizations (CSOs) have not done enough to assist in provision of social re-integration services for prisoners and remandees, including released prisoners and remandees. He accused the organizations of 'distancing themselves' from 'criminals.'

"Civil society are also to blame for the problem of social re-integration of ex-offenders because they are not providing such services. Other organizations do not want to be associated with 'criminals.' The Tanzania Prisons Systems (TPS) might claim to have in place the system, but they are understaffed and do not have adequate capacity."

Lawyer, Dar es Salaam

LHRC's View: LHRC understands that the Tanzania Prisons Services (TPS) has in place a system of providing various services to prisoners as part of their rehabilitation and re-integration, including psychosocial or counselling services. However, budgetary constraints and staff shortage concerns for TPS, coupled with prison overcrowding, make it less likely that they can adequately and effectively provide effective social-reintegration services, including post-release care, to released prisoners. Further research into this matter in Tanzania context is warranted. The 2022 human rights report shall provide greater detail on the situation of provision of social-reintegration services to prisoners and remandees.



2.4.3.11. Non-bailable offences: Economic and other crimes

Overview

Like in most other countries across the world, Tanzania's criminal justice system recognizes the right to bail, which is also a constitutional right under the Constitution of the United Republic of Tanzania, 1977.²⁶⁹ However, in most countries this right is also absolute, such that there are bailable and non-bailable offences. Bail is usually denied in domestic penal laws for serious offences such as murder, treason, terrorism, and armed robbery. In Tanzania Mainland, the list of non-bailable offences is comprised of murder, treason, armed robbery, defilement, trafficking in narcotic drugs, dealing in narcotic drugs contrary to the law, terrorism, money laundering, and human trafficking.²⁷⁰ Major economic crimes which are non-bailable are narcotic drug, terrorism and money laundering.²⁷¹

In recent years, there has been a fierce debate and discussion around economic and other crimes which are not bailable vis-à-vis the right to bail. The discussion has mostly focused on the economic crime of money laundering. This situation prompted LHRC to probe the issue through two research undertakings in 2021. In the Human Rights Survey 2021, we sought opinions from stakeholders, particularly those in the legal profession, on non-bailable offences, focusing on economic crimes. The findings are discussed below. A specific study on non-bailable offences, which was mainly desk research, was also conducted in 2021, the findings of which are discussed further below.

Popular stakeholder opinion: Economic crimes law is oppressive and used as a weapon

Majority of the respondents expressed that the economic crimes law is oppressive and used as a weapon to put people behind bars and deny them bail. A specific concern was on the long list of predicate offences, which prosecutors use to make bailable offences unbailable.

"I think the law should be amended because of the big loophole created in economic crimes, especially predicate offences."

Advocate, Mwanza

²⁶⁹ Having its foundation in the Bill of Rights under Articles 13(6)(b) and 15(1) of the Constitution of Tanzania, 1977.

²⁷⁰ See section 148(5)(a) of the Criminal Procedure Act, 1985; section 29(1) of the Drug Control and Enforcement Act, 2015; and Section 36(4) of the Economic and Organised Crime Control Act.

²⁷¹ 148(5)(a) of the Criminal Procedure Act.



Some respondents expressed that the law has been misused as a weapon or tool for slapping individuals with trumped-up charges of money laundering to deliberately deny them bail, forcing them to spend long periods in remand prisons.²⁷² One of the respondents claimed that economic crimes are used as a tool to deny bail to individuals and ensure lengthy pre-trial detention as punishment, including opposition political party members.²⁷³

In **Kagera**, one of the advocates who participated in the survey said economic crimes are associated with lengthy pretrial detention and violates the principle of presumption of innocence. Another lawyer in the region claimed automatic denial of bail for economic crimes like money laundering constitutes violation of Article 13 of the Constitution of the United Republic of Tanzania, 1977. A similar conclusion has been reached by the American Bar Association, which in May 2021, released its report titled 'A Legal Analysis of Tanzania's Anti-Money Laundering Laws Under Regional and International Human Rights Law'.²⁷⁴ The analysis generally found that **automatic denial of bail** for enumerated crimes under Tanzanian law contravenes fundamental rights and regional and international law.²⁷⁵ The study also showed that non-bailable offences have significantly contributed to overcrowding in prisons and was used to specifically target individuals, especially critics, by deliberately depriving them of bail as some sort of punishment.²⁷⁶

"The law denies bail for economic crimes. This is contrary to the principle of presumption of innocence, which is guaranteed under the Constitution."
Advocate, Geita

Some of the respondents also claimed that the automatic denial of bail under the economic crimes law seeks to expose accused persons to prolonged pretrial detention and drive them into plea-bargaining. In **Dar es Salaam**, a lawyer and former detainee said that the main issue with the economic crimes law is the long list of predicate offences, which is subject to abuse even for minor offences.²⁷⁷

272 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.

273 Ibid.

274 See American Bar Association, *A Legal Analysis of Tanzania's Anti-Money Laundering Laws Under Regional and International Human Rights Law*, May 2021 at https://www.americanbar.org/groups/human_rights/reports/tanzania--a-legal-analysis-of-tanzania-s-anti-money-laundering-1/.

275 Ibid.

276 Ibid.

277 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.



One of the respondents in **Mwanza**, who was in support of the denial of bail for economic offences, noted the law has helped to reduce crime given the severe sentencing for such offences. She acknowledged, however, that the law is prone to abuse by unscrupulous characters within the government, including politicians and public figures, to target and hurt innocent people.²⁷⁸

LHRC's study on non-bailable offences

In 2021, LHRC conducted a study on non-bailable offences in Tanzania Mainland, drawing lessons from the African countries of Kenya, Malawi, Uganda, Zambia, and Zanzibar.²⁷⁹ The study sought to examine the practice on non-bailable offences in Tanzania vis-à-vis the practices in these countries and human rights standards. The main method of data collection was document review, made possible by desk research – which largely informed the study. Among the documents reviewed were constitutions, criminal laws and decided cases. A look at the laws and practices of other countries enabled comparison with the situation in Tanzania Mainland.

One of the key findings of the study is that constitutions of all countries that were reviewed guarantee the right to bail.²⁸⁰ However, in all these countries the right to bail is not absolute, such that there are both bailable and non-bailable offences, as is the case in Tanzania Mainland.²⁸¹

Another key observation made in the study is that in four out of five countries that were compared with Tanzania Mainland, the court has powers to determine and grant bail in non-bailable offences. For instance, in **Kenya**, the High Court has mandate to grant bail in non-bailable offences, and this mandate is derived from Article 49(1)(h) of the Constitution of Kenya of 2010, which allows granting of bail unless there are compelling reasons for not releasing a criminal suspect.²⁸² The High Court of Kenya has however noted that each case presented before it is unique, and the compelling reasons may differ with each case. The prosecution must show there are compelling reasons for not

278 LHRC Human Rights Survey 2021: Mwanza Field Report [interview with a female lawyer].

279 See LHRC (2021), *A Study on Non-Bailable Offences in Tanzania: Drawing Lessons and Inspiration from Kenya, Malawi, Uganda, Zambia and Zanzibar*, at <https://humanrights.or.tz/reports/a-study-on-non-bailable-offences-in-tanzania>.

280 Article 49(1)(h) of the Constitution of Kenya of 2010; Article 42(2)(e) of the Malawi Constitution of 1994; Article 13(3)(b) of the Constitution of Zambia; Articles 23(6) and 28(3)(a) of the Constitution of Uganda of 1995; and Articles 14(1) and 16(1) of the Constitution of Zanzibar of 1984.

281 LHRC Study on Non-Bailable Offences (above).

282 See also *Republic v. Joktan Mayende & 4 Others*, Bungoma High Court, Criminal Case No. 55 of 2009.



releasing the accused person.²⁸³ In **Malawi**, similar powers to grant bail for non-bailable offences exist and again the onus is on the State or prosecution to show or prove that the interests of justice require the accused person's continued detention. In **Zambia**, the Supreme Court of Zambia acknowledges that the prohibition of grant of bail to suspects and accused persons only when they are brought to court without any delay. An accused person must be released on 'constitutional bail' where a trial is unreasonably delayed. In **Uganda**, courts have always endeavoured to uphold the right to presumption of innocence and right to liberty while granting bail. Finally, in the neighbouring **Zanzibar**, which is part of Tanzania, initially the Chief Justice of Zanzibar had powers to grant bail in any offence, including non-bailable offence, but the powers were removed following a 2019 constitutional petition questioning the constitutionality of the of the provision granting such powers. The High Court declared the provision unconstitutional, and consequently currently there is no court with mandate to hear and determine a bail application unless and until legislative amendments are made to give the court such powers.²⁸⁴

All of the respondents who were interviewed during the study were of the opinion that existence of non-bailable offences in Tanzania Mainland is a serious violation of the right to be presumed innocent until proven guilty and the right to liberty under the Constitution of the United Republic of Tanzania.²⁸⁵ They also generally noted that the fact that our laws allow arrests before completion of investigation of investigation, non-bailable offences might be abused to fulfil ulterior motives, like the current state of affairs where a good number of people are remanded in custody pending trial having being charged for allegedly commission of non-bailable offences while investigation remains incomplete for months and even years.²⁸⁶

The study non-bailable offences in Tanzania Mainland concluded that:

Even when the society wants to protect itself from accused persons or suspected criminals, at least that person should be given an opportunity to appear before an impartial court of law to vindicate his right to liberty and have that court make a pronouncement with regard to that right. This is the reason why in Kenya, Malawi, Zambia, and Uganda the High Court has been mandated to hear

283

284 *A Study on Non-Bailable Offences in Tanzania* (supra).

285 Ibid.

286 Ibid.



and determine bail applications even in non-bailable offences. It is desirable that, like it is in Kenya and Malawi, the burden of proving that an accused person should not be admitted to bail should be on the prosecution and not on the accused persons as in Zambia, Uganda and Tanzania Mainland before 1985. Being mindful of the fact that at times right to liberty can be derogated from, as is provided for in the respective constitutions, Zanzibar and Uganda have put some safeguards against arbitrary pretrial detentions by limiting the time within which trial in non-bailable offences should commence. In other words, in Zanzibar and Uganda, as it currently obtains in Tanzania Mainland, the time for such detention has not been left at the discretion of the investigators and prosecution. The legislature has put a threshold for the time and sanctioned non-compliance on the part of investigators and prosecutors by allowing an accused person to be let at liberty.

LHRC's View: An automatic denial of bail for 'non-bailable offences', akin to mandatory death penalty in the Penal Code – which was found to be unfair and in violation of the right to be heard by the African Court on Human and Peoples' Rights in 2019 – contravenes international human rights standards.

LHRC's Call: Like it is the case in countries such as Kenya, Malawi, Uganda, and Zambia, the High Court should be granted powers to hear and determine bail for non-bailable offences on case-by-case basis. The prosecution should have the burden of showing that there are compelling reasons for not releasing the accused person. Mandatory or automatic bail denial should thus not be provided in law, hence the need to amend section 148(5) of the Criminal Procedure Act.

2.4.3.12. Videoconferencing and the right to a fair trial

Global initiatives on videoconferencing in criminal proceedings

Countries around the world have been integrating Information and Communication Technology (ICT) in administration of justice. Part of this package is videoconferencing, the use of which has intensified in different parts of the world following the outbreak of the Covid19 pandemic in 2020. With the outbreak ensuring there are lock downs and restrictions on court hearings, the use of ICT, including videoconferencing, increased.²⁸⁷

²⁸⁷ Sahana Manjesh & Madhurima Dhanuka (2020), *DISCONNECTED VIDEOCONFERENCING AND FAIR TRIAL RIGHTS*, Commonwealth Human Rights Initiative (CHRI), at <https://www.humanrightsinitiative.org>.



Integration of ICT in the Judiciary of Tanzania and use of videoconferencing

In Tanzania, the Judiciary has taken several measures to digitalize the administration of justice through the integration of ICT, including e-filing of cases, e-payment, e-notification, e-decisions, e-publication, e-reports, and video and teleconference.²⁸⁸ Like in other parts of the world, the outbreak of the Covid19 pandemic has necessitated increase of ICT use in the administration of justice in Tanzania in the past two years (2020 and 2021) to modernize administration of justice and ensure the courts of law remain operational. In 2020, a total of 14,422 cases were filed electronically.²⁸⁹

Regarding videoconferencing, by mid-2020 the Judiciary of Tanzania (JoT) had circulated videoconferencing facilities to the Court of Appeal, all High Court Registries, Divisions and regional prisons. According to JoT, by the end of 2020 laptops supporting video conference technology had also been supplied to all Magistrates to enable hearing of cases through videoconferencing countrywide. Consequently, from January to December 2020, a total of 14,641 court proceedings were conducted by way of video and teleconference, saving Tshs. 2,750,092,736 on the part of the Judiciary, Tanzania Prison Services (TPS), advocates, litigants and other stakeholders.²⁹⁰ In August 2021, the Remote Proceedings and Electronic Recording Rules 2021 were published to provide further guidance to remote hearing of cases.²⁹¹

Key human rights concerns over the use of videoconferencing in criminal proceedings in Tanzania

According to the Commonwealth Human Rights Initiative (CHRI), while the use of videoconferencing increased in the aftermath of the Covid19 pandemic, little attention was paid to installing **safeguards to protect trial rights**.²⁹² CHRI has pointed out that studies in different countries

<https://download/1619586831Disconnected%20Videoconferencing%20And%20Fair%20Trial%20Rights.pdf>

288 Judiciary of the United Republic of Tanzania, COMPREHENSIVE PERFORMANCE

REPORT OF THE JUDICIAL FUNCTIONS – 2020, at <https://media.tanzlii.org/>

[files/guidelines/2021-12/comprehensive-performance-report-a5.pdf](https://media.tanzlii.org/files/guidelines/2021-12/comprehensive-performance-report-a5.pdf).

289 Ibid.

290 Ibid.

291 See the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules,

2021, at <https://fbattorneys.co.tz/wp-content/uploads/2021/09/REMOTE-RULES-2021.pdf>.

292 Sahana Manjesh & Madhurima Dhanuka (2020), *DISCONNECTED VIDEOCONFERENCING AND FAIR TRIAL RIGHTS*, Commonwealth Human Rights Initiative (CHRI).



have shown how videoconferencing violates trial rights of the accused person, including in the United Kingdom, Australia, and the United States of America (USA). For instance, use of the technology in UK revealed the inability of privileged communication between lawyers and clients, strained rapport with judges, inability to gauge the mental condition and other vulnerabilities of defendants, disengagement by the defendants in the process and growing distance between the judge and the defendant.²⁹³

Fair trial rights which can be compromised by the use of videoconferencing in criminal proceedings include:²⁹⁴

[Freedom from arbitrary arrest and ill-treatment](#): Videoconferencing hearings compromise the ability of magistrates to ascertain the physical well-being of the accused persons. They limit the ability of the accused person to convey concerns regarding the legality of their arrest or share grievances against ill-treatment, coercion or abuse by the police.

[Right to effective participation in hearings and the right to be present at the hearing](#): Videoconferencing hearings limit the role and agency of the accused in the trial, thereby infringing the vital fair trial right of a person to effectively participate in their own hearings.

[Right to effective counsel](#): Lawyers play an important role in the protection of the right to a fair trial, the right to liberty, and the prevention of torture and other ill-treatment of the accused. Videoconferencing hearings compromise these rights, as the accused persons do not have access to their lawyers during such hearings.

[Right to confidential communication with counsel](#): Lawyers have faced difficulties in confidentially communicating with their clients during videoconferencing hearings, and also in accessing their clients in prison. The lack of inclusion of secure and confidential means of communication between lawyers and the accused persons in videoconferencing hearings is a fair trial violation.

[Right against bias and protection for the vulnerable](#): Videoconferencing hearings can exacerbate vulnerabilities of accused persons with special needs, as lack of physical presence can make it difficult for judicial officers as well as lawyers to identify special needs.

[Right to open court hearing](#): In several jurisdictions video conferencing hearings did not allow access to public and family, violating the right to public hearing.

[Right to speedy trial and opt-in and opt-out rights](#): Use of videoconferencing hearings without express and informed free consent of the accused person is a denial of their rights. Existing procedures

293 Ibid.

294 Ibid.



in courts do not take this into account, and the decision to conduct hearings via videoconferencing rests solely upon the court. Accused persons do not have the right to opt-in or out of videoconferencing hearings.

Right to equality of arms: Difficulties in accessing technology, by lawyers as well as the accused persons, affects accused persons' ability to present an effective defence before the court. Videoconferencing hearings can leave accused persons at severe disadvantage in criminal proceedings, resulting in adverse orders or directions, gravely affecting their life and liberty.

Respondents of the CHRI study were asked whether they count imaging the possibility of videoconferencing being integrated into court practice in the future. Majority of lawyers (45%) and judicial officers (80%) supported the hybrid court system, 30% supported opt-in/opt-out method, and the remaining 25% did not support the introduction of videoconferencing. The right to opt-in and opt-out ensures that **an accused person is free to choose the videoconferencing option.**

A policy brief prepared by the *Africa Judges and Jurists Forum* (AJJF)²⁹⁵ in June 2021,²⁹⁶ has noted that while a digital transformation within court systems across the world has potential to create broader access to court data and enhance access to justice, the train of court digital transformation has left many people in Southern Africa behind. According to AJJF, the digital transformation has perpetuated the digital inequality that already exists between the rich and the poor, between men and women, between minorities and other groups in the society as well as within the society at large. A growing concern on data privacy is also on the cards. Another key concern for effective digitalization is access to computers, mobile phones and internet, which is a problem for a large part of the population in Africa.²⁹⁷ For instance, only 7.7% of the population of Africa has access to a computer within their household, 80% of countries in Southern Africa rank in the bottom 20 for smartphone penetration rates globally, and only 46% of people in sub-Saharan Africa have access to reliable mobile internet connection, and only 30% of people can afford the cheapest internet device. These challenges have negative implications on the right to

295 A network of judges and jurists across the continent. The membership of AJJF is inspired by the imperative to promote the rule of law in the context of Africa's development. The Headquarters of AJJF are based in South Africa. The Forum works with governments, Inter-governmental entities, non-governmental formations, and the private sector.

296 Africa Judges and Jurists Forum (AJJF), *DIGITAL TRANSFORMATION OF COURT PROCESS IN SOUTHERN AFRICA: A HUMAN RIGHTS APPROACH*, A Policy Brief, June 2021, at <https://africajurists.org/wp-content/uploads/2021/publications/21.06-Digital-Transformation-of-Court-Processes-in-Southern-Africa-AJJF-Final.pdf>.

297 In Tanzania, electricity and internet connectivity problems are among the major challenges in digitalization of administration of justice.



access to justice, access to information, right to privacy, and the right to equality before the law. Regarding virtual court proceedings, AJJF notes that one major drawback has been the lack of transparency in terms of court proceedings. To address the impact of court digital transformation, AJJF proposes a human rights-centred approach, which places the rights of court users at the centre of any digitalization agenda.²⁹⁸

In November 2020, the International Commission of Jurists (ICJ) published a global guidance on the use of videoconferencing in judicial proceedings.²⁹⁹ It provides a series of recommendations based on international standards. ICJ emphasizes on protection of rights of an accused person and the **free and fully informed consent to use of videoconferencing**, noting that “As a starting point, whenever all the parties give their free and fully informed consent to the use of video-conferencing in any given judicial proceedings, its use in such circumstances would appear not to give rise to concerns under international human rights law and rule of law standards.”³⁰⁰ ICJ then provides the following recommendations on the use of videoconferencing, based on the international and regional treaty provisions, jurisprudence, and other standards:³⁰¹

- The right of any person to be physically present for his or her initial appearance before the judicial authority following arrest or detention on criminal charges should be fully respected, including in situations of crisis or emergency such as the COVID-19 pandemic. In particular, national laws and rules should not permit, and in practice courts and other authorities should not proceed with, such hearings in which an accused is denied the right to be physically present for the hearing and is instead forced to participate only by means of a video link or similar technology without his .
- At the same time, governments, judiciaries, and others responsible for the conduct of criminal trials and judicial review of detention, should ensure, given the essential nature of such proceedings for the rule of law and human rights, that sufficient human and other resources, technological equipment, and practical arrangements, are in place to avoid undue delay of criminal proceedings or judicial review

298 DIGITAL TRANSFORMATION OF COURT PROCESS IN SOUTHERN AFRICA (supra).

299 International Commission of Jurists (ICJ), *Videoconferencing, Courts and Covid19: Recommendations Based on International Standards*, November 2020, at https://www.unodc.org/res/ji/import/guide/icj_videoconferencing/icj_videoconferencing.pdf.

300 Ibid.

301 Ibid.



of detention. Governments and judiciaries should ensure the availability of appropriate videoconferencing technology for those litigants and accused who may, on the basis of freely given and fully informed consent in appropriate circumstances, choose to use it. In the event that undue delay nevertheless occurs, governments and judiciaries must give effect to the right of persons to be released.

- In any other type of hearing in which under national or international law a person would normally have the right to be physically present, a judge may decide that participation in the hearing should exceptionally take place via videoconferencing, without a party's consent, due to a public emergency including a public health emergency; however, such a decision should be taken only based on the judge's assessment, with reasons, that the imposition of such a measure is necessary and proportionate to the local circumstances of the emergency in question, and that the person's physical presence is not required on the basis of a judicial assessment of the appropriateness of substitute methods of participation in light of the characteristics of the case and the interests of the parties, and with any guarantees necessary to ensure the fairness and integrity of the proceedings.
- Any time that videoconferencing or similar technologies are used as a substitute for physical presence, authorities must ensure that any individual party or accused that is deprived of liberty has access to legal counsel before, during and after the hearings, including a secure and confidential means of communication between the lawyer and client

In September 2020, the Brennan Center for Justice, a U.S.-based nonpartisan law and policy institute, published a report on the impact of video proceedings on fairness and access to justice in court.³⁰² According to the report, increased use of videoconferencing poses challenges for fair judicial proceedings and as such judiciaries should exercise caution in adopting and using the technology (mitigation of harms).³⁰³ The report further makes the following observations:

- Use of remote video proceedings can make attorney-client communications more difficult. For example, a 2010 survey by the National Center for State Courts found that 37 per-

³⁰² Alicia Bannon (2020), *The Impact of Video Proceedings on Fairness and Access to Justice in Court*, Brennan Center for Justice, at <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court>.

³⁰³ Ibid.



cent of courts using videoconferencing had no provisions to enable private communications between attorneys and their clients when they were in separate locations

- Remote proceedings may make it harder for self-represented litigants to obtain representation and other forms of support and an accused person appearing in person in court is more likely to obtain counsel
- People evaluate those with whom they work face-to-face more positively than those with whom they work over a video connection
- A study by the advocacy organization *Transform Justice*, which surveyed lawyers, magistrates, probation officers, intermediaries, and other officials about the use of remote proceedings in the United Kingdom, revealed that 58 percent of respondents thought that video hearings had a negative impact on defendants' ability to participate in hearings, and 72 percent thought that video hearings had a negative impact on defendants' ability to communicate with practitioners and judges
- There is a substantial digital divide associated with access to the internet and communication technology, hence a danger of video proceedings exacerbating existing inequalities

However, the report also acknowledges that remote video has played a role in enhancing access to justice. It also observes that videoconferencing technology can reduce the time and expenses associated with traveling, transportation, childcare, and other day-to-day costs that individuals incur when they go to court. The report concludes by stating that while video conferencing has been a valuable tool during the Covid19 pandemic, judiciaries need to proceed with caution in terms of expanding remote court proceedings. More research on the impact of the technology on outcomes is recommended and more importantly judiciaries need to consult a broad set of stakeholders, including public defenders and prosecutors, legal services providers, victim and disability advocates, community leaders, and legal scholars when developing policies for remote proceedings.

Some lawyers who responded to the Human Rights Survey 2021, conducted across 20 regions in Tanzania Mainland, expressed concerns over the use of videoconferencing in criminal proceedings. One of the lawyers, while acknowledging the positive aspect of the technology, expressed his concerns as follows:



“Use of ICT in the administration of justice is a good thing, but it is associated with various challenges, including constant adjournment of hearings, uncertain electricity, and internet connectivity.”

Lawyer, Dar es Salaam

LHRC’s View: Videoconferencing in court proceedings has its advantages and disadvantages. On the positive side it has the potential of enhancing access to justice and fast-track administration of justice. On the other hand, if caution is not exercised, it can result into violation of trial rights of accused persons and occasion miscarriage of justice. Moreover, videoconferencing may hinder access to information for visually impaired persons.

LHRC’s Call: Integration of ICT, including the videoconferencing technology, in the administration of justice in Tanzania to proceed in consideration to the concerns over the use of the technology. A great attention should be paid to installing **safeguards** recommended by different stakeholders above, including the International Commission of Jurists (ICJ), **to protect trial rights**. For the case of Tanzania, it is also important to address some of the challenges highlighted by the Africa Judges and Jurists Forum (AJJF), especially the internet connectivity problem.

2.4.4. Juvenile justice

2.4.4.1. Overview

Juvenile justice in Tanzania is mainly administered through the Law of the Child Act of 2009, which was revised in 2019. The Act was introduced, among other things, to ensure legal protection of children in conflict with the law and ensure administration of juvenile justice in line with international human rights standards. Tanzania has ratified various international and regional treaties that protect children’s rights and stipulate how juvenile justice is to be administered. Key underpinning principles in this regard are: **the best interests of the child; non-discrimination; right to survival and development;** and **views of the child**. The applicable standards and principles in administration of juvenile justice in Tanzania discussed below.

2.4.4.2. Legal and institutional frameworks on juvenile justice

Various international and regional standards are applicable to



Tanzania's juvenile justice system. Key standards include the UN Convention on the Rights of the Child (CRC) of 1989; the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") of 1985; and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) of 1990. Domestically, juvenile justice is covered under the Law of the Child Act, 2009 (revised in 2019).

UN Convention on the Rights of the Child (CRC), 1989

The CRC provides for rights of a child in conflict with the law and safeguards in administration of juvenile justice. Under Article 37 of CRC, no child is to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and capital punishment and life imprisonment without possibility of release are prohibited as sentences for any person below the age of 18 years.³⁰⁴ The CRC also prohibits unlawful or arbitrary deprivation of a child's liberty, demanding arrest, detention or imprisonment of a child to be in conformity with the law and used only as a measure of last resort for the shortest appropriate period of time.³⁰⁵ In the administration juvenile justice States are also required by the CRC to ensure that a child deprived of liberty is treated with humanity and respect for the inherent dignity of the human person, taking into consideration the age. This includes separation of children in conflict with the law with adults unless it is considered that not doing so is in line with the principle of the best interests of the child.³⁰⁶

A juvenile or child offender's right to maintain contact with his or her family through correspondence and visits is also guaranteed under the CRC.³⁰⁷ Additionally, the CRC requires States Parties to it, including Tanzania, to ensure that every child deprived of liberty has the right to prompt access to legal and other appropriate assistance, well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision

³⁰⁴ Article 37(a) of CRC.

³⁰⁵ Ibid, Article 37(b).

³⁰⁶ Ibid, Article 37(c).

³⁰⁷ Ibid.



on any such action.³⁰⁸

African Charter on the Rights and Welfare of the Child (ACRWC), 1990

Under the ACRWC, the **principle of best interests of the child** applies to administration of juvenile justice. According to this principle, **in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.**³⁰⁹ Right to be heard is also an important pillar of administration juvenile justice under the ACRWC.

Article 17 of the ACRWC provides how juvenile justice is to be administered. This includes ensuring every child accused or found guilty of committing a crime has a right to special treatment in manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others³¹⁰. In juvenile justice, States are also required to ensure a child who is detained or imprisoned is **protected from torture**, inhuman or degrading treatment or punishment and is **separated from adults in a detention facility or prison.**³¹¹ The ACRWC also provides for fair trial rights of a juvenile offender, including **the right to be presumed innocent until duly recognized guilty; the right to be promptly informed of charges against them** in a language they can understand; **the right to legal representation**; and **the right to expeditious trial.**³¹² Additionally, the press and **the public should be prohibited from the trial** (trial should be private) and there should be a minimum age below which a child is presumed not to have the capacity to commit a crime.³¹³ More importantly, the ACRWC provides that “ **The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his or her family and social rehabilitation.**”³¹⁴

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), 1985

308 Ibid, Article 37(d).

309 Article 4(1) of the ACRWC.

310 Ibid, Article 17(1).

311 Ibid, Article 17(2)(a) & (b).

312 Article 17(2)(c) of ACRWC.

313 Ibid, Article 17(2)(d) & (4).

314 Ibid, Article 17(3).



The Beijing Rules, adopted in 1985, provide guidance to countries on how juvenile justice shall be administered.³¹⁵ Among others, the Beijing Rules require juvenile justice to be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles and for the juvenile justice services to be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes. The Rules also define a juvenile as ‘a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.’³¹⁶

In administration of juvenile justice, States are required, among others, to:

- establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice in consideration of the varying needs of juvenile offenders and needs of the society
- ensure that basic procedural safeguards (fair trial rights) are guaranteed at all stages of proceedings
- ensure protection of juvenile’s right to privacy
- ensure decisions are made with regards to the best interests of the child
- ensure dealing with juvenile offenders without resorting to formal trial to be considered first
- ensure detention without trial is used only as a measure of last resort and for the shortest possible period of time
- ensure proceedings are conducive to the best interests of the juvenile
- ensure capital and corporal punishments are not imposed on juvenile offenders
- ensure juvenile justice personnel reflect the diversity of juveniles and there is fair representation of women and minorities in juvenile justice agencies

315 See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) Adopted by General Assembly resolution 40/33 of 29 November 1985

<https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf>.

316 Rule 2.2 of the Beijing Rules.



United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990

The Riyadh Guidelines³¹⁷ provide measures which can be taken to ensure children and young persons are not compelled to commit crimes. According to the Guidelines, young persons can develop noncriminogenic attitudes and comprehensive plans for prevention of juvenile justice should be instituted at every level of Government. Emphasis is placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. The Guidelines also require respect to be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes. In terms of education, governments are obligated to make public education accessible to all young persons. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services.³¹⁸

Law of the Child Act, 2009 (revised edition of 2019)

Enactment of the Law of the Child Act (LCA) in 2009 was a key milestone in terms of protecting children's rights in Tanzania and domesticating the CRC and ACRWC. Part IX of the law covers children who are in conflict with the law (juvenile justice). Key provisions on administration of juvenile justice included in the Act include establishment of juvenile court; proceedings in juvenile court; involvement of social welfare officers; basic procedural safeguards for juveniles; and sentencing.

Juvenile Court is established under Section 97 of the LCA and the Chief Justice is given mandate to designate any premises used by a primary court to be a juvenile court.³¹⁹ LCA also provides that a

317 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

<http://humandevlopment.gov.bz/wp-content/uploads/2014/04/Riyadh-Guidelines-United-Nations-Guidelines-for-the-Prevention-of-Juvenile-Delinquency.pdf>.

318 Ibid.

319 Section 97(1) & (2) of LCA [RE 2019].



Resident Magistrate is to be assigned to preside over the court.³²⁰

In terms of juvenile proceedings, the LCA states that when hearing a charge against a child, the general rule is that the juvenile court shall sit at a different building or room from that which the ordinary proceedings of the court are held.³²¹ The exception is when a child is jointly charged with adults.³²² The Juvenile Court is also allowed to seek opinion and recommendation of a social welfare officer, where it considers necessary³²³ and when such a move is considered necessary then it must consider such opinion or recommendation before sentencing.³²⁴ Regarding sentencing, juvenile courts are prohibited from imposing a prison sentence on a juvenile offender³²⁵. Instead, alternative punishments are provided, including probation and placement at an approved school.

Basic procedural safeguards for juveniles guaranteed under the LCA include the right to bail, right to cross-examine witness, right to be tried in private settings, right to be informed about charges against them, right to have next of kin and advocate to be present, right to give an account and express an opinion (right to be heard), and right to appeal.³²⁶ Proceeding must be held in camera and be as informal as possible unlike proceedings against adults, and a social welfare officer must be present.³²⁷ LCA also recognizes the right to a parent, guardian or next of kin to be present.³²⁸

The Second Five-Year Child Justice Strategy (covering the period of 2020/21 to 2024/25)

In March 2021, the then Minister of Constitutional and Legal Affairs, Hon. Dr. Mwigulu Lameck Nchemba, launched the “CHILD JUSTICE: THE SECOND FIVE-YEAR STRATEGY FOR PROGRESSIVE REFORM 2020/21 – 2024/25.” The Strategy has been established to align relevant policies, laws, and practices with the national, regional and international standard norms with respect to child justice in Tanzania. It also seeks to guide and coordinate policy

³²⁰ Ibid, Section 97(3).

³²¹ Section 100(10) of LCA [RE 2019].

³²² Ibid.

³²³ Section 100A (1) of LCA [RE 2019].

³²⁴ Ibid, Section 100A (2).

³²⁵ Ibid, Section 119.

³²⁶ See for example Section 99 of the LCA [RE 2019].

³²⁷ Ibid, Section 99(1)(b) & (d).

³²⁸ Ibid, Section 99(1)(e).



and legal procedural reforms deemed necessary from “a system point of view” in order to improve child justice. It aims to sustain the momentum of the progressive reforms achieved during the implementation of the First Child Justice Strategy 2014-2017; and to continue to create a more fair and effective child justice system in Tanzania.

2.4.4.3. Perceptions on juvenile delinquency and causes of juvenile crimes: survey findings

Community members who responded to the Human Rights Survey 2021 were asked about the problem of juvenile delinquency/ crime in their community, juvenile crimes mostly committed, and causes of juvenile crime. Regarding the problem of juvenile crime, half of them (51%) said it is a serious problem, followed by over a third (39%) who said it is a moderate problem. Only 5% and 1% of the respondents said juvenile crime is only a minor problem and not at all a problem respectively.

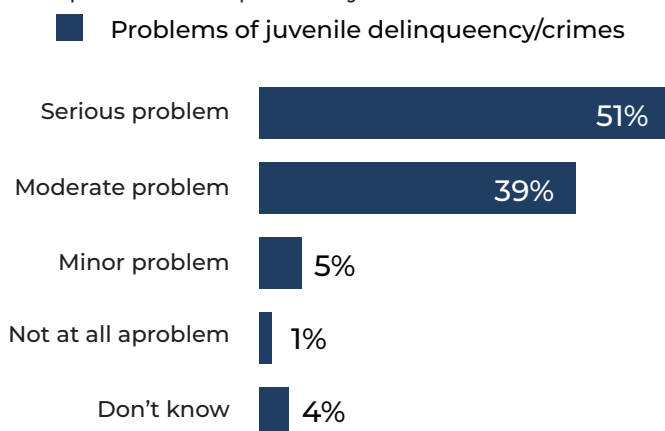


Figure 20: Community members' perceptions on juvenile crime in their community (N=1,088)

Source: **Field Data, 2021**

“There are many children who are in conflict with the law. There juveniles who roam the streets and hide in bushes, waiting to target and rob people... there are also girls aged 16 and 17 years who engage in commercial sex.”

Community member, Geita

Regarding juvenile crimes mostly committed, theft was mentioned the most by the respondents (84%), followed by sexual violence (39%). A third of the respondents also indicated that vandalism is a



common juvenile crime in their community, while physical assault was mentioned as common by 22% of the respondents, as shown in figure 21 below.

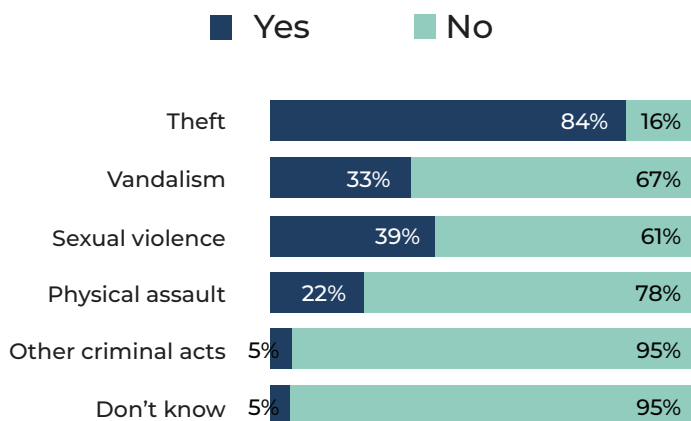


Figure 21: %Responses of community members on juvenile crimes commonly committed (N=1,088)

Source: Field Data, 2021

Regarding causes of juvenile crime, poor parenting or parental neglect was mentioned as the biggest cause (84%), followed by peer pressure/influence (55%), and lack of quality education (43%). Some of the community members associated lack of education with crime, noting that the less educated a youth is the more likely they will resort to criminal activity.

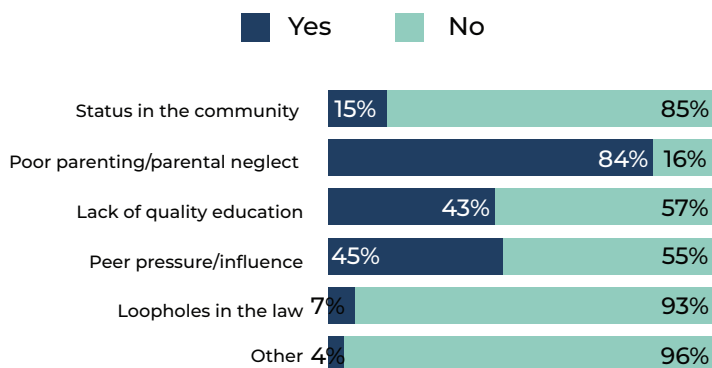


Figure 22: %Responses community members on causes of juvenile crimes (N=1,088)

Source: Field Data, 2021



In **Geita**, increase of juvenile crime was linked to family desertion/ abandonment. Regarding this issue, a community development officer who responded to the survey said:

“There has been an increase of children in conflict with the law and this is contributed by factors such as child/family abandonment and separation of parents.”
CDO, Geita

In **Mara**, poor parenting was identified as a major factor contributing to increased juvenile crime. During an interview a social welfare officer in the region revealed:

“..juvenile crime is a big challenge in our community...children commit crimes such as theft, rape, and sodomy.. the major factor that contributes to all this is poor parenting, as parents have no time for their children. Children leaving with grandparents or with a single parent, usually a mother, are more vulnerable to juvenile delinquency.”
SWO, Mara

Bias against street children was also mentioned as a challenge in **Mara** Region. Of specific concern is the assumption that all street children are automatically juvenile offenders or potential offenders, hence treated as such by authorities, especially law enforcement authorities.

“...there is a misconception that has been built in the community that all street children are automatically juvenile offenders and are usually treated as such by the authorities and taken to detention facilities.”
Paralegal, Mara

2.4.4.4. Perceptions on the juvenile justice system: survey findings

Respondents of the Human Rights Survey 2021 identified several issues of concern with juvenile justice in Tanzania, including:

- Mixing juvenile offenders with adults in detention facilities/prisons
- Shortage of retention homes/centres for victims
- Shortage of detention facilities
- Shortage of juvenile courts
- Lack of financial support for SWOs to guarantee their effective participation in juvenile proceedings
- Timing of juvenile proceedings in designated juvenile courts
- Food for juvenile offenders awaiting trial



- Lack of proper and regular training on juvenile justice for some of the judicial officers
- Some designated juvenile courts not being conducive for juvenile proceedings
- Juvenile justice system focusing more on dealing with juvenile offenders instead of prevention
- Too much protection of juvenile offender and less regard for the victim in terms of sentencing
- Proceedings not conducted in camera
- Sexual and other forms of violence against detained juveniles
- Shortage of social welfare offices (SWOs)

Table 11: Some of the key quotes regarding juvenile justice made by respondents to the survey

Issue	Quote
Mixing juvenile offenders with adults in detention facilities/prisons	<p><i>"It is true that there are many children in conflict with the law, but this does not justify subjecting them to the same treatment and mixing them with adult offenders, which leaves them vulnerable to acts of violence."</i></p> <p>NGO official, Dar es Salaam</p> <p><i>"Juvenile justice is faced with many challenges in Serengeti District. One of the challenges is mixing juvenile offenders with adult offenders or remandees and giving them the same treatment."</i></p> <p>Advocate, Mara</p>
Shortage of retention homes/centres for victims	<p><i>"There is a challenge of shortage of retention homes for victims of juvenile crime. We also do not have a juvenile court in Gairo, we have to go to Kilosa for juvenile cases."</i></p> <p>- SWO, Gairo District</p>
Shortage of detention facilities, approved schools, and courts	<p><i>"The Government has done well to establish juvenile courts in most districts but only the Kisutu court has all the qualifications. There is also only one approved school for children in conflict with the law, located in Mbeya. In my opinion, such schools should be in each region and all other juvenile courts should be improved to be like the Kisutu court in Dar es Salaam."</i></p> <p>Lawyer, Dar es Salaam</p> <p><i>"We don't have a detention facility for children in conflict with the law, so they are put in adult detention facilities."</i></p> <p>Magistrate, GEITA</p>



Issue	Quote
<p>Lack of financial support for SWOs to guarantee their effective participation in juvenile proceedings</p> <p>&</p> <p>Timing of juvenile proceedings in designated juvenile courts & food juvenile offenders awaiting trial</p>	<p><i>“Social welfare officers lack the financial support needed to enable them to effectively carry out their duties relating to juvenile justice. They do not have specific budget for juvenile cases. We are also faced with a challenge of most juvenile court proceedings commencing in the afternoon after the adult criminal proceedings, but we have to stay with the children in conflict with the law since morning and ask for food, which forces us to use our money to buy them food while awaiting trial.”</i></p> <p>SWO, Dar es Salaam</p>
<p>Lack of proper and regular training on juvenile justice for some of the judicial officers</p>	<p><i>“Magistrates have been trained on administration of juvenile justice, but prosecutors also need to be trained.”</i></p> <p>Resident Magistrate, Geita</p>
<p>Juvenile justice system focusing more on dealing with juvenile offenders instead of prevention</p>	<p><i>“The juvenile justice system has focused more on addressing juvenile crime and less on preventing such crime.”</i></p> <p>Lawyer, Mwanza</p>
<p>Too much protection of juvenile offender and less regard for the victim in terms of sentencing</p>	<p><i>“Punishment or sentence given to convicted juvenile offenders is too lenient. Stricter punishment should be given to habitual and repeat offenders.”</i></p> <p>Prosecutor, Tanga</p>
<p>Sexual and other forms of violence against detained juveniles</p>	<p><i>“Most children in conflict with the law are mixed with adults in detention facilities, leaving them vulnerable to abuse.”</i></p> <p>NGO official, Dar es Salaam</p> <p><i>“There have been allegations of sexual violence at the Kisutu detention facility.”</i></p> <p>Lawyer, Dar es Salaam</p>
<p>Shortage of social welfare offices (SWOs)</p>	<p><i>“It is very important for social welfare officers to participate in juvenile cases, as they are an important part of the process. However, there is a problem of shortage of such officers and they available officers are sometimes busy with other duties, hence proceedings stall.”</i></p> <p>Resident Magistrate, Morogoro</p>

Source: **Field Data, 2021**



LHRC's View: Existence of the legal framework on juvenile justice, especially the Law of the Child Act, which was amended recently in 2019, is a step in the right direction in terms of protecting children's rights. However, from the points raised by respondents of the LHRC survey, it appears there are two major issues or concerns with juvenile justice in Tanzania. The first one, is lack of effective implementation of the juvenile justice law, and the second one is gaps in the law, which need to be addressed to protect both children in conflict with the law and victims of their juvenile offenders.

LHRC's Call: The Judiciary and Ministry of Community Development, Gender, Women and Special Groups to lead initiatives to look into and discuss current key issues and concerns regarding the juvenile justice system to ensure local practices are in line with international human rights standards and best interests of the child.

2.5. Right to Liberty and Personal Security

Meaning & Key Applicable Standards

- Requires that persons not be subject to arrest and detention (deprivation of liberty).
- Entails two distinct rights: the right to liberty of the person and the right to personal security.
- Includes freedom from arbitrary arrest and detention, right to personal security and right to bail.
- Does not grant complete freedom from arrest or detention. However, deprivation of liberty is only justified if it is **in accordance with the law** (principle of legality) and **not arbitrary**. Other key principles in this regard are necessity and proportionality.
- Right to personal security creates an obligation on the Government of Tanzania to ensure that reasonable and appropriate measures are taken to protect detained and non-detained persons.
- Key applicable standards include: the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the UN Convention on the Rights of the Child (CRC) of 1989, Convention on the Rights of Persons with Disabilities (CRPD) of 2006 the African Charter on Human and Peoples' Rights (ACHPR) of 1981, and African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. Domestically, the standard is the Constitution of the United Republic of Tanzania, 1977.

In 2021, reported incidents and concerns relating to right to liberty and personal security included personal security of *bodaboda* drivers; lack of police presence/stations in some wards across Tanzania Mainland; concerns over safety and security of women and children; and arbitrary



arrests and detention.

2.5.1. Personal security of people, including bodaboda drivers

The Tanzania Human Rights Report 2020 highlighted killings and attacks of bodaboda drivers reported in different parts of Tanzania, whereby a total of five incidents were documented by LHRC in 2020. In 2021, personal security of *bodaboda* drivers, who are targeted for their motorcycles, continued to raise concerns over their safety and security. LHRC documented a total of eight incidents of attacks and killings of the drivers in 2021, which are three more than those reported and documented in 2020. The incidents were reported in Kilimanjaro, Dar es Salaam, Mara, Mbeya, Lindi, Pwani, and Tabora Regions. For instance, in May 2021, Police in **Kilimanjaro** Region arrested three young people for killing a *bodaboda* driver, Rodgers Kessy, by hitting him on the head with a hammer and strangling him with a wire, before taking his motorcycle. The accused persons are Sifael Sarun (21), Emmanuel Godson (21), and Elia Laizer (21), all residents of Kiboroloni area. In July 2021, Police in **Dar es Salaam** arrested 46 criminal suspects, including four accused of killing a *bodaboda* driver, Jumanne Mussa (30), resident of Kigamboni area in Dar es Salaam.

In **Pwani**, a 30-year-old Mohamed Kaputi, resident of Kibaha District, was brutally attacked and killed by unknown assailants, who then took his motorcycle. The incident occurred in October 2021. In the same month, 25-year-old Richard Stanslaus, resident of Igunga District in **Tabora** Region, was kidnapped, viciously attacked and killed by two people for his motorcycle in October 2021. The perpetrators were arrested by police as they were attempting to sell the motorcycle.

In **Pwani** Region, one of the respondents to the Human Rights Survey was a *bodaboda* driver. He narrated his ordeal with the people who pretended to be passengers and attacked (stabbed) him and took away his vehicle.³²⁹

329 LHRC Human Rights Survey 2021: Pwani Field Report.





Picture 11: A bodaboda driver in Kibaha District who narrowly escaped death following attack by assailants who wanted his motorcycle

Incidents of crime and violence against other people in the community also raised personal security concerns in different parts of Tanzania Mainland. These incidents included gender-related killings or killings committed by intimate partners, abductions, sexual violence against children, and human trafficking. Bodaboda drivers themselves were also implicated in various criminal activities and sexual violence against children in 2021.

2.5.2. Lack of Police Presence in some Wards: A Threat to Personal Security

The generally accepted or cited police to civilian ratio is 1:450.³³⁰ In July 2021, the Inspector General Police (IGP) of Tanzania, Simon Sirro, also acknowledged that the recommended police to civilian ratio is 1 police officer for every 450 civilians. However, he noted that currently there is 1

³³⁰ See WorldAtlas “Countries With The Most Police Officers Per Capita” at <https://www.worldatlas.com/articles/countries-with-the-most-police-officers-per-capita.html>; Mary Kimani “Security for the highest bidder” Africa Renewal, October 2009, at <https://www.un.org/africarenewal/magazine/october-2009/security-highest-bidder>. [It should be noted, however, that the 1:450 is only the most cited ratio, but there is no clarity by the UN or any official UN document that it is indeed the standard and how it has been calculated]



police officer for every 2,000 civilians in Tanzania.³³¹ To address this gap, he called for increased community-based or participatory policing.³³² In September 2021, the Ministry of Home of Affairs revealed that it was planning to employ 3,103 new police officers.³³³ As of December 2020, regions which were leading for shortage of police officers, based on the police to civilian ratio, were Simiyu (1:3,465), Tabora (1:2,768); Geita (1:2,457), Songwe (1,2,417), and Kigoma (1:2,342).³³⁴

Respondents of the Human Rights Survey 2021 highlighted the lack of police presence in some wards in some of the regions of Tanzania Mainland. This issue was especially brought to light in Pwani and Singida Regions. For instance, in **Pwani**, it was reported that some wards in the region did not have police stations, a situation which has forced villagers to resort to amicable settlement of criminal matters, using ten cell leaders and other local leaders. In Kisarawe District, it was reported that there was only one police station, which is located in Kisarawe Town – some 20 km away from wards such as Kazimzumbwi, Masaki, Msanga and Marui, which do not have police stations.

“..There are many incidents of violence in our community, but they often are often unreported due to the proximity of the police station. There is only one police station, located in Kisarawe Town.”

Community member, Pwani

In **Singida**, it was revealed that lack of police stations in some of the wards has forced villagers to resort to using peoples’ militia officers (*mgambo*) to arrest suspects and take them to police stations in other wards, but they have to pay Tshs. 10,000 to secure their services.³³⁵ This situation has resulted into some villagers not reporting some crimes, including GBV and VAC incidents.

2.5.3. Safety and security of women and children

In 2021, safety and security of women and children raised alarm in terms of protection of their rights. Key issues that jeopardized their safety and security include killings of women in different regions for reasons such as witchcraft suspicion and intimate partner violence fuelled by jealousy; and sexual and physical violence against children. These issues are discussed in detail in other parts of this report.

331 LHRC Media Survey & Human Rights Monitoring, 2021.

332 Ibid.

333 LHRC Media Survey 2021.

334 Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, Januari – Disemba 2020.

335 LHRC Human Rights Survey 2021: Singida Field Report.



Most of the incidents of violence against women and children (VAWC) continue to occur at home, as revealed in chapter five of this report. Recent studies, including by the United Nations Office on Drugs and Crime (UNODC), have shown that home has become the most dangerous place for women, who constitute majority of homicide victims worldwide killed by partners or family.³³⁶

2.5.4. Arbitrary arrests and detention

According to the ICCPR, “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”³³⁷ This provision echoes Principle 10 of the UN Body of Principles for the Protection for All Persons under any Form of Detention or Imprisonment of 1988. A person deprived of his or her liberty must be promptly informed of the reasons thereof, in a language which he or she understands and in sufficient detail so as to be enabled to request a prompt decision by a judicial authority on the lawfulness of his or her deprivation of liberty.³³⁸ Accused person must also not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.³³⁹

The Criminal Procedure Act requires police officers or other people carrying out an arrest to use a reasonable force during arrest (no more than is necessary to prevent escape).³⁴⁰ A person being arrested should not be subjected to more force than is necessary to make the arrest.³⁴¹

2.5.4.1. Reported cases of arbitrary arrests and detention

In 2021, LHRC documented at least eight reported incidents of arbitrary arrests and detention, including five against journalists.³⁴² The incidents are one more than those documented by LHRC in 2020. However, it is noteworthy that these represent just a small fraction of incidents as many such incidents go unreported.

Incidents of arbitrary arrests and detention documented by LHRC were reported in Dar es Salaam, Kagera, Mbeya, Tabora,

336 See United Nations Office on Drugs and Crime (UNODC), *Home, the most dangerous place for women, with majority of female homicide victims worldwide killed by partners or family*, UNODC study says, Press Release, 25 November 2018 at <https://www.unodc.org/unodc/en/press/releases/2018/November/home--the-most-dangerous-place-for-women--with-majority-of-female-homicide-victims-worldwide-killed-by-partners-or-family--unodc-study-says.html>.

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

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

339 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.

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

341 Ibid, Section 21.

342 LHRC Human Rights Monitoring 2021.



Tanga, Kilimanjaro, and Katavi Regions. In **Mbeya**, arbitrary arrest was reportedly followed by demand for bribes by police officers, whereby one victim of arbitrary arrest was reportedly asked for Tshs. 400,000-bribe as a condition for bail.³⁴³ In **Tabora** arbitrary arrest of a 19-year-old was reportedly followed by his mysterious disappearance.³⁴⁴ It was reported that the victim's mother had visited and brought him food while in police custody five days before his disappearance.

One of the community members who participated in the Human Rights Survey 2021 lamented the behavior of police officers arresting civilians without telling them reasons for arrest. He noted that this behavior has become normal in his community.

“One day I was suddenly arrested as I was getting off the bus. Several other people were also arrested, and we were all taken under police custody. To secure our release, we had to pay some money.”

Community member & NGO official, Dodoma

2.5.4.2. Arbitrary arrests and detention ordered by government leaders

Under the Regional Administration Act, RCs and DCs are allowed 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 tranquillity.³⁴⁵ And the detention of a person should not last more than 48 hours, after which they must be produced before a court of law.³⁴⁶ However, LHRC has observed that these powers have usually abused by RCs and DCs.

Arbitrary arrests by government leaders and senior public officials have become an issue in recent years. In the period of 2017 to 2021, LHRC has documented at least four reported incidents of arbitrary arrests and detention ordered by government leaders, mostly District Commissioners (DCs). A total of 12 people were arbitrarily arrested and detained in these incidents, including

³⁴³ LHRC Human Rights Monitoring 2021.

³⁴⁴ Ibid.

³⁴⁵ Section 7 of the Regional Administration Act 1997.

³⁴⁶ Ibid.



public servants and journalists. Trends on arbitrary arrests and detentions and action by senior government leaders to address them in the period of 2017 to 2021 are summarized in table 12 below.

Table 12: Arbitrary arrests and detention ordered by government leaders and action taken – 2017 to 2021

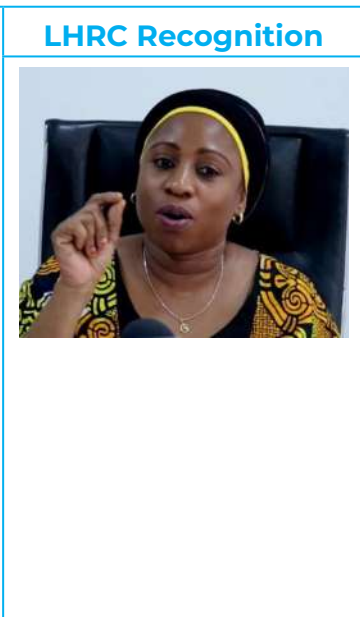
Year	Incident & Action
2017	<ul style="list-style-type: none"> ■ In February, DC in Kilimanjaro orders arrest and detention of three officials for more than 48 hours for allegedly not doing their jobs properly. ■ In March, the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Ummu Mwalimu, warns against RCs and DCs ordering arrest of health workers without good cause and urges them to follow legal procedures. ■ In June, the Minister of State in the President's Office, Regional Administration and Local Government, Hon. George Simbachawene, also warns against abuse of detention powers by RCs and DCs.
2018	<ul style="list-style-type: none"> ■ In October, RC in Katavi orders arrest and 12-hour detention of three public servants for allegedly delaying at an important function. ■ In December, RC in Manyara orders arrest and 48-hour detention of four workers of company and their lawyer, for for allegedly spreading false claims of being detained on social media (posting seditious content) ■ In August, President's Office, Regional Administration and Local Government, Hon. Selemani Said Jafo (MP), warns against the habit of some DCs of ordering arbitrary arrests and detention of government officials and public servants. ■ In the same month, the deputy minister, Dr. Zainabu Chaulla, made similar remarks while opening a training workshop for district commissioners and district executive directors in Dodoma. ■ In Simiyu Region, the Regional Commissioner, Hon. Anthony Mtaka, warns district commissioners in the region against ordering arbitrary arrest and detention of public servants.
2019	<ul style="list-style-type: none"> ■ No reported incidents of arbitrary arrests and detention ordered by RC and DCs documented by LHRC.
2020	<ul style="list-style-type: none"> ■ No reported incidents of arbitrary arrests and detention ordered by RC and DCs documented by LHRC.



2021	<ul style="list-style-type: none"> ■ Once incident of arbitrary arrest and detention of two journalists ordered by the Director of Temeke Municipality. Question asked whether powers of arrest and detention extend to directors. ■ Not orders made by RCs and DCs documented. ■ In April, then Minister of Information, Culture, Arts, and Sports, Hon. Innocent Bashungwa, takes to Twitter to announce that his ministry is following up on the incident. ■ 13 days later, then Minister of State in the President's Office for Regional Administration and Local Government (PO-RALG), Umyy Mwalimu, suspends the director from his duties for abuse of power and improper conduct, paving way for an investigation. ■ In August, the suspended director is arraigned before the Kisumu Resident Magistrate Court in Dar es Salaam on abuse of office charges following investigation by the anti-corruption body, PCCB. This is a step in the right direction in terms of holding leaders and government officials accountable for abuse of their powers.
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Salute for Hon. Umyy Mwalimu for standing up against misuse of arrest and detention powers of government leaders

Hon. Umyy Mwalimu deserves praise as she has been vocal against arbitrary abuse of powers of arrest and detention since 2017. As minister she has given several warnings to RCs and DCs in this regard. While serving as the PO-RALG Minister in April 2021, she also ordered suspension of the Temeke Municipality Director, Lusabilo Mwakabibi, following allegations of abuse of office and powers, including ordering arbitrary arrests and detention of two journalists in Dar es Salaam.



2.5.5. Right to bail

As discussed above, right to bail is essential in safeguarding the right to liberty and the principle of presumption of innocence.

2.5.5.1. Denial of bail

Respondents to the Human Rights Survey 2021 were asked the extent to which denial of bail is a problem in their community. Nearly half of them (46%) said it is a moderate problem, followed



by over a third (35%) who were of the opinion that denial of bail is a serious problem in their community. Only 16% and 1% of the respondents perceived denial of bail to be only a minor problem and not at all a problem in their community respectively.

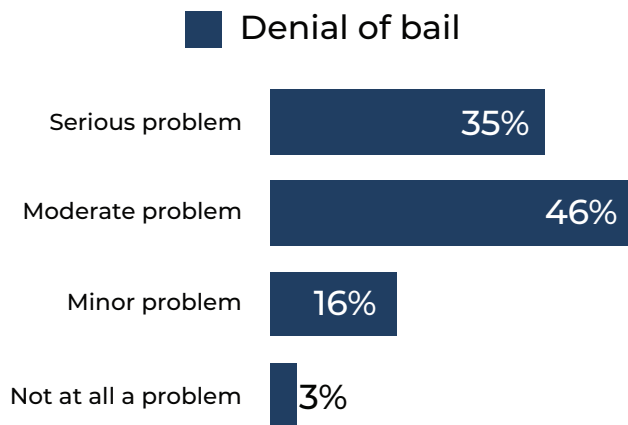


Figure 23: %Responses on community members' perception of denial of bail (N=1,089)

Source: *Field Data, 2021*

In 2021, through media survey, human rights survey, and human rights monitoring, LHRC documented at least ten incidents of denial of police bail, which are two more than those reported in 2020. But again, these may just be a very small fraction of actual number of incidents. Some stakeholders have pointed out that there are many such incidents which go unreported and are contributed by delays in investigations and lack of proper cause. One of the documented incidents was the arbitrary detention of an Indian who used to work at a company in Singida Region, Thilak Kumar, who was successfully provided with legal aid by LHRC and eventually released on bail.

LHRC's View: Right to bail is a constitutional right and essential for realization of the right to liberty and personal security. Posting bail is important for an accused person because it gives them an opportunity to seek legal counsel for their case. It is essential in safeguarding the right to be presumed innocent until proven guilty. As such, arbitrary denial of bail should be discouraged.

LHRC's Call: Tanzania Police Force to ensure bail is timely issued for



all bailable offences in line with the Criminal Procedure Act. Regular checks on police officers are needed to address denial of police bail.

2.5.5.2. Mixed views on whether all offences should be bailable

As discussed above, the topic of whether all offences should be bailable was a subject of hot debate in 2021. There were mixed views on this issue by community members, lawyers prosecutors, magistrates, and advocates, who responded to the Human Rights Survey 2021. Popular opinions expressed by community members who responded to the survey were:

- Offences to be made bailable, subject to Judiciary approval/determination. There should be a bail hearing.
- Bail should be granted, but there should be very strict conditions for bail.
- No bail for repeat offender.
- Judiciary to be granted power to revoke bail.
- Community awareness-raising to be prevent increased mob violence incidents.
- Instead of granting bail even for the most serious crimes, a solution could be speeding up the investigations and criminal proceedings.
- Making all offences to be bailable may create a personal security risk for an accused person.
- Bail should be granted for all offences, except murder.
- There should not be an automatic denial of bail, courts should have final say over granting of bail (bail determination hearings).
- There should be no bail for murder and rape.
- There should be no bail for hardened criminals and habitual offenders.
- Releasing some of the accused persons on bail may lead to interference with investigations.



Table 13: Some of the comments on provision of bail made by community members who responded to LHRC's Human Rights Survey 2021

<p><i>"No. I do not think making all offences bailable is a good idea, especially for cases such as armed robbery, murder, and treason. What needs to be done is the police to speed up the investigations."</i></p> <p>- Primary Court Magistrate, Morogoro</p>
<p><i>"The essence of bail includes protecting the accused person (his/her personal security). It is not a good thing, for example, to release a person accused of murder back to the community where people are still angry with him/her. I also recommend for rape to be added to the list of non-bailable offences."</i></p> <p>Prosecutor, Tanga</p>
<p><i>"In my opinion, bail should be granted for all petty offences. It should only be denied for serious crimes like murder."</i></p> <p>Lawyer, Mwanza</p>
<p><i>"I think bail should be automatically denied for habitual and repeat offenders."</i></p> <p>Community member, Kigoma</p>
<p><i>"I think there should be a possibility of granting bail for all offences, but bail conditions should be set depending on the seriousness of the case."</i></p> <p>Judicial officer, Mwanza</p>
<p><i>"Bail should be granted for all offences, but conditions should be set on a case-by-case basis."</i></p> <p>District Court Magistrate, Morogoro</p>
<p><i>"I think all offences should be made bailable in line with the constitutional principle of presumption of innocence."</i></p> <p>Lawyer, Kagera</p>
<p><i>"The Judiciary should have the final say on bail, on a case-by-case basis. We can maintain the list of non-bailable offences, but there should be a procedure for bail hearing."</i></p> <p>Lawyer, Dar es Salaam</p>



“Making all criminal offences bailable will create a huge risk, especially for the personal security of an accused person. Release of an accused person may also lead to evidence tampering or interference with an investigation. The change that needs to be made is to ensure no person is arrested before completion of investigation, like is some other countries.”

Paralegal, Morogoro

“Bail should be granted offences which do not directly threaten the safety and security of civilians, such as economic crimes.”

Resident Magistrate, Geita

Source: Field Data, 2021

LHRC’s View: Right to bail is a constitutional right and essential for realization of the right to liberty and personal security. Given the challenges of slow pace of investigation and criminal proceedings in Tanzania, automatic denial of bail constitutes infringement of fundamental human rights and has far-reaching ramifications. As suggested by some of the respondents of the survey, we can maintain some offences as non-bailable offences, but the court should have the final say over granting bail. This means there should be circumstances when the court may grant bail for non-bailable offences. Additionally, special consideration should be given to special and gender needs of women, PWDs, and older people, when making a determination on bail.

LHRC’s Call: As proposed in LHRC’s study on non-bailable offences conducted in 2021, Tanzania to borrow a leaf from countries such as Kenya, Malawi, Uganda, and Zambia by granting the High Court powers to determine bail on a case-by-case basis and grant bail even for non-bailable offences. This will be in line with the constitutional mandate given to the Judiciary under Article 107A of the Constitution of the United Republic of Tanzania and international human rights standards.

2.5.6. Trumped-up charges and delays in conducting investigations

2.5.6.1. Senior government leaders alarmed by trumped-up charges and delays in conducting investigations

In recent years, senior government leaders have expressed concern over complaints of trumped-up charges and delays in



conducting investigations. For instance, in February 2020, the late H.E. President John Magufuli indicated that investigators and law enforcers in the country have been causing unnecessary suffering to remandees due to delays in conducting and concluding investigations.³⁴⁷ He also noted that some people are arrested and detained on trumped-up charges, including under instructions of the rich people.³⁴⁸ The then Minister of Home Affairs, Hon. George Simbachawene, also expressed concern over trumped-up charges and called to the police commanders to address the problem.³⁴⁹

In 2021, H.E President Samia Suluhu also expressed concerns over various criminal justice challenges, including trumped-up or fabricated charges. In May 2021, following her plea the law enforcement organs to review cases and dismiss all cases fabricated against innocent civilians, the Police Force started reviewing the cases. In December 2021, she urged the Inspector General of Police (IGP), Simon Sirro, to make major reforms in the police force to eradicate corruption, excessive use of force/police brutality, fabrication of charges, discriminatory language, and verbal abuse. She expressed concern over police officers who break the law and called upon the IGP to ensure they are held accountable and disciplined for their actions.³⁵⁰ On Christmas eve, IGP Simon Sirro identified a number of issues that need to be addressed to improve the performance of the Tanzania Police Force, including fabrication of charges (trumped-up charges).³⁵¹ According to the IGP, there has been a tendency of some police officers fabricating charges against civilians so that they can demand a bribe to drop such charges.³⁵²

Earlier, in July 2021, the then Minister of Home Affairs, Hon. George Simbachawene, called upon police officers to refrain from fabricating charges against innocent civilians.³⁵³ He also called for timeframe for police training to be extended from 9 months to 12 months, so that recruited police officers are adequately trained.³⁵⁴

347 LHRC (2021), *Tanzania Human Rights Report 2020*, [www.humanrights.or.tz].

348 Ibid.

349 Ibid.

350 LHRC Media Survey 2021.

351 Ibid.

352 Ibid.

353 LHRC Media Survey 2021.

354 Ibid.



In 2020 a total of 1,422 remandees were released by the DPP after it was revealed that they had been remanded on trumped-up charges.³⁵⁵ In May 2021, PCCB announced that it had dismissed 147 cases that are thought to have been fabricated against innocent civilians.

Moreover, 2021 saw the government (prosecution) dropping cases for lack of interest to prosecute and, in some incidents, dropping of unbailable counts, especially money laundering, and subsequent release on bail. Majority of these cases had stayed in court for years, including 31 Muslim clerics who spent 8-years in prison without trial.³⁵⁶ This trend leaves several unanswered questions about the about the criminal justice system and also extends discussion on trumped-up charges. The trends justify the essence of safeguarding right to liberty by making bail a universal right for all.

2.5.6.2. Community members views on trumped charges/ fabricated cases: survey findings

Community members who responded to the Human Rights Survey 2021 were asked whether trumped-up charges/fabricates cases are a problem in their community, and if so to what extent. Nearly a half of the respondents (49%) expressed that trumped-up charges are a serious problem in their community, while over a third (38%) were of the opinion that it is a moderate problem. Only 2% of the respondents said it is not at all a problem, while 11% said it is only a minor problem.

³⁵⁵ LHRC (2021), *Tanzania Human Rights Report 2020*, [www.humanrights.or.tz].

³⁵⁶ Masheikh wa Uamsho waachiliwa huru | Matukio ya Afrika | DW | 16.06.2021, <https://www.dw.com/sw/masheikh-wa-uamsho-waachiliwa-huru/a-57920289>.



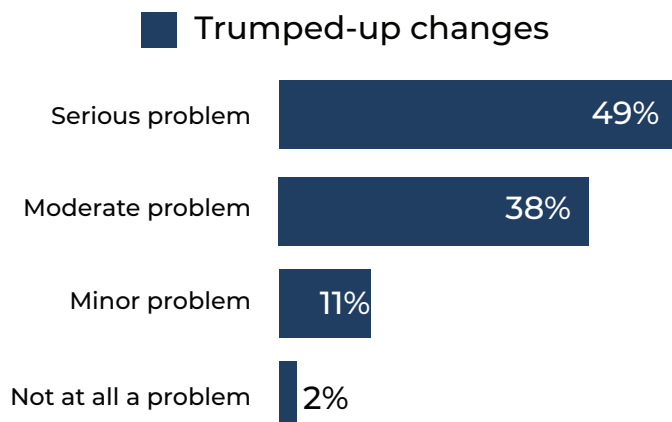


Figure 24: %Responses on community members' perceptions on trumped-up charges (N=1,089)

Source: Field Data, 2021

“Some police officers taint the reputation of the police force by fabricating charges or cases against innocent civilians. The Tanzania Police Force should take serious measures to address this problem and ensure those implicated are held accountable.”

- Community member, Rukwa

In **Mara**, some respondents accused police officers and PCCB officials of imposing trumped charges on innocent civilians, especially rich people, as well as critics.³⁵⁷ These charges include money laundering and other economic crimes.

In Gairo District, **Morogoro**, some of the police officers were accused by some of the respondents of colluding with commercial sex workers create fabricated charges against men. It was reported that the sex workers seduce men and with them to a hotel/lodge and when they get there, they call the police officers, shouting that they are being raped. When the police officers, who are usually nearby, arrive in the room they demand about Tshs. 100,000 to Tshs. 300,000 not to arrest the men³⁵⁸.

In **Mwanza**, some of the lawyers and judicial officers pointed out that the problem of trumped-up charges can be addressed by increasing accountability for the Office of the Director of

³⁵⁷ LHRC Human Rights Survey 2021: Mara Field Report.

³⁵⁸ LHRC Human Rights Survey 2021: Morogoro Field Report.



Public Prosecutions (DPP) and making all offences bailable.³⁵⁹

Similar remarks were made by some of the interviewed lawyers and paralegals in Tabora, Njombe, Katavi, and Mbeya Regions. In **Kagera**, one lawyer recommended during an interview for the criminal justice system to address the problem of trumped-up charges, as well as creating public awareness.³⁶⁰

In **Tabora**, an NGO official stated that corruption and trumped-up charges have caused people to lose faith in the police and the whole justice system, while also blaming some of the community members for initiating bribe because they believe that in order to get quality services they need to pay bribe³⁶¹.

In **Dar es Salaam**, one of the lawyers who responded to the survey mentioned that the Office of the DPP should ensure only cases with proper evidence are sent to court and courts should also reject cases which are determined to be weak.³⁶²

He also stated that granting bail for even non-bailable offences will help in addressing the problem of trumped-up charges.

2.5.6.3. Reported incidents of trumped-up charges

In 2021, LHRC documented at least three incidents of trumped-up charges, reported in Arusha and Tabora Regions. In **Tabora**, residents Mgazi, Chagana, Lugubu, and Imenya Villages in Igunga District accused some of the police officers in the district of fabricating charges against them, soliciting bribes, and threatening them with murder charges during a meeting with the District Commander of the PCCB, Francis Zuakuu.³⁶³

Two of the residents claimed that their relatives had been arrested and the police had demanded Tshs. 2 million and Tshs. 1.5 million to release them.

In April 2021, seven police officers in Arumeru District in **Arusha** Region were arrested for soliciting a bribe of Tshs. 100 million.³⁶⁴

The police officers reportedly colluded with three civilians to solicit the money from a businessman in the district, the whole plot being orchestrated by one of the civilians, who was the former employee of the businessman. They threatened charge the businessman with illegal possession of ivory if he did not comply.

359 LHRC Human Rights Survey 2021: Mwanza Field Report.

360 LHRC Human Rights Survey 2021: Kagera Field Report.

361 LHRC Human Rights Survey 2021: Tabora Field Report.

362 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.

363 LHRC Media Survey 2021.

364 LHRC Human Rights Monitoring 2021.



2.5.7. Human trafficking

2.5.7.1. Overview & situation of human trafficking globally and in Sub-Saharan Africa

Overview

Trafficking in persons has been defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”³⁶⁵

According to the United Nations (UN), human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain.³⁶⁶

Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. States are required to adopt legislative and other measures to criminalize human trafficking.³⁶⁷

Human trafficking is a threat to right to liberty and personal security. It also a threat to other rights and freedoms such as right to life, right to non-discrimination, freedom from slavery, freedom from torture, freedom from violence, freedom of association, freedom of movement, right to health, right to just and favourable conditions of work, right to adequate standard of living, and right to social security.³⁶⁸

³⁶⁵ See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 at <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

³⁶⁶ See The Office of the United Nations High Commissioner for Human Rights, Human Rights and Human Trafficking, Fact Sheet No. 36 at https://www.ohchr.org/Documents/Publications/FS36_en.pdf, accessed 15 October 2020.

³⁶⁷ See Article 5(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

³⁶⁸ Ibid.



Global situation of human trafficking

In January 2021, the United Nations Office on Drugs and Crime (UNODC) released the Global Report on Trafficking in Persons 2020, a fifth such report.³⁶⁹

In summary, the report reveals that:

- Victims are targeted when they are vulnerable and the Covid19 pandemic has increased vulnerability
- Female victims continue to be particularly affected by trafficking in persons
- Traffickers of children target victims from extremely poor households, dysfunctional families or those who are abandoned with no parental care
- In low income countries, children make up half of the victims detected and are mainly trafficked for forced labour (46%)
- Covid19 will more likely particularly increase risk of trafficking for labour
- Child trafficking emerges from communities in extreme poverty
- Children account for about one third of the detected victims of trafficking, but child trafficking disproportionately affects low-income countries, where it is linked to broader phenomenon of child labour
- In Sub-Saharan Africa, children have been trafficked to work on plantations, in mines and quarries, on farms, as vendors in markets and on the streets
- The main economic sectors where victims are reported to be exploited are domestic work, construction work, fishing, agriculture, catering, street trading, garment, and mining.
- Female victims trafficked for domestic servitude suffer extreme harm. 'Invisibility' of some sectors helps to hide trafficking for forced labour
- Victims of trafficking for domestic servitude are exposed to multiple forms of exploitation and violence, including sexual, physical, and psychological abuse that is rarely seen in other forms of trafficking. Victims of this type of trafficking are usually women, who often work and live with the perpetrators of exploitation, making them particularly vulnerable
- Criminal actors involved in trafficking of persons are individual traffickers,³⁷⁰ opportunistic associations of traffickers,³⁷¹ business-enterprise-type of organized criminal groups,³⁷² and governance-type of organized criminal groups³⁷³

³⁶⁹ UNODC, Global Report on Trafficking in Persons 2020 (United Nations publication, Sales No. E.20.IV.3).

³⁷⁰ Typically operate on their own.

³⁷¹ Two traffickers operating together, or more than two traffickers not systematically working together beyond a single crime episode.

³⁷² Three or more traffickers systematically working together to traffic persons as a core component of their criminal activities.

³⁷³ Practice security governance in a community or territory by means of fear and violence, and may be involved in multiple illicit markets.



- Organized criminal groups traffic more victims (57%) and tend to use more violence than small scale traffickers
- When organized criminal groups are involved, many more victims are trafficked, often for longer periods, across wider distances and with more violence
- Some traffickers use recruitment agencies as cover
- Some trafficking operations are organized as recruiting agencies, typically used by potential migrants seeking work abroad. Workers are often deceived over the fees taken from their wages to allegedly cover the job search, official documents, transport, housing, and other services. Some agencies charge up to 11 months' salary
- Illicit profits from trafficking can vary: large criminal organizations make the highest incomes, while small scale traffickers can earn a little more than average wage
- Victims of trafficking within national borders were sold for as little as 250 USD
- Traffickers use subtle means to recruit victims and get more violent during exploitation, usually deceptive or manipulative means
- Traffickers adapt to technology shifts and exploit through the internet to operate in multiple locations at the same time
- Perpetrators actively approach victims in online spaces or wait for victims or consumers to respond to ads
- Forced labour is on the rise, while proportion of adult women victims is declining (from more than 70% to less than 50%)



Source: UNODC elaboration of national data.

Picture 13: Share of detected trafficking victims, by form of exploitation, 2018 (or most recent)

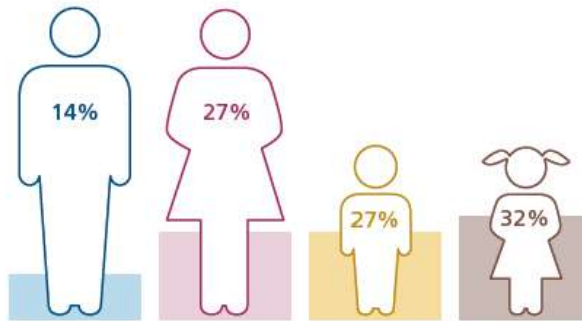
Source: UNODC 2020



Situation of human trafficking in Sub-Saharan Africa

Regarding human trafficking in Sub-Saharan Africa, UNODC study revealed the following:³⁷⁴

- Children represent the majority of victims in Sub-Saharan Africa (60%), especially in West Africa, while Southern African and East African countries tend to detect more adults than children
- Majority of detected victims in Sub-Saharan Africa are trafficked for the purpose of forced labour
- Trafficking flows out of Sub-Saharan Africa have a global dimension, with victims detected in Western and Southern Europe, in North Africa, and in the Middle East. The victims are also detected in North America and East Asia
- As a destination of trafficking flows, most of the victims are trafficked within their own countries or across the border from neighbouring countries
- Countries in West Africa tend to detect more victims than other countries



Source: UNODC elaboration of national data.

*Based on data on sex and age of 4,799 victims detected in 26 countries in Sub-Saharan Africa.

Picture 14: Shares of detected victims of trafficking in Sub-Saharan Africa by age group and sex, 2018 (or most recent)

Source: **UNODC 2020**

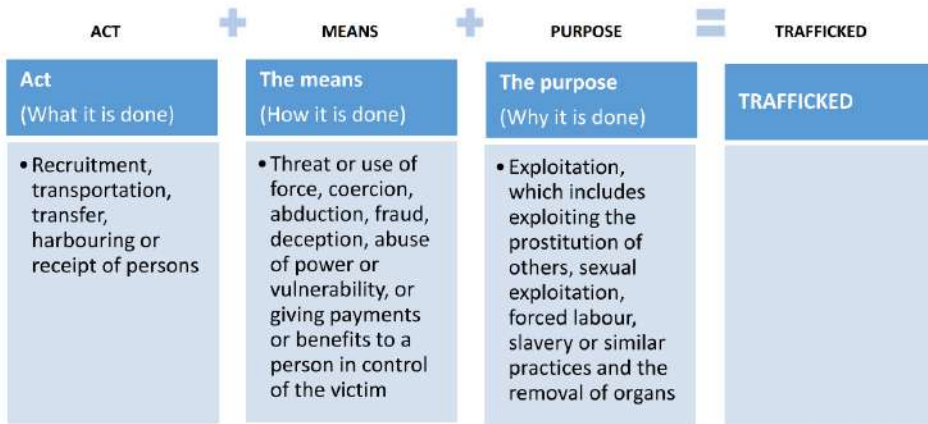
³⁷⁴ Global Report on Trafficking in Persons 2020 (supra).



2.5.7.2. Key elements of human trafficking

According to the United Nations Office on Drugs and Crime (UNODC), there are three key elements of human trafficking, namely an **act**, **means** used to commit an act, and **purpose** (reason for the act). The elements are summarized in picture x below.

Key elements of human trafficking factsheet



Picture 15: Key elements of human trafficking
 Source: UNODC³⁷⁵

2.5.7.3. The Anti-Trafficking in Persons Act, 2008

In Tanzania, efforts to combat human trafficking include ratification and domestication of key international human rights instruments, including the United Convention on Transnational Organized Crime (UNTOC), 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000. The Protocol was domesticated through the Anti-Trafficking in Persons Act, No. 6 of 2008, which criminalizes trafficking in persons. There is also in place the National Anti-Trafficking in Persons Action Plan (2018 - 2021), whose general objective is to contribute towards the improvement of preventive measures and response services in combating trafficking in persons.³⁷⁶

375 See UNODC Human Trafficking Key Elements Factsheet at https://www.unodc.org/documents/e4j/Secondary/Human_Trafficking_11_Key_elements_of_human_trafficking.pdf.

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



Parts of the law

The anti-trafficking law is divided into eight parts, whereby the first, like in all laws, is preliminary provisions. The second part of the law covers prohibition of trafficking in persons, with the third and fourth parts cover investigations and judicial proceedings and rescue, rehabilitation, protection and assistance to victims respectively. Part five of the law is about the anti-trafficking fund, part six the anti-trafficking committee, and part seven miscellaneous provisions. The last part of the law covers amendments. The law applies both to Tanzania Mainland and Tanzania Zanzibar.³⁷⁷

Acts that constitute and promote human trafficking

Section 4(1) of the anti-trafficking law lists acts that if done by a person constitute human trafficking and amount to an offence. These acts are:

Recruiting, transporting, transferring, harbouring, providing or receiving a person by any means, including under the pretext of domestic or overseas employment, training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;

Introducing or matching a person to a foreign national for marriage for the purpose of acquiring, buying, offering, selling or trading the person in order for that person to be engaged in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;

Offering or contracting marriage, real or simulated, for the purpose of acquiring, buying, offering, selling or trading a person in order for that person to be engaged in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage;

Adopting or facilitating the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced-labour and slavery, involuntary servitude or debt bondage; and

Recruiting, hiring, adopting, transporting or abducting a person, by means of threat or use of force, fraud, deceit, violence, coercion or intimidation for the purpose of removal or sale of organs of the person or doing these acts to a child or a person with disabilities for the purpose of engaging such child or person in armed activities.

³⁷⁷ Section 1(2) of the Anti-Trafficking in Persons Act, 2008.



Additionally, as long as exploitation is the motive, placement for sale, bonded placement, temporary placement or placement as service constitutes human trafficking.³⁷⁸

When it comes to child victims, consent of the child, parent or guardian shall be immaterial.³⁷⁹ When it comes to adults, consent shall also not matter where the means used to obtain it are threat or use of force, fraud, deceit, violence, coercion or intimidation.³⁸⁰

Acts that promote or facilitate human trafficking are also covered in the anti-trafficking law. These acts include **promoting, procuring or facilitating** the commission of the offence.³⁸¹

This includes leasing or subleasing a house for purposes of human trafficking, providing transportation, receiving financial rewards, and advertising or publishing any information that promotes trafficking.³⁸²

Severe trafficking in persons

According to the law, there are certain acts or circumstances which are considered severe human trafficking. These acts or circumstances are:

Where the trafficked person is a child or PWD;
Adoption is made for the purpose of prostitution, pornography, sexual exploitation, forced labour and slavery, involuntary servitude or debt bondage;
If the crime is committed by a syndicate or in large scale;
If the offender is an ascendant, parent, sibling, guardian, or a person who exercises authority over the trafficked person;
If the offence is committed by a public officer, an employee or a religious leader; and
If the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies.

Trafficking in persons by intermediary

The anti-trafficking law also talks about intermediaries, whose job is to facilitate human trafficking, acting as a go-between or broker. Intermediary is defined as “a person who knowingly participates in or is concerned with any aspect of trafficking in persons.”³⁸³

378 Ibid, Section 4(2).

379 Ibid, Section 4(3).

380 Section 4(4) of the Anti-Trafficking in Persons Act, 2008.

381 Ibid, Section 5(1).

382 Ibid, Section 5(2).

383 Section 7(2)(a) of the Anti-Trafficking in Persons Act, 2008.



Their actions with regard to human trafficking include: submitting or taking a person to process of trafficking; giving a consent for a person to be trafficked; receiving at any place a person for the purpose of making that person be a subject of trafficking; and entering into an agreement of trafficking persons.³⁸⁴ Being an intermediary is therefore a criminal offence.³⁸⁵

Punishment for human trafficking

Punishment for committing human trafficking is a fine of not less than Tshs. 5 million but not more than Tshs. 100 million or imprisonment of not less than 2 years and not more than 10 years, or both fine and imprisonment.³⁸⁶

Rescue, care, rehabilitation and canceling of trafficked persons

Public officers in the security services are tasked with rescuing victims of human trafficking and providing them with temporary basic material support for their care and protection.³⁸⁷

Social rehabilitation of the victims must be carried out by social welfare officers (SWOs).³⁸⁸

Services provided by SWOs in this regard include psychological support or counselling and material assistance.

Protection and assistance to victims

In terms of protection and assistance to victims of human trafficking, the government, through the relevant ministries and social welfare department, is required to take adequate measures to ensure protection, rehabilitation and assistance to rescued human trafficking victims.³⁸⁹ These services, however, are provided depending on the available resources.³⁹⁰

Centers for protection of victims

The anti-trafficking law is stipulating that the Government is required to establish or designate centres for protection and assistance to human trafficking victims.³⁹¹ Services provided by centres include accommodation, nutrition, legal assistance, psychological and medical care, security and protection and relocation.³⁹²

³⁸⁴ Ibid, Section 7(2)(b).

³⁸⁵ Ibid, Section 7(1).

³⁸⁶ Section 4(5) of the Anti-Trafficking in Persons Act, 2008.

³⁸⁷ Ibid, Section 17(1).

³⁸⁸ Ibid, Section 17(2).

³⁸⁹ Section 18(1) of the Anti-Trafficking in Persons Act, 2008.

³⁹⁰ Ibid, Section 18 (3).

³⁹¹ Section 20(1) of the Anti-Trafficking in Persons Act, 2008.

³⁹² Ibid, Section 20(2).



Repatriation of victims

The Government is required to ensure repatriation and reception of human trafficking who are Tanzanians or stateless persons entitled to permanent resident in Tanzania upon entry into territory of another state.³⁹³

Programs that address trafficking in persons

The Government is also required to establish, implement and coordinate preventive, protective and rehabilitative programmes for trafficked persons.³⁹⁴

The Anti-Trafficking Fund

The Anti-Trafficking Fund has been established by for purposes of supporting the basic material needs of victims of trafficking in persons and training.

The Anti-Trafficking Committee

The Anti-Trafficking Committee has also been established purposes, among others, of coordinating activities of government departments and law enforcement organs charged with matters relating to trafficking in persons and providing relevant advice.³⁹⁵

The committee is also expected to liase with NGOs to promote rehabilitation and reintegration of victims of trafficking in persons.

2.5.7.4. Situation of human trafficking in Tanzania

Police data

The most recent data on human trafficking in Tanzania published by the Tanzania Police Force shows that in the period of 2016 to 2020, a total of 151 incidents of human trafficking were reported. These include 19 incidents reported in 2020, which are one more than those reported in 2019. However, opinions of the majority of respondents to the Human Rights Survey 2021 show that they are many incidents of human trafficking which go unreported, and this is not only for Tanzania but globally.

³⁹³ Ibid, Section 21(1).

³⁹⁴ Section 24(1).

³⁹⁵ Section 32 of the Anti-Trafficking in Persons Act, 2008.



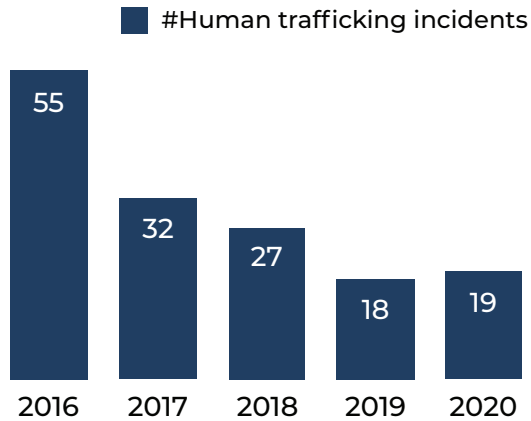


Figure 25: Incidents of human trafficking recorded by police, 2016 to 2020

Source: NBS's Tanzania in Figures 2020

Forms, victims, and perpetrators of human trafficking

In recent years, child trafficking, particularly child labour trafficking and child sex trafficking, have been the most common forms of human trafficking in Tanzania. Impoverished and orphaned children from rural areas are at a higher risk of being trafficked, while girls are exploited in domestic servitude and sex trafficking.³⁹⁶

Women and girls are the major victims of human trafficking in Tanzania. According to a 2020 study by Daughters of Mary Immaculate (DMI), 97% of human trafficking in Tanzania is conducted internally, with children in the ages of 12 to 17 being the major victims. 74% of the victims are girls.³⁹⁷

Other people who are at greater risk of human trafficking include migrants and refugee children.

Perpetrators of human trafficking include family members/relatives, peers, romantic or intimate partners, acquaintances, and strangers. They usually use deceptive, and manipulative means to lure the victims into different forms of trafficking.

³⁹⁶ LHRC (2021), Tanzania Human Rights Report 2020, LHRC [www.humanrights.or.tz].

³⁹⁷ Alfred Lasteck "RIPOTI MAALUMU WAZAZI WANAVYOBARIKI BIASHARA HARAMU YA MABINTI MJINI" HABARILEO Newspaper (online) 7 June 2021, at <https://habarileo.co.tz/habari/2021-06-0760bdd4e61c1fe.aspx>.



Trafficking profile

According to the *2021 Trafficking in Persons Report: Tanzania*, human traffickers – who exploit both domestic and foreign victims in Tanzania – often dupe family members, friends, or intermediaries into aiding traffickers’ in their exploitative tactics by fraudulently offering assistance with education, offering better living conditions, or securing employment in urban areas and abroad.³⁹⁸

The report further notes that:

- Brokers sometimes enter communities to recruit and transport victims into trafficking situations. Impoverished and orphaned children from the rural interior, children with disabilities, and Burundian and Congolese refugees and migrants remain most at risk to trafficking.
- Traffickers exploit girls in domestic servitude throughout the country and in sex trafficking, particularly in tourist hubs along the border with Kenya.
- Traffickers target young girls from rural and impoverished villages, pay their parents a small fee, and coerce the girls into sex trafficking, specifically targeting business people.
- Traffickers subject children to forced labor on farms—including as cattle herders and occasionally as hunters—in gold and gemstone mines and quarries, the informal commercial sector, and on fishing vessels operating in Tanzanian and international waters.
- Some unscrupulous individuals manipulate the traditional practice of child fostering—in which poor parents entrust their children into the care of wealthier relatives or respected community members—and subject children to forced labour as domestic workers.
- Some women and girls travel to Zanzibar from Tanzania Mainland with promises of marriage or good jobs and then are forced to work as farm laborers.
- Children with disabilities are transported to neighbouring countries, especially Kenya, to work as beggars or in massage parlours.
- Traffickers sometimes subject Tanzanians to forced labor, including in domestic service, and sex trafficking in other African countries, the Middle East, Europe, Asia, and the United States.
- Traffickers and their victims increasingly transited Zanzibar en route for forced domestic service in Oman and the UAE.
- There are Ethiopian migrants and victims who transit through Tanzania en route to South Africa.
- According to observers, there are also Burundian victims who are increasingly transiting Dar es Salaam en route to Oman, UAE, and Kenya.
- Citizens of neighboring countries may transit Tanzania before traffickers subject them to domestic servitude or sex trafficking in

³⁹⁸ 2021 Trafficking in Persons Report: Tanzania (supra).



- Kenya, South Africa, Europe, and the Middle East.
- Children from Burundi and Rwanda are increasingly subjected to child forced labor in Tanzania.

Regions leading in human trafficking

Human trafficking in Tanzania is usually accompanied with human rights violations such as beatings, rape, denial of food, forcing victims to work long hours, non-payment for work done, and confiscation of travel documents (for those trafficked from other countries).³⁹⁹

Traffickers enlist the help of family members, friends or intermediaries to aid their criminal conduct and there are brokers who enter into communities to recruit and transport the victims. One of the hotspots in recruitment of child victims in Mpwapwa, Dodoma, and is discussed in detail below. Apart from Dodoma, other regions leading in human trafficking are Dar es Salaam, Tanga, Mwanza, Kigoma, Kagera, Geita, Singida, Arusha, Manyara, Shinyanga, Simiyu, Lindi, Mtwara, and some regions in Zanzibar⁴⁰⁰. Most of the trafficking is conducted internally (within Tanzania).

Government and stakeholder efforts in combating human trafficking

Prosecution

Corruption within the judicial system and official complicity in trafficking crimes were cited as key obstacles in investigation and prosecution of human trafficking offenders.⁴⁰¹ Penalties also remained a concern, especially for serious crimes such as rape. The Anti-Trafficking Secretariat also drafted an amendment to the 2008 anti-trafficking law but it was late to be reviewed by the end of 2021.⁴⁰²

It was also reported that the Government did not maintain a centralized law enforcement data system on trafficking crimes, hindering the government's ability to disaggregate national human trafficking statistics.⁴⁰³

The number of cases of human trafficking that are investigated and prosecutions remain low in Tanzania. Recently, in January 2022, the Anti-Trafficking Secretariat (ATS) revealed that in the period

³⁹⁹ LHRC Media Survey 2021.

⁴⁰⁰ Ibid.

⁴⁰¹ Office to Monitor and Combating Trafficking in Persons, 2021 Trafficking in Persons Report: Tanzania, U.S. Department of State, at <https://www.state.gov/reports/2021-trafficking-in-persons-report/tanzania/>.

⁴⁰² Ibid.

⁴⁰³ Ibid.



of July 2020 to June 2021, there were a total of 7 cases of human trafficking before courts of law, involving 26 businesspersons and by December 2021, there were 20 people who had been convicted and imprisoned in different parts of the country.⁴⁰⁴

Provisions within the Whistle Blowers and Witness Protection Act of 2015 and the 2008 anti-trafficking law giving option to victims of human trafficking not to participate in prosecution efforts was also identified as a challenge⁴⁰⁵. This may contribute to difficulties in prosecuting and sentencing perpetrators of human trafficking.

Protection

In 2021, the Government increased protection efforts, including coordinating information sharing among departments, identification of victims, and placing victims in government-vetted shelters run by NGOs. According to the *2021 Trafficking in Persons Report: Tanzania*, the government reported identifying 165 potential trafficking victims, compared with 161 victims during the previous reporting period.⁴⁰⁶

Of the 165 identified and referred victims, 145 were female, 20 were male, 139 children, and 26 were adults; this compares to 159 females, two males, one adult, and nine unknown identified and referred victims during the previous reporting period.⁴⁰⁷

In January 2021, it was reported that the Government had identified, referred to care, and reintegrated into their home communities 38 PWD victims exploited into forced begging in Dar es Salaam.⁴⁰⁸

Separately, the Anti-Trafficking Secretariat (ATS), reportedly reintegrated 42 child trafficking victims with their families.⁴⁰⁹

Recently, in January 2022, ATS revealed that in the period of July 2020 to December 2021, ATS in collaboration with other stakeholders rescued 2,018 human trafficking victims in Tanzania Mainland, including citizens of Burundi, Kenya and other countries.⁴¹⁰

In December 2021, ATS Secretary, SATC Seperatus Fella, revealed that

404 LHRC LHRC Human Rights Survey 2021.

405 2021 Trafficking in Persons Report: Tanzania (supra).

406 2021 Trafficking in Persons Report: Tanzania (supra).

407 Ibid.

408 Ibid.

409 Ibid.

410 LHRC Media Survey 2021.



in the period of July 2020 to March 2021 a total of 163 Tanzanians were rescued from human trafficking, including two in Iraq and Malaysia.⁴¹¹

He also mentioned that 15 victims from Burundi were rescued and repatriated.⁴¹² An international organization also reported identifying 243 Burundian child victims in Tanzanian refugee camps and facilitated their return to Burundi.⁴¹³

In October 2021, Daughter of Mary Immaculate (DMI), revealed that a total of 59 girls who were victims of human trafficking were rescued in Dar es Salaam in the period of nine months (January to September 2021). Out of these 79% had been sexually abused. The DMI Executive Director revealed during an interview with *DailyNews*⁴¹⁴ that majority of rescued girls were coming from Kigoma, Tanga, Ruvuma, Dodoma, Simiyu, Rukwa, Njombe, and Iringa Regions.

In 2021 it was also reported that the Government allowed foreign victims the same access to assistance, counselling, medical care, and training as domestic victims; however, an international organization reported some NGO-run shelters did not accept foreign victims.⁴¹⁵

Identification and referral of victims to relevant care and assistance was also closely done between the Government and NGOs.⁴¹⁶

However, it was reported in 2021 that the Government did not implement the witness protection program for trafficking victims, hence deterring some victims from testifying in court.⁴¹⁷ There were also no reports from the Government on award of restitution to victims of human trafficking.⁴¹⁸

Prevention

In terms of prevention, in 2021 it was also reported that the Government had increased efforts to prevent trafficking. Measures taken include slightly increasing funding for the ATS, although it remains insufficient; dedicating resources to immigration commissioners to monitor known traffickers, including labor traffickers in the fishing industry, in collaboration with the Government of Japan and an international organization; and formation and mobilization of task forces to

411 LHRC Media Survey 2021.

412 Ibid.

413 2021 Trafficking in Persons Report: Tanzania (supra).

414 Sauli Gillard "NEARLY 60 TRAFFICKED GIRLS RESCUED IN DAR" *DailyNews* Newspaper (online) 20 October 2021, at <https://www.dailynews.co.tz/news/2021-10-29617bfbf9ea165.aspx>.

415 2021 Trafficking in Persons Report: Tanzania (supra).

416 Ibid.

417 Ibid.

418 Ibid.



identify trafficking victims and increase local information sharing.⁴¹⁹ The government collaborated with international organizations, NGOs, and civil society to draft a new national action plan.

In August 2021, the United Nations Office on Drugs and Crime (UNODC) reported that from 19-31 July 2021, it organized and facilitated a series of consultations and work sessions in Dodoma and Arusha together with the Tanzania Anti-TIP Secretariat aimed at developing a new 3-year Anti-Trafficking in Persons National Plan of Action (NPA) (2021-2024).⁴²⁰ This process commenced with a consultative workshop during which both governmental and non-governmental stakeholders shared their views, success stories and challenges on the implementation of the previous Anti-TIP NPA (2018-2021).⁴²¹

The first draft of the Anti-TIP NPA (2021-2024), structured around the “4Ps”-paradigm and international standards to prevent and counter TIP – **preventing TIP**, effective **prosecution** and punishment of offenders, **protection** and assistance to victims, and the **promotion** of coordination and cooperation in countering TIP through enhanced partnership – was presented to the implementing stakeholders and Anti-Trafficking Committee during two subsequent validation workshops for their review and recommendations⁴²².

In 2021, ATS also continued to provide trainings to different stakeholders, including justice actors, SWOs, teachers, immigration officers, religious leaders and LGA representatives.⁴²³

It was further reported that **the Department of Social Welfare had collaborated with the Ministry of Education to include human trafficking awareness modules in school clubs nationwide.** Additionally, Government agencies in Tanzania Mainland and Zanzibar reportedly performed periodic inspections of large employers in an effort to detect cases of forced labor, but they did not report identifying any such cases during the reporting period.

Anti-trafficking tier ranking: Tanzania on tier 2 watchlist in 2021

Annually, the U.S. State Department's Office to Monitor and Combat Trafficking in Persons publishes a report to address and

419 2021 Trafficking in Persons Report: Tanzania (supra).

420 See UNDOC “Criminal Justice Capacity Building and New Anti-Trafficking in Persons National Plan of Action for Tanzania” 10 August 2021 at <https://www.unodc.org/easternafrika/en/Stories/criminal-justice-capacity-building-and-new-anti-trafficking-in-persons-national-plan-of-action-for-tanzania.html>.

421 Ibid.

422 Ibid.

423 LHRC Media Survey 2021.



educate others on the international advancements on human trafficking. This report is the Trafficking in Persons Report (TIP).⁴²⁴

The Trafficking Victims Protection Act (TVPA) places each country into a tier based on its government's efforts to satisfy the TVPA's minimum standards for the elimination of human trafficking.⁴²⁵

Tier 1 is the highest ranking a country can receive. However, this ranking does not mean that a country has completely eliminated human trafficking.

According to the *2021 Trafficking in Persons Report: Tanzania*, despite the various efforts made in combating human trafficking in Tanzania, including increasing funding for the anti-trafficking committee to implement the national action plan and allocating resources to the victim assistance fund, the Government did not fully minimum standards for the elimination of trafficking.⁴²⁶

This was contributed by several challenges, including loopholes in the anti-trafficking law, which are discussed below. Consequently, Tanzania remained on Tier 2 Watch List for the third consecutive year.⁴²⁷

Challenges in combating human trafficking

Major challenges in Combating Human Trafficking in Tanzania o Corruption within the justice system

- Inadequate funding
- Loopholes in punishment e.g. option of fine only
- Inadequate resources for implementation of the National Anti-Trafficking in Persons Action Plan (2018-2021)
- Complicity of officials in crimes

One of the factors that have been identified as an obstacle in combating human trafficking in Tanzania is the option for fine as punishment in the Anti-Trafficking in Persons Act, 2008. ⁴²⁸The fine ranges from Tshs. 5 million to 100 million. The court may impose a fine, imprisonment, or both. Budgetary constraints is another key challenge. In June 2021,

424 See Martina Anderson "A Look Inside the 2021 Trafficking in Persons Report" Anti-Trafficking International, 13 July 2021 at https://www.preventtht.org/editorial/a-look-inside-the-2021-trafficking-in-persons-report/?utm_source=rss&utm_medium=rss&utm_campaign=a-look-inside-the-2021-trafficking-in-persons-report.

425 No country is guaranteed to remain within a certain tier. Each country must annually provide evidence that they are continually improving their efforts to minimize human trafficking.

426 Office to Monitor and Combating Trafficking in Persons, 2021 Trafficking in Persons Report: Tanzania, U.S. Department of State, at <https://www.state.gov/reports/2021-trafficking-in-persons-report/tanzania/>.

427 Ibid. [Tier 2: Countries whose governments do not fully meet the TVPA minimum standards for the elimination of trafficking but are making significant efforts to bring themselves into compliance with these standards.]

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



the Chairperson of the Anti-Child Trafficking Committee, Adatus Magere, revealed that availability of limited resources has been a major challenge for the Government in combating human trafficking.⁴²⁹

Reported incidents of human trafficking documented by LHRC

In 2021, human trafficking continued to be a threat to human rights, including the right to personal security. LHRC documented at least 20 incidents of human trafficking, reported in Dar es Salaam, Morogoro, Mara, Dodoma, Mbeya, Shinyanga, and Geita Regions. In July 2021, the Deputy Chairperson of the Commission for Human Rights and Good Governance (CHRAGG), Mohammed Khamis, remarked during the commemoration of the World Day Against Trafficking in Persons on 30th July 2021 that human trafficking is an issue in Tanzania.⁴³⁰ He warned parents and guardians to take extreme caution before allowing their children to be taken away for 'work' within and outside the country.⁴³¹

In January 2021, 15 people in **Dar es Salaam**, including a businessman Sadikiely Meta (71), were taken to Kisutu Resident Magistrate Court, faced with 41 charges, including human trafficking. They were accused of trafficking 37 PWDs, including children with disabilities aged 7 to 11 years, from Tabora and Shinyanga Regions and taking them to Dar es Salaam to beg and generate income for them.

In August 2021, Mohamed Shalaby (52), an Egyptian; Ally Rajabu(40), a Tanzanian; and Chebet Benson(33), a Ugandan; were arraigned before the Kisutu Resident Magistrate Court in Dar es Salaam, charged with human trafficking offences.⁴³² The Egyptian was charged with trafficking of 95 people, 90 of whom were Tanzanians and 5 Burundians, to Mauritius and Canada. The Tanzanian was charged with facilitating the crime and the Ugandan charged for illegally working in Tanzania.

In Tanzania, in 2021, several incidents of commercial sexual exploitation of children were reported, especially in Dar es Salaam and Morogoro. LHRC documented at least 3 such incidents, which are discussed in detail further below.

429 LHRC Media Survey 2021.

430 Ibid.

431 LHRC Media Survey 202

432 LHRC Media Survey & Human Rights Monitoring 2021.



Recommendations to combat human trafficking

In 2021, several key stakeholders in the fight against human trafficking, including the US Office to Monitor and Combat Trafficking in Persons⁴³³ and the UNODC,⁴³⁴ made several key recommendations to address human trafficking in Tanzania, including:

- Fully implementing the provisions of the 2008 anti-trafficking law, as outlined in the implementing regulations and the national action plan;
- Addressing the conditions of vulnerabilities to trafficking in persons;
- Addressing trafficking in persons facilitated by the use of the internet;
- Amending the 2008 anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment and align the procedural law pertaining to trafficking-related arrests within the act with the requirements for other serious crimes;
- Increasing efforts to investigate, prosecute, and convict trafficking offenders, including complicit officials, and impose adequate penalties in accordance with the law;
- Increasing funding and resources for the Anti-Trafficking Committee (ATC) and Anti-Trafficking Secretariat (ATS) to combat trafficking;
- Expand anti-trafficking public awareness campaigns to families, schools, and community leaders;
- Ensuring victims are not punished for acts they commit as a result of trafficking;

LHRC's View: Human trafficking incidents are underreported. This is contributed by its covert nature and lack of or limited understanding among community members and human rights stakeholders on what constitutes human trafficking. Human trafficking is a serious human rights concern, especially for children, who are the most vulnerable group in the society. It constitutes violation of fundamental human rights such as the right to liberty and personal security, freedom from torture, and freedom from violence. 2021 is also the year when the National Anti-Trafficking in Persons Action Plan (2018 - 2021) came to an end. It is now time to evaluate implementation of the plan and identify gaps that can be corrected.

433 Office to Monitor and Combating Trafficking in Persons, *2021 Trafficking in Persons Report: Tanzania*, U.S. Department of State, at <https://www.state.gov/reports/2021-trafficking-in-persons-report/tanzania/>.

434 Global Trafficking in Persons Report (supra).



LHRC's Call: The Government to develop a new anti-trafficking in persons action plan to replace the National Anti-Trafficking in Persons Action Plan (2018 - 2021). There is also need to raise and increase public awareness on human trafficking and encourage community members to report acts of human trafficking.

2.5.7.5. Child trafficking in Dodoma and other parts of Tanzania: A special report by HABARILEO Newspaper

In 2021, HABARILEO Newspaper revealed how parents in Mpwapwa District, **Dodoma** Region have been complicit in child trafficking, following an investigation into child trafficking in Tanzania.⁴³⁵ The investigation included interviews with victims of child trafficking. One child victim, a girl aged only 13 years, revealed that that in December 2019 she was recruited by a man through her mother to go and work in Dar es Salaam. She was made to work as a domestic servant for 10 months, but she was only paid for three months' work. The initial agreement was for to be paid Tshs. 50,000 per month, of which Tshs. 20,000 was to be sent directly to her mother in Dodoma.

Another interview featured a 14-year-old girl who was recruited in a village in Mpwapwa District and taken to Arusha to work when she was just 10 years old. She claimed that she was paid only Tshs. 40,000 per month and subjected to a great deal of violence and exploitation, including being made to work for long periods, usually from early morning (around 05:00am) to late at night; denied food and other basic needs; and harassment and verbal abuse.

Key Findings

- Girls as young as 10 years old are subjected to child trafficking, usually in the form of child labour trafficking
- Parents, including mothers, are complicit in trafficking of girls and perceive the practice to be okay

⁴³⁵ Alfred Lasteck "RIPOTI MAALUMU WAZAZI WANAVYOBARIKI BIASHARA HARAMU YA MABINTI MJINI" HABARILEO Newspaper (online) 7 June 2021, at <https://habarileo.co.tz/habari/2021-06-0760bdd4e61c1fe.aspx>.



“We have nothing else to be proud of other than our children. That’s why they are taking care of us, like we did our parents when we were their age by herding livestock and farming.”

A female parent, Mpwapwa

- Most of the trafficked girls are trafficked through brokers at a bar (hotspot) dubbed ‘house girls auction’ in Mpwapwa
- Parents, especially mothers, who do not see a problem with their children being taken to work in other regions believe that their children should work to support them as they did when they were children to support theirs

“I carried the child in my own womb, raised and fed her, and now there is an opportunity for her to work and get money. Why should I stand in the way of that?”

A female parent, Mpwapwa

- An average of 128 girls are rescued from child trafficking in Tanzania each year by the *Daughters of Mary Immaculate* (DMI), based in Dar es Salaam
- Half of the rescued girls (50%) are trafficked for sex and the other half for exploitative labour, usually working as domestic servants
- 10 to 15 girls of the rescued girls are usually found to be pregnant, despite the majority of them being aged 13 to 17 years
- Most of the girls are trafficked from Dodoma, Iringa, Mbeya, Manyara, Singida, Kilimanjaro, and Tanga Regions
- There are also some few girls who are trafficked from neighbouring countries such as Malawi, Uganda, and Burundi
- Dar es Salaam is the major destination for trafficked girls

Key Recommendations

- Increased resources to intensify efforts of combating human trafficking
- Increased public awareness on human trafficking and its impact, especially targeting parents because they have been a major part of the problem
- Increased investigation and prosecution of human trafficking cases

LHRC’s View: Children are the most vulnerable members of the society and are very vulnerable to the trickery and deception of human traffickers. This is because they are easy to deceive and manipulated, given their age. It is important to identify areas and hotspots for human



trafficking so that preventive measures can be taken and human traffickers and those who assist them are brought to justice.

LHRC's Call: The Government, especially through the Ministry of Home Affairs, to collaborate with other stakeholders to strengthen anti-human trafficking measures in regions where children are most trafficked from, such as Dodoma, Iringa, Mbeya, Manyara, Singida, Kilimanjaro, and Tanga Regions.

2.5.7.6. Victims and perpetrators of human trafficking

Victims

All human beings are vulnerable to human trafficking. However, some groups or members of the society are more vulnerable than others. These members of the society include women and children, who are usually trafficked for labour and sex, both within and outside Tanzania. Those who come from poor families, especially in rural areas, are even more vulnerable to human trafficking.

According to the data collected from different parts of the world through the Counter-Trafficking Data Collaborative (CTDC)⁴³⁶ and released in 2017, children and women are the major victims of human trafficking globally.⁴³⁷ For instance, in child trafficking two thirds of the victims (66%) are female.

According to Save the Children, while both girls and boys are vulnerable to child trafficking, girls are disproportionately targeted and must deal with life-long effects of gender inequality and GBV.⁴³⁸ Girls are two times likelier to be reported as trafficking victims and tend to be trafficked for forced marriages and sexual slavery. On average, 120 million girls worldwide experience sexual exploitation.⁴³⁹

436 Data portal initiated by IOM, the UN Migration Agency, in partnership with Polaris, a non-governmental organization that works to combat and prevent modern-day slavery and human trafficking, to host the world's largest open access, multi-stakeholder repository of human trafficking data.

437 See CDTC's child trafficking brief at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.

438 Save the Children "THE FIGHT AGAINST CHILD TRAFFICKING" at <https://www.savethechildren.org/us/charity-stories/child-trafficking-awareness#:~:text=By%20raising%20awareness%20of%20trafficking,from%20the%20clutches%20of%20traffickers>.

439 Ibid.



Persons with disabilities (PWDs) are also another group which has become a victim of human trafficking in Tanzania.

Perpetrators

According to the Counter-Trafficking Data Collaborative (CTDC), almost half of identified cases of child trafficking (41%) begin with a family member. The extent of family involvement in child trafficking is more than four times higher than in cases of adult trafficking, where family members are involved in only 9% of adult cases. Globally, 68% of children trafficked through a family member are trafficked for forced labour, while 36% are trafficked for sexual exploitation.

Other perpetrators of child trafficking (playing the role of intermediaries) include intimate partners (14%), friends (11%), and other people in the community (34%).⁴⁴⁰ Intermediaries or brokers are common perpetrators of child trafficking in Tanzania.

2.5.7.7. Child labour trafficking and Child sex trafficking

Child Tracking – Key Statistics



Source: CTDC

440 CDTC's child trafficking brief (supra).



According to the Counter-Trafficking Data Collaborative (CTDC), globally, more than half of children (54%) are trafficked for sexual exploitation, while only a third are trafficked for forced labour.⁴⁴¹

Child labour Trafficking

Child labour trafficking refers to the use of force, fraud, or coercion to compel a child under 18 to provide involuntary labor or services.⁴⁴² This type of child trafficking usually occurs in agricultural settings, factories, domestic workplaces, health and beauty services, restaurants, and small businesses, and is more common in informal settings or situations where employers cannot be easily monitored.⁴⁴³

The first schedule of the Employment and Labour Relations (General) Regulations of 2017 provides a list of work considered hazardous for children.⁴⁴⁴ The list includes hazardous works in the sectors such as agriculture, fishery, mining, construction, service, trade, and transport. Examples include: fetching and carrying fire wood, portorage of heavy loads, feeding farm animals, crushing ore, drilling and blasting, cement mixing, painting, brick making, carpentry, welding, stone crushing, water vending, masonry, cleaning toilets, working in places such as bars, hotels and places of entertainment, and electrical repair.

According to the Counter-Trafficking Data Collaborative (CTDC), globally, children who are victims of labour exploitation are most likely forced to beg (19%), undertake domestic work (18%), or work in the hospitality sector (8%).⁴⁴⁵ Boys are more likely to be forced into begging or peddling, while girls are more commonly trafficked into domestic work and to a lesser extent begging.⁴⁴⁶ In contrast, adults are more frequently trafficked to work in the construction and agriculture sectors.

Child labour is said to be exploitative labour as a child is used as cheap labour, paid less than the labour provided (unequal payment) and

441 See CDTC's child trafficking brief at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.

442 See National Center on Safe Supportive Learning Environments "Child Labor Trafficking" at <https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/child-labor-trafficking#:~:text=Child%20labor%20trafficking%20is%20using,provide%20involuntary%20labor%20or%20services..>

443 Ibid;

444 Employment and Labour Relations (General) Regulations, GN. 47 of 2017 and under section 82(3) of the Law of the Child Act 2009

445 See CDTC's child trafficking brief at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.

446 Ibid.



exposed to various hazards.⁴⁴⁷ In 2021, LHRC documented incidents of exploitative child labour reported in Manyara, Tabora, Singida, Mbeya, Geita, Shinyanga, and Dodoma. For instance, in August 2021, children in Mwaitoloyo Ward in **Shinyanga** Region, who appeared to be below the age of 10, **were found grazing cattle during school hours**.⁴⁴⁸ When interviewed, most of them were afraid to speak, but when asked how much they were paid to graze the cattle, they said they get Tshs. 200 or Tshs. 300, but did not specify whether it is hourly or daily.

Child sex Trafficking

According to the Counter-Trafficking Data Collaborative (CTDC), globally, majority of children trafficked for sexual exploitation (67%) are aged 15-17 years. 98% of children that are recruited into trafficking by their intimate partners end in situations of forced sexual exploitation, and nearly all of them (96%), are girls.⁴⁴⁹

Sex trafficking can have devastating consequences for children, including long-lasting physical and psychological trauma, sexually transmitted infections, substance use disorders, unplanned pregnancy, and mental health problems, such as depression and suicidal ideation.⁴⁵⁰

In Tanzania, in 2021, several incidents of commercial sexual exploitation of children were reported, especially in Dar es Salaam and Morogoro. Parents and guardians were implicated in using their female children in sexual activities remunerated in cash. For instance, in **Dar es Salaam** one of the respondents mentioned that some women push and encourage their female schoolchildren to engage in sexual relationship with men so they (the women) can get paid. They encourage their children to engage in commercial sex so that they can also contribute to the family income. In Gairo District, **Morogoro** Region, a teacher at one of the primary schools in the district revealed during an interview that there is a female pupil at the school who was forced to engage in commercial sex by her parents, getting paid Tshs. 4,000 every time she sleeps with a man. In Gairo, there was also an incident of a grandmother who was subjecting her granddaughter to commercial prostitution, paid between Tshs. 1,000 and 2,000.

447 Law Reform Commission of Tanzania, *Report on Labour Law*, presented to the Minister of Justice and Constitutional Affairs, Ministry of Justice and Constitutional Affairs, 2001.

448 LHRC (2021), Human Rights and Business Report 2020/21, LHRC [www.humanrights.or.tz]

449 See CDTC's child trafficking brief at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.

450 According to the National Center on Safe Supportive Learning Environments (see "Child Sex Trafficking at <https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/child-sex-trafficking>).



2.5.7.8. Trafficking of PWDs

In 2021, the Human Rights Survey 2021 revealed that trafficking of PWDs is becoming an issue of great concern. In **Dar es Salaam**, the survey found that some ‘agents’ go to villages and bring PWDs to the city to the ‘hosts’, who put them in wheelchair and hire ‘handlers’ to take them to the streets to beg.⁴⁵¹ It was revealed that after begging for the whole day, the money earned is taken back to the host, usually called “the boss” and divided, whereby the host gets a minimum of Tshs. 15,000, the handler gets Tshs. 10,000, the person providing shelter gets Tshs. 10,000, and the beggar gets the remaining amount. Consequently, if the beggar is to get anything, he or she must collect more than Tshs. 35,000 per day. If they complain, they get kicked out of the shelter and their wheelchairs are taken back.⁴⁵² In **Mara**, a similar practice was said to take place, whereby a host sends PWDs to street and beg for money. They do in exchange of wheelchairs, food, and shelter.

In January 2021, 15 people in **Dar es Salaam**, including a businessman Sadikiely Meta (71), were taken to Kisutu Resident Magistrate Court, faced with 41 charges, including human trafficking. They were accused of trafficking 37 PWDs, including children with disabilities aged 7 to 11 years, from Tabora and Shinyanga Regions and taken them to Dar es Salaam to beg and generate income for them.

2.6. Right to Take Part in Governance

Meaning & Key Applicable Standards

- Means the right to participate freely in the government of his country, either directly or through chosen representatives.
- Also known as a right to take part in public affairs or right to participate in the government.
- Includes the right to vote and stand for election.
- Key applicable standards include: the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, Convention on the Rights of Persons with Disabilities (CRPD) of 2006, the African Charter on Human and Peoples’ Rights (ACHPR) of 1981, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) of 2003, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Domestically, the standard is the Constitution of the United Republic of Tanzania, 1977.

⁴⁵¹ LHRC Human Rights Survey 2021: Dar es Salaam Field Report.

⁴⁵² Ibid.



2.6.1. Legal barriers to realising the right to take part in governance

In 2021, several legal barriers to realising the right to take part in governance continued to exist. These barriers are found in the Constitution of the United Republic of Tanzania of 1977 and electoral laws, including the Political Parties Act, Cap. 258 (R.E 2019).

In the Constitution of Tanzania, one of the key concerns is the issue of private/independent candidates. The Constitution does not allow a person to contest in presidential, parliamentary or local government elections unless they are a member of a political party.⁴⁵³ In June 2013, the African Court of Human and Peoples' Rights held that the African Charter enshrines an individual right protecting the freedom of every citizen to participate freely in government either directly or through a representative.⁴⁵⁴ In its view, the right is “not meant to be enjoyed only in association with some other individuals or groups of individuals such as political parties. The African Court found that Tanzania’s prohibition on independent candidates was neither permitted by Article 27(2) (limitations on individual rights) of the Charter nor proportionate to the “alleged aim of fostering national unity and solidarity” put forth by Tanzania. The Court directed Tanzania “to take constitutional, legislative and all other necessary measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken.”⁴⁵⁵ However, the measures are yet to be taken.

Another key issue in the Constitution of Tanzania that relates to the right to take part in governance is the prohibition of challenging presidential election results in a court of law. According to the Constitution, no court of law is allowed to inquire into the election of a candidate when such candidate has been declared by the electoral commission (NEC) to have been duly elected.⁴⁵⁶ In July 2020, the African Court on Human and Peoples' Rights (the African Court) delivered its judgement in the case of *Jebra Kambole v United Republic of Tanzania*.⁴⁵⁷ The Court found that Article 41(7) of the Constitution of the United Republic of Tanzania, 1977 violates Articles 2 and 7(1) (a) of the Banjul Charter. The Court directed Tanzania to submit a report within twelve (12) months of

453 See for example Articles 67(1)(b) and 39(1)(c) of the Constitution of Tanzania, 1977.

454 See African Court of Human and Peoples' Rights, *Tanganyika Law Society et al. v. The United Republic of Tanzania*, App. Nos 09/2011 and 11/2011, Judgment of 14 June 2013, para 4.

455 Ibid.

456 Article 41(7) of the Constitution of Tanzania

457 See JUDGMENT SUMMARY, *JEBRA KAMBOLE V. UNITED REPUBLIC OF TANZANIA*, APPLICATION NO. 018/2018 JUDGMENT ON MERITS AND REPARATIONS, 15 JULY 2020 at [https://en.african-court.org/images/Cases/Judgment/Application_018-2018 - Jebra_Kambole_v_Tanzania - Judgment_Summary.pdf](https://en.african-court.org/images/Cases/Judgment/Application_018-2018_-_Jebra_Kambole_v_Tanzania_-_Judgment_Summary.pdf), accessed 30 October 2020.



the judgment, on the measures taken to implement the terms of the judgment. However, like in the other case above, no measures have been taken thus far to rectify the situation.

For the Political Parties Act, the amendments made in law have faulted by stakeholders within and outside Tanzania for giving the Registrar of political parties excessive and intrusive powers over political parties and failing to conform to international standards on freedom of association. The amendments therefore negatively impacted the right to take part in governance by limiting freedom of association of political parties. Amendments need to be made to bring the law in conformity with international human rights standards.

For women, gender-blind electoral laws pose a big challenge for them to effectively realise their right to participate in public affairs. These laws are discussed in detail in sub-chapter 5.1 further below.

2.6.2. Political Participation and the 2021 By-elections

2.6.2.1. Overview

In Tanzania, political participation stems from Article 21 of the Constitution of the United Republic of Tanzania of 1977, which provides that “every citizen of the United Republic entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law.”⁴⁵⁸ The Article further provides that “Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.”⁴⁵⁹

Political participation derives from the freedom to speak out, assemble and associate; the ability to take part in the conduct of public affairs; and the opportunity to register as a candidate, to campaign, to be elected and to hold office at all levels of government.⁴⁶⁰ In Tanzania, citizens participate in politics in various ways, including voting, conducting electoral campaigns, engaging in public consultations, expressing their views or opinions on matters affecting them and nation at large, and seeking political leadership. They participate in the political

⁴⁵⁸ Article 21(1) of the Constitution of Tanzania, 1977.

⁴⁵⁹ Ibid, Article 21(2).

⁴⁶⁰ See UN “Political Participation” at <https://www.un.org/womenwatch/osagi/wps/publication/Chapter3.htm>.



process by making their opinions known. The right to participate in political life is therefore linked to fundamental human rights such as freedom of expression, freedom of association, freedom of assembly, and right to education – which are also known as participation rights, as they enable people to effectively participate in the conduct of public affairs. The major concern has been lack of equal participation in political and public affairs, with groups such as women and persons with disabilities (PWDs) not afforded equal opportunities.

In 2021, Tanzanians had another opportunity to participate in political life through voting and standing for election, following the 2020 general elections. This opportunity materialized in the form of byelections, which were held in Kigoma Region.

2.6.2.2. Electoral Standards

Key electoral standards applicable to Tanzania include various international and regional human rights instruments and national laws, rules, and regulations. At international level, major standards for elections include:⁴⁶¹ the International Covenant on Civil and Political Rights (ICCPR) of 1966; the International Convention on the Elimination of Racial Discrimination (ICERD) of 1966; the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979; the Convention on the Political Rights of Women (CPRW) of 1952; the Convention on the Rights of Persons with Disabilities (CRPD) of 2006; the Declaration on the Elimination of Discrimination against Women of 1967; and the Declaration on the Rights of Disabled Persons of 1975. There are also several UN General Assembly resolutions, general comments, and general recommendations which elaborate the right to political participation.⁴⁶²

At regional level, major standards for elections include: the African Charter on Human and Peoples Rights (ACHPR) of 1981; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003; the NEPAD Declaration on Democracy, Political, Economic and

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

462 See for example the General Assembly Resolution A/RES/46/137 of 1991 (Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections).



Corporate Governance signed by Heads of State and Government of the Members States of the African Union of 2002; and the AU Declaration on the Principles Governing Democratic Elections in Africa of 2002.

At domestic level, laws governing elections include Constitution of the United Republic of Tanzania, 1977; the Political Parties Act, Cap. 258 (R.E 2019); the National Elections Act, Cap. 343 (R.E 2015); the Election Expenses Act, Cap. 278 (R.E 2015); and the Local Authorities (Elections) Act, Cap. 292 (R.E 2015). Others relevant laws, rules and regulations include Local Government (District Authorities) Act, Cap. 287 (R.E 2002); the Local Government (District Authorities) Act, Cap. 287 (R.E 2002); the Local Government (Urban Authorities) Act, Cap. 288 (R.E 2002); the National Elections (Presidential and Parliamentary Elections) Regulations of 2020 (G.N. No. 402 of 2020); and the Electoral Code of Conduct for Presidential, Parliamentary and Councilors' Elections of 2020.

2.6.2.3. By-elections conducted in Tanzania in 2021: LHRC's observations

Introduction

In 2021, LHRC was given accreditation to observe the by-elections in Buhigwe and Muhambwe, having missed out in election observation during the 2020 General Elections. The by-elections were conducted following the death of Muhambwe MP, Eng. Atashasta Justus Nditiye, in February 2021 and the appointment of the Buhigwe MP, Dr. Phillip Mpango, to position of the Vice-President of the United Republic of Tanzania. In April 2021, the National Electoral Commission (NEC) announced that the by-elections in the two constituencies were take place on 16th May 2021.

Pre-election period

- ***Election management and preparations***

The National Electoral Commission (NEC) is the main electoral body in Tanzania, tasked with preparation, coordination, and supervision of elections in Tanzania.⁴⁶³ NEC made relevant preparation for the by-elections, including provision of voter

⁴⁶³ See Section 4(1) of the National Elections Act, Cap. 343 (R.E 2015).



education. NEC also trained returning officers to ensure they are well-equipped to oversee the by-elections and visited various polling stations ahead of the by-elections to ensure smooth conduct of the elections. Voting materials and equipment were also delivered to the polling stations.⁴⁶⁴

■ ***Voter registration***

In Buhigwe Constituency, a total of 112,333 voters were registered, while in Muhambwe Constituency, the number of registered voters stood at 127,766.

■ ***Party registration***

A total of 13 parties participated in the by-elections. These parties are: CCM, ACT-Wazalendo, CHAUMMA, AAFP, CCK, UPDP, ADA TADEA, SAU, D MAKINI, ADC, UDP, UMD, and NLD. CHADEMA, the main opposition party, boycotted the by-elections, noting that it will only participate in such elections when there have been legal and institutional framework reforms.

■ ***Candidate nomination***

One of the key observations that were made following the candidate nomination process was that not a single political party included persons with disabilities in the list of candidates.

A total of 13 candidates were nominated by their political parties to contest the MP position in Buhigwe Constituency out of whom 7 (54%) were males and 6 (46%) were females (seven female, six male), while in the Muhambwe Constituency the number of nominated candidates was 3 out of whom two (60%) were males and 1 (30%) was a female.

LHRC observed two major concerns during the internal party nomination process. One was about the internal party democracy, which ideally suggests that a person who receives most votes internally should be nominated to be the party candidate. However, this was not the case in Muhambwe Constituency,

⁴⁶⁴ See LHRC(2021), Buhigwe & Muhambwe By-Elections Report 2021, LHRC at <https://www.humanrights.or.tz/assets/attachments/1635850462.pdf>.



whereby it was observed that CCM nominated the third-placed candidate in internal polls, Dr. Frolence Samizi.

Another key concern that was observed when the LHRC election observation scanned through the policy documents of political parties is that the political parties have no clear guidelines for enhancing women's political participation and considering gender equality or parity in nomination of candidates and internal party leadership.

■ **Campaigns**

All campaigns in the two constituencies were conducted peacefully. There were no incidents of violence or breach of peace. CCM and ACT-Wazalendo dominated the campaign platform as other political parties did not prefer to conduct serious campaigns. However, several irregularities were observed during the campaigns, especially CCM campaigns. These include use of vernacular language, use of Government resources for campaign activities, and using officials visits in line with electoral activities, contrary to the Electoral Code of Conduct for Presidential, Parliamentary and Councillors' Elections of 2020.⁴⁶⁵ According to the Code of Conduct, prohibited conduct of Government during the election period include: Ministers, Regional Commissioners and District Commissioners using official visits in line with electoral activities; making promises regarding development activities in the community such as road construction, water distribution and other things similar to this with the aim of gaining political support; and using such authority or Government resources for campaign activities for the benefit of any party or candidate.⁴⁶⁶ The breach of the Code was mainly caused by official visits and participation during the campaigns of the Prime Minister and the Vice President.⁴⁶⁷ The Code of Conduct also requires political parties and candidates "to ensure that Kiswahili language shall be the only language used during the election campaigns. Where this language is not understood, and where necessary, a candidate shall speak in Kiswahili language and an interpreter shall translate in the language understood in the respective community."⁴⁶⁸

465 See Part III of the Electoral Code of Conduct for Presidential, Parliamentary and Councillors' Elections of 2020 at <https://www.nec.go.tz/uploads/documents/en/1599898271-28-8-2020.pdf>.

466 Ibid Rule 3.3 (a) & (b).

467 Buhigwe & Muhambwe By-Elections Report (supra).

468 See Part II of the Code of Conduct (2.1 (k)).



The Electoral Code of Conduct also prohibits political parties and candidates from causing disruption or instigating disruption of any kind at meetings of other parties.⁴⁶⁹ However, it was reported that some CCM party members were accused of disrupting ACT-Wazalendo campaign meetings. For instance, in May 2021, police had to intervene to remove CCM ward councilor, who had reportedly interfered with ACT-Wazalendo meeting.⁴⁷⁰

LHRC further observed that ACT-Wazalendo was the only opposition political party that conducted campaigns in Buhigwe and Muhambwe Constituencies. The other opposition political parties did not conduct any campaigns. Some of the opposition party parliamentary candidates claimed during interviews that they had decided to resort to door-to-door campaigns, something which was found to be untrue.⁴⁷¹

Campaigns lasted for 15 days, from 1st to 15th May 2021.

■ **Media coverage**

Media coverage during the by-elections was mainly done by three media outlets, namely the Tanzania Broadcasting Corporation (TBC), Clouds Media Group, and Uhuru Media Group.

■ **Election observation**

NEC granting accreditation to observe the by-elections to five election observers, including LHRC. Others were the United States Embassy, Umoja wa Wawezeshaji Kioo, Centre for International Policy (CIP), and Research and Education for Democracy in Tanzania (REDET). During campaigns, the election observation team worked freely and received cooperation from NEC and political parties. However, on the election day the team that was observing polling stations in Bunyambo Ward had to relocate to Kibondo due to safety and security concerns.

Election day

- **Participation:** A total of 13 political parties were represented at

⁴⁶⁹ Ibid, Rule 2.2 (a).

⁴⁷⁰ Buhigwe & Muhambwe By-Elections Report (supra).

⁴⁷¹ Ibid.



polling stations on the election day.

- **Voter turnout:** Voter turnout was generally observed to be low in both Buhigwe and Muhambwe Constituencies, whereby only a nearly a third of registered voters (28%) participated in the elections. This points to the problem of voter apathy which has characterized most elections in Tanzania in the past 10 years.

Table 14: Voter turnout during Buhigwe and Muhambwe by-elections

Constituency	Registered Voters	Voter Turnout # (%)
Buhigwe	112,333	30,713 (27.3)
Muhambwe	127,766	35,339 (27.6)
TOTAL	240,099	66,052 (27.5)

- **Election preparedness**

Preparations for the election day were generally made well. There were returning officers and polling administrators at all polling stations with the electoral materials and equipment to facilitate the voting process. However, LHRC observed a discrepancy between the number of polling stations and voters announced by NEC and that which was announced by returning officers. Earlier, NEC had announced that there would be at total of 793 polling stations and 303,965 registered voters, but LHRC found out through interviews with returning officers, that there was actually a combined total of 626 polling stations and 240,099 registered voters.

- **Voting process**

LHRC observed 73 polling stations in Muhambwe Constituency and 68 in Buhigwe Constituency, making a total of 141 polling stations that were observed on the election day. Generally, the voting process was conducted smoothly and peacefully, in line with the electoral standards. This was in terms of opening of polling stations, closing of the stations, and counting of votes. There were 4 NEC representatives at every polling station and there was no observed interference with the voting process by law



enforcement/police officers.⁴⁷²

All polling stations were open by 7:00am as required by the NEC regulations and Electoral Code of Conduct. There were also sufficient numbers of polling stations and returning officers, who appropriately dressed as required by the National Elections Act. However, LHRC observed that most MP candidates did not have polling agents, with CCM and ACT-Wazalendo having the majority of agents at 68 polling stations. CHAUMMA, UDP, ADOP, CCK and UMD had not more than 3 agents, while AAFP, UPDP, ADA TADEA, SAU, ADC and NLD did not have any agent present.

All polling stations were also observed to be accessible to voters and secrecy of the ballot was observed. The ballot boxes were observed to be sealed. Voters took no longer than three minutes to cast their votes. However, at Mlela Primary School polling station the voters' list was not displayed, which is contrary to NEC rules and regulations.⁴⁷³

Polling stations were closed at 04:00pm on the election day and vote counting commenced immediately. The closing and vote counting process was peaceful. Only DP did not have agents present during vote counting. However, in Buhigwe Constituency there was a power outage several minutes before vote counting commenced, although neighbourhood areas still had power. Vote counting there had to proceed using a torch.⁴⁷⁴

However, LHRC observed limited understanding of ballots among some of the polling station administrators, but this did not disrupt the voting and vote counting processes.

On the election day, police in Muhambwe arrested several people who were in two vehicles, suspected of ballot stuffing. However, upon search of the vehicles, no ballot papers were found. The vehicle occupants were identified as CCM party members from Kibondo.

■ **Violence**

There were no reports of violence on the election day in both constituencies.

⁴⁷² Buhigwe & Muhambwe By-Elections Report (supra).

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.



- **Announcement of results**

In Buhigwe Constituency, CCM's Felix Kavejuru was declared the winner, with 25,274 votes, while ACT-Wazalendo's Garula Kudraa claimed the second spot with 4,749 votes. In Muhambwe Constituency, CCM's Florence Samizi was declared the winner, with 23,441 votes, while ACT-Wazalendo's Julius Masabo claimed the second spot with 10,847 votes.⁴⁷⁵

ACT-Wazalendo conceded defeat and congratulated CCM for their victory in Muhambwe Constituency. However, ACT-Wazalendo questioned and doubted the outcome of the by-election in Buhigwe Constituency. The party claimed that there were irregularities which marred the by-election, citing some of the polling agents being forced out of polling stations and ballot stuffing in Kasumo Village in Kijana Ward. They also implicated some polling station administrators of ballot stuffing at different polling stations. There were also allegations of vote rigging and harassment, arrest, and abduction of ACT-Wazalendo members. However, the LHRC election observation team could not verify or confirm the allegations.⁴⁷⁶

Post-election period

- **Complaints and appeals**

Though ACT-Wazalendo had complaints regarding the conduct and outcome of the by-election in Buhigwe Constituency, LHRC did not hear of any formal complaints and appeals filed with NEC.

- **Violence**

No incidents of violence were observed or reported in the aftermath of the by-elections in the two constituencies.

- **Concerns**

There were some few red flags which somewhat dented the otherwise free and fair elections, including the mysterious timing (or coincidence) of power outage a few minutes before vote counting commenced in Buhigwe Constituency. This would explain ACT-Wazalendo's concern with the outcome of the by-

⁴⁷⁵ Buhigwe & Muhambwe By-Elections Report (supra).

⁴⁷⁶ Ibid.



election in this constituency.

■ **Credibility and fairness of elections**

LHRC's assessment of the by-election in Muhambwe Constituency generally showed that the by-election was free and fair, in the absence of evidence of serious breach of electoral standards. However, in Buhingwe Constituency, the by-election was observed to be somewhat free and fair, due to some few red flags and reported irregularities and complaints by the ACT-Wazalendo party. There is need to address the concerns raised during the concerns raised during the by-elections and improve the electoral environment by increasing transparency and accountability.

■ **Key Recommendations**

- + Reform the national electoral legal framework to bring it in conformity with regional and international human rights standards to ensure elections are free, credible, and fair
- + Ratify the African Charter on Democracy Elections and Governance (ACDEG), 2007 to safeguard the right to take part in governance and political participation in Tanzania
- + Government to ensure there are permanent returning officers employed by NEC instead of using District Executive Directors (DEDs) as returning officers
- + NEC to consider timely and adequate consultation with all electoral stakeholders at every stage of election
- + Voter registration exercise should continue beyond election year or period
- + Political parties to strengthen internal party democracy in line with international electoral standards
- + Political parties to increase transparency and diversity in internal decision-making and resort to wide stakeholder-engagement and preparation of manifestos and other policy documents
- + Constitutional reforms to give the Judiciary greater powers to safeguard electoral rights and interpret electoral standards
- + Constitutional and legal reforms to enhance gender equality in politics and enhance women's political participation
- + Constitutional and legal reforms to ensure that private candidates can also content in elections
- + Media to play a neutral role during elections and provide the public with accurate information, while demonstrating highest levels of professionalism
- + General public to refrain from boycotting elections and fully participate in the electoral process in order to choose the leaders they want



2.6.3. The Road to the 2025 Tanzania General Elections: Some Key Lessons from Malawi's Presidential Elections of 2019 and 2020

2.6.3.1. Introduction

The 2019 presidential elections and outcome

In 2019, Malawi held presidential elections, contested by candidates from seven political parties in the country, namely the Democratic Progressive Party (DPP), Malawi Congress Party (MCP), United Transformation Movement (UTM), United Democratic Front (UDF), United Transformation Movement (UTM), the United Democratic Front (UDF), Mbakuwaku Movement for Development (MMD), Umodzi Party (UP), and Independent.⁴⁷⁷ The elections, which were organized, coordinated, and supervised by the Malawi Electoral Commission (MEC), saw DPP's Prof. Arthur Peter Mutharika, who was the incumbent President, was declared winner of the 2019 presidential elections, with 1,940,709 votes (38.57%), closely followed by MCP's Dr. Lazarus McCarthy Chakwera, with 1,781,740 votes (35.41%).⁴⁷⁸

Political unrest following announcement of presidential election results

Following the announcement of the presidential results and declaration of the incumbent President, DPP's Prof. Arthur Peter Mutharika, political unrest ensued, as the opposition parties, led by MCP's Dr. Lazarus McCarthy Chakwera and UTM's Dr. Saulos Klaus Chilima, disputed the election results and took to the streets to protest and call for resignation of the MEC's Chairperson, Jane Anshah.⁴⁷⁹

Challenging presidential election results in court

Eventually, MCP's Dr. Lazarus McCarthy Chakwera and UTM's Dr. Saulos Klaus Chilima, decided to go to court to challenge the presidential election results and a five-judge panel was set up by the Judiciary to hear and determine the case. It was reported that President Mutharika tried but failed to get the case dismissed and in May 2019, and it was also revealed that the Government had made attempts to shut down access to social media sites during

⁴⁷⁷ Fundikila Wazambi, *The Road to the 2025 Tanzania General Elections: Some Key Lessons from Malawi's Presidential Elections of 2019 and 2020*, (unpublished).

⁴⁷⁸ Ibid.

⁴⁷⁹ *The Road to the 2025 Tanzania General Elections: Some Key Lessons from Malawi's Presidential Elections of 2019 and 2020* (supra).



the general elections.⁴⁸⁰

Issues for determination

In the case, *Chilima & Chakwera vs. Mutharika & EC*,⁴⁸¹ the High Court of Malawi sought to determine three main issues before it:⁴⁸²

- Whether the 2nd Respondent (MEC) breached its duty under Section 76 of the Constitution of the Republic of Malawi;
- Whether the 2nd Respondent breached its duty under Section 77 of the Constitution of the Republic of Malawi; and
- Whether 2nd Respondent infringed on the Petitioners' and the citizen's political rights under Section 40 of the Constitution of the Republic of Malawi.

Malawi Lawyers Society (MLS), statutory body for legal practitioners, and Women Lawyers Association (WLA), an NGO comprising women lawyers from different disciplines, asked the Court to be admitted as *amicus curiae* (experts to clarify the position of the law and international electoral standards).

Claims made by petitioners

The petitioners alleged that the elections were replete with many irregularities, including: one of the names of the petitioners missing from the relevant register at a centre where he registered to vote; intimidation of election monitors; bribing of election monitors, presiding officers and other MEC staff to influence voters on the choice of candidates; tampering of results sheets by presiding officers and other MEC staff in order to alter the result of the vote at a polling station or tally centre; and use of duplicate or fake results sheets.⁴⁸³ They also alleged unauthorized persons being found with ballot papers and ballot boxes; arrests of persons at various places for offences relating to breach of electoral law; failure of MEC to deal with complaints before announcing election results; failure to deliver ballot papers under conditions of absolute security; and giving handouts.

480 Ibid.

481 See *Dr. Saulos Klaus Chilima & Dr. Lazarus McCarthy Chakwera vs. Prof. Arthur Peter Mutharika & Electoral Commission*, High Court of Malawi, Lilongwe District Registry, Constitutional Reference No. 1 of 2019, Final Judgement, 3 February 2020, at <https://africanlii.org/sites/default/files/Chilima%20%26%20Chakwera%20vs%20Mutharika%20%26%20EC%20-%20Final%20Judgment%20%20draft%201.pdf>.

482 Ibid.

483 Ibid, Paras 100 & 101.



Decision of the High Court of Malawi

Satisfied with the case and evidence presented by the applicants, MCP's Dr. Lazarus McCarthy Chakwera and UTM's Dr. Saulos Klaus Chilima, the High Court of Malawi held that there was undue return and undue election during the 2019 presidential elections, and consequently, President Mutharika was not duly elected as President of the Republic of Malawi during the 21st May 2019 elections. The Court also held that MEC violated sections 40(3), 76(2) (d) and 77(5) of the Constitution of Malawi, and in view of the gravity of the said violations and breaches, the clearly demonstrated incompetence for failing, in multiple dimensions, to follow clearly the laid out legal processes for the conduct of elections.⁴⁸⁴ Consequently, the Court ordered the nullification of the elections and a fresh election to the office of the President to be held in accordance with relevant Malawi laws.⁴⁸⁵

Appeal

Efforts by President Prof. Peter Mutharika and MEC to appeal before Malawi's Supreme Court of Appeal proved futile as the Court of Appeal upheld the decision of the High Court of Malawi. The Court of Appeal held that the litany of irregularities in the Presidential election revealed by the record of appeal was not only serious but also troubling. According to the Court, numerous irregularities involved widespread use of correction fluid called "tippex" on tally sheets, illegal alteration of a large number of tally sheets, the use of numerous duplicate tally sheets where originals inexplicably went missing among the many other irregularities, and such seriously undermined the credibility, integrity and fairness of the return of the President during the general election. It agreed with the High Court of Malawi that the conduct of MEC in the management of the elections, which resulted in gross violations and breaches of the Constitution and applicable laws, demonstrated serious incompetence and neglect of duty on the part of the Electoral Commissioners in multiple dimensions. The Court of Appeal also agreed with the order for fresh elections.

Fresh elections and outcome

Following the Supreme Court of Appeal's decision to uphold the decision of the High Court of Malawi, which annulled the

⁴⁸⁴ *The Road to the 2025 Tanzania General Elections: Some Key Lessons from Malawi's Presidential Elections of 2019 and 2020* (supra).

⁴⁸⁵ *Ibid.*



2019 presidential elections, fresh elections were held on 23 June 2020 in line with the Court's orders and directions. Three parties participated in the repeat elections, namely MCP, MMD, and DPP. MCP was represented by Lazarus Chakwera, MMD by Peter Dominico Sinosi Driver Kuwani, and DPP by Arthur Peter Mutharika.⁴⁸⁶ MCP's Lazarus Chakwera, who went to court to challenge the 2019 presidential election results, won the re-run elections of 2020, with 2,604,043 votes, followed by his main rival, DPP's Arthur Peter Mutharika, who took 1,75,877 of the total votes.⁴⁸⁷

2.6.3.2. Key Lessons

Several key lessons can be derived from Malawi's history-making presidential elections of 2020.⁴⁸⁸

Independence and role of the Judiciary in safeguarding electoral justice

The Judiciary of Malawi deserves praise for its resilience and commitment to ensure proper administration of justice amid severe pressure from the incumbent government. The High Court of Malawi stood firm in defending the constitutional right to access to remedy and effective remedy when a person feels their human rights have been violated. Despite continuous pressure from the Government, and even attempts to enforce the premature retirement of the Malawi Chief Justice and bribing the five Judges of the Supreme Court of Appeal to rule in favour of the incumbent President, the High Court and Supreme Court of Appeal determined the petition filed by the two main opposition political party leaders in line with Constitution of the Republic of Malawi, relevant case law, and international human rights standards.

Challenging presidential results

As the African Court on Human and People's Rights held in the *Jebra Kambole presidential results case*,⁴⁸⁹ challenging presidential results is in line with international human rights standards. The Court noted that among the key elements of the right to a fair hearing, as guaranteed

486 Ibid.

487 Ibid.

488 *The Road to the 2025 Tanzania General Elections: Some Key Lessons from Malawi's Presidential Elections of 2019 and 2020* (supra).

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



under Article 7 of the Banjul Charter, is the right of access to a court for adjudication of one's grievances and the right to appeal against any decision rendered in the process. Having found the provision of the Constitution of Tanzania to be in violation of the Banjul Charter, the Court ordered Tanzania to take all necessary constitutional and legislative measures, within a reasonable time, to ensure that article 41(7) of its Constitution is amended and aligned with the provisions of the Banjul Charter to eliminate, among others, any violation of Articles 2 and 7(1) (a) of the Charter.

Independence and integrity of Electoral Management Bodies (EMBs)

The presidential elections saga in Malawi in 2019 and 2020 also presents a key lesson for electoral management bodies (EMBs), including Tanzania's National Electoral Commission (NEC), especially in the aftermath of the 2020 general elections which were marred by various irregularities.⁴⁹⁰ EMBs have a big role to play in ensuring elections are free, fair, and peaceful. The management of democratic elections requires independent and non-partisan EMBs that are free from any kind of political bias. Effective and well-run EMBs can guarantee free and fair elections and ensure a State does not incur costs of re-run elections and risk post-electoral violence, which as we have seen in the case of Kenya in recent years, can have deadly consequences.

Parallel vote tallying/tabulation

Parallel vote tallying (PVT) is a process of independent tabulation or quick count polling station results to verify election results. This is usually based on a representative random sample of polling stations and PVT is a powerful tool to enable citizens to analyse the integrity of the electoral process, especially voting and counting, and accuracy of results. PVT involves collection and tabulation of official polling station results parallel to the election authorities. It was first used in the Philippines in 1986 but has also been used in African countries such as Burundi, Mozambique, and Kenya. It has also been used in Ghana during the 2008 presidential election and Zimbabwe's 2007 presidential elections.

Other key lessons

Flaw in the first-post-the-post (FPTP) electoral system

- The election results reflected a narrow margin between the winner and runner-up (2 per cent), demonstrating a flaw in the first-

⁴⁹⁰ See LHRC (2021), Tanzania Human Rights Report 2020, LHRC [www.humanrights.or.tz]



past-the-post (FPTP) electoral system. The High Court determined that the term ‘majority’ in section 80 of the Constitution should be interpreted as a two-round ‘50-percent-plus-1’ absolute majoritarian electoral system.

Maintaining the independence of democratic institutions, including EMBs, is essential for

Democracy

- At the centre of Malawi’s flawed election storm was the compromised MEC. The case filed by the opposition after the 2019 elections demonstrated the extent to which EMBs are essential to democracy and that their mandates should not be taken lightly.

Checks and balances

- Malawi’s democratic institutions—including the judiciary, Parliament and the military— proved resilient in the face of a determined effort to weaken checks and balances on the executive.
- The presidential elections in Malawi highlight the importance of a strong institutional framework that effectively entrenches the principle of checks and balances.

Credible elections are worth the cost

- The logic that was ultimately followed in Malawi was that democratic peace comes at a premium, and that the cost of not running a fresh (credible) election would be higher. If protests and conflict continued or even escalated, the breakdown of law and order would have a far greater long-term cost.

An open civic space and vibrant democratic culture

- The Malawian civil society demonstrated its vibrancy through protests and court cases.

Open communication and consultation

- One of the contributory factors to the successful conduct and the accepted outcome of the 2020 fresh presidential election was the MEC’s openness to consult electoral stakeholders within the short period it had to deliver the elections. The Commission provided ongoing updates on the process especially during the results management process. The live broadcast of the court proceedings also contributed to public trust in the process.



2.7. Freedom from Torture and Inhuman or Degrading Treatment

Meaning & Key Applicable Standards

- Occurs when someone deliberately causes very serious and cruel suffering (physical or mental) to another person.
- Any act inflicting severe pain to obtain information, confession or to intimidate or punish by a public official or any person in official capacity.
- Includes the act of a law enforcement official intentionally and purposefully inflicts pain or suffering on an individual who is powerless and unable to escape or resist arrest
- Key standards include: UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984; International Covenant on Civil and Political Rights (ICCPR), 1966; African Charter on Human and Peoples Rights (Banjul Charter), 1981; African Charter on the Rights and Welfare of the Child (ACRWC), 1990; Universal Declaration on Human Rights (UDHR), 1948; and Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975. Domestically, the standard is the Constitution of the United Republic of Tanzania, 1977.

2.7.1. The Convention Against Torture (CAT)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted in 1984 to protect people from various acts of torture and cruel, inhuman or degrading treatment. The convention prohibits torture and imposes various obligations upon States to combat torture. Among the obligations is to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under State's jurisdiction.⁴⁹¹ However, Tanzania is yet to ratify this important human rights convention. Ratification of this convention is particularly important for safeguarding the rights of detainees.

2.7.2. Reported Torture Incidents

In 2021, LHRC documented at least 47 incidents of torture and/or inhuman or degrading treatment. These incidents include torture of accused persons under police custody (detainees) and child torture.

2.7.3. Torture of persons under police custody: excessive use of force and overreliance on confessions

⁴⁹¹ Article 2(1) of CAT.



In 2021, LHRC documented three incidents of torture of persons under police custody, reported Mara, Dodoma, and Dar es Salaam Regions (all the victims were male). In **Mara**, it was reported in February 2021 that Baraka Manyanda (22), resident of Turwa Ward in Tarime District, was severely beaten by police officers at a police station after he had initially resisted arrest. He reportedly died while receiving medical treatment.⁴⁹² In **Dar es Salaam**, it was reported in November 2021 that a police officer at Goba Police Station tortured Issa Kassim (20) by subjecting him to excessive beating, leaving him in critical condition.⁴⁹³ According to the relatives, some of the police officers wanted to be paid some money (bribe) as a condition for the victim's release and the beating caused the victim to be sent to ICU at Muhimbili's MOI. In **Dodoma**, police officers reportedly tortured a *bodaboda* driver, Ally Bakari (21), by beating him, removing his 'rasta' hair and inserting a broom handle into his anus, damaging his intestine in the process.



Picture 19: A man who was reportedly tortured by some police officers in Dodoma

Picture credit: Mwananchi Newspaper

Overreliance on confessions is a key contributing factor for torture and ill-treatment of persons under police custody. According to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, “Any unnecessary, excessive or otherwise arbitrary use of force by law enforcement

492 LHRC Media Survey 2021.

493 Ibid.



officials is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment.⁴⁹⁴ An act of a law enforcement official intentionally and purposefully inflicts pain or suffering on an individual who is powerless and unable to escape or resist arrest is unlawful and amounts to torture.⁴⁹⁵ According to the UN High Commissioner for Human Rights, torture during interrogations - illegal, immoral, and ineffective.⁴⁹⁶

2.7.4. Prison conditions and torture and cruel, inhuman or degrading treatment or punishment (CIDTP)

People who are detained by the State, including in police stations, prisons, detention centres, and immigration centres, are particularly vulnerable to violations of their right to freedom from torture and ill-treatment.⁴⁹⁷ Poor conditions of detention or imprisonment constitute ill-treatment.⁴⁹⁸ Various decisions of regional and international human rights mechanisms, including courts, have found different forms of treatment in the contexts of detention or imprisonment to amount to torture and ill-treatment.⁴⁹⁹ For instance, in the case of *Mendoza et al. v. Argentina*, the Inter-American Court of Human Rights (IACtHR) found that excessive or repeated use of force in prison which results in severe physical or mental pain or suffering.⁵⁰⁰ The victims in this case had suffered appalling conditions of detention and subjected to strong blows to their face, while detained in various facilities, and one committed suicide while in detention.⁵⁰¹ In *Ntikaraha v. Burundi*, the Committee against Torture (CAT), found that handcuffing the complainant, putting him into a vehicle and beating him until he lost consciousness on the way to the jail of the criminal police amounted to torture.⁵⁰²

Other acts in detention facilities that constitute torture and or cruel, inhuman, degrading treatment or punishment (CIDTP) include mock

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

495 Ibid.

496 See “Torture during Interrogations - Illegal, Immoral, and Ineffective” Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein, 22 September 2017, at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22134&LangID=E>.

497 Magdalena Sepúlveda et al (2004), *Universal and Regional Human Rights Protection: Cases and Commentaries* (University for Peace, Costa Rica); Icelandic Human Rights Centre, *Conditions of Detention*, at <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-freedom-from-torture-or-cruel-inhuman-or-degrading-treatment-or-punishment/conditions-of-detention>.

498 Ibid.

499 See REDRESS, *Torture in Detention*, at <https://redress.org/wp-content/uploads/2021/07/Training-Module-12-Torture-In-Detention.pdf>.

500 *César Alberto Mendoza et al. v. Argentina*, Case 270-02, Report No. 26/08, Inter-Am. C.H.R., JUDGMENT OF MAY 14, 2013, at https://www.corteidh.or.cr/docs/casos/articulos/seriec_260_ing.pdf.

501 Ibid.

502 CAT (2014) *Boniface Ntikaraha v Burundi*, No. 503/2012, 12 May 2014, at <https://atlas-of-torture.org/en/entity/efl81w13rgo1elqvmwmddeu3di?page=11>.



executions; failure to provide food, water, and medical care; exposure to cold; hot and cold-water treatment; credible threats of harm to the victim or a third party; sleep deprivation; and overcrowding or poor sanitary conditions in detention facilities.⁵⁰³ For instance, in the case of *Mukong v. Cameroon*, the Human Rights Committee found that Mr. Mukong, who was kept detained incommunicado, was threatened with torture and death and intimidated, deprived of food, and kept locked in his cell for several days on end without the possibility of recreation, had been subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the ICCPR.⁵⁰⁴ In another case, *Matthews v. Trinidad and Tobago* (Communication No. 569/1993, Views of 31 March 1998), the Committee found that conditions of detention violated Article 10(1) of the Covenant, especially as to sanitary conditions.⁵⁰⁵ In the case of *Krischna Achutan and Orton and Vera Chirwa v. Malawi*, the African Commission on Human and Peoples' Rights found that certain aspects of imprisonment amounted to a violation of Article of the Banjul Charter.⁵⁰⁶

As discussed above, prisons in Tanzania are overcrowded, largely contributed by automatic denial of bail and prolonged pre-trial detention. This situation leaves people who are detained vulnerable to torture and CIDTP. There have also been reports of prisons not having good sanitary conditions and prisoners and other detainees not getting good food.

2.7.5. Death penalty and torture or inhuman or degrading treatment

There is a general consensus that death penalty violates the right to life and amounts to a cruel, degrading and inhuman punishment under the Convention against Torture (CAT). Imposition of this kind of punishment has not made much impact in terms of deterrence of crime, which is why there is a global movement towards the abolition of the death penalty. Subjecting persons to the death row phenomenon amounts to inhuman and degrading treatment. Prisoners who are on deathrow also suffer mental torture. In Tanzania, death sentences continued to be imposed by courts of law. During the year under review, LHRC documented 24 death sentences, imposed by courts in

⁵⁰³ See REDRESS, *Torture in Detention*, at <https://redress.org/wp-content/uploads/2021/07/Training-Module-12-Torture-In-Detention.pdf>.

⁵⁰⁴ *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994), at <http://hrllibrary.umn.edu/undocs/html/vws458.htm>.

⁵⁰⁵ Icelandic Human Rights Centre, *Conditions of Detention* (supra).

⁵⁰⁶ *Krischna Achutan* (on behalf of Aleke Banda), Amnesty International on behalf of Orton and Vera Chirwa v. Malawi (Communication 64/92, Seventh Activity Report 1993-1994, Annex IX).



Mara, Geita, Iringa, Njombe, Mbeya, and Kigoma Regions. There are therefore more people on death row, anxiously awaiting to be executed by hanging.

2.7.6. Lengthy pre-trial detention and torture

Studies have shown that the longer an accused person stays in prison the greater the risk of coercion through torture or ill-treatment and poor legal representation, especially where the accused person is poor.⁵⁰⁷ Remandees awaiting trial are at greater risk of torture, violence, and inhuman treatment in overcrowded and insanitary prisons or detention facilities and usually have no access to work, education, or rehabilitation. For pretrial detainees who contract disease or who are damaged physically or psychologically by torture during their detention, the long-term effects are so great as to be nearly incalculable.

In 2021, lengthy pre-trial detention continued to be a big challenge, as discussed in detail above. Detainees are therefore at a great risk of torture, violence, and inhuman treatment, especially given the overcrowding and poor sanitary conditions concerns.

2.7.7. Child torture

The African Charter on the Rights and Welfare of the Child requires States, including Tanzania, to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect, or maltreatment including sexual abuse.⁵⁰⁸ Domestically, the Law of the Child Act (LCA),⁵⁰⁹ provides for the ‘Protection from torture and degrading treatment.’⁵¹⁰ According to the LCA, “a person shall not subject a child to torture, or other cruel, inhuman punishment or degrading treatment, including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child.”⁵¹¹ It also provides that correction of a child is not justifiable if it is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child is by reason of tender age or otherwise incapable of understanding the purposes of the correction.⁵¹²

507 UN Subcommittee on Prevention of Torture (SPT), Report on Paragual, 7 June 2010, CAT/OP/PRY/1, para 64, cited in Penal Reform International (PRI) & Association for the Prevention of Torture (APT), *Pre-trial detention: Factsheet*, Detention Monitoring Tool, 2nd ed. 2015.

508 Article 16(1) of the African Charter on the Rights and Welfare of the Child.

509 CAP. 13 R.E. 2019.

510 Article 13 of the Law of the Child Act, [CAP. 13 R.E. 2019].

511 Ibid, Article 13(1).

512 Ibid, Article 13(2).



Intrafamilial child torture (ICT), which is torture inflicted on children by their parents or other caregivers, has become a serious problem in Tanzania Mainland. In the past two years, LHRC has documented many incidents of physical abuse against children, including torture in the form of denial of food and burning of hands as punishment. In the Human Rights Survey 2021, beating/torture (54%) was mentioned as the second most common form of violence against children, after child neglect (60%).⁵¹³ Through media survey and human rights monitoring, in 2021 LHRC documented at least 20 incidents of child torture.

2.8. Freedom from violence

Meaning & Key Applicable Standards

- Means protection of everyone from all forms of violence, whether physical, sexual, economic, or psychological/emotional.
- Freedom from violence is implied in and closely linked to right to life, freedom from torture and degrading treatment, freedom from discrimination and the right to safety and security. These fundamental human rights are protected and guaranteed under all major international and regional human rights instruments.
- Key standards include: the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (Banjul Charter), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), and the UN Convention on the Rights of the Child (CRC). Domestically, freedom from violence is implied in the Constitution of the United Republic of Tanzania, 1977.

Maputo protocol requires States Parties to “ensure the **right of elderly women to freedom from violence**, including sexual abuse, discrimination based on age and the right to be treated with dignity.”⁵¹⁴ Maputo Protocol also requires States Parties to “ensure the **right of women with disabilities to freedom from violence**, including sexual abuse, discrimination based on disability and the right to be treated with dignity.”

For children, freedom from violence is implied under the UN Convention on the Rights of the Child (CRC), which requires States Parties to take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment,

⁵¹³ LHRC Human Rights Survey 2021: Field Data.

⁵¹⁴ Article 22(b) of the Maputo Protocol.



maltreatment or exploitation.⁵¹⁵ Additionally, the Committee on the Rights of the Child, established under the CRC, has recognized the **right of the child to freedom from all forms of violence.**⁵¹⁶

2.8.1. Violence against women

Violence against women (VAW) continues to be a major human rights concern in Tanzania Mainland. In 2021, LHRC documented incidents of various forms of violence suffered by women, including and especially physical and sexual violence.⁵¹⁷ Intimate partner violence (IPV) took centre stage in 2021, with women constituting the overwhelming majority of victims and costs of which included death and permanent injury or disability. Widows also suffer different forms of violence, including economic and psychological violence. These issues are discussed in detail in subchapter 5.1.

2.8.2. Violence against children

Violence against children (VAC) also continues to be a key human rights concern for children. In 2021, children in different parts of Tanzania Mainland experienced different forms of violence, including neglect, physical violence, mental violence, sexual abuse and exploitation, and harmful cultural practices, including FGM and forced and early marriages. Sexual violence, especially in the form of rape and sodomy, was the biggest threat to children's right to freedom from all forms of violence. Consequences for VAC in 2021 included deaths and permanent injuries, including mental injury. VAC issues and situation are discussed in detail in subchapter 5.2.

2.8.3. Violence against men: men, who are usually the perpetrators, as the silent victims

While violence is usually perpetrated against women and children, men can also be victims of violence,⁵¹⁸ especially in domestic settings. Globally, domestic violence is often seen as women suffering violence at the hands of their male partners and unfortunately men who are abused by their partners are usually ignored by the community and law the police. In a male-dominated society, men feel that it is shameful to be beaten by a woman and hence rarely or do not report the violence.⁵¹⁹

515 Article 19(1) of CRC.

516 See Committee on the Rights of the Child, The right of the child to freedom from all forms of violence, General comment No. 13 (2011), at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQ ZLK2M58RF%2F5F0vFKtnY3RFBX0eVOrGEV YuIm9CsHNwh1HrjED9fVmGn%2BaZ1TGy6vH1Iek6kukGyB%2FFCGBbSOP0uwpKf24vcxkEnv>.

517 LHRC Media Survey & Human Rights Monitoring, 2021.

518 Kolbe, V., & Büttner, A. (2020). Domestic Violence Against Men-Prevalence and Risk Factors. *Deutsches Arzteblatt international*, 117(31-32), 534–541. <https://doi.org/10.3238/arztebl.2020.0534>; Deshpande S. Sociocultural and Legal Aspects of Violence Against Men. *Journal of Psychosexual Health*. 2019;1(3-4):246-249. doi:10.1177/2631831819894176

519 Deshpande S. Sociocultural and Legal Aspects of Violence Against Men. *Journal of Psychosexual Health*. 2019;1(3-4):246-249. doi:10.1177/2631831819894176



Most of the existing literature also discuss domestic violence in relation to women.⁵²⁰ However, men also suffer verbal, physical, emotional/psychological, and sexual abuse.⁵²¹

In India, a 2019 study on GBV against men found that 51.5% males experienced violence at the hands of their wives/intimate partner at least once in their lifetime and 10.5% in the last 12 months.⁵²² This prevalence rate was found to be higher than in USA, Canada, and the UK (19.3%).⁵²³ In U.S, approximately 10 men experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact, including stress.⁵²⁴ Less income, less education, and influence of alcohol were found to increase risk of violence against men.⁵²⁵

In African context, including Tanzanian, fear of being seen or perceived to be weak and turning into a laughing stock has generally forced men not to bring abuse they suffer to the attention of authorities. In most cases they are also not believed by fellow community members. Consequently, there is underreporting of violence against men. In India, a recent study has identified reasons for underreporting including to include a belief and hope that things will get better (improve), fear of losing social respect and position, protection, love for children and family, perception that men complaining is a “feminine behaviour,” and fear of being blamed.⁵²⁶ Most of these reasons, especially fear of being perceived unmanly, are also true in the African context.

Community members who responded to the Human Rights Survey 2021 were asked the extent to which violence against men is a problem in their community. While the overwhelming majority (71%) said it is only a minor problem and not at all a problem, a quarter of the respondents acknowledged that it is a moderate problem in their community, while 4% said it is in fact a serious problem.

520 Ibid,

521 Ibid.

522 Malik, JS, Nadda, A. A cross-sectional study of gender-based violence against men in the rural area of Haryana, India. *Indian J Commu Med.* 2019;44(1):35. (cited in Deshpande S. Sociocultural and Legal Aspects of Violence Against Men. *Journal of Psychosexual Health.* 2019;1(3-4):246-249. doi:10.1177/2631831819894176).

523 Deshpande S. Sociocultural and Legal Aspects of Violence Against Men (supra).

524 See Centers for Disease Control and Prevention (CDC), *Intimate Partner Violence, Sexual Violence, and Stalking Among Men*, at <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/men-ipvsvandstalking.html>.

525 Deshpande S. Sociocultural and Legal Aspects of Violence Against Men (supra).

526 Ibid.



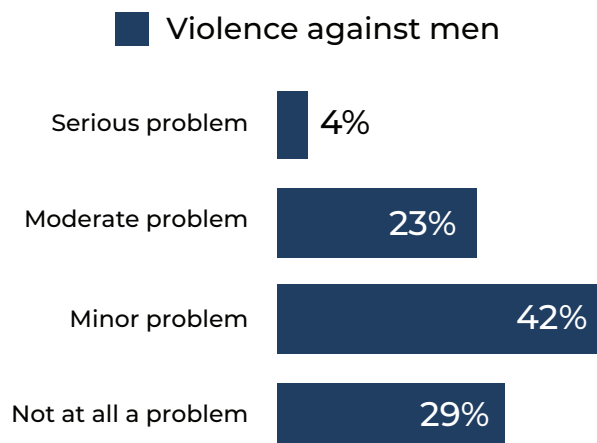


Figure 26: %Responses on respondents' views on violence against men (N=1,094)

Source: *Field Data, 2021*

Some of the interviewed community members who said violence against men is a problem in their community noted that verbal abuse is the most common form of violence against men perpetrated by their female partners. They also noted that men usually do not report incidents of violence against them. In Singida, one of the interviewed respondents revealed a culture called “Idimu” which was said to perpetuate violence against married men. According to this culture, among the Nyaturu tribe, it is a taboo for a man/husband to share a toilet with his grown children or being seen by them entering the toilet, hence have to build a small house (*idimu*) beside the main house and relocate that house alone. As days go by life in the new house becomes very difficult, characterized by wife’s neglect of the husband.

“Men are also subjected to various forms of violence. The problem is that they do not report what they are going through. It is like they do not have a platform to air their grievances.”

Paralegal, Morogoro

In recent years, including 2021, various senior police officers and government officials have also called upon men who experience violence at the hands of their intimate partners to come forward. For instance, in December 2021, the then Minister of Health, Dr. Dorothy Gwajima, called upon men who are subjected to different forms of



domestic violence to report incidents and seek help.⁵²⁷ Similar remarks were made by the Dar es Salaam Special Zone Police Commander, ACP Lazaro Mambosasa in April 2021.⁵²⁸ The ACP noted that in the period of 15th March to 1 April 2021, a total of 5,312 men complained about violence suffered at the hands of their female intimate partners through one stop centres. Acts of domestic violence they were subjected to included beatings, denial of good and denial of conjugal rights.⁵²⁹ In **Shinyanga**, some men revealed in December 2021 that they had been subjected to different forms of violence by their wives, including denial of conjugal rights (emotionally/psychological violence).⁵³⁰

In 2021, LHRC documented at least seven incidents of violence against men, some of which resulted into death. These incidents were reported in Dar es Salaam, Songwe, Mara, Shinyanga, where at least four men were killed by their lovers or wives, 3 of them because of jealousy. In **Shinyanga**, police arrested Amina Hamisi (32) for assaulting with a knife her husband, Simon Robert (43) because of jealousy.⁵³¹

2.8.4. Violence against PWDs

PWDs are more vulnerable to violence compared to other vulnerable group in the community. They faced different forms of violence, including physical, sexual, psychological, and economic violence. In 2021, violence perpetrated against PWDs included trafficking and economic exploitation, and sexual violence.

2.8.5. Violence against the elderly

In 2021, the elderly continued to be subjected to different forms of violence, including physical violence, sexual violence, neglect, interference with property rights, and having grandchildren abandoned to them. They also continue to be major victims of being killed over witchcraft suspicion. Parricide (child killing their parent), usually motivated by property inheritance, has also emerged as an issue for the elderly.

2.9. Impact of Covid19 on Civil and Political Rights

In 2021, the impact of Covid19 on civil and political rights was significant. Fundamental civil and political rights were negatively impacted as follows:

527 LHRC Media Survey 2021.

528 Ibid.

529 Ibid.

530 LHRC Media Survey 2021.

531 LHRC Media Survey 2021.



- Restricted movement and limited access to information by journalists
- Delays and disruptions in administration of criminal justice due to ICT-related challenges such as poor internet connectivity, as the Judiciary resorted to videoconferencing technology to cope with the pandemic

“Accused persons were not brought to court for hearing, instead we were using videoconferencing. However, we faced various challenges, including poor networking, sound problems, and not hearing the accused person well. This compromised the accused person’s right to be heard”

Judicial officer, Mwanza

- Constant adjournment of cases, further compounding the problem of lengthy pre-trial detention
- Denial of the right of the accused to appear physically in court
- Increased infringement of press freedom as self-censorship continues to be the rule in order to avoid trouble, especially with regard to Covid19 and political issues
- Rise in different forms of abuses/violence, especially against children and women
- Media outlets being financially crippled and forced into retrenchment, affecting collection and dissemination of information
- Groups such as children and women being in greater risk of human trafficking
- Increased risk of child labour and economic exploitation

2.10. Relevant SDGs, TDV 2025, and Agenda 2063 Targets

Tanzania’s achievement of these 2030 Sustainable Development Goals (SDGs), Tanzania Development Vision 2025 (TDV 2025), and Agenda 2063: The Africa We Want, depends on progress made in realization of civil and political rights:

Key SDGs, TDV 2025 and Agenda 2063 Targets relating to Civil and Political Rights	
SDGs	<p><u>SDG 5 GENDER EQUALITY</u>: Achieve Gender Equality and Empower All Women and Girls.</p> <p><u>SDG 10 REDUCED INEQUALITIES</u>: Reduce Inequality Within and Among Countries.</p> <p><u>SDG16 PEACE, JUSTICE AND STRONG INSTITUTIONS</u>: Promote Peaceful and Inclusive Societies for Sustainable Development, Provided Access to Justice for All and Build Effective, Accountable and Inclusive Institutions At All Levels.</p>



TDV 2025	<p><u>Peace, Stability and Unity</u> <u>Good Governance</u></p> <ul style="list-style-type: none"> ■ Desirable moral and cultural uprightness. ■ Strong adherence to and respect for the rule of law
Agenda 2063: The Africa We Want.	<p>ASPIRATION 2: An integrated continent, politically united, based on the ideals of Pan-Africanism and the vision of Africa's Renaissance ASPIRATION 3: An African of good governance, democracy, respect for human rights, justice and the rule of law ASPIRATION 4: A peaceful and secure Africa</p>



CHAPTER 3: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, ratified by Tanzania in 1976, guarantees economic, social and cultural rights. States have a duty to ensure progressive realization of these rights.⁵³² Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic, social and cultural rights recognized in the present Covenant to non-nationals.⁵³³ Social and economic rights enhance individuals' protection by the state, for their dignity, freedom and well-being. The State is duty bound to support provision of entitlements to the basic needs such as education, food, public health care, housing, and other social goods to the maximum of the available resources.⁵³⁴ Right to education, right to health, right to social security, right to food, right to clean water and sanitation, and the right to adequate standard of living are commonly identified as the entitlements upon which states should accord their citizens with for the purpose of improving and maintaining their social lives.

At international level, apart from ICESCR, economic, social and cultural rights are also guaranteed and protected under the Universal Declaration of Human Rights (UDHR), 1948; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979; and Convention on the Rights of the Child (CRC), 1989. At regional/continental level, they are provided for and protected under the African Charter on Human and Peoples' Rights (ACHPR),⁵³⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁵³⁶ and the African Charter on the Rights and Welfare of the Child (ACRWC).⁵³⁷ Tanzania is duty bound under the ICESCR, ACHPR, Maputo Protocol and ACRWC to progressively realize these rights for its citizens to the maximum of its available resources.

532 Article 2(1) of ICESCR.

533 Ibid, Article 2(3).

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

535 See for example Articles 15, 16(1) and 17(1) of ACHPR.

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

537 Articles 11 and 14 of ACRWC.



Economic and social rights, such as right to work and right to own property are also enshrined in the Constitution of the United Republic of Tanzania.⁵³⁸ These rights are also provided for under key pieces of legislation, such as the Employment and Labour Relations Act of 2004, the Land Act of 1999 and the Village Land Act of 1999.

In 2021, the situation of economic, social, and cultural rights slightly deteriorated/worsened, mainly due to the impact of Covid19. Various challenges continue to hinder effective realisation of social, economic, and cultural rights, including budgetary constraints; delays in disbursement of funds; partial disbursement of funds; poor working conditions; unemployment; shortages of workers; and shortages of equipment, tools, and facilities.

3.1. Right to Education

Meaning & Key Applicable Standards

- Means access to **quality** education, which is available, accessible, acceptable, and adaptable.
- Is a basic human right for all and is important for everyone to make the most of their lives and essential for effective realization of all other human rights, including the right to take part in governance.
- Key standards include: the International Covenant on Economic, Social and Cultural Rights (ICESR), 1966; UNESCO Convention against Discrimination in Education, 1962; Convention on the Rights of the Child (CRC), 1989; African Charter on Human and Peoples Rights (Banjul Charter), 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; SADC Protocol on Gender and Development, 2008; and the African Charter on the Rights and Welfare of the Child (ACRWC), 1990. Domestically, the standard is the Constitution of the United Republic of Tanzania, 1977.

In 2021, the Government continued to take measures to ensure progressive realization of the right to education. However, several challenges persist, which hinder effective realization of this right, including budgetary constraints, shortage of teachers, shortages desks and classrooms, shortage of toilet holds, violence against schoolchildren, long distance from school, child marriage, child pregnancy, and quality of education.

⁵³⁸ See for example Articles 22, 23 and 24 of the Constitution of the United Republic of Tanzania, 1977.



3.1.1. Government and other stakeholder action to ensure realization of the right to education, including implementation of fee-free education policy

In 2021, the Government took various measures to promote the right to education. For instance, in March 2021, the Government Spokesperson, Dr. Hassan Abbas, revealed that in the period of 2015 to February 2021, the Government had taken several measures to improve the education sector, including providing over one trillion shillings to support fee-free education, constructing over 100,000 classrooms, renovating some of the schools, providing 26 cars to regional education officers, and employing over 20,000 teachers. He noted these measures have helped to increase enrolment in basic education, including increasing the number of children enrolled in standard one.

In May 2021, Deputy Minister of PO-RALG, Hon. David Silinde, revealed during a Q & A session in the Parliament that the Government had set aside a total of Tshs. 7.15 billion to make 710,000 desks for primary schools for the financial year 2021/22 in a bid to reduce shortage of desks.⁵³⁹ In the same month, it was reported that Meatu District Council had received Tshs. 800 form the central government to facilitate construction of classrooms, toilets, laboratories, dormitories, and dispensaries. This was revealed by the District Executive Director, Fabian Manoya, during a meeting with councilors.

In **Geita**, it was reported in January 2021, that Geita District Council had allocated Tshs. 1.9 billion for the education sector in the financial year 2021/22 in order to address some education-related challenges, including shortage of desks and classrooms.⁵⁴⁰ Deputy District Executive Director, Donald Nnsoko, revealed that while receiving 1,000 desks donated by Geita Gold Mine (GGM) in January 2021. In the same month, it was reported in Mulemba District Council in **Kagera** Region provided 836 desks to 26 primary schools to help ease shortage of desks in schools in Mulemba District. According to the District Executive Director of the district, the desks needed are 51,534 during the 2020/21 financial year, while available desks were 49,576, hence there is a shortage of 1,948 desks.⁵⁴¹

Other stakeholders also provided resources to facilitate provision of

⁵³⁹ LHRC Media Survey 2021.

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.



education. For instance, in May 2021, NMB Bank donated a total of 450 desks, 60 chairs, and 60 tables to primary and secondary schools located in Chamwino District in Dodoma, worth Tshs. 53 million. Among the schools which benefitted from the donation were Dabalo, Chiwondo, Igamba, and Msanga Primary Schools. In July 2021, MP of Masasi Constituency, Minister Geoffrey Mwambe, donated 190 iron sheets and 260 cement bags to facilitate construction of teachers' toilet, a teacher house, and a dispensary.⁵⁴² MP of Chalinze, Ridhiwani Kikwete, also reportedly donated 390 desks worth Tshs. 30 million to secondary schools suffering shortage of desks in his constituency in May 2021.

In **Iringa**, it was reported in July 2021, that Tanzania Postal Bank (TPB) had facilitated construction of 20 toilet holes at Ifwagi Primary School in Mufindi District to help reduce shortage of toilet holes at the school.⁵⁴³ In **Mtwara**, in April 2021, it was reported that the NMB Bank had donated 170 iron sheets worth Tshs. 4 million to facilitate construction of a school in Mnauke Village in Newala District.⁵⁴⁴ In **Manyara**, NMB also donated 50 desks in Hanang District.

Citizens in different parts of the country also played their part to facilitate provision of education. For instance, in January 2021, it was reported that residents of Misungwi Ward in Misungwi District, **Mwanza** Region, started construction of a new secondary schools to accommodate 565 new secondary school students.⁵⁴⁵

Government action to ensure progressive realization of the right to education also included provision of loans to higher education students. In July 2021, HESLB stated that it has allocated Tshs. 570 billion worth of loans for 160,000 higher education students for the financial year 2021/22, which shall see 10,000 students more benefitting from the loans compared to the previous financial year.⁵⁴⁶ In May 2021, the Minister of Education, Science, and Technology, Prof. Joyce Ndalichako, announced that the Government had scrapped a 10% penalty fee for loan beneficiaries.⁵⁴⁷ Despite good efforts by the Government to provide higher education loans, through engagement with youth, especially through human rights clubs at college/university level, LHRC has also received complaints about discrimination on provision of such loans,

542 LHRC Media Survey 2021.

543 Ibid.

544 LHRC Media Survey 2021.

545 Ibid.

546 Ibid.

547 LHRC Media Survey 2021.



especially when it is found that an applicant had studied at an expensive private school.⁵⁴⁸ Some of the higher education students remarked that due regard should be given to the present circumstances of the applicant and not the past.⁵⁴⁹

3.1.2. Quality Education: Concerns of poor working and learning environment

In January 2021, it was observed that despite trends showing a 5.19% increase in pass rate, half of the candidates got Division Four in the National Form Four examinations results (50.74%), released on 15th January 2021. Among those who got Division Four, 126,773 (57%) were female and 94,276 (43%) were male. Difficult teaching and learning environment, especially in rural areas, was said to be among key factors affecting performance.⁵⁵⁰

Unsatisfactory working environment for teachers continued to be a key barrier to quality education. Teachers, especially in public schools in rural and semi-urban areas, continued to face various challenges in carrying out their duties, including shortage of teacher offices. For instance, in July 2021, the administration of Kangaye Secondary School, located in Ilemela District in Mwanza, has revealed that their school is faced with several challenges, including shortages of chairs, tables, and teacher offices.⁵⁵¹

Proposition of special academic camps for pupils and students preparing for national examinations

In July 2021, the Dodoma Regional Commissioner, Anthony Mtaka, emphasized the importance of special academic camps for pupils and students preparing for national examinations. He urged parents to allow their children to attend such camps. Hon. Mtaka has previously overseen a successful special camps initiative in Simiyu Region, which saw a significant improvement in performance in national examinations.

Shortage of teacher houses a big concern

According to the 2020 BEST statistics, 4 out of 5 teachers do not live

⁵⁴⁸ LHRC meetings with human rights clubs members and leaders, 2021.

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid.

⁵⁵¹ LHRC Media Survey 2021.



in teacher houses, due to shortage of such houses. Shortage of such houses is now 81.3%, as there are only 46,904 out of 251,052 houses required. All regions of Tanzania Mainland have over 50% shortage of teacher houses, with Dar es Salaam leading with 91%, followed by Shinyanga (87%), Kilimanjaro (87%), Tanga (86%), and Mwanza (86%) Regions.

Reforms needed in the education sector

In December 2021, education stakeholders revealed that **in order for** the education sector to make progress there is need to for reform the sector to address various barriers that hinder provision of quality education. The barriers include gaps in the curricula, medium of instruction, learning/teaching environment, and safety and security of pupils and students.⁵⁵² **According to Prof. Richard** Mabala, an education expert and right to education activist, medium of instrument is one of the major barriers in provision of quality education. He also pointed the challenge of teacher to pupil/student ratio, pointing out that while one class is not supposed to contain more than 45 pupils/students, the reality is quite different, especially for government/public schools.⁵⁵³

In 2021, Hon. Umyy Mwalimu, the then Minister of PORALG, also expressed concern over quality of education and called for educational reforms, especially review of curricula. While noting that performance in form four and form six national examinations significantly increased in 2020, indicating improved performance among students, there is still a challenge of low understanding among students, suggesting that most of them cram for the examinations.

3.1.3. Government re-entry policy for pregnant schoolgirls: A step in the right direction

In November 2021, the Government lifted ban on pregnant schoolgirls and teenage mothers, allowing them back into mainstream education. Following this positive move by the government, the debate shifted to how the decision can effectively be implemented. Stakeholders commended the Government for this decision and gave their views on the next steps. *HakiElimu* Executive Director, Dr. John Kalage, stated that the guidelines are a welcome development in terms of safeguarding girls' right to education, while LHRC's Fulgence Massawe (Advocate) revealed that while the government's move demonstrates

⁵⁵² Ibid.

⁵⁵³ Ibid.



political will, it must be backed by a written policy and law to effectively safeguard the right to education for girls. Local stakeholders also demanded the inclusion of these elements in the Education Guidelines for the expulsion and suspension of pupils from schools (No. 295 of 2002).

The World Bank (WB) also issued a statement in support of the Government's announcement of allowing the girls back to school, stating that. ***"The Bank looks forward to the issuance of guidelines that will enable pregnant girls and young mothers to continue their education and it will support their implementation through our partnership with the government of Tanzania in the education sector."***

LHRC's View: LHRC welcomes the Government's decision to allow pregnant girls and young mothers back to school. This will go a long way in safeguarding girls' right to education, which is essential for effective realization of other human rights, including the right to work and right to adequate standard of living.

LHRC's Call: Government to widely circulate the re-admission guidelines to all schools across Tanzania Mainland to ensure school administrations do not block the re-admission, while ensuring that the school environment is friendly and inclusive.

3.1.4. Budgetary allocation for the education sector

The education budget in Tanzania has been one of the fastest growing budgets from year to year. Although stakeholders still show that the budget does not meet the standards to meet the needs of student inflation after free education policy from pre-school to form four. In May 2015, WEF (World Education Forum) adopted Incheon Declaration and Framework for action on the Implementation of the Sustainable Goal 4 which is to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all⁵⁵⁴. 184 states around the world, including Tanzania, made different commitments under this Declaration and one of the commitments is to allocate at least 15-20% of their total budgets on education to achieve the SDG 4 targets by 2030.

The current budget trends in the education sector show that the

⁵⁵⁴ See Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, at <https://unesdoc.unesco.org/ark:/48223/pf0000245656>. See also Legal and Human rights center(2020): *Human rights protection and the Threats posed by COVID19 in Tanzania*, Legal and Human rights center, Dar es salaam, Tanzania.



budget has been increasing which is a good indicator of progressive realization of this right although it is still falling short of the minimum standard which was agreed in the Incheon Declaration. In the financial year 2019/20, the budget which was allocated for education sector was Tshs. 4.511 trillion which is equal to 13.63% of the overall budget. In the financial year 2020/21 the budget allocated was Tshs. 4.721 trillion, which is equal to 13.56% of the overall budget, while in the financial year 2021/22 is 5.26 trillion, equivalent to 14% of the total budget.⁵⁵⁵

3.1.5. Shortages of classrooms, desks, and toilet holes

Shortages of classrooms and toilet holes continued to be barriers to the right to education in 2021. Reports of shortages of classrooms, desks, and toilet holes were made in different parts of Tanzania Mainland, including in Shinyanga, Mbeya, Morogoro, Dar es Salaam, Shinyanga, Kilimanjaro, Mtwara, Mbeya, Songwe, Tabora, Kigoma, and Mara Regions. Some of these reports are summarized in table 15 below.

Table 15: Some of the reported incidents of shortages of classrooms, desks and toilet holes documented by LHRC in 2021

Incident	Report Date
Morogoro: In July 2021 it was reported that 595 pupils of Misongeni Primary School in Bigwa Ward were using only 4 toilet holes. However, the school administration revealed, that had received building materials to facilitate construction of a new toilet with 16 toilet holes.	20 Jul 2021
Dar es Salaam: Mbande and Majimatitu Primary Schools were reportedly faced with severe shortages of classrooms, toilet holes, and teachers.	20 Apr 2021
Shinyanga: Kabale Primary School, located in Bulyanhulu Ward in Kahama District is faced with severe shortage of classrooms, forcing 300 pupils to study in one classroom. According to the Headteacher, Elias Kihamba, there are 8 classrooms, while the number required is 40.	2 Apr 2021
Mtwara: Nearly 140 pupils of Kitama Moja Primary School in Tandahimba District, were reportedly forced to study in a single classroom due to shortage of classrooms. The school has a total of 1,066 pupils and only 3 classrooms.	8 Feb 2021
Mbeya: It was reported that Soweto Primary School was faced with shortage of two classrooms and 46 desks.	13 Feb 2021

⁵⁵⁵ See The Citizen's Budget: A Simplified Version Of The Government Budget For The Financial Year 2021/22, at <https://policyforum-tz.org/node/5739>.



Songwe: In May 2021, it was reported that primary schools in Tunduma Town Council were faced with shortage of 980 toilet holes.	13 May 2021
Tabora: In May 2021, it was reported that pupils at Kambalage and Kalembela Primary Schools, located in Kiloleni Ward in Urambo District, were forced to relieve themselves in bushes due to lack of toilets at the schools.	15 May 2021
Mara: More than 130 pupils at Buhemba Primary School in Tarime District were reportedly studying in a single classroom due to shortage of classrooms at the school.	3 Mar 2021
Mwanza: Sengerema Primary School, located in Sengerema District, was said to have one toilet, which is used by about 1,723 pupils and 49 teachers.	10 Aug 2021
Kigoma: More than 300 pupils at Shikizi Mwashwa Primary School in Uvinza District were reportedly learning while sitting on the floor or building blocks due to shortage of desks.	12 Oct 2021

Source: *LHRC Media Survey 2021*

According to the 2020 BEST statistics, provided by the PO-RALG, 98 districts are faced with shortage of classrooms.⁵⁵⁶

3.1.6. Shortages of teachers, including for reproductive health education and inclusive education

Shortages of teachers significantly compromise the quality of education as a few teachers have to deal with so many pupils/students, way above the recommended teacher-pupil/student ratio. In January 2021, education officers and heads of primary and secondary schools in Buchosa District Council in Mwanza Region cited various reasons for poor performance of some students in their examinations. The reasons include long distance to school, congestion in classrooms, lack of parental support, shortage of teachers, and poor motivation for teachers.

In 2021, shortages of teachers were reported in different parts of Tanzania Mainland, including Shinyanga, Dodoma, and Geita Regions. Some of the reports are summarized in table 16 below.

⁵⁵⁶ LHRC Media Survey 2021.



Table 16: Some of the reports of shortages of teachers documented by LHRC in 2021

Incident	Report Date
Shinyanga: Nearly 1,000 pupils of Mwende Pamoja Primary School were reportedly being taught by only five teachers. Due to such shortage, the Government has directed the Shinyanga District Council to send more teachers to the school.	Nipashe Newspaper, 4 Jan 2021
Dodoma: Parents of schoolchildren studying at Veyula Primary School in Dodoma have asked the Government to hire more teachers at the school to address shortage of teachers, which has contributed to some of the pupils completing Standard Four without even knowing how to read and write.	10 Feb 2021
Shinyanga: Nyihogo Secondary School, located in Kahama Municipality, was reportedly faced with shortage of at least 10 science subject teachers, as well as a laboratory.	31 May 2021
Geita: In September 2021, it was reported that Geita region was faced with a 56% shortage of mathematics and science teachers. There were only 744 out of 1,715 required teachers.	7 Sep 2021

Source: *LHRC Media Survey 2021*

According to the 2020 BEST statistics, provided by the PO-RALG, 16 councils in Tanzania Mainland are faced with a 50% shortage of teachers. The councils are located in Kigoma, Katavi, Mwanza, Singida, Geita, Shinyanga, Songwe, Simiyu, Dodoma, and Mwanza Regions. The shortage has a negative impact on teaching environment, exceeding the teacher to student ratio of 1:40.

3.1.7. Long distance from home to school and the need for dormitories

Various studies have shown that long distance to school has a negative impact on student’s education achievements.⁵⁵⁷ Long distance to school also contributes to irregular attendance to school and school dropout. Because of travelling long distances to school, schoolchildren usually arrive at school tired, which affects their learning and reduces their time for learning as well as concentration. School distance is a significant factor in school attendance and

⁵⁵⁷ See Mhiliwa, A.J. (2015). The effects of school location on learner’s academic performance (master’s thesis).The Open University of Tanzania. Available from http://repository.out.ac.tz/1296/1/Dissertation_-_Joseph_Mhiliwa.pdf; OECD, (2011). “Does where a student lives affect his or her reading performance?” in PISA 2009 at a glance, OECD Publishing.; Human Rights Watch, (2017). I had a dream to finish school: Barriers to secondary education in Tanzania, at <https://www.hrw.org/report/2017/02/14/i-had-dream-finish-school/barriers-secondary-education-tanzania>.



drop-out rates. A study conducted in Rorya District in Mara Region, concluded that long distance travelled by students reduces teacher students contact time, leads to stomach ulcers, headaches and related issues which reduce school attendance and completion rates.⁵⁵⁸

The problem of tiredness and not concentrating in class may be compounded by lack of food at school and the fact that the schoolchildren cannot go back home to get food and return to school.

On their way to school, children are also exposed to various vulnerabilities, including sexual violence perpetrated by strangers; abductions for child trafficking; dangerous animals, especially for those residing in remote rural areas; and harsh weather conditions. Girls are disproportionately affected by long distances, and more are vulnerable to different forms of violence along the way. To address this problem, among the common recommendations provided by education and child rights stakeholders is building school dormitories or hostels.

In March 2021, education stakeholders and financial institutions were asked to help with the construction of dormitories for Diongoya Secondary School in Mvomero District, **Morogoro**, to help protect students from drowning when crossing a river to reach the school. It was reported that in the period of two years, three students have lost their lives by drowning while attempting to cross the river.⁵⁵⁹

In December 2021, 50 students from Boko Mnemela Ward in Kibaha District, **Pwani** Region, were reportedly not able to attend school due to having to walk up to 9 kilometres.

3.1.8. Sanitary pads and menstrual hygiene facilities: A challenge for female schoolchildren

In 2021, availability and accessibility of sanitary pads emerged as an issue of concern for female schoolchildren. For instance, in July 2021, it was reported in **Lindi** Region that female students of Nangano Secondary School, located in Liwale District, requested MP Maimuna Pathan to assist them with sanitary pads so that they do not have to miss school when in their menstrual periods. They made the request when the MP visited their school.

In May 2021, it was revealed that girls in different parts of Tanzania Mainland are said to face several difficulties when during menstruation.

⁵⁵⁸ See Lilian Oneye & Daniel Onyango, Perception of School Stakeholders on the Effect of School- Home Distance on Students' Academic Performance among Community Secondary Schools in Rorya District, Tanzania, at <https://ejess.ac.tz/wp-content/uploads/2021/04/EAJESS-2-1-0068-1.pdf>.
⁵⁵⁹ LHRC Media Survey 2021.



These difficulties include access to sanitary pads (lack of products), not having enough money to buy the products/sanitary pads, and diseases. Some of the stakeholders have urged the Government to remove Value Added Tax (VAT) from sanitary products, having done so in July 2018 and then bringing back the tax in June 2019. Prices for sanitary products have increased from about Tshs.1,500 in 2017 to Tshs. 3000 in 2021, which means girls have to spend up to Tshs. 9,000 each month on the products, if used as they should. Using a sanitary pad for a longer time than recommended leaves girls vulnerable to infections, especially UTI.

LHRC's Call: The Government of Tanzania to remove tax for menstrual products to make them more accessible and affordable for girls and women and safeguard girls' right to education.

In **Tanga**, in March 2021, lack of sanitary pads was mentioned as one of the factors negatively affecting girls' school attendance and academic performance. Among those affected are female students of Songa and Masuguru Secondary Schools in Muheza District, who were donated 400 sanitary pads in March 2021. Lack of changing rooms for girls was also identified as a key challenge for girls at schools. In May 2021, some of the students in Handeni District in the region called upon the Government to consider allocating a budget for sanitary pads, which can be distributed in schools, to reduce school absenteeism during menstruation amongst adolescent girls.

In March 2021, *Total Tanzania Limited* and *Flaviana Foundation* donated more than 9,000 sanitary pads to 1,500 schoolgirls. The Legal and Corporate Affairs Manager of Total Tanzania Limited, Marsha Msuya Kilewo, revealed that girls miss up to 5 to 7 days of schools due to lack of sanitary pads, ending up missing up to 60 to 84 days per year.

In **Kagera**, it was reported in March 2021, that 1,800 female students from 16 secondary schools in Bukoba Municipality were provided with sanitary pads. The pads were donated by NGO that deals with nutrition and shall help to reduce school absenteeism during menstruation amongst adolescent girls. One of the students mentioned that since she cannot afford buying the sanitary products, she has been mostly relying on pieces of cloth, which cause her inconvenience.

In **Mtwara**, it was reported in December 2021 that in a bid to create a



favourable school environment for girls and meaningful participation in class, some of the schools in Masasi District Council designated special changing rooms to accommodate girls and enable them to take care of themselves during their menstruation period.

3.1.9. Reluctance of some parents to send their children to school

In 2021, there were several reports of parents refusing to take their children to school or encouraging them to drop out of school, including for the reason of child marriage. Some of them even attempt to bribe education officials to prevent their children from going to school. For instance, in February 2021, PCCB in Pwani Region arrested and sent to court Rashid Mtolea for offering a Tshs. 250,000 bribe to an education officer of Mlanza Ward, Iddi Ally, so that a legal action would not be taken against him for failure to send his child to school.

In November 2021, it was reported that approximately 100 pupils who finished their primary education at Mahama and Nzali Primary Schools in Chamwino District, **Dodoma** Region, were reportedly encouraged to fail their exams by their parents so that the parents do not incur costs of educating them further.⁵⁶⁰ Others were promised to be sent to Dar es Salaam to do some domestic work if fail their exams.

In **Kagera** Region, LHRC came across the case of one parent, Melchades Buberwa (32), resident of Kasarani Village in Bukoba District, who had refused to take his three children to school, claiming that God has forbidden secular education.⁵⁶¹

3.1.10. School dropout concerns

According to the 2020 BEST statistics, provided by the PO-RALG, the number of students dropping out of school has been increasing, whereby in every 50 students who drop out 29 are boys and 21 are girls. In 2020, 96,683 boys and 71,151 girls dropped out of school. In March 2021, it was reported that 2,162 students out of 15,860 who had been selected to continue with secondary education in Lindi Region had not reported at their respective schools. Out of them girls are 1,157 and boys are 1,005.

In April it was reported that statistics provided by the National

⁵⁶⁰ LHRC Media Survey 2021.

⁵⁶¹ LHRC Human Rights Survey 2021: Kagera Field Report.



Examination Council of Tanzania (NECTA) show that 16% of students who start their secondary education do not complete their Ordinary Level education.

3.1.11. Male teachers implicated in sexual violence and impregnating schoolgirls

During the human rights survey across Tanzania Mainland, teachers were mentioned among the perpetrators of violence against children (VAC) by 17.4% of the respondents. In September 2021, the PO-RALG Minister, Hon. Ummu Mwalimu, revealed that 285 teachers were sent before the Teachers Service Commission (TSC) for engaging in sexual relationships with schoolgirls.⁵⁶²

In 2021, LHRC documented 10 incidents of teachers accused of sexual VAC. In the period of 2019 to 2021, LHRC documented 39 incidents of teachers implicated in VAC.

3.1.12. Violence against children negatively affecting schoolchildren

In 2021 violence against children (VAC) continued to be one of the key barriers to the right to education. In 2021, LHRC documented 512 reported cases/incidents of VAC. Acts of violence, including sexual violence, severely impact children's ability to learn and causes them physical and psychological harm.

3.1.13. Child pregnancy and child marriage

Child/teenage pregnancy and child marriage hinder girls from effectively realizing their right to education. According to the 2020 BEST statistics, provided by the PO-RALG, the number of girls who drop out of school due to pregnancy has been increasing. For instance, the number of girls who dropped out of school due to pregnancy increased from 3,439 in 2015 to 5,398 in 2019. In 2021, through media survey and human rights monitoring, LHRC documented at least 2,166 **incidents** of child pregnancy and 37 of child marriage.

More than 120,000 girls drop out of school every year in Tanzania, 6,500 of them because they are pregnant or have children.
- World Bank, 2021

In February 2021, it was reported in Handeni District, **Tanga** Region, that some parents urge their children, especially girls, to deliberately fail their examinations so that they do not continue with their education and get married.⁵⁶³ Similar reports were made in **Mtwara**, whereby some of the parents and guardians of Standard Seven pupils in Masasi

⁵⁶² LHR Media Survey 2021.

⁵⁶³ LHRC Media Survey 2021.



District were said to be one of the reasons for their children to perform poorly in national examinations by telling them to deliberately fail.⁵⁶⁴

President Samia's administration allowing schoolgirls who become pregnant to continue with mainstream education

The year 2021 saw Tanzania lift its ban on pregnant schoolgirls and young mothers, allowing them back to school to continue with their education. The decision of the Samia administration conforms with Tanzania's obligations under international and regional human rights instruments, which prohibit any form of discrimination in provision of education. The previous position was not in line with international human rights standards. This is a positive step in terms of safeguarding girls' right to education and ensure they have a better future.

LHRC Recognition



3.1.14. Comprehensive Sexuality Education

3.1.15. Overview

According to UNESCO, comprehensive sexuality education is “**a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality.** It aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and understand and ensure the protection of their rights throughout their lives.”⁵⁶⁵

According to UNESCO, many young people receive confusing and conflicting information about relationships and sex, as they make the transition from childhood to adulthood, necessitating

⁵⁶⁴ Ibid.

⁵⁶⁵ See UNESCO, *Why comprehensive sexuality education is important*, 15 February 2018, at <https://en.unesco.org/news/why-comprehensive-sexuality-education-important>.



the need for the young people to get reliable information, which prepares them for a safe, productive and fulfilling life. CSE therefore plays a crucial role in addressing the health and well-being of children and young people.

3.1.16. Provision of CSE in Tanzania

In Tanzania, adolescents and young people face various challenges, such as child/early pregnancy and parenthood, child marriage, risky sexual behaviours, sexual violence, and high risk of HIV infection and other sexually transmitted diseases. One way to address these challenges is through provision of CSE. As part of response to such challenges, Tanzania has also, over the years, committed to various regional and global initiatives, including: the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979; the Beijing Declaration and Beijing Platform for Action (1995); the AU Continental Policy Framework on Sexual and Reproductive Health and Rights (SRHR), 2005; the Sustainable Development Goals (SDGs) which came into effect in January 2016; and the 2013 ESA Ministerial Commitment.⁵⁶⁶ Domestically, the policy environment governing provision of CSE comprises but is not limited to the Education and Training Policy of 2014, the National HIV and AIDS Policy of 2001, the National Accelerated Investment Agenda for Adolescent Health and Wellbeing (NAIA 2020/21-2023/24), and the National Plan of Action to End Violence against Women and Children in Tanzania (2018-2022).⁵⁶⁷

In December 2021, Ministers responsible for education, health, gender, and youth in Eastern and Southern Africa (ESA), recommitted to the ESA Commitment. They expressed overwhelming support to continue their joint efforts towards creating a brighter future for adolescents and young people in the region by empowering the youth and protecting their health and well-being to achieve the common goals.⁵⁶⁸ According to a statement issued by UNICEF, “while important strides have been made toward improving sexual and reproductive health and rights (SRHR) outcomes among adolescents and young people, significant gaps and barriers still exist to the realization of the ESA Commitment

⁵⁶⁶ Tanzania participated in adopting the ESA Ministerial Commitment during the International Conference on AIDS and STIs in Africa (ICASA) of 2013 in Cape Town, South Africa. It was represented by the then Minister of Education and Vocational Training (MOEVT), Mr. Philipo Augustino Mulugo and the then Minister of Health and Social Welfare, Hon. Dr. Hussein Mwinyi.

⁵⁶⁷ UNESCO, 2020 Annual Report: Our Rights, Our Lives, Our Future (O³), at <https://unesdoc.unesco.org/ark:/48223/pf0000380370>.

⁵⁶⁸ See UNICEF, Leaders from Eastern and Southern Africa recommit to the education, health and well-being of adolescents and young people, Press Release, 7 December 2021, at <https://www.unicef.org/esa/press-releases/leaders-esa-recommit-well-being-adolescents-young-people>.



targets.”⁵⁶⁹ Evaluation of the 2013 ESA Commitment has revealed progress in reducing new HIV infections, increasing comprehensive HIV knowledge and creating a conducive policy environment. However, accelerated efforts are urgently needed to reduce early and unintended pregnancy, gender-based violence and curb the effect of humanitarian emergencies, such as the COVID-19 pandemic. This further underscored the need to renew the commitment, through expanding and aligning it with the SDG Agenda 2030.⁵⁷⁰

CSE is one of the key targets in the ESA Ministerial Commitment. Under the 2013 ESA Commitment, Tanzania had committed to scaling up a rights-based CSE to ensure healthy sexual and reproductive lives for adolescents and youth by 2020. In Tanzania, CSE is provided and included in curriculum, and it is called Comprehensive Sexuality and Life Skills Education and is not taught as a standalone subject, but rather integrated in other subjects. Most of the CSE programmes in Tanzania are school-based and training manuals have been developed. In 2020, UNESCO disseminated at least 500 copies of CSE teaching and learning materials, including training manuals and teaching aids (posters).⁵⁷¹ CSE terminology is also used interchangeably with other terminology such as SHR, HIV and GBV prevention education.⁵⁷² In Tanzania Mainland CSE components have been integrated into the primary school curriculum, certificate teacher curriculum, and education programme courses for undergraduate students at the Open University of Tanzania.⁵⁷³

3.1.17. Challenges in provision of CSE in Tanzania

In Tanzania, key barriers to provision of CSE include inadequate funding, avoidance and omission of key topics, lack of adequate training and support for teachers. Some of the teachers teaching CSE purposefully omit certain topics they are not comfortable with, and while stakeholders such as UNESCO continue to provide teacher training, such training has not been adequate in most parts of Tanzania. Some parents have also expressed concern that teaching children about sexuality could encourage them to engage in sexual activities. Some teachers and government officials also share these

569 Ibid.

570 Ibid.

571 UNESCO, 2020 Annual Report (supra).

572 Ibid.

573 Ibid.



concerns, according to a UNESCO official.⁵⁷⁴ However, the trends of child pregnancy suggest that schoolchildren actually engage in sexual activities at a much younger age compared to the situation in the past, and hence in need of CSE more now than ever. Dependency on donor funding to support CSE programmes has also been identified as a challenge. Some of the topics, such as sexuality are also considered to be culturally inappropriate. According to UNESCO, some teachers are incapable of answering sexual and reproductive health and rights and HIV and AIDS related questions due to lack of knowledge and being well conversant with the topics, mainly due to cultural sensitivity of issues to be discussed.⁵⁷⁵

In 2020 and 2021, the Covid19 pandemic also affected provision of CSE in Tanzania and CSE-related programmes implemented by various partners, including UNESCO.

3.2. Right to Health

Meaning & Key Applicable Standards

- Means right to the highest attainable standard of health.
- Core components are availability, accessibility, acceptability and quality.
- Achieving this right is both central to, and dependent upon, the realisation of other human rights, to food, housing, work, education, information, and participation.
- Key standards include: the Universal Declaration of Human Rights (UDHR), 1948; the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966; the African Charter on Human and Peoples' Rights (Banjul Charter), 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; and African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

In 2021, key challenges in realization of the right to health included budgetary constraints; shortage of healthcare workers; mental health and suicide; violence against women and girls; shortage of equipment, medicines, and medical supplies; and sexual and reproductive health challenges.

3.2.1. Government action to ensure progressive realisation of right to health

In 2021, the Government took various measures to facilitate progressive realisation of the right to health and address some of the challenges

⁵⁷⁴ Interview with a UNESCO official in Dar es Salaam in December 2021.

⁵⁷⁵ UNESCO, 2020 Annual Report (supra).



in the health sector. For instance, in April 2021 the Government announced that it had allocated Tshs. 80 million for construction and renovation of Rorya Hospital and stated that the hospital had already started providing medical services to outpatients.

In July 2021, the Government announced that it had employed 473 health workers to fill in the positions which were left vacant due to different reasons, including retirement, deaths, and resignation. In the same month, it was reported in **Mbeya** that the then Deputy Speaker (current Speaker) and MP of Mbeya Urban, Dr. Tulia Ackson, had provided Tshs. 500 million to facilitate construction of Iyela Health Centre to overcome the challenge of citizens having to walk long distances to seek medical services.

In July 2021, Morogoro Municipal Council announced that it had allocated Tshs. 299 million for construction of four dispensaries and renovation of Sababa Health Centre in order to reduce patient congestion at the Morogoro Referral Hospital.

3.2.2. Budgetary allocation for the health sector

In 2021, budget allocation for the health sector continued to fall below the international standards set under the Abuja declaration, which requires setting at least 15% of national budget for the health sector.⁵⁷⁶ For the Financial year 2019/2020, the budget allocated for health sector accounted for only 7.8% of the government budget, In the financial year 2020/2021, the budget allocated for the sector was Tshs. 192 trillion, which is equivalent to 5.5% of the government budget. While for the year 2021/2022, the budget allocated for the sector is 2.02 trillion equivalents to 5.5% of the total government budget.

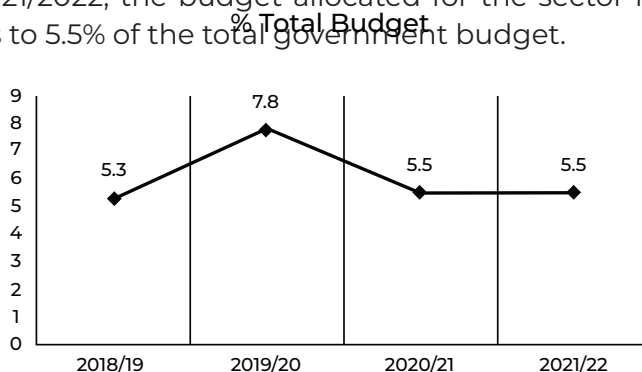


Figure 27: Health sector budget allocation – financial years 2018/19 to 2021/22

Source: *Budget speeches 2018/2019 – 2021/22*

⁵⁷⁶ See the Abuja Declaration on HIV / AIDS, Tuberculosis and other related Infectious Diseases, 2001 at <https://au.int/sites/default/files/pages/32894-file-2001-abuja-declaration.pdf>.



3.2.3. Shortage of health workers

Despite efforts made to address it so far, shortage of health workers continued to be a challenge in 2021, including in Dodoma Region. In January 2021, Dodoma Regional Medical Officer, Best Magoma, revealed Dodoma Region has 67% shortage of health workers. He mentioned that Chemba District leads with a 79.9% shortage, followed by Chamwino (79.8%), Kondoa DC (76.9%), Mpwapwa (73.7%), Bahi (73.7%), Kongwa (68%), and Dodoma (50.9%).⁵⁷⁷

In May 2021, the former President of the Medical Association of Tanzania (MAT), Dr. Elisha Osati, stated that the health sector is faced with a shortage of 52%, as the available health workers only constituted 48% of the required number. In the same month, some of the nurses in Bunda Town Council in Mara Region complained about shortage of nurses and doctors in the council, which has caused the available workers to usually work beyond working hours. This statement was made during the commemoration of the International Nurses Day on 12th May 2021.

3.2.4. Shortage of health equipment and facilities

Several reports of shortage of health equipment and facilities were made in 2021. For instance, in July 2021, KCMC Referral Hospital was reportedly facing shortage of oxygen tanks due to increase of patients. According to the KCMC Director, Prof. Gileard Masenga, one patient needs 10 oxygen tanks, while the hospital can only produce 400 oxygen tanks per day. He noted that before the Covid19 pandemic outbreak the hospital was using 50 to 60 oxygen tanks per day but are currently using more than 400 tanks per day.⁵⁷⁸

Shortage of health facilities has seen some community members, especially in rural areas, having to walk or travel long distances to access health services. For instance, in March 2021, it was reported in **Rukwa** that residents of Ntumbi Village in Mpui Ward, Sumbawanga District, said they have to travel for more than 30 kilometres to access health services. In the same month, it was reported in **Dodoma** that residents of Mlembule Village in Mpwapwa District called upon the Government to bring health services closer to them as they have to

⁵⁷⁷ LHRC Media Survey 2021.

⁵⁷⁸ Ibid.



travel for up to 40 kilometres to access such services at the district headquarters. The Village Chairperson, Octan Bahatisha, mentioned that the has no dispensary and thus villagers have to go to the district headquarters to seek health services, which is a big challenge, including for pregnant women, especially when they need medical attention at night. He added that during rainy seasons it is even more difficult to access medical services given the geographical and infrastructural challenges, especially around Manamba area.

3.2.5. Stealing of medicines and medical supplies

In 2021, several health workers in Tanzania Mainland were accused of stealing medicines and medical supplies. For instance, in March 2021, the ministry responsible for health revealed that medicines worth 26.7 billion Tanzanian shillings (about 11.5 million U.S. dollars) were stolen from public hospitals between July 2019 and December 2020. This revelation followed investigation conducted by medical experts, commissioned by the ministry.

In Shinyanga, in January 2021, police arrested a health worker at the dispensary of Nyamalogo Village in Shinyanga District, William Desdez, and local militia officer, Fedson Matekele, for stealing medicines at the dispensary.⁵⁷⁹ According to the police in the region, some of the stolen medicines had already expired but are still sold to and used by citizens, which is detrimental to their health.⁵⁸⁰

3.2.6. Maternal health

Maternal health (health of women during pregnancy, childbirth and the postnatal period) is essential in reduction of child and maternal mortality.⁵⁸¹ According to the United Nations, the deaths and injuries suffered by women and adolescent girls in pregnancy and childbirth, as well as by infants and young children, are largely preventable, yet they still occur at alarming rates.⁵⁸² Access to quality maternal healthcare is therefore an important component of the right to health and essential for women's realization of other human rights, including and especially right to life.

In Tanzania barriers to access to quality maternal healthcare include

579 LHRC Media Survey 2021.

580 Ibid.

581 Icelandic Human Rights Centre, *RIGHT TO MATERNAL, CHILD AND REPRODUCTIVE HEALTH*, at <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/right-to-maternal-child-and-reproductive-health>.

582 See OHCHR "Human rights-based approach to maternal health" at <https://www.ohchr.org/en/issues/women/wrgs/pages/maternalandchildhealth.aspx>.



shortage of health workers, shortage of spaces for pregnant women, shortage of health facilities, long distance to health facilities, and violence against women and children (VAWC).

In **Pwani**, it was reported in March 2021 that some of the doctors in Kibaha Town Council lamented shortage of rooms at dispensaries, including labour/delivery ward rooms. In the same month, it was reported in Shinyanga that the dispensary of Ulowa Village in Ushetu District Council in Kahama District was faced with lack of labour ward, forcing pregnant women to go to Shinyanga District Hospital to deliver babies.

For women in rural areas, having to walk long distances to access health services presents a big challenge in terms of their enjoyment of health right. In May 2021, MP for Kisesa Constituency, Luhaga Mpina, stated that there are currently 6,197 villages which do not have access to health services and that villagers have to walk or travel for up to 20 kilometres to access such services in nearby villages. He noted that lack of health services has contributed to deaths of women and children.

In 2021, LHRC documented at least two incidents of domestic violence in which pregnant women were subject to physical violence by the partners. In some cases, domestic violence has even caused miscarriage among pregnant women.

In April 2021, it was reported that from the year 2018 to 2021 between 1,700 and 1,800 women lose their lives each year while giving birth. According to Dr. Ahmad Makuhani from the Ministry of Health, Community Development, Elderly, and Children, about 10,000 to 12,000 babies die each year. He added that 90% of these deaths occur at health centres.

Child marriages and early pregnancies also affect health conditions of adolescent girls and young women, putting them at an increased risk of maternal mortality. According to the World Health Organization (WHO), the negative health and social impact of child marriage include higher rates of maternal and infant mortality, infection, social separation, and domestic abuse compared with older married women.⁵⁸³

583 See WHO "REACHING CHILD BRIDES" at <https://www.who.int/pmnch/knowledge/publications/summaries/ks22.pdf>.



According to *GIRLS NOT BRIDES*, child marriage has a hugely detrimental impact on the health and wellbeing of girls and young women, who are more susceptible to experiencing complications during pregnancy and childbirth.⁵⁸⁴ The children of child brides are also at higher risk of poor health outcomes than children of girls who marry later.⁵⁸⁵ Child brides are often under intense social pressure to prove their ability to have children and are often isolated, hard to reach, and unable to access services.⁵⁸⁶

Mistreatment and denial of maternal health services was also reported in 2021. For instance, in August 2021, it was reported that a pregnant woman delivered in a bajaj tricycle after she was denied medical services at a health centre in Mikumi District for failure to pay Tshs. 120,000 that she was told to pay by a doctor to receive medical assistance. The minister responsible for health, Dr. Dorothy Gwajima, called for the regional authorities to investigate the incident and submit their report within a 7-day period.

In August 2021, despite the government policy requiring pregnant women and children below the age of five years to be provided with free medical services, some of the ward councilors in Bunda District said that this has not been the case at some of the health centres in the district, as pregnant women are required to pay. During a parliamentary session in February 2021, Member of Parliament (MP) for Tabora Urban Constituency, Emmanuel Mwakasaka, questioned why pregnant women were made to pay between Tshs. 30,000 and 50,000 during delivery at Kitete Hospital in Tabora. Responding to this question, the then Deputy Minister responsible for health said the government policy is for pregnant women not to be charged during delivery.

3.2.7. Mental health and suicide

According to the WHO, suicide is a serious public health problem⁵⁸⁷ and more than 700 000 people die due to suicide every year and for every suicide there are many more people who attempt suicide.⁵⁸⁸ Suicide is the fourth leading cause of death among 15–19-year-olds and 77% of global suicides occur in low- and middle-income countries. Mental illnesses such as depression, psychosis and substance use are associated

584 See "CHILD MARRIAGE AND MATERNAL HEALTH" at https://www.girlsnotbrides.org/documents/644/CM_and_maternal_health_ENG_updated_version.pdf.

585 Ibid.

586 Ibid.

587 See WHO Suicide Factsheet at <https://www.who.int/news-room/fact-sheets/detail/suicide>, accessed 7th March 2019.

588 See WHO, Suicide, 17 June 2021, at <https://www.who.int/news-room/fact-sheets/detail/suicide>.



with an increased risk of suicide. Those who have depression or severe stress, consume alcohol excessively, are in deep trouble financially, have experienced a relationship breakup, have chronic pain and illness, have suffered abuse or violence and have a sense of isolation, are more associated with suicidal behaviour.

In Tanzania, suicide has been a key mental health concern in recent years. More and more incidents of suicide have been reported in recent years, averaging over 150 cases per year in the period of 2016 to 2019. In October 2021, Dr. Shedrack Makubi from the ministry responsible for health, revealed that WHO statistics indicate that 7 million Tanzanians are suffering from mental health complications, with majority of them residing in Dar es Salaam.⁵⁸⁹

In 2021, people commitment suicide for different reasons. These reasons included: husband release from police custody; lover rejection; being reported to police by wife; accusation of stealing; debt; non-recognition by a pastor in church; wife threatening to leave husband; jealousy; finding a partner has HIV; being HIV positive; denial of due wages; and economic hardship.

In 2020, LHRC documented 22 reported incidents of suicide. In 2021, the number of suicide incidents documented by LHRC rose to 45. Table 17 below summarizes some of the incidents of suicide documented by LHRC in 2021.

Table 17: Some of the reported incidents of suicide documented by LHRC in 2021

Incident	Report Date
Ruvuma: A secondary school student at St. Agnes Peramiho Girls' Secondary School, Sophia Mbanu (19), hanged herself to death using a rope.	20 May 2021
Kagera: Jesca Samson (37), resident of Katoma Street in Karagwe District, committed suicide by using a rat poison after finding out that her husband, who had been arrested following a quarrel between them, had been released from police custody.	6 Jan 2021
Mara: Kitachana Shenani (30), resident of Makundusi Village in Serengeti District, committed suicide after his lover rejected him in front of the whole family. The incident occurred on 11 th April 2021.	15 Apr 2021

589 LHRC Media Survey 2021.



Kilimanjaro: Zephania Lyimo (72), resident of Lyamungo Sinda Village, committed suicide by using a rope because of his wife's decision to report him to the police after an altercation. This incident occurred on 31 st January 2021.	8 Feb 2021
Pwani: A 14-year-old female student committed suicide by hanging after her mother accused her of stealing Tshs.500.	27 May 2021
Tabora: Veronica Thadeo (23), resident of Kitungulu Village in Urambo District committed suicide after she was diagnosed with UTI.	5 Aug 2021
Iringa: A 14-year-old child, Yassin Kalolo, resident of Ipogolo in Iringa Municipality, committed suicide by hanging. He did not leave any note stating reasons for ending his life.	14 Jun 2021
Lindi: Yahaya Hamisi Salum, resident of Mmangawanga Village in Lindi District, reportedly committed suicide over debt. According to the relatives, the victim committed suicide because he was heavily in debt, owing Tshs. 12 million he was given to purchase agricultural products.	30 Nov 2021
Njombe: Police in Njombe revealed that Ravan Lazaro (48), resident of Ludewa District, committed suicide over non-recognition in church. It was reported that victim was angered when the pastor only recognized and mentioned his wife in the church for taking good care of his son who was sick and ensuring he receives proper medical treatment.	7 Dec 2021
Kilimanjaro: Police in Kilimanjaro Region reported that a woman, Anna Shirima (26), killed herself by drinking poison after her husband, Riziki Shirima (26) caught her with her lover and killed him.	8 Dec 2021

Source: LHRC Media Survey and Human Rights Monitoring 2021

In terms of sex disaggregation, overwhelming majority of the suicide victims in cases documented by LHRC in 2021, over two thirds (76%), were male. The remaining 24% were female.



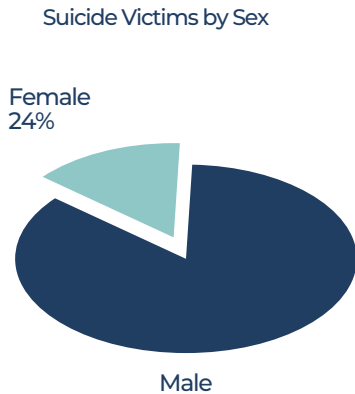


Figure 28: %Suicide victims by sex

Source: LHRC Media Survey & Human Rights Monitoring 2021

In terms of age category, LHRC’s assessment of the reported cases of suicide, documented through media survey and human rights monitoring, showed that the majority of the suicide victims fell (42%) in the age category of 15-35 years, followed by those in the age category of 36-59 years (31%), and those in the age category of 10-14 years. Only 7% of the victims were 60 years old and above. Therefore, youth (15-35 years) appear to be at greater risk of committing suicide.

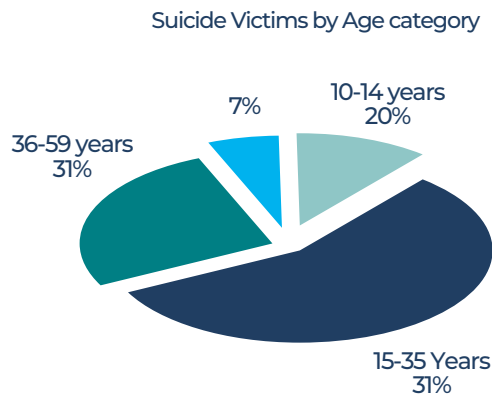


Figure 29: %Suicide victims by age category

Source: LHRC Media Survey & Human Rights Monitoring 2021

LHRC’s View: Cases of suicide have been on the rise in recent years. This calls for coordinated efforts amongst stakeholders, both government



and non-government, to give mental health the recognition and attention it deserves and save people and the nation at large from suffering and other impacts of suicide. It has now become common for children as young as 10 years old to commit suicide and this situation should not be normalized.

LHRC's Call: There is a need for the Government and other stakeholders to enhance mental health awareness programmes, with a special focus for men and youth, and the Ministry of Health should take lead on this.

3.2.8. Health Insurance and the Universal Health Coverage

Sustainable Development Goal number 3 seeks to ensure good health and well-being by ensuring healthy lives and promoting well-being for all at all ages. One its targets is to achieve universal health coverage, including financial risk protection, access to quality essential healthcare services and access to safe, effective, quality and affordable essential medicines and vaccines for all. Health insurance is a safety net as it provides social protection in case one sustains a serious injury or becomes ill. It ensures that everyone has access to basic health services and affordable medicines.

Despite the existing health insurance arrangements, low health insurance coverage remains an obstacle in effective realization of the right to health for majority of Tanzanians.⁵⁹⁰ According to MoHCDGEC, by March 2019 only 33% of Tanzanians were covered by health insurance. In January 2020, Deputy Director of the National Health Insurance Fund (NHIF), Christopher **Mapunda**, revealed that 66% of Tanzanians are not covered by health insurance in the country.⁵⁹¹ **This means more** two thirds of the Tanzanian population are not covered with NHIF.

In August 2021, the Government announced that it had set aside Tshs. 149 billion for implementation of the universal healthcare coverage. Implementation was said to commence later in 2021 should the Parliament pass the proposed bill.⁵⁹²

LHRC's View: Improving health insurance coverage situation is imperative, but this should also go hand in hand with improving the quality of health services provided, especially at public health facilities.

⁵⁹⁰ See World Health Organization "Accelerating attainment of Universal Health Coverage in Tanzania" 26 March 2019, at <https://www.afro.who.int/news/accelerating-attainment-universal-health-coverage-tanzania>, accessed 19th December 2020.

⁵⁹¹ LHRC Media Survey 2020.

⁵⁹² LHRC Media Survey 2021.



3.2.9. Sexual and Reproductive Health and Rights: Vulnerability of Youth

3.2.9.1. Overview

According to the WHO, sexual and reproductive health and rights **encompass efforts to eliminate preventable maternal and neonatal mortality and morbidity, to ensure quality sexual and reproductive health services, including contraceptive services, and to address sexually transmitted infections (STI) and cervical cancer, violence against women and girls, and sexual and reproductive health needs of adolescents.**⁵⁹³

Universal access to sexual and reproductive health is essential not only to achieve sustainable development but also to ensure that this new framework speaks to the needs and aspirations of people around the world and leads to realisation of their health and human rights.

3.2.9.2. Legal framework on sexual and reproductive health and rights (SRHR)

Sexual and reproductive health has been recognized as a human right in various international and regional human rights instruments, both impliedly and expressly, including under the Beijing Declaration and Platform for Action in 1995; the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; and the SADC Protocol on Gender and Development, 2008. This right has also been provided by numerous treaty bodies, including the CEDAW Committee, the Committee on the Rights of the Child, and Committee on Economic, Social, and Cultural Rights.⁵⁹⁴

In the African context the Maputo Protocol and SADC Protocol on Gender and Development specifically recognize the **health and**

⁵⁹³ See WHO, *Sexual and reproductive health and rights: a global development, health, and human rights priority*, at https://www.who.int/reproductivehealth/publications/gender_rights/srh-rights-comment/en/#:~:text=Sexual%20and%20reproductive%20health%20and%20rights%20encompass%20efforts%20to%20eliminate,and%20cervical%20cancer%2C%20violence%20against.

⁵⁹⁴ See Frameworks and Policies on Sexual and Reproductive Health Gender, Human Rights and Culture Branch, Technical Division, United Nations Population Fund (UNFPA), October 2009, at https://www.unfpa.org/sites/default/files/jahia-events/webdav/site/global/shared/documents/events/2009/policies_frameworks.pdf.



reproductive rights of women and girls.⁵⁹⁵ Under the Maputo Protocol, States Parties are required to ensure that the right to health of women, including sexual and reproductive health is respected and promoted, including:⁵⁹⁶

- the right to control their fertility;
- the right to decide whether to have children, the number of children and the spacing of children;
- the right to choose any method of contraception;
- the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- the right to be informed on one's health status and on the health status of one's partner, particularly if affected with STIs, including HIV/AIDS, in accordance with internationally agreed recognised standards and best practices; and
- the right to have family planning education.

Under the Maputo Protocol, States are further required to:⁵⁹⁷

- provide adequate, affordable and accessible health services, including information, education and communication programmes to women, especially those in rural areas;
- establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; and
- protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the health or the life of the mother or the foetus.

The SADC Gender Protocol requires States Parties to adopt laws, policies and programmes to ensure the development and protection of the girl child, including by ensuring that girl children have equal access to information, education, services and facilities on sexual and reproductive health and rights.⁵⁹⁸ It also requires States Parties to develop and implement policies and programmes to address the mental, sexual and reproductive health needs of women and men.⁵⁹⁹

3.2.9.3. Situation of sexual and reproductive health and rights in Tanzania

⁵⁹⁵ Article 14 of Maputo Protocol & Articles 11 and 26 of SADC Gender Protocol.

⁵⁹⁶ Article 14(1) of the Maputo Protocol.

⁵⁹⁷ Ibid, Article 14(2).

⁵⁹⁸ Article 11(e) of the SADC Gender Protocol.

⁵⁹⁹ Ibid, Article 26(c).



In Tanzania, the Government and other stakeholders have introduced and implemented various programmes on sexual and reproductive health (SRH) and progress has been achieved in certain areas, including:

- Reduction of new HIV infections among adolescents and young people: Official statistics produced by the National Bureau of Statistics (NBS) show a declining trend of HIV infection in Tanzania, with prevalence among adolescents and adults in the age category of 15-49 years decreasing slightly from 5.1% in 2014 to 4.8% in 2019.⁶⁰⁰ The number of new HIV infections decreased from 82,000 in 2018 to 77,000 in 2019.⁶⁰¹
- Construction of new health facilities to expand health services;
- Introduction of police gender and children desks to address different forms of violence;and
- Enactment and adoption of laws and policies to regulate provision of SRH services, including the Public Health Act of 2009, the National Health Policy 2018, Comprehensive ASRH Training packages (SP & Peer Educators manual), National Youth Development Policy, The National Road Map Strategic Plan to Improve Reproductive, Maternal, Newborn, Child & Adolescent Health in Tanzania (2016 - 2020), the National Accelerated Action and Investments Agenda for Adolescent Health (NAAIA) and Wellbeing 2019-2022, and the National Adolescent Reproductive Health Strategy 2011-2015 (was under review by December 2021).

However, various challenges persist, hinder effective realisation of sexual and reproductive health and rights, especially among youth, including:

- Risky sexual behaviours among youth, largely contributed to lack of or limited knowledge about SRH.
- Alarming rate of violence against children and young people.
- SRH programmes being more school-based.
- Negative perception about certain aspect of SRH among parents and government officials.
- Limited access to accurate and age-appropriate SRH information.
- Decreased knowledge about HIV prevention knowledge. According to official NBS statistics, HIV prevention knowledge among males and females aged 15-24 years decreased from 59.5% among females and 66.7% among males in 2012 to 36.7% among females and 37% among males in 2017 respectively.⁶⁰²
- Child/teenage pregnancy: As discussed in detail in this report, child/teenage pregnancy continues to be among the major barriers to effective realization of the girls of adolescent rights and young wom-

600 See UNICEF, HIV and AIDS fact sheet, at <https://www.unicef.org/tanzania/reports/hiv-and-aids-fact-sheet>.

601 Ibid.

602 Tanzania Commission for AIDS (TACAIDS), Zanzibar AIDS Commission (ZAC). Tanzania HIV Impact Survey (THIS) 2016-2017: Final Report. Dar es Salaam, Tanzania. December 2018.



en, including the right to sexual and reproductive health. Increased child/early pregnancy cases suggest low awareness about reproductive health and rights among adolescent girls and young women.

- Child marriage: As discussed in chapter five of this report (below), child marriage is also a key challenge in terms of realisation of SRHR. The Law of Marriage Act, 1971 remains a key legal hurdle and its amendment cannot come soon enough to safeguard the rights of girls.
- Violence against women and children (VAWC): VAWC incidents have been increasing in recent years, driven by several factors, including tolerance and normalization of various forms of violence, especially against women and girls.
- Limited access to SRH services, especially in rural and semi-urban areas: Most of the SRH services are provided at health facilities in Tanzania. However, as pointed out above, there is shortage of health facilities, especially in various parts of rural areas in Tanzania Mainland. This makes it difficult for people, especially women and youth, to access such services. For most youth, access to age-appropriate and friendly SRHR information and services remains a challenge, exacerbated by lack of confidentiality amongst health workers.

Other barriers to SRH services in Tanzania include shortage of health workers, which is a big concern; long queues; negative attitude of healthcare workers, including being judgemental; stigma and discrimination; religious norms; and misconceptions around reproductive health and HIV prevention services.⁶⁰³

3.2.9.4. Sexual and Reproductive Health and Rights: Findings of Hakielimu's Study

In 2021, *Hakielimu*, a right to education NGO operating in Tanzania, conducted a study on sexual and reproductive health and rights, focusing on policy and practice in primary and secondary schools in Tanzania Mainland.⁶⁰⁴ The study was conducted in regions of Dodoma, Lindi, Rukwa, Mara, and Arusha, purposefully selected to represent areas with high and low percentages of teenage pregnancies.⁶⁰⁵

Generally, the study showed that:⁶⁰⁶

- Provision of sexual and reproductive health and rights (SRHR) education in primary and secondary schools is challenging and charac-

603 See World Health Organization. Regional Office for Africa & The United Republic of Tanzania. Ministry of Health, Community Development. (2019). Assessment of barriers to accessing health services for disadvantaged adolescents in Tanzania. World Health Organization. Regional Office for Africa. <https://apps.who.int/iris/handle/10665/324924>. License: CC BY-NC-SA 3.0 IGO.

604 See Hakielimu, *Sexual and Reproductive Health and Rights: A Study on Policy and Practice in Primary and Secondary Schools in Tanzania Mainland*, November 2021, at <https://www.hakielimu.or.tz/download/srhr-research-full-report-a-study-on-policy-and-practice-in-primary-and-secondary-schools-in-tanzania-mainland/?wpdmdl=10145&refresh=623eab5775a6f1648274263>.

605 Ibid.

606 Ibid.



terised by a shortage of teaching and learning resources, outdated teaching and learning approaches, inadequate SRHR knowledge by teachers and considerable opposition from traditional and religious leaders.

- Nearly half of teachers (49%) said they separated girls' and boys' classes and assigned female and male teachers respectively.
- Use of English language in teaching and learning SRHR and related topics was also identified as a challenge.
- 93.3% of interviewed teachers said SRHR content lacks broadness and depth, hence insufficient. 73% of interviewed teachers believe SRHR should be taught from Standard IV and recommend introduction of SRHR to children at age 10 to 12.
- At least 32% of students said teachers are incompetent in delivering SRHR education, while 66% of teachers said they have adequate capacity and confidence to teach SRHR. Almost 50% of teachers also indicated that they had not received in-service training on SRHR education.
- The curriculum for primary and secondary schools, syllabuses, and subjects, including human reproductive systems, are silent on SRHR.
- Existing policies, laws, and specific guidelines on SRHR education acknowledge challenges related to teen pregnancies, teen marriage, school dropouts and early sex debut.
- SRHR is not taught as a standalone subject at the school level, and instead, in science, technology, and biology, according to the majority of the respondents (46.7%).
- Puberty (83.6), HIV/AIDS (76.8), and sexually transmitted infections and diseases (70.0%) were the most frequently reported SRHR topics among primary and secondary school learners.
- Teachers' insufficient and inadequate knowledge in teaching SRHR related subjects, inadequate teaching and learning materials, skills-gap among teachers, and socio-cultural factors that impeded the ability of teachers to learn, adopt and deploy best teacher-learning approaches were repeatedly mentioned as challenges.
- Teachers are often advised to invite a guest speaker, usually a health-care provider, to talk and guide learners on SRHR topics, but only a few schools can afford to invite a guest speaker.
- Students (81.65%) are generally interested in learning and understanding SRHR issues at an early age and without hiding some key concepts. Majority of students expressed that they would like to get more information and for SRHR to be a standalone subject to be taught comprehensively.
- Main sources of SRHR information for respondents were workshops and seminars, friends and peers, school clubs and media outlets such as TV, Radio and social networks.
- Majority of respondents indicated that SRHR education in schools may attract and contributed to improving girls' access to education. 65% of teachers suggested that SRHR had improved academic performance among girls.



- SRHR education improves youth's knowledge, attitudes, and skills about various aspects of sexuality, contributing to behaviour change and avoiding risks commonly associated with sexually related health challenges, including teenage pregnancies.
- SRHR education contributes to increased girls' awareness of menstrual hygiene and self-awareness, contributing to girls' increased confidence and chances to make informed life and relationship choices in their lives.

Among the key recommendations regarding SRHR education provided by *Hakielimu* is for the ministries responsible for education and health to collaborate with key stakeholders to develop a national framework on sexuality education that will help to integrate major components of comprehensive sexuality education. It is also recommended that key priorities stipulated in the Adolescents' Health and Development (ADHD) Strategy, especially promoting a comprehensive curriculum on SRH, to be implemented.

3.2.10. Outbreak of the Covid19 pandemic

In July 2021, the Minister of Health, Community Development, Gender, Elderly, and Children, Dr. Dorothy Gwajima, announced that by 21st July 2021, the number of Covid19 patients in Tanzania were 682. In **Iringa**, it was reported in July 2021 that the Iringa Regional Commissioner, Queen Sendiga, prohibited public gatherings as a strategy of combating Covid19. The decision was made after Iringa was declared one of the regions with many Covid19 patients.

In November 2021, the Ministry responsible for health revealed that the number of Covid19 deaths in Tanzania had reached 725, from the 26,164 documented cases. A total of 25,330 people recovered from the pandemic. In December 2021, the Government revealed that Covid19 statistics showed that 8 of the 10 people who are infected have not been vaccinated, while 7 out of 10 people who die from Covid19 are those who have not vaccinated. The Prime Minister, Hon. Kassim Majaliwa, revealed that people aged 45 years and above were at higher risk of contracting Covid19.

3.3. Right to Water

Meaning & Key Applicable Standards



- Means the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.
- 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”
- Key standards include: the Universal Declaration of Human Rights (UDHR), 1948; the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966; the African Charter on Human and Peoples’ Rights (Banjul Charter), 1981; Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), 2003; and African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

In 2021, key challenges that hindered effective realisation of the right to water included insufficient budget allocated for the water sector, water leakages and loss, and limited access to clean water in some parts of the country, especially in rural areas.

3.3.1. Government action to ensure progressive realization of the right to water

In 2021, the Government took various measures to increase access to water in different parts of Tanzania Mainland. For instance, in April 2021 it was reported that residents of Langilo Village in Mbinga District Council, **Ruvuma** Region, expressed gratitude the Ministry of Water for providing them with clean and safe water through RUWASA. In **Pwani**, it was reported that residents of Mkuranga A, Mkuranga B, Mugawa, Mkwalia, Njia Nne, Kitumbo, and Kiparang’anda Wards in Mkuranga District would finally get clean water following completion of a water project by DAWA. It was reported that DAWASA had provided a 1.5 million litre water tank, which shall provide water services in the district and nearby areas. In **Tabora**, it was reported that the Government had drilled deep wells worth Tshs. 256 to provide clean and safe water for four villages. The project was made possible through the TASAF programme. In **Lindi**, it was reported that the Government had provided Tshs. 8 billion to Lindi District to address water access challenge for the financial year 2020/21. In **Simiyu**, RUWASA stated in March 2021 that it had managed to increase access to clean and safe water in Maswa District from 69% to 73%.

3.3.2. Budgetary Allocation for the Water Sector

The trend of budgetary allocation for the water sector in Tanzania has been promising, although as is the case in education and health sectors, partial and/or delayed disbursement of funds presents a



challenge. For the financial year 2019/2020, budgetary allocation for the water sector was Tshs. 634,196,197,530. A total of 706.2 billion shillings was allocated to water sub sector to facilitate various priority activities for the financial year 2021/22. The allocation of funds for some priority water projects is as follows: 326.4 billion shillings for implementing rural water supply and sanitation program; 140.5 billion shillings for rehabilitation and expansion of urban water supply; 37.5 billion shillings for identifying, preserving, managing and sustaining water resources; 51.0 billion shillings for implementing water supply and sanitation program for Dar es Salaam and Pwani region; and 27.4 billion shillings for implementing Lake Victoria to Tinde – Shelui Water Supply project.

3.3.3. Challenges hindering effective provision of clean and safe water

Lack of or limited access to clean and safe water in some areas of Tanzania Mainland

In May 2021 it was reported that access to clean and safe water is still a challenge in some areas of Mwanza, Kigoma, Kilimanjaro, Kagera, Shinyanga, and Mara.⁶⁰⁷ Lack of or limited access to water was said to disproportionately affect women and girls, who usually have to walk long distances to fetch water. This situation has also been said to contribute to marital disputes and increased risk of rape and other forms of violence for women and girls when they go to fetch water in distant places.⁶⁰⁸ Some of the reported incidents of lack of or limited access to clean and safe water documented by LHRC in 2021 are summarized in table 18 below.

Table 18: Some of the reported incidents of lack of or limited access to clean and safe water documented by LHRC in 2021

Incident	Report Date
Kigoma: Women from Likwilo Village in Nyasa District lamented lack of clean and safe water services in the village. The village is one of the 84 villages in the districts that have never had access to tap water, forced to rely on well water and Lake Nyasa.	26 Apr 2021
Dodoma: Residents of Msagali Village in Mpwapwa District urged the Government to improve water service and rescue them from the water shortage problem. The whole village relies on a small well that was drilled by the Mkaji project.	19 May 2021

607 LHRC Media Survey 2021.

608 Ibid.



Dodoma: In May 2021, it was reported that Bahi District is faced with severe water shortage (over 50%), calling for priority intervention by DUWASA.	5 May 2021
Kagera: In November 2021 it was reported that residents of three villages in Kakunyu Ward, Missenyi District, did not have access to clean water and had to fetch water from dirty ponds. The villages are Bwenkoma, Bugango, and Kakunyu.	23 Nov 2021
Arusha: More than 800 residents of Nadosito area in Muriet Ward were said to face the challenge of lack of clean and safe water, causing them to use unsafe water.	3 Sep 2021

Source: LHRC Media Survey 2021

Other challenges that continue to hinder effective provision of clean and safe water include illegal connections, insufficient budget allocated for the water sector, and water leakages and loss.

3.4. Right to Work

Meaning & Key Applicable Standards

- Means right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- Is a foundation for life with dignity.
- It gives an individual an opportunity to gain a living by work they freely choose or accept.
- Key standards include: the Universal Declaration of Human Rights (UDHR), 1948; the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966; the African Charter on Human and Peoples' Rights (Banjul Charter), 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; ILO conventions; and ILO Declaration on Fundamental Principles and Rights at Work, 1998. Domestically, the standard is the Constitution of the United Republic of Tanzania, 1977.

In 2021, key issues which affected the right to work for Tanzanians included: PAYE and loan board payments burden for workers; shortage of workers in health and education sectors; poor working conditions; inadequate rest for workers; and violations of labour rights of workers, aggravated by the Covid19 outbreak.



3.4.1. PAYE and loan board payments burden for workers

In 2021, the burden of PAYE and loan board payments continued to be a challenge for workers, in both public and private sectors, contributing to excessive monthly deductions below the statutory requirement of deductions not exceeding two thirds of salaries.⁶⁰⁹ This problem has largely been contributed by the increase of loan board deduction rate from 8% to 15%⁶¹⁰ and the Wage Order not being reviewed for a long time, and compounded by the Covid19 pandemic, which has significantly negatively impacted the right to work. The recent CAG report,⁶¹¹ covering the financial year 2019/20, has indicated that that 3,038 staff in 35 LGAs were receiving less than one third of their salaries.⁶¹²

The recent CAG reports have warned that these excessive deductions may adversely affect employees' performance and their well-being and leave them vulnerable to fraudulent practices and misappropriation of public funds or abuse of office, which will affect service delivery. The burden was also caused by excessive/uncontrolled borrowing, which saw eight employees in six LGAs getting zero amounts as their monthly net salaries.⁶¹³

On a positive note, in May 2021, during the Workers' Day commemoration, H.E President Samia Suluhu Hassan, announced that her Government had scrapped the 6% value retention fee for the Higher Education Students Loans Board (HESLB) beneficiaries. This move was welcomed with relief by workers who benefited from the loan as it helps to reduce loan. In the same month, the Government reduced the minimum Pay As You Earn (PAYE) rate from 9% to 8%.

3.4.2. Shortage of workers in health and education sectors

The recent CAG report has also noted persistent shortage of staff in 123 LGAs, including in health and education sectors.⁶¹⁴ These shortages have also been highlighted above. As indicated in the reports, shortage of workers creates a burden for existing employees, who are forced

609 See the Specified Officers (Debt Recovery) Act No.7 of 1970 as emphasized in circular with Ref. No.CE.26/46/01/1/66 of 28th November 2012.

610 See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2016/2017 at http://www.nao.go.tz/?wpfb_dl=257, accessed 30th December 2018; ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th April 2019.

611 ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2019/20.

612 See the CAG report at https://www.nao.go.tz/uploads/Annual_General_Report_for_Local_Government_Authorities_2019_20.pdf

613 Ibid.

614 CAG Report for the financial year 2019/20 (supra).



to work harder in order to meet performance expectations. It also negatively affects efficiency and effectiveness of service delivery and could result into mental and physical health problems and lower morale and job satisfaction. For the financial year 2019/2020, the CAG found a 34% shortage of staff at 123 LGAs. Such deficiency was said to have an impact on the general performance of the LGAs, including inadequate service delivery, overloading, and demotivating the present employees.⁶¹⁵ According to the CAG, due to shortage of staff, efficiency and effectiveness of service delivery in LGAs was negatively affected, especially in works, health, and education departments. The available employees had to work beyond official hours to meet the performance expectations. This contributed in lowering their morale and job dissatisfaction.⁶¹⁶

3.4.3. Unpaid employee claims, delayed promotions, and salary increments

The recent CAG LGAs report also indicates unpaid employee claims/benefits in 36 LGAs worth a total of Tshs. 27,840,078,424. These included leave allowances for employees, especially those in the education and health sectors. 7,992 employees from 14 LGAs were not promoted as well as their salary increments despite meeting the qualifications. According to the CAG, delayed promotions and salary increments for public servants discourage their working morale, which in turn may lead to poor performance in terms of service provision.

3.4.4. Poor working conditions

LHRC's Human Rights and Business 2020/21, released in 2021, revealed poor working conditions to be a key challenge at most workplaces in the private sector. Workers in sectors which provide social services, such as teachers and health workers, were mainly affected by poor working conditions. For instance, for teachers, shortages of classrooms, teachers, and teacher houses had negative impact on their work, consequently compromising the quality of teaching. Shortage of staff in the health sector also compromised quality of healthcare services provided as shortage of health workers is nearly 50%.

3.4.5. Inadequate rest for workers

Reports of workers being overworked and getting little time to rest were revealed widely in the human rights and business survey conducted in 15 regions of Tanzania Mainland by LHRC in 2021. Those working in the transportation, security, and hospitality industries, such as bus

⁶¹⁵ Ibid,

⁶¹⁶ Ibid.



and truck drivers, hotel workers, and security guards, were the major victims in this regard. They were also found to be underpaid. Domestic workers, majority of whom are adolescent girls and young women, also fall under this category.

3.4.6. Non-remittance of social benefit contributions for LGA workers

The CAG report on LGAs for the financial year 2019/2020 shows that during the period under review, salary deductions worth Tshs. 5,079,945,442, including social benefit contributions, were not remitted to respective institutions, including NSFF.

3.4.7. Violations of labour rights of workers at private industries/companies, aggravated by Covid19 Pandemic

In 2021, violations of labour rights of workers at private companies/industries, aggravated by the Covid19 pandemic, documented by LHRC included:

- Lack of employment contracts for 4 out of 10 employees.
- Threats and intimidation of employees demanding employment contract and copies of their contracts.
- Contracts being written in language employees did not understand and being rushed to sign them.
- Some workers being made to work long hours, up to 16 hours per day, which is above even the maximum daily working hours of 12 hours (9 normal working hours + 3 maximum overtime hours). This was especially found to be true for bus and truck drivers, construction workers, and employees of private security firms.
- Overtime without pay: In terms of percentage of employees getting paid for overtime work, only five regions recorded 50% and above, namely: Arusha, Dar es Salaam, Geita, Kili-manjaro, and Tanga.
- Workers in the transportation, hospitality, and private security industries were found to be among workers who usually work the longest hours, deprived of much needed rest.
- Payment of inadequate wages: Complaints about inadequate wages, as workers lamented their wages being inadequate and not proportionate to the current costs of living. The Wage Order has not been reviewed since 2013, despite the law requiring review after every three years.
- Unjustified deduction of wages: Some of the interviewed workers, especially hotel workers and bus and truck drivers, complained that their employers tend to unjustifiably deduct their wages.



- Unsanitary working conditions observed at most workplaces, with female workers disproportionately affected by dirty/filthy or unclean toilets, leaving them more vulnerable to infections.
- Less than 50% of workers found with sufficient PPE.
- Violence and harassment in the workplace, including intimidation, threats, and bullying.
- Infringement of freedom of association: Most employers continue to arbitrarily restrict workers' freedom of association and collective bargaining through discouraging them or threatening them from joining trade unions.
- Child labour: Child labour continues to persist in different parts of Tanzania, especially in mining and agriculture sectors. Child labour incidents were mostly reported in Manyara, Tabora, Singida, Mbeya, Geita, Shinyanga, and Dodoma.
- Denial of leave: only half of the respondents said they were granted annual leave.
- Discrimination of female workers at workplaces, including when they need maternity leave.
- Unfair termination of employment: Reasons for termination included demanding labour rights, including employment contracts or copies of such contracts; inquiring about salary deduction; accident; pregnancy; Covid19; airing grievances to local authorities; and breastfeeding.

In March 2021, the Commission for Mediation and Arbitration (CMA) warned employers who do not provide employment contracts to their workers that legal measures shall be taken against them. Rodney Matalis, a principal mediator at CMA, stated that some of the employers tend to deny workers their employment contracts, which leaves them vulnerable in case of labour dispute and to unfair dismissal. In the same month, the Deputy Minister, Prime Minister's Office (Labour, Youth & Employment). Hon. Paschal Katambi Patrobas, called upon employers to comply with laws and regulations to safeguard workers' rights and prevent labour disputes with the workers.

In August, the Commission for Mediation and Arbitration (CMA), Dar es Salaam Division, revealed that labour disputes increased during the Covid19 pandemic, whereby a total of 1,075 workers entered into disputes with their employers in Dar es Saaalm in the first quarter of the year since the outbreak. According to Nahshon Mpula, a senior official at CMA, most of the disputes related to complaints about



measures taken by employers to cope with the pandemic, especially retrenchment of workers, which some most workers claimed was arbitrary.

3.4.8. Youth and Employment

Unemployment and underemployment are among the key challenges facing youth today, including in Tanzania. These challenges are said to be contributed by lack of employability skills among higher education graduates. Lack of jobs makes it difficult for youth to realize other human rights and live a life with dignity, driving them more towards poverty and crime. Youth, especially young women, are also faced with several challenges when seeking employment and in the workplaces, including sextortion, sexual harassment and other forms of violence against women.

In July 2021, it was reported in Dar es Salaam that unemployment continued to be a challenge for youth, with approximately 800,000 young people graduating at universities/colleges each year.

The issue of youth and employment is further discussed under chapter five below.

3.4.9. Rights of Workers in the Media Industry

In 2021, LHRC conducted a survey on the rights of workers in the media industry (journalists). The survey findings show that lack of employment contract was cited as the biggest challenge or serious problem for journalists (73%), followed by low pay (68%), threats (56%), unfair dismissal (55%), and breach of employment contract by employer (54%). Sexual harassment/sextortion of female journalists was also cited as a serious problem (42%) and moderate problem (40%). Editors and human resources officers were mentioned the most as perpetrators of sexual violence against female journalists.



3.5. Right to Own Property

Meaning & Key Applicable Standards

- Means right to everyone has the own property alone as well as in association with others.
- No one shall be arbitrarily deprived of his property.
- Somewhat complex human right, subjected to more qualifications and limitations than any other human right.
- Essential right and has implications for other human rights, including right to work, right to education and right to adequate housing.
- Key standards include: the Universal Declaration of Human Rights (UDHR), 1948; the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966; the African Charter on Human and Peoples' Rights (Banjul Charter), 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; Domestically, the standard is the Constitution of the United Republic of Tanzania, 1977.

In 2021, key issues affecting the right to property included: land conflicts/disputes; infringement of women's access, control and ownership of land; property grabbing from widows and older persons; and writing of wills to secure property and inheritance rights.

3.5.1. Violation of right to own or inherit property ***Targeting of older persons to grab their property***

In the course of conducting the human rights survey in **Kagera**, LHRC came across a 94-year-old woman, Zulfa Khassim, resident of Kayanga Ward in Karagwe District, who complained about violation of her right to own land.⁶¹⁷ According to the older woman, she legally acquired the land by inheriting it from her husband when he passed away and has been occupying it for at least 70 years. However, she was surprised to find that an investor had invaded her land and claimed that he owned the land. The matter was taken to land tribunals and resolved in favour of the older woman, but the investor appealed to court. At the court of law, she was told the investor legally owns the land, even though he had failed to produce any evidence to that effect.⁶¹⁸

Children demanding property/'inheritance' from older persons, even resorting to killing them

Older persons have also been targeted by their children and relatives over property 'inheritance.' In some cases the pressure to get or 'inherit' property from older persons has resulted into killings. In 2021, LHRC

⁶¹⁷ LHRC Human Rights Survey 2021: Kagera Field Report.

⁶¹⁸ Ibid.



documented two incidents of parents killed by their children, reported in Geita and Rukwa Regions, both motivated by property inheritance. In the years 2020 and 2021, LHRC has documented five incidents of parricide motivated by property inheritance, all perpetrated by sons of the victims.

One of the community members who responded to the Human Rights Survey 2021 in Kilimanjaro Region, revealed that sometimes children, especially male children, use witchcraft suspicion allegations as an excuse into kill their parents, but the true motive is acquisition of property (inheritance).⁶¹⁹ Interviewed older persons in some of the regions, such as Dar es Salaam, Rukwa, and Kagera, complained about their children interfering with their property rights, including forcing them to give them their 'inheritance.' These situations have been known to cause quarrels and misunderstandings, sometimes culminating to violent acts against the elderly, including killings.

Property grabbing from widows

Continued application of customary laws has been cited as a key driver of property grabbing from widows. In the past two years (2020 and 2021), LHRC has documented at least 42 incidents of infringement of widows' property and inheritance rights, through forced eviction of widows from their marital homes and denial of inheritance. Of these, 16 incidents were reported in 2020 and 26 incidents were reported and documented in 2021. Property grabbing from widows is discussed in detail in chapter five below.

Property grabbing from widows constitutes violations of their fundamental rights protected under various international and regional human rights instruments as well as the Constitution of the United Republic of Tanzania, 1977, including the right to equality, right to acquire and own property, right to live a life with dignity, and right to adequate standard of living.

3.5.2. Women's access to, use of and control over land

Women's access to, use of and control over land continued to be limited in 2021, especially in rural areas, where application of customary law is applied. In most rural communities, women are still denied the right to own land, with men having final say in their access and use of land and

⁶¹⁹ LHRC Human Rights Survey 2021: Kilimanjaro Field Report.



being in total control. This challenge was reported in nearly all regions that were surveyed, but especially in Geita and Morogoro. For instance, in **Geita**, some of the interviewed respondents pointed out that land access and ownership is only a wishful thinking for women, especially those residing in rural areas and widows.⁶²⁰ They noted that their predicament is compounded by lack of or low awareness about their land rights. They also stated that most women (widows) are denied matrimonial property when their husbands die and often kicked out together with their children.⁶²¹

In **Morogoro**, it was revealed that it is even more difficult for unmarried women to access and use land in some communities. Regarding this issue, one community member said:

“It is very difficult for unmarried women to get access to land in our community, and even for the married women, they are only allowed to use land. They cannot own and/or sell the land.”

Community member, Morogoro

3.5.3. Land conflicts/disputes: A big barrier to enjoyment of property rights in some areas of Tanzania

In 2021, LHRC documented several reported land disputes through the human rights survey, media survey, provision of legal aid, and human rights monitoring. The disputes included land disputes among family members, land use disputes between farmers and pastoralists, and disputes between community members and investors.

Non-payment of compensation following land acquisition contributing to land disputes

In May 2021, the Deputy Minister of Lands, Housing, and Human Settlements Development, Hon. Angelina Mabula, stated that 39% of land disputes relate to non-payment of compensation, usually by public institutions.

Many land disputes at High Court in Bukoba

In 2021, land conflicts/disputes were reported in different parts of Tanzania. For instance, in **Kagera**, it was revealed that 35% to 40% of cases that are filed at the High Court of Tanzania in Bukoba District

⁶²⁰ LHRC Human Rights Survey 2021: Geita Field Report.

⁶²¹ Ibid.



relate to land. Most of these cases related to land disputes, which have also led to killings in some areas.⁶²²

Land conflicts between farmers and pastoralists causing deaths, disruption of peace, and destruction of property

In 2021, LHRC found that land conflicts between farmers and pastoralists are still prevalent in some areas in Tanzania Mainland. Conflicts and clashes between these two groups were mostly reported in **Morogoro** Region, but LHRC documented other incidents reported in Katavi, Manyara, Lindi, Dodoma, and Pwani Regions. LHRC documented at least 18 killings caused by land use conflicts between farmers and pastoralists in these regions.

In December 2021, it was reported in **Morogoro** that a resident of Itete Ward in Malinyi District, Audi Magwila (34), was killed during a conflict between farmers and pastoralists. Four other people were injured following the clash and one of them, Kasianus Kisawike (33), mentioned that before the incident he was called by the victim, who told him that some livestock were feeding in the farm and when he attempted to chase the livestock away the pastoralists started attacking them with sticks, bats and machetes.⁶²³ Another person was killed later that month and 15 houses torched as the conflict escalated. In Kilosa District, local officials and lawyers who responded to the human rights survey noted that land conflicts between farmers and pastoralists have been common, especially in Tindiga Ward, leading to killing of livestock by farmers and revenge killings, rape, and sodomy by pastoralists.

In **Dodoma**, it was reported in September 2021 that four people were arrested by police for killing their relative, Rashid Ndauta (40) and cutting his body into pieces. The killing was said to be caused by a dispute over land.⁶²⁴

In **Tanganyika**, a 25-year-old man, Rajabu Rashid, resident of Ngoma Village in Tanganyika District, was killed in August 2021 following a clash with livestock herders whose livestock had entered and were feeding in his farm.⁶²⁵ He was attacked with a sharp object when he attempted

622 LHRC Media Survey 2021.

623 Ibid.

624 Ibid.

625 LHRC Human Rights Monitoring 2021.



to chase the livestock away. In **Manyara**, a 46-year-old man, Emeliani Richard, resident of Amei Village in Kiteto District, was reportedly killed during a clash between farmers and pastoralists, with the village chairperson also implicated in the killing incident.

In **Lindi**, LHRC received reports from various sources that 13 people, including Mwichande Magoma (41), resident of Nanjilinji Village in Kilwa District had been killed during a land conflict between farmers and pastoralists. LHRC intervened and called regional police to intervene and prevent further loss of life. Police arrested 60 people in connection with the conflict and killings. LHRC documented two other incidents of killings during clashes between farmers and pastoralists, reported in Mkuranga District in Pwani Region and Lindi District in Lindi Region.

3.5.4. Writing of wills to safeguard property and inheritance rights

Community members who responded to the Human Rights Survey 2021 were asked various questions about writing of wills, looking at community attitude towards will writing. To start with, the respondents were asked whether they think will writing is important. Overwhelming majority of the respondents (91%) said the practice is important, while only 9% said it is not important. The next question the respondents were asked was whether they had written a will. While 91% of the respondents had stated that is important to write a will, only 11% said they had actually written one. 89% of the respondents said they had not written any will.

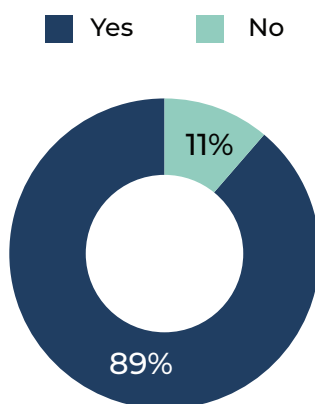


Figure 30: %Responses of community members on whether they had written a will (N=1,084)

Source: *Field Data, 2021*



Community members who responded to the survey were asked to provide reasons for not writing wills in their community. Lack of awareness was mentioned by the majority of respondents as the major reason (66%), followed by perception or belief that writing of will means one is inviting death to his house (37%), and perception that one is too young to write wills (28%).

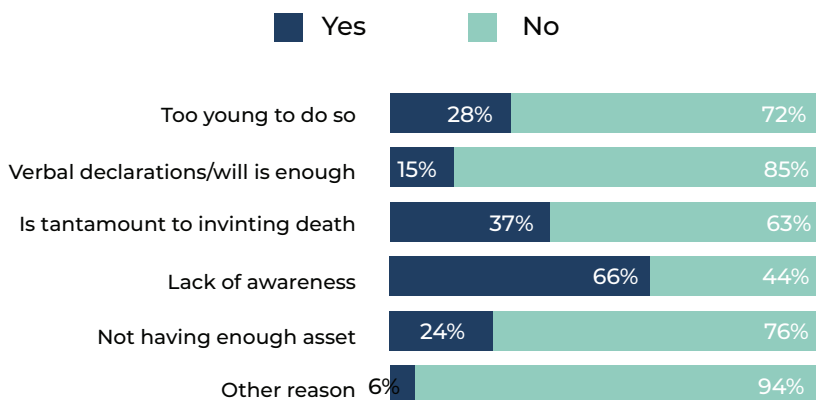


Figure 31: %Responses on why people do not write wills (N=1,084)

Source: *Field Data, 2021*

“People do not want to write wills because they think it will invite death to them. Some people also believe will writing is for the people with many properties.”
Community member, Geita

Writing of a will is for the rich people

In most of the regions that were surveyed in 2021, some of the interviewed community members said writing of wills is not for them but for the rich people who have a lot of properties. For instance, a community member in **Mtwara** said:

“The issue of writing a will is for town people, because they are the educated ones. In our community here writing a will means creating family disputes.”
Community member, Mtwara

Writing of a will put one’s life in danger or create family conflict



“There are older people who live in fear of their own children, knowing that they are more likely to be beaten if the children find out there is a will.”

Paralegal, Kagera

Some people leave it too late to write a will

“Some people write will when they are very sick and die shortly after. As a result, the will gets lost or in extreme cases the original will get hidden by some family members.”

CBO official, Morogoro

LHRC's View: Having addressed many cases of inheritance disputes, we have observed that most of these disputes would have been prevented if there was a will in place. Women (widows) and children become the major victims of forced eviction and denial of inheritance and property rights where there is no will.

LHRC's Call: Community members are encouraged to overcome their fears over writing wills and prepare them to safeguard property and inheritance rights of their families.

3.6. Impact of Covid19 on Economic and Social Rights

Like it was the case for other human rights, the Covid19 pandemic did not spare social and economic rights. Community members who responded to the Human Rights Survey 2021 were asked how the pandemic affected their economic and social rights. Loss or reduction of income (93%) was mentioned as the biggest effect of Covid19, followed by changing source of income (86%), disruption of education (82%), and limited access to health services (81%). Other effects of the pandemic on social and economic rights included mental health deterioration (76%), food insecurity (72%), and loss of employment/work (71%).



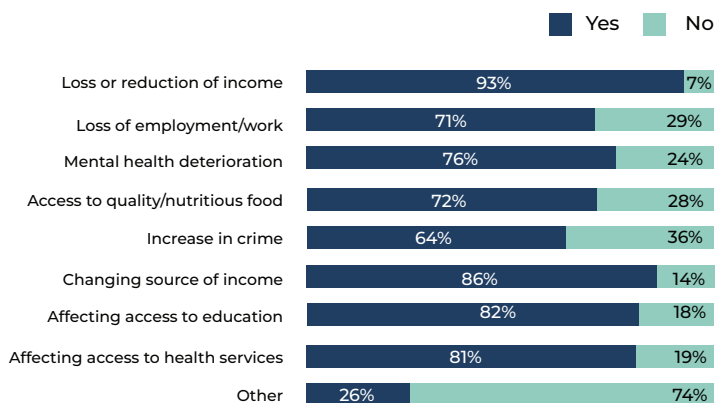


Figure 32: %Responses on effects of Covid19 on social and economic rights

Source: Field Data, 2021

For the government, the Covid19 pandemic significantly disrupted provision of social services, especially in the education and health sectors. Work burden for the health workers significantly increased, considering they health sector was already faced with severe shortage of workers. Loss of revenue, including revenue from the tourism industry was also a big challenge for the Government caused by the Covid19.

LHRC’s Human Rights and Business Report 2020/21 also revealed several effects of the Covid19 pandemic on the labour rights of workers in the private sector and businesses, including:

For workers

- Non-payment of wages
- Delayed payment of wages
- Reduction of wages
- Unfair dismissals
- Loss of employment due to retrenchment
- Indefinite leave
- Increased work burden

For businesses

- Temporary closure of businesses



- Slowing down production
- Outsourcing to other suppliers at a high cost
- Delays in consignment and import orders
- High interest rate repayments
- Increased rent
- Termination of contracts and agreements
- Running out of stock
- Production loss
- Loss in sales and marketing

In August 2021, the Commission for Mediation and Arbitration (CMA) revealed that labour disputes increased as a result of the Covid19 pandemic.⁶²⁶ According to the CMA, a total of 18,222 labour disputes were registered in the period of 2020 and by July 2021, a significant increase compared to the previous periods. Most of the disputes were about termination of employment as employers undertook retrenchment to cope with the Covid19 situation. Deputy spokesperson of CMA revealed that labour disputes filed at the Commission had increased by approximately 6,000 disputes in the Covid19 era.⁶²⁷

3.7. Relevant SDGs, TDV 2025, and Agenda 2063 Targets

Tanzania's achievement of these 2030 SDGs, TDV 2025, and Agenda 2063, depends on progress made in realization of economic, social, and cultural rights:

Key SDGs, TDV 2025 & Agenda 2063 Targets relating to Economic, Social, and Cultural Rights.	
SDGs	<p>SDG1 NO POVERTY: End Poverty in All Its Forms Everywhere.</p> <p>SDG2 ZERO HUNGER: End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture.</p> <p>SDG3 GOOD HEALTH AND WELL-BEING: Ensure Healthy Lives and Promote Well-Being for All At All Ages.</p> <p>SDG4 QUALITY EDUCATION: Ensure Inclusive and Equitable Quality Education and Promote Lifelong Learning Opportunities for All.</p> <p>SDG 5 GENDER EQUALITY: Achieve Gender Equality and Empower All Women and Girls.</p> <p>SDG6 CLEAN WATER AND SANITATION: Ensure Availability and Sustainable Management of Water and Sanitation for All</p> <p>SDG8 DECENT WORK AND ECONOMIC GROWTH: Promote Sustained, Inclusive and Sustainable Economic Growth, Full and Productive Employment and Decent Work for All.</p> <p>SDG11 SUSTAINABLE CITIES AND COMMUNITIES: Make Cities and Human Settlements Inclusive, Safe, Resilient and Sustainable</p>

⁶²⁶ LHRC Media Survey 2021.

⁶²⁷ Ibid.



TDV 2025	<p><u>High Quality Livelihood</u></p> <ul style="list-style-type: none"> ■ Food self-sufficiency and food security. ■ Universal primary education, the eradication of illiteracy and the attainment of a level of tertiary education and training that is commensurate with a critical mass of high quality human resources required to effectively respond and master the development challenges at all levels. ■ Gender equality and the empowerment of women in all socio-economic and political relations and cultures. ■ Access to quality primary health care for all. ■ Access to quality reproductive health services for all individuals of appropriate ages. ■ Reduced infant and maternal mortality ■ Universal access to safe water. ■ Absence of abject poverty <p><u>A Well Educated and Learning Society</u> <u>Peace, Stability and Unity</u></p>
Agenda 2063: The Africa We Want.	<p>ASPIRATION 1: A prosperous Africa based on inclusive growth and sustainable development</p> <p>ASPIRATION 3: An African of good governance, democracy, respect for human rights, justice and the rule of law</p> <p>ASPIRATION 5: An Africa with a strong cultural identity, common heritage, values, and ethics</p>



CHAPTER 4: COLLECTIVE RIGHTS

4.1. Overview

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) of 1966; the African Charter on Human and People's Rights (ACHPR) of 1981 and the United Nations Charter of 1945. For a right to be recognised as a collective right, the holder of the right should be collective or affirm the collective identity of groups in society, the exercise of the right pertains to a legally protected collective good, the interest of a right is of a collective nature.⁶²⁸

4.2. Right to Development

The United Nations (UN) has defined development as “**...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.**”⁶²⁹ The right to development is a human right on a par with all other human rights.⁶³⁰ Key elements of this right are: people-centred development; a human rights-based approach; participation; equity; non-discrimination; and self-determination.

628 Andrea, N. (2018) Collective Rights: In The United Nations Declaration On The Rights of Peasants And Other People Working In Rural Areas, Fian International available at https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/droits_collectifs_UK_web.pdf, accessed on 18th March 2019.

629 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.

630 Office of the United Nations High Commissioner for Human Rights (2016), Frequently Asked Questions on the Right to Development, Fact Sheet No. 37 at <https://digitallibrary.un.org/record/3832228?ln=en>, accessed 29 October 2020.



The right to development is both an individual and a collective right. It belongs to all individuals and all peoples.
Office of the United Nations High Commissioner for Human Rights

Rule of law, good governance, participation of people and respect for human rights are key for realization of the right to development, which is essential in enjoyment of other fundamental human rights guaranteed under the ICCPR and the ICESCR. The Government has a duty to involve community members in creating development plans and policies,⁶³¹ 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.⁶³²

Governments are also obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals to ensure meaningful participation in development and fair distribution of benefits resulting from such development.⁶³³ The Declaration further provides for states' duty to co-operate with each other in ensuring development and eliminating obstacles to development.⁶³⁴

4.2.1. Economic Development

Positives in infrastructure development: Considerable progress continues to be made in the development of infrastructure, including roads and electricity. In terms of electricity infrastructure, Tanzania continues to make progress in rural. In February 2020, Minister for Energy, Dr. Medard Kemani, revealed that Tanzania had acquired the first slot in rural electrification in Africa, overtaking Nigeria. In May 2021, a total of 80 villages in Morogoro District were expecting to benefit from the Rural Energy Agency (REA-III) project, which shall see them get electricity. In the same month, more than 64,000 villagers from Kigongomawe Village in Muheza District were set to get electricity following completion of a power project implemented by TANESCO.

In July 2021, the Ministry of Energy announced that the Government had allocated Tshs. 24.7 billion to connect power to 53 villages that are yet to get power in Katavi Region as part of the Rural Energy Agency (REA-III) Phase II project. In the same month, the Minister of PO-

631 In Tanzania, we have the Tanzania Development Vision 2025, which is an essential tool that guides the development process in the country.

632 Article 1 of the UN Declaration on the Right to Development.

633 Ibid, Article 2(3).

634 Ibid Article 3(3).



RALG, Hon. Ummu Mwalimu, told residents of Kigoma Region that the Government had set aside **Tshs.** 14 billion to renovate rural roads in the region.

Table 19: Road Network (National Roads) in Kilometres by Status, Tanzania Mainland, 2016 - 2020

Year	National Roads				Total National Roads
	Trunk Roads		Regional Roads		
	Paved	Unpaved	Paved	Unpaved	
2016	7,753	5,033	1,398	20,816	35,000
2017	8,211	4,011	1,541	22,495	36,258
2018	7,989	2,500	1,516	20,845	32,850
2019	7,990	2,492	1,517	21,179	33,178
2020	8,172	2,4722	1,651	21,354	33,649

Source: NBS, Tanzania in Figures 2020

Economic growth

In July 2020, Tanzania reached a milestone in terms of economic growth after graduating from a low-income to lower-middle-income country. This achievement is in line with the Tanzania Development Vision 2025, which envisages Tanzanians to “have graduated from a least developed country to a middle-income country⁶³⁵ by the year 2025 with a high level of human development.”⁶³⁶ However, the Covid19 pandemic has ensured that Tanzania’s economic growth slowed down, as was the case in most other countries. The Real Gross Domestic Product (GDP) Growth was reported to have decreased from 7.0% in 2019 to 4.8% in 2020.⁶³⁷ Key sectors such as tourism and manufacturing were hit hard by the pandemic, hence affecting economic growth.⁶³⁸ According to the Bank of Tanzania (BoT), the decision of the Government of not imposing a nationwide lockdown

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

636 See THE TANZANIA DEVELOPMENT VISION 2025 at <https://mof.go.tz/mofdocs/overarch/vision2025.htm>, accessed 29 October 2020.

637 See Bank of Tanzania (BoT), Monetary Policy Statement, 2021/22, June 2021 at <https://www.bot.go.tz/Publications/Regular/Monetary%20Policy%20Statement/en/2021062416483067.pdf>, accessed 29 November 2021.

638 Ibid.



on economic activities lessened the impact of the pandemic on the economy.⁶³⁹

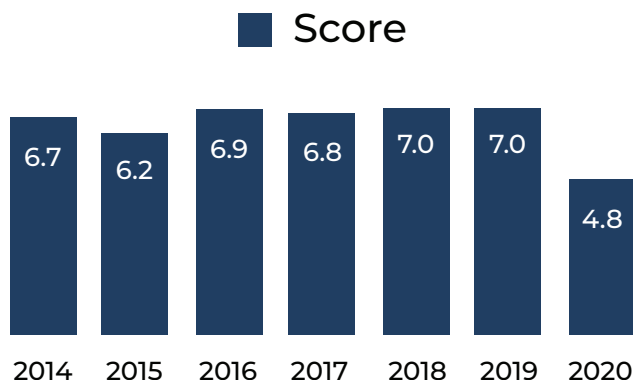


Figure 33: Real GDP Growth Tanzania
Source: Bank of Tanzania (BoT) 2014-2021

4.2.2. Human Development

A human rights-based approach has been emphasized in the **UN** Declaration on the Right to Development and the 2030 Agenda for Sustainable Development. This approach requires development to be achieved in a manner that ensures that all human rights and fundamental freedoms are fully realized.⁶⁴⁰

Translation of economic growth into poverty reduction remains a slow process, as majority of people continue to live under or slightly above USD 1 per day. Economists in Tanzania have commended the middle-income status as a step forward in national development but have cautioned that the country must strive to reduce inequalities, particularly the gap between the rich and the poor.⁶⁴¹

In 2021, Covid19 impact affected human development in various ways, including loss of income and employment. The Tanzania High-Frequency Welfare Monitoring Survey (HFWMS) conducted by the National Bureau of Statistics between February and March

⁶³⁹ Ibid.

⁶⁴⁰ See Article 1 of the Declaration on the Right to Development of 1986; Office of the United Nations High Commissioner for Human Rights (2016), Frequently Asked Questions on the Right to Development, Fact Sheet No. 37.

⁶⁴¹ See Alawi Masare "Tanzania: What It Means As Tanzania Rises to Middle Income Level" The Citizen Newspaper, 3 July 2020 at <https://allafrica.com/stories/202007030449.html>, accessed 29 October 2020.



2021 showed that 18% of respondents claimed to have jobs in 2020 were not working a year later.⁶⁴² Among them, 4% said they were no longer working because an informal business had been closed, while many reported that their incomes had dropped. The survey also showed that 42% of respondents reported that their family business revenues had dropped,⁶⁴³ while another 10% said they had no revenue at all.⁶⁴⁴

4.2.3. Political Development

Enjoyment of the right to development requires States to take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social, and cultural rights.⁶⁴⁵

States are also required to undertake effective measures to ensure women have an active role in the development process, eradicate social injustices, and encourage popular participation in all spheres.⁶⁴⁶

Political development therefore requires greater participation in political life. Participation rights (freedoms of expression, assembly and association) are essential in enjoyment of the right to **political life**. As discussed in chapter two of this report, freedoms of expression, assembly, and association continued to be negatively affected by restrictive legislation, exacerbated by various amendments made in 2019 and 2020. These restrictions, coupled with arbitrary actions by state agents, have caused political development to stall in the past three years.

4.2.4. Social Development

Social development requires effective realisation of key social rights such as right to education, right to health, right to water and right to adequate standard of living⁶⁴⁷. While several challenges continued to hinder effective realisation of social rights in 2021, the country continues to make considerable process in promoting basic human rights such as the right to education, right to health, and right to water. For instance, increased enrollment is a key

642 See World Bank, The World in Tanzania, at <https://www.worldbank.org/en/country/tanzania/overview#1>, accessed 29 November 2021.

643 Ibid.

644 Ibid.

645 Article 6(3) of the Declaration on the Right to Development.

646 Ibid, Article 8(1) & (2).

647 See Article (3)1 of the Declaration on the Right to Development.



milestone in education. However, greater investment is needed to⁶⁴⁸ ensure provision of quality social services to citizens, including setting aside sufficient budget. Covid19 had an impact on social development, including by restricting access to education, access to health services, and through loss of income and employment.

Like other countries across the globe, Tanzania continues to recover from the Covid19 pandemic, which has negatively impacted the right to development, both individual and collective.

4.3. Right to Enjoy and Benefit from Natural Resources

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."

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 URT Constitution.

Natural resources are important for generation of revenue and provide employment for many Tanzanians, for example in the tourism industry. The mining industry is another area where natural resources generate revenue and provide employment. Local and foreign investors have invested in the mining sector. Duty bearers are required to ensure permanent sovereignty over the natural resources for the purpose of enhancing national development and wellbeing of the people, ensure respect of the rights and interests of the indigenous people, equitable sharing of transboundary natural resources and protection and conservation of the natural resources.⁶⁴⁹

Under the Constitution of the United Republic of Tanzania, the State authority and agencies are required to direct policies

⁶⁴⁸ Article 21(1).

⁶⁴⁹ Christina, V. International Environmental Law: Sovereignty over Natural Resources and Prohibition of Transboundary Harm available at <https://www.uio.no/studier/emner/jus/jus/JUS5520/h14/undervisningsmateriale/3.-sovereignty-over-natural-resources.pdf>, accessed on 9th March 2020.



and programmes in ensuring that the use of natural wealth places emphasis on the development of the people and geared towards eradication of poverty, ignorance and disease.⁶⁵⁰

4.3.1. Action to safeguard the right to enjoy and benefit from natural resources

In 2021, the Government continued to take steps to ensure realisation of the right to enjoy and benefit from natural resources. This was partly done through collection of revenue in key sectors such as the mining sector in order to *support national development*.

4.3.2. Challenges in realization of the right to enjoy and benefit from natural resources

One key challenge which has affected the right to enjoy and benefit from natural resources and resulted into drop of revenue in the years 2020 and 2021 is the Covid19 pandemic, which has negatively affected key sectors such as tourism and manufacturing. For instance, with significant drop of tourists coming in to see our tourist attractions, the Government lost revenue and people lost jobs or experienced drop in incomes.

Corruption, tax avoidance, and tax evasion, especially in the extractive sector, also pose challenge in effective realization of the right to enjoy and benefit from natural resources. These factors guarantee that only a few people actually benefit from ‘the national cake.’

4.4. Right to Clean and Healthy Environment

4.4.1. Overview

The right to a healthy environment requires a healthy human habitat, including clean water, air, and soil that are free from toxins or hazards that threaten human health.⁶⁵¹ This right also involves an adequate living standard, the ability to participate in environmental decision-making and development planning, a safe environment in which to work, and access to information about health and environment.⁶⁵²

According to the United Nations Environment Programme (UNEP),⁶⁵³

650 Article 9(i) of the Constitution of the United Republic of Tanzania, 1977

651 Council of Economic and Social Rights, “What is the Right to a Healthy Environment?”, online: <http://cesr.org/healthyenvironment>.

652 “The Human Right to a Safe and Healthy Environment” The Peoples’ Movement for Human Rights Education, online: <http://.pdhre.org/rights/environment.html>.

653 UNEP, What are environmental rights?, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>.



there are several established human rights related to the environment. Environmental rights are composed of substantive rights (fundamental rights)⁶⁵⁴ and procedural rights (tools used to achieve substantial rights).⁶⁵⁵

Explicitly, the right to a healthy environment was first recognized in international environmental law during the Stockholm Conference in 1972, whereby the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972)⁶⁵⁶ was adopted.⁶⁵⁷

This conference is considered an important starting point in developing environmental law at international, regional, and national levels. It influenced legal and institutional developments in the field of environment, including creation of the United Nations Environment Programme (UNEP), and led to the development of the United Nations Conventions on the Law of the Sea (UNCLOS), a comprehensive framework for the establishment of global rules on the protection of the marine environment and marine living resources⁶⁵⁸.

Another key conference which contributed to the development and recognition of the right to environment is the Rio Conference, during which the Rio Declaration on Environment and Development 1992 (Rio Declaration)⁶⁵⁹ was adopted⁶⁶⁰. The right to a healthy environment is also implied under key human rights instruments such as the Universal Declaration of Human Rights (UDHR) of 1966 and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966. For instance, the UDHR provides that *“everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...”*⁶⁶¹

Article 12 of the ICESCR of 1966 goes further to suggest steps that a State Party should take to achieve full realization of this right. These include steps for preservation, treatment, and control of epidemic, endemic, occupational and other diseases⁶⁶².

654 Substantive rights are those in which the environment has a direct effect on the existence or the enjoyment of the right itself. Substantive rights comprise of: civil and political rights, such as the rights to life, freedom of association and freedom from discrimination; economic and social rights such as rights to health, food and an adequate standard of living; cultural rights such as rights to access religious sites; and collective rights affected by environmental degradation, such as the rights of indigenous peoples.

655 Procedural rights prescribe formal steps to be taken in enforcing legal rights. Procedural rights include 3 fundamental access rights: access to information, public participation, and access to justice.

656 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972), <https://docenti.unimc.it/elisa.scotti/teaching/2020/22646/files/stockholm-declaration>.

657 See *“The Right to A Healthy Environment”* at <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module15.htm>.

658 Ibid.

659 Rio Declaration on Environment and Development 1992, <https://www.jus.uio.no/1m/environmental.development.rio.declaration.1992/portrait.a4.pdf>,

660 The Right to A Healthy Environment (supra).

661 See Article 25 of the UDHR.

662 Article 11 of ICESCR.



Article 24 of the African Charter on Human and Peoples' Rights provides for a right to a satisfactory environment that is conducive to development.

Right to development is also provided for or implied in various other environmental-related conventions, including the 1972 World Heritage Convention, the 1985 Vienna Convention, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (UNEP), and the 1992 Convention on Biological Diversity (UNEP).⁶⁶³

According to World Health Organization (WHO), 24% of all global deaths, roughly 13.7 million deaths a year, are linked to the environment, due to risks such as air pollution and chemical exposure.⁶⁶⁴

This means that almost 1 in 4 of total global deaths are linked to environment conditions.

4.4.2. Key milestone: Right to environment now officially a human right

In 2021, the United Nations (UN) Human Rights Council recognised, for the first time, that having a clean, healthy and sustainable environment is a human right⁶⁶⁵. The recognition was made through adoption of Resolution 48/13⁶⁶⁶, called on States around the world to work together, and with other partners, to implement this newly recognised right⁶⁶⁷. Delighted by this key milestone, the UN High Commissioner for Human Rights, Michelle Bachelet, issued a statement, calling on States to take bold actions to give prompt and real effect to the right to a healthy environment, following a UN Human Rights Council's landmark decision.⁶⁶⁸

She also paid tribute to the efforts of a diverse array of civil society organisations, including youth groups, national human rights institutions, indigenous peoples' organizations, businesses and many others worldwide who have been advocating for full international recognition of this right⁶⁶⁹.

Additionally, she stressed the importance that the rights to

⁶⁶³ See "The Right to A Healthy Environment" at <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module15.htm>.

⁶⁶⁴ See World Health Organization, Environmental health, at https://www.who.int/health-topics/environmental-health#tab=tab_2.

⁶⁶⁵ See "Access to a healthy environment, declared a human right by UN rights council" UN News, 8 October 2021, at <https://news.un.org/en/story/2021/10/1102582>.

⁶⁶⁶ The text was proposed by Costa Rica, the Maldives, Morocco, Slovenia and Switzerland, and was passed with 43 votes in favour and 4 abstentions - from Russia, India, China and Japan.

⁶⁶⁷ Ibid.

⁶⁶⁸ See Office of The High Commissioner for Human Rights, Bachelet hails landmark recognition that having a healthy environment is a human right, 08 October 2021, at <https://www.ohchr.org/en/2021/10/bachelet-hails-landmark-recognition-having-healthy-environment-human-right?LangID=E&NewsID=27635>.

⁶⁶⁹ Ibid.



participation, access to information and access to justice are also respected in order for the human right to a healthy environment to be fully realized.⁶⁷⁰

“The Human Rights Council’s decisive action in recognising the human right to a clean, healthy and sustainable environment is about protecting people and planet – the air we breathe, the water we drink, the food we eat. It is also about protecting the natural systems which are basic preconditions to the lives and livelihoods of all people, wherever they live.... Having long called for such a step, I am gratified that the Council’s action today clearly recognises environmental degradation and climate change as interconnected human rights crises.”

- UN High Commissioner for Human Rights, Michelle Bachele

In another resolution, Resolution 48/14, the Human Rights Council also increased its focus on the human rights impacts of climate change by establishing a Special Rapporteur dedicated specifically to that issue.

4.4.3. Situation of realization of the right to clean and healthy environment

Many national constitutions and laws recognize the right to a healthy environment derived from the obligation of states to adopt the principles reflected in the Stockholm and Rio declarations.⁶⁷¹ By the recent estimates provided by UNEP, there are over 100 constitutions which provide for a right to a healthy environment.⁶⁷² The Constitution of the United Republic of Tanzania, however, is not among them.

In Tanzania Mainland, key policy and legal documents that provide for and govern the right to environment are the National Environmental Policy of 1997 and the Environmental Management Act of 2004. Section 4 of the Environmental Management Act recognizes the right to clean, safe, and healthy environment, section 5 provides for the right to bring an action on environment, and section 6 provides for the duty to protect the environment. The Act also establishes the National Environment Management Council (NEMC),⁶⁷³ which is the government body responsible for regulation of environment. Key functions of NEMC include carrying out environmental audits,

⁶⁷⁰ Ibid.

⁶⁷¹ See “The Right to A Healthy Environment” at <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module15.htm>.

⁶⁷² UNEP, What are environmental rights?, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>.

⁶⁷³ Section 17 of the Environmental Management Act, 2004.



reviewing and recommending for approval environment impact statements, and enforcing and ensuring compliance of the national environmental quality standards.⁶⁷⁴

LHRC's Human Rights and Business Survey 2021 Findings

In Tanzania, over the years, enjoyment of the right to a clean and healthy environment has been infringed due to the problem of environmental pollution, especially caused by individuals and businesses. Through the business and human rights programme, LHRC has been documenting different forms of environmental pollution caused by businesses, especially operations of companies/industries. In the period of 2020/21, LHRC documented at least 15 incidents of water pollution, air pollution, noise pollution, and land degradation in regions such as Dar es Salaam, Shinyanga, Dodoma, Mara, Tanga, Geita, Mtwara, Mbeya, and Pwani Regions.⁶⁷⁵ For instance, in **Dar es Salaam** industrial waste, usually chemical waste, dumped into Gide/Kibangu River was reported to contaminate the water in the river, which is also used for irrigation by peasants who grow vegetables and greens along the river. Community members and University of Dar es Salaam's Mabibo Hostel were also said to dump waste into the river.

In **Geita**, the survey found that mining activities have contributed to pollution of water sources. Interviewed community members in Katoma and Nyamalembo claimed that water in the sources was contaminated with chemical waste, with artisanal and small-scale miners said to be mainly responsible. Contamination of water sources was said to cause sickness to people who were consuming or using the water, including diarrhoea and skin infections. The United Nations Environment Programme (UNEP) has established that mercury-dependent artisanal and small-scale gold mining (ASGM) is the largest source of mercury pollution on Earth.⁶⁷⁶ Uncontrolled use of mercury by artisanal miners in Tanzania is a serious environmental concern. Mercury problem has prompted the Government of Tanzania to adopt an action plan to reduce use of mercury by artisanal and small scale miners in gold mining, in line with the Minamata Convention on Mercury of 2013.⁶⁷⁷

674 Ibid, Section 18.

675 See LHRC (2021), Human Rights and Business Report 2020/21, at www.humanrights.or.tz.

676 See Esdaile, L. J.; Chalker, J. M. The Mercury Problem in Artisanal and Small-Scale Gold Mining. *Chem. Eur. J.* 2018, 24, 6905-6916, at <https://chemistry-europe.onlinelibrary.wiley.com/doi/full/10.1002/chem.201704840#chem201704840-bib-0001>, accessed 20th June 2021.

677 See Jamhuri ya Muungano wa Tanzania, Ofisi ya Makamu wa Rais, Mpango-Kazi wa Taifa wa



In 2021, air pollution concerns were raised by community members who participated in LHRC's Human Rights and Business Survey 2021 in Dar es Salaam, Tanga, Geita, Mtwara, Mbeya, and Pwani Regions. **Dar es Salaam**, *MMI Steel Mills Industry* was implicated in air pollution due to smoke emitted to community members living and doing businesses around the area, and it was reported that the industry had been fined and warned by NEMC for environmental pollution. In **Geita**, the survey found that dust emitted from GGM mining operations was causing air pollution, contributing to tuberculosis (TB). Some of the interviewed residents of Nyamalembo Village remarked that a 9-year-old boy had recently caught TB because of the dust and was awaiting compensation from the mine.

Regarding land degradation, mainly caused by mining activities, LHRC documented concerns raised by community members in Manyara and Dodoma Region in May 2021. For instance, in **Manyara** interviewed community members expressed concern with the sinkholes (small but deep holes) created as a result of mining activities, which were damaging the environment. In **Dodoma**, sodium cyanide used in the mining activities was said to contaminate soil.

4.5. Impact of Covid19 on collective rights

As stated above, enjoyment of collective rights is dependent on enjoyment of individual rights covered under chapters two, three, and five of this report. As such, the impact of the Covid19 on these rights, as highlighted in the respective chapters above, also apply to collective rights. Sectors such as tourism and hospitality were hit the hardest by the pandemic, including in terms of loss of employment, reduced income, and loss of revenue on the part of the Government Provision of social services, especially health services, was disrupted by the pandemic, hence negatively impacting social development.

4.6. Relevant SDGs, TDV 2025, and Agenda 2063 Targets

Tanzania's achievement of these 2030 SDGs, TDV 2025, and Agenda 2063, depends on progress made in realization of collective rights:

Kupunguza Matumizi ya Zebaki kwa Wachimbaji Wadogo wa Dhahabu, Mutsari Mahusi, 2020-2025 at <https://www.vpo.go.tz/uploads/files/Mpango-Kazi%20wa%20Taifa%20wa%20%20Kupunguza%20Matumizi%20ya%20Zebaki%202020-2025.pdf>, accessed 20th June 2021.



Key SDG, TDV 2025, and Agenda 2063 Targets relating to Collective Rights	
SDGs	<p><u>SDG1 NO POVERTY</u>: End Poverty in all Its Forms Everywhere.</p> <p><u>SDG2 ZERO HUNGER</u>: End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture.</p> <p><u>SDG 5 GENDER EQUALITY</u>: Achieve Gender Equality and Empower All Women and Girls</p> <p><u>SDG12 RESPONSIBLE CONSUMPTION AND PRODUCTION</u>: Ensure Sustainable Consumption and Production Patterns.</p> <p><u>SDG13 CLIMATE ACTION</u>: Take Urgent Action to Combat Climate Change and Its Impacts.</p> <p><u>SDG17 PARTNERSHIPS FOR THE GOALS</u>: Strengthen the Means of Implementation and Revitalize the Global Partnership for Sustainable Development.</p>
TDV 2025	<p>High quality livelihood</p> <p>Peace, stability and unity</p>
Agenda 2063: The Africa We Want.	<p>ASPIRATION 1: A prosperous Africa based on inclusive growth and sustainable development</p> <p>ASPIRATION 3. An Africa of good governance, democracy, respect for human rights, justice and the rule of law</p> <p>ASPIRATION 4. A peaceful and secure Africa</p> <p>ASPIRATION 6: An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children</p>



CHAPTER 5: RIGHTS OF VULNERABLE GROUPS

Some groups of in the community are more likely than others to experience human rights violations. Recognizing their increased vulnerability, special protection for these groups is warranted, which is why there are various conventions and laws that specifically protect their rights. In Tanzania, vulnerable groups include women, children, persons with disabilities (PWDs), the elderly, persons living with HIV/AIDS, and refugees. This chapter highlights some key issues and developments relating to rights of vulnerable groups during the reporting period of 2021.

5.1. Women's Rights

Tanzania has ratified several conventions that protect the rights of women and girls.⁶⁷⁸ Several obligations arise from these conventions, the goal being to ensure women and girls enjoy their human rights, as guaranteed under the international bill of rights,⁶⁷⁹ equally with men and boys. Among the obligations are to eradicate all forms of discrimination against women through appropriate legislative, institutional and other measures and taking take appropriate and effective measures to address all forms of violence against women.⁶⁸⁰

Over the years, Tanzania has taken various steps to promote women's rights, including legislative and policy measures. Key milestones in this regard include the development of the National Plan of Action to End Violence Against Women and Children (NPA-VAWC); establishment of NPA-VAWC committees; affirmative action to increase women's political participation and representation in decision-making; women's economic empowerment initiatives; and establishment of police gender and children desks. The NPA-VAWC has been developed by consolidating eight different action plans addressing violence

678 Key women's rights conventions ratified by Tanzania are the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) of 1979; Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003; and SADC Protocol on Gender and Development.

679 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).

680 See Article 2(1) & 4(2) of the Maputo Protocol.



against women and children and currently, Tanzania is implementing the National Plan of Action to End Violence Against Women and Children (NPA-VAWC 2017/18 – 2021/22). As the plan comes to an end in 2022, LHRC’s Tanzania Human Rights Report 2022 shall provide an assessment of achievements and challenges in implementation of the plan, to inform the next plan.

With one year to go before the NPA-VAWC 2017/18 – 2021/22 comes to an end, violence against women (VAW) and discrimination remain key barriers to effective realization and enjoyment of women’s rights. VAW is a form of discrimination and constitutes human rights violation,⁶⁸¹ violating women’s 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.⁶⁸²

5.1.1. Gender-based violence (GBV): A key human rights concern for women and children

5.1.1.1. Trends on gender-based violence (GBV) and violence against children (VAC): Police crime statistics

Crime statistics released by the Tanzania Police Force (TPF) in January 2021 show that in the period of January to December 2020, a total of 42,414 incidents of GBV were reported in the whole of Tanzania, representing an increase of 3,049 incidents (7.7%) compared to the incidents reported in 2019.⁶⁸³ Regions (police regions) with most incidents were Arusha (5,740), Manyara (2,972), Tanga (2,848), Lindi (2,390) and Temeke (2,114). Regions which recorded the least incidents were mostly from Zanzibar, including Pemba North (69), Unguja South (86), Pemba South (95), and Unguja North (98).⁶⁸⁴ According to the police data, Tanzania Mainland recorded 41,673 of the 42,414 incidents of GBV (98%), of which 27,539(66%) involved female victims, and 14,134 (34%) involved male victims.

681 United Nations Human Rights, Office of the High Commissioner, Violence Against Women, Information Series on Sexual and Reproductive Health and Rights, available at http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf, accessed 30th December 2018.

682 See Nieves Rico, Gender-Based Violence: A Human Rights Issue, available at <http://www.cepal.org/mujer/noticias/paginas/9/27409/genderbasedviolence.pdf>, accessed 30th December 2018; Amnesty International, Violence Against Women Information, available at <https://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women-information>, accessed 30th December 2018.

683 Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, *TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, JANUARI – DESEMBA 2020*. [Tanzania Police Fore & National Bureau of Statistics, Crime and Traffick Incidents Statistics, January to December 2020]

684 Ibid.



Statistics provided by the ministry responsible for gender for the year 2021 indicate that incidents of GBV decreased from 42,414 in 2020 to 29,373 in 2021, a decrease of 30.8%.⁶⁸⁵ Out of the 29,373 reported incidents, 20,897 involved female victims and the remaining 8,476 were male victims⁶⁸⁶

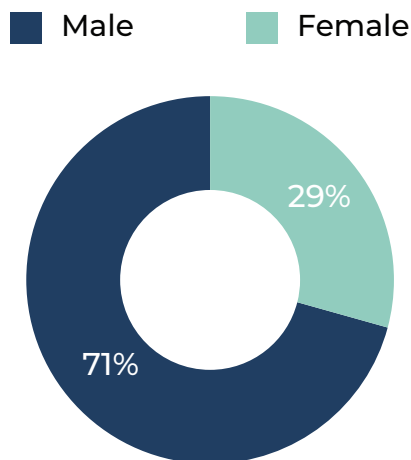


Figure 34: %Male and female victims of GBV in Tanzania – Jan to Dec 2021

Source: Police crime statistics, 2022

Women and girls have been constituting the majority of victims of GBV in the past five years. From 2017 to 2021, there has been a total of 134,856 female victims. Compared to 61,199 male victims during this period, the **number of female victims is more than two times those of male victims**. On average, there have been 26,971 female victims and 12,239 male victims per year during this period.

685 WIZARA YA MAENDELEO YA JAMII, JINSIA, WANAWAKE NA MAKUNDI MAALUM
WASILISHO KUHUSU MTAKUWWA (2017/18 – 2021/22), Hoteli ya Morena, Dodoma, 26 Februari, 2022.

686 Ibid.



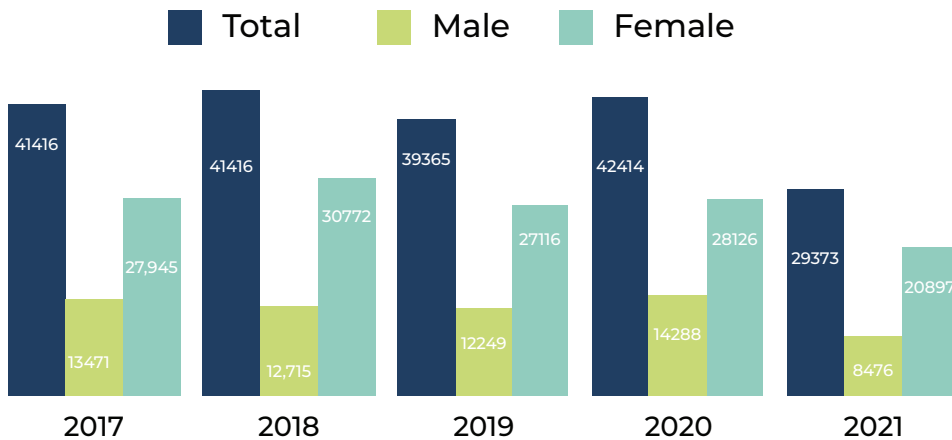


Figure 35: GBV victims in Tanzania by sex - 2017 to 2021

Source: *Ministry of Community Development, Gender, Women and Special Groups*

12,817 out of the 29,373 reported incidents of GBV (44%) for the year 2021 were recorded in Arusha, Ilala, Tanga, Kinondoni, and Rukwa police regions (or Dar es Salaam, Arusha, Tanga, and Rukwa Regions). Figure 36 below shows the number of reported incidents in each of these regions.

Top 5 regions for GBV in 2021

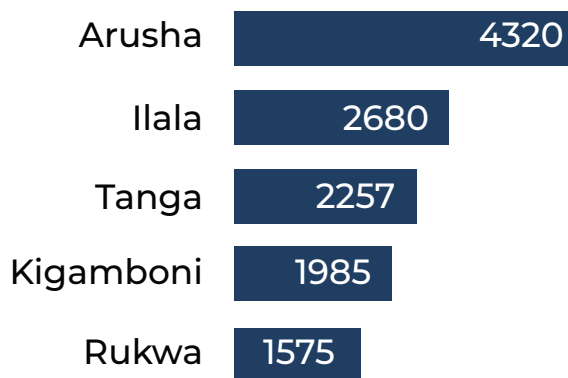


Figure 36: Top five police regions for GBV in 2021

Source: *Police data, 2021*



Table 20: Top five regions for GBV in Tanzania – 2017 to 2021

	Region	#Times in top 5	Top 5 in 2021	Top 5 Rank
1	Arusha	5	Yes	1
2	Temeke	4	No	N/A
3	Kinondoni	3	Yes	4
4	Tanga	3	Yes	3
5	Dodoma	2	No	N/A

As indicated in table 20 above, Arusha Region dominates in terms of the number of times the regions have been in the top 5 leading regions for GBV in the past 5 years, appearing all five times. Temeke Police Region follows in second, having featured four times, while Kinondoni and Tanga Regional Polices both have featured three times. Dodoma is also in the mix, having featured two times in the period of 2017 to 2021. However, if we ignore the “regional police category” and go with the normal “region” category then Dar es Salaam (comprises Kinondoni, Ilala and Temeke Districts) leads, with at least one of its districts of Kinondoni, Temeke, and Ilala appearing each year. Kinondoni and Temeke have even been more dominant, taking top spots from 2017 to 2019.

LHRC’s View: It is high time for Tanzania to enact a GBV law. Several countries across the world already have such law in place. For instance, in Bulgaria there is the Law on Protection Against Domestic Violence (2005), in South Africa there is the Domestic Violence Act (1998) of South Africa, in Malaysia there is the Domestic Violence Act (1994) of Malaysia, in India there is the Protection of Women from Domestic Violence Act (2005), in Sierra Leone they have the Domestic Violence Act (2007) of Sierra Leone, and in Namibia there is the Combating of Domestic Violence Act (2003) of Namibia.⁶⁸⁷

LHRC’s Call: The Government to enact a GBV law to prevent and address GBV in line international human rights violations.

⁶⁸⁷ See UN Women, Definition of domestic violence, 11 December 2010, at <https://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>.



5.1.1.2. Legal action against perpetrators of GBV and VAC

In 2021, the Tanzania Police Force (TPF), the National Prosecutions Service (NPS), and the Judiciary, collaborated to ensure legal action is taken against perpetrators of GBV and VAC. For instance, in April 2021, it was revealed in **Kigoma** that 138 out of 881 GBV and VAC cases documented by the police gender and children desks in the region had been filed in court in the past six months.⁶⁸⁸ According to the desk coordinator, Doris Sweke, one of the challenges that they face in the region is lack of cooperation from families of the victims, who persuade or pressurize the victims to turn against the prosecution in court.⁶⁸⁹ In **Dar es Salaam**, it was reported that out of 1,071 cases of GBV and VAC reported in Kinondoni Police Region in the period of June 2020 to July 2021, only 333 had been filed in court.⁶⁹⁰

In May 2021, the budget speech for the ministry responsible for gender and children, revealed that in the period of July 2020 to April 2021, a total of 11,270 GBV cases and 6,651 VAC cases were reported and handled by the ministry.⁶⁹¹ Out of these GBV and VAC cases, only 1,431 were filed in court.⁶⁹²

LHRC's View: Despite the good work that is done by TPF and NPS, the percentage of GBV and VAC cases that is filed in courts of law appears to be below 50%. LHRC understands there are evidentiary obstacles which contribute to this situation, but efforts need to be made to overcome the challenges and increase the percentage of cases brought to court for determination. Taking an example of Kigoma above, only 16% of GBV and VAC cases proceeded to court, while for the case of Kinondoni Police Region in Dar es Salaam, the percentage is 31%.

LHRC's Call: TPF and NPS to strengthen investigation capacities to ensure increased pace of investigation of GBV and VAC cases, which in turn shall result into increased percentage of cases filed in court. Community members should also be encouraged by stakeholders, including CSOs and religious leaders, to cooperate with the authorities to ensure smooth investigation and prosecution of GBV and VAC cases.

688 LHRC Media Survey & Human Rights Monitoring.

689 Ibid.

690 Ibid.

691 HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. DKT. DOROTHY GWAJIMA (MB), KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2021/22, at <https://www.jamii.go.tz/uploads/publications/sw1638275486-HOTUBA%20YA%20WAMJW%202021.22.%20BUNGENI%20-%202011%20MEI%202021.%20FINAL.pdf>

692 Ibid.



5.1.2. Violence Against Women

5.1.2.1. Trends on violence against women: Police crime statistics

In 2020, incidents of violence against women (VAW) documented by the police increased by nearly 3000 incidents compared to the year 2019. In July 2021, the Director of Criminal Investigation (DCI), Camilius Wambura, revealed that a total of 15,131 people were subjected to GBV in the period of January to June 2021, a decrease of 4,209 people (21.8%) compared to the same period in 2020.⁶⁹³ He noted that during this period, the region which recorded most GBV incidents was Arusha (1,697), followed by Ilala (1,486), Tanga (1,347), Kinondoni (924), and Lindi (780).⁶⁹⁴

Police data for the year 2021 show that a total of 11,138 VAW incidents were reported, a decrease of 8,670. Despite this increase, the number is still big as is the risk, as it represents an average of 1,490 women subjected to VAW each month across Tanzania. This equals to 50 women being subjected to different forms of VAW every day.

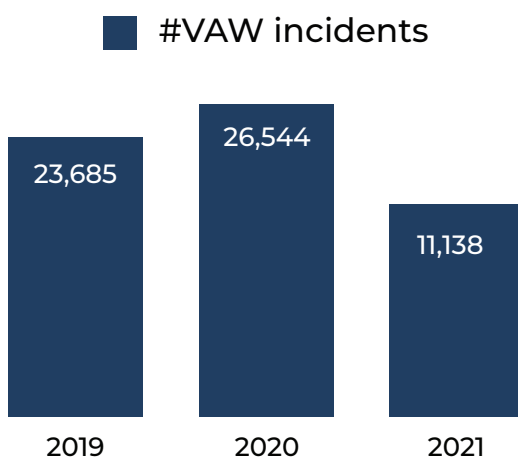


Figure 37: #VAW incidents recorded by police 2019 - 2021

Source: *Tanzania Police Force*

⁶⁹³ LHRC Media Survey 2021.

⁶⁹⁴ Ibid.



5.1.2.2. Situation of violence against women: Human Rights Survey findings

Reported incidents and Community Perceptions of VAW

During the Human Rights Survey 2021, participants were asked to give their opinions on violence against women. They were asked to what extent violence against women is a problem in their community. About half of the respondents (52%) perceived violence against women to be a serious problem in their community, closely followed by those who perceive it to be a moderate problem (41%). Less than 10% of the respondents perceived violence against women to be either a minor problem or not at all a problem, as indicated in figure 38 below.

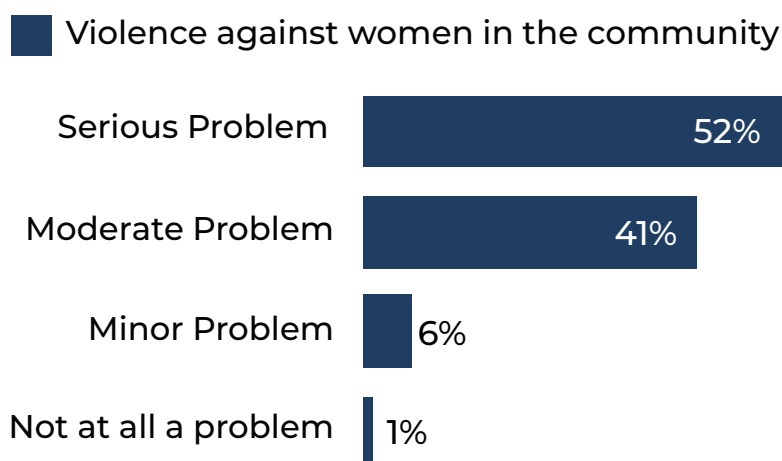


Figure 38: %Survey participants' perceptions on violence against women in the community

Source: Field data, 2021

Survey respondents were also asked if they had witnessed or heard of any incident or incidents of violence against **women in the** period of 2021. Majority of them (66%) claimed that they had indeed either witnessed or heard about an incident or incidents of violence against women in their community, while 35% said they had neither witnessed nor heard.



Common Forms of Violence Against Women

Violence against women (VAW) can manifest in different forms, broadly as physical violence, sexual violence, economic violence, and emotional or psychological violence. Widespread forms of VAW include domestic and intimate partner violence, especially wife or partner beating; acts of sexual violence such as rape and sodomy; sexual harassment; femicide; economic abuse; FGM; and forced marriage.⁶⁹⁵ During the Human Rights Survey 2021, respondents were asked to give their opinions on the different forms of violence which are common in different parts of Tanzania, particularly rape, sodomy, wife or partner beating (domestic violence), verbal abuse/humiliation, being badly injured or killed by intimate partner due to jealousy, being killed over witchcraft suspicion, denial of inheritance/property ownership, unwarranted touching of body parts or sexual harassment, and sexual corruption/sexortion. Beating (domestic violence) and verbal abuse/humiliation were cited as most serious problems by over half of the respondents (both 54%), and apart from being killed over witchcraft suspicion, majority of respondents cited other forms of violence as either serious or moderate problems, including rape and intimate partner violence. The responses of the respondents are summarized in table 21 below.

Table 21: Survey participants' perceptions on different forms of violence against women in Tanzania Mainland

Form of Violence	Serious problem	Moderate problem	Minor problem	Not at all a problem
Rape	34%	48%	14%	4%
Sodomy	23%	41%	30%	6%
Beating (domestic violence)	54%	38%	7%	1%
Verbal abuse/humiliation	54%	36%	9%	1

⁶⁹⁵ See UN Women "Forms of Violence against Women" 31 October 2010, at <https://www.endvawnow.org/en/articles/296-forms-of-violence-against-women-.html>, accessed 23rd November 2021.



Badly injured or killed by intimate partner due to jealousy	33%	36%	23%	8%
Killed over witchcraft suspicion	12%	31%	34%	23%
Denial of inheritance/property ownership	37%	40%	20%	3%
Unwarranted touching of body parts	35%	43%	18%	4%
Sexual corruption/sexortion	42%	35%	18%	5%

Source: *Field data, 2021*

In some of the regions, such as Dar es Salaam, social welfare officers who participated in the survey stated that there have been many complaints by women being forced to engage in sodomy (anal sex) by their spouses.⁶⁹⁶

Major Perpetrators of VAW

Field data shows that most women suffer violence at the hands of their intimate partners, either a husband or a lover. Husbands were reported to be the major perpetrators, especially for subjecting their wives to domestic violence in the form of beating. During this reporting period, husbands were also implicated in different forms of economic violence against women and psychological violence, especially in rural areas.

Family members, especially relatives of a deceased husband, were also mentioned as perpetrators of violence against women, especially widows. Several incidents of widows being chased out of the house by such relatives were reported.

Drivers of VAW

Poverty or lack of income for women continues to be a key driver of violence against women, as some women feel that they do not have

⁶⁹⁶ Dar es Salaam Field Report 2021.



many options rather than to stay in a violent relationship or marriage due to lack of income and/or resources. This was revealed by survey participants across all 20 regions that were visited. For instance, in Dar es Salaam, some of the interviewed participants cited lack of income and financial resources as a key challenge for women to leave abusive or violent relationships or marriages.⁶⁹⁷ In Morogoro, it was reported that some women decide to condone intimate partner violence because if they report their partners to the authorities and get arrested then they will lose a breadwinner.⁶⁹⁸

“There is a man lives in Lukobe Ward who regularly beats his wife and son, But every time he gets arrested the wife begs for his release because he is the only breadwinner.”

- SWO, Morogoro Municipality

Patriarchy, which ensures men control decision-making, was cited as another factor for prevalence of VAW. Jealousy was also mentioned as important factor in men’s violence against women, **particularly** intimate partner violence (IPV).

Alcoholism is another key factor that was said to drive violence against a partner. This factor was especially identified as key problem in **Iringa** Region, whereby alcoholism, fueled by a cheap traditional liquor called “*ulanzi*,” drives men to physical violence against their spouses. It was revealed that domestic violence against women intensifies during the harvesting period, whereby the price for traditional liquor goes as down as Tshs. 200⁶⁹⁹. In one incident in the region, a man was arrested for severely beating his wife, who had to be hospitalized, for allegedly taking too long to open the door for him after returning very late from drinking the traditional liquor. Alcoholism, especially among men, was also said to be a key driver of violence against women and children in Rombo District, **Kilimanjaro** Region. Alcoholism in the district, fueled by availability of cheap local liquor, largely contributes to family disputes and quarrels.

Women fear the social and economic consequences that may result from reporting their husbands to local authorities, including the escalation of violence or being left without financial support in the case of divorce.

697 Dar es Salaam Field Report 2021.

698 Morogoro Field Report 2021.

699 Iringa Field Report 2021.



Preference of settling VAW at family level is also a factor contributing to prevalence of VAW. In regions such as Iringa, Kagera, and Geita, prevalence of VAW was said to be contributed by the tendency of settling VAW matters at family level, which usually translates into poor cooperation with justice actors.⁷⁰⁰ This situation creates impunity for the perpetrators as they know no legal action shall be taken against them.

Other factors contributing to VAW include belief in witchcraft; low awareness about human rights and GBV; discriminatory customs and traditions, including those denying women the right to inheritance and land ownership; extra-marital affairs; and condoning of violence.

5.1.3. Physical Violence Against Women: Intimate Partner Violence and Killings of Women Motivated by Jealousy

5.1.3.1. Overview

Across the globe, the World Health Organization (WHO) has established that intimate partner violence (IPV) is the most common type of violence experienced by women. In Tanzania, this type of violence was dominant once again in 2021, as killings of women by their intimate partners continued making headlines. Like in 2020, jealousy emerged as the main cause of intimate partner violence.

5.1.3.2. Reported incidents documented by LHRC

As discussed in Chapter Two above, IPV and killings reemerged as a key human rights concern in 2021, jeopardizing right to life, right to health, and freedom from violence. LHRC documented a total of 35 reported incidents of IPV killings through human rights monitoring and media survey,⁷⁰¹ with the overwhelming majority of the victims (89%) being women. In total, LHRC documented 31 incidents of women killed by their intimate partners, a decrease of 1 incident compared to the incidents documented by LHRC in 2020. Out of the 35 killings of women and men by their intimate partners, overwhelming majority (72%) were motivated by jealousy.

⁷⁰⁰ Iringa Field Report 2021; Kagera Field Report 2021; & Geita Field Report 2021.

⁷⁰¹ These incidents were reported Dar es Salaam, Dodoma, Singida, Kagera, Mara, Lindi, Mbeya, Iringa, Geita, Kilimanjaro, Tabora, Songwe, Katavi, Njombe, Mtwara, and Shinyanga Regions.



Incidents of killings caused by IPV were widely reported in 2021. For instance, in July 2021, the Director of Criminal Investigation (DCI), Camilius Wambura, revealed that more incidents of women killed by their intimate partners have been reported in different parts of Tanzania Mainland, most of them motivated by jealousy.⁷⁰² He mentioned that in July at least five incidents were reported, four of them involving married women. In August 2021, it was reported that police in **Mbeya** had arrested Mabula Joseph (31), resident of Inyala area, for killing his partner, Jema Mela (36), because of jealousy. It was reported that he got mad after the woman told him she did not wish to continue with the relationship. In September, police in **Pwani** reported that on 5th September 2021 two lovers, Godfrey Pius Mandai (48) and Veronica Gerald (42), were found dead at their home after drinking poison. It was reported that the man gave his lover a glass of juice he had mixed with poison with the intention of killing her because of jealousy, before also drinking the juice and committing suicide. The man left a suicide note. In November, police in **Kilimanjaro** Region reported that a man called Augustino Moshi (37), resident of Rombo District, had killed his wife, Atanasia Augustine Moshi (31), by hacking her with a sharp object, before committing suicide by hanging. Police revealed that his actions were motivated by jealousy.

Incidents of IPV that did not result into killings were also reported in various parties of Tanzania Mainland. In **Morogoro**, one of the shocking incidents of IPV was a vicious attack on Evelna Mnene (36), resident of Gairo District, by her husband, Ahadi Enock Ngwei, who stabbed her with a knife on different parts of her body in September 2021.⁷⁰³ A similar incident was reported in **Geita** in December 2021, where the High Court of Tanzania – Mwanza Zone, sitting in Geita Region, imposed a 10-year sentence on Peter James (56) after convicting him of attempted murder of his wife.⁷⁰⁴ He reportedly attacked his wife with a machete on different parts of her body, causing her serious injuries. In the same month, it was reported in **Dodoma** that Mariam Paul (26), resident of Mbuyuni area in Dodoma had been left in severe bodily pain and lying on a bed for several days following a heavy beating from her husband.⁷⁰⁵ The incident occurred in November 2021.

702 LHRC Media Survey 2021.

703 LHRC Human Rights Monitoring & Media Survey 2021.

704 Ibid.

705 Ibid.



Overall, in 2021, LHRC documented at least 50 reported incidents of IPV against women, of which 31 resulted into death.

5.1.3.3. What the community members say: Human Rights Survey 2021 findings

“There is a man who goes by the name of Yona who poured petrol on his wife and burnt her to death, before committing suicide. They have left behind three children and the man’s actions were said to be motivated by jealousy.”

Community member, Morogoro

Community members who responded to the Human Rights Survey 2021, conducted in 20 regions of Tanzania Mainland, were asked whether women being badly injured or killed by their intimate partners because of jealousy is a problem. Overall, over two thirds of the respondents (69%) think this is a problem, of which 33% consider it to be a serious problem and 36% feel it is a moderate problem. Only 31% of the respondents were of the opinion that intimate partner violence and killing motivated by jealousy is either a minor problem or not a problem at all, as indicated in figure 39 below.

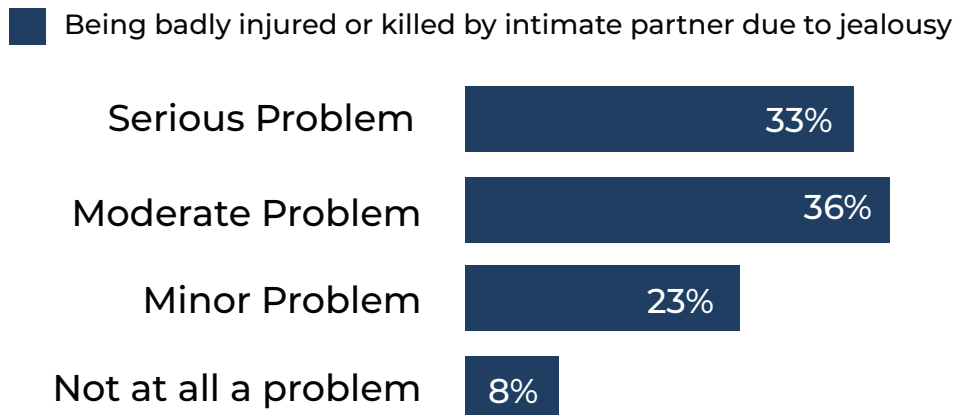


Figure 39: %Responses of survey participants on whether women being badly injured or killed by intimate partner due to jealousy is a problem in their community

During interviews with key informants, the issue of smartphones and social media was raised as a factor contributing to jealousy and driving partners to act in rage. A social welfare officer who responded to the survey had this to say during an interview:



“There should reach a time intimate partners should go their separate ways if they can no longer stay with and tolerate each other. Religious belief is a contributing factor for people to stay in abusive relationships, including the Christianity Faith, which forbids divorce.”

SWO, Dar es Salaam

In **Mara** Region, it was revealed that jealousy is a key factor in intimate partner violence and killing, especially among the *Kurya* tribe. One respondent revealed during an interview that Kurya men are naturally very jealous and will not hesitate to resort to violence if they suspected their spouses of cheating.

LHRC’s View: Intimate partner violence has become a big challenge and has far-reaching ramifications for families and the society at large. It destabilizes families, has negative impact on children, and affects women’s ability to function properly and become more productive members of the society. It is a public health problem and human rights concern that affects women’s physical and mental health, subjecting victims to psychological impacts such as depression, anxiety, and post-traumatic stress disorder (PTSD).

Addressing the problem of VAW is essential in achieving SDG 5 on gender equality, which targets elimination of all forms of violence against all women and girls in the public and private spheres. It is essential in achieving the high-quality livelihood goal in the Development Vision 2025, which calls for gender equality and empowerment of women.

LHRC’s Call: Deliberate efforts are needed to address VAW, starting with increasing the budget allocation for implementation of the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22.⁷⁰⁶ Furthermore, LHRC calls for collective efforts and collaboration among community actors, including religious leaders, community leaders/elders and household members, to address this problem. Increased awareness to break the patriarchal system, which has normalized violence, and economic empowerment among women will help them walk away from any signs of violence at earlier stages before they escalate and get out of control resulting to brutal killings and death.

⁷⁰⁶ Contains eight thematic areas, namely: Household Economic Strengthening; Social norms and values; Safe Environment in Public Spaces; Parenting Family support and relationships; Implementation and Enforcement of Laws; Response and support services; Safe schools and life skills; and Coordination.



5.1.4. Other Incidents of Physical and Psychological Violence Against Women

5.1.4.1. Domestic/intimate partner violence and its impact: LHRC's Media Survey and Human Rights Monitoring 2021

During this reporting period, LHRC documented at least 70 incidents of physical violence against women, which are 3 times those reported in 2020. The major issue of concern is domestic violence, especially in the form of wife or spouse beating and assault. In 2020, LHRC documented at least 23 reported incidents of wife beating and other forms of domestic violence.

The incidents were reported in different regions, including Katavi, Kilimanjaro, Geita, Tabora, Shinyanga, Dar es Salaam, Arusha, Mwanza, Pwani, and Mara. The victims suffered physical abuse for different reasons, including witchcraft suspicion and belief in witchcraft, sexual intercourse, jealousy, child custody, long illness, and alcoholism. In **Katavi**, police arrested Nestory Ntibigimana (62), resident of Kabanga Village in Tanganyika District, for killing his wife, Farazia Nzigimiyana (60), over witchcraft suspicion. When he was questioned by the police, he said that he killed his wife because he suspected that she was bewitching him.⁷⁰⁷ The incident occurred in May 2021.

In July 2021, police in **Kilimanjaro** reported that a man stabbed to death his wife, Fausta Silayo (22), after she had refused to engage in sexual intercourse with him one month after giving birth. The incident occurred on 23rd July 2021 and the woman died the following day while receiving treatment at a hospital. The man fled to Kenya after committing the crime. In another incident in the region, another woman, Magdalena Makishe (61), was reportedly severely beaten and killed by her husband, Zakayo Kimaro, for complaining about her husband's decision to sell her farming bulls. It was reported that the woman had two farming bulls and her husband forced to sell one of the bulls when she was not at home. When she returned and did not find the bull, she started asking her husband, who reacted by beating her with a stick to death. The incident occurred in April 2021.

In **Shinyanga**, it was reported in September 2021 that Jacob Mwajenga (35), attacked his wife, Debora Rwekwama (34), an employee of CRDB Bank, and chopped her left arm with a machete because of jealousy.

⁷⁰⁷ LHRC Media Survey 2021.



He beat her until she fainted before chopping her arm. In **Mwanza**, a police officer, Juliana Kwayi, complained and called for legal action against her husband, Nicolus Laurent, who constantly beats her and cause her severe pain and injuries. She stated that her husband had been regularly physically abusing her.

In **Njombe**, LHRC's human rights monitoring in 2021 revealed an incident involving a 25-year-old woman, Zaituni Ngimbutze, resident of Lyamkena Ward in Makambako District, whose husband put a padlock on her private parts to prevent her from having sexual intercourse with other men.⁷⁰⁸ The padlock caused the woman a lot of discomfort and severe bodily harm when her husband pulled it following a quarrel.



Picture 22: A woman in Rukwa whose intimate partner cut-Off her ears because of jealousy

Picture credit: Mwananchi

708 LHRC Human Rights Monitoring 2021.



A sick woman killed by husband and son in Tabora, who were tired of taking care of her

In August 2021, it was reported that a 57-year-old woman, resident of Puge Ward in Nzega District, Tabora Region, was killed by her husband and son, who killed her and then hanged her to make it look like she had committed suicide. The incident occurred on 4th August 2021 in Isalalo Village, and when questioned by police, the perpetrators revealed that they killed her because she had been sick for a long time, and they were tired of taking care of her.

5.1.4.2. Community perceptions on domestic violence: LHRC's Human Rights Survey 2021 findings

The LHRC human rights survey conducted in 20 regions of Tanzania Mainland also showed that domestic/intimate partner violence is a serious problem. Respondents were asked to give their opinions on the magnitude of the problem of domestic violence, particularly wife beating. Half of the respondents (54%) said that domestic violence/wife beating is a serious problem in the community, while over a third (38%) were of the opinion that it is a moderate problem. Only 8% of the respondents perceived domestic violence/wife beating to be either a minor problem or not at all a problem in their community.

■ Being beaten (domestic violence) as a problem in the community

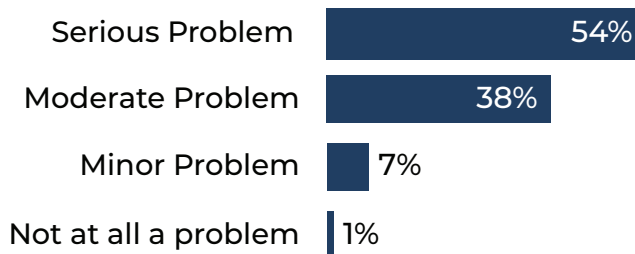


Figure 40: Survey participants' perceptions on domestic violence/wife beating



Community members who participated in the survey were also asked about verbal abuse and humiliation, whether it is a problem in their community. Over half of the respondents (54%) said it is a serious problem in the community, followed by over a third (36%), who believed verbal abuse and humiliation to be a moderate problem. Only 1% indicated that it is not at all a problem, while 9% said it is only a minor problem.

■ Verbal abuse/humiliation as a problem in the community

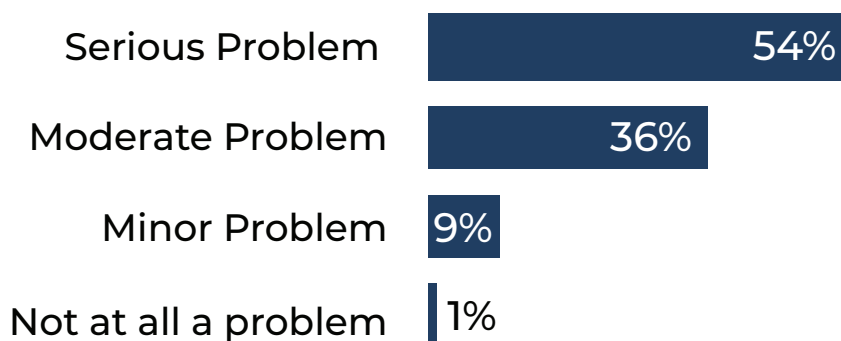


Figure 41: Survey participants' perceptions on verbal abuse/humiliation against women

In **Pwani** Region, one of the interviewed respondents narrated her ordeal with her co-parent which left her with several injuries on her face. Habiba **Kajela** (34), claimed that her husband went to her workplace drunk and beat her while demanding to custody of their children.⁷⁰⁹

In **Mara**, physical violence against women was said to be a common occurrence. One of the interviewed respondents in the region, who is a paralegal, said physical violence, especially in the form of wife or spousal beating has almost been normalized and justified in most parts of the region, with patriarchy and persistent gender inequalities and gender biases key drivers of such violence.⁷¹⁰ He further noted:

"...here, in our community, women are often beaten by their husbands...there is one case of a man who was severely beating his wife and calling her 'his cow.'..."

Paralegal, Mara

⁷⁰⁹ LHRC Human Rights Survey 2021: Pwani Field Report.
⁷¹⁰ Mara Field Report 2021.



In **Mara**, the survey also found that women working in the hospitality sector, especially barmaids, are usually subjected to different forms of sexual and psychological abuse, including verbal abuse and unwarranted touching of body parts, with the latter also found to be the case in all other regions that were surveyed. Lack of legal action against perpetrators was observed to be a factor contributing to impunity among the perpetrators. For instance, social welfare officers in Musoma MC and Tarime DC who participated in the survey stated that they had recorded more than 150 cases of psychological violence against women in the months of January to July 2021, but none of them had been taken to court.

In Geita, the survey also found physical violence against married men to be somewhat normalized. Some of the interviewed women explained that they come to expect and even accept this violence because of prevailing community norms. Women who divulge an experience of physical abuse to friends or family members quickly learn that their experience is not an anomaly. **Interviewed respondents** in the region attested to the domestic violence being a serious problem in the community, with devastating consequences for victims (women), their families, and the community at large. For instance, a paralegal revealed that she witnessed a man severely beating his wife in public and she had to call the police to rescue her. However, the beating caused the woman's lungs to rupture, did not receive proper medical treatment, experienced health complications, and ultimately succumbed to death in July 2021.⁷¹¹

5.1.4.3. Women killed under suspicious circumstances in some parts of Arusha

For the past three years, Arusha Region has been on alert due to killings of women under suspicious circumstances, believed to be motivated by belief in witchcraft.⁷¹² According to the police in the region, nine women have been killed during this period, most recently Anna Ng'ida, who was killed in February 2021.

5.1.4.4. Health workers physically and psychologically abusing pregnant women

Hospital settings have been identified as one of the places where patients, especially pregnant women, face different forms of abuse, especially physical and psychological abuse. In January 2021, The

711 Geita Field Report 2021.

712 LHRC Media Survey 2021.



District Executive Director (DED) of Sumbawanga Municipality in Rukwa Region, Jacob Mtalinya, suspended a nurse, Valencine Kunyanga, for verbally abusing and slapping a pregnant woman who gave birth on the floor after she could not wait any longer to be attended.⁷¹³ According to witnesses, two hours after midnight on 10th January 2021, the pregnant woman entered into labour and started pleading for help but was told by the nurse to wait. When labour pain became too much, she decided to spread her khangas (garment) and delivered the baby by herself. When the nurse came back she got angry and started slapping her.⁷¹⁴

5.1.4.5. Single Mothers and the Issue of Child Maintenance

The issue of child maintenance has become a thorn for many single mothers in different parts of Tanzania, who complain about their co-parents not living up to their responsibilities for their children. This problem was attested by various respondents during the human rights survey conducted in 20 regions of Tanzania Mainland, including social welfare officers. Legal aid providers, including LHRC, have also been receiving many complaints about child maintenance.

In Morogoro MC alone, social welfare officers revealed that in the whole of 2020 they received 135 cases of child maintenance, but in the period of January to July 2021, they had received 119 cases.⁷¹⁵

5.1.4.6. Men abandoning their spouses and children, causing them psychological harm

During this reporting period, there were many reported cases of men abandoning their families. This was said to be a big problem in nearly all the regions that were visited during the survey, especially in rural areas. For instance, a social welfare officer in Pwani Region revealed that there are many cases of men abandoning their families in the region. A young woman in the region, Shani Shaaban (25), revealed during an interview that she was married by Ally Bakari Chenje when she was just 14 years old, and they have four children together. But she is now suffering with their children after her husband abandoned them since December 2020, considering that she has no job.

713 LHRC Media Survey 2021.

714 Ibid.

715 LHRC Human Rights Survey 2021: Morogoro Field Report.



“...there are many reported cases of men abandoning their families, leaving them in poverty.”

SWO, Pwani



Picture 23: A young woman in Pwani Region whose husband abandoned her and their three children

Incidents of men abandoning their families were also reported in nearly all surveyed regions, especially in Mara, Geita, and Kigoma. In **Mara**, some of the women who were interviewed said that some men tend to abandon their wives so that they can go and start life with a another, usually younger, woman.

“..my husband married another woman and left me with the children without any support. I had to work hard to build my fish selling business to take care and educate my children..”

Community member, Mara

In **Tanga, Kigoma, and Singida** Regions, some of the interviewed women revealed that one of the reasons men abandon them is saying no to marital sodomy, whereby the options are usually beating or neglect/abandonment.

Through media survey, LHRC also documented incidents of men abandoning their families in regions such as Lindi, Morogoro, Rukwa,



Songwe, Kilimanjaro, Dar es Salaam, Njombe, Katavi, and Tanga. In **Katavi**, a 29-year-old woman, resident of Tanganyika Village, was abandoned by her husband, who also took with him some of her properties.

5.1.5. Sexual Violence against Women

Sexual violence continues to be a problem for women in different parts of Tanzania. During this reporting period, LHRC documented at least 51 incidents of sexual violence, through human rights survey, human rights monitoring, and media survey. This equals to 19 incidents less than those documented by LHRC in 2020 across Tanzania Mainland. Most of these incidents were of rape, reported in different regions, including Mwanza, Dar es Salaam, Morogoro, Lindi, Mara, Tabora, Dodoma, Pwani, Mbeya, Katavi, Manyara, and Tanga.

Police statistics indicate that acts of rape perpetrated against women and girls has been decreasing in the period of 2019 to 2021. In 2019, the number of reported incidents was 7,837, which slightly decreased to 7,263 incidents in 2020.⁷¹⁶ In 2021, the number of rape incidents recorded by the police further decreased to 6,305. This represents a decrease of 958 incidents (13.2%).⁷¹⁷

5.1.5.1. Rape and sodomy

One of the shocking incidents reported in 2021 was an incident of a man in **Dodoma** raping his 75-year-old mother. Another older woman (76 years), who is blind, was raped in Kibiti District, **Pwani**. In **Katavi**, yet another older woman (aged 80 years), resident of Uwanja wa Ndege Ward in Mpanda District, was raped in July 2021 by a perpetrator who broke into her house. Another shocking incident is that of a 42-year-old woman who was gangraped in **Morogoro**. In **Kigoma**, parents of a victim of rape (20) years, forced the perpetrator to marry her in May 2021.⁷¹⁸ Some of the victims of rape were not only raped but thereafter also killed by the perpetrators. In 2021, LHRC documented at least two such incidents, reported in **Katavi** and **Manyara**.

Table 22: Some of the reported incidents of sexual violence against women (rape and sodomy) documented by LHRC in 2021

716 Tanzania Police Force Statistics, 2020 & 2021.

717 Tanzania Police Force Statistics, 2021.

718 LHRC Human Rights Monitoring, 2021.



Reported Incident	Reported Date
Mwanza: Flora Ndabigaye (27), resident of Sanjo Village in Misungwi District, was raped and killed. According to the police in the region, she was found dead 17 meters from her house, and it was determined that she had been raped then strangled to death. Mussa Enock (23) and Abisai Juma (22) were arrested in connection with the incident.	14 Jan 2021
Dar es Salaam: A court in Dar es Salaam convicted Afidhi Mbunda (43) of raping his 18-year-old daughter and sentenced him to 20 years in prison.	14 Apr 2021
Morogoro: A woman aged 41 years, resident of Mtakuja Village in Mvomero District, claimed that she had been gang-raped by nine men. She added that although the men were arrested, she later saw them around the streets and have been threatening her. The incident occurred on 13 th April 2021.	28 May 2021
Lindi: In May 2021, Ali Chikukuru (21), resident of Naunambe Village in Ruangwa District, was sentenced to life in prison after he was found guilty of sodomizing a 55-year-old woman in November 2020.	3 May 2021
Dar es Salaam: Police in Ilala District arrested Said Hassan Said (26), a prison officer and resident of Ukonga area, and was looking for another man for raping and sodomizing a 29-year-old woman. The incident occurred on 1 st September 2021. It was reported the two men grabbed the woman and forced her into their car, took her to a house near Ukonga Prison, and gangraped and sodomized her, causing her severe pain and great bodily harm.	3 Sep 2021
Tabora: Nzega Resident Magistrate Court imposed a 30-year sentence on Maganga Antoni (30) after finding him guilty of armed robbery and sodomy. On 5 th June 2021 he invaded the house of a woman in Wita Village, robbed her of Tshs. 42,000 and then sodomized her.	18 Oct 2021
Pwani: Police arrested Mohamed Said Sobo (24) for raping a 76-year-old woman who is blind, resident of Ruaruke Ward in Kibiti District.	27 Apr 2021
Morogoro: Police in Mvomero District arrested three men in connection with a gangrape of a 42-year-old woman, resident of Wami Village in Luhando Ward, while walking back home with her husband in April 2021.	11 Apr 2021
Kigoma: 20-year-old woman, resident of Janga Ward in Kigoma DC, was raped by a man called Hassan. The matter was taken to the village chairperson to be resolved amicably. Parents of the victim forced the perpetrator to marry her, which he did on 1 st May 2021.	1 May 2021



Mbeya: Female teachers in Rejewa Ward in Mbarali District complained about sexual harassment suffered at the hands of a headteacher at one of the primary schools in the region, who was boasting that nothing can be done against him because he is the chairperson of CWT at district level. One of the victims reportedly requested for transfer to another school	30 Apr 2021
Katavi: An older woman aged 80 years, resident of Uwanja wa Ndege Ward in Mpanda District, was raped in July 2021 by a perpetrator who broke into her house.	19 Jul 2021
Katavi: A 24-year-old woman, resident of Sibwesa Village in Tanganyika District, was brutally raped and murdered by unknown perpetrators in August 2021.	24 Aug 2021
Manyara: A 37-year-old woman, resident of Kijungu Village in Kiteto District, was raped and murdered by unknown men in September 2021.	4 Sep 2021

Source: Media Survey 2021 & Human Rights Monitoring 2021

Women who are drunk or intoxicated become easy targets for sexual violence. For instance, in September 2021, it was reported in Chunya District in **Mbeya** that a 25-year-old woman was raped by three men she met at a bar after she got drunk. She was found unconscious in a nearby bush by some good samaritans, who took her to Mkola Dispensary.⁷¹⁹

5.1.5.2. Sexual harassment

Police Officers Implicated in Sexual Harassment in Handeni, Tanga

In September 2021, reports emerged in Handeni District that some of the male police officers were sexually harassing women. This was revealed by women and men who attended a public meeting convened by the safety and security committee of the district, chaired by the District Commissioner, Hon. Sirieli Mchembe. Some of the women who attended the meeting mentioned some of the male police officers tend to sexually harass them by touching their body parts without their permission and forcing them to engage in sexual relationship or sex with them, including when they go to enjoy themselves at different places. Some of the men also attested to the sexual harassment of women suffered at the hands of the law enforcement officers, including forcefully taking their women/lovers and threatening the women with arrest and detention if they do not comply.

⁷¹⁹ LHRC Human Rights Monitoring 2021.



The news of violence against women perpetrated by men in uniform, who are supposed to protect women, was met with condemnation by different stakeholders, including the Tanzania Media Women Association (TAMWA) and the Handeni District Commissioner herself, who was shocked by the allegations and called for police investigation and the perpetrators to be held accountable. A few days later, Handeni District OCD announced that he had formed commission to investigate the matter.

DC Mchembe: Standing Up against Sexual Violence in Handeni

LHRC commends Handeni District Commissioner, Hon. Sireli Mchembe, for taking a stand against different forms of sexual violence against women in her district, following allegations of sexual harassment of women perpetrated by some of the police officers. She condemned the actions and called for investigation of the allegations so that the perpetrators can be held to account.

LHRC Recognition



Community perceptions on sexual harassment

During the human rights survey, community members were asked to provide their opinions on sexual harassment, particularly unwarranted touching of women's body parts. Over a third of the respondents (35%) said that this is a serious problem in the community, while nearly a half (43%) said it is a moderate problem. Only 18% said it is a minor problem, and 1% said it is not at all a problem.



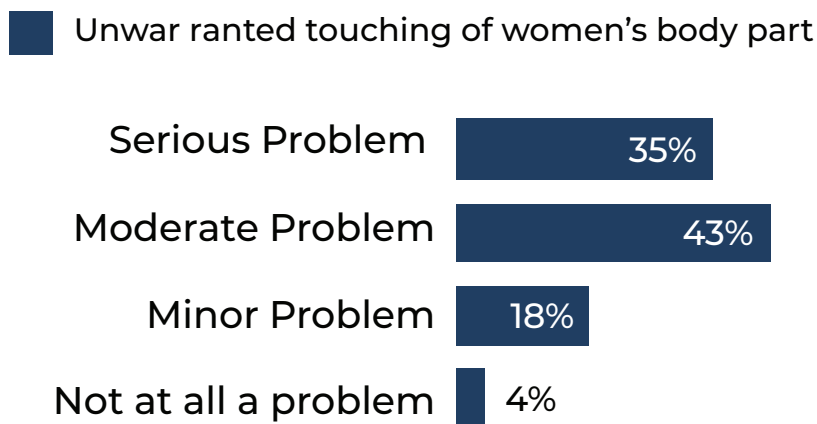


Figure 42: Survey participants' perceptions on unwarranted touching of women's body parts

In **Morogoro**, some of the interviewed women revealed that most women in their areas of residence expect and accept to be touched on a certain part of their bodies without their permission, while some of them are not even aware that such an act constitutes violence against women.

5.1.5.3. Spousal and marital rape and sodomy

Domestic violence against women in Tanzania includes acts of spousal rape and sodomy. Unfortunately, the law offers little protection against domestic violence and does not recognize marital rape. Nevertheless, some women, married and unmarried, in different parts of Tanzania continue to complain about unwilling sexual intercourse and sodomy. Some of the respondents of the human rights survey expressed their concerns with spousal rape and sodomy, especially in Mtwara, Singida, Kilimanjaro, Mbeya, Kigoma, and Tanga Regions.

Spousal rape and sodomy may lead to devastating consequences for couples, especially when it is fuelled by alcoholism. In **Mara**, one respondent stated that a young woman killed her husband after he came back home drunk and forced her into sex and sodomy.⁷²⁰ She took a machete in their bedroom and cut him to death.

⁷²⁰ LHRC Human Rights Survey 2021: Mara Field Report.



Through media survey and human rights monitoring, LHRC also documented several incidents of marital sodomy. For instance, in April 2021 it was reported in Nzega District, **Tabora**, that a 28-year-old woman was forced by her husband to engage in anal sex. The woman reported her husband to a social welfare officer. In **Tanga**, a 25-year-old woman, resident of Maguzoni Village in Lushoto District, made a similar complaint against her husband at the Lushoto Paralegal unit. She was advised to report the matter to the police gender and children desk.

In more than 50 countries around the world, including the United States, Nepal, Britain and South Africa, marital rape has been explicitly criminalized.⁷²¹ However, in most countries, including Tanzania, marital rape is not a crime. Marital rape has been found to have a greater impact on women than a stranger rape, leaving victims vulnerable to posttraumatic stress disorder (PTSD).⁷²² The damage is said to increase because the woman is pressured to stay with the abusive partner, in constant fear of repeat assault.⁷²³

5.1.5.4. Sexual exploitation of women

Sexual exploitation of women in Gairo, Morogoro

In **Morogoro**, one of the respondents, who works as a paralegal, revealed an issue of sexual exploitation of women by their spouses, whereby they are told to target other men and respond to their sexual advances, get money from them and give it to the husband. They coerce their wives or spouses to engage in sexual acts with other men for financial gain and make arrangements to 'catch them red-handed' and demand money from the men. In essence the spouses view their wives as a property and/or source of income.⁷²⁴

5.1.5.5. Sexual Corruption

Apart from the media sector, in 2021 sexual corruption was also found to be pervasive in the job market, higher learning institutions, and when accessing services. LHRC documented at least four reported incidents of sexual corruption or sextortion, reported in Kilimanjaro, Kagera, Dodoma, and Morogoro Regions. It should be noted, however,

721 See Ellen Wulffhorst "UN Urges Countries to End Marital Rape and Close Legal Loopholes" Global Citizen, 26 June 2019, at <https://www.globalcitizen.org/en/content/un-women-marital-rape-laws/>.

722 See Ekua Hagan "Intimate Partner Sexual Assault" Psychology Today, 3 March 2020, at <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/202003/intimate-partner-sexual-assault>.

723 Ibid.

724 LHRC Human Rights Survey 2021: Morogoro Field Report.



that most of such incidents go unreported, especially where the sex bribe has not been given.

In Kilimanjaro, the Police Force fired a traffic police officer, Peter Albert Moshi, for sextortion. It was reported that the police officer was caught by the anti-corruption body, PCCB, on 6th January 2021 demanding a sex bribe from a woman whose child had been a victim of motorcycle accident. The police officer demanded sex from the mother as a condition for completing the investigation.

In **Kagera**, in April 2021, the anti-corruption body, PCCB, arrested a lecturer from Maruku Agricultural Training Institute, Ruta Kyaragaile (59), for engaging in sexual corruption, contrary to sections 15 and 25 of the PCCB Act No. 11 of 2007. Kagera PCCB Commander, Joseph John, stated that they received a complaint from one of the female students at the institute, that the lecturer has been bothering her and demanding sex, otherwise she will not graduate. A trap was set by PCCB, which led to the arrest at a guest house in the region.

In **Dodoma**, a lecturer at University of Dodoma, Basil Mswahili, was caught in the act with one of his students demanding sex from her in order to offer her marks in her supplementary examinations. A video of the lecturer widely circulated on social media was condemned by different stakeholders. A few days later, on 28th October 2021, the university administration issued a statement to the public stating that it had suspended the lecturer from performing all duties including teaching.

In **Morogoro**, one of the female respondents mentioned that she had experienced sexual corruption when seeking employment. She was asked a sex bribe by a human resources officer in exchange for skipping the second-round interview to direct employment.⁷²⁵

During the survey across 20 regions of Tanzania Mainland, participants were asked to provide their opinions on the problem of sexual corruption and sextortion in their community. Nearly half of them (42%) acknowledged that sexual corruption/sextortion is a serious problem. In the community, followed by over a third (35%) who said it is a moderate problem and 18% who said it is actually a minor problem. Only 5% of the respondents claimed sexual corruption/sextortion to be

⁷²⁵ Morogoro Field Report 2021.



not at all a problem in the community, based on their experience.

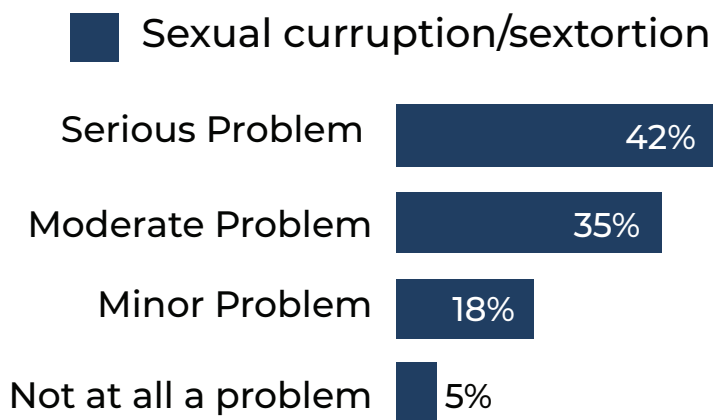


Figure 43: Survey participants' perceptions on sexual corruption/sextortion in the community

LHRC' View: Despite various efforts by the Government, led by PCCB, corruption is still pervasive in different sectors, including the employment sector, justice sector, and education sector.

LHRC's Call: PCCB should work closely with various stakeholders, including gender desks at higher learning institutions, media, and NGOs, to address sexual corruption and hold the perpetrators accountable.

5.1.6. Violence against Women in the Media Sector: LHRC's Human Rights Survey 2021

The human rights survey conducted in 20 regions also probed various issues about journalists, including violence against female journalists. These issues are discussed in detail under chapter two.

Regarding violence against women in the media sector, particularly female journalists, majority of the respondents, nearly half of them (42%) said it is a serious problem for female journalists, followed by 40% who said it is a moderate problem. 43% of the respondents also said they had witnessed or heard about any incident of sexual violence or sextortion against a journalist in the past year.

When asked which acts of sexual violence against female journalists they had witnessed or heard about, most of the respondents mentioned



being asked for a sex bribe to be employed or for a story to be published or aired. Young women doing fieldwork or internship were said to be more vulnerable in this regard as they seek employment. Some of the respondents, especially in Dar es Salaam, mentioned unwarranted touching of body parts, especially breasts and buttocks, as a common form of sexual violence against female journalists.

Sexual harassment in its different forms was also mentioned by nearly all respondents as a common. Examples include flirting, making sexually offensive gestures or remarks, inappropriate or unwanted touching of arms or brushing up against a woman, blocking the way or standing in the way, making sexually offensive facial expressions, unwelcome sexual advances, and repeatedly asking for dates or hook ups. A few other respondents also mentioned looking at a woman's body up and down (persistent staring) and telling sexually offensive jokes.

Editors and human resources officers were mentioned the most as perpetrators of sexual violence against female journalists. Other perpetrators include managing directors/managers, media owners, and sources. Consequences of rejecting unwelcome or unwanted sexual advances include non-employment, difficult working environment, a story not being published, and unfair dismissal.

LHRC's View: Female journalists are disproportionately affected by various challenges journalists face, including low pay, delays in payment of wages, and difficult working environment, making them more vulnerable to sexual violence. The LHRC survey findings regarding sexual corruption in the media sector are similar to those made by the Tanzania Women Media Association (TAMWA). In February 2021, TAMWA revealed that 48% of journalists who are not formally employed have experienced sexual corruption. TAMWA Executive Director, Rose Reuben, revealed that a small survey conducted in Dar es Salaam showed that sexual corruption is big challenge in the media sector, especially for female journalists.

5.1.7. Economic Violence against Women

5.1.7.1. Overview

Economic violence refers to a form of violence that involves denial of certain opportunities, including controlling a woman or man's access to resources for generating income, discrimination



in employment, denial of inheritance and discrimination in accessing economic and educational opportunities. **It includes** making or attempting to make a person financially dependent by maintaining total control over financial resources, withholding access to money, and/or forbidding attendance at school or employment.⁷²⁶

5.1.7.2. Incidents of economic violence against women documented by LHRC

In 2021, different forms of economic violence against women were reported across Tanzania Mainland. LHRC documented at least 77 incidents reported in this part of Tanzania. They include interference women's rights over ownership and control of property, withholding access to money, and denial of inheritance. In 2020, LHRC recorded at least 27 reported incidents of economic violence against women through human rights monitoring.

5.1.7.3. Interference with women's rights over ownership and control of property

In **Kilimanjaro**, Neoni Lazaro, hacked to death his sister, Magreth Mushi (50), resident of Urari Village in Rombo District, after she refused to give him the money she got for selling tomatoes from her farm. The incident occurred on 9th February 2021. In another incident in the region, which occurred in Siha District in April 2021, Magdalena Makishe (61), was reportedly severely beaten and killed by her husband, Zakayo Kimaro, for complaining about her husband's decision to sell her farming bulls. It was reported that the woman had two farming bulls and her husband forced to sell one of the bulls when she was not at home. When she returned and did not find the bull, she started asking her husband, who reacted by beating her with a stick to death.

5.1.7.4. Withholding access to money

In January 2021, it was reported that most men in Mbeya and Shinyanga Regions leave their wives and children to do the farming.⁷²⁷ But once the harvesting period arrives, they take charge and sell all the agricultural produce and without involving their wives. This constitutes economic violence against women.

⁷²⁶ See UNWOMEN "Frequently asked questions: Types of violence against women and girls" at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, accessed 20th December 2020.

⁷²⁷ LHRC Media Survey & Human Rights Monitoring 2021.



During the human rights survey, this was also reported to be usual practice in Kilosa and Gairo Districts in **Morogoro** Region, where it was also revealed during interviews that during the harvesting period (June to November) incidents of physical and psychological violence also increase.⁷²⁸ In Karagwe DC, **Kagera**, it was also revealed during a key informant interview that economic violence mostly comes to life during the harvesting period.⁷²⁹

In **Singida**, in July 2021, police arrested Juma Shabani (45), resident of Ndulungu Village in Iramba District, for killing his wife, Moshi Rashid (40), after she asked for part of the money they obtained after selling maize to pay for their child's school fees. RPC Stella Mutahibirwa stated that the incident occurred on 18th July 2021, noting that the husband got mad after the wife asked him for the money and started beating her with a stick and sharp object on different parts of her body, leading to her death.

In Serengeti DC, **Mara**, a representative of a local organization operating in the district revealed that economic violence against women is a problem in the district as some men ensure that their wives do not get their hands on family income, perpetuating their economic dependence on them. In Tarime DC and Musoma MC, also located in Mara, social welfare officers stated that a total of 161 cases of economic violence were registered, 140 for the latter and 21 for the former.⁷³⁰

5.1.7.5. Denial of inheritance

Customs and traditions continue to be a major obstacle for women's inheritance rights, especially in rural areas. During the human rights survey, participants were asked whether denial of inheritance for women is a problem in their community. Over a third of respondents (37%) indicated that denial of inheritance is a serious problem in the community, while 40% said it is a moderate problem. Only 23% of the respondents said denial of inheritance is either a minor problem or not at all a problem, as indicated in figure 44 below.

728 Morogoro Field Report 2021.

729 Kagera Field Report 2021.

730 Mara Field Report 2021.



■ Denial of inheritance as a problem in the community

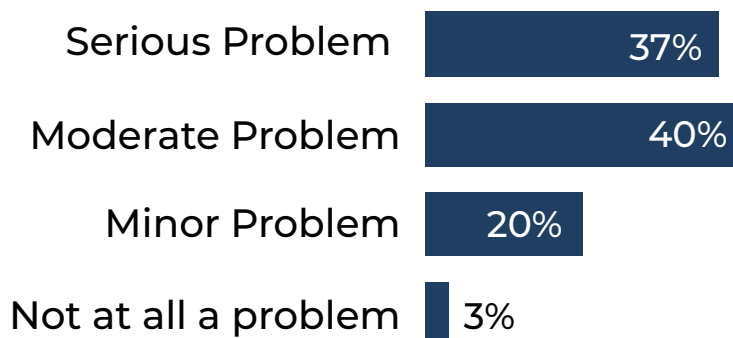


Figure 44: Survey participants' perceptions on denial of inheritance for women in the community

In **Kagera and Mara**, customs and traditions, particularly persistent discriminatory social norms and practices, were said to be a key factor hindering realization of women's inheritance rights.⁷³¹ The discriminatory norms and practices have created gender inequalities and consequently affecting women's rights and welfare. One of the respondents in Mara Region, indicated that the customs and traditions of the Kurya tribe, one of the dominant tribes in the region, do not allow women to inherit their fathers' properties, as it is believed that they will go away and get married and that is where they will have access to property. Another respondent added that most widows in the region are denied their inheritance rights and face hostile treatment from relatives of their deceased husbands and in most cases get kicked out of their matrimonial homes.

"Women in this region are not valued at all. They are denied the right to inherit land, especially when their parents and spouses have died... there is a woman who used to be our neighbour, who was kicked out of her matrimonial home by her in-laws...a case has been filed in court."
Community member, Mara

Through human rights monitoring and media survey, LHRC documented at least 48 incidents of denial of inheritance, reported in different parts of Tanzania Mainland. These incidents were reported in **Morogoro, Manyara, Mara, Dar es Salaam, Arusha, Tanga, Kigoma, Songwe, Mtwara, Lindi, Ruvuma, Kagera, Morogoro, Kilimanjaro,**

⁷³¹ Kagera Field Report 2021; Mara Field Report 2021.



Pwani, and **Geita** Regions. Majority of these cases (70%) concerned widows who were prevented from inheriting their late husbands' property and left homeless. The main perpetrators were in-laws. Often, it is not just the widows who are kicked out, but also their children.

In **Mara**, a 35-year-old woman, resident of Mwibagi Village in Butiama District, was prevented from inhering her late husband's properties by her brother-in-law in April 2021. In **Arusha**, a 56-year-old woman, resident of Olmolog Village in Longido District, was denied inheritance of her late husband's properties by her in-laws, despite existence of a will that safeguards such right. In **Tanga**, 45-year-old woman, resident of Sumbawanga Village, was denied inheritance of a farm that belonged her deceased husband by her father-in-law. In **Arusha**, it was also reported that a 47-year-old woman, resident of Sakina in Arusha DC, was prevented from inheriting her late mother's properties in March 2021.

5.1.7.6. Eviction of women from marital home

In 2021, eviction of women from marital home was also reported as a common form of economic violence against women. Through human rights monitoring and media survey, LHRC documented at least 23 incidents of eviction of women from their marital homes. These incidents were reported in **Mwanza**, **Manyara**, **Songwe**, **Mara**, **Morogoro**, **Mwanza**, **Mbeya**, and **Rukwa** Regions. For instance, in **Manyara**, a 39-year-old woman, resident of Mrombo Village in Mbulu District, was evicted from marital home by her husband in April 2021. In **Mara**, a 30-year-old woman, resident of Nyamirende Village in Rorya District, was evicted from marital home by her father-in-law. In **Songwe**, a 22-year-old woman, resident of Mlowo Ward in Mbozi District, was evicted from marital home by her husband for giving birth to a baby with disability. In **Mara**, it was also reported in July 2021 that a man in Mseke Village in Serengeti District had kicked his wife out of their marital home for not conceiving children in 8 years of marriage. In **Mbeya**, a 26-year-old woman, resident of Chokaa Ward in Chunya District, was kicked out of marital home by mother-in-law following the death of her husband.

Major perpetrators of this form of violence were husbands. In-laws were also implicated in the case of eviction of widows. Husbands usually evict their wives from matrimonial or marital



home to bring their ‘new women.’ Most of these incidents occur in rural areas where women have lower awareness of their rights and laws and customary laws, most of which are restrictive to women’s property rights, are often applied.

5.1.7.7. Men not working to provide for their families and not doing housework

Another form of economic violence against women observed in 2021 is the tendency of men in some areas of Tanzania Mainland not working to provide for their families and even not doing any housework. This situation creates a lot of burden for their wives and children, who have to work or do some small-scale businesses in order to sustain their lives. This concern was especially raised in the regions of **Tanga, Pwani,** and **Mtwara**, where some men were accused by interviewed respondents, including social welfare officers, of spending too much time at ‘coffee centres,’ popularly known as ‘*vijiwe*,’ usually playing board games (*bao*) on wooden boards instead of working. In Gairo District, **Morogoro** Region, a community member also raised a similar concern, noting that it is normal to find some men spending too much time at the *vijiwes* instead of working and helping out their spouses with household and other responsibilities.⁷³²

5.1.8. Widows’ eviction from homes: The case of violation of property and inheritance rights of widows

5.1.8.1. Legal frameworks on widows’ rights

Women’s right to own, inherit and control property is guaranteed and protected under various international and regional human rights instruments. These include the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966, the UN Convention on Elimination of All forms of Discrimination Against Women (CEDAW) of 1979, the African Charter on Human and Peoples’ Rights (Banjul Charter) of 1981, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) of 2003 (Article 14), and the SADC Protocol on Gender and Development of 2008.

⁷³² LHRC Human Rights Survey 2021: Morogoro Field Report.



A widow shall the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

F Article 21 of Maputo Protocol

Under Article 19, the Maputo Protocol recognizes the right of women to sustainable development and imposes an obligation among States, including Tanzania, to take all appropriate measures to promote women's access to and control over productive resources such as land and guarantee their right to property.⁷³³ Article 20 provides for widows' rights, including the right to freedom from inhuman, humiliating or degrading treatment; right to become legal guardian and custodian of her children after death of husband; and right to remarry (marrying a person of her choice).⁷³⁴ Article 21 of the Protocol specifically recognizes widow's **right to inheritance**, which includes right to equitable share in inheritance of late husband's property, right to continue living in matrimonial house.⁷³⁵ The Article also recognizes the **right of women and men to inherit, in equitable shares, their parents' properties**.⁷³⁶

The SADC Protocol on Gender and Development also guarantees women's property rights, including the right to acquire and hold rights in property, the right to equal inheritance, and right to secure credit.⁷³⁷ The Protocol imposes an obligation upon States Parties, including Tanzania, to end all discrimination against women and girls with regard to property such as land.⁷³⁸ Like the Maputo Protocol, the SADC Protocol also provides for rights of widows and widowers, which include the right of a widow to an equitable share in the inheritance of the property of her husband and her right to continue living in the matrimonial house after her husband's death.⁷³⁹ It also prohibits discrimination of a widow because of her status.

Domestically, the Constitution of the United Republic of Tanzania, 1977 safeguards women's right to own property. According to the Constitution, every person is entitled to own property and has a right

733 Article 19(c) of Maputo Protocol.

734 Ibid, Article 20(a), (b). & (c).

735 Article 21(1) of Maputo Protocol.

736 Ibid, Article 21(2).

737 Article 7(c) of SADC Protocol on Gender and Development, 2008.

738 Ibid, Article 18(1).

739 Ibid, Article 10(1)(c) & (e).



to the protection of his property held in accordance with the law.⁷⁴⁰ The Land Act and the Village Land Act also recognizes the right of both men and women acquire and own property. The major challenge in protecting this right for women is restrictive customary laws which deny them from inheriting property.

5.1.8.2. Overview of violation of property and inheritance rights of widows

Despite the various measures taken internationally, regionally, and domestically, many women, including widows, remain unable to practice their property and inheritance rights. In various African countries, including Tanzania, widows often face abuses and are denied their property and inheritance rights. The major perpetrators are in-laws, who usually demand the widow leaves her marital home. There is also a practice in some communities and tribes of ‘inheriting’ widows by male relatives.⁷⁴¹

In African context, the problem of violation of property and inheritance rights of widows is compounded by various barriers to access to justice, including lengthy or complicated procedures, legal costs, and long distance to government agencies and courts,⁷⁴² which limits their ability to seek effective remedy and safeguard their rights. For most of the victims, legal aid is the easiest and most realistic option to safeguard their rights, but then again there is limited access to legal aid, most of which is concentrated in urban and semi-urban areas. Lack of knowledge about property and inheritance rights is major obstacle in terms of protection of widows’ rights.

Customary laws are often used as a major weapon to rob widows of their right to inherit land and property. Forced eviction is sometimes accompanied by seizure of other properties in the house, even cooking utensils. This leaves widows facing extreme poverty, especially in rural areas, where most women lack social protection. Widows who are victims of child marriage face even greater disadvantage as they are more vulnerable to different forms of violence. In other parts of Africa, widows have been subjected to acts of rape or coercive sex as part of ‘cleansing’

740 Article 24(1).

741 See Human Rights Watch, “You Will Get Nothing” Violations of Property and Inheritance Rights of Widows in Zimbabwe, 24 January 2017, at <https://www.hrw.org/report/2017/01/24/you-will-get-nothing/violations-property-and-inheritance-rights-widows-zimbabwe>.

742 Ibid.



ritual following the death of their husbands.

Property grabbing from widows usually happens immediately after the death of husband, with relatives and in-laws of the husband moving in fast to seize various properties, intimidate the widow and eventually kicking the widow and in most cases even her children out of the land or house. In most cases, therefore, widows lose everything and have to start life afresh with their children or alone, edging them to extreme poverty and in extreme cases to homelessness. The impact of property grabbing from widows is often extended children, who may be forced to drop out of school and beg or do petty work to sustain their lives.

Polygamy, which is very common in African communities, further compounds the problem of infringement of property and inheritance rights of widows. This practice creates a situation where there are multiple widows who not only have to fight for their late husbands' properties with in-laws, but also with each other. There is therefore increased tension where polygamous marriage exists.

5.1.8.3. Violations of property and inheritance rights of widows in Tanzania

In Tanzania, property grabbing from widows is a common practice, especially in rural areas where restrictive customary laws are commonly applied. The challenges that widows face regarding property and inheritance rights are similar to those faced in other African countries, as highlighted above.

When a husband dies the battle for properties begins

In some Tanzanian communities it is a common scenario to see attempts by relatives of a deceased husband to grab land title documents and even properties such as cars immediately after death of the husband. Instead of mourning their husbands, widows usually have to be on high alert regarding properties of their late husbands, including having to hide key documents.

Customary laws a major obstacle in protecting widows' property and inheritance rights

The major challenge in protection of the rights of widows in Tanzania is the existence of discriminatory laws, especially customary laws, which are widely applicable in rural areas. In 2015, the



Committee on the Elimination of Discrimination against Women (CEDAW) held that the Government of Tanzania should provide compensation to two widows who had brought complaints of property grabbing before the committee and called for legal reforms to safeguard rights of widows.⁷⁴³ The Committee specifically said Tanzania should take steps to revise or repeal laws, customs and practices that discriminate against women.⁷⁴⁴ The two widows could not inherit upon their respective husband's death under local customary law and subsequently evicted from their homes by their in-laws. They also argued that millions of other women in Tanzania experience the same violations they have faced as a result of discriminatory customary laws.⁷⁴⁵ Regarding widows, the customary law states that women have no share of the inheritance of the deceased husband if he leaves behind relatives of his clan. Instead, her share is to be cared for by her children.⁷⁴⁶

In 2006, the High Court agreed that the provisions were discriminatory but said it would not overturn them as doing so would **“be opening a Pandora’s box, with all the seemingly discriminative customs from our 120 tribes plus following the same path”**.⁷⁴⁷ Following the decision against them, the widows filed an appeal before the Court of Appeal of Tanzania, where the appeal remained pending for more than six years. They then resorted to seeking remedy at CEDAW.⁷⁴⁸

In determining the case of the two widows, CEDAW said that Tanzania should grant the two women adequate reparation and compensation, noting that they had been left **“economically vulnerable, with no property, no home to live in with their children and no form of financial support.”** CEDAW also called on the Government of Tanzania to ensure that rights guaranteed under the Convention have precedence over inconsistent and discriminatory provisions. CEDAW also told Tanzania to submit a written response within six months, including information on any action taken in light of its recommendations. A year later, in 2016, the Government of Tanzania had reportedly not adequately complied with the CEDAW Committee decision, including by not providing financial compensation or reparations to the two widows.⁷⁴⁹

743 Human Rights Watch, “You Will Get Nothing” *Violations of Property and Inheritance Rights of Widows in Zimbabwe* (supra).

744 See UN “Widows’ eviction highlights need to abolish or amend Tanzania’s discriminatory laws, UN experts say” 1 April 2015, at <https://news.un.org/en/story/2015/04/494932-widows- eviction-highlights-need-abolish-tanzanias-discriminatory-laws-un>.

745 Ibid.

746 Ibid.

747 Ibid.

748 E.S. and S.C. v. the United Republic of Tanzania (Communication No. 48/2013, U.N. Doc. No. CEDAW/C/60/D/48/2013).

749 See PeaceWomen, *LETTER FROM HUMAN RIGHTS WATCH TO THE UNITED REPUBLIC OF TANZANIA ON*



It has been observed that instead of recognizing widows' right to inherit matrimonial property, customary law treats them as minors dependent on the care of others as property to be inherited by men and the limited customary rights granted to women are even more uncertain in practice.⁷⁵⁰

Property grabbing from widows constitutes violation of their fundamental human rights

Property grabbing from widows constitutes violations of their fundamental rights protected under various international and regional human rights instruments as well as the Constitution of the United Republic of Tanzania, 1977. Property grabbing violates widows' right to equality, right to acquire and own property, right to live a life with dignity, and right to adequate standard of living. Non-discrimination is well established principle under international human rights law and the Constitution of Tanzania of 1977.

5.1.8.4. Reported incidents of infringement of widows' property and inheritance rights

In the past two years (2020 and 2021), LHRC has documented at least 42 incidents of infringement of widows' property and inheritance rights, through forced eviction of widows from their marital homes and denial of inheritance. Of these, 16 incidents were reported in 2020 and 26 incidents were reported and documented in 2021.

In June 2021, it was reported that forced eviction of widows is intense among pastoralist communities, including the Maasai community, in which women are not only allowed to inherit property but also prohibited from re-marrying in some cases. Some of the widows interviewed by *Pangani FM* mentioned that they were forcefully evicted by their in-laws from their marital homes immediately after their husbands died, together with their children. One of the interviewed women from Tanga claimed that she was kicked out by her in-laws, who took everything, leaving her to suffer with her children. She did not want to challenge them in any way over the properties, including going to court, because she was afraid they would do something bad to her or her children, including 'bewitching.' She therefore decided to leave everything in the hands of God.⁷⁵¹

COMPLIANCE WITH UN CEDAW COMMITTEE DECISION, 18 April 2016, at <http://peacewomen.org/node/93833>.

750 See Ezer, Tamar, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters* (2006). 7 *GEORGETOWN JOURNAL OF GENDER AND THE LAW* 599 (2006), University of Miami Legal Studies Research Paper No. 3825933, Available at SSRN: <https://ssrn.com/abstract=3825933>.

751 Ibid.



LHRC's View: Right to inheritance is among the most violated women's rights in Tanzania, particularly in rural areas where customary laws are mostly practiced and invoked to justify denial of property rights. Some of the customs and traditions remain major obstacles hindering effective realization of women's rights, especially in rural area.

LHRC's Call: The Government to review and repeal or amend all laws that discriminate against women and widows with regard to property and inheritance rights. Men are also encouraged to write wills to safeguard property and inheritance rights of their wives and children.

5.1.9. Women's Political Participation and Representation

5.1.9.1. Introduction

Under the Maputo Protocol,⁷⁵² which Tanzania has ratified, "States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures..."⁷⁵³ These measures include ensuring women are equal partners with men at all levels of development and implementation of State policies and development programmes and ensuring increased and effective representation and participation of women at all levels of decision-making.⁷⁵⁴

5.1.9.2. Legal and Policy Frameworks on Gender Equality and Women's Participation in the Electoral Process

International level

At international level, women's political participation originates in the principles of non-discrimination and equal enjoyment of political rights enshrined in the international human rights instruments such as the Universal Declaration of Human Rights (UDHR) of 1948, the Convention on the Political Rights of Women (CPRW, 1952), the International Covenant on Civil and Political Rights (ICCPR) of 1966, and the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979.⁷⁵⁵ These instruments recognize women's political rights in light of the principles of non-discrimination and equal enjoyment of rights. CEDAW, which is a women's rights convention, requires

752 Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa, 2003.

753 Ibid, Article 9(1).

754 Ibid, Article 9(1) & (2).

755 See ACE "Gender and Elections" at <https://aceproject.org/ace-en/topics/ge/ge2/ge21/ge211>.



States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country on equal terms with men.⁷⁵⁶

Various declarations and UN resolutions adopted at international level also reaffirm women's right to political participation. Key among them are the Beijing Declaration and Platform for Action of 1995,⁷⁵⁷ General Assembly Resolution 66/130 on Women and political participation of 2011, the Security Council Resolution 1325 on Women, Peace and Security of 2000, UN Economic and Social Council Resolution Number 15 of 1990,⁷⁵⁸ and General Assembly Resolution on Women's Political Participation (A/RES/58/142) of 2003.

Sustainable Development Goal 5 (achieve gender equality and empower all women and girls), also includes a target of ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public figure.

Regional level

At regional level, key instruments include the African Charter on Human and Peoples' Rights (Banjul Charter) of 1981, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003, and SADC Protocol on Gender and Development of 2008. According to the Banjul Charter, "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."⁷⁵⁹ The Maputo Protocol requires States Parties, including Tanzania, to take affirmative action and other measures to guarantee women's political participation on equal terms with men. It guarantees women's right to participation in political and decision-making process without any discrimination.⁷⁶⁰ The SADC Protocol on Gender and Development requires States to adopt and implement affirmative or special measures to eliminate barriers for women's political participation⁷⁶¹ and achieve 50-50 representation in decision-making positions in public and private sectors.⁷⁶²

There are also other standards such as the Solemn Declaration

⁷⁵⁶ Article 7 of CEDAW, 1979.

⁷⁵⁷ Requires States to take measures to ensure women's access to and full participation in power structures and decision making, encourage political parties to integrate gender equality and parity and review electoral systems to ensure the system used is gender-sensitive.

⁷⁵⁸ Recommends 30% minimum proportion of women in leadership positions.

⁷⁵⁹ Article 13(1) of the Banjul Charter.

⁷⁶⁰ Article 9 of the Maputo Protocol.

⁷⁶¹ Article 5 of the SADC Protocol on Gender and Development.

⁷⁶² Ibid, Article 12(1).



on Gender Equality in Africa of 2004, the African Union Agenda 2063, and the Treaty for the Establishment of the East African Community of 1999. These standards promote gender equality in politics and decision-making, calling for women to be meaningfully involved in decision-making and enjoy equal representation in leadership positions.

Domestic level

At domestic level, the most important document in terms of promotion of gender equality and women's political participation is the Constitution of the United Republic of Tanzania, 1977. The Constitution provides for the right to non-discrimination, right to equality, and right to equality before the law,⁷⁶³ which are the cornerstone for women's political participation. The Constitution also recognizes the right to freedom to participate in public affairs.⁷⁶⁴ There are also key electoral laws such as the Political Parties Act, Cap. 258 (R.E 2019) and the National Elections Act, Cap. 343 (R.E 2015), as well as other electoral laws, rules, and regulations.

5.1.9.3. Status of Women's Representation and Participation in the Electoral Process

26 years on from the Beijing Declaration, progress has been made in safeguarding women's political rights and enhance their political participation. In African context, a lot has happened in between, including development and adoption of key women's rights treaties such as the Maputo Protocol and the SADC Gender Protocol and women becoming presidents – including Liberia's Ellen Johnson Sirleaf and Malawi's Jocye Banda. In Tanzania, we now have H.E President Samia Suluhu Hassan, who has made history by becoming the country's first female president.

According to the first Women's Political Participation (WPP) Africa Barometer 2021, women constitute 24% of the 12,113 parliamentarians in Africa - 25% in the lower houses, and 20% in the upper houses of parliament.⁷⁶⁵ In East Africa, 32% of MPs are women. In terms of the highest female representation in parliament, Rwanda currently sets the pace with over 60% of female MPs.

⁷⁶³ Articles 12 and 13 of the Constitution of the United Republic of Tanzania, 1977.

⁷⁶⁴ Ibid, Article 21(1).

⁷⁶⁵ GENDERLINKS, Women's Political Participation Africa Barometer 2021 (supra).



Table 23: Women’s political participation in Africa by key indicators 2021

Indicator (%)	Africa	East Africa
Women in lower houses of parliament	25%	33%
Women in upper houses of parliament	20%	29%
Women in parliament overall	24%	32%
Women in local government	21%	35%
Women in political party leadership	12%	15%
Women in election monitoring bodies	28%	45%
Women speakers	21%	33%
Women in mayors of capital cities	19%	0%
Women in in top executive positions	7%	12%
Women in cabinet	22%	32%

Source: Genderlinks 2021

In Tanzania, the Government has taken various measures to enhance women’s political participation in line with its international and regional human rights obligations. Key among them is the incorporation of the bill of rights into the Constitution of the United Republic of Tanzania of 1977, which includes the right to equality and freedom to participate in public affairs. Affirmative action has also been incorporated into the Constitution, introducing a 30% threshold of women quota in Parliament. This and other measures have seen the number of elected and special seats female MPs increase considerably. For instance, the number of special seats MPs increased from 22 in 1985 to 102 in 2010.⁷⁶⁶ The number of elected female MPs increased from 8 in 1995 to 26 in 2015 and 2020.⁷⁶⁷ Currently, overall percentage of women MPs stands at around 36%, the same as in 2010.

Table 24: Percentage of women occupying some of the public leadership positions (as of March 2022)

Position	#Female	%Female
Ministers	8 out of 22	36

766 Anjellah Kairuki. The Role of Women in Politics in Tanzania. ARGUMENTE UND MATERIALIEN ZUM ZEITGESCHEHEN 90., at https://www.hss.de/download/publications/AMZ_90_Frauen_05.pdf.

767 IPU Perline’s Global Data on National Parliament – Tanzania, March 2021. Available online via: https://data.ipu.org/node/184/data-on-women?chamber_id=13508.



Deputy Ministers	5 out of 23	22
Permanent Secretaries	3 out of 21	14
Regional Commissioners	6 out of 26	23
Regional administrative Secretaries	22 out of 26	46

From the table above, it can be observed that women are still underrepresented in various leadership positions and the progress towards the achieving the SDG 5: Gender Equality is slow. Percentage of women holding all of the positions above is less than 50%. For positions of Deputy Ministers, Permanent Secretaries, and Regional Administrative Secretaries, women holding such positions are not even a third of the overall number.

However, in the words of UN Women, progress has been slow and uneven⁷⁶⁸ as countries, including in Sub-Saharan Africa, continue to struggle to reach key gender equality targets in political participation and electoral process. According to the Inter-Parliamentary Union (IPU) since the Beijing Declaration of 1995, women's representation in parliament has only increased by ten 10%.⁷⁶⁹ In Tanzania, the 30% women quota in the Constitution is still below the 50% threshold recommended in the SADC Gender Protocol and required by international standards. Most of the barriers that existed back then are still in force in different parts of the world.⁷⁷⁰ These barriers, most of which are also applicable to Tanzania, are briefly discussed below.

5.1.9.4. Barriers to women's effective participation in the electoral process

Major barriers to women's effective participation in the electoral process in Tanzania include:

- **Gender gaps in electoral laws, including the Constitution of Tanzania of 1977**

Despite the Constitution of Tanzania providing for some key provisions which safeguard women's political rights (Articles 12, 13, 21, & 66), there are some gender gaps which are glaring. One such gap is the fact that the Constitution does not contain

768 UN WOMEN (2015), THE BEIJING DECLARATION AND PLATFORM FOR ACTION TURNS 20: SUMMARY REPORT, <https://sustainabledevelopment.un.org/content/documents/1776The%20Beijing%20Declaration%20and%20Platform%20for%20Action%20turns%2020.pdf>.

769 See GENDERLINKS, Women's Political Participation Africa Barometer 2021, <https://genderlinks.org.za/wp-content/uploads/2021/03/3WPP-Africa-FOREWORD-EXEC-SUMM.pdf>.

770 THE BEIJING DECLARATION AND PLATFORM FOR ACTION TURNS 20 (supra).



a specific provision on **gender equality**, unlike the constitution of our neighbours, Kenya. The 30% women quota in parliament in the Constitution of Tanzania is also yet to be increased to the 50% threshold required under the SADC Gender Protocol. Under Constitution, special seats MPs do not enjoy equal status with other MPs. For instance, they cannot be appointed for the position of Prime Minister.⁷⁷¹ Additionally, unlike constitutions of countries such as Kenya and Rwanda, independent candidates are not allowed, despite also the decision of the African Court on Human and Peoples' Rights on the private candidacy in elections case.⁷⁷² Additionally, unlike in countries such as Kenya and Malawi, presidential results cannot be challenged under the Constitution of Tanzania of 1977.⁷⁷³ This limits access to justice and hinders effective remedy for political candidates who may be aggrieved by the conduct of an electoral management body and dissatisfied with the presidential election results, including female candidates.

The Political Parties Act, Cap. 358 R.E 2019, has been faulted for not containing provisions which promote gender equality in internal party politics.⁷⁷⁴ An ideal situation would be incorporation of provisions which require political parties to mainstream gender in political party policy documents and internal party structures.⁷⁷⁵ The National Elections Act, Cap. 343 has also been found to be somewhat lacking in terms of promoting gender equality for not providing sufficient guidelines for selection of women in special seats.⁷⁷⁶ Other electoral laws, regulations, and rules (electoral code of conduct) have also been faulted for not containing provisions which promote or ensure gender equality.⁷⁷⁷

■ Violence against women in elections/politics (VAWEP)

According to the study conducted by *Tanzania Women Cross-Party Platform* in the aftermath of the 2015 Tanzania General

771 See Article 51(2) of the Constitution of Tanzania, 1977.

772 African Court of Human and Peoples' Rights, *Tanganyika Law Society et al. v. The United Republic of Tanzania*, App. Nos 09/2011 and 11/2011, Judgment of 14 June 2013.

773 See Victoria Lihuru, *A Gender Analysis of Political Parties Policy Documents in Tanzania*, Women in Law and Development in Africa, October 2020, at <https://wildaftanzania.or.tz/wp-content/uploads/2021/03/political-agender.pdf>.

774 Ibid.

775 Ibid.

776 A Gender Analysis of Political Parties Policy Documents in Tanzania (supra).

777 Ibid.



Elections, violence against women during the 2015 general elections occurred in psychological, physical and sexual forms, whereby the dominant form was psychological violence.⁷⁷⁸ During the 2020 general elections, female political candidates suffered various forms of abuse, including abusive words and statements.⁷⁷⁹ There were reports of male candidates labelling and calling female candidates names and using sexist rhetoric to belittle them. For instance, in Mara Region, a campaign manager labelled a female candidate a ‘prostitute’ while appealing for people to vote for a male candidate.⁷⁸⁰ In Rukwa Region, a CCM parliamentary candidate reportedly urged people during a political rally not to vote for a female candidate because ‘she would not be able to represent them while on her period.’⁷⁸¹

- **Customs, traditions, and gender stereotypes**

Cultural barriers such as traditional gender roles, gender-based stereotypes and negative attitudes against women limit women’s ability to participate in political life.

- **Finances and resources**

Lack of financial resources for women in politics in Tanzania is a key challenge for women’s political participation. The less resources one has the less influential they are in their political parties and this means lack of sufficient funds for political campaigns.

- **Lack of adequate support from political parties and exclusion from decision-making party structures**

Political parties in Tanzania are male-dominated and this affects female candidates in terms of support, unlike their male counterparts, who enjoy more support from party leadership. The value of women’s role and participation is usually undermined in such a male-dominated decision-making setup. In Tanzania, women are underrepresented in internal decision-making

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

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

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

781 Ibid.



mechanisms in their political parties.⁷⁸²

- **Gender gaps in political party policy documents and practices**

Political party documents such as constitutions and election manifestos usually contain provisions on gender issues and promises of promoting gender equality. However, there are no specific strategies to mainstream gender equality and ensure gender parity in internal party structures to enable more female political party members to participate in decision-making.

- **Electoral system and management**

The First-Past-the-Post (FPTP) electoral system that Tanzania predominantly uses (also considered as using mixed system), which focuses on the winner-takes-all approach, has been faulted for not being women friendly. The Proportional Representation (PR) system, which has enabled Rwanda to have a more than 60% female representation in parliament, has been said to be more suited to enhancing women’s political participation, especially when combined with voluntary or legislated quota.

Table 25: Advantages and disadvantages of main electoral systems

System	Pros	Cons	Gender considerations
FPTP	Good for accountability	“Winner takes all” is not good for inclusion	Women especially excluded – lack of funds and networks
PR	Good for inclusion	Weak on accountability – vote for a party, not a candidate	When combined with voluntary or legislated quota results in rapid increase in women’s participation
Mixed	Includes the best of both worlds	PR candidates are regarded as token	If the PR candidates happen to be women (e.g. national level in Zimbabwe) this adds to the notion of tokenism

Source: **Genderlinks 2021**

According to the 2021 Women’s Political Participation Africa Barometer,

⁷⁸² Victoria Lihuru, A Gender Analysis of Political Parties Policy Documents in Tanzania (supra).



six out of top ten countries, including the top three of Rwanda, South Africa, and Namibia, follow the PR electoral system.⁷⁸³

- **Inadequate media coverage/negative portrayal of female political candidates**

Lack of adequate media coverage and gender bias in the media, which leads to negative portrayal of women politicians and political aspirants is another issue of concern for women in politics. During the general elections of 2020, male candidates also enjoyed more coverage and positive coverage during the 2020 general elections, hence lack of equal coverage between male and female political aspirants. This negatively affected the visibility of female candidates.

According to *Genderlinks* and TAMWA, during the 2020 general elections women constituted only 18% of news sources and 20% of images and the bulk of coverage (69%) was gender blind.⁷⁸⁴ Only 20% of the coverage was gender aware, while the remaining 11% constituted 'subtle' or 'blatant stereotypes'.⁷⁸⁵

- **The dual burden and a disproportionate share of domestic work**

Like many other women, women in politics have to set aside time for domestic work. This creates a two-way and increased burden when they also have to effectively participate in public or government affairs, unlike their male counterparts.

- **Limited access to education**

Education is an essential tool for women's effective participation in politics and leadership.⁷⁸⁶ Limited access to education for women and girls therefore presents a challenge in terms of their participation in political life. Right to education is one of the key ingredients of participation rights, the others being freedoms of

783 GENDERLINKS, Women's Political Participation Africa Barometer 2021.

784 Genderlinks, Women's Political Participation Africa Barometer 2021, <https://genderlinks.org.za/wp-content/uploads/2021/03/3WPP-Africa-FOREWORD-EXEC-SUMM.pdf>

785 Ibid.

786 Ruth Meena, Mary Rusimbi, & Caroline Israel, Women and Political Leadership: Facilitating Factors in Tanzania, UONGOZI INSTITUTE, 2017.



expression, assembly, and association.

5.1.9.5. Women's Participation in the 2021 Byelections

Women were well represented as political candidates in the 2021 byelections in Buhigwe and Muhambwe constituencies in Kigoma Region. A total of 13 candidates were nominated by their political parties to contest the MP position in Buhigwe Constituency (seven female, six male), while in the Muhambwe Constituency the number of nominated candidates was 3 (one female, two male).

5.1.9.6. Strategies/Good practices to Enhance Women's Political Participation

Below are some good practices or strategies which can be used to enhance women's political participation in Tanzania:

Legal reforms to address gender gaps in electoral laws

- Removing gender gaps in electoral laws is a good way and a starting point in increasing women's political participation.

Establishing mandatory women's quota in intra-party politics and leadership

- In 2007, the Spanish Government enacted a law that requires political parties to allocate at least 40% of the places on the list of candidates to women and respect the 40/60 proportion in every five positions within each list. This has made Spain to be among European countries with highest proportion of female politicians after Sweden and Finland.⁷⁸⁷
- In Tanzania, enactment of a similar law, which includes sanctions for non-compliance, would create a similar impact in terms of women's political participation.

Capacity building and mentoring of female political aspirants within political parties

- Capacity building and mentorship programmes for women are important to give young female politicians confidence to contest elections both internally and for public positions.⁷⁸⁸ The roles of CSOs, both domestic and international, is very important in this regard.

Establishing internal party structures that promote gender equality

- Having in place internal party structures such as women's wings

787 EIGE. Advancing gender equality in political decision-making. European Institute for Gender Equality, 2016., at file:///C:/Users/USER/Downloads/mh0415104enn_0.pdf.

788 Julie Ballington et al, Empowering Women for Stronger Political Parties: A Guidebook to Promote Women's Political Participation, UNDP & NDI, February 2012, at <https://www.ndi.org/sites/default/files/Empowering-Women-Full-Case-Study-ENG.pdf>.



in important is important in increasing women's political participation and safeguarding women's political rights.

- This has proven to be a good practice in countries such as Bolivia and Ecuador, where it has helped to increase women leaders.⁷⁸⁹

Substituting the first-past-the-post (FPTP) electoral system with the proportional representation (PR) electoral system

- PR system has proven to be more friendly to women compared to FPTP. It is high time now Tanzania embraces this system as a strategy to increase female political participation.

Sustained advocacy on gender equality, including through strategic litigation/constitutional petition

- Continuous awareness-raising and advocacy on gender equality are essential in enhancing women's political participation. Advocacy can also manifest through strategic litigations and engagement of regional and international human rights mechanisms.
- The legal action option has worked well for the women's rights associations in the Netherlands, which took to court to challenge the decision of the Reformed Political Party (SGP) to prohibit women from contesting for political leadership positions, based on the party leadership's interpretation of the bible. The Dutch Supreme Court conclude the party action of excluding women from party membership to constitute violation of CEDAW, 1979.⁷⁹⁰

Institutionalizing gender equality within party structures, processes, and practices

- Electoral laws should target party structures, processes, and practices to ensure adherence to gender equality. Monitoring implementation of gender equality provisions should be the task of the electoral management body (EMB), in this regard NEC for Tanzania Mainland and ZEC for Zanzibar.
- EMBs themselves should first mainstream gender and observe gender parity. In collaboration with the Office of Registrar of Political Parties (ORPP) and other stakeholders, they should also help political parties to conduct gender audit, develop party gender action plans, and introduce rules guaranteeing women's participation and representation in decision-making.
- All policy documents of political parties should be gender-audited to mainstream a gender perspective.
- The role of women's wings should also be strengthened.

Ensuring availability of adequate funding for female political aspirants and equitable access to media

- Funding is big hurdle for many women who have political aspirations. Increased resource mobilization and a fair distribution of ex-

789 See Rumbidzai Kandawasvika-Nhundu. *Political Parties in Africa through a Gender Lens*. International Institute for Democracy and Electoral Assistance 2013, at <https://www.idea.int/sites/default/files/publications/political-parties-in-africa-through-a-gender-lens.pdf>.

790 EIGE. *Advancing gender equality in political decision-making*. European Institute for Gender Equality, 2016., at file:///C:/Users/USER/Downloads/mh0415104enn_0.pdf.



isting resources is therefore essential to achieving gender equality in political life.

- In Tanzania, funds provided to political parties should also cover specific needs of female political members and aspirants. This law should stipulate this.
- Women should also be provided with skills to mobilize resources for campaigns.

Introducing a legal requirement of candidate nomination process to be transparent, fair, and women-friendly

- Nomination of candidates within political parties should be transparent, fair, and women-friendly in line with international human rights standards. Candidate-selection procedures should not be a matter of secret and a business of a selected-few individuals.

Political parties to introduce voluntary party quotas

- Party quotas are measures adopted voluntarily by political parties, which can impact their policy documents to enhance gender parity. Party quotas guarantee selection of a specific number or percentage of women among candidates. In Tanzania context, the party quota should at least not be below the 30% threshold for women in parliament provided in the Constitution of Tanzania, but the ideal situation is the 50-50 representation required in the SADC Gender Protocol.

Helping women to balance personal and professional life in political parties

- Helping women in this regard will boost their confidence to run for office and improve their chances of winning elections.

Making gender a part of a political party's electoral strategy

- Incorporating gender into a party's electoral strategy can be an effective campaigning technique. This strategy has translated into more votes and election winning for presidential candidate François Hollande in France in 2012 and José Zapatero in Spain in 2004. Political parties which take their gender equality commitments seriously benefit from stronger links with their electorate and with new groups of voters.⁷⁹¹

⁷⁹¹ Julie Ballington et al, Empowering Women for Stronger Political Parties (supra).



President Samia's appointment of more women in key leadership positions

Since she assumed the presidency in March 2021, following the untimely death of H.E President John P. Magufuli, H.E. President Samia Suluhu Hassan has taken several measures to enhance women's political participation. Key among such measures to entrust some key cabinet positions to women. For instance, in September 2021, she appointed Dr. Stergomena Tax to be the Minister of Defence and National Service, the first woman to hold such position in Tanzania. Another key position now held by a woman is that of the Ministry of Foreign Affairs and East African Cooperation, following appointment of Hon. Amb. Liberata Mulamula.

By January 2022, the President had made three changes in her cabinet, the latest bringing the number of female cabinet members to nine from seven previously.

LHRC Recognition



LHRC's View: Despite progress made in enhancing women's political participation and representation in decision-making, various barriers still exist as highlighted above. Addressing these barriers required coordinated efforts between government and non-government actors.

LHRC's Call: As we head towards 2024 and 2025 elections, policy, legal, and institutional frameworks should be revised or amended to promote gender equality in line with international human rights standards. The Government should take measures to enhance women's political participation, towards attaining the 50/50 representation of men and women in political leadership and other decision-making positions. For instance, in terms of leadership positions at regional levels, if RC is male then RAS should be female. Tanzania could also do with a gender equality law like our neighbours in Malawi, who have in place the Gender Equality Act of 2013.



5.1.10. Women's Economic Empowerment

5.1.10.1.10% empowerment loans for women, youth, and PWDs

Economically empowering women is essential in the fight against GBV as a key preventive measure⁷⁹². Economic empowerment can afford women the financial independence to leave abusive relationships or prevent GBV.⁷⁹³ According to UN Women, investing in women's economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth.⁷⁹⁴

Globally, lack of economic or financial security is a key concern for most women, especially in rural areas, and is one of the major reasons they decide to stay in abusive relationships.

In Tanzania, women's economic empowerment includes provision of interest-free loans to women. In 2018, legal reforms were made to introduce a 10% interest free loans for the groups of women, youth, and persons with disabilities (PWDs). The 10% is to be set aside by LGAs and provided to groups of women (4%), youth (4%) and PWDs (2%). To access the loans groups must be organized into five members, the group's business must be registered within a local council; and the group members must have identification documents.⁷⁹⁵

Reports show that women's groups have been accessing the loans at a higher rate than the groups of youth and PWDs. According to a 2019 study report by the agricultural Non State Actors Forum (ANSAF), women benefitted the most compared to other groups (41%), followed by youth (41%) and PWDs (10%).⁷⁹⁶

5.1.10.2. Provision of empowerment loans for women, youth, and PWDs in 2021

792 See UN Women "Take Five: "Economic empowerment of women is one of the key steps in prevention of gender-based violence in rural areas"" 3 August 2021 at <https://eca.unwomen.org/en/news/stories/2021/07/take-five-economic-empowerment-of-women>.

793 International Center for Research on Women (ICRW), PREVENTING AND RESPONDING TO GENDER-BASED VIOLENCE, A CRITICAL COMPONENT OF ECONOMIC DEVELOPMENT AND WOMEN'S ECONOMIC EMPOWERMENT, 2020, at <https://www.icrw.org/publications/preventing-and-responding-to-gender-based-violence-a-critical-component-of-economic-development-and-womens-economic-empowerment/>.

794 See UN Women "Economic empowerment" at <https://www.unwomen.org/en/what-we-do/economic-empowerment>.

795 Empowerment Loans: How 10% allocated budget helps women, youth and people with disabilities" Big Bold Cities, at <https://bigboldcities.org/en/innovation/empowerment-loans-how-10-allocated-budget-helps-women-youth-and-people->

796 ANSAF, The Capacity of Local Government Authorities to Mobilize, Allocate and Spend 10% of Own Source on Women, Youth and People with Disabilities: Study Report, January 2019, at <https://ansaf.or.tz/wp-content/uploads/2020/04/STUDY-REPORT-LGAs-COMMITMENT-FOR-YOUTHWOMEN-AND-PWD-F.pdf>.



The Government of Tanzania has also recognized that women's economic empowerment is essential for combating GBV, which is why it is implementing women's economic empowerment programme through implementation of the Women and Gender Development Policy, 2000.⁷⁹⁷

There is also the National Microfinance Policy 2017, which provides guidelines to achieve gender equity in accessing financial services in order to empower women economically, and credit facilities targeting women, most notably the Women Development Fund (WDF), which is supported by the government through the National Gender Machinery and complimented by the local councils⁷⁹⁸.

According to the Government, in the period of 2015 to 2020, a total of Tshs. 2.22 trillion was provided to 490,000 women's groups comprised of more than 4.9 women.⁷⁹⁹

For the financial year 2020/2021, a total of Tshs. 22.3 billion had been disbursed by LGAs to groups of women (4%), youth (4%), and PWDs (2%)⁸⁰⁰. LHRC documented reports of disbursement of these funds to women, youth, and PWDs in Kigoma, Shinyanga, Mara, Dar es Salaam, and Kilimanjaro Regions. For instance, in **Kigoma**, a total of 31 women and youth groups in Kasulu District Council received loans worth Tshs. 140million from the LGA in January 2021, in compliance with the statutory requirement of LGAs allocating 10% of its budget/income for groups of women, PWDs, and youth.⁸⁰¹ In **Shinyanga**, it was reported in November 2021 that Msalala District Council had set aside Tshs. 256 million for 56 groups of women, youth, and PWDs.⁸⁰²

In **Mara**, it was reported that in December 2021, 32 groups had received Tshs. 148 million⁸⁰³. In **Kilimanjaro**, a total of Tshs. 295 million was provided to the groups by November 2021.⁸⁰⁴

797 See HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. DKT. DOROTHY GWAJIMA (MB), KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2021/22 (supra).

798 See The United Republic of Tanzania, Country Report on The Implementation of

The Beijing Platform For Action And The Outcome Document Of The Twenty-Third Special Session of the General Assembly- Beijing +10, at <https://www.un.org/womenwatch/daw/Review/responses/UNITEDREPUBLICOF TANZANIA-English.pdf>.

799 HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. DKT.

DOROTHY GWAJIMA (MB), KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2021/22 (supra).

800 See HOTUBA YA WAZIRI MKUU WA JAMHURI YA MUUNGANO WA TANZANIA, MHESHIMIWA KASSIM M. MAJALIWA (MB.) KUHUSU MAPITIO NA MWELEKEO WA KAZI ZA SERIKALI NA MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA ZA OFISI YA WAZIRI MKUU NA OFISI YA BUNGE KWA MWAKA 2021/2022 (Prime Minister's Office Budget Speech for the financial year 2021/22) at <https://www.kazi.go.tz/uploads/documents/en-1618388643-Hotuba%20ya%20Waziri%20Mkuu%20Bungeni%202020-2021.pdf>,

801 LHRC Media Survey 2021.

802 Ibid.

803 Ibid.

804 bid.



5.1.10.3. Challenges of the 10% interest free loan programme

Some of the challenges that have been identified in provision of the 10% interest free loans include slow pace or non-repayment of loans, lack of entrepreneurship skills, mistrust and quarrelling among group members, and political interference.⁸⁰⁵ There has also been a concern that the loans have been diverted to other projects by the groups.⁸⁰⁶

Regarding non-repayment of loans, in November 2021, it was reported that the Moshi Municipal Council in **Kilimanjaro** Region had taken to court more than 55 people, who were beneficiaries of the loans, for failure to repay the loans.⁸⁰⁷ Among them 30 were female and 25 were male.⁸⁰⁸

The CAG annual report on audit of LGAs for the financial year 2019/20 shows that 82 LGAs did not contribute Tshs. 5.7 billion to the Women, Youth, and People with Disabilities Fund as required by law.⁸⁰⁹ It also indicated that Tshs. 27.8 billion had not been recovered from beneficiary groups.

5.1.11. Women and Criminal Justice

While the number of women who are incarcerated in prisons across the world is lower than that of men, reports show that the number of imprisoned women has been increasing significantly in some countries,⁸¹⁰ including in Sub-Saharan African prisons.⁸¹¹

Studies have also revealed that female prisoners and detainees suffer disproportionately from the injustices of the criminal justice systems.⁸¹²

805 Empowerment Loans: How 10% allocated budget helps women, youth and people with disabilities” Big Bold Cities (supra).

806 LHRC Media Survey 2021.

807 LHRC Media Survey 2021.

808 Ibid.

809 See UNITED REPUBLIC OF TANZANIA, NATIONAL AUDIT OFFICE, ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2019/20 at

https://www.nao.go.tz/uploads/Annual_General_Report_for_Local_Government_Authorities_2019_20.pdf.

810 Penal Reform International, Discrimination of women in criminal justice systems, BRIEFING: ACCESS TO

JUSTICE, January 2012, at <https://cdn.penalreform.org/wp-content/uploads/2013/08/BRIEFING-Discrimination-women-criminal-justice.pdf>.

811 Van Hout, M.C., Mhlanga-Gunda, R. Contemporary women prisoners health experiences, unique prison health care needs and health care outcomes in sub Saharan Africa: a scoping review of extant literature.. BMC Int Health

Hum Rights 18, 31 (2018). <https://doi.org/10.1186/s12914-018-0170-6>.

812 Ibid.



Several other facts have been established regarding women in conflict with the law and prisoners:⁸¹³

Background

- Like men, majority of women prisoners come from socially disadvantaged/poor segments of communities⁸¹⁴.
- Most women in conflict with the law are low-level petty offenders, driven to crime because of lack of equal access to financial resources and urgent need to support their families. They are usually characterized as being young women with low level of education and dependent child or children and unemployed.⁸¹⁵
- Prior emotional, physical, and/or sexual abuse largely contributes to women's criminal behaviour.

Vulnerability to injustice, discrimination, and violence

- Due to their economic status, women are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay bail. They are also usually shunned or excluded by their spouses or family when detained for criminal offences, further minimizing their chances of release on bail and good legal representation.
- Women in prison in Africa experience compounded discrimination due to gender and poverty.
- Structural inequality results in women being poorly educated, having reduced access to economic resources and legal processes.
- In addition to the profound social and economic impact on families, women in prison are affected by a number of gender-related issues, including reproductive health needs, mental health disorders connected to prior experiences of violence, abuse and substance abuse, and heightened vulnerability to sexual abuse and harassment in detention.
- Women have a heightened vulnerability to mental and physical abuse during arrest, questioning and in prison. They are particularly at risk of rape, sexual assault and humiliation, especially by prison staff. There are also subjected to ill-treatment acts such as

813 See Penal Reform International, *Discrimination of women in criminal justice systems* (supra); Ackermann, Marilize. (2015). *Women in detention in Africa: A review of the literature*. *Agenda*. 29. 80-91. 10.1080/10130950.2015.1122345; and Van Hout, M.C., Mhlanga-Gunda, R. *Contemporary women prisoners health experiences, unique prison health care needs and health care outcomes in sub Saharan Africa: a scoping review of extant literature.. BMC Int Health Hum Rights* 18, 31 (2018). <https://doi.org/10.1186/s12914-018-0170-6>.

814 Ibid.

815 Penal Reform International, *Discrimination of women in criminal justice systems* (supra).



touching, being stripped naked, and invasive body searches.⁸¹⁶

- Women prisoners are at higher risk of harming themselves or attempting suicide in comparison to men prisoners.
- Women are likely to suffer particular discrimination after release from prison, due to social stereotypes, including being rejected by their families.

Gender specific and special health needs

- Specific needs and characteristics of women and girls are mainly unacknowledged and unaddressed in most criminal justice systems across the world. Few prisons meet the specific needs of women prisoners and lack gender-appropriate rehabilitation.⁸¹⁷
- In some countries, conjugal visits are not allowed to women in prison or are more restricted than for male prisoners.
- Women prisoners have greater primary healthcare needs compared to their male counterparts, but prison conditions, especially unsanitary conditions, put them at a more disadvantaged position in terms of their sexual and reproductive health and rights.
- Women who are admitted to prison are more likely than men to suffer from mental health problems, often as a result of previous domestic violence, physical and sexual abuse, and examination by male doctors may put them at risk of re-traumatization or re-victimization.
- Health care provisions for women, including pregnant women, in Sub-Saharan African prisons are reported to fall far short of the equivalence care standards mandated by human rights and international recommendations, and the agreements set out in the Southern African Development Community (SADC) Minimum Standards for HIV in Prisons.

Impact of detention of women offenders on children and family

- As primary caretakers of children, the injustices of criminal justice systems extend to women's children and family. Even short-term period in prison may be detrimental to children.
- A significant number of women in prison are mothers and often, the sole or primary caregiver of children prior to detention.
- The true impact of female detention is felt by children who are imprisoned with their mothers, or who remain alone on the outside.

⁸¹⁶ Penal Reform International, *Discrimination of women in criminal justice systems* (supra).

⁸¹⁷ Penal Reform International, *Discrimination of women in criminal justice systems* (supra).



Access to justice

- Women's access to formal justice system, especially in African context, remains poor, leaving them vulnerable to harsh informal justice systems dominated by male elders.
- Women often remain in pre-trial detention since they are unable to afford bail or fines.
- Since women are also disproportionately affected by poverty, they are less likely to afford adequate legal representation than their male counterparts, who usually enjoy greater support from their families.

Prison conditions

- More often than not, prison infrastructure and personnel are oriented towards a male prison population, overlooking the specific needs of female detainees.

Supervision of women prisoners/detainees

- According to the decision of the Committee on the Elimination of Discrimination against Women in the case of *Inga Abramova v. Belarus*⁸¹⁸, no male member of staff should be allowed to enter part of the institution set aside for women unless accompanied by a woman officer and that women prisoners should be attended and supervised only by women officers. In Tanzania context this brings the question of practice in this regard and how many of prison staff are female.

Access to information and training

- Due to their small numbers, juvenile female prisoners are likely to have less access to suitable educational and vocational training facilities than either adult women or juvenile male prisoners.
- Juvenile female prisoners are also more unlikely to have access to gender-sensitive and age-appropriate healthcare or counselling for physical or sexual abuse suffered prior to imprisonment.

Pregnant girl and women prisoners

- Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigmatization to which they

⁸¹⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Communication No. 23/2009, *Inga Abramova v. Belarus*, 27 September 2011, CEDAW/C/49/D/23/2009, available at: <https://www.refworld.org/docid/4fd6f75a2.html> [accessed 4 March 2022]



may be subjected, their inexperience of dealing with pregnancy and the lack of adequate facilities for pregnant juvenile female prisoners.

Poverty

- In many countries, the risk of losing their accommodation and employment upon detention is higher for women, and women offenders are confronted with increased stigmatization as in most societies they contravene prevailing role models for their sex. They are likely to have particular support requirements in terms of housing, reunification with families and employment.

There are also concerns over lack of commitment of governments to implement the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), adopted in 2010. While these rules require Member States to develop gender-specific options and alternatives to pretrial and sentencing of women in conflict with the law and take into account the history of victimization of many women offenders and their caretaking responsibilities⁸¹⁹, this practice is often different as these specific requirements are lacking in most criminal justice systems. The Bangkok Rules also require non-custodial sentences for pregnant women and women with dependent children to be preferred, taking into account the best interests of the child⁸²⁰. Detention should only be applied when the offence is serious and it is absolutely necessary⁸²¹. The African Charter on the Rights and Welfare of the Child (African Children's Charter) also **emphasizes on non-custodial measures** for women in conflict with the law in line with the principles of the best interests of the child⁸²². In this regard, the Charter requires African States Parties to it, including Tanzania, to provide special treatment to expectant mothers and mothers of infants and young children who are detained for criminal offences.⁸²³

LHRC's View: Prisons in Tanzania are not easily accessible by non-government actors, especially NGOs, which makes it difficult to determine the true extent of prison conditions and how such conditions disproportionately affect women in conflict with the law. However,

819 Rule 57 of the Bangkok Rules.

820 Ibid, Rule 64.

821 Ibid.

822 Article 30 of African Children's Charter.

823 Ibid; See also Resolution 10/2 on "Human rights in administration of justice, in particular juvenile justice," dated 25 March 2009 (emphasizing on non-custodial measures when sentencing or deciding on pre-trial measures for a pregnant woman or child's sole or primary carer).



based on discussion on the criminal justice system in chapter two above and its various challenges it is fair to conclude that women in conflict with the law in Tanzania also face the challenges highlighted above. We are also concerned with the level of awareness of prison staff and administrations in Tanzania about international human rights standards applicable to women detainees and prisoners.

LHRC's Call: Reform of the criminal justice system and practices is needed to address the challenges of the system that specifically and disproportionately affect women in conflict with the law and prisoners. Emphasis should be given to non-custodial measures as required under the Bangkok Rules and the African Children's Charter. As primary caretakers of children, it is also important to seriously consider the principles of the best interests of the child when detaining and sentencing women in conflict with the law.

5.2.Children's Rights

The international community has taken steps to legally protect children's rights and ensure they freely enjoy and realize these rights.⁸²⁴

To achieve this, children need to be free from all forms of discrimination and violence. As such States, Tanzania inclusive, are obligated to take all appropriate measures to ensure children do not suffer discrimination and protect them from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation.⁸²⁵

They are also required to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage⁸²⁶.

512 reported cases/incidents of VAC were documented by LHRC in 2021.

This sub-chapter looks at key issues affecting children's rights in 2021, including sexual violence; physical and psychological violence; child labour and exploitation; child marriage; and the predicament of child pregnancy.

⁸²⁴ This has been done through adoption of various conventions at international and regional levels such as 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.

⁸²⁵ 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.

⁸²⁶ Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.



Government action to promote children's rights and protect them from violence

To promote children's rights and protect them from different forms of violence, the Government of Tanzania has taken various measures so far, including:

- Ratification & domestication of child rights treaties: Treaties include the UN Convention on the Rights of the Child (CRC) of 1989 and the African Charter on the Rights and Welfare of the Child (ACRCW) of 1990.
- Enactment of a specific law for children, the Law of the Child Act of 2009 (revised in 2019): The law guarantees rights of children as human beings and protects them from all forms of violence and torture.
- National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18-2021/22 (NPA-VAWC) & establishment of NPA-VAWC Committees.
- Establishment of police gender and children desks: Desks continue to be established in different regions.
- Development and adoption of the child justice strategy: Currently we have the CHILD JUSTICE: THE SECOND FIVE-YEAR STRATEGY FOR PROGRESSIVE REFORM 2020/21 – 2024/25, developed by the Ministry of Constitutional and Legal Affairs (MoCLA) with the support of the United Nations Tanzania and UNICEF.
- Establishment of the juvenile justice system: Key document in this regard is the Law of the Child Act of 2009 (revised in 2019).
- Criminalization of all forms of violence against children: Laws criminalizing violence against children include the Penal Code and the Law of the Child Act.
- Legal action against perpetrators of VAC and court rules to fast-track VAC cases: Each year there are reports of arrest and arraignment of perpetrators of VAC.
- Ministry responsible for children's welfare: Currently we have the Ministry of Community Development, Gender, Women and Special Groups, which among other things is responsible for children's rights and welfare. MoCLA is another ministry in this regard.
- Child development policies: There are various child and youth-related policies that seek to enhance promotion of children's rights and prevention of VAC.

For the period of July 2020 to April 2021, the ministry responsible for



gender and children also reported that it had taken various measures to address VAC and promote children's rights, including establishment of child protection desks in primary and secondary schools, conducting anti-child pregnancy campaigns, and coordinating reporting of VAC through child helpline (116).⁸²⁷ For instance, it was revealed that by April 2021 a total of 182 child protection desks had been established and 5,228 children were attended through the child helpline.

5.2.1. Violence against Children

In 2021, violence against children (VAC) continued to be an issue of great concern for children's rights and welfare. Incidents of different acts of violence were reported and documented in all regions across Tanzania Mainland.

5.2.1.1. Police crime statistics on VAC

Police crime statistics, released in January 2021, show that a total of 15,870 incidents of VAC were reported and documented in the period of January to December 2020.⁸²⁸ This constitutes an increase of 190 incidents (1.2%) compared to the incidents reported in 2019. Regions (police regions) which recorded most incidents of VAC were Tanga (1,026), Mbeya (738), Mwanza (738), Dodoma (727) and Kilimanjaro (656). Police regions which recorded the least incidents were Pemba North (64), Unguja South (78), Unguja North (85), and Pemba South (88).⁸²⁹ Top three reported VAC incidents were rape (5,867), impregnating a schoolgirl (3,631), and sodomy (1,000).

Police statistics for the year 2021 indicate that incidents of VAC decreased from 15,870 in 2020 to 11,499 in 2021, a decrease of 27.5%. Out of the 11,499 reported incidents, 9,759 (85%) involved female victims and the remaining 1,740 (15%) were male victims.

827 HOTUBA YA WAZIRI WA AFYA, MAENDELEO YA JAMII, JINSIA, WAZEE NA WATOTO, MHE. DKT. DOROTHY GWAJIMA (MB), KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2021 / 22, at <https://www.jamii.go.tz/uploads/publications/sw1638275486-HOTUBA%20YA%20WAMJW%202021.22.%20BUNGENI%20-%2011%20MEI%202021.%20FINAL.pdf>.

828 Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, *TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, JANUARI – DESEMBA 2020*. [Tanzania Police Fore & National Bureau of Statistics, Crime and Traffick Incidents Statistics, January to December 2020].

829 Ibid.



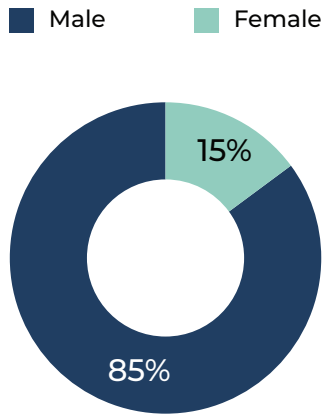


Figure 45: Distribution of VAC victims in Tanzania by sex – Jan to Dec 2021

Source: *Police crime statistics, 2022*

In the past five years, girls have constituted the overwhelming majority of VAC victims. From 2017 to 2021, there has been a total of 57,076 female VAC victims. Compared to 13,921 male victims during this period, the **number of female victims is four times that of male victims**. On average, there have been 2,784 female victims and 12,239 each year during this period.

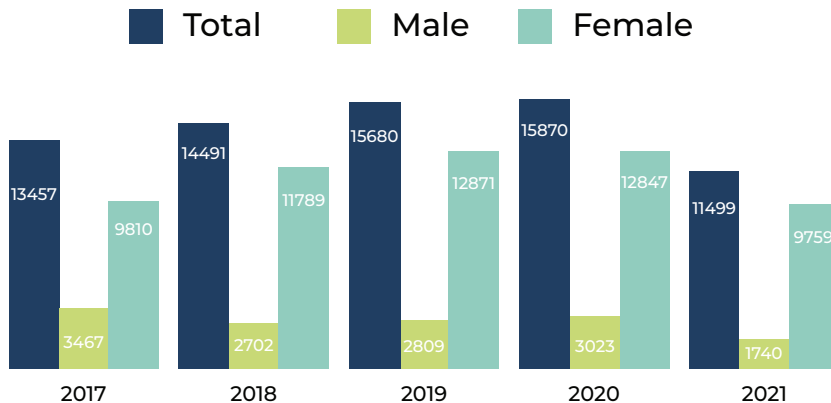


Figure 46: VAC victims in Tanzania by sex – 2017 to 2021

Source: *Police data, 2017 to 2021*

2,993 out of the 11,499 reported incidents of VAC (26%) for the year 2021 were recorded in Arusha, Tanga, Shinyanga, Mwanza, and Ilala police



regions (or Dar es Salaam, Arusha, Tanga, Shinyanga and Mwanza Region. Figure 47 below shows the number of reported incidents in each of these regions.

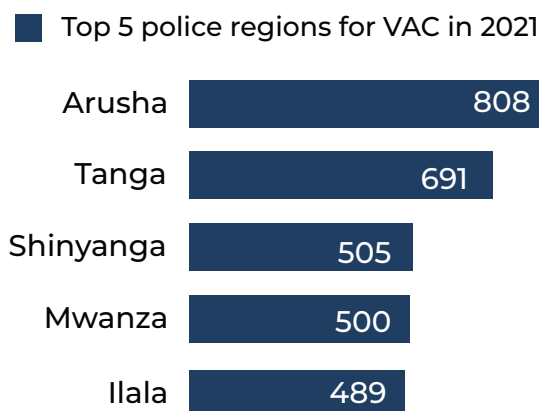


Figure 47: Top five police regions for VAC in 2021

Source: Police data, 2021

Table 26: Top five regions for VAC in Tanzania – 2017 to 2021

	Region	#Times in top 5	Top 5 in 2021	Top 5 Rank in 2021
1	Tanga	5	Yes	2
2	Mwanza	4	Yes	4
3	Mbeya	3	No	N/A
4	Arusha	3	Yes	1
5	Temeke	2	No	N/A

As indicated in table 26 above, Tanga Region dominates in terms of the number of times the regions have been in the top 5 leading regions for rape in the past 5 years, appearing all five times. Mwanza follows in second, having featured four times, while Mbeya and Arusha have both featured three times in the past five years. However, if we ignore the “regional police category” and go with the normal “region” category then Dar es Salaam (comprises Kinondoni, Ilala and Temeke Districts) would dominate. Temeke District has been leading in in terms of VAC in Tanzania, taking the top regional position in 2017 and coming in second in 2019.



5.2.1.2. Reported incidents and community Perception of VAC

Participants of the human rights survey conducted in 20 regions of Tanzania Mainland were asked to provide their opinions on the problem of violence against children (VAC). Over half of the respondents (55%) said VAC is a serious problem in the community, followed by 37% who felt it is a moderate problem. Less than 10% of the respondents perceived VAC to be either a minor problem or not at all a problem.

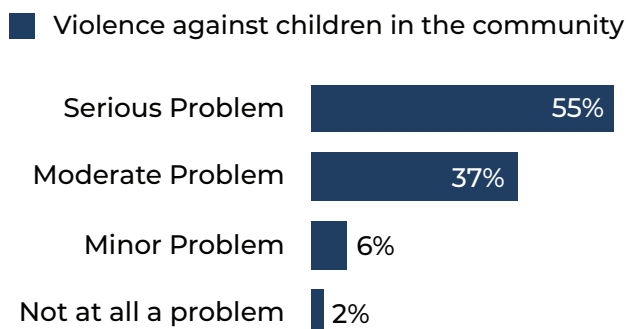


Figure 48: Survey participants' perceptions on VAC in the community

Community members who participated in the survey were also asked whether they had witnessed or heard of any incident of VAC **in the year 2021**. Nearly two-thirds of the respondents (65%) said that they had either witnessed or heard of any VAC incident in the period of January to October 2021. The remaining 35% said they had not witnessed or heard about a VAC incident during that period.

The survey also sought to determine common forms or acts of violence perpetrated against children. They were asked whether acts such as rape, sodomy, beating/torture, verbal abuse/humiliation, child neglect, FGM, and bullying were common in their community. Child neglect was mentioned as the most common act of VAC (60%), followed by beating/torture (54%), verbal abuse/humiliation (50%), and rape (48%).



■ Common forms or acts of violence against children

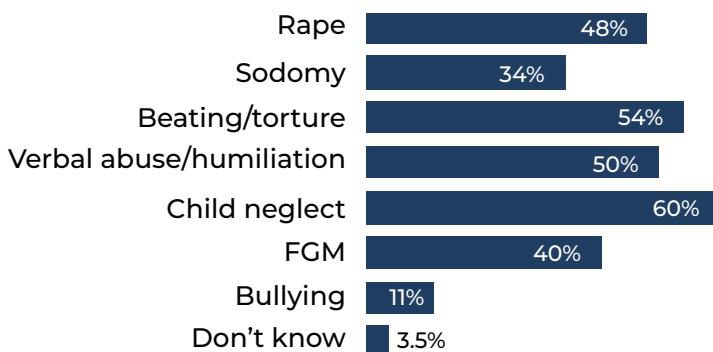


Figure 49: Survey participants' perceptions on common forms or acts of VAC

In 2021, LHRC also conducted a media survey to document reported human rights issues and incidents of human rights violations. Regarding VAC,⁸³⁰ the survey showed that 89% of VAC incidents reported by the media were sexual VAC, while 11% were physical and emotional VAC. Most of these incidents were reported in the Lake Zone Regions, Dar es Salaam, Kilimanjaro, and Morogoro. Victims of sexual VAC ranged from 3 to 17 years of age.

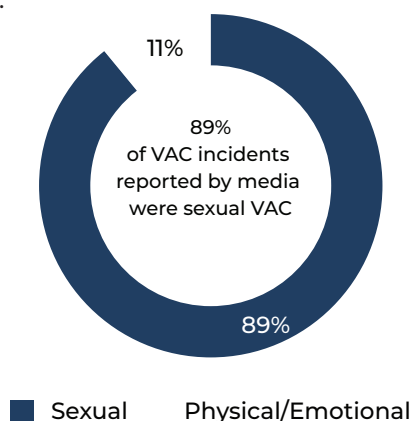


Figure 49: % of physical and sexual incidents of VAC reported by media

Source: LHRC Media Survey 2021

⁸³⁰ At least 512 reported cases/incidents of VAC were documented by LHRC in 2021 through media survey and human rights monitoring.



In November 2021, statistics on VAC showed that a total of 6,168 of children were subjected to different forms of VAC in the period of January to September 2021, of which 5,287 are girls and 881 boys.⁸³¹ This was revealed by the Deputy Minister of Home Affairs, Hon. Khamis Hamza Chilo, while responding to question by a fellow MP, Esther Matiko during a parliamentary session. The deputy minister said that a total of 3,800 cases had been taken to court, 2,368 are under investigation, and 88 have been decided by courts in different parts of the country.⁸³²

In December 2021, statistics provided by the police force, covering the period of June 2020 to July 2021, showed that a total of 22,151 of VAC were reported to police gender and children desks. Regions which recorded most cases were Arusha, Ilala, Tanga, Kinondoni, Dodoma, and Njombe.⁸³³ The Zonal Police Commander-Dar es Salaam Special Zone, ACP Jummanne Muliro, stated that Kinondoni Regional Police recorded a total of 1,071 of VAC incidents during this reporting period, of which 333 had been sent to court, 2019 were under investigation, and 93 had been decided. Singida Regional Police Commander, ACP Stella Rweyemamu, mentioned that one of the hotspots for VAC in the region are huts that show videos to children (*vibanda umiza*), where children are usually subjected to different forms of violence, including sodomy. She also mentioned that most men in the region do not work, instead stay in streets, a situation which puts children at increased risk of violence.⁸³⁴

5.2.1.3. Who are the major perpetrators of VAC?

Participants of the human rights survey were also asked about the perpetrators of VAC in the community. They were given the options of a relative/family member, father, mother, neighbour, teacher, *bodaboda driver*, a fellow pupil/student, unknown people, and other. Relatives/family members were mentioned the most (66%) as major perpetrators of VAC, followed by fathers (47%), mothers (35%), *bodaboda* drivers (31), unknown people (30.3%), and neighbour (27%). The option of 'other' was mentioned the least, with 5.5%.

831 LHRC Media Survey 2021.

832 Ibid.

833 LHRC Media Survey 2021.

834 Ibid.



■ Major perpetrators of violence against children

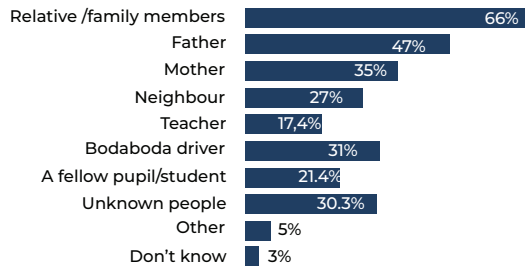


Figure 50: %Responses on the major perpetrators of VAC in the community

5.2.1.4.VAC takes place in which settings?

VAC takes place in various settings, both public and private. Participants of the survey across Tanzania Mainland were asked where acts of VAC usually occur in their community. Home settings were mentioned the most as places where VAC usually occurs, at 73%, followed by streets (70%), on the way to school (38%), and at school (27%). 22% of the respondents also said that VAC occurs within transport vehicles, especially school buses.

■ Setting wherer violence occurs

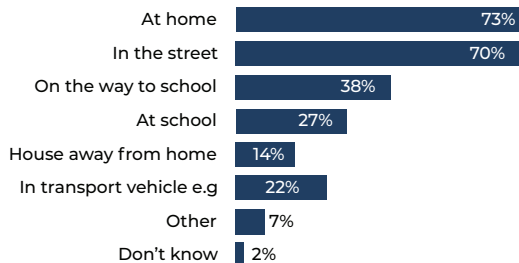


Figure 51: %Responses on settings where VAC occurs

5.2.1.5.Factors contributing to VAC

During the survey, several factors contributing to VAC was identified. One of the factors that was commonly mentioned during interviews is lack of cooperation from the victim's family as they prefer to settle the matter at home 'as a family,' which



hampers VAC/abuse cases. For instance, in **Morogoro** it was revealed that most cases of VAC end up being resolved by elders in the family, with the punishment for the perpetrator usually a fine.⁸³⁵

“..there is a tendency of the victim’s families resolving rape and other cases of sexual violence at home by receiving compensation in the form of cows, goats or money – usually around Tshs. 100,000 to 200,000. Up to five cows can be given as compensation. At his point, the victim’s families end cooperation with the police/prosecution.”

VEO, Kilosa - Morogoro

Distance from home to school was also mentioned as another factor that contributes to VAC, especially sexual VAC. In Kisarawe, **Pwani**, girls walking long distances to school and passing through bushes to get there were said to be at increased risk of sexual VAC.

“...it is very risky for young girls to pass through bushes on their way to school...there have been reports of girls being raped in the bushes.”

Local organization worker, Kisarawe - Pwani



Picture 26: A female child observed walking to school alone in Kisarawe District

Children being left alone at home (neglected), poor parenting, alcoholism, economic hardships, child marriage, parental separation

835 LHRC Human Rights Survey 2021: Morogoro Field Report.



and belief in superstition/witchcraft were also mentioned as contributing factors. Other factors include cases taking too long in courts, corruption, not knowing where to report VAC (lack of knowledge about VAC referral pathway), and low legal awareness.

“Most parents leave their homes to go and work in plantations around December to April. Children are usually left alone to take care of each other. In one incident, a 16-year-old girl was left alone with her siblings without any money or sufficient food. She had to engage in commercial sex to get money and take care of her siblings.”

Paralegal, Gairo - Morogoro

In **Geita**, some of the small-scale miners were implicated in sexual VAC, motivated by belief in witchcraft. It was revealed by a community development officer that some of the miners believe that if they rape children aged 5 to 10 years then they will get more gold.⁸³⁶

In July 2021, police in **Mbeya** Region arrested a businessman in connection with a series of rape incidents. It was reported that the man had been responsible for more than 20 incidents of child rape. It was believed that his actions were motivated by belief in witchcraft.⁸³⁷ During the human rights survey in **Pwani** Region, some of the interviewed respondents in Kisarawe and Mkuranga Districts mentioned that some of the men in the districts tend to rape their daughters so that they gain prosperity in their businesses.⁸³⁸

In coastal regions such as **Dar es Salaam** and **Pwani**, there are cultural practices such a popular ‘*vigodoro*’ dance, which bring different people together in the streets, including children, and women dancing while revealing most parts of their bodies, sometimes stripping down to underwear. This popular dance provides a platform for children to be sexually abused, especially at night. Regarding this, a social welfare officer in Kibaha District said:

“...parents allow their children to go to the vigodoro dances, where they are sometimes raped and sodomized.”

SWO, Kibaha - Pwani

836 LHRC Human Rights Survey 2021: Geita Field Report.

837 LHRC Human Rights Survey 2021: Mbeya Field Report.

838 LHRC Human Rights Survey 2021: Mbeya Field Report.



Another key factor is parents, especially mothers, not wanting their husbands or partners to face legal action, hence taking their side as opposed to that of the victim. For instance, in **Pwani** Region, there was a case of a child who reported to her teacher at school that her stepfather had raped her three times when her mother was away, but the mother claimed that her husband cannot do such a thing.

5.2.1.6. Introduction of guidelines for introduction of gender desks at all educational levels

In November 2021, it was reported that the Government introduced guidelines for introduction of gender desks at all educational levels, from primary school to universities⁸³⁹. The guidelines were officially launched on 25th November 2021 by the Prime Minister, Hon. Kassim Majaliwa during the commemoration of the 16 Days of Activism against Gender-Based Violence.

5.2.2. Online Child Abuse

5.2.2.1. Overview

According to UNICEF, globally children are currently spending more time online than ever before, essentially growing up online⁸⁴⁰.

A child goes online for the first time every half second. This puts children at an increased risk of violence, exploitation and abuse online. One of the dangers children face on the internet and online platforms is cyberbullying, which together with other forms of violence, leave children exposed to content, including messages, that can incite self-harm and even suicide.⁸⁴¹ According to UNICEF, **more than a third of young people in 30 countries report being cyberbullied, with 1 in 5 skipping school because of it**⁸⁴².

Cyberbullying can have mental, emotional, and physical effects on children, leaving them upset, embarrassed, feeling ashamed, losing sleep, avoiding people, or even in extrem cases developing suicidal behaviour.

839 LHRC Media Survey 2021.

840 See UNICEF, Protecting children online, at <https://www.unicef.org/protection/violence-against-children-online>.

841 Ibid.

842 Ibid.



CYBER-BULLYING

Cyberbullying is bullying with the use of digital technologies. It can take place on social media, messaging platforms, gaming platforms and mobile phones. It is repeated behaviour, aimed at scaring, angering or shaming those who are targeted. Examples include:

- spreading lies about or posting embarrassing photos or videos of someone on social media
- sending hurtful, abusive or threatening messages, images or videos via messaging platforms
- impersonating someone and sending mean messages to others on their behalf or through fake accounts.

Face-to-face bullying and cyberbullying can often happen alongside each other. But cyberbullying leaves a digital footprint – a record that can prove useful and provide evidence to help stop the abuse.

- UNICEF

But the biggest threat to children's online safety, however, is online sexual exploitation and abuse, posed by child sex offenders who target and contact their potential victims.⁸⁴³ Children may be victimized through the production, distribution and consumption of sexual abuse material, or they may be groomed for sexual exploitation, with abusers attempting to meet them in person or exhort them for explicit content.⁸⁴⁴ Child sex offenders can sit in the comfort of their own homes and target and abuse children far away. [Some 80% of children in 25 countries report feeling in danger of sexual abuse or exploitation online.](#)⁸⁴⁵

In Tanzania, it has been reported that 67% of children in the age category of 12-17 years are internet users.⁸⁴⁶ The percentage is higher among those in the age category of 16-17 years, at 86%, while the percentage for 14-15-year-olds is 68% and that for 12-13-year-olds is 42%. It has also been observed that a slightly higher proportion of boys (70%) than girls (64%) use the internet.⁸⁴⁷ However, while most children use the internet, they do not do so frequently, with only about 7% usually going online at least once per day, while 75% go online less frequently per month.⁸⁴⁸

843 UNICE, Protecting children online (supra).

844 Ibid.

845 Ibid.

846 ECPAT, INTERPOL, and UNICEF. (2022). Disrupting Harm in Tanzania: Evidence on online child sexual exploitation and abuse. Global Partnership to End Violence against Children. [https://www.end-violence.org/sites/default/files/2022-03/DH_Tanzania_ONLINE_final_revise%20020322.pdf]

847 Ibid.

848 Ibid.



According to the most recent population data, there are approximately 57.6 million Tanzanians,⁸⁴⁹ and half of the population in Tanzania is children,⁸⁵⁰ which means there are approximately 28.8 million children in Tanzania. So, the 7% of children in Tanzania who go online at least once per day translates into 2 million children who go online each day, vulnerable to online violence, exploitation, and abuse.

5.2.2.2. Legal and policy framework for online child protection

In Tanzania, various measures have been taken by the Government to protect children online, the most important being developing the legal and policy framework for online children protection. The most important legislation for addressing online child abuse is the Cybercrimes Act of 2015, which criminalises acts and distribution of child sexual abuse material, cyberbullying, and online pornography, including child pornography.⁸⁵¹ Other relevant laws are the Law of the Child Act of 2009 (revised in 2019); the Penal Code (CAP 16), which criminalizes various forms of violence against children; and the Anti-Trafficking in Persons Act, 2008. Online child protection is also covered by the National Plan of Action to End Violence Against Women and Children (NPA-VAWC 2017/18 – 2021/22) and the Electronic and Postal Communications (Online Content) Regulations, 2020.

Several gaps/loopholes have been identified in the legal framework for online children protection. These include non-criminalization of mere possession of child sexual abuse material, lack of specific provision criminalising live streaming of child sexual abuse, and absence of provisions prohibiting online grooming for sexual purposes and sexual extortion committed in the online environment.⁸⁵²

5.2.2.3. Situation of online child abuse in Tanzania: Online

Recently, on 18th March 2022, a first detailed report on online child sexual exploitation and abuse (OCSEA), was launched in Tanzania. The report, called “DISRUPTING HARM IN TANZANIA: Evidence of

849 See National Bureau of Statistics, Tanzania in Figures 2020, June 2021 at https://www.nbs.go.tz/nbs/takwimu/references/2020_Tanzania_in_Figure_English.pdf.

850 See UNICEF, For Tanzania’s most vulnerable adolescents, 8 July 2019, at <https://www.unicef.org/tanzania/stories/tanzanias-most-vulnerable-adolescents>.

851 See Sections 13, 14, and 23 of the Cybercrimes Act, 2015.

852 ECPAT, INTERPOL, and UNICEF. (2022). Disrupting Harm in Tanzania (supra).



online child sexual exploitation and abuse,” was jointly developed by End Child Sexual Exploitation (ECPAT) International, a global network of organisations in over 100 countries working towards ending child sexual exploitation; the International Criminal Police Organization (INTERPOL); and the United Nations Children’s Fund (UNICEF).

Generally, the report shows that:⁸⁵³

- In the last year alone, approximately 200,000 children were victims of grave instances of online sexual exploitation and abuse in Tanzania. The report found that children were subjected to harmful experiences, such as being blackmailed to engage in sexual activities and/ or being coerced to engage in sexual activities through promises of money or gifts. Frontline workers surveyed said national attitudes towards sex could put children at a greater risk.
- Frontline workers cited a general lack of awareness and understanding about online child sexual exploitation and abuse in Tanzania, noting that it is a ‘new’ issue that many do not understand the concept of.
- Frontline workers surveyed found that many children did not know that sexual behaviour in any form is unacceptable, indicative of a lack of awareness and education. In fact, only 30% of internet-using children have received some level of sex education in Tanzania.

Key findings in the report include:⁸⁵⁴

- 3% of internet-using children aged 12-17 surveyed were offered money or gifts to engage in sexual acts in person.
- 2% of the surveyed children were offered money or gifts in exchange for sexual images.
- 6% of children received unwanted requests to talk about sex in the last year.
- 3% were asked to share images and videos showing their private parts to others.
- Children who experienced sexual abuse and exploitation were unaware of the reporting mechanisms available:
 - + 82% of the internet-using children surveyed said they did not know how to report harmful content on social media.

⁸⁵³ See ECPAT International, Launch of the Disrupting Harm Report for Tanzania on Technology and the Sexual Exploitation of Children, PRESS BRIEFING: 18 March 2022, at <https://ecpat.org/launch-of-the-disrupting-harm-report-for-tanzania-on-technology-and-the-sexual-exploitation-of-children/>.

⁸⁵⁴ Ibid.



- + 67% said they did not know where to get help if they or a friend were subjected to sexual harassment or abuse

LHRC's View: Online child abuse is becoming a key human rights concern for children, as more and more children in Tanzania are embracing digital technologies and platforms, which are the hunting grounds for child sex offenders. Collaborative efforts are needed between government and non-government actors to improve the situation of online child protection.

LHRC's Call: Increased collaboration between government and non-government actors to address online violence, exploitation, and abuse of children, starting with making relevant legal and policy reforms. As the National Plan of Action to End Violence Against Women and Children (NPA-VAWC 2017/18 – 2021/22) comes to an end in 2022, the issue of online child protection should be amplified in the new action plan.

5.2.3. Sexual Violence: The Biggest Threat to Children's Rights

In 2021, sexual violence against children (sexual VAC), especially in the form of rape and sodomy, was again the biggest threat to children's rights, as many such incidents were reported and recorded. As pointed out above, media survey conducted by found that majority of the reported VAC incidents (89%) were sexual VAC. Survey conducted in 20 regions of Tanzania Mainland also found sexual VAC to be the most common form of VAC.

In **Morogoro**, the survey observed an increase of cases of sexual VAC in Morogoro MC. While in the whole of 2020, there were 52 cases that were recorded, in the period of January to August 2021 alone there were already 68 cases.⁸⁵⁵

In **Iringa**, in the period of January to June 2021, Iringa MC recorded 229 incidents of sexual VAC, especially rape and sodomy, of which 154 (62%) involved girls as victims and 75 (38%) boys.⁸⁵⁶ In Kilolo DC, there 101 incidents, of which 54 (54%) girls and 47 (46%) boys.⁸⁵⁷

In **Mwanza**, high rates of sexual VAC were observed in Misungwi and Nyamagana Districts. A total of 440 rape incidents were recorded by social welfare officers *in the districts in the period of January to June 2021*. A total of 40 sodomy incidents were also reported during this period.

855 LHRC Human Rights Survey 2021: Morogoro Field Report.

856 Human Rights Survey 2021: Iringa Field Report.

857 Ibid.



Victims and perpetrators of sexual VAC

Victims of sexual VAC include children as young as 3 years of age. For instance, in February 2021, Masanja Ndalawa (53), **resident of Ibisabageni Village in Geita**, was taken to Geita Resident Magistrate Court, charged with sodomizing a 3-year-old boy and causing him severe pain.

Both the survey conducted in the 20 regions and media survey found people close to children to be the major perpetrators of sexual VAC. These include **family relatives, uncles, step-fathers and fathers**. For instance, in February 2021, Police in **Mbeya** arrested Isaka Mkubwa (53), resident of Itende Ward, for raping his two daughters and impregnating one of them. He would usually threaten them not to make any noise. In another incident which occurred in April 2021, Masalu Madaha (32), resident of Mondo Village in Misungwi District in **Mwanza**, was sentenced to 60 years in prison for raping his 7-year-old daughter. He committed the offence on 2nd March 2021. In **Geita**, Vincent Said, resident of Sabora Village in Geita District, was accused of raping his stepdaughter aged seven years. It was reported that he committed the offence on 29th June 2021, and he is also HIV positive. In **Morogoro**, a Standard Three pupil at Gairo Primary School revealed that her father was sexually abusing her and when she told her mother about it **she did not believe her**. In **Pwani**, a girl in Kisarawe **District was raped by her** stepfather at least three times while her mother was away.⁸⁵⁸ When she could no longer take **it** she informed her teacher at school, but her mother was less cooperative as she claimed her husband cannot do such a thing. In another incident in the region, a 14-year-old school child revealed during a family meeting in **Mkuranga** District that her father had raped her on several occasions and the father was warned and the girl urged to return back home.

Another father in **Dodoma** (30) was arrested in December 2021 for sodomizing his male child in Kondo District.⁸⁵⁹ In April 2021, it was reported in Kyela District, **Mbeya**, that Michael Maisha (34), had raped his 12-year-old daughter. Earlier, in May 2021, it was reported in the region that a 6-year-old child, resident of Chemba District,

858 LHRC Media Survey & Human Rights Monitoring 2021.

859 Ibid.



was repeatedly raped by her stepfather for two months.⁸⁶⁰ Six other incidents involving fathers or stepfather as perpetrators were reported in Kilwa District (Lindi), Mpanda District (Katavi), Serengeti District (Mara), Tarime District (Mara), Tanganyika (Katavi) and Geita (Geita). In these six incidents alone, there were nine victims.



Picture 27: A girl who claimed to have been raped by her stepfather in Kisarawe, Pwani

In July 2021, Police in **Manyara** Region revealed that two incidents of child rape were reported in the period of 25th June and 10th July 2021, including a 5-year-old child who was raped by her uncle. **Manyara** RPC, ACP Merrison Mwakyoma, revealed that police in the region, through the police gender and children desk, had acquired a vehicle from the **Babati** DC, which they would use to raise awareness about GBV and violence against children at street and household levels as part of the strategy to address the problem.

Bodaboda drivers and teachers were also implicated in sexual VAC

⁸⁶⁰ LHRC Human Rights Monitoring 2021.

in 2021. For instance, in **Mtwara**, it was revealed by one respondent that *bodaboda* drivers tend to target, lure, and rape school children. In **Mara**, a *bodaboda* driver was accused of raping a 14-year-old girl, a secondary student at Serengeti Secondary School in Serengeti District.⁸⁶¹ In the human rights survey, conducted across 20 regions of Tanzania Mainland in 2021, one community member in Mtwara had this to say regarding *bodaboda* drivers:⁸⁶²

“...bodaboda drivers are implicated in child rape and pregnancy.”

Community member, Mtwara

Several incidents of teachers were also reported during this reporting period, and are discussed further below.

Strangers and neighbours also continue to pose a threat to children in terms of protection from all forms of violence. For instance, in November 2021, it was reported in **Rukwa** that 3-year-old child, resident of Mji Mwema Street in Njombe Urban, was abducted and raped by an unknown person after the perpetrator took her away from other children she was playing with, including her brother.⁸⁶³ In **Katavi**, an 11-year-old girl, resident of Mpanda District, was reportedly raped in April 2021 by a neighbour (an adult).

In 2021, **older men** were also implicated in sexual VAC. For instance, in December 2021, a 61-year-old man was arrested by police for raping an 11-year-old pupil in Kongwa District, **Dodoma**. In another incident in the region, a 6-year-old child, resident of Chimedeli Village in Bahi District, was reportedly raped by her grandfather (60). In **Kilimanjaro**, another 60-year-old reportedly disappeared after raping his 12-year-old child. In **Katavi**, a 64-year-old man was accused of raping an 11-year-old girl, resident of Mlele District in the region.

Sexual VAC resulting into health complications and death

Incidents of sexual VAC documented by LHRC in 2021 showed some of the devastating consequences of sexual VAC, including health complications and death. For instance, in **Kagera**, a five-year-old child in Kataruka Village in Bukoba DC was reportedly raped on 19th February 2021 by a relative (grandfather), causing her severe pain and bladder dysfunction, such that she can no longer control her

861 LHRC Human Rights Monitoring 2021.

862 LHRC Human Rights Survey 2021: Mtwara Field Report.

863 LHRC Media Survey 2021.



bladder (unintentional passing of urine). Her grandmother noticed the problem while bathing her, as the victim cried and mentioned that her grandfather (her mother's uncle) had inserted 'a hard object' in her private parts. **In April, police in the region** were looking for a man responsible for raping and then killing a 10-year-old girl on 5th April 2021. The child was last seen alive when her mother sent her to a shop to buy a soap. In June 2021, an eight-year-old girl, resident of Mpirani Village in Same District in **Kilimanjaro** Region was reportedly raped to death by unknown people on 16th **June 2021**.

Gang-raped and sodomized: The sad story of a 14-year-old girl in Katavi Region

In February 2021, LHRC came across the sad incident involving a 14-year-old girl, resident of Kapalangao Village in Kawajense Ward in Mpanda District, who was gangraped and sodomized by three men. The incident occurred on 11th February 2021 and the victim was seriously injured and admitted to Mpanda Referral Hospital. While the physical injuries may heal in time, the emotional injuries, the ones which cannot be visibly seen, are less likely to heal. This is what rape does to women and girls. It destroys them psychologically as very few find the strength to cope with it. This is why the Government needs to invest more in prevention and addressing violence against women and children (VAWC) through the new national plan of action on eradicating VAWC.

Raped and impregnated

Being raped is traumatic enough for women and girls but adding pregnancy to that leaves them seriously depressed and suicidal. In 2021, LHRC documented an incident of a 17-year-old child, resident of Mjimwema Ward in Njombe District, **Njombe**, who was raped and impregnated on 11th February 2021. The perpetrator was a 42-year-old man, John Danga, and the pregnancy caused the girl to be expelled from school. In another incident, a 17-year-old girl, resident of Nkalakala Village in Mkalama District, **Singida** Region, was raped and impregnated in March 2021.

Raped and killed

In some of the reported sexual VAWC incidents, the perpetrators did not just stop with the heinous act of raping girls, but also



went on to kill them. For instance, in **Manyara**, it was reported that a 30-year-old man, Emmnauel Naasi, raped and killed a 5-year-old girl, resident of Mutuka Village in Babati District⁸⁶⁴.

In **Mara**, a 14-year-old girl, resident of Mugumu Ward in Serengeti District, was reportedly raped and killed on 28th February 2021. The perpetrator was a house servant, who escaped after the incident⁸⁶⁵.

In September 2021, another incident of rape and murder involving a 6-year-old girl, resident of Mbeya Town Council, was reported in **Mbeya**⁸⁶⁶.

Sexual VAC perpetrated in different settings, including places of worship and on the way to school

Even a place of worship is not always a safe place for children. For instance, in May 2021, it was reported that the Kinondoni District Court in **Dar es Salaam** sentenced Elisha Mushi (22) to 30 years in prison after finding him guilty of sodomizing a 4-year-old child at a church. He committed the offence on 19 February 2021 at Embassy Kingdom Church. In **Njombe**, it was reported in March 2021 that a 10-year-old girl was raped while on her way to school by a stranger who offered her a lift on a motorcycle⁸⁶⁷.

Schoolchildren are also targeted on their way to school and subjected to sexual VAC. For instance, in **Morogoro**, a social welfare officer revealed that some children have been raped while on their way to school, including at nearby cemeteries.⁸⁶⁸

Sexual VAC a serious problem in Rombo District, Kilimanjaro Region, where the 'sale' leaf culture perpetuates VAC

In May 2021, it was revealed by the head of police gender and children desk in Rombo **District, Kilimanjaro** Region, Selestina Malisa, that more than 11 girls are raped each month in the district. She mentioned that one of the drivers of violence against children, especially sexual violence, is the *Chagga* tribe culture of forgiving a wrongdoing once a leaf called '**sale**' is presented to the victim's family. Based on this culture, rape cases stall in court as the families decide to settle the matters at home and the victim and victim's families stop cooperating with the police, including not showing up in court to give testimony. According to the police gender and **children** desks, most of the perpetrators of sexual violence against children are **relatives**.

864 LHRC Human Rights Monitoring 2021.

865 Ibid.

866 Ibid.

867 LHRC Human Rights Monitoring 2021.

868 LHRC Human Rights Survey 2021: Morogoro Field Report.



Commercial sexual exploitation of children

Commercial sexual exploitation of children (CSEC) refers to the exploitation by an adult with respect to a child or an adolescent – female or male – under 18 years old; accompanied by a payment in money or in kind to the child or adolescent (male or female) or to one or more third parties⁸⁶⁹.

It involves the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person⁸⁷⁰.

According to the International Labour Organization (ILO), CSEC includes: the use of girls and boys in sexual activities remunerated in cash or in kind (commonly known as child prostitution) in the streets or indoors, in such places as brothels, discotheques, massage parlours, bars, hotels, restaurants, etc.; the trafficking of girls and boys and adolescents for the sex trade; child sex tourism; the production, promotion and distribution of pornography involving children; the use of children in sex shows (public or private).⁸⁷¹

In 2021, several incidents of commercial sexual exploitation of children were reported, especially in Dar es Salaam and Morogoro. Parents and guardians were implicated in using their female children in sexual activities remunerated in cash. For instance, in **Dar es Salaam** one of the respondents mentioned that some women push and encourage their female school children to engage in sexual relationship with men so they (the women) can get paid. They encourage their children to engage in commercial sex so that they can also contribute to the family income. In Gairo District, **Morogoro** Region, a teacher at one of the primary schools in the district revealed during an interview that there is a female pupil at the school who was forced to engage in commercial sex by her parents, getting paid Tshs. 4,000 every time she sleeps with a man⁸⁷².

In **Morogoro**, it was reported in August 2021, that some of the female students at Gairo A Primary School were supported by their grandmothers to engage in commercial sexual activities with men, earning between Tshs.

869 See ILO “Commercial sexual exploitation of children” at <https://www.ilo.org/ipec/areas/CSEC/lang--en/index.htm> accessed 27 November 2021.

870 See Office of Juvenile Justice and Delinquency Prevention “Sexual Exploitation of Children” at <https://ojjdp.ojp.gov/programs/sexual-exploitation-children>, accessed 27 November 2021.

871 ILO “Commercial sexual exploitation of children.”

872 LHRC Human Rights Survey 2021: Morogoro Field Report.



1,000 and 2,000 every time they engage in sexual intercourse with men⁸⁷³.

In November 2021, police in the region arrested Maria Zayumba (28), resident of Sangasanga area in Morogoro for abducting a 6-year-old female child and took her to Iringa Region to sexually please her husband (child sex trafficking). Police stated that the child was abducted on 22nd October 2021 on her way home from school⁸⁷⁴.

Sexual violence perpetrated by teachers

During the human rights survey across Tanzania Mainland, teachers were mentioned among the perpetrators of VAC by 17.4% of the respondents. In 2019, The Teachers Service Commission (TSC), revealed that 162 teachers had been dismissed since July 2016 for engaging in sexual relationships with schoolgirls and LHRC documented at least 24 cases of teachers implicated in sexual VAC, who were either arrested and sent to court or found guilty and imprisoned, three of whom were headteachers. In 2020, LHRC documented at least 9 incidents of teachers implicated in sexual VAC, including rape and engaging in sexual relationships with schoolgirls, who were either arrested and sent to court or found guilty and imprisoned. In September 2021, the PO-RALG Minister, Hon. Umyy Mwalimu, revealed that 285 teachers were sent before the Teachers Service Commission (TSC) for engaging in sexual relationships with students.⁸⁷⁵

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Number of incidents of teachers implicated in sexual VAC in the period of 2019 to 2021.

In 2021, LHRC documented 10 incidents of teachers accused of sexual VAC, which are summarized in table 27 below.

⁸⁷³ Ibid.

⁸⁷⁴ LHRC Media Survey 2021.

⁸⁷⁵ LHRC Media Survey 2021.



Table 27: Incidents of male teachers implicated in sexual VAC documented by LHRC – 2019 to 2021

Reported Incident	Report Date
Mara: Police in Mara Region arrested a teacher from Namibu B Primary School for raping a Standard Six pupil. It was reported that the teacher raped the pupil inside the headteacher's office and threatened to kill her while doing so.	11 Jan 2021
Mbeya: Police in Chunya District arrested four teachers of Isangawama Secondary School for engaging in sexual relationships with female students from the school. Several complaints had been made against the teachers and trap was set for the teachers, culminating into the arrests. The arrested teachers are Samson Njonaje, Ramadhan Shaban, Yose Elisalia, and Dot-to Salande.	10 May 2021
Mwanza: Magu District Commissioner, Salum Kali, ordered removal of a headteacher who was accused of engaging in a sexual relationship with female pupils at his school.	14 May 2021
Rukwa: Police in Rukwa arrested a teacher at Itete Primary School in Nkasi District, Clarence Mwanakurya (29), for living with a 16-year-old student of Kirando Secondary School as husband and wife, which is a statutory rape offence.	13 Nov 2021
Dar es Salaam: A 4-year-old pupil at Pugu Kichangani Nursery School was reportedly raped by her teacher, Sekadi Shabani. The child's mother observed her uncomfotability when she returned home, when she revealed that her teacher had 'done something bad' to her. When she was taken to Pugu Hospital it was confirmed that she had been raped. She also revealed that her two fellow pupils had also been sexually abused. Illa Police Region Commander, ACP Debora Magilimba, stated that the suspect had been arrested and was in custody.	12 Nov 2021
Mbeya: A teacher in Kyela District was accused of sexually abusing a 14-year-old boy, resident of Mbugani Village in Mbugani Ward.	15 Dec 2021
Mbeya: Police in Mbeya Region arrested Adelard Mjinjo, a teacher, for raping a 14-year-old girl, resident of Jungurutu Village in Mbarali District.	15 May 2021

Source: Media Survey & Human Rights Monitoring 2021

In April 2021, TSC warned teachers in Kilolo District against engaging in sexual relationships with students as that is contrary to teachers' ethics and a sign of lack of professionalism.⁸⁷⁶ According to TSC official, Christina Hape, Kilolo is one of the districts with many complaints against teachers, including complaints about male teachers engaging in sexual relationships with female students.

⁸⁷⁶ LHRC Media Survey 2021.



In **Lindi**, Lindi District Court sentenced to life in prison, a resident of Ruo Village in Mtama District, after finding him guilty of defiling a child aged 8 years on 17th December 2021. The sentence was imposed on 25th December 2021.

LHRC's View: Like it is the case for sexual VAC incidents perpetrated by other actors, the number of incidents of sexual VAC perpetrated by teachers documented by LHRC might be just a small fraction of actual number of incidents, as there is a high possibility that there are many other incidents which go unreported or are yet to come to light. It is a sad situation that some of the teachers are becoming a nightmare for innocent schoolchildren, affecting or cutting short their dreams because their selfish actions. A school should be a place where a child feels safe and protected.

LHRC's Call: TSC and the Ministry of Education, Science, and Technology to intensify efforts of addressing different forms of VAC perpetrated by teachers, especially sexual VAC, to guarantee protection of students, especially schoolgirls, so that they effectively learn and realize their right to education.

Sexual abuse of boys (sodomy)

Many countries around the world have been faulted for lacking adequate legal protections for boys and usually not looking at boys as victims.⁸⁷⁷ Just like it is the case for men compared to women, boys are usually looked less of victims compared to girls. However, boys also suffer from different forms of violence, including sexual violence. Sodomy is the most common form of sexual violence against boys in Tanzania and is gaining momentum in different settings, including school and home. In 2021, LHRC documented at least 34 incidents of sexual abuse of boys in the form of sodomy.

In March 2021, it was reported in Kwembago Village in Lushoto District, **Tanga**, that a 13-year-old boy was sodomized by a 27-year-old man, Alfani Ramadhani and four other men. In **Katavi**, it was reported that a 12-year-old boy, resident of Sitalike Ward in Mpanda District was

⁸⁷⁷ Rebecca Ratcliffe "Sexual abuse of boys often overlooked by state laws, global study warns" The Guardian Newspaper, 16 Jan 2019, at <https://www.theguardian.com/global-development/2019/jan/16/sexual-abuse-of-boys-often-overlooked-by-state-laws-global-study-warns>.



sodomized in April 2021. In **Mara**, a child sodomy incident involving an 8-year-old boy, resident of Tarime District, was also reported in August 2021 and the perpetrator pleaded guilty in court three days after arrest. In **Manyara**, it was also reported in August that a 7-year-old child, resident of Msimbazi Village in Babati District, had been sodomized by another, older child (15). Ten other incidents of child sodomy were reported in Chemba District (Dodoma), Ubungo District (Dar es Salaam), Mlele District (Katavi), Kilombero (Morogoro), Ubungo (Dar es Salaam), Makambako District (Njombe), and Temeke (Dar es Salaam). Four of these incidents were reported in Katavi Region, where in one of the incidents the victim (13 years) was thereafter killed by the perpetrator.

Child on Child Sexual Violence/ Peer-on-peer sexual abuse

Children, usually older children, also perpetrate sexual violence against other children, usually younger children. During the human rights survey, children, particularly school children, were also mentioned among the perpetrators of VAC. During this reporting period, incidents of child-on-child sexual violence were reported in regions such as Kagera, Dar es Salaam, Mbeya, and Lindi. LHRC documented at least 12 incidents in total.

In **Kagera**, one of the respondents said that there are many cases of child-on-child sexual violence in Bukoba MC and Karagwe DC. These cases include rape, sexual harassment, and sodomy.⁸⁷⁸ In **Dar es Salaam**, in March 2021, the police gender and children desk at Chang'ombe Police Station expressed concern over child-on-child sexual violence. According to an officer of the desk, Blandina Ndunguru, incidents of pupils sodomizing each other in toilets at schools have been rising.⁸⁷⁹ In **Lindi**, police in Ruangwa District arrested a 13-year-old pupil of Maguja Primary School for sodomizing his fellow pupil from Likangara Primary School. The incident occurred on 5th February 2021.⁸⁸⁰

LHRC's Call: Decisive action needs to be taken to increase protection of children from all forms of violence. Children also need to be taught how to protect themselves from violence and encouraged to

878 LHRC Human Rights Survey 2021: Kagera Field Report.

879 LHRC Media Survey 2021.

880 Ibid.



report incidents and advances. This could be part of the package of comprehensive sexuality education.

Judicial action against perpetrators of sexual violence

In 2021, courts in different parts of Tanzania Mainland determined cases of sexual VAC and imposed sentences on perpetrators. For instance, in November 2021, in **Songwe** the Mbozi Resident Magistrate Court sentenced Lucas Charles (35), resident of Ngwara Ward, to life in prison after confessing to raping a 3-year-old child of his employer. The incident occurred on 16th October 2021 in Ngwara Village. In **Mwanza**, Illemela District Court sentenced Anorld Thomas (30) to life in prison after finding him guilty of sodomizing his daughter in March 2021.

5.2.4. Physical and Psychological Violence against Children

Physical violence against children refers to all acts perpetrated against children that bring them physical harm. Such acts may include slapping, pushing, hitting with a fist (punching), kicking, whipping, or threatening a child with a weapon.⁸⁸¹ Emotional or psychological violence includes restricting a child's movements, denigration, ridicule, threats and intimidation, discrimination, rejection and other non-physical forms of hostile treatment.⁸⁸²

In 2021, physical violence was the second most common form of VAC, followed by psychological violence. During the human rights survey, incidents of physical and psychological VAC were reported in all surveyed regions including Pwani, Morogoro, Kagera, Mara, **and** Geita. For instance, in **Pwani**, a stepmother burned the hand her child after accusing him of stealing Tshs. 100.⁸⁸³ In **Morogoro**, one respondent stated that children are excessively punished by their parents or guardians, including being burned on their hands and burned with a clothing iron.⁸⁸⁴ **In Kagera**, an incident of a stepmother pouring hot tea on her child was reported, while in another incident hot porridge was poured on another child as a punishment.⁸⁸⁵ In **Mara**, parents (mother and father) were said to be the major perpetrators of physical and psychological VAC.⁸⁸⁶ In **Geita**, reported incidents of physical VAC that were mentioned by respondents included, burning of hands,

881 See the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22, p. vi.

882 See World Health Organization "Violence against children" 8 June 2020 at <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>, accessed 18 October 2020.

883 Human Right Survey 2021: Pwani Field Report.

884 LHRC Human Rights Survey 2021: Morogoro Field Report.

885 LHRC Human Rights Survey 2021: Kagera Field Report.

886 LHRC Human Rights Survey 2021: Mara Field Report.



whipping, and kicking. For instance, in one incident, which occurred in Buseresere Ward in Chato District, a father whipped his two children for allegedly taking too long to open the door for him he got back home.⁸⁸⁷ One of the children was badly injured, with part of **her** ear cut out. In two other incidents a stepmother burned the hands of her child for buying a wrong item at a shop, and a father burned his 11-year-old son for stealing Tshs. 200.

Though media survey and human rights monitoring, LHRC also documented at least 57 incidents of physical and psychological VAC. These incidents were reported in Kagera, Rukwa, Mtwara, Ruvuma, Singida, Kilimanjaro, Dar es Salaam, Geita, Shinyanga, Mbeya, and Arusha Regions. The incidents included acts such as burning, whipping/caning, and hacking. Most of these acts of violence were perpetrated by parents.

Table 28: Some of the incidents of physical and psychological VAC documented by LHRC - January to December 2021

Reported Incident	Report Date
Kagera: Police in Kagera Region arrested Amos Rudovick (39), resident of Ibale Village in Kyerwa District, for beating to death his son, Dustan Amos (13). The incident occurred on 2 nd January 2021.	5 Jan 2021
Rukwa: Police in Rukwa Region were looking for Allon Simfukwe, resident of Sumbawanga District, for hacking to death his child, Kadius Allon (3) after the wife had left him and refused to come back or even talk to him.	12 Jul 2021
Mtwara: Police in Mtwara Region arrested Muwaza Abeid (29), accused of burning and injuring his 8-year-old child for allegedly stealing food (<i>ugali</i> and meat).	21 Jul 2021
Ruvuma: A female student at a secondary school in Namtumbo District died after she was caned by her teachers for failing a mock exam. Six teachers at Mbunga Secondary School have been arrested in connection with her death.	20 Jul 2021
Singida: A police officer in Singida poured petrol and torched a Standard Six pupil of Minga Primary School aged 14 years, after accusing the child of stealing sunflower oil. The incident occurred on 2 nd April 2021.	15 Apr 2021

887 LHRC Human Rights Survey 2021: Geita Field Report.



<p>Kilimanjaro: Baltazari Mtui, resident of Marangu Ward, was arrested by police for torturing his two children by burning their buttocks using a hot machete. The children are Standard and Standard Two pupils at Lyasongoro Primary School.</p>	24 Apr 2021
<p>Dar es Salaam: Jesca George (22), a domestic worker, was taken before the Kinondoni District Court, faced with the charge of killing a 10-year-old child of her former employer while the mother was at work. The incident occurred on 27th January 2021 in Kawe area.</p>	17 Feb 2021
<p>Shinyanga: A primary school pupil aged 9 years, resident of Usule Ward in Shinyanga District, was badly injured after her parents burned him on different parts of his body for allegedly stealing some groundnuts. The perpetrators the mother, and the stepfather.</p>	13 Feb 2021
<p>Geita: Jackson Bhati (27), resident of Buhangizi Village in Geita Region, stabbed his two children aged 3 and 4 in their stomachs after learning that their mother had married another man in a nearby village.</p>	10 Feb 2021
<p>Singida: Police in Singida Region arrested Mathias Marmo (30) and his wife Regina Laurent (28) for severely beating with a stick a child they were raising, Joyce John, and causing her death.</p>	14 Aug 2021
<p>Arusha: A 15-year-old child, resident of Sekei Ward in Arusha DC and a domestic servant, was beaten and burned on her back with an iron by her employer. LHRC was able to intervene and ensure the matter is referred to the police gender desk. On 13th August 2021, the child's father was told by police to take his daughter back to Singida and the employer was ordered to pay the 7-month salary that was owed to the victim.</p>	25 Aug 2021

Source: Media Survey & Human Rights Monitoring 2021





Picture 28: A child (11) whose father cut off part of her ear as punishment in Chato District, Geita Region

Burning hands: Preferred method of punishing children by parents/guardians

In 2021, the Deputy Minister of Home Affairs, Hon. Khamis Chilo, revealed during a parliamentary session that a total of 130 children, of whom 33 were males (25%) and 97 were females (75%), were physically abused by burning their hands in the period of January to September 2021. In the period of January of December 2021, LHRC documented at least **17** such incidents, reported in the regions of Mara, Mtwara, Singida, Shinyanga, Katavi, and Dar es Salaam.

For instance, in **Mara**, a 5-year-old Elisha Frank, resident of Serengeti District, was burned on both hands by his uncle for eating food without permission. In a similar incident, reported in **Mtwara** in July 2021, Muwaza Abeid (29) burned the hand of her 8-year-old daughter for eating stiff porridge (ugali) and meat that had been reserved for her grandmother⁸⁸⁸.

⁸⁸⁸ LHRC Media Survey 2021.



In **Shinyanga**, police arrested Peter Mahona (47) for burning both hands of his 9-year-old son in February 2021, resident of Shinyanga District, as punishment for eating groundnuts.⁸⁸⁹ A similar incident occurred in Ubungo District, **Dares Salaam**, involving an 8-year-old boy as a victim and his mother as the perpetrator.⁸⁹⁰

Beaten to death

In 2021, LHRC documented at least six incidents/cases of physical violence against children which resulted into death. These incidents were reported in Katavi, Manyara, Tabora, Kigoma, Shinyanga, and Mara Regions. Majority of the victims were boys.

For instance, in **Katavi**, it was reported in April 2021 that a 4-year-old child, resident of Migunga Village in Mlele District was beaten to death by his stepfather, Christopher Charles.⁸⁹¹

In **Manyara**, a 9-year-old child, resident of Kiteto District, was attacked and killed by his father in March 2021. In **Njombe**, a man attacked and killed another 9-year-old following a quarrel with the victim's father. The incident occurred in April 2021 in Njombe District. In **Tabora**, a man brutally attacked and killed two children and their mother. In **Kigoma**, a man beat to death his 17-year daughter for refusing to get married for a dowry of 13 cows.⁸⁹²

In **Mara**, a 3-year-old child, Juma Paulo, resident of Magunga Village in Butiama District was attacked to death by his father, Paulo Andrea (50) after the father claimed the child was not his.⁸⁹³

5.2.5. Revictimization of VAC victims

The risk of repeat victimization or revictimization is a big concern for victims of violence against children in Tanzania. For instance, studies have shown that child sex abuse survivors are five times more likely to be the victims of sexual assault later in life.⁸⁹⁴

But given the abusive environment in which the survivors return in the context of Tanzania this may happen sooner rather than later. As pointed out in this and other LHRC human rights reports, most acts of violence against women and children (VAWC) are perpetrated at home.

889 LHRC Human Rights Monitoring 2021.

890 Ibid.

891 LHRC Human Rights Monitoring 2021.

892 Ibid.

893 LHRC Human Rights Monitoring 2021.

894 Keith Fadelici "Revictimization: How Can This Keep Happening?" 4 May 2020, at <https://www.psychologytoday.com/us/blog/fostering-freedom/202005/revictimization-how-can-keep-happening>.



In the Human Rights Survey, some of the interviewed social welfare officers, especially in Kigoma and Tanga Regions, expressed concern over the high risks of revictimization of survivors of VAC, especially where the perpetrators are people close to the survivor, such as family members and relatives.⁸⁹⁵

Shortages of safe houses and fit persons/families guarantees that most victims will return to the same home settings where they suffered abuse, increasing chances of revictimization.⁸⁹⁶

5.2.6. Filicide: When parents kill their children

In recent years, incidents of parents killing their children (filicide) have been reported severally in different countries across the world, including Tanzania. Both mothers and fathers have been reported to kill their children. For instance, in Australia one child is killed by a parent every fortnight.⁸⁹⁷

Factors that drive parents to kill their children include psychiatric symptoms, previous histories of battering, and illness of children.⁸⁹⁸

In 2021, LHRC documented at least two incidents of filicide, reported in Geita and Simiyu Regions. In **Geita**, in December 2021, police arrested Veronica Gabriel (30), resident of Mwabagaru Village in Chato District, for poisoning her five children and causing deaths of two of them. The incident occurred on 1st December 2021.⁸⁹⁹

In **Simiyu**, a mother, resident of Gula Village in Maswa District, killed her two children before turning back to herself and committing suicide.

LHRC's View: In Tanzania, past history of violence, especially among women, as well as abandonment of a mother and children by husband/partner may be contributing factors of filicide.

5.2.7. Severe Corporal Punishment by Teachers

Severe corporal punishment in schools remains a challenge in Tanzania, like in most other African countries. In most cases such type of punishment not only contravenes international human rights and

895 LHRC Human Rights Survey 2021: Kigoma Field Report; LHRC Human Rights Survey 2021: Tanga Field Report

896 Ibid.

897 Hayley Gleeson "When parents kill: The missed red flags and invisible victims of filicide" at <https://www.abc.net.au/news/2021-03-21/australia-invisible-victims-filicide-missed-red-flags/13253150>.

898 Ibid; Hannah Barry "Child Murder by Mothers: A Critical Analysis of the Current State of Knowledge and a Research Agenda" 30 October 2019; Glenys Young "Sociologist Studies What Leads Mothers to Kill Their Children" 3 August 2020, at <https://today.ttu.edu/posts/2020/08/Stories/sociologist-studies-what-leads-mothers-kill-children>.

899 LHRC Media Survey 2021.



child rights standards, such as the UN Convention on the Rights of the Child (CRC),⁹⁰⁰ but also domestic laws.⁹⁰¹

According to the UN Committee on the Rights of the Child, school corporal punishment is incompatible with the CRC. The impact of severe corporal punishment in schools has included severe bodily harm, permanent injuries or disability, and in most extreme cases, death.⁹⁰²

4 The Number of cases of schoolchildren killed due to severe corporal punishment in schools documented by LHRC from 2017 to 2021.

In Tanzania, corporal punishment remains widely used in schools, especially public schools. The most commonly used method of corporal punishment is striking pupils/students with a cane (caning), usually for different disciplinary infractions such as not doing a homework, coming to school late, and noise-making. However, some students have been caned for failing their examinations and in some cases the punishment is inflicted by several teachers at once.

Despite the fact that there is a law governing imposition of corporal punishment on pupils and students, which should not exceed 3 sticks, its applicability is contrary to what the rules are stating. Teachers, especially in public schools, continued imposing such punishment in disregard of the law, usually exceeding the 3 sticks rule. It is also the law that only a headmaster or designated teacher can administer it, but this rule is also rarely observed. For instance, in the human rights survey, a youth organization official in Sumbawanga District in Rukwa Region revealed that excessive use of corporal punishment in schools in the district has become a big challenge and normalized in public schools.⁹⁰³ The official noted that students are subjected to corporal punishment for different reasons, including noisemaking and being late to school.⁹⁰⁴

In the period of 2017 to 2020, LHRC has documented at least four cases

900 Ibid

901 Spare the Child : Corporal Punishment in Kenyan Schools, 1 September 1999, available at:

902 Ibid; "Girl student in hospital after alleged caning by teacher" The Indian Express Newspaper, 4 March 2021, at <https://indianexpress.com/article/india/crime/girl-student-in-hospital-after-alleged-caning-by-teacher/>.

903 LHRC Human Rights Survey 2021: Rukwa Field Report.

904 Ibid.



of severe corporal punishment imposed by teachers in schools, reported in Iringa, Kagera, Njombe and Pwani Regions. Severe caning of students in these regions resulted into permanent disability (1), serious injuries (1), and death (2). In **Iringa**, police in Kilolo District arrested a head teacher, Robson Sanga (59), for caning a 13-year-old pupil and causing his death after arriving at school late. The incident occurred in September 2017. In **Kagera**, in August 2018, it was reported that a 13-year-old student at Kibeta Primary School in Bukoba Municipal, Kagera Region was severely beaten to death by his teacher, Mr. Respicius Mtazangira, upon being accused of stealing another teacher's handbag. Despite losing consciousness in more than one occasion, the teacher continued to mercilessly beat the pupil with heavy sticks; and reportedly did not stop even after other pupils and teachers begged him to stop the beating, leading to the child's death a couple of hours later.

In **Njombe**, Resident Magistrate Court in Njombe sentenced to three years in prison a teacher from Welela Primary School and a fine of Tshs. 10 million for causing great bodily harm and permanent disability to a pupil after caning the pupil with a stick ten times. The teacher, Focus Mbilinyi, committed the offence in January 2020. A similar incident was reported in **Pwani**, where police arrested a primary school teacher, Evatha Mboya (50), for severely flogging a 12-year-old standard five pupil and causing the child to be admitted to a hospital after complaining about a headache.

In 2021, LHRC documented seven incidents/cases of severe corporal punishment imposed on students by their teachers in Kilimanjaro, Mwanza, Morogoro, Dar es Salaam, Shinyanga, and Ruvuma Regions. The punishment, mostly using a cane, resulted into severe pain/bodily harm (5), and death (2). Of the seven victims, four are female and three are male.

In **Kilimanjaro**, it was reported in April 2021, that a 17-year-old student had been caned 28 times on her hand by her teacher, causing her severe bodily harm.⁹⁰⁵ In **Mwanza**, police arrested a teacher at Lutale Primary School in Magu District for severely caning to death a 12-year-old student at the school. The incident occurred in February 2021.⁹⁰⁶ In **Morogoro**, three school children in Malinyi District were severely caned and beaten by their teacher. In **Dar es Salaam**, a 13-year-old

905 LHRC Human Rights Monitoring 2021.

906 Ibid.



student, resident of Ubungo District, was severely beaten by her teacher at Mabibo Secondary School and had to transfer to another school.⁹⁰⁷ In **Shinyanga**, an 11-year-old child, Ivon Mengeso, resident of Nyahanga Ward in Kahama District was severely beaten by his teacher at St. Antony of Padua Primary School in August 2021.⁹⁰⁸ In **Ruvuma**, six teachers were arrested by police in connection with the death of a 15-year-old student at Mbunga Secondary School, who was severely beaten by the teachers for failing his mock examinations. The child died at a local health centre after succumbing to various injuries sustained following the beating.⁹⁰⁹

#Severe corporal punishment

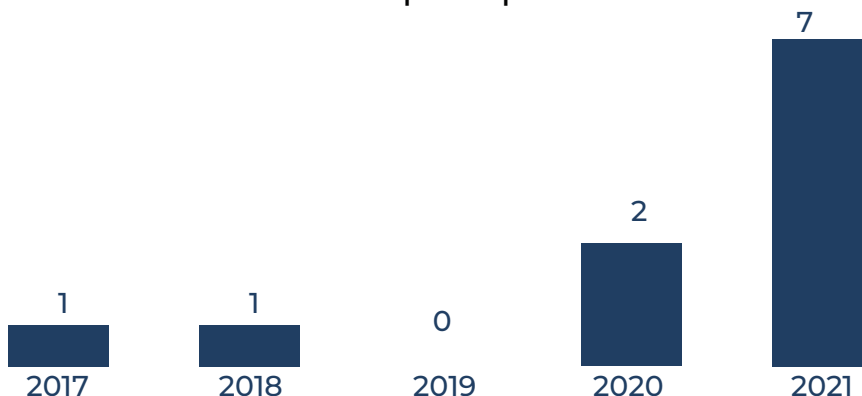


Figure 52: #Severe corporal punishment cases documented by LHRC- 2017 to 2021

5.2.8. Child Labour and Exploitation

5.2.8.1. Overview

Child labour denies a child their fundamental human rights, including right to education and freedom from all forms of violence. It also hinders children’s development.⁹¹⁰ According to the Food and Agriculture Organization of the United Nations (FAO), child labour refers to “work that is inappropriate for a child’s age, affects children’s education, or is likely to harm their health, safety or morals.”⁹¹¹ Child labour is said to be exploitative labour when a child is used as cheap labour, paid less than the labour provided (unequal payment) and exposed to various

907 Ibid.

908 Ibid.

909 LHRC Media Survey 2021.

910 ILO, *International Labour Standards on Child labour* at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang-en/index.htm>, accessed 21st May 2018.

911 See FAO “Child Labour in Agriculture” at <http://www.fao.org/childlabouragriculture/en/>, accessed 17th September 2019.



hazards.⁹¹² Child labour may lead to impairment of a child's physical, mental, moral, spiritual and social development.⁹¹³

5.2.8.2. ILO global estimates and trends on child labour

In June 2021, the International Labour Organization (ILO) released its report on child labour, showing global estimates and trends, revealing that child labour has risen to 160 worldwide, an increase of 8.4 million children since 2016.⁹¹⁴ The report warns that progress to end child labour has stalled for the first time in 20 years, reversing the previous downward trend that saw child labour fall by 94 million between 2000 and 2016.⁹¹⁵

Key findings in the ILO child labour report of 2021⁹¹⁶

- **Child labour remains a persistent problem in the world today:** 160 million children (63 million girls and 97 million boys) were in child labour globally at the beginning of 2020, accounting for 1 in 10 of all children worldwide. 79 million (nearly half of those) were in hazardous work that directly endangers their health, safety and moral development.
- **Global progress against child labour has stagnated since 2016:** The percentage of children in child labour remained unchanged since 2016 while the absolute number of children in child labour increased by over 8 million. Percentage of children in hazardous labour has also remained almost unchanged but rose in absolute terms by 6.5 million children.
- **Child labour is more prevalent in rural areas:** There are 122.7 million rural children in child labour compared to 37.3 million urban children. The prevalence of child labour in rural areas (19.9%) is close to three times higher than in urban areas (4.7%).
- **The global picture masks continued progress against child labour in Asia and the Pacific, and Latin America and the Caribbean:** In both regions, child labour trended downward over the last four years in percentage and absolute terms. But similar progress has not been observed in Sub-Saharan Africa, where both number and percentage of children in child labour have increased. There are now more children in child labour in this region than in the rest of the world combined.
- **Sub-Saharan Africa stands out as the region with the highest prev-**

912 Law Reform Commission of Tanzania, *Report on Labour Law*, presented to the Minister of Justice and Constitutional Affairs, Ministry of Justice and Constitutional Affairs, 2001.

913 Ibid.

914 International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021. License: CC BY 4.0.

915 See "Child labour rises to 160 million – first increase in two decades" ILO, 10 June 2021, at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_800090/lang-en/index.htm.

916 International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021. License: CC BY 4.0.



alence and largest number of children in child labour: In this part of Africa, child labour prevalence stands at 23.9%, the highest across the regions and increasing from 22.4% in 2016.

- **Child labour is frequently associated with children being out of school:** A large share of young children in child labour are excluded from school despite falling within the age range for compulsory education. More than a quarter of children aged 12 to 14 who are in child labour are out of school. This severely constrains their prospects of decent work in youth and adulthood as well as their life potential overall. Many more children in child labour struggle to balance the demands of school and child labour at the same time, which comprises their education and their right to leisure. In Sub-Saharan Africa, the percentage of children aged 5 to 14 years in child labour who are not attending school is 28.1%, the third highest after Eastern and South-Eastern Asia and Central and Southern Asia.
- **The Covid19 pandemic threatens to further erode global progress against child labour unless urgent mitigation measures are taken:** New analysis suggests a further 8.9 million children will be in child labour by the end of 2022 as a result of rising poverty driven by the pandemic.
- **Involvement in child labour is higher for boys than girls at all ages:** Among all boys, 11.2% are in child labour compared to 7.8% of all girls. In absolute numbers, boys in child labour outnumber girls by 34 million.
- **Most child labour – for boys and girls alike – continues to occur in agriculture:** 70% of all children in child labour, 112 children in total, are in agriculture. Many are younger children, underscoring agriculture as an entry point to child labour. Over three quarters of all children aged 5 to 11 in child labour work in agriculture.
- **The largest share of child labour takes place within families:** 72% of all child labour and 83% of child labour among children aged 5 to 11 occurs within families, primarily on family farms or in family microenterprises. Family-based child labour is frequently hazardous despite common perceptions of the family as offering a safer work environment. More than one in four children aged 5 to 11 and nearly half of children aged 12 to 14 in family-based child labour are in work likely to harm their health, safety or morals.

5.2.8.3. Child labour and legal framework on child labour in Tanzania

In Tanzania, child labour⁹¹⁷ is prohibited under various domestic legislations, most notably the Law of the Child Act of 2009 (revised in 2019) and the Employment and Labour Relations Act of 2004. Despite

917 Any work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: is mentally, physically, socially or morally dangerous and harmful to children [NPA-VAWC 2017/18 – 2021/22, p. v]



various efforts to combat child labour and exploitation in Tanzania, child labour persists in its various forms, denying children the fundamental rights, including right to education and protection from harmful employment. **In Tanzania, child labour is common in sectors such as agriculture, mining, and livestock.**

The first schedule of the Employment and Labour Relations (General) Regulations of 2017 provides a list of work considered hazardous for children.⁹¹⁸ The list includes hazardous works in the sectors such as agriculture, fishery, mining, construction, service, trade, and transport. Examples include: fetching and carrying fire wood, **portering of heavy loads**, feeding farm animals, crushing ore, drilling and blasting, cement mixing, painting, brick making, carpentry, welding, stone crushing, water vending, masonry, cleaning toilets, working in places such as bars, hotels and places of entertainment, and electrical repair.

Under the Employment and Labour Relations (General) Regulations, 2017, no person is allowed to employ or cause to be employed a child under the age fourteen;⁹¹⁹ and a child of this age and above can only perform light work as stipulated in the schedule to the Regulations.⁹²⁰ They also stipulate that a child who is still attending school is only allowed to work in excess of three hours per day.⁹²¹ Additionally, a child aged 14 years and above can work for not more than 6 hours per day provided he is on leave, has completed his studies, or is not in school for any justifiable reason.⁹²²

Regarding hours of work and rest, the Regulations stipulate that a child should not work for more than three consecutive hours without at least a one-hour rest.⁹²³ However, no child is allowed to work overtime and work between 8pm and 6am.⁹²⁴ Other working conditions include a child of 14 to 16 years not carrying any load weighing more than 15 kilograms and a child above 16 years not being allowed to carry more than 20 kilograms.⁹²⁵ Nevertheless, employer must keep register and maintain a register in respect of children employed in his work place,⁹²⁶

918 Employment and Labour Relations (General) Regulations, GN. 47 of 2017 and under section 82(3) of the Law of the Child Act 2009

919 Regulation 3(1) of the Employment and Labour Relations (General) Regulations, 2017.

920 Ibid, Regulation 3(2).

921 Ibid, Regulation 4(1).

922 Regulation 4(2) of the Employment and Labour Relations (General) Regulations, 2017.

923 Ibid, Regulation 5.

924 Ibid, Regulation 6 and section 79(1) of the Law of Child 2009

925 Regulation 7 of the Employment and Labour Relations (General) Regulations, 2017.

926 Ibid, Regulation 8(1) and under section 85(1) of the Law of the Child Act entitled Registration of a child in Industrial Undertakings



pay the child wages,⁹²⁷ and provide written employment contract and a copy of such contract to the child.⁹²⁸

Poverty remains the major cause of child labour in Tanzania, hindering a child's basic social and economic rights, such as the right to education and right to protection.

5.2.8.4. Child labour in Tanzania Mainland in 2021: Survey findings

In 2021, respondents of the human rights survey in regions such as Dar es Salaam, Morogoro, and Kagera, said child labour and exploitation is a problem in their community. For instance, in **Dar es Salaam**, it was reported that children were brought in from other regions to work as domestic servants, but were usually economically exploited.⁹²⁹ In **Morogoro**, child labour was said to be an issue in agriculture, as child labour was said to be preferred during the farming season, especially in the months of December to April.⁹³⁰ In **Kagera**, it was reported that some parents, especially in rural areas, force their children to go and do some farm work and take the money on their behalf.⁹³¹

A survey on business and human rights, conducted by LHRC in March and April 2021, found that child labour incidents were mostly reported in Manyara, Tabora, Singida, Mbeya, Geita, Shinyanga, and Dodoma.⁹³² For instance, in **Manyara**, child labour was said to be prevalent around mining areas and in sugarcane plantations, while in **Tabora**, child labour was said to be common in tobacco plantations.

In Geita, stone quarrying/crushing was also observed as a key child labour issue. Stone crushing in quarry is listed as a hazardous work for children, because of possible hazards such as toxic gases, explosives, sexual harassment, vibration, long working hours, harsh supervision, and mercury fumes.⁹³³ Possible physical, mental, or psychological harm associated with this hazardous work includes low self-esteem, physical assault, heat stress, poor physical and mental development, and depression.⁹³⁴ According to ILO, quarrying or crushing stone for

927 Ibid, Regulation 9 and section 81(1,2) of the Law of the Child Act [CAP 13, R.E 2019].

928 Ibid, Regulation 10(1).

929 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.

930 LHRC Human Rights Survey 2021: Morogoro Field Report.

931 LHRC Human Rights Survey 2021: Kagera Field Report.

932 See LHRC (2021), Human Rights and Business Report 2020/21, at www.humanrights.or.tz.

933 See the First Schedule of the Employment and Labour Relations (General) Regulations, 2017.

934 Ibid.



construction material for to make gravel is a hard and dangerous work for children.⁹³⁵ But, as it was observed in Geita, children from poor families usually find themselves with no choice but to engage in stone crushing, usually together with other family members, to earn a living as part of a household income.⁹³⁶

In Mbeya, the survey found that children are employed in rice plantations, including to chase birds away. It was also reported that most farmers prefer to employ children to attend their rice farms because they do a better job in sowing seeds than adults. Because of this employment, children tend to miss school, hence denied their right to education.⁹³⁷ In February 2021, some of the tobacco farmers in Chunya District in the region were also warned against employing children in their farms, as the Government made it clear that it would take legal measures against those who shall continue to use children as cheap labour. It has been reported that the farmers prefer to employ children as they can pay them much less than they pay adults. It has also been reported that children who perform such labour are also subjected to different forms of violence and exploitation, including sexual and psychological violence.

“..we have received many complaints from teachers regarding truancy because children are employed to chase away birds in rice plantations. Most rice farmers prefer to use children because rice farming requires workers to constantly bend down, which is easier for children compared to adults.”

WEO – Mbarali District, Mbeya

In **Dodoma**, the survey found that children are engaged to work in plantations, mines, and quarrying or crushing stones. An interview with a social welfare officer in Bahi District revealed that child labour is a big issue in the district, largely contributed by poverty and negative parental attitude towards education. The social welfare officer noted that there is high demand for child labour during the harvest season, especially harvesting of groundnuts.

5.2.8.5. Reported incidents of child labour in Tanzania

⁹³⁵ ILO “Child labour in stone quarrying” at <https://www.ilo.org/ipec/areas/Miningandquarrying/MoreaboutCLinmining/lang--en/index.htm>, accessed 24th May 2021.

⁹³⁶ Ibid.

⁹³⁷ LHRC (2021), Human Rights and Business Report 2020/21, at www.humanrights.or.tz.



Mainland in 2021

In 2021, through media survey and human rights monitoring, LHRC documented 48 incidents of child labour and exploitation reported in nearly all regions of Tanzania Mainland, including Morogoro, Iringa, Dodoma, Dar es Salaam, Geita, Mbeya, Tanga, and Songwe. For instance, in **Mbeya**, police arrested two people for abducting 11 children and hiring them as livestock keepers for personal gains.⁹³⁸ In **Tanga**, it was revealed that child labour is preferred in orange fruit farms in Korogwe District, especially during harvesting, contributing to schoolchildren dropping out of school.⁹³⁹ In **Iringa**, a 13-year-old girl, was forced by her father to drop out of school and go work at a sugarcane plantation in Kilombero District, Morogoro Region. The matter was reported to a social welfare officer and arrangements made to transport the victim back to Iringa.⁹⁴⁰ Another child from **Iringa** (9 years of age) was also a victim of child labour, made to work in a rice plantation in Kilombero District, was rescued by LHRC and local stakeholders to ensure her safe return to Iringa so that she can continue with her education.⁹⁴¹

938 LHRC Media Survey 2021.

939 LHRC Human Rights Monitoring 2021.

940 Ibid.

941 Ibid.





Picture 29: A 9-year-old child found by LHRC working in a rice plantation during school hours in Kilombero District in 2021

In **Geita**, LHRC came across another 9-year-old girlchild in April 2021 who was forced by her mother to work in local mines. The mother even refused to let her wear her school uniform, insisting she goes to work in the local mines instead.⁹⁴² In **Songwe**, a 6-year-old boychild, resident of Ilembu Ward in Mbozi District was found selling vegetables in the streets during school hours, a form of child labour prohibited for a child of his age under Tanzanian labour laws. Intervention was made by the Village Executive Officer to enlighten the child's mother about the dangers of child labour, who promised not to make her child do such work again.⁹⁴³

In **Mbeya**, in February 2021, LGA in Chunya District warned some of the tobacco farmers against employing children in their farms and vowed to take legal measures against those who shall continue to use children as cheap labour. It has been reported that the farmers prefer to employ

⁹⁴² LHRC Human Rights Monitoring 2021.

⁹⁴³ Ibid.



children as they can pay them much less than they pay adults.⁹⁴⁴ It has also been reported that children who perform such labour are also subjected to different forms of violence and exploitation, including sexual and psychological violence.⁹⁴⁵

5.2.9. Violence against Children Working as Domestic Servants

As of the year 2015, domestic workers in Tanzania represented 5% of total population aged 15 – 64 years.⁹⁴⁶ Majority of the domestic workers (75%), fall within the aged category of 15-24 years.⁹⁴⁷ Girls and young women who work as domestic servants in different parts of Tanzania Mainland face various common challenges, including unfair remuneration; non-payment of wages (economic violence); sexual, physical, and psychological abuse; lack of employment contract; and being overworked. Lack of adequate legal protection make them more vulnerable to violence and exploitation.

During the human rights survey, community members were asked about violation of domestic servants' rights. A quarter of respondents (25%) said it is a serious problem, while a third (34%) said it is a moderate problem. Only 16% of the respondents perceived violation of domestic servants' rights to be not at all a problem.

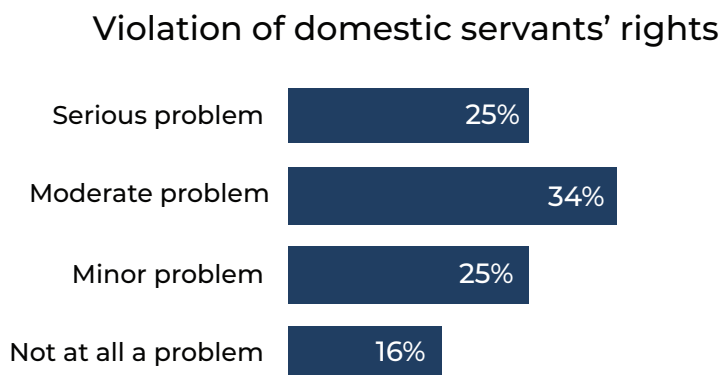


Figure 53: Survey participants' perceptions on violation of domestic servants' rights

944 LHRC Media Survey 2021.

945 Ibid.

946 See ILO, Advancing Decent Work for Domestic Workers in the United Republic of Tanzania, at https://www.ilo.org/africa/countries-covered/tanzania/WCMS_412363/lang-en/index.htm, accessed 27 November 2021.

947 Ibid.



In **Morogoro**, it was revealed that domestic servants face various challenges, especially working without written contracts and sexual violence.⁹⁴⁸ Another key challenge they face is non-payment of wages on time and unfair deductions of wages, as explained by a paralegal in the region.

“House girls (domestic workers) have been at a great risk of being subjected to different forms of violence, including verbal abuse, sexual harassment, and forced sex (rape), with male children and fathers the main perpetrators. Economic violence is also common among house girls as they are usually not paid their wages as per agreement.”

Paralegal, Morogoro

In 2021, LHRC also documented two incidents of violence against domestic servants, aged below 18 years, who were trafficked from **Dodoma** to provide domestic work services in Dar es Salaam. Their work environment was characterized by overworking and underpayment.⁹⁴⁹ Mpwapwa District was mentioned as one of the areas where girls are usually recruited to go and work as domestic servants in different regions, but mostly Dar es Salaam.⁹⁵⁰ LHRC has observed that most of the girls recruited to work as domestic servants are victims of child trafficking.

5.2.10. Challenges in addressing VAC

In the Human Survey 2021, some of the respondents who were interviewed, including social welfare officers, identified three main challenges that hinder effective provision of social welfare services. These challenges are budgetary constraints, the social welfare department being blocked by the community development department (lack of visibility), and shortage of social welfare officers.

For instance, in Morogoro, shortage of social welfare officers (SWOs) was said to affect administration of juvenile justice. A social welfare in the region said:

“We are experiencing shortage of social welfare officers, as we currently only have 11, while the wards are 29. Five social welfare officers are work at the municipal level, while the remaining six are in six of the wards. There is also only one vehicle, which we share with the health and environment departments.”

SWO, Morogoro

948 Huma Rights Survey 2021: Morogoro Field Report.

949 LHRC Media Survey 2021.

950 Ibid.



5.2.11. Child Neglect and Abandonment

5.2.11.1. Overview

According to the Committee on the Rights of the Child, Neglect means the failure to meet children’s physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children’s care have the means, knowledge and access to services to do so.⁹⁵¹ It includes:⁹⁵²

- **Physical neglect:** failure to protect a child from harm, including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care;
- **Psychological or emotional neglect:** including lack of any emotional support and love, chronic inattention to the child, caregivers being “psychologically unavailable” by overlooking young children’s cues and signals, and exposure to intimate partner violence, drug or alcohol abuse;
- **Neglect of children’s physical or mental health:** withholding essential medical care;
- **Educational neglect:** failure to comply with laws requiring caregivers to secure their children’s education through attendance at school or otherwise; and
- **Abandonment:** a practice which is of great concern and which can disproportionately affect, inter alia, children out of wedlock and children with disabilities in some societies.

The African Charter on the Rights and Welfare of the Child of 1990 requires States Parties to take specific legislative, administrative, social, and educational measures to protect the child from abuse, torture, and neglect.⁹⁵³

5.2.11.2. National legal framework on child neglect

In Tanzania context, child neglect is a form of child abuse, which is associated with failure to provide for a child’s basic needs such as adequate food and clothing and failure to protect a child from

951 See Committee on the Rights of the Child, The right of the child to freedom from all forms of violence, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vFKtnY3RFBX0eVOrGEVYuIm9CsHNwh1HrjED9fVmGn%2BaZ1TGy6vH1lek6kukGyB%2FFCGBbSOPOuwpKf24vcxkEnv>.

952 Ibid.

953 Article 16(1) of the African Charter on the Rights and Welfare of the Child, 1990.



violence.⁹⁵⁴ Domestically, the Law of the Child Act of 2009 and the NPA-VAWC 2017/18 – 2021/22 define child abuse to include neglect.⁹⁵⁵ The Law of the Child Act also imposes parental duty and responsibility to protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression.⁹⁵⁶

5.2.11.3. Child neglect in Tanzania Mainland in 2021: Survey findings

In 2021, child neglect and abandonment continued to be a key human right concern for children. During the survey, child neglect was mentioned as the most common form of VAC (60%). During interviews with key informant, child neglect and abandonment was mentioned as a major challenge in all surveyed regions. For instance, in **Singida**, a social welfare officer in Manyoni District revealed that child neglect is the biggest VAC issue in the district, leaving the children more vulnerable to other form of violence, including sexual violence and exploitation.⁹⁵⁷ In **Pwani**, a woman in Kisarawe District was accused by her sister of neglecting and abandoning her two children.⁹⁵⁸ In **Kagera**, social welfare officers indicated that cases of men abandoning their families and children are becoming more common, with the common act of child neglect being failure to provide their children with basic services.⁹⁵⁹

5.2.11.4. Reported incidents of child neglect

Through media survey and human rights monitoring, LHRC documented 24 reported incidents of child neglect reported in different parts of Tanzania Mainland, including Dar es Salaam, Shinyanga, Tanga, Kigoma, and Katavi Regions. In **Shinyanga**, it was reported in February 2021 that women in Mwakitolyo Ward in Shinyanga DC have accused their men of abandoning and neglecting their families and cause their children to drop out of school.⁹⁶⁰ Because of this situation, the children are forced to join their mothers in doing quarrying of gold rocks and fetching water to get money.⁹⁶¹

5.2.12. Child Marriage and Economic Violence against Children

954 NPA-VAWC 2017/18 – 2021/22, p. 5.

955 Section 3 of the Law of the Child Act, 2009.

956 Section 9(3)(a) of the Law of the Child Act, 2009.

957 LHRC Human Rights Survey 2021: Singida Field Report.

958 LHRC Human Rights Survey 2021: Pwani Field Report.

959 LHRC Human Rights Survey 2021: Kagera Field Report.

960 LHRC Media Survey 2021.

961 Ibid.



Tanzania's obligation to eliminate child marriage

Tanzania has an obligation to combat and eliminate all forms of discrimination against women and girls, including harmful practices which endanger their health and general well-being such as child marriage.⁹⁶² As a country and member of the African Union (AU), it is duty bound to take effective action, including legislation, to specify the minimum age of marriage to be 18 years.⁹⁶³ Nevertheless, the Law of Marriage Act, 1971 still allows girls aged 14 and 15 to get married.

Law of Marriage Act, 1971 yet to be amended to outlaw child marriage

In 2016, the High Court of Tanzania delivered its judgment on the *Rebeca Gyumi case*,⁹⁶⁴ declaring 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. The Court of Appeal, upheld that landmark 2016 ruling by the High of Tanzania that child marriage, allowed under the Law of Marriage Act of 1971, contravenes the Constitution of the United Republic of Tanzania of 1977 and increased the minimum age of marriage for girls and boys from 14 and 15 years respectively to 18 years.⁹⁶⁵ Two years on, the marriage law is yet to be amended to set 18 years as the minimum age of marriage.

Table 29: Developments relating to child marriage in Tanzania

1994	The Law Reform Commission releases its report on the Law of Marriage Act. It recommends minimum age of marriage to be 21 years, outlawing child marriage.
2003	Tanzania ratifies the African Charter on the Rights and Welfare of the Child 1990, which prohibits child marriage and sets 18 years as minimum age of marriage for women.
2007	Tanzania ratifies the Maputo Protocol of 2003, which prohibits child marriage and sets 18 years as minimum age of marriage for women.

962 See Articles 1,5, & 6 of the Maputo Protocol.

963 Article 21(2) of African Charter on the Rights and Welfare of the Child, 1990.

964 *Rebeca Z. Gyumi v Attorney General* (Tanzanian Civil Case No. 5 of 2016)

965 See Msichana Initiative "Tanzania Court of Appeal Upholds 2016 Ruling: Child Marriage Is Unconstitutional" at <https://msichana.or.tz/tanzania-court-of-appeal-upholds-2016-ruling-child-marriage-is-unconstitutional/>, accessed 3rd March 2020; Ettie Bailey-King "TANZANIA'S SUPREME COURT DECLARES CHILD MARRIAGE UNCONSTITUTIONAL" *Girls Not Brides*, 14 Nov 2016, at <https://www.girlsnotbrides.org/law-one-steps-ending-child-marriage-says-rebeca-gyumi-founder-msichana-initiative-tanzania/>, accessed 3rd March 2020.



	2016	Tanzania participates in developing and adopting the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage
2016		Rebecca Gyumi case, challenging provisions within LMA allowing child marriage, is filed before the High Court of Tanzania.
	2016	High Court of Tanzania delivers its judgement on the Rebecca Gyumi case, declared provisions within the Law of Marriage Act allowing girls at 14 and 15 years to be married unconstitutional and called for amendment of LMA to set 18 years as minimum age for marriage.
2019		Court of Appeal upholds decision of the High Court, calling for amendment of LMA to outlaw child marriage by setting 18 years as minimum age for marriage.
	2021	Two years on from the Court of Appeal judgement, the Parliament of Tanzania is yet to amend the Law of Marriage Act of 1971 to outlaw child marriage. The national report of Tanzania before the UPR Working Group reveals that the Government is in the process of reviewing the Law of Marriage Act, Cap. 29 to conform to the Court of Appeal decision in the case of Attorney General vs Rebecca Z. Gyumi, Civil Appeal No. 204 of 2017 on the age of marriage.

In April 2021, some of the MPs called upon the Government to speed up the process of amending the Law of Marriage Act of 1971 to outlaw child marriage. They made the pledge during a session with anti-child marriage stakeholders.

Reported incidents of child marriage: LHRC's media survey & human rights monitoring

Through media survey and human rights monitoring, LHRC documented 37 incidents of child marriage, two more than those documented in 2020. These incidents were reported in regions such as Katavi, Shinyanga, Mara, Mtwara, Lindi, Kilimanjaro, Dodoma, Kigoma, and Rukwa.

Most of the girls who were subjected to child marriage were in the age category of 13 to 16 years. In one incident, reported in **Katavi**, a man beat his daughter to death for refusing to get married. In **Lindi**, 14-year-old girl was kicked out of the house in September 2021 after refusing to marry. Dowry was observed to be the biggest motivation for parents to force their children to get married and the main perpetrators in this regard were fathers. The youngest victim, who was rescued from



child marriage, was 11 years old. Nearly half of the incidents (46%) were reported in the Lake Zone (20%), especially in Mara Region, followed by the Western Zone, especially Katavi Region. Most of the perpetrators were arrested in connection with the incidents.

Table 30: Some of the reported incidents of child marriage documented by LHRC in 2021

Katavi: Police in Tanganyika District arrested three people for conspiracy to marry off a 16-year-old student for a dowry of Tshs. 1 million.	11 Feb 2021
Shinyanga: Rozalia Petro, a student at Ulowa Secondary School in Ushetu – Kahama District, provided an account of how her fellow student was forced by her parents to drop out of school and get married. She mentioned that a year before the parents of her friend started making preparations for marriage, including a dowry to be paid. Once the preparations were completed, the girl was grabbed by friends of her husband to be and officially become the wife.	11 Mar 2021
Kilimanjaro: Police in Kilimanjaro Region intervened a wedding ceremony and rescued an 11-year-old child from child marriage. The girl was about to be married for a dowry of three cows in Same District, Kilimanjaro Region.	10 Aug 2021
Shinyanga: It was reported in July 2021 that 30 female schoolchildren in different schools located in Shinyanga District had dropped out of school due to pregnancy in the first six months of 2021. It was also reported that 12 students were taken out of school to be married.	7 Jul 2021
Kigoma: Police in Kigoma arrested a man, Kulwa Juakali (40) , for beating to death his daughter (17) for refusing to get married for 13 cows as dowry.	12 Nov 2021
Katavi: Police in Nkasi District arrested headteacher of Itete Primary School, Clarence Mwanakurya (29) for marrying a 16-year-old girl, who is a pupil at the school.	28 Nov 2021
Rukwa: Police in Rukwa arrested Kennedy Fumpa (37) for marrying a standard three pupil aged 11 years for a dowry of Tshs. 330,000 and a pig. The dowry was received by the child's grandmother.	18 Oct 2021
Dodoma: Police in Dodoma arrested a man, Shoto Hussein Mashoto (30) for marrying a 13-year-old girl, resident of Chimedeli Village in Bahi District, for a dowry of 8 cows.	2 Feb 2021
Mara: Police in Rorya District arrested a 70-year-old man from Busanga Vilalge who forcefully married 13-year-old girl, resident of Manila Village, after paying a dowry of 5 cows.	22 Sep 2021
Mara: A 13-year-old girl, resident of Migabiri Village in Tarime District, was abducted and forced into marriage in March 2021.	3 Mar 2021

Source: Media Survey & Human Rights Monitoring 2021



Reported incidents of child marriage: Human rights survey findings

In the human rights survey, incidents of children marriage were especially reported in regions such as Pwani, Morogoro, Mara, Geita, Mtwara, Rukwa, and Katavi Regions. In **Pwani**, it was revealed that some parents encourage their daughters to marry so that they get dowry. Some of the parents in the region were also accused of encouraging their female children to fail their standard seven national examinations so that they can get married.⁹⁶⁶

“Just the other day one woman was caught trying to marry off her Standard 7 daughter. When questioned by the Ward Executive Officer, she said she sees no problem since she was also married young.”

SWO, Morogoro MC

In February 2021, police in Tanganyika District, **Katavi** Region, arrested three people for conspiracy to marry off a 16-year-old student for a dowry of **Tshs.** 1 million. In March 2021, Rozalia Petro, a student at Ulowa Secondary School in Ushetu – Kahama District, **Shinyanga** Region, provided an account of how her fellow student was forced by her parents to drop out of school and get married.⁹⁶⁷ She mentioned that a year before the parents of her friend started making preparations for marriage, including a dowry to be paid. Once the preparations were completed, the girl was grabbed by friends of her husband to be and officially become the wife. In Shinyanga District, it was reported that in the first six months of 2021, at least 12 female students were taken out of school to be married.

In August 2021, police in **Kilimanjaro** Region intervened a wedding ceremony and rescued an 11-year-old child from child marriage. The girl was about to be married for a dowry of three cows in Same District, Kilimanjaro Region.

It's all about the money for some parents, poverty a key factor

The survey found that for some parents it is all about the money and/or property they can get from marrying off their daughters. Essentially, they turn their daughters into a source of income, which constitutes

⁹⁶⁶ LHRC Human Rights Survey 2021: Pwani Field Report.

⁹⁶⁷ LHRC Media Survey 2021.



economic violence. In **Morogoro**, some of the respondents revealed that some parents force their girls to marry during the planting season so that they raise enough money for farming.⁹⁶⁸ In **Mara**, a social welfare officer who responded to the survey revealed that a girl child is valued much in the community, especially among the *Kurya* tribe parents, some of whom prefer to get their female children married to whoever comes to propose marrying them just to get cows.⁹⁶⁹

“..there is an older person here at Kimanzichana who targets and marries 16 year-old girls and leaves them when they conceive, and the parents of the girls are okay with this so long as they get money..”

Community member, Mkuranga - Pwani

FGM a driver of child marriage in Mara

In Mara, FGM was identified as a key driver of child marriage. Girls who undergo FGM are considered ready for marriage and to start a family of her own. This was revealed by community members and social welfare officers who participated in the survey.

“...FGM is the biggest problem in this area. There is a belief among community members that once a child is has undergone FGM she is ready for marriage. This belief has contributed to child marriage and pregnancy.”

SWO, Mara

LHRC’s Call: The Government to take immediate measures to comply with the decision of the Court of Appeal of Tanzania in the Rebecca Gyumi case to set 18 years as the age of marriage for both males and females and thereby abolishing our outlawing child marriage.

5.2.13. Female Genital Mutilation in Tanzania: Still a long way to go to change mindsets

FGM is a form of violence against women and girls and continues to be a challenge in different parts of Tanzania, especially in Manyara, Dodoma, Arusha, Mara, and Singida Regions. FGM is both a public health and human rights concern.

During the human rights survey, FGM was reported to be the biggest challenge in Mara Region. While many anti-FGM interventions have made by different stakeholders in the region, including LHRC, it remains a key challenge for girls as the practice is currently done more secretly.

⁹⁶⁸ LHRC Human Rights Survey 2021: Morogoro Field Report.
⁹⁶⁹



In January 2021, it was reported that some parents in Serengeti District had refused to take back to school their female children who had run away from home in the previous month to avoid FGM. In 2020, more than 700 girls from Serengeti, Butiama, and Tarime Districts had escaped FGM and fled into safe houses/centres. The centres are Masanga ATGM Tarime (473), Hope for Girls and Women Tanzania Serengeti na **Butiama** (300) and Anglican Safe House in Mugumu (4). One of the residents of Itununu Village, Joshua Mwita, insisted that his child must undergo FGM so that she can get married easily and as soon as possible. He noted that he did not subject his first daughter to FGM, who completed secondary education and got married in Kenya without him receiving any cows. He added that girls who have been cut are in great demand and his child should not study beyond ordinary level secondary education. He said:

“I insist that my child must be circumcised as per our customs and traditions. I was very much saddened by her sister’s decision to marry a person she claimed to love in Kenya against my will.”

Regarding FGM, Mr. Mwita’s daughter said:

“I am forced to undergo FGM so that I can get married and my brother, who is studying at Nyamoko Secondary School, can get his dowry. That is why even my brother has sided with my parents to ensure I get circumcised. I had to run away in December.”

LHRC’s Call: The Government and non-government actors, such as CSOs, to take collaborative efforts to address FGM.

5.2.14. Children’s Rights and the Predicament of Child Pregnancy

Child pregnancy incidents on the rise

In 2021, incidents of child pregnancy, involving female children as young as 13 years, continued to be widely reported in different regions across Tanzania Mainland. More cases of child pregnancy were reported and documented by LHRC in 2021. Through human rights survey, media survey, and human rights monitoring, LHRC documented at least 2,166 incidents of child pregnancy in the period of January to December 2021, which are 1,718 more than those documented during the same period in 2020. Majority of these incidents were reported in Kigoma, Mwanza,



Morogoro, and Shinyanga Regions, and some of them are summarized in table 31 below.

Table 31: Some of the reported incidents of child pregnancy documented by LHRC – January to December 2021

Reported Incident	Report Date
Shinyanga: It was reported in July 2021 that 30 female schoolchildren in different schools located in Shinyanga District had dropped out of school due to pregnancy in the first six months of 2021.	7 Jul 2021
Kigoma: In July 2021, the Government announced that nearly 1000 girls aged below 18 years, majority of them schoolchildren, had acquired pregnancy in Kibondo District in the period of January and June 2021.	20 Jul 2021
Mwanza: In May 2021, it was reported that at least 200 female pupils and students in Magu District had gotten pregnant in the period of January 2020 to March 2021. According to the head of police gender and children desk in the district, 71 female pupils and students were found pregnant in the period of March to January 2021.	14 May 2021
Morogoro: In May 2021, it was reported that a total of 57 children in Mlimba District Council in Kilombero District had been subjected to different forms of violence, including sodomy, rape, and child pregnancy. Latifa Kalikawe, a social welfare officer, revealed that incidents of sexual violence against children had risen in the period of January to March 2021, whereby 21 cases of rape, 5 of sodomy, and 31 of child pregnancy were documented.	12 May 2021
Kagera: In June 2021, it was reported in Missenyi District that an eight-year-old child, a primary school pupil, was found to be pregnant. Seven other cases of child pregnancy were report.	18 Jun 2021
Morogoro: 1,277 cases of child pregnancy were recorded in Morogoro in the period of 2020/21.	14 Sep 2021
Kigoma: 981 cases of child pregnancy were reported in Kibondo District alone in the period of January to June 2021.	19 Jul 2021

Source: Human Rights Survey, Media Survey & Human Rights Monitoring 2021

BEST statistics, provided by PO-RALG, show that the number of secondary school girls who dropped out of school due to pregnancy has increased from 3,439 girls in 2015 to 5,398 girls in 2019, an increase of 57%. Regions which lead in this regard are Mwanza, Morogoro, and Dodoma.



During the human rights survey, incidents of child pregnancy were widely reported in regions such as Pwani, Morogoro, Mtwara, Rukwa, Kigoma, and Mwanza. In **Pwani**, it was revealed that in the period of January to June 2021, a total of 15 cases of child pregnancy were reported in Mkuranga District, forcing them to drop out of school.⁹⁷⁰ Among those cases were two incidents involving a form two student at Dundani Secondary School and a standard six pupil at Kimanzichana Primary School.⁹⁷¹ In Mtwara, it was revealed that cases of child pregnancy are higher in rural areas (32%) compared to urban areas (18%).⁹⁷² In **Kagera**, 40 cases of child pregnancy were reported in Muleba District by May 2021, of which 30 cases involved secondary school girls and 10 involved primary school girls.⁹⁷³ In **Mara**, *bodaboda* drivers were identified among those responsible for child pregnancy.⁹⁷⁴

Factors contributing to child pregnancy

During the human rights survey, several factors contributing to child pregnancy were identified. These factors are summarized in table 32 below.

Table 32: Factors contributing to child pregnancy in Tanzania

Child neglect and abandonment
- e.g. not providing children with basic services
Peer pressure
Social media
Parents using their children to generate income
Lack of sexual and reproductive health education
Lack of life skills
Poverty/economic hardships
Family lacking a stable source of income, leading to female children engaging in commercial sex
Long distance to school
Parental separation

970 LHRC Human Rights Survey 2021: Pwani Field Report.

971 Ibid.

972 LHRC Human Rights Survey 2021: Mtwara Field Report.

973 LHRC Human Rights Survey 2021: Kagera Field Report.

974 LHRC Human Rights Survey 2021: Mara Field Report.



FGM
- Once they have undergone FGM, girls are considered ready for sex and marriage.
Poor parenting e.g. parents not talking and being close to their children
Lack of self-awareness

Source: *Human Rights Survey 2021*

LHRC’s View: Child pregnancy or teenage pregnancy is serious health and human rights concern in Tanzania and has a negative impact on the achievements of the country’s key targets under the Sustainable Development Goals (SDGs) and the Tanzania Development Vision.

LHRC’s Call: The Government, through the ministries responsible for education and children, to work with other stakeholders to address the root causes of child pregnancy. Comprehensive sexuality education is also a key weapon in prevention of child pregnancy.

5.2.15. Child trafficking

Child trafficking has been defined as the exploitation of girls and boys, primarily for forced labor and sexual exploitation.⁹⁷⁵ According to the International Labour Organization (ILO), child trafficking is about taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation.⁹⁷⁶ ILO has also pointed out that child trafficking is closely interlinked with the demand for cheap malleable and docile labour in sectors and among employers where the working conditions and the treatment grossly violates the human rights of the children.⁹⁷⁷ The ILO Convention No. 182 (1999) on the Worst Forms of Child Labour (WFCL) classifies trafficking among “forms of slavery or practices similar to slavery.”⁹⁷⁸

Global situation of child trafficking

According to the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF), and the Inter-Agency Coordination Group against Trafficking (ICAT), children account for nearly one-third of identified trafficking victims globally.⁹⁷⁹ Refugee,

975 See SavetheChildren “THE FIGHT AGAINST CHILD TRAFFICKING” at <https://www.savethechildren.org/us/charity-stories/child-trafficking-awareness>.

976 See ILO “Trafficking in children” at <https://www.ilo.org/ipec/areas/Traffickingofchildren/lang-en/index.htm>.

977 Ibid.

978 Ibid.

979 UNODC, Global Report on Trafficking in Persons 2020 (United Nations publication, Sales No. E.20.IV.3);



migrant and displaced children are especially vulnerable to trafficking.⁹⁸⁰ However, UNICEF and ICAT believe that the number of children who fall victim to trafficking is higher than current data suggests.⁹⁸¹

According to the latest report on human trafficking by UNODC, released in January 2021:

- Victims are targeted when they are vulnerable and the Covid19 pandemic has increased vulnerability
- Traffickers of children target victims from extremely poor households, dysfunctional families or those who are abandoned with no parental care
- In low income countries, children make up half of the victims detected and are mainly trafficked for forced labour (46%)
- Covid19 will more likely particularly increase risk of trafficking for labour
- Child trafficking emerges from communities in extreme poverty
- Children account for about one third of the detected victims of trafficking, but child trafficking disproportionately affects low-income countries, where it is linked to broader phenomenon of child labour
- In Sub-Saharan Africa, children have been trafficked to work on plantations, in mines and quarries, on farms, as vendors in markets and on the streets
- Female victims trafficked for domestic servitude suffer extreme harm. 'Invisibility' of some sectors helps to hide trafficking for forced labour
- Victims of trafficking for domestic servitude are exposed to multiple forms of exploitation and violence, including sexual, physical, and psychological abuse that is rarely seen in other forms of trafficking. Victims of this type of trafficking are usually women, who often work and live with the perpetrators of exploitation, making them particularly vulnerable
- Besides domestic servitude, sea fishing, agriculture and mining are among the sectors of the economy where exploitation and trafficking have been well documented
- Traffickers use subtle means to recruit victims and get more violent during exploitation, usually deceptive or manipulative means

Situation of child trafficking in Sub-Saharan Africa

Regarding human trafficking in Sub-Saharan Africa, UNODC study revealed the following:⁹⁸²

UNICEF, Children account for nearly one-third of identified trafficking victims globally, *Press Release*, 29 July, 2018, at <https://www.unicef.org/press-releases/children-account-nearly-one-third-identified-trafficking-victims-globally>.

980 Ibid.

981 See Children account for nearly one-third of identified trafficking victims globally, *Press Release*, 29 July, 2018 (supra).

982 Global Report on Trafficking in Persons 2020 (supra).



- Children represent the majority of victims in Sub-Saharan Africa (60%), especially in West Africa, while Southern African and East African countries tend to detect more adults than children
- Majority of detected victims in Sub-Saharan Africa are trafficked for the purpose of forced labour
- As a destination of trafficking flows, most of the victims are trafficked within their own countries or across the border from neighbouring countries
- Countries in West Africa tend to detect more victims than other countries

Child trafficking in Tanzania

In recent years, child trafficking, particularly child labour trafficking and child sex trafficking, have been the most common forms of human trafficking in Tanzania. Impoverished and orphaned children from rural areas are at a higher risk of being trafficked, while girls are exploited in domestic servitude and sex trafficking.⁹⁸³

Women and girls are the major victims of human trafficking in Tanzania. According to a 2020 study by Daughters of Mary Immaculate (DMI), 97% of human trafficking in Tanzania is conducted internally, with children in the ages of 12 to 17 being the major victims. 74% of the victims are girls.⁹⁸⁴ Other people who are at greater risk of human trafficking include migrants and refugee children.

Perpetrators of human trafficking usually use deceptive, and manipulative means to lure the victims into different forms of trafficking. Traffickers exploit girls in domestic servitude throughout the country and in sex trafficking, particularly in tourist hubs along the border with Kenya.⁹⁸⁵ They usually target young girls from rural and impoverished villages, pay their parents a small fee, and coerce the girls into sex trafficking, specifically targeting businesspeople. Trafficked children are usually subjected to forced labor in agriculture and mining sectors. Children with disabilities have been transported to neighbouring countries, especially Kenya, to work as beggars or in massage parlours.⁹⁸⁶ Most of the trafficking is conducted internally (within Tanzania). As discussed above, regions leading in human

983 LHRC (2021), Tanzania Human Rights Report 2020, LHRC [www.humanrights.or.tz].

984 Alfred Lasteck "RIPOTI MAALUMU WAZAZI WANAVYOBARIKI BIASHARA HARAMU YA MABINTI MJINI" HABARILEO Newspaper (online) 7 June 2021, at <https://habarileo.co.tz/habari/2021-06-0760bdd4e61c1fe.aspx>.

985 2021 Trafficking in Persons Report: Tanzania (supra).

986 Ibid.



trafficking in Tanzania Mainland, including child trafficking, are Dodoma, Dar es Salaam, Tanga, Mwanza, Kigoma, Kagera, Geita, Singida, Arusha, Manyara, Shinyanga, Simiyu, Lindi, and Mtwara. In October 2021, Daughter of Mary Immaculate (DMI), revealed that a total of 59 girls who were victims of human trafficking were rescued in Dar es Salaam in the period of nine months (January to September 2021). Out of these 79% had been sexually abused. The DMI Executive Director revealed during an interview with *DailyNews*⁹⁸⁷ that majority of rescued girls were coming from Kigoma, Tanga, Ruvuma, Dodoma, Simiyu, Rukwa, Njombe, and Iringa Regions. An average of 128 girls are rescued from child trafficking in Tanzania each year by the DMI).

In 2021, budgetary constraints were identified as a key challenge in combating child trafficking. In June 2021, the Chairperson of the Anti-Child Trafficking Committee, Adatus Magere, revealed that availability of limited resources has been a major challenge for the Government in combating human trafficking.⁹⁸⁸

Reported child trafficking incidents documented by LHRC

As stated above, in 2021, LHRC documented 20 incidents of human trafficking, reported in various regions of Tanzania Mainland. Half of these incidents involved children as victims of trafficking. The incidents were reported in Dar es Salaam, Morogoro, Mbeya, Arusha, and Iringa Regions. Most of the trafficking incidents reported in 2021 were on child labour trafficking, child sex trafficking, and trafficking of PWDs, including children with disabilities (usually for begging).

In **Dar es Salaam**, in January 2021 it was reported that 15 people had been arrested for trafficking 37 PWDs, including children with disabilities aged 7 to 11 years, from Tabora and Shinyanga Regions and taken them to Dar es Salaam to beg and generate income for them.⁹⁸⁹ In **Morogoro**, police arrested Maria Zayumba (28), resident of Sangasanga area in Morogoro for abducting a 6-year-old female child

987 Sauli Gillard "NEARLY 60 TRAFFICKED GIRLS RESCUED IN DAR" *DailyNews* Newspaper (online) 20 October 2021, at <https://www.dailynews.co.tz/news/2021-10-29617bfbf9ea165.aspx>.

988 LHRC Media Survey 2021.

989 LHRC Media Survey 2021.



and taking her to Iringa Region to sexually please her husband (child sex trafficking). Police stated that the child was abducted on 22nd October 2021 on her way home from school.⁹⁹⁰

In **Arusha**, it was revealed that a 15-year-old child, resident of Sekei Ward in Arusha DC and a domestic servant, had been subjected to physical abuse by her employer and had not been paid for seven months. In **Iringa**, a 13-year-old girl, was forced by her father to drop out of school and go work at a sugarcane plantation in Kilombero District, Morogoro Region. The matter was reported to a social welfare officer and arrangements made to transport the victim back to Iringa.⁹⁹¹ Another child from **Iringa** (9 years of age) was also a victim of child labour and exploitation, made to work in a rice plantation in Kilombero District, was rescued by LHRC and local stakeholders to ensure her safe return to Iringa so that she can continue with her education.

In **Mbeya**, it was reported in September 2021 that three people had been arrested for trafficking children aged 10 years. The children were taken to different parts of Tanzania to provide labour in domestic work, agriculture, and livestock keeping. According to the police in the region, the traffickers were between Tshs. 20,000 and 25,000 for each child.⁹⁹² It was also reported that two other people, Daniel Julius (21) and Kamungu Julius (30), were arrested by police on similar charges, accused of trafficking 11 children, selling them for Tshs. 25,000 to 30,000 to pastoralists for purposes of livestock keeping.⁹⁹³

In Mpwapwa District, **Dodoma** Region, parents were accused of being complicit in child trafficking, following an investigation into child trafficking in Tanzania.⁹⁹⁴ It was found that girls as young as 10 years old are subjected to child trafficking, usually in the form of child labour trafficking and parents are complicit in trafficking of girls and perceive the practice to be okay. This situation collaborates the findings of the Counter-Trafficking Data Collaborative (CTDC), which show that almost half of identified cases of child trafficking (41%) begin with a family member.⁹⁹⁵ The extent of family involvement in child trafficking is more than four times higher than in cases of adult trafficking.

990 Ibid.

991 Ibid.

992 LHRC Media Survey 2021.

993 Ibid.

994 Alfred Lasteck "RIPOTI MAALUMU WAZAZI WANAVYOBARIKI BIAHARA HARAMU YA MABINTI MJINI" HABARILEO Newspaper (online) 7 June 2021, at <https://habarileo.co.tz/habari/2021-06-0760bdd4e61c1fe.aspx>.

995 See CTDC's child trafficking brief at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.



5.3. Rights of Persons with Disabilities

Rights of persons with disabilities (PWDs) are guaranteed internationally, regionally, and nationally.⁹⁹⁶ 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.⁹⁹⁷ States, including Tanzania, are obligated to take appropriate measures to ensure PWDs do not suffer any form of discrimination and protected from forms of exploitation, violence and abuse.⁹⁹⁸

5.3.1. Protection of Rights of PWDs

Community members who participated in the survey were asked to provide their opinion on the protection of the rights of PWDs. Over half of the respondents (57%) said the rights of PWDs are only somewhat protected, while only 8% said their rights are very well protected. 10% of the respondents said that rights of PWDs are not at all protected.

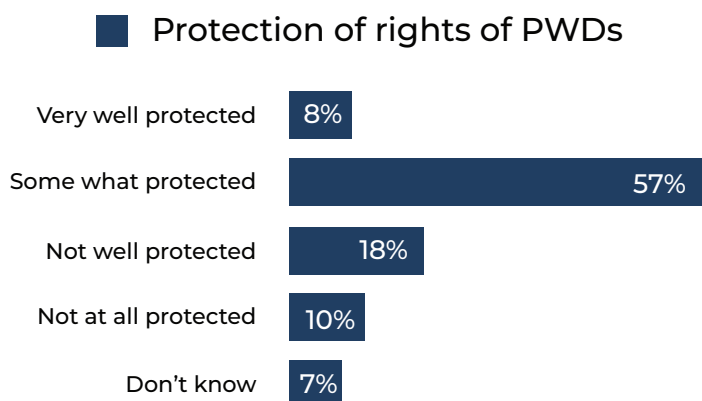


Figure 54: Survey participants' perceptions on protection of rights of PWDs

996 See for example, Convention on the Rights of Persons with Disabilities (CRPD), 2006; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (not yet ratified by Tanzania); and Persons with Disabilities Act, No. 9 of 2010.

997 See CRPD.

998 Articles 16(1) & 27(1) of CRPD.



5.3.2. Access to Employment and Economic Opportunities

PWDs facing discrimination in employment

The human rights survey conducted in 20 regions of Tanzania Mainland found that even when possessing the relevant skills and qualifications, PWDs find it very difficult to find jobs, and majority of them remain unemployed. In **Dar es Salaam**, it was revealed that even when they get employed, PWDs usually get part-time or seasonal work and face various forms of discrimination and violence at workplaces. In **Mtwara**, most PWDs who were interviewed mentioned lack of employment opportunities and discrimination in the job market as a key challenge they face. In **Tanga**, it was revealed by an official working for an NGO that deals with PWDs that PWDs who seek work are usually exploited through underpayment, especially those who cannot talk.

“..sometimes persons with disabilities, especially those who are unable to speak or deaf persons, are made to work and exploited when it comes to payment. For instance, there was one such person who was made to till the land and then paid only Tshs. 2,000, contrary to the original agreement..”

PWD rights NGO official, Tanga

Impact of lack of employment and economic opportunities

Lack of employment and very limited access to economic opportunities means most PWDs do not have much income, hence living in poverty. Consequently, it is more difficult for them to access other social services, especially health services. This also leaves them more vulnerable to different forms of discrimination and violence. Lack of income also leaves them vulnerable in terms of social protection, including health insurance.

Discrimination and lack of income also hinder the ability of PWDs to get their basic needs and equipment, and essential supplies. This was revealed in regions such Geita, Dar es Salaam, and Dodoma.

Economic Empowerment of PWDs

Economic empowerment is essential for promotion and protection of the rights of PWDs. In 2021, the Government, through city, municipal, district, and town councils (LGAs), continued to support economic



empowerment of PWDs, through allocation of 2% of internal revenue. The then minister of PO-RALG, Hon. Umyy Mwalimu, stated that for the financial year 2021/22, the Government, through LGAs, had planned to provide Tshs. 67.6 billion to groups of women, youth, and PWDs as interest free loans. She reminded LGAs to ensure they set aside 10% of their internal revenue for these groups.

In May 2021, Mbeya City Council in **Mbeya** provided interest-free loans worth Tshs. 529 million to youth, women and PWDs during the third quarter of the financial year 2020/21. In August 2021, it was reported that Dodoma City Council in **Dodoma** had provided interest-free loans of Tshs. 2.6 billion to empower 221 economic groups of women, youth, and PWDs for the financial year 2020/21.

While most LGAs have been setting aside the the 10% of internal revenue for the groups of women, youth, and PWDs, repayment of the loans has been a challenge for most groups. For instance, in July 2021, it was reported that a total of Tshs. 51 Million which had been provided to 43 groups of women, youth, and PWDs as interest-free loans in Handeni Town Council in **Tanga** Region had not been repaid by the beneficiaries. The loans are provided out of 10% of budget of LGAs set aside as empowerment loans for the groups. New empowerment loans totaling Tshs. 70 million have been provided to 44 groups by the town council.

5.3.3. Stigma and Discrimination

Interviewed respondents in all surveyed regions acknowledged that PWDs face different forms of stigma and discrimination, including isolation. For instance, majority of the interviewed respondents in **Iringa** said that isolation is one of the most common challenges PWDs face in the region, especially children.⁹⁹⁹ Parents and relatives were said to hide their children with disabilities as a way of protecting them from stigma and bullying.¹⁰⁰⁰

Isolation of children with disabilities

Isolation of children with disabilities, usually by their parents, has become a common form of violence against them. The preferred method of isolation is locking them in the house, usually in a room. For instance, in June 2021, it was reported in **Tabora** that a child with

⁹⁹⁹ LHRC Human Rights Survey 2021: Iringa Field Report.

¹⁰⁰⁰ Ibid; LHRC Human Rights Survey 2021: Kagera Field Report.



disability, Leticia Maganga, had been locked inside the house for 14 years. Another child in Morogoro Municipal Council was said to have been locked at home for 17 years.¹⁰⁰¹ Cases of isolation of children with disabilities were also revealed during the human rights survey, including in **Morogoro** Region.

“Some parents have a false belief that giving birth to a child with disability is a weakness or a curse. We have rescued some few children with disabilities who were locked up at home by their parents. Some are denied their right to education..”

Special education teacher, Morogoro

Stigmatization of PWDs

Stigma is a common challenge faced by PWDs in the community, which is usually associated with disregard of their welfare and neglect. In Muleba, **Kagera**, a paralegal who participated in the survey revealed that some people in the community, including professionals, do not see PWDs as normal people and tend to give them differential treatment.

In **Mara**, negative perceptions of PWDs were said to be a key factor hindering effective realization of the rights of PWDs. Parents who give birth to children with disabilities face the risk of being called different names and regarded as not having luck. This was especially said to be a misconception among some of the members of the *Kurya* tribe. Some parents were also accused of giving preferential treatment to their children without disabilities and discriminating those with disabilities, including when it comes to education.¹⁰⁰²

“My friend, in our community if you give birth to a child with disability you better lock the child in the house, otherwise you will be called all the names, including a witch or the cursed.”

Community member, Mara

LHRC's View: Stigmatization and discrimination of PWDs, including denying children with disabilities educational opportunities and locking them in houses, constitute a grave violation of their constitutionally guaranteed human rights. Locking children with disabilities in the house damages their mental health and exaggerates their development and physical delays, setting them up for more disabilities.¹⁰⁰³

1001 LHRC Human Rights Survey 2021: Morogoro Field Report.

1002 LHRC Human Rights Survey 2021: Mara Field Report.

1003 LOOM INTERNATIONAL, “Shame on You”: Children with Disabilities and Their



LHRC's Call: Community members to refrain from stigmatizing and discriminating PWDs, including children with disabilities, and spreading misconceptions about children with disabilities.

5.3.4. Access to Justice

Access to justice was said to be a challenge for PWDs in **Morogoro**. One of the lawyers in the region who responded to the survey said that it is difficult to handle cases involving PWDs because of shortage of sign language experts and lack of such experts at courts of law in the region. This limits their access to justice, and my occasion to miscarriage of justice.

"In 2021, the challenge of interpretation due to shortage of sign language experts caused a young man with disability to be convicted to 30 years in prison without being properly heard."

Lawyer, Morogoro

5.3.5. Access to Buildings

One of the key challenges that PWDs continue to face across Tanzania Mainland is lack of disability friendly buildings, especially due to lack of ramps. This was raised an issue in regions such as Pwani, Morogoro, Kagera, Singida, and Kigoma.

"I visited the Regional Commissioner's Office once there were no ramps, so I had to use the stairs, albeit with difficulty. I eventually lost balance and fell out of my wheelchair. I met the Regional Commissioner and told him about my experience, and he immediately ordered construction of ramps to facilitate the movement of wheelchairs."

PWD (physical ability), Morogoro

In **Pwani** lack of ramps at schools, including on entrances of classrooms and toilets, was said to pose a big challenge for children with disabilities. In **Geita**, an incident of a PWD failing to enter court premises due to lack of ramps was reported, while it was also reported that there was not toilet for PWDs at most health facilities. Public buildings and/or facilities are therefore not easily accessible for PWDs.

5.3.6. Violence against PWDs

Families Look for Opportunity, at <https://www.loomininternational.org/shame-on-you-children-with-disabilities-and-their-families-look-for-opportunity/>.



PWDs are more vulnerable to violence compared to other vulnerable groups in the community. They faced different forms of violence, including physical, sexual, psychological, and economic violence.

Trafficking and economic exploitation of PWDs

A common form of violence against PWDs in urban areas is economic exploitation of PWDs, especially trafficking of PWDs, especially children, from rural to urban areas, who are then forced to beg and make money for their hosts. For instance, in **Dar es Salaam**, the survey found that some 'agents' go to villages and bring PWDs to the city to the 'hosts', who put them in wheelchair and hire 'handlers' to take them to the streets to beg.¹⁰⁰⁴ It was revealed that after begging for the whole day, the money earned is taken back to the host, usually called "the boss" and divided, whereby the host gets a minimum of Tshs. 15,000, the handler gets Tshs. 10,000, the person providing shelter gets Tshs. 10,000, and the beggar gets the remaining amount. Consequently, if the beggar is to get anything, he or she must collect more than Tshs. 35,000 per day. If they complain, they get kicked out of the shelter and their wheelchairs are taken back.¹⁰⁰⁵ In **Mara**, a similar practice was said to take place, whereby a host sends PWDs to street and beg for money. They do in exchange of wheelchairs, food, and shelter.

In **Dar es Salaam**, in January 2021, 15 people, including a businessman Sadikiely Meta (71), were taken to Kisutu Resident Magistrate Court, faced with 41 charges, including human trafficking. They were accused of trafficking 37 PWDs, including children with disabilities aged 7 to 11 years, from Tabora and Shinyanga Regions and taken them to Dar es Salaam to beg and generate income for them.

Sexual violence against PWDs: Children with mental disabilities at greater risk of sexual violence

PWDs, especially children with disabilities, are also vulnerable to different forms of sexual violence, including rape. In **Dar es Salaam**, it was reported that some women and female children with disabilities are raped and impregnated.¹⁰⁰⁶ In **Mara**, it was reported in April 2021 that Ibrahimu James (22), resident of Nanyungu Village, was arrested

1004 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.

1005 Ibid.

1006 LHRC Human Rights Survey 2021: Dar es Salaam Field Report.



by police on 13th April 2021 for raping a 16-year-old girl who has a mental disability. He pulled her into a bush and raped her.

In September 2021, it was reported in Mererani, **Arusha** Region, that a barber, Athuman Rashid (57), was arrested by police for sodomizing a PWD who is both deaf and mute, aged 21 years.¹⁰⁰⁷ Concerned citizens caught him on the act and called the police.

In **Tanga**, it was revealed by some of the interviewed respondents that women and girls with disabilities are at greater risk of sexual violence. One of the respondents said that most people take advantage of them and the fact that they cannot easily communicate with others. He added that there is a one young woman with mental disability who has been repeatedly raped and impregnated by her uncle.¹⁰⁰⁸

Violence against PWAs

While in recent years incidents of attacks of persons with albinism (PWAs) have declined, in 2021 one incident of attack and killing of a PWA (a child) was reported. PWAs therefore continue to live in fear, hence not effectively enjoying their human rights. In **Tanga**, it was reported that PWAs in Handeni District called for government protection to enable them take part in development activities, as there are still some people in the society who seek to inflict harm on them.

Neglect of children with disabilities

According to UNICEF, there are nearly 240 million children living with disabilities in the world -- 1 in 10 children worldwide -- are being denied basic rights.¹⁰⁰⁹ This is usually achieved through neglect. According to the Committee on the Rights of the Child, neglect includes physical neglect, psychological or emotional neglect; neglect of children's physical and mental health; educational neglect; and abandonment.¹⁰¹⁰ According to UNICEF nearly half of children with disabilities are more likely to have never attended school and a quarter of them are less likely to receive early stimulation and responsive care.¹⁰¹¹

1007 LHRC Media Survey 2021.

1008 LHRC Human Rights Survey 2021: Tanga Field Report.

1009 See UNICEF "FACT SHEET: The world's nearly 240 million children living with disabilities are being denied basic rights – UNICEF" 2 December 2021, at <https://www.unicef.org/press-releases/fact-sheet-worlds-nearly-240-million-children-living-disabilities-are-being-denied>.

1010 See Committee on the Rights of the Child, *The right of the child to freedom from all forms of violence* (supra).

1011 UNICEF FACT SHEET on children with disabilities (supra).



In Tanzania, neglect, stigma, and discrimination against children with disabilities is common at family level. This has contributed to constant violations of their fundamental human rights, including right to education, right to equality, and freedom of movement. In November 2021, it was reported in **Kigoma** that parents who had sent their children with disabilities at Nengo Primary School, which provides inclusive education, had abandoned their children at the school.¹⁰¹² According to the headteacher, Doris Pius, the parents had never returned once to check on their children ever since they took them there and during school leave it is only when they are called that they come.¹⁰¹³

In **Njombe**, it was reported in April 2021 that a 15-year-old child with disability, resident of Uhuru Village in Makambako Town Council had been locked up in the house all the time by her parents and denied basic educational and other needs.¹⁰¹⁴ LHRC made an intervention and referred the matter to the social welfare department within the council.

In November 2021, LHRC documented an incident of educational neglect of a child with disability aged 6 years, reported in Ilemela District, **Mwanza** Region. It was reported that the child has been subjected to abuse and his mother has refused to take him to school.¹⁰¹⁵

Tricking and forcing PWDs into arrangements they had not understood (deception), including forced marriage

In **Tanga**, the survey revealed that in some cases PWDs are taken advantage of to get into arrangements or sign documents they do not understand, having been taken advantaged of through deception or coercion.¹⁰¹⁶ In one incident it was found that a woman with disabilities had been married off to a man without her informed consent.¹⁰¹⁷

5.3.7. Access to Education and Other Social Services

Challenges in accessing education

In **Pwani**, long distance to school and lack of ramps at school was said

1012 LHRC Media Survey 2021.

1013 Ibid.

1014 LHRC Human Rights Monitoring 2021.

1015 Ibid.

1016 LHRC Human Rights Survey 2021: Tanga Field Report.

1017 Ibid.



to be challenge for children with disabilities. Lack of toilets which are disability-friendly was also mentioned as a challenge for children with disabilities in schools, contributing to absenteeism.

Shortage of special education teachers was also raised as issue for children with disability, including those with visual impairment. Most teachers who engage with children with disabilities lack the relevant skills and understanding of the needs of the children. This factor, coupled with shortage of learning materials/teaching aids, contributes to lack of quality education and compromises future chances of employment.

In **Shinyanga**, in May 2021, it was reported that Buhangia Primary School, located in Shinyanga Municipality, which provides special needs education, is faced with shortage of special education teachers. The headteacher, Fatuma Jilala, mentioned that the school has a total of 1,049 pupils, of which 227 are children with disabilities.

In terms of accessing health services, communication barrier was found be one of the challenges for PWDs. In June 2021, health workers in **Dodoma** called upon the Government to provide them with a training on sign language to enable them to communicate with hearing-impaired persons/deaf persons.

In **Singida**, it was revealed by some of the interviewed respondents that inclusive education is still faced with many challenges which hinder effective realization of the right to education of children with disabilities. Shortage of special tools and equipment was mentioned as a key challenge in most inclusive education schools. One of the respondents stated that children with disabilities have to cover long distances to get to school, which is very tiresome for them, hence the need for dormitories. Another respondent stated that the special schools is a better option for children with disabilities than the current setup.¹⁰¹⁸

A boost for right to education for children with disability

In January 2021 it was reported that the Government had started distributing equipment and tools worth Tshs. 2.8 billion to facilitate special needs education for 18,488 children with special needs. This was revealed by the Ministry of PO-RALG, whereby the Minister responsible noted that this was another measure the Government had taken to

¹⁰¹⁸ LHRC Human Rights Survey 2021: Singida Field Report.



ensure no one is left behind in education.

In **Arusha**, in March 2021, it was reported that a special school for children with special needs began receiving pupils following its completion. It was reported that the school, Patindi, had cost Tshs. 3.6 billion to build. In **Dar es Salaam**, in July 2021, it was reported that different schools in Ilala Municipal Council would benefit from disability-friendly toilets to be constructed by the Peace Life for People with Disability Foundation (PLPDF). The foundation announced it had observed shortage of such toilets at schools and would construct 20 toilets, starting with Jangwani Secondary School, which has 84 students with disabilities.

5.4. Rights of the Elderly

Unlike women, children, and PWDs, there is no international human rights convention specifically for the elderly. Argument has been made that absence of such an instrument means lack of comprehensive and systematic framework for the protection and promotion of rights of the elderly.¹⁰¹⁹

According to the 2011 report of the Secretary General to the UN General Assembly, older persons around the world face four major challenges in terms of human rights.¹⁰²⁰ These challenges are discrimination, poverty, violence and abuse, and lack of specific measures and services.¹⁰²¹ These challenges are also major challenges faced by the elderly in Tanzania,¹⁰²² who are believed be over four million people.

Government action to promote rights and welfare of the elderly

In the period of July 2020 to April 2021, the Government reportedly took various measures to promote the rights and welfare of the elderly, including provision of shelter at 13 elderly homes, namely Kibirizi, Njoro, Kolandoto, Bukumbi, Misufni, Nunge, Nyabange, Kilima, Sukamahela and Magugu. A total of 267 older people (167 male, 100 female) received shelter services during this period. Another key support provided to some older people during this period is facilitating provision of healthcare services.

1019 See HelpAge International “Towards a UN convention on the rights of older people” at <https://www.helpage.org/what-we-do/rights/towards-a-convention-on-the-rights-of-older-people/>, accessed 5th January 2019.

1020 See Follow-up to the Second World Assembly on Ageing; Report of the Secretary-General, Sixty-sixth session, A/66/173, 22 July 2011 at <https://undocs.org/A/66/173>, accessed 5th January 2019.

1021 Ibid.

1022 According to the Tanzania National Age Policy 2003, these are people who are 60 years and above.



5.4.1. Protection of Rights of the Elderly

Participants of the human rights survey were asked to provide their opinions on the protection of rights of the elderly. Over half of them (53%) said that rights of the elderly are only somewhat protected, while only 9% said they are very well protected. Over a third of respondents (32%) said rights of the elderly are not well protected, including 11% who think they are not at all protected.

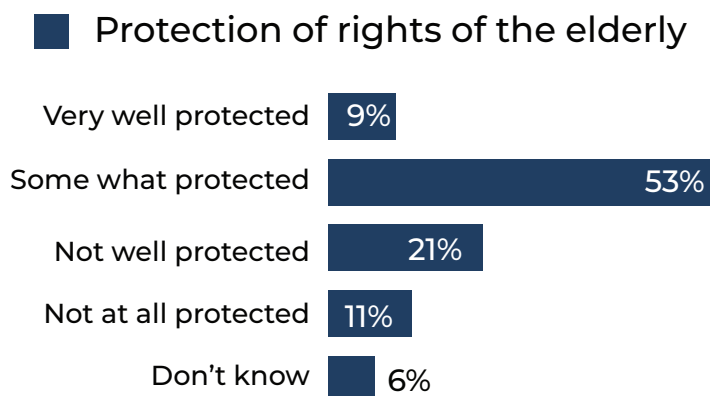


Figure 55: Survey participants' perceptions on protection of rights of the elderly

One of the challenges in protection of the rights of the elderly is lack of a law on the elderly. During the UPR process in Geneva, Switzerland, in 2021, Tanzania's national report revealed that the Government was in the processes of reviewing the National Elderly Policy of 2003 prior to enacting a law on the protection of the elderly. According to *HelpAge International*, lack of attention to older people in various countries around the world and worsening economic circumstances are exacerbating existing serious violations of older people's rights.¹⁰²³

LHRC's View: It is high time for Tanzania (Tanzania Mainland) to enact a law to protect the rights of the elderly, like our neighbours Zanzibar. In Zanzibar, the Elderly Affairs Bill was signed into Law by the former President, H.E Dr. Ali Mohammed Shein in June 2020,¹⁰²⁴ a key milestone for protection of the elderly rights in Zanzibar. Among other things, the law recognizes the right to universal pension for older people in

¹⁰²³ HelpAge International, *Protecting the rights of older people in Africa*, at <https://www.helpage.org/silo/files/protecting-the-rights-of-older-people-in-africa.pdf>

¹⁰²⁴ See HelpAge International, Elderly affairs bill signed into Law in Zanzibar, at <https://www.helpage.org/newsroom/latest-news/elderly-affairs-bill-signed-into-law-in-zanzibar-tanzania/>.



Zanzibar. Many other countries in the world have in place the elderly rights law. For instance, China has the Elderly Rights Law,¹⁰²⁵ which prohibits adult children from neglecting or snubbing elderly people and South Korea has the Older Persons Act 13 of 2006. Other countries like, Ghana,¹⁰²⁶ have bills in are place and in the process to passing them into law to safeguard the rights of older people.

5.4.2. Access to Health Services

For older people in Africa, including Tanzania, health is the single most important asset, as it enables them to work.¹⁰²⁷ However, they are faced with various challenges when accessing health services. These include concentration of hospitals or clinics in urban areas, far from where most of them live; transportation costs; inability to afford fees for services or drugs; lack of information about services and entitlements; shortage of supplies; poor management of health services; lack of medical personnel trained in older peoples' health care; and negative attitudes of medical staff.¹⁰²⁸

Access to health services was mentioned as a key challenge for the elderly in all surveyed regions. For instance, in **Iringa, Kagera, Mara, and Morogoro**, some of the interviewed respondents claimed that despite the government providing older persons with IDs to help them get free health services, most older persons continue to face various challenges when accessing healthcare services, including being charged for the services and being told the drugs they are looking for are not available.

In **Kagera**, some of the older persons who were interviewed said that despite the policy requiring them to be given priority in getting medical services, in most cases they are made to wait like other patients and told to go and buy medication at nearest pharmacies.¹⁰²⁹ It was also reported that in some areas older persons are forced to walk long distances to access health services at heath facilities.¹⁰³⁰

1025 Karina Martinez-Carter "How the elderly are treated around the world" The Week, 11 January 2015, at <https://theweek.com/articles/462230/how-elderly-are-treated-around-world>.

1026 "Ghana: Editorial 30enact the Age Law to Address Old-Age Challenges" AllAfrica. Com, at 1 October 2021, at <https://allafrica.com/stories/202110010798.html>.

1027 HelpAge International, *Protecting the rights of older people in Africa* (supra).

1028 Ibid.

1029 LHRC Human Rights Survey 2021: Kagera Field Report.

1030 Ibid.



“Older people in my community have access to free medical services. However, they are then told to go and buy medicines. This is tantamount to telling them to go and die, a very sad situation.”

Elderly organization representative, Morogoro

In **Mara**, most of the older persons who were interviewed claimed that they do not usually get free medical treatment as it is claimed. One of them claimed that he had never received free treatment and that he was told the only medicines available are Panadol and Paracetamol.¹⁰³¹

“My child I have been hearing that the older people are entitled to free medical services, but I have never received such services free of charge. If you don’t have money you are more likely to lose your life..”

Older person, Mara

5.4.3. Violence against the Elderly

In Africa, it is common for older people to be subjected to negative attitudes and abandoned and neglected by their families.¹⁰³² In extreme cases, they are also subjected to various forms of violence, including rape and physical abuse.¹⁰³³ However, it has been observed that most of them tend to not report the abuses they suffer, usually due to fear and ignorance of their rights. Older women, especially widows, are said to experience more abuse than older men, including over witchcraft suspicion.¹⁰³⁴

Under the Maputo Protocol, Tanzania is obligated to provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training.¹⁰³⁵ It is also required to ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.¹⁰³⁶

In 2021, LHRC documented at least 16 incidents of violence against the elderly, including physical violence, sexual violence, and neglect. These incidents are double those documented by LHRC in 2020. But it should be noted that this could just be a small fraction of the actual number

1031 LHRC Human Rights Survey 2021: Mara Field Report.

1032 HelpAge International, *Protecting the rights of older people in Africa* (supra).

1033 Ibid.

1034 Ibid.

1035 Article 22(a) of Maputo Protocol.

1036 Ibid, Article 22(b).



of incidents reported, considering the problem of non-reporting of different forms of violence against older people.

Physical violence

Older persons face physical violence for different reasons, including witchcraft suspicion and inheritance disputes. In most regions, children were cited as the major perpetrators of physical violence against the older persons (their parents). Some of the children have been known to even kill their own parents over witchcraft suspicion or demanding inheritance.

“Older people are accused of witchcraft and subjected to different acts of violence, including being attacked with a machete..”

Director - Morogoro Elders Peoples Organization - Morogoro

“Violence against the elderly is a problem everywhere, and the children are the major perpetrators. They forcefully take away land and money from their parents (older people) and in extreme cases even kill them to get their properties.”

Community member - Morogoro

“Serious measures need to be taken to protect the elderly. They face so many challenges. They are victims of property grabbing, including land and livestock, and physical violence. Older women are often denied their property and inheritance rights.”

Community member, Bukombe - Geita

In January 2021, Said Kihundwa (98), resident of Mlangoni Village in Siha District, **Kilimanjaro** Region, was killed by his grandson, Haruna Bashiru (27), allegedly because he had been very ill for a long time and did not deserve to suffer anymore. In May 2021, police in **Mbeya** Region arrested Daniel Manga, resident of Iheha Village in Mbarali District, for hacking to death his father, Victor Manga (79), over witchcraft suspicion. In August, the elderly council in Kahama Municipality, **Shinyanga** Region, issued a statement condemning the brutal killing of Mayombo Songo (75), resident of Wendele area, who was hacked to death by unknown people. According to the council chairperson, Underson Lyimo, killings of the older persons in the district had stopped but now seem to have started again. In the same month, police in **Rukwa** Region arrested a 35-year-old man, resident of Chanji Ward, for killing his father, Thomas Mremi (85) and burying him near his house. It was



reported that he hit his father with a heavy object on the head following a quarrel over the victim's house. The son was angered by his father's decision to sell the house and had not been seeing eye to eye with his father, with the father lamenting that the son did not want to go out and build his own life.

Sexual violence

In 2021, reports of sexual violence against female older persons were reported in different parts of Tanzania Mainland. This form of violence against older persons is perpetrated for different reasons, including witchcraft. For instance, in Kilolo District, **Iringa** Region, the survey found that some female older persons are raped because some men have been made to believe that if they have sex with a female child who has not reached puberty or a woman who has reached menopause, they can become rich, which puts female older persons at risk.¹⁰³⁷ In May 2021, police in **Mara** Region arrested Focus Marundi (19) for raping an older woman aged 81 years. This incident occurred in Nyakatena Village in Musoma District on 12th May 2021.

Neglect

In all surveyed regions, including Arusha, Katavi, Mara, and Mbeya, some of the children were accused of neglecting their elderly parents, by not providing them with any financial support to help them meet their basic needs.

"..I have educated my first born son and he now has a good job. The sad thing is that he has never sent me even a hundred shillings, despite the fact that he has also abandon here his wife and children. So, I am struggling to provide for my grandchildren and daughter-in-law, while he is living a good life in town."

Community member - Mara

Interference with property rights

Interviewed older persons in some of the regions, such as Dar es Salaam, Rukwa, and Kagera, complained about their children interfering with their property rights, including forcing them to give them their 'inheritance.' These situations have been known to cause quarrels and

1037 LHRC Human Rights Survey 2021: Iringa Field Report 2021.



misunderstandings, sometimes culminating into violence acts against the elderly, including killings.

Grandparents forced to look after their grandchildren after they were abandoned by their parents

Some of the interviewed respondents, including older persons, stated that there is a tendency of some children 'dumping' their children on their grandparents, who become 'parents for the second time' and take care of their grandchildren. But over time, the care burden becomes too much for them as they usually do not receive any financial support from the parents, who continue to 'live a good life' in towns and cities. This was revealed during interviews and focus group discussions in regions such as Dar es Salaam and Kagera.

"There is a tendency of youth abandoning their children with their parents and not providing them with any support. This creates a big burden for older people.."

Director - Morogoro Elders Peoples Organization - Morogoro

5.4.4. Parricide: When children kill their parents

Parricide is when a child kills their parents, mother (matricide) or father (patricide) or another near relative¹⁰³⁸. In recent years, parricide has become a problem in different parts of the world, including Africa. It is now not uncommon for children to kill their parents for different reasons, especially for property. For instance, it was reported in India in October 2021 that a husband and his wife conspired and killed his parents and younger brother so that they gain ownership of family property.¹⁰³⁹ In Africa, there have also been cases of parricide in different parts of the continent, but only a few studies on the matter have been conducted, especially in South Africa.¹⁰⁴⁰

5

Number of incidents of parricide documented by LHRC in 2020 and 2021.

In Tanzania, children may kill their parents or get involved in their killing

1038 Joyce Lupiani "Explanation of parricide and why kids kill parents" KTNV, 11 June 2021, at <https://www.ktnv.com/news/crime/explanation-of-parricide-and-why-kids-kill-parents>; Jeffrey L. Metzner "When a Child Kills: Abused Children Who Kill Their Parents, Jama Network, 17 June 1992, at <https://jamanetwork.com/journals/jama/article-abstract/397911>.

1039 "Tamil Nadu: Couple gets death penalty for killing parents over property in Villupuram District" TIMES OF INDIA, 31 October 2021, at <https://timesofindia.indiatimes.com/city/chennai/tamil-nadu-couple-gets-death-penalty-for-killing-parents-over-property-in-villupuram-district/articleshow/87416148.cms>.

1040 Moen, Melanie & Shon, Phillip. (2020). Attempted and Completed Parricides in South Africa, 1990–2019. International Journal of Offender Therapy and Comparative Criminology. 65. 0306624X2092802. 10.1177/0306624X20928023.



for two major reasons. One is witchcraft suspicion and two is property inheritance. In the years 2020 and 2021, LHRC has documented five incidents of parricide motivated by property inheritance, all perpetrated by sons of the victims. Of the five victims, one was female and four were male.

One of the community members who responded to the Human Rights Survey 2021 in Kilimanjaro Region, revealed that sometimes some children, especially male children use witchcraft suspicion allegations as an excuse to kill their parents, but the true motive is acquisition of property (inheritance).¹⁰⁴¹

In 2021, LHRC documented two incidents of parents killed by their children, reported in Geita and Rukwa Regions, both motivated by property inheritance. In **Geita**, a 60-year-old man aged 60 years, Senzo Matala, resident of Kabehe Village in Chato District, was killed in April 2021 by his 36-year-old son, Charles Matala. When arrested and questioned by the police, the son confessed that he killed his father so that he could inherit his land.¹⁰⁴² In **Rukwa**, in August 2021, police arrested a 35-year-old man, resident of Chanji Ward, for killing his father, Thomas Mremi (85) and burying him near his house. It was reported that he hit his father with a heavy object on the head following a quarrel over the victim's house. The son was angered by his father's decision to sell the house and had not been seeing eye to eye with his father, with the father lamenting that the son did not want to go out and build his own life.¹⁰⁴³ The two reported incidents of parricide that were documented by LHRC are one less than those reported in 2020, all of which were also motivated by property inheritance and perpetrated by sons.

5.4.5. Social Protection for the Elderly

Social protection provides secure incomes for people in old age and pensions are a crucial form of social protection. According to *HelpAge International*, just 4% of older people in Tanzania receive a pension, forcing them to take on difficult tasks such as farming, which is physically too demanding to them.¹⁰⁴⁴

During the survey, lack of pension for older persons was mentioned as a challenge in nearly all surveyed regions, especially in Morogoro.

1041 LHRC Human Rights Survey 2021: Kilimanjaro Field Report.

1042 LHRC Media Survey 2021.

1043 Ibid.

1044 See HelpAge International "Why do we work in Tanzania?" at <https://www.helpage.org/where-we-work/helpage-global-network-members-in-africa/tanzania/>, accessed 28 November 2021.



“Lack of pension arrangement is a big challenge for older people in Tanzania Mainland. Our colleagues in Zanzibar are getting monthly pensions, at least Tshs. 20,000 per month, which is something.”

Director - Morogoro Elders Peoples Organization - Morogoro

For the elderly, in terms of accessing health services, the universal health coverage (UHC) also cannot come soon enough. In August 2021, it was reported that the Government had set aside Tshs. 149 billion for implementation of UHC, which would commence later in 2021 should the Parliament endorse and pass the UHC bill.¹⁰⁴⁵

5.5. Rights of Persons Living with HIV/AIDS

Like any other human being, rights of persons living with HIV/AIDS are provided for and protected under various regional and international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the African Charter on Human and Peoples' Rights (ACHPR). In Tanzania, their rights are covered under the HIV and Aids (Prevention and Control) Act of 2008, which provides for the right to non-discrimination and right to access social services, among others.

5.5.1. Access to medical services

In recent years, Tanzania has made good progress in achieving its 90-90-90 targets. 83% out of 90% of people living with HIV know their HIV status, compared to 61% in 2016/17.¹⁰⁴⁶ 90% of all people with diagnosed HIV infection had received sustained antiretroviral therapy. 92% of people receiving antiretroviral therapy had viral suppression. There were no reported incidents of denial of access to medical services by PLHIVs documented by LHRC in 2021.

5.5.2. Stigma and discrimination

Stigma and discrimination are key challenges that PLHIVs face in the community. The settings in which this occurs includes family, school, and workplace. For instance, during the human rights survey in **Kagera**, it was reported that some parents whose children are living with HIV had prevented them from attending school because ‘they can die any time.’¹⁰⁴⁷ In Katavi, one of the community members who responded to

1045 LHRC Media Survey 2021.

1046 LHRC Media Survey 2020.

1047 LHRC Human Rights Survey 2021: Kagera Field Report.



the Human Rights Survey 2021 revealed during an interview that most community members are still not ready to respect and not stigmatize PLHIVs.¹⁰⁴⁸

5.6. Rights of Refugees

5.6.1. Overview

A refugee has been defined as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country ...”¹⁰⁴⁹ Rights of refugees are protected under various international and regional human rights instruments. Originating under Article 14 of the Universal Declaration of Human Rights of 1948, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the most comprehensive codification of the rights of refugees at the international level. It is both a status and rights-based instrument, which entered into force on 22 April 1954.

The 1951 UN Refugee Convention recognizes various rights of refugees and imposes several obligations upon States Parties, Tanzania inclusive, to safeguard those rights. Such rights include the right to non-discrimination, freedom of religion, artistic rights, right of association, access to courts, right to wage-earning employment, right to self-employment, right to practice a liberal profession, right to housing, right to education, labour rights, freedom of movement, right to identity papers, and right to travel documents.¹⁰⁵⁰ In ensuring realization of these rights, States are required to accord refugees treatment not less favourable than that accorded to aliens generally or the same treatment as accorded to nationals. The Convention also requires States not to impose penalties on people who are unlawfully in their countries, as long as they are directly from a territory in line with Article 1 of the Convention.¹⁰⁵¹ It also stipulates that a country can only expel a refugee lawfully in its territory only on the grounds of national security or public order.¹⁰⁵² More importantly, the Convention is underpinned by

1048 LHRC Human Rights Survey 2021: Katavi Field Report.

1049 See UNHCR “Protecting Refugees: questions and answers” 01 February 2002 at <https://www.unhcr.org/publications/brochures/3b779dfe2/protecting-refugees-questions-answers.html#:~:text=A%20refugee%20has%20the%20right,from%20torture%20and%20degrading%20treatment,> accessed 3 November 2020; See also Article 1(1) of the African Refugee Convention.

1050 See Articles 3, 4, 14, 15, 16, 19, 21, 22, 24, 26, 27 & 28 of the UN Refugee Convention, 1951.

1051 Ibid, Article 31.

1052 Ibid, Article 32(1).



the principle of non-refoulement, such that no State is to expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.¹⁰⁵³ Additionally, the Convention encourages States to facilitate the assimilation and naturalization of refugees.¹⁰⁵⁴

At regional level, refugee rights are protected under the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the OAU in 1969. According to this convention, the term “refugee” also applies to “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”¹⁰⁵⁵ The African Refugee Convention recognizes rights of refugees such as the right to asylum, right to non-discrimination, right to voluntary repatriation, and right to travel documents.¹⁰⁵⁶ It also reiterates the principle of non-refoulement, whereby it prohibits return of expulsion of a person to return to or remain in a territory where his life, physical integrity or liberty would be threatened.¹⁰⁵⁷ Both conventions set out duties for refugees, the chief of which is to respect the laws and regulations of the land which grants them asylum.¹⁰⁵⁸

Tanzania has in place legislation governing rights and duties of refugees, the Refugees Act, 1998. It provides for a definition of refugees that is similar to that provided for in the UN Refugee Convention and the African Refugee Convention. It also establishes a committee to receive and determine applications for refugee status, provides for the process for determining such status, stipulates rights of refugees, such as right to work, right to education, right to voluntary repatriation, right to family reunion, and right to resettlement.¹⁰⁵⁹ It also stipulates duties of refugees, including respective laws and paying taxes.¹⁰⁶⁰

5.6.2. Situation of Refugee Rights

1053 Ibid, Article 33(1).

1054 Ibid, Article 34.

1055 Article 1(2) of the African Refugee Convention.

1056 See Articles 2, 4, 5, 6,

1057 Article 2(3) of the African Refugee Convention.

1058 See for example Article 3 of the African Refugee Convention.

1059 See sections 31, 32, 34,35 & 36 of the Refugees Act, 1998.

1060 Ibid, section 33.



Traditionally, Tanzania has been one of the countries that are very welcoming to refugees in the world, which has earned it accolades within the international community. Over the years, political instability in neighbouring countries such as Burundi and the Democratic Republic of Congo (DRC) has seen Tanzania become a second home for many refugees and asylum seekers, currently hosting more than 300,000 refugees.¹⁰⁶¹ In recent years, challenges faced by refugees include right to work and to participate in income-generating activities, which in turn affects their right to adequate standard of living.

In 2021, the major issue concerning refugees hosted in Tanzania that came into light is the issue or allegation of forceful return of refugees to their home countries, particularly Burundian refugees. On 13th April 2021, twelve human rights experts¹⁰⁶² appointed by the UN Human Rights Council to monitor the situation of Burundian refugees in Tanzania issued a statement highlighting acts of violations of rights of Burundian refugees, especially disappearances, torture, forced returns and repression.¹⁰⁶³ The experts alleged that arbitrary arrests and enforced disappearances had been carried out by the Tanzanian police and intelligence services in cooperation with the Burundian intelligence services.¹⁰⁶⁴ They also indicated that there was a strict encampment policy imposed on the refugees, who were also living in fear of being abducted and taken to unknown location or being forcefully returned to Burundi.¹⁰⁶⁵ It was further reported by the experts that some of the Burundian political opponents had been tracked in refugee camps by Burundian intelligence agents posing as refugees and later arrested by Tanzanian security forces and that some of the refugees confirmed being coerced into signing 'voluntary return' forms.¹⁰⁶⁶

Additionally, the UN human rights experts expressed concerns over two things regarding the situation of Burundian refugees.¹⁰⁶⁷ One, they noted that they were alarmed by reports that some refugees had been

1061 Guri Romtveit "6 things to know about refugees in Tanzania" Norwegian Refugee Council, 06 Mar 2019.

1062 Mr. Tae-Ung Baik (Chair), Mr. Henrikas Mickevičius, (Vice Chair), Ms. Aua Balde, Mr. Bernard Duhaime and Mr. Luciano Hazan, Working Group on Enforced or Involuntary Disappearances; Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions; Leigh Toomey (Chair-Rapporteur), Elina Steinerte (Vice-Chair), Miriam Estrada-Castillo, Mumba Malila, Seong-Phil Hong, Working Group on Arbitrary Detention.

1063 See "UN experts deplore rights violations against Burundi refugees" OHCHR, 13 April 2021, at [https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=26990#:~:text=GENEVA%20\(13%20April%202021\)%20%E2%80%93,torture%2C%20forced%20returns%20and%20repression](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=26990#:~:text=GENEVA%20(13%20April%202021)%20%E2%80%93,torture%2C%20forced%20returns%20and%20repression).

1064 Ibid.

1065 Ibid.

1066 UN experts deplore rights violations against Burundi refugees (supra).

1067 Ibid.



killed after they were abducted. Two, since the Government announced in August 2020 that it was investigating the disappearances in refugee camps, no results have been made public yet.

5.7. Youth Rights

5.7.1. Overview

Like other human beings, youth are guaranteed their human rights under various international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and political Rights (ICCPR) of 1966; the African Charter on Human and Peoples Rights (Banjul Charter) of 1981; and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1981. In Africa, like in other parts of the world, there is a specific convention for youth rights, the African Youth Charter of 2006.¹⁰⁶⁸ According to the Charter, youth or young people refer to every person between ages 15 and 35 years.¹⁰⁶⁹

The African Youth Charter recognizes various rights and stipulates their duties. The youth rights include **right to non-discrimination**; freedom of movement; **freedom of expression**; freedom of association; freedom of thought, conscience and religion; protection of private life; protection of the family; right to own and inherit property; right to social, economic, political, and cultural development; right to participate in all spheres of society; **right to education of good quality**; **right to gainful employment**; and **right to adequate standard of living**. Other fundamental rights of youth enshrined in the Charter include the right to enjoy the best attainable state of physical, mental and spiritual health; right to social security; right to presumption of innocence when accused of crime; and fair trial rights.

The African Youth Charter imposes a number of obligations upon States Parties, including developing a comprehensive and coherent national youth policy; taking measures to elimination discrimination against girls and young women according to obligations stipulated in various international, regional and national human rights conventions; take measures to protect right of mentally and physically challenged youth; and take measures to eliminate harmful social and cultural practices.

¹⁰⁶⁸ African Youth Charter, adopted by the Seventh Ordinary Session of the Assembly, held in Banjul, The Gambia on 2nd July 2006.

¹⁰⁶⁹ Ibid.



Youth responsibilities under the Charter include becoming custodians of their own development; protecting and working for family life and cohesion; partaking fully in citizenship duties including voting, decision making and governance; engage in peer-to-peer education to promote youth development; reject and expose corruption; and defending democracy, the rule of law and all human rights and fundamental freedoms.¹⁰⁷⁰

In Tanzania, there is a legal and policy framework for promotion and protection of youth rights, which shall be looked at in detail in the 2022 human rights report. But in 2021, the launching of the NATIONAL ACCELERATED ACTION AND INVESTMENT AGENDA FOR ADOLESCENT HEALTH AND WELLBEING (2021/22- 2024/24), was a positive development in terms of enhancing realization of youth rights.

5.7.2. Key challenges youth face

Youth in Tanzania are faced with various challenges that hinder effective realization of their human rights, including:¹⁰⁷¹

- **Limited knowledge about sexual and reproductive health and rights:** This challenge can be overcome by provision of comprehensive sexuality education (CSE) and improving access to information regarding sexual and reproductive health and rights. According to stakeholders, one of the challenges in provision of CSE in schools is omission of key topics considered to be culturally insensitive and age inappropriate.
- **Harmful cultural practices such as FGM and child marriage:** Practices such as FGM and child marriage continue to be a thorn for girls and young women in Tanzania, especially in Manyara, Dodoma, Arusha, Mara, Singida, Shinyanga, and Tabora Regions, where prevalence rates are higher than in other regions.
- **Human trafficking:** As discussed above, human traffickers in Africa and Tanzania target youth the most, especially adolescent girls and young women and men, usually for labour and sex trafficking. Lack of accurate information and the problem of unemployment leaves them particularly vulnerable.
- **Unemployment and underemployment:** According to the UN, in education, 142 million youth of upper secondary age are out of school. In employment, 71 million young people are unemployed; and millions more are in precarious or informal work.¹⁰⁷² In

1070 Article 26 of the African Youth Charter, 2006.

1071 Derived from other parts of this report; Tanzania Human Rights Report 2020; the African Youth Charter of 2006; the National Youth Development Policy of 2007; UN reports; media reports; and Justina Ochieng "PROBLEMS THE AFRICAN YOUTH FACE" 4 July 2021.

1072 See UN "World Youth Report: Addressing the complex challenges facing young people today" at <https://www.un.org/en/desa/world-youth-report-addressing-complex-challenges-facing-young-people-today>.



Tanzania, youth unemployment continues to be a key challenge, despite slight progress made in reducing it over the years. Most youth have identified unemployment/lack of jobs as their biggest challenge.¹⁰⁷³ This problem is usually accompanied by the problem of underemployment.

- **HIV/AIDS pandemic:** Youth remain the group that at the highest risk of HIV infection as evidenced by different forms of sexual violence against them, such as rape and sodomy, and the increasing number of schoolgirls who become pregnant each year – which attests to their engagement in unprotected sex.
- **Poor quality education and inadequate training:** While the Government of Tanzania has done well to increase access to education, especially more recently through implementation of the fee-free education policy and expanding basic education, the quality of education provided remains a challenge¹⁰⁷⁴ and an area that needs significant improvement. For the young people in higher education, concerns over quality of education and how it prepares them for the ever-competitive job market continue to be raised and subject to public debates, amid the claims that most college and university graduates in Tanzania lack employability skills, which contributes to their unemployment.
- **Restricted access to health services and information:** Despite improvements, access to health services and information is still a challenge for youth, especially those who are in rural areas.
- **Drugs/substance abuse:** This continues to be a key health issue for youth, who are vulnerable to drugs and substances, especially those who are idle.
- **Crime and criminal justice:** Poverty and lack of equal opportunities put youth who come from a poor background and in socially disadvantaged communities at higher risk of committing crimes and even higher risk of infringement of their rights as accused persons when in conflict with the law (criminal justice concerns). As discussed above, the criminal justice in Tanzania is not very friendly to youth in conflict with the law, who usually find themselves unable to pay for bail and afford good legal representation.
- **Globalization and the pressure of social networking:** Globalization and social networking have come with their good and bad. There is fear that most youth in Tanzania do not know how to make proper use of these tools, for instance for purposes of entrepreneurship. There is a lot of content that is detrimental to youth, including porn content, thus necessitating youth to be equipped with the right and accurate information to help them safely navigate through such content and focus on their personal development.
- **Child labour and exploitation:** As discussed above, child labour

¹⁰⁷³ See British Council, *NEXT GENERATION Youth Voices in Tanzania*, Summary Report, July 2016, at <https://www.britishcouncil.org/research-policy-insight/research-reports/next-generation-youth-voices-tanzania>.

¹⁰⁷⁴ Ibid.



and exploitation denies young children and adolescents their basic rights, including right to education, negatively impacting their future prospects for employment and good life. They are also vulnerable to trafficking and different forms of violence, including sexual violence.

- **Exclusion in the decision-making processes or lack of meaningful participation:** The African Youth Charter and other regional and international human rights instruments applicable to youth emphasize on their right to participate in making decisions that affect their lives. But concerns over exclusion in decision-making processes or lack of meaningful participation persist in Tanzania.
- **Poverty:** Poverty remains a big barrier for effective realization of youth rights in Tanzania, as is the case in most African countries, especially in Sub-Saharan Africa.
- **Lack of proper information:** Misinformation is also a big issue for youth in Tanzania, due to limited access to accurate information. Youth also lack information-seeking behaviour.
- **Mental health:** In Tanzania, mental health has not been given the importance and priority it deserves, leaving people psychologically affected and vulnerable to stress and suicidal tendencies. In recent years, suicide has emerged as a key mental health issue, with reports of people committing suicide, including youth, increasing. LHRC's media survey and human rights monitoring conducted in 2021 revealed youth to constitute the majority of suicide victims (42%).
- **Gender based violence (GBV):** Youth, especially young women in universities and fresh graduates seeking employment are at great risk of sextortion, as discussed in detail above.

This section sought to briefly highlight some key issues and challenges around youth rights in Tanzania. Youth rights and key challenges facing youth shall be discussed in detail in the Tanzania Human Rights Report 2022.

5.8. Impact of Covid19 on the Rights of Vulnerable Groups

In 2021, LHRC observed that vulnerable groups were mostly and disproportionately affected by the Covid19 pandemic. Community members who participated in the Human Rights Survey 2021 were asked about which group was affected the most by Covid19; domestic violence; women and girls and Covid19; children and Covid19; and impact of Covid19 on socio-economic rights.

5.8.1. Groups mostly affected by Covid19

When asked which group was affected the most by Covid19, over a third of the respondents (35%) mentioned women, followed by a quarter (25%) who mentioned men. PWDs and children were mentioned as the



most affected group by 17% and 14% of the respondents respectively.

■ Groups mostly affected by covid19

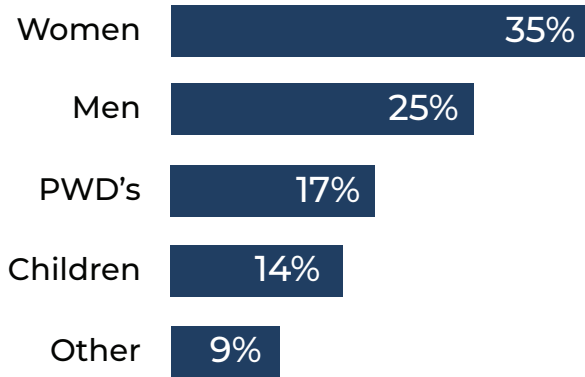


Figure 56: %Responses on community members' perception of groups mostly affected by Covid19

Source: Field Data, 2021

5.8.2. Domestic violence

When asked to what extent domestic violence was a problem during the pandemic was, majority of the respondents, nearly half of them (44%), said it was a moderate problem, followed by 40% of the respondents who said it was actually a serious problem. Only 16% of the respondents said it was a minor and not at all a problem.

■ Domestic violence during covid pandemic

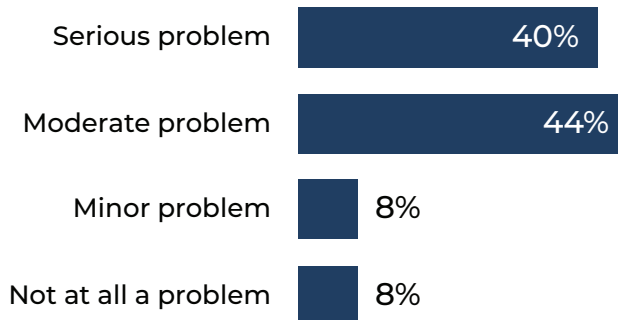


Figure 57: % Responses of respondents on extent of the problem of domestic violence during the Covid19 pandemic

Source: Field Data, 2021



5.8.3. Women and girls and Covid19

5.8.3.1. Community members' perceptions

Community members who participated in the survey were asked whether violence against women (VAW) increased during the pandemic. Majority of the respondents, nearly a half (44%) indicated that VAW increased during the pandemic, while 27% said it actually increased a lot. Only 29% of the respondents (nearly a third) were of the view that VAW did not increase during the pandemic.

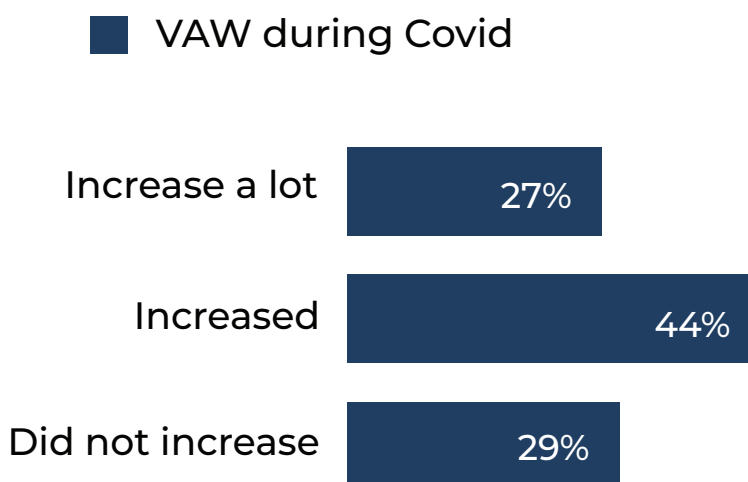


Figure 58: %Responses on whether VAW increased during the Covid19 pandemic

Source: Field Data, 2021

For women, increased unpaid domestic work was also cited as a serious problem during the Covid19 pandemic. Nearly half of the respondents (46%) said it was a moderate problem, while a third of them (32%) were of the view that it was a serious problem.



■ Increased unpaid domestic work during Covid19

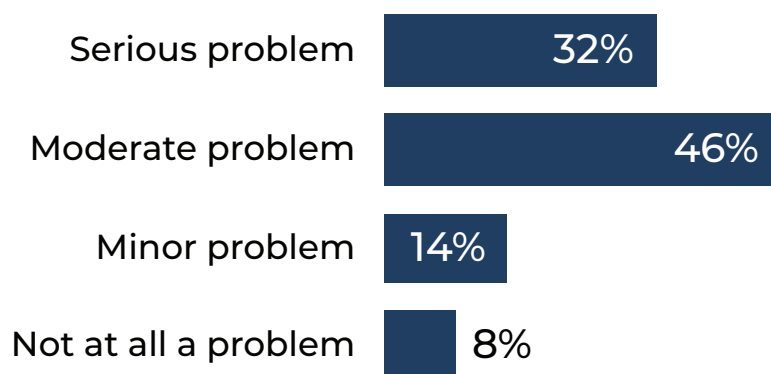


Figure 59: % Responses of respondents on extent of the problem of increased unpaid domestic work during Covid19

Source: Field Data, 2021

Regarding the impact of Covid19 on women and girls, majority of the respondents also identified challenges such as FGM, child marriage, child pregnancy, availability and affordability of sanitary pads as moderate and serious problems during the pandemic. Their responses in this regard are as indicated in table 33 below.

Table 33: %Responses of respondents on extent of various problems facing girls and young women during the Covid19 pandemic

Problem	Extent (%)			
	Serious	Moderate	Minor	Not at all
FGM	14	31	26	29
Child marriage	32	33	17	18
Child pregnancy	36	36	17	11
Availability & affordability of sanitary pads	35	36	18	11

Source: Field Data, 2021



5.8.3.2. Increased vulnerability for women and girls: Case study of Kilimanjaro and Manyara Regions

In 2021, Participatory Ecological Land Use Management (PELUM Tanzania),¹⁰⁷⁵ conducted an assessment of the impact of the Covid19 pandemic on women and girls in Kilimanjaro and Manyara Regions. The assessment was done as part of the validation of the Rural Women Cultivating Change (RWCC) Project. Key findings of the assessment were:¹⁰⁷⁶

- The Covid19 pandemic greatly affected the community members especially waves 1 and 2 (in year 2019-2020). However, in wave 3 (in year 2021), there were few new cases related to covid19 since there are few restrictions imposed by the government.
- Most of covid19 related sexual and gender-based violence (SGBV) cases reported are due to long term effect of the pandemic.
- In 2021, women continued to feel the impact of the pandemic, facing challenges such as marketing for their agricultural produce. Trade restrictions in neighbouring countries such as Kenya, Uganda, and Rwanda, have ensured that they can only sell their produced internally, hence low profit margins.
- Covid19 pandemic increased burden for heads of households, especially female heads of households.
- Since the pandemic erupted, the communities in the two regions have experienced increased SGBV, child marriage, and FGM cases (especially Manyara).
- Excessive alcohol consumption was said to be a big contributing factor to SGBV, including sexual and physical violence. Women and girls continued to be more vulnerable to SGBV.
- The long distances from homes to schools has continued being a factor for child pregnancies, school dropouts and low academic performances. These problems were compounded by the Covid19 pandemic, which ensured that academic calendars were condensed.
- Persons with disabilities (PWDs), including women and children with disabilities, were disproportionately affected by the pandemic.
- The pandemic also jeopardized food security and the right to quality or nutritious food for the local communities, since most of the community members do not have a habit of storing food for future

¹⁰⁷⁵ A legally registered network of Civil Society Organizations (CSOs) that have come together to facilitate and promote networking, learning and advocacy in participatory ecological land use management. It was founded in 1995 by five Member Organizations (MOs) and currently it has grown up to 42 MOs spread all over Tanzania serving over 1.2 million male and female smallholder farmers. PELUM Tanzania headquarters is in Morogoro Municipality.

¹⁰⁷⁶ PELUM Tanzania, Rural Women Cultivating Change Project, Validation Report (unpublished).



use, selling almost everything they harvest. For women and girls, increased economic vulnerability means increased vulnerability to different forms of violence.

- Despite the covid19 impact to economy, there were no special women economic empowerment initiatives that were introduced to support women who were greatly and negatively impacted by the pandemic. However, the local government authorities reported that they had extend loan repayment period for women's groups which had accessed the 4% funds allocated by the district councils for women.
- The community development officers (CDOs) and ward executive officers (WEOs) reported that there had been an increased demand for financial support by women due to negative economic impact of covid19. Also, they reported that there had been increased cases on loan defaults in their communities.

5.8.4. Children and Covid19

When asked whether violence against children (VAC) increased during the Covid19 pandemic, majority of the respondents (41%) indicated that it had increased, followed by those who felt that it had not increased, and 27% who said it increased a lot.

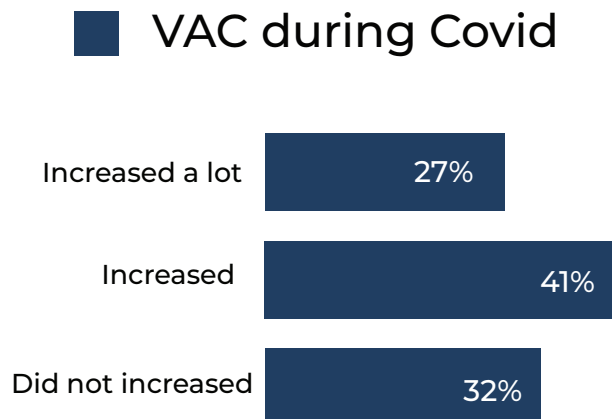


Figure 60: %Responses on whether VAC increased during the Covi19 pandemic

Source: *Field Data, 2021*



Respondents of the survey were also asked about specific issues regarding children's rights and welfare that were commonly raised during the pandemic, namely physical violence, sexual violence, risky sexual behaviours among girls, child neglect, child marriage, and child pregnancy. They were asked to what extent these were problems in their community during the pandemic, and generally majority of them were of the opinion that they were serious or moderate problems, as indicated in table 34 below.

Table 34: Responses of respondents on extent of various problems facing children during the Covid19 pandemic

Problem	Extent (%)			
	Serious	Moderate	Minor	Not at all
Physical violence	32	47	10	11
Sexual violence	40	32	14	14
Risky sexual behaviours among girls	60	27	10	3
Child neglect	31	40	15	14
Child pregnancy	42	32	9	17
Child marriage	37	31	13	19

Source: *Field Data, 2021*

5.8.5. Impact of Covid19 on other vulnerable groups

The pandemic also affected other vulnerable groups such as PWDs, refugees, and youths. For instance, for youth, the problem of unemployment and underemployment was exacerbated by the Covid19 as many employers reduced the number of employees to cope with the financial loss caused by the pandemic. As reported above in Chapter Three, there were also increased labour rights violations. Loss of employment means loss of income, hindering effective realization of the right to adequate standards of living.

A survey on the economic impact of Covid19 on youth in Africa (second annual Africa Youth Survey), conducted by the Johannesburg-based Ichikowitz Family Foundation in 2021, revealed that pandemic increased the already-high level of unemployment among youth. According to



the survey,¹⁰⁷⁷ nearly 20% of the 4,500 respondents said they became unemployed because of the pandemic and 37% were forced to stop or pause their education.¹⁰⁷⁸ Another 8% saw their pay docked, 18% had to move back home and 10% said they had to care for family members.

For PWDs, the problems of unemployment/lack of income generating activities and stigma discrimination were also compounded by the pandemic, while refugees also suffered as a result of overcrowding, which risks the spread of the pandemic, and limited access to social services.

5.9.Relevant SDGs, TDV 2025, and Agenda 2063 Targets

Tanzania’s achievement of these 2030 SDGs, TDV 2025, and Agenda 2063, depends on progress made in realization of rights of women, children, PWDs, the elderly, PLHIVs, refugees, and youths:

Key SDGs, TDV 2025, and Agenda 2063 Targets relating to Rights of Vulnerable Groups	
SDGs	<p><u>SDG3 GOOD HEALTH AND WELL-BEING</u>: Ensure Healthy Lives and Promote Well-Being for All at All Ages.</p> <p><u>SDG4 QUALITY EDUCATION</u>: Ensure Inclusive and Equitable Quality Education and Promote Lifelong Learning Opportunities for All.</p> <p><u>SDG5 GENDER EQUALITY</u>: Achieve Gender Equality and Empower All Women and Girls.</p> <p><u>SDG6 CLEAN WATER AND SANITATION</u>: Ensure Availability and Sustainable Management of Water and Sanitation for All.</p> <p><u>SDG10 REDUCED INEQUALITIES</u>: Reduce Inequality Within and Among Countries.</p> <p><u>SDG16 PEACE, JUSTICE AND STRONG INSTITUTIONS</u>: Promote Peaceful and Inclusive Societies for Sustainable Development, Provided Access to Justice for All and Build Effective, Accountable and Inclusive Institutions At All Levels.</p>

1077 Conducted in major urban and trading centers in Angola, Congo, the Republic of Congo, Ethiopia, Gabon, Ghana, Kenya, Malawi, Mozambique, Nigeria, Rwanda, South Africa, Sudan, Uganda and Zambia.

1078 See “The Three Challenges Facing African Youths Today” Africa.com, 4 September 2021, at <https://www.africa.com/the-three-challenges-facing-african-youths-today/>.



<p>TDV 2025</p>	<p><u>High quality livelihood.</u></p> <ul style="list-style-type: none"> ■ Food self-sufficiency and food security. ■ Universal primary education, the eradication of illiteracy and the attainment of a level of tertiary education and training that is commensurate with a critical mass of high-quality human resources required to effectively respond and master the development challenges at all levels. ■ Gender equality and the empowerment of women in all socio-economic and political relations and cultures. ■ Access to quality primary health care for all. ■ Access to quality reproductive health services for all individuals of appropriate ages. ■ Reduction in infant and maternal mortality rates by three-quarters of current levels. ■ Universal access to safe water. ■ Life expectancy comparable to the level attained by typical middle-income countries. ■ Absence of abject poverty <p><u>A well educated and learning society</u> <u>Peace, Stability and Unity</u> <u>Good Governance</u></p> <ul style="list-style-type: none"> ■ Desirable moral and cultural uprightness. ■ Strong adherence to and respect for the rule of law <p><u>A strong and Competitive economy</u></p>
<p>Agenda 2063: The Africa We Want.</p>	<p>ASPIRATION 1. A prosperous Africa based on inclusive growth and sustainable development. ASPIRATION 3. An Africa of good governance, democracy, respect for human rights, justice and the rule of law. ASPIRATION 4. A peaceful and secure Africa. ASPIRATION 6: An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children. ASPIRATION 7: Africa as a strong, united, resilient and influential global player and partner and partner.</p>



CHAPTER 6: HUMAN RIGHTS MECHANISMS

6.1. Overview

This chapter looks at local, regional and international human rights mechanisms applicable Tanzania. These human rights mechanisms comprise of laws and institutions that promote and protect human rights. The national mechanisms highlighted in this chapter are the national human rights institution (CHRAGG), the Judiciary, the National Prosecutions Service (NPS), 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.¹⁰⁷⁹

6.2. National Human Rights Mechanisms

6.2.1. Legal Framework

The national human rights mechanisms in Tanzania include the Commission for Human Rights and Good Governance (CHRAGG), the Prevention and Combating of Corruption Bureau (PCCB), the Judiciary, the National Prosecutions Service (NPS), the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS). These mechanisms are established under the following laws:

- CHRAGG is established under the Commission for Human rights and Good Governance Act No. 7 of 2001.
- PCCB is established under the Prevention and Combating of Corruption Bureau Act, CAP 329, Act No. 11 of 2007.
- The Judiciary is established under the Constitution of the United Republic of Tanzania, 1977.
- NPS is established under the National Prosecutions Service Act, CAP 430 (RE 2019).

¹⁰⁷⁹ Note: There are other human rights mechanisms such as the Committee on the Elimination of Racial Discrimination; the Committee on Economic, Social, and Cultural Rights; and the Committee on the Rights of Persons with Disabilities.



- TPF is established under the Police Force and Auxiliary Services Act, CAP 322.
- TPS is established under the Prisons Act, CAP 58.

In conducting their operations and day-to-day activities all these mechanisms also are governed by various other laws, rules, and regulations as well as international human rights standards in line with Tanzania obligations and commitments under various international and regional human rights instruments.

6.2.2. Judiciary

6.2.2.1.Mandate

- Authority with final decision in dispensation of justice in the United Republic of Tanzania
- Administration of justice through interpretation and application of laws, rules, and regulations as well as international human rights standards
- Setting precedents and developing case law
- Provide remedy for legal and human rights violations

Positive action to promote or protect human rights

In 2021, action by Judiciary to promote and/or protect human rights included use of ICT expedite proceedings in court, construction of new courts, reducing backlog of cases, operationalization of mobile courts, establishment of integrated justice centres, and conducting judicial inspections

6.2.2.2.Key challenges observed in 2021

- Shortage of judicial staff.
- Corruption, especially in lower courts.
- Delays in dispensation of justice, mainly contributed by delays in police investigations
- Covid19 pandemic, forcing the Judiciary to resort to the use of ICT, including videoconferencing.
- Constant adjournment of cases.
- Non-execution/implementation of judgements: In 2021, the Vice President, Hon. Dr. Phillip Mpango, identifies this a challenge. For LHRC, several court judgements which await implementation come to mind, including the Court of Appeal judgement in the Rebecca Gyumi case.
- Some court buildings, especially lower courts (primary courts) being in dilapidated condition e.g. Rudewa Ward in Kilosa District





Picture 32: Right: Rudewa Primary Court building found in dilapidated condition; Right: An unused lock-up cell at the court, also in dilapidated condition

Source: Field Data, 2021

- Lack of holding cells at courts of law, e.g. Kilolo District in Iringa, where detainees are usually made to sit down at a ground outside the court, left with only a few guards.
- Backlog of cases, contributed by shortage of judicial workers and delays in completing investigations
- Intimidation of magistrates, especially by politicians: For instance, one of the judicial officers who responded to the Human Rights Survey 2021 in Pwani Region, revealed that he was called by a politician regarding one of the cases before and told to ensure the accused person is convicted.

“..I was once called by a politician, who ordered be to ensure the accused person is convicted and sent to jail because he needs to be taught a lesson..”

Judicial officer, Pwani

6.2.3. Tanzania Police Force

6.2.3.1.Mandate

- Maintain law and order.
- Protect life and property.
- Prevent, detect and investigate crime.

Police mandate includes investigation of human rights violations, for instance arrested and taking to court perpetrators of violence against women and children. Preventing crime includes raising awareness on



crimes and criminal laws as well as road safety, for instance the “*Nenda kwa Usalama*” road safety campaign conducted by Traffic Police.

Positive action to promote or protect human rights

In 2021, police continued to take action to protect citizens and their property, including arresting and taking to court perpetrators of human rights violations such as people accused of committing acts of physical and sexual violence. Fewer crimes have been documented by police in recent years, including in the period of 2020/2021.¹⁰⁸⁰ Various operations were also conducted in 2021, including on unauthorized possession of firearms. The number of police gender and children desks have increased from 417 in 2016 to 423 in 2021. One stop centres have also increased from 4 in 2017/18 to 20 by February 2022.

One notable thing regarding police operations in 2021 is arrest of perpetrators of child marriage in different parts of Tanzania Mainland. Police gender desks also continued to provide services to victims of different forms of violence. The desks also continued to document criminal offences which constitute human rights violations, including VAWC.

6.2.3.2. Key challenges observed in 2021

- Corruption
- Shortage of police officers: According to the IGP, Simon Sirro, there is currently one police officer for 2,000 people, while the international standard is one police officer for 450 people.
- Excessive use of force during arrest or interrogation, sometimes leading to extrajudicial killings
- Arbitrary arrest and detention
- Negative perception about rights of accused person, including right counsel
- Trumped-up charges/fabrication
- Holding accused persons beyond 24 hours before taking them to court
- Lengthy investigations, causing delays in dispensation of criminal justice
- Long distance from resident to police gender desks

¹⁰⁸⁰ See HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE. GEORGE BONIFACE SIMBACHAWENE (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2021/2022 at <https://www.moha.go.tz/sw/blog/2021-05-03/hotuba-ya-waziri-wa-mambo-ya-ndani-ya-nchi-mhe-george-boniface-simbachawene-mb>.



“The police gender and children desk is located some 5 kilometres from the Kilosa Town Centre, as we were relocated to pave way for a railway project. The challenge now is for people to reach as they have to pay up to Tshs. 2000 to bodaboda drivers just to get here.”

Police gender desk officer, Kilosa

- Lack of police presence/stations in some wards: For instance, in February 2021, it was reported in Shinyanga DC that lack of police stations in some areas contributed to occurrence of gender-based violence and violence against children. Some of the residents of Mwakitolyo Ward claimed that they usually have to travel for up to 30 kilometres to access police services in the nearby Salawe Ward, costing them about Tshs. 5000 to Tshs. 20,000 if they travel by vehicles.¹⁰⁸¹ In this case, nearby police have to travel long distances to provide police services.
- Unqualified police officers running the police gender and children desks: In 2021, this issue was revealed during a meeting between police commanders and the Children’s Dignity Forum (CDF). It was stated that some of the police officers running the desks lack required qualifications, including adequate training.

6.2.4. Tanzania Prisons Service (TPS)

6.2.4.1.Mandate

Key functions of TPS include:

- Custodial sentence management and supervision of offenders.
- Proper management of custodial remand services.
- Design and implementation of programmes and services which address offenders’ rehabilitation needs.

Prisons are there to 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.

Positive action to promote or protect human rights

In 2021, TPS continued to provide prison services, including managing and supervising detainees and ensuring detainees are taken to court whenever required.

¹⁰⁸¹ LHRC Media Survey 2021.



6.2.4.2. Key challenges observed in 2021

- Prolonged detention of accused persons in prisons, largely caused by denial of bail and delays in investigations, causing prison overcrowding and compromising the ability of TPS to provide required prison services.
- Budgetary constraints
- Shortage of prison officers
- Non-payment of allowances
- Shortage of vehicles for transporting detainees to court: In 2021, the Chief Justice noted that in some areas accused persons have been transported for up to 200 kilometres to reach court.

“Here in Kilosa we are faced with various challenges, such as lack of a prison facility, hence relying on Wami (Mvomero District) and Kibegere (Kilombero District) Prisons, which are 75 and 140 kilometres away respectively. We are faced with the challenge of proximity of the court.”

Judicial officer, Morogoro

- Lack of coordination with other mechanisms, especially police

6.2.5. Commission for Human Rights and Good Governance

6.2.5.1. Mandate

CHRAGG has operational mandate in the whole of Tanzania, overseeing human rights and good governance issues. Key functions include:

- Human rights and good governance sensitization and public awareness-raising
- Receiving and addressing complaints of human rights violations as the national human rights institution (NHRI)
- Conduct inquiry on matters relating to infringement of human rights and violation of principles of good governance
- Conduct research on human rights and good governance issues and disseminate findings
- Institute proceedings in court to prevent human rights violations
- Advise the Government and other public institutions and the private sector on human rights and good governance issues

Positive action to promote or protect human rights

In 2021, CHRAGG continued carrying out its key functions, including: sensitizing about preservation of human rights and duties; and receiving complaints in relation to violation of human rights. CHRAGG also continued to closely work with CSOs and made several visits at CSO offices, including LHRC, to check on the work done and strengthen ties.



6.2.5.2.Key challenges observed in 2021

- Shortage of funds: Like for most other government institutions, budgetary constraints is a challenge for CHRAGG in terms of providing and expanding its services.
- Lack of offices in most regions in Tanzania: Currently, CHRAGG only has five offices, four in Tanzania Mainland (Dodoma, Dar es Salaam, Mwanza, and Lindi) and one in Zanzibar (Unguja). This limits its ability to reach many people and provide timely services.

6.2.6. Prevention and Combating of Corruption Bureau

6.2.6.1.Mandate

- Examine and advise the practices and procedures of public parastatal and private organisations, to facilitate the detection of corruption or prevent corruption and secure the revision of methods of work or procedure which appear to add to the efficiency and transparency of the institution concerned.
- Addressing corruption, both gran and petty, which is has negative impact on human rights, especially socio-economic rights.

Positive action to promote or protect human rights

In 2021, PCCB continued to take various measures to prevent and address corruption, including awareness-raising and arrest and prosecution of perpetrators of corruption. For instance, in February 2021, PCCB in Pwani Region arrested a DAWASA worker, Gidman Athanas, for soliciting and receiving a bribe of Tshs. 220,000. It was reported that he asked for the amount in order to scrap a Tshs. 500,000 water bill from the system for a customer, who reported the matter to the anti-corruption body.

Tanzania in the Corruption Perceptions Index 2021

Tanzania's performance in the Corruption Perceptions Index continues to indicate improvements in combating corruption, although corruption is still a big problem in Tanzania. In 2019, Tanzania was ranked 96th out of 180 countries, jumping another 3 places after scoring



37 out of 100 points.¹⁰⁸² In 2020, Tanzania's score jumped two more places in the world rankings to 94th after scoring one more point. In 2021, Tanzania jumped further in the rankings to the 87th position after scoring another point to make it 39 points.¹⁰⁸³ Figure 61 below shows score trend from 2015 to 2021.

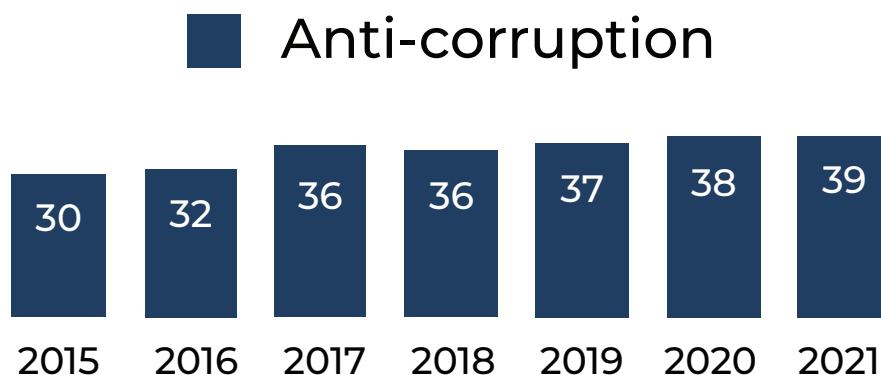


Figure 61: Tanzania's scores in the Corruption Perceptions Indexes 2014-2020

Source: Corruption Perceptions Indexes 2015 to 2021

6.2.6.2. Key challenges observed in 2021

- Delays in investigation and prosecution of corruption cases.

6.2.7. National Prosecutions Service (NPS)

6.2.7.1. Mandate

NPS has overall mandate over prosecution of criminal offenders in Tanzania, on behalf of the Government. Key functions include:

- Deciding to prosecute or not to prosecute in relation to any offence;

¹⁰⁸² See Transparency International's Corruption Perceptions Index 2019, at <https://www.transparency.org/cpi2019>, accessed 5th March 2020.

¹⁰⁸³ See Transparency International's Corruption Perceptions Index 2021: Tanzania, at <https://www.transparency.org/en/countries/tanzania>.



- Taking and conducting criminal cases on behalf of the sovereign of the United Republic, the Central Government, independent departments, executive agencies and the local government;
- Coordinating and supervising criminal investigation and conduct of criminal prosecution in courts of law other than court martial;
- Discontinuing at any stage before judgement is delivered any criminal proceeding brought to the court by another person or authority;
- Issuing directives to any public officer performing functions relating to conduct of criminal prosecution in courts of law; and
- Direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously.

Positive action to promote or protect human rights

In 2021, NPS continued to act on behalf of the State to ensure criminal offenders are prosecuted to the full extent of the law.

6.2.7.2.Key challenges observed in 2021

- Budgetary constraints, which sometimes make it difficult to prepare witnesses for the prosecution

6.2.8. The Role Played by the Ministry of Constitutional and Legal Affairs

6.2.8.1.Overview

The Ministry of Constitutional and Legal Affairs (MoCLA) also has a key role to play in promoting and protecting human rights in Tanzania. In this regard, it works closely with the Ministry of State, President Office from Zanzibar Ministry of Constitution, Legal Affairs, Public Service and Good Governance. In 2021, the ministry played a crucial role in developing and submitting the national report, collaboration with other key government actors.

6.2.8.2.Mandate

Regarding human rights, the mandate of MoCLA includes:

- Preparing national reports for presentation before the human rights bodies;
- Disseminating concluding observations from human rights treaty bodies;
- Preparing country reports on human rights in accordance with



- regional and international human rights instruments;
- Sensitising the public on human rights matters;
- Ensuring state comply with human rights obligations; and
- Overseeing the development of human rights regime.

Positive action to promote or protect human rights

The year 2021 was a busy one for MoCLA as Tanzania's human rights record was examined during the Universal Periodic Review (UPR) process by the UN Human Rights Council. The State report was reviewed under third cycle of the UPR on 5 November 2021. MoCLA represented the United Republic of Tanzania in reporting, submissions, and evaluation of proposed recommendations during the process.

6.2.8.3. Key challenges observed in 2021

- Budgetary constraints, including budget for preparing due state reports.

6.3. Regional and International Human Rights Mechanisms

6.3.1. Legal Framework

Tanzania is part of various regional and international human rights mechanisms. These include the Universal Periodic Review Mechanism (UPR) - whereby it submits its reports on promotion and protection of human rights; and bodies established under various human rights treaties. 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 periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Status of reporting to the treaty bodies is indicated in the Annex section below.



6.3.2. Universal Periodic Review (UPR): Tanzania on the Spotlight in 2021

6.3.2.1. Overview

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.¹⁰⁸⁴ 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 fulfil their international human rights obligations.¹⁰⁸⁵ The last UPR process was 2016, whereby Tanzania submitted its report and CSOs submitted shadow report. Several recommendations were made for Tanzania to improve human rights, whereby some accepted, and some were noted or rejected.¹⁰⁸⁶

6.3.2.2. Tanzania's review process

In 2021, Tanzania's human rights record was yet again examined by the UN Human Rights Council's Universal Periodic Review (UPR) Working Group for the third time on 5th November 2021, following the first and second UPR reviews in October 2011 and May 2016.¹⁰⁸⁷ The documents on which the reviews are based are: 1) national report - information provided by the State under review; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information provided by other stakeholders including national human rights institutions, regional organizations and civil society groups. During the interactive dialogue, 92 delegations made statements.

6.3.2.3. Tanzania's national report

The Tanzania national report highlighted developments since previous review and status of implementation of accepted recommendations.¹⁰⁸⁸ The updates on implementation of accepted recommendations was made under various thematic areas, including:

1084 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.

1085 Ibid.

1086 See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016.

1087 OHCHR "Tanzania's human rights record to be examined by Universal Periodic Review" at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27747&LangID=E>.

1088 Human Rights Council Working Group on the Universal Periodic Review, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: United Republic of Tanzania*, Thirty-ninth session, -12 November 2021, at <https://undocs.org/A/HRC/WG.6/39/TZA/1>.



- **International human rights instruments:** The Government considered ratification of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984), the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) and the International Convention on the Protection of the Persons from Enforced Disappearance (2006). However, it noted that it needs more time to conduct research and consultations.
- **Constitutional development:** Constitution-making process shall be revisited at the appropriate time because there are more pressing matters.
- **Normative framework:** Various laws enacted and amended. Government in the process of reviewing the Law of Marriage Act, Cap. 29 to conform to the Court of Appeal decision in the case of Attorney General vs Rebecca Z. Gyumi, Civil Appeal No. 204 of 2017 on the age of marriage.
- **The national human rights institution:** Budget for CHRAGG, the national human rights institution, has been increasing.
- **The National Human Rights Action Plan:** Implementation of the plan continued and the plan went under final evaluation in 2017.
- **Human rights treaty obligations:** The State is in the final stages of validating State Party Reports on the International Convention on the Rights of Persons with Disabilities (2006), the International Convention on the Rights of the Child (1989) and the International Convention on the Elimination of All Forms of Discrimination against Women (1979), to be submitted by end of 2021.
- **Violence against women and children:** Government continues to implement the National Plan of Action to end Violence Against Women and Children (NPA-VAWC 2017/18-2021/22) which aims at reducing violence against women and children by 50% in 2022.
- **Non-discrimination:** Government continuing to take measures to enhance women's political participation and representation.
- **Child labour:** Government developed a National Strategy on Elimination of Child Labour 2018-2022 to reduce child labour from 29% to 9% by 2022 including a program to eliminate child labour in tobacco plantations in Tabora Region.
- **Persons with disability:** Government has adopted legislative measures in favour of Persons with Disability (PWDs), for example the Local Government Finance Act, Cap. 290 was amended to stipulate that out of 10% of Council revenue 2% be directed to



economic empowerment programs for PWDs in their respective areas.

- **Access to justice:** Government continued to enhance access to justice including through enactment of the Legal Aid Act of 2017 and the adoption of the Legal Aid Regulations of 2018.
- **Freedom of expression and the right to information:** Claims of interference with freedom of expression are addressed through judicial processes or administrative complaints. The Government also entered into dialogue with media practitioners and amended some legislation in order to ensure freedom of expression and right to information are promoted and protected.
- **Freedom of assembly and association:** Political parties are allowed to conduct public meetings and processions in compliance with the applicable laws, regulations and procedures.
- **Education:** Government is implementing a fee free education policy for all children at the level of primary and secondary education and allocates TZS 24 billion (USD10.3 million) monthly towards this spending. Water and sanitation facilities in schools have been improved as 6,629 toilets were constructed between 2015 and 2020.
- **Health:** From the period 2016/17 to 2019/20, the budget allocation for Health sector programs and activities increased by 13% whereby released and actual expenditure increased by average 35% per annum.

6.3.2.4. Shadow reports

Prior to the UPR process for Tanzania, various CSOs in Tanzania submitted shadow reports to the UPR Working Group, including LHRC. One of the reports was prepared in 2019, looking at the status of implementation of accepted recommendations during the 2nd cycle in 2016.¹⁰⁸⁹

Table 35: Status of recommendations accepted by Tanzania during the

1089 TANZANIA CSOs UPR MID TERM REPORT OCTOBER 2019

https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/Tanzania_CoalitionCSOsHRDefenders.pdf



2nd cycle UPR process in 2016

Thematic area	#Accepted Recommendations	Status
Child Rights	24	All recommendations partially implemented.
Women’s Rights	19	10 partially implemented, 9 not implemented.
Human Rights in General and Political Rights	26	Most partially implemented, few not implemented.
Civil Society and Human Right Defend	17	Most partially implemented, few not implemented.
Freedoms of Expression, Association and Assembly	2	Both partially implemented.
Economic and Land Rights	7	Most partially implemented.
Minority Rights, Persons with Disabilities (PWDs) and Persons with Albinism (PWAs)	22	Most partially implemented, few not implemented.

Source: TANZANIA CSOs UPR MID TERM REPORT OCTOBER 2019

6.3.2.5. Recommendations accepted, to be examined, and noted

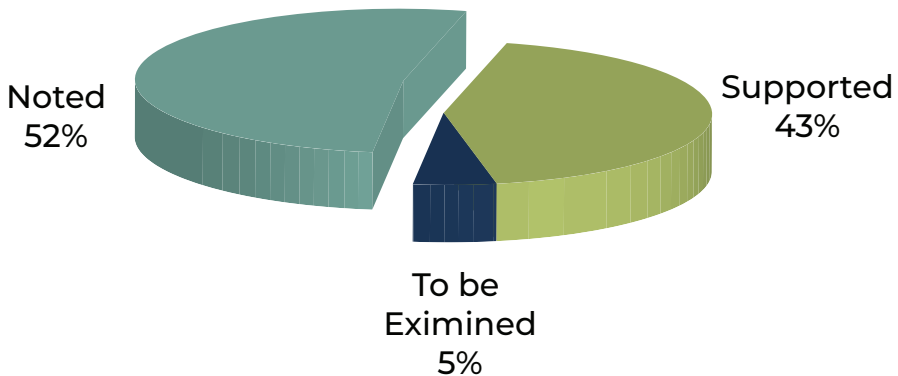


Figure 62: % 2021 UPR Recommendations made to Tanzania that were supported, to be examined, and noted

Source: UPR Working Group Report on URT, December 2021



A total of 108 recommendations enjoyed the support of Tanzania (accepted), including on:

- Accelerate implementation of the Convention on the Rights of Persons with Disabilities (Australia);
- Expedite the adoption of the second national human rights action plan to implement the recommendations of the universal periodic review (Maldives);
- Continue efforts to halt all forms of discrimination against women (Libya);
- Continue efforts to address all types of attacks against persons with albinism (Rwanda);
- Continue to promote access to justice for all through increased provision and coverage of legal aid (Sri Lanka);
- Continue measures to prevent trafficking in persons (Nepal);
- Improve access to adequate housing, safe drinking water and adequate sanitation (Ukraine);
- Adequately resource the National Plan of Action to End Violence against Women and Girls in Tanzania 2017/18–2021/22 and strengthen the fight against child and forced marriages (Spain); and
- Improve accessibility of persons with disabilities to public places, including public buildings and public transport services (Japan).

A total of 12 recommendations will be examined by Tanzania,¹⁰⁹⁰ including:

- Ratify the Convention relating to the Status of Stateless Persons (Côte d'Ivoire);
- Enact a law on the protection of older persons in society on the mainland of the United Republic of Tanzania (Kenya);
- Consider revising inheritance laws in order to ensure equal inheritance rights for women with regard to their husbands and parents (Germany);
- Take additional steps to ensure women's rights in matters of inheritance, succession and land rights (Japan);
- Revoke customary laws that undermine women's land rights, such as the Local Customary Law (Declaration) Order (G.N. No. 436/1963) (No. 4), and strengthen institutions dealing with land administration (Switzerland);

¹⁰⁹⁰ To be examined by the United Republic of Tanzania, which will provide responses in due time, but no later than the forty-ninth session of the Human Rights Council.



- Implement measures to provide non-discriminatory universal health coverage (Mauritius); and
- Introduce amendments to the laws with a view to guaranteeing the right to education and introduce 12 years of free primary and secondary education, of which 9 years are compulsory, and at least one year of free and compulsory pre-primary education, especially for girls and children with disabilities (Poland).

A total of 132 recommendations were noted, including:

- Ratify the international human rights treaties to which the United Republic of Tanzania is not yet a party (Ukraine);
- Intensify efforts to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Chile);
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Mongolia);
- Enact a comprehensive law on sexual and gender-based violence, ensuring inclusion of indigenous women and girls and those living with disabilities (Denmark);
- Adopt a de jure moratorium on capital executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Italy);
- Abolish the death penalty in all circumstances (Norway);
- Abolish the death penalty and commute all death sentences to alternative sentences (Switzerland);
- End illegal pretrial detention which contravenes constitutional guarantees and the internationally recognized right to a fair trial (United Kingdom of Great Britain and Northern Ireland);
- Amend the Media Services Act, the Political Parties Act and related legislation to ensure freedom of expression and assembly are protected (United Kingdom of Great Britain and Northern Ireland);
- Review legislation, including the Cybercrimes Act, to ensure that freedom of the press, as well as freedom of expression and opinion, is protected (Germany);
- Amend the Non-Governmental Organizations Act (Amendments) Regulation 2018 in line with international human rights standards on freedoms of association and peaceful assembly (Denmark);
- Refrain from imposing a ban on pregnant girls and young women attending schools or taking exams (Armenia);
- Undertake further measures to prevent domestic violence and



marital rape and ensure that all victims receive necessary assistance (Thailand);

- Revise the 1971 Law of Marriage Act to set the minimum age of marriage to 18 years for both girls and boys (Canada); and
- Uphold the rights of refugee claimants in the United Republic of Tanzania and ensure that those seeking asylum are protected pending status determination, that refugee status is determined in an impartial, fair and timely manner and that any repatriation of refugee claimants is conducted in accordance with the international human rights obligations of the United Republic of Tanzania (Canada).

6.3.3. Key challenges facing regional and international human right mechanisms

Difficulties in Enforcing Decisions of Regional and International Human Rights Mechanisms

In December 2019, it was revealed that Tanzania had decided to withdraw access of individuals and NGOs to the African Court on Human and Peoples' Rights, issuing a notice of withdrawal¹⁰⁹¹.

According to the notice, the withdrawal decision was reached after the Declaration had been implemented contrary to the reservations submitted by Tanzania when making its Declaration.¹⁰⁹² The withdrawal came at a time when its enforcement of regional and international human rights mechanisms, especially of the African Court on Human and Peoples' Rights and the East African Court of Justice, has been a challenge.

Enforcement of decisions/judgements of the regional and international human rights mechanisms in domestic jurisdictions usually depends on the political will. For instance, in 2013, the African Court on Human and Peoples' Rights issued its judgement on the private candidate case filed by the late Christopher Mtikila, but the judgement is yet to be enforced. In 2019, the East African Court of Justice delivered its judgement on the Media Services Act of 2016 but it is yet to be enforced.

¹⁰⁹¹ See NOTICE OF WITHDRAWAL OF THE DECLARATION MADE UNDER ARTICLE 34(6) OF THE PROTOCOL TO THE AFRICAN CHARTER ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/12/Tanzania-Withdrawal-Article-36-4-African-Court.pdf>.

¹⁰⁹² Ibid.



Non-ratification of some key regional and international human rights instruments

Tanzania is yet to ratify some of the regional and international human rights instruments, including the UN Convention against Torture (CAT) and the African Charter on Democracy Elections and Governance (ACDEG) of 2007. This is a gap in terms of the human rights mechanisms effectively carrying out their mandate of promoting and protecting human rights.



CHAPTER 7: IMPLEMENTATION OF RECOMMENDATIONS IN PREVIOUS REPORT

7.1. Overall Picture

Apart from providing the situation of human rights, as guaranteed in the Constitution of the United Republic of Tanzania of 1977 and regional and international human rights instruments, Tanzania Human Rights Reports provide recommendations to enhance protection of human rights. This chapter examines the status of implementation of recommendations provided in the LHRC's previous reports, starting from the year 2015 to the year 2020.

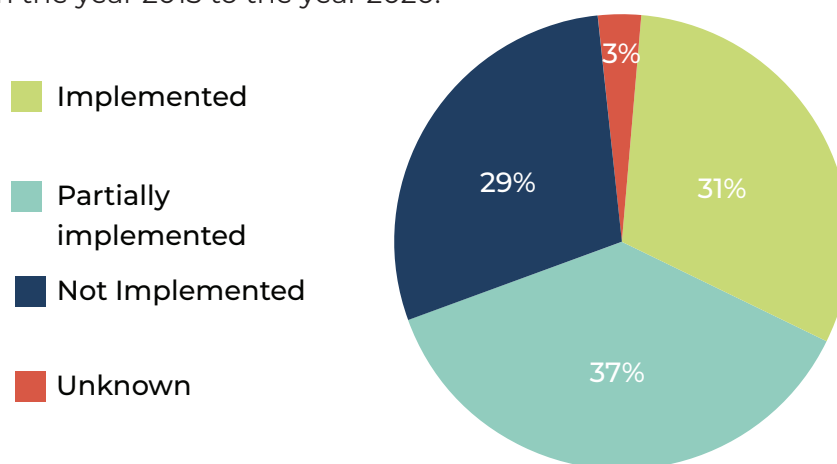


Figure 63: Status of implementation of recommendations of THRR 2015 to 2020

Table 36 below shows the number of recommendations that were implemented (I), partially implemented (PI), not implemented (NI), and whose status is unknown (U).



Table 36: Status of recommendations of Tanzania Human Rights Reports 2015 to 2020

Category of Human Rights	#Recommendations	I	PI	NI	U
Civil and Political Rights	67	22	24	21	0
Economic, Social and Cultural Rights	44	13	18	12	1
Rights of Vulnerable Groups	28	8	9	9	2
Other human rights	5	2	2	0	1
TOTAL	144	45	53	42	4

Majority of the recommendations made during this period (47%) were on civil and political rights. This is because these rights constitute the majority of human rights stipulated in international human rights instruments and are the most violated human rights compared to other categories of human rights. Recommendations on civil and political rights also constituted the majority of recommendations which were implemented (47%) and not implemented (50%).

LHRC’s Call: In order to safeguard fundamental human rights, enhance social justice, and achieve sustainable development goals (SDGs), we call upon the Government and other actors to fully implement recommendations which are not implemented and those which are partially implemented.

7.2. Civil and Political Rights Recommendations

During this reporting period, a total of 67 key recommendations on civil and political rights made in the Tanzania Human Rights Reports of years 2015 to 2020 were assessed to determine their status. Out of these, only 22 recommendations have been implemented, while 24 have been partially implemented. A total of 21 recommendations have not implemented.



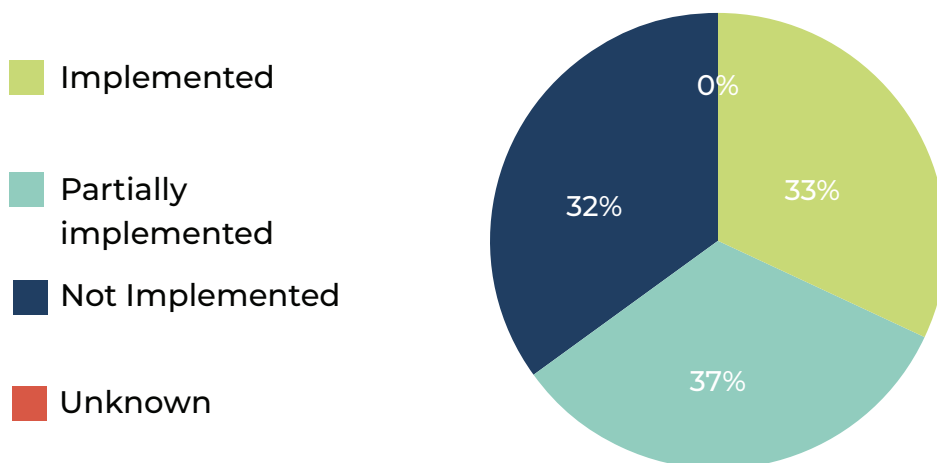


Figure 64: Status of THRR recommendations on civil and political rights (2015-2020)

Table 37: Some of the key recommendations on civil and political rights not implemented – 2015 to 2020

Recommendation	Description
Officially declare the state of moratorium on execution of death penalty and amend Penal Code to end compulsory sentencing of death penalty for the crime of murder and treason.	No declaration. Mandatory death penalty still in place, despite decision of the African Court of November 2019.
Sign and ratify the Second Optional Protocol to the International Convention on Civil and Political Rights to abolish the death penalty	No signature and ratification.
Establish an independent and inclusive electoral body.	None.
Establishment of an independent police oversight body.	None.
Government to amend the Media Services Act 2016 to bring it in line with international standards on freedom of expression.	None, despite decision of the East African Court of Justice of 2019.
Government to amend the Cybercrimes Act so that it does not infringe on freedom of expression and other human rights.	None.
The Government to ratify and domesticate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	None.



Government to sign and ratify the African Charter on Democracy, Elections and Governance.	None.
Government to amend the Online Content Regulations to remove or amend provisions that do not conform to international human rights standards.	New Online Content Regulations introduced in 2020 to replace the Online Content Regulations of 2018, but still do not conform to international human rights standards, especially on freedom of expression.
Government to amend the Political Parties Act 1992 to remove problematic provisions in line with international standards on freedoms of association and assembly.	The law amended in 2019, but not in conformity with international standards on freedoms of association and assembly.
The Police Force to promptly and effectively investigate cases in order to safeguard rights to liberty and personal security and right to equality before the law.	Investigations take too long to conclude, contributing to pre-trial detentions and prison overcrowding.

7.3. Economic, Social, and Cultural Rights Recommendations

During this reporting period, a total of 44 key recommendations on economic, social, and cultural rights made in the Tanzania Human Rights Reports of years 2015 to 2020 were assessed to determine their status. Out of these, only 13 recommendations have been implemented, while 18 have been partially implemented. A total of 12 recommendations have not been implemented, and status of implementation of 1 recommendation was unknown.

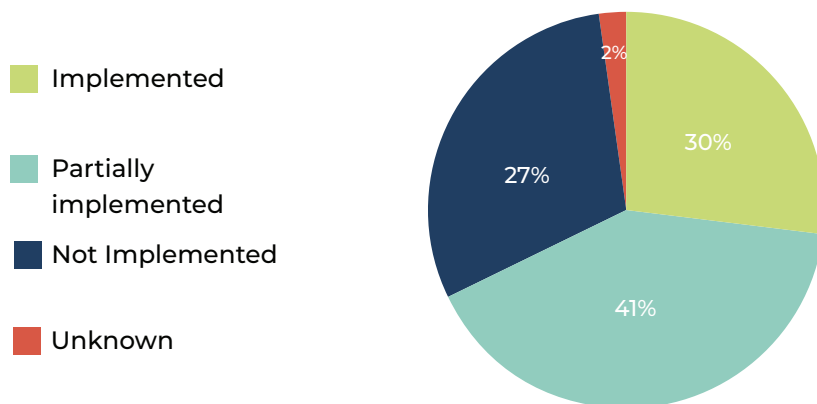


Figure 65: Status of THRR recommendations on economic, social and cultural rights (2015-2020)



Table 38: Some of the key recommendations on economic, social, and cultural rights not implemented – 2015 to 2020

Recommendation	Description
The Government to increase budgetary allocations for education, water and health sectors in line with international standards and ensure full and timely disbursement of funds for these sectors.	Budgets have been increased but not in line with international minimum standards.
Ministry responsible for education to devise strategies of preventing VAC perpetrated by male teachers in schools.	No strategy in place.
Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted immediately after being promoted.	None.
The Government to ensure its institutions pay water bills on time in order for the water authorities to effectively implement their activities and maintain water infrastructure.	Still reports of government institutions which are notorious in non-payment of bills on a timely basis.
Review the Wage Order and ensure it is reviewed after every 3 years as required by law.	None. Last reviewed in 2013.
Make corporate social responsibility (CSR) a legal requirement for all sectors, following the amendments to the Mining Act, which saw CSR mandatory for companies in the mining sector.	None.
Increase budgetary allocation for the health sector to at least reach the minimum target of 15% as required under the Abuja Declaration.	Budget increased but not in line with the minimum standards.

7.4. Rights of Vulnerable Groups Recommendations

During this reporting period, a total of 28 key recommendations on rights of vulnerable groups made in the Tanzania Human Rights Reports of years 2015 to 2020 were assessed to determine their status. Out of these, only 8 recommendations have been implemented, while 9 have been partially implemented. A total of 9 recommendations were not



implemented, and status of implementation of 2 recommendations was unknown.

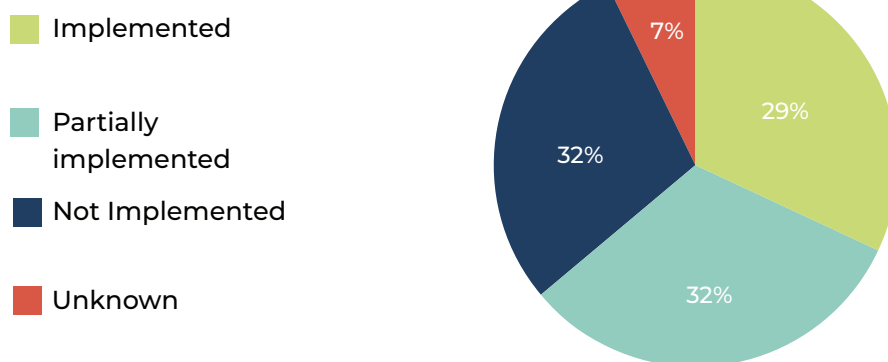


Figure 66: Status of THRR recommendations on rights of vulnerable groups (2015-2020)

Table 39: Some of the key recommendations on rights of vulnerable groups not implemented – 2015 to 2020

Recommendation	Description
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.	No such law in place.
The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.	Progress made, but slow. Women still underrepresented in decision-making positions.
Spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy	No such law yet.
The Government to amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.	None.
Harmonize laws on administration of deceased's estates to address the problem of conflict of laws applicable during administration of estate	None.



<p>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.</p>	<p>None. One year on since directive of the Court of Appeal of Tanzania.</p>
<p>The Government to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.</p>	<p>None.</p>
<p>Increase funding for the police gender desk to enable it to effectively address gender-based violence and violence against children.</p>	<p>Funding for desks still one of the major challenges.</p>
<p>The Government to increase budget for implementation of the NPA-VAWC in order to address VAC and VAW, which have reached alarming levels.</p>	<p>No reports of any significant increase in budgetary allocation.</p>



CHAPTER 8 CONCLUSION AND RECOMMENDATIONS

8.1. Conclusion

Civil and Political Rights

In the year 2021, the situation of civil and political rights slightly deteriorated/worsened as fundamental civil and political rights were violated, especially right to life, right to equality before the law, right to liberty and personal security, and freedom from violence. The whole situation of these rights was exacerbated by the Covid19 pandemic. Of particular concern were rights of accused persons in the criminal justice system. Restrictive laws and regulations also continued to hinder effective realisation of civil and political rights, especially freedoms of expression, assembly, and association.

Some of the key issues affecting effective realisation of civil and political rights included shortage of judicial personnel, corruption within the justice system, disregard of due process of the law, lengthy detention of remandees, denial of bail, violations of right to take part in governance, prosecution before completion of investigation and arbitrary restrictions on freedoms of association and assembly, low representation of women in leadership positions, and violence against women and children.

On a positive note, the Government led by H.E President Samia Suluhu showed signs of commitment to improve human rights, especial fair trial rights and access to justice.

Economic, Social and Cultural Rights

In 2021, the Government continued to take various measures to ensure progressive realisation of economic, social, and cultural rights in line with its obligations under regional and international human



rights instruments. Key policies such as the fee-free education policy, continued to be implemented to safeguard the right to education. However, effective realisation of these rights continued to be hindered by challenges such as insufficient budget; shortage of workers, including teachers and healthcare workers; shortage of classrooms and dormitories; shortage of toilet holes; violence against children; harmful cultural practices; low social security coverage; and labour rights violations.

Collective Rights

During this reporting period, collective rights, particularly the right to development, were boosted by Tanzania achieving the middle-income country status. The country did not fare well in terms of political development and human development, while challenges hindering effective realisation of social rights negatively affected social development. Realisation of the right to enjoy and benefit from natural resources was affected by challenges, such as the Covid19, which affected industries such as the tourism industry; corruption; tax avoidance and evasion.

Rights of vulnerable groups

Vulnerable groups include women, children, PWDs, youth, refugees, the elderly and PLHIVs. These are groups that are more likely to suffer human rights violations, which is why there are special protection mechanisms for them, including specific human rights instruments, save for the elderly who are yet to have a specific human rights convention. In the year 2021, incidents of violence and discrimination against vulnerable groups were widely reported and documented. Sexual violence continues to be a big threat to effective enjoyment of the rights of vulnerable groups.

Human rights mechanisms

Key national human rights mechanisms are the law enforcement organs, mainly the Tanzania Police Force and the Tanzania Prison Services; the Judiciary; and the Commission for Human Rights and Good Governance (CHRAGG). Their role is to protect human rights under different capacities and in 2021 they continued to play this role in various ways, including bringing perpetrators of human rights



violations to justice and taking various measure to enhance access to justice. However, key issues affecting their role in human rights protection included corruption, delays in investigation and prosecution of cases, poor working environment due to shortage of equipment, shortage of law enforcement officers and judicial workers, overcrowding in prisons, budgetary constraints, shortage of facilities, and poor knowledge about human rights and essence of procedural safeguards.

International, regional, and sub-regional human rights mechanisms include: Universal Periodic Review Mechanism, Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Tanzania is a party to all these mechanisms, some of which are based in Arusha – one of its regions. Non-enforcement of the decisions of these mechanisms continued to be a challenge in 2020.

8.2. Recommendations

8.2.1. Civil and Political Rights

State actors

- Being a de facto abolitionist state, the Government, through the Ministry of Constitutional and Legal Affairs, should move to declare a state of moratorium and improve death row conditions and prepare to abolish death penalty.
- Police force should promptly respond to mob violence and witchcraft-related killings; and ensure the perpetrators are brought to justice.
- Ministry of Home Affairs to ensure law enforcement officers who conduct extra-judicial killings are held accountable in accordance with the law
- The Ministry of Constitutional and Legal Affairs to spearhead amendments of laws restricting freedoms of expression, association and assembly.
- The Government to amend the Online Content Regulations 2020 to bring them in line with international human rights standards.
- The Government to amend Media Services Act of 2016 in line with the decision/judgement of the East African Court of Justice of 2019.
- Government officials to refrain from interfering with freedom of expression without reasonable ground stipulated by law; and stop threatening journalists.



- Freedom of expression should be effectively guaranteed, and citizens should be freely allowed to air their views on the governance issues.
- The Police Force to promptly and effectively investigate cases in order to safeguard rights to liberty and personal security and right to equality before the law.
- Police to use their powers under the Police Force and Auxiliary Services Act in relation to freedom of assembly objectively, ensuring that any denial of assembly is lawful, reasonable and necessary.
- Government authorities and police to refrain from suppressing opposition political parties through denial of political assembly.
- Government officials and members of political parties to exercise political tolerance in order to preserve peace and security.
- Ministry of Home Affairs and the Police to ensure the police force responds timely to prevent mob violence and act against mob-killings, ensuring the perpetrators are brought to justice.
- The Government, through the Ministry of Constitutional and Legal Affairs, to create a police oversight body to ensure and promote accountability in law enforcement.
- Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.
- The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.
- The Government and the Police Force to refrain from arbitrarily interfering with freedom of expression, including press freedom; freedom of assembly; and freedom of association.
- The Police Force should refrain from conducting arbitrary arrests and arbitrarily detain accused persons instead of sending them to court within a specified period of time (usually 24 hours) as required by the law, in order to promote the right to liberty. Police officers implicated in this behaviour should be held accountable.
- The Police Force should ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
- The Government, through the Ministry of Constitutional and Legal Affairs, to take legal and administrative measures to safeguard the right to take part in governance, including allowing independent candidates and creation of an independent and inclusive electoral body.
- The Government to allow all CSOs, especially those dealing with human rights, to observe elections in order to enhance credibility of such elections.



- The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.
- The Police Force and courts of law to grant bail for all bailable offences and to do so timely.

Non-state actors

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

Members of the public

- To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system when they are not satisfied with the outcome of a case.
- Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially right to life, freedom of expression and freedom from torture, as a way of promoting these rights.
- Community members to expose and report violations of human rights, especially right to life, and ensure the perpetrators are brought to justice.

8.2.2. Economic, Social and Cultural Rights

State actors

- The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for education, water and health sectors in line with international standards and ensure full and timely disbursement of funds for these sectors.
- The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the agriculture sector, which is the leading employer, in order to boost the right to development and right to work. It should also increase investment in irrigation farming in order to boost food production and improve accessibility.



- The Prime Minister's Office Labour, Employment, Youth and People with Disability should collaborate with the Ministry of Community Development, Gender, Women and Special Groups to promote self-employment and entrepreneurship in order to address the problem of youth unemployment.
- The Ministry of Education, Science and Technology should address challenges faced by teachers to ensure they work in favourable conditions, as key measure in improving quality of education and achieving key targets under SDG 4 and the Tanzania Development Vision 2025.
- The Ministry of Education, Science and Technology to devise strategies of preventing VAC perpetrated by male teachers in schools.
- Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid accumulation of debts; and ensure no new staff debts are created..
- As recommended by the CAG in the 2017/18 audit report on local government authorities (LGAs), management of the LGAs and the Government as a whole to ensure that there is sufficient budget allocation for staff appraisal activities and perform awareness program to LGAs' staff on the importance of staff appraisal to the government employees.
- Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted immediadely after being promoted.
- The Government, through the Ministry of Finance and Planning, to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water, which is essential to the Government's industrialisation drive.
- The Government should ensure its institutions pay water bills on time in order for the water authorities to effectively implement their activities and maintain water infrastructure.
- The Ministry of Water should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of monies.
- Ministry of Education, Science and Technology to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.

Non-state actors

- CSOs should work with relevant government ministries, such as the ministry responsible for women and ministry responsible for land, to promote and protect economic rights, including conducting awareness-raising sessions and campaigns.



- CSOs should collaborate with the Prime Minister’s Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties.
- The private sector should collaborate with the Government to invest in water projects in order to increase access to water services. This could also be done as part of corporate social responsibility.
- CSOs, the media and other stakeholders should collaborate with the Government to promote and protect social and cultural rights, including through awareness-raising of the public.

Members of the public

- Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work, right to own property and popular versions on laws relating to these rights prepared by government and no-government actors.
- Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission for Human Rights and Good Governance.
- Parents should strive to understand their duties and responsibilities towards their children under the Law of the Child Act of 2009 (as amended in 2019) and make efforts to ensure children enjoy and realise their rights, including right to education and freedom from violence.
- Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.
- Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.

8.2.3. Collective Rights

State actors

- The Government should address corruption in the mining sector, which is threatening right to development and right to enjoy and benefit from natural resources.
- The Ministry of Natural Resources should ensure effective implementation of natural resources laws.
- The Government to ensure respect of human rights while attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- The Government to ensure effective implementation of corporate social responsibility (CSR) policy to ensure people in areas with heavy investment, such as mining areas, benefit from their natural resources through improved social services.
- The Government to address tax evasion and avoidance in the



mining sector and ensure companies which evade tax are held accountable.

Non-state actors

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

Members of the public

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

8.2.4. Rights of Vulnerable Groups

State actors

- The Government, through the Ministry of Constitutional and Legal Affairs, to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues.
- The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
- The Government, through the Ministry of Constitutional and Legal Affairs and the Ministry of Foreign Affairs, to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.
- The Government through the Ministry of Education, Science and Technology to Integrate gender education in learning curriculums from elementary to higher learning.
- The Government, through the Ministry of Finance and Planning and Ministry of Home Affairs, should increase funding for the police gender desk to enable it to effectively address gender-based violence and violence against children.
- The Government, through the Ministry of Community Development, Gender, Women and Special Groups, and the Ministry of Home



Affairs, to ensure that acts of gender-based violence (violence against women) are prevented and investigated.

- The Judiciary to ensure that courts prosecute and punish acts of gender-based violence.
- The Government to ratify the ILO C190 - Violence and Harassment Convention, 2019 (No. 190) to safeguard against acts of violence and harassment in the world of work.
- The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.
- The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action.
- The Government, through the Ministry of Constitutional and Legal Affairs, to facilitate amendment of the Law of Marriage Act of 1971 in line with the Court of Appeal decision of 2019 in the Rebeca Gyumi case.
- The police and courts of law to increase the pace of investigation and prosecution of cases on violence against children and women.
- The Judiciary to ensure that courts of law fast-track proceedings of violence against PWDs.
- The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.
- The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of a law on elderly rights and protection to complement the National Age Policy.
- The Ministry of Community Development, Gender, Women and Special Groups to fast-track the process of introducing pension for the elderly.
- The Government, through the Ministry of Finance and Planning, to increase budget for implementation of the NPA-VAWC in order to address VAC and VAW, which have reached alarming levels.
- The Ministry of Community Development, Gender, Women and Special Groups to ensure allocation of adequate budget for community development and social welfare departments to effectively perform their duties in relations to violence against women and children, including making follow-ups on the incidents and providing relevant assistance to victims.
- The Government to take deliberate measures to increase the number of social welfare officers to enhance provision of relevant services to the vulnerable groups.



Non-state actors

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

Members of the public

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

8.2.5. Human Rights Mechanisms

State actors

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights. Adequate budget should be allocated for CHRAGG as a national human rights institution, to enable it to effectively carry out their mandate.
- The Government, through the Prevention and Combating of Corruption Bureau (PCCB), should move to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.
- The Government to reconsider its decision to withdraw access to the African Court on Human and Peoples' Rights for NGOs and



individuals.

- The Government should enforce decisions of the African Court on Human and Peoples' Rights on, independent candidate, mandatory death sentence and that of the East African Court of Justice on the Media Services Act of 2016.

Non-state actors

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

Members of the public

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



ANNEXES

Annex 1: Status of International Human Rights Ratifications in 2021

As of December 2021, 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



	<i>Convention/Treaty</i>	<i>Ratification</i>
Regional	African Charter on Human and Peoples' Rights 1981	1984
	African Charter on the Rights and Welfare of the Child 1990	2003
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2000 (Maputo Protocol)	2007
	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 1998	2006

Tanzania is yet to ratify the following treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003.
- African Charter on Democracy, Elections and Governance. Date of Adoption: January 30, 2007.
- International Convention for the Protection of all Persons from Enforced Disappearance 2010.
- Optional Protocol to the International Covenant on Civil and Political Rights 1976.
- Second Optional Protocol to the International Covenant and Political Rights, aiming at the abolition of the death penalty 1991.
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2013.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006.
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.

LHRC calls upon the Government to ratify the conventions which are yet to be ratified in order to safeguard human rights and strengthen human rights mechanisms in Tanzania.

Annex 2: Status of Tanzania's Reportage to Treaty Bodies

The table below shows the status of Tanzania's reporting to the treaty bodies.



Treaty Body	Mandate	Tanzania Reports
Human Rights Committee	Monitoring implementation of the ICCPR (Article 40 of ICCPR)	First report submitted on 20 th August 1979. Second report submitted on 4 th June 1991. Third report submitted on 6 th February 1997. Fourth and last report submitted on 8 th October 2007. Fifth report was due on 1 st August 2013.
Committee on Economic, Social and Cultural Rights	Monitoring implementation of ICESCR (Article 17 of ICESCR)	First report submitted on 10 th September 1979. Second report submitted on 25 th August 2009. Third report was due on 30 th November 2017.
Committee on Elimination of Discrimination Against Women	Monitoring implementation of CEDAW (Article 18 of CEDAW)	First report submitted on 9 th March 1988. Second report submitted on 25 th September 1996. Third report submitted on 16 th April 2007. Fourth and last report submitted on 10 th November 2014.
Committee on the Elimination of Racial Discrimination	Monitoring implementation of CERD (Article 9 of CERD)	First report submitted on 22 nd March 1976. Second report submitted on 29 th January 1980. Third report submitted on 1 st October 1982. Fifth report submitted on 17 th July 1986. Sixth and last report submitted on 27 th October 2004. Seventh report was due on 26 th November 2007.
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)	First report submitted on 20 th October 1999. Second report submitted on 20 th October 2004. Third report submitted on 13 th January 2012. Next report due on 9 th January 2020.
Committee on the Rights and Welfare of the Child	Monitoring implementation of the ACRWC (Article 43 of ACRWC)	Initial report submitted in December 2006. Consolidated 2 nd , 3 rd and 4 th reports submitted in October 2015.



The table above indicates the extent to which Tanzania has complied with its reporting obligations under the treaties it has ratified. While Tanzania has done well in its reporting obligations under the ICESCR, CEDAW, CRC, and ACRWC, it has not done so with regard to its reporting obligations under the CRPD and recently under the ICCPR and CERD. LHRC calls upon the Government, under the Ministry of Constitutional and Legal Affairs to comply with its treaty reporting obligations by preparing and submitting timely reports on actions taken to improve, promote and protect human rights in Tanzania.

Annex 3: List of International Human Rights Instruments

- African Charter on Human and Peoples Rights (ACHPR) of 1981.
- African Charter on the Rights and Welfare of the Child (ACRWC) of 1990.
- African Declaration on Internet Rights and Freedoms.
- AU Declaration of Principles on Freedom of Expression in Africa 2002.
- AU Model on Freedom of Expression Law.
- Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.
- Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969
- Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) of 1979.
- Convention on the Rights of Persons with Disabilities (CRPD) of 2006
- Declaration on the Elimination of Discrimination against Women of 1993.
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.
- Guidelines on Freedom of Association and Assembly in Africa.
- International Convention on the Elimination of all forms of Racial Discrimination (CERD) of 1965.
- International Covenant on Civil and Political Rights (ICCPR) of 1966.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.
- International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors of 2004.



- Johannesburg Principles of National Security, Freedom of Expression and Access to Information of 1995.
- Joint Declaration on Freedom of Expression and the Internet of 2011.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.
- SADC Protocol on Gender and Development of 2008.
- UN Basic Principles on the Role of Lawyers of 1990.
- UN Convention Relating to the Status of Refugees, 1951.
- UN Convention on the Rights of the Child (CRC) of 1989.
- Universal Declaration of Human Rights (UDHR) of 1948.
- UN Declaration on the Right to Development of 1986.
- UN Universal Declaration on the Eradication of Hunger and Malnutrition of 1974.



PART TWO: ZANZIBAR

Zanzibar Legal Services
Centre (ZLSC)

&



Zanzibar Fighting Against Youth
Challenges Organization (ZAFAYCO)



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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
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCM	Chama cha Mapinduzi
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CHRAGG	Commission for Human Rights and Good Governance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LRCZ	Law Review Commission of Zanzibar
MoHR	Members of House of Representatives
NEA	National Elections Act
PLHIV	Persons living with HIV/AIDS
PWAs	Persons with Albinism
PWDs	Persons with Disabilities
SDG	Sustainable Development Goal



UDHR	Universal Declaration of Human Rights
UN	United Nations
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Funds
UPR	Universal Periodic Review
VAC	Violence against Children
VAW	Violence against Women
ZAECA	Zanzibar Anticorruption and Economic Crimes Authority
ZAFAYCO	Zanzibar Fighting Against Youth Challenges Organization
ZAWIO	Zanzibar Widows Organization
ZEMA	Zanzibar Environmental Management Authority
ZLSC	Zanzibar Legal Services Centre



ABOUT ZLSC & ZAFAYCO

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.

Zanzibar Fighting Against Youth Challenges Organization (ZAFAYCO) is a non-governmental, nonprofit-making membership organization established by two young graduates after the realization of difficult and huge challenges facing them in 2011 and got its registration the same year Dec. 23, 2011 under Registration No. 1047 under the societies Act No.6 of 1995, known as "Zanzibar Fighting Against Youth Challenges Organization". In the new online registration system ZAFAYCO has been registered under Business Entities Registration Act No. 12 of 2012 with the registration No. Z0000012796. ZAFAYCO now has 29 organization active members



(17 females and 12 males) and 5 Board of Trustees members (3 males and 2 females). ZAFAYCO Leaders are according to constitution as hierarchically arranged from Chairperson, Vice Chairperson, Executive Director, Deputy Ex. Director, Financial Manager, Assistant F. Manager and Coordinator with sub committees.

Vision: To see Zanzibar youth are very active and flexible in order that they can handle current economic, political and social challenges.

Mission: ZAFAYCO is dedicated towards promoting young people through awareness raising, capacity building and networking programs which are youth centered, environmental friendly and development oriented.

Main Objective: The Organization's main focus is the development of youth and women, by helping all that need help regardless of age, tribe, etc. The most pressing needs of the groups are identified through meetings with community members and possible solutions are worked out in partnership with them.



CHAPTER 1: INTRODUCTION

1.1. Contextual Overview

1.1.1. Historical Overview

The first settlements of Zanzibar are believed to have been established by immigrants from numerous sections of the African Mainland.¹⁰⁹³ 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, Persian 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.¹⁰⁹⁴ 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.¹⁰⁹⁵

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 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.¹⁰⁹⁶

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

1093 Michael F (1965), Zanzibar Background to Revolution, p.29

1094 Bhacher M.R(1994), Trade and Empire in Muscat and Zanzibar: p.5-6

1095 ibid

1096 J. Middleton and another (1965), Zanzibar, its society and politics, p.3-4



Zanzibaris as “Shirazi” with the Persian origin.¹⁰⁹⁷

Politically, the people of Zanzibar have a long political relationship with Arabs from Oman.¹⁰⁹⁸ 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.¹⁰⁹⁹ Zanzibar 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.”¹¹⁰⁰ 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.

When the British came to rule in Zanzibar, the human rights agenda took 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. Zanzibar and its narrow coastal regions were 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 1963.¹¹⁰¹ 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

1097 . Ibid.

1098 . S.C. Nicholls (1971), *The Swahili Coast, Politics, Diplomacy and Trade on the East African Littoral*, p.217

1099 . <https://www.britannica.com/place/Zanzibar-island-Tanzania>

1100 Article 4 of UDHR

1101 Majamba H.I, (2007), *Perspectives on the Kadhis’ Courts in Zanzibar*, p.2



African origin and Zanzibari of Arabs. However, the official link or tie between the Revolutionary Government of Zanzibar and the Omani Government has seen its 'ups and downs.' Nevertheless, the two countries continue to have a strong socio-economic relationship as Oman has been a close ally of Zanzibar, providing support in the areas such as health, education, and culture.

Realization of human rights was a struggle for Zanzibaris during the British and Sultan rules, as was the case for their neighbours in Tanganyika. This situation intensified the struggle for independence and realization of the right to self-determination, led by the Afro-Shirazi party (ASP). Eventually, on December 10, 1963, Zanzibar achieved independence as a member of the Commonwealth. In January 1964 the Zanzibar government was overthrown by an internal revolution, Sayyid Jamshid ibn Abdullah (who had succeeded to the sultanate in July 1963 on his father's death) was deposed, and a republic was proclaimed.¹¹⁰² An armed insurrection led by Ugandan ASP member John Okello (dubbed the "Field Marshal of Zanzibar and Pemba"), an ASP Youth League mob supported by disaffected ex-police officers overwhelmed security authorities to gain strategic control of the capital, Zanzibar Town.¹¹⁰³ The Umma Party, led by the radical left-winger Abdulrahman Mohamed Babu, was at the forefront. While it did not start the uprising, Umma turned it into a revolutionary insurrection, which took over state power – becoming the first time in modern Africa that a neocolonial administration had been directly overthrown.¹¹⁰⁴ ASP's Abeid Amani Karume the first President of Zanzibar following the 1964 revolution and in the same year led Zanzibar into the union with Tanganyika to form the United Republic of Tanzania.

The Independence Constitution of 1963, which was characterized by a monarchy leadership, included a bill of rights. However, following the 1964 revolution, the Independence Constitution was replaced by the Constitutional Decree passed by the Revolutionary Council. Consequently, Zanzibar was ruled without a permanent Constitution from 1964 to 1979 when the Revolutionary Council passed the first democratic Constitution of 1979 under the administration of Aboud Jumbe, the then President of Zanzibar. The 1979 Constitution created a legislative body called the House of Representatives followed by first national election after Revolutionary. In 1983 another constitutional debate started in Zanzibar, culminating into the constitutional reforms

1102 See Britannica, *Independence of Tanzania*, <https://www.britannica.com/place/Tanzania/Independence>.

1103 See "Remembering Zanzibar's revolution and its bloody aftermath" TRT World Magazine, 12 January 2021, at <https://www.trtworld.com/magazine/remembering-zanzibar-s-revolution-and-its-bloody-aftermath-43195>.

1104 Ibid.



which saw Zanzibar adopt a new constitution in 1984, which is still in use to date.¹¹⁰⁵ This democratic Constitution made it mandatory for the House of Representatives to be directly elected from constituencies and included the provisions of the Bill of Rights into it. The Constitution has undergone various amendments, including the 2002 amendments which saw the inclusion of provisions on separation of powers and the right of anyone to to protect the constitution through court process.¹¹⁰⁶

1.1.2. Geography and Population

1.1.2.1. Geography

Zanzibar lies off the eastern coast and situated at its narrowest point some 40 km. away from the east of Tanzania Mainland, (West of Zanzibar) in the Indian Ocean. The northern tip of Unguja Island is located at 5.72 degrees south, 39.30 degrees east; with the southernmost point at 6.48 degrees south, 39.51 degrees east.¹¹⁰⁷ The northern tip of Pemba Island is located at 4.87 degrees south, 39.68 degrees east, and the southernmost point located at 5.47 degrees east. To the east both island exist deep Indian oceans.¹¹⁰⁸ Pemba Island is 40 miles long and 14 miles wide with a surface area of 608 square miles. It is found 36 miles from the mainland and 29 miles north-east of Unguja island. Unguja is about 24 miles wide and 50 miles long and has a surface area of just under 1,000 square miles.¹¹⁰⁹ Zanzibar islands cover a total area of around 2,654 square kilometers out of which Unguja Island occupies an area of 1,666 square kilometers and Pemba Island occupies the remaining 988 square kilometers of the total area.

Zanzibar is characterized 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.¹¹¹⁰ The country is also 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. 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,¹¹¹¹ *Kipupwe*

1105 See University of Minnesota Human Rights Library, *Tanzania Human Rights Jurisprudence*, at <http://hrlibrary.umn.edu/research/TanzaniaB.html>.

1106 Ibid.

1107 See Zanzibar in Figures 2020, at <http://www.ocgs.go.tz/php/ReportOCGS/Zanzibar%20In%20Figures%202020.pdf>.

1108 Ibid.

1109 Ibid.

1110 Lugoe F.N (2012) Land Diputes in Zanzibar for SMOLE p.13

1111 Zanzibar Institute for Tourist Development (2014) p.33



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.¹¹¹²

1.1.2.2. Population

In terms of population, the last census, which was conducted in 2021, showed that Zanzibar had 1,303,569 people.¹¹¹³ Female population was 672,892, while male population was 630,677. But the projections of 2020 show that the population has risen to 1,671,598, with nearly equal percentage of male and female population.¹¹¹⁴ Currently, preparations for the new census are underway, with the census expected to be conducted in 2022.

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.¹¹¹⁵

1.1.3. Economic Situation

Zanzibar's economy is largely dependent on agricultural and tourism sectors. In agriculture, production of cloves is very important to Zanzibar, historically considered to be the economic backbone of Zanzibar's economy. Zanzibar has been enjoying a good economic growth rate, increasing from 5.8% in 2016 to 7.0% in 2019.¹¹¹⁶ During this period, the average economic growth rate was impressive, at 6.9%. However, in 2020 the growth rate declined significantly to 1.3%,¹¹¹⁷ with the tourism-dependent economy of Zanzibar particularly impacted by the COVID-19 pandemic, which disrupted the Zanzibar economy, especially hitting hard the tourism sector, which is one of the key sectors for the economy. Impressive economic growth led to increased budgetary allocation, whereby the nominal government budget grew

1112 Zanzibar Human Rights Report, 2016

1113 The United Republic of Tanzania, 2012 Population and Housing Census.

1114 Zanzibar in Figures 2020.

1115 Zanzibar Human Rights Reports, 2016

1116 Zanzibar in Figures 2020 (supra).

1117 Ibid.



by 69 per cent from TSh 841 billion in FY 2016/17 to TSh 1,419 billion in FY 2019/20.¹¹¹⁸ However, Zanzibar’s economy recovered in the second quarter of 2021, with growth of real gross domestic product (GDP) at 6.5 percent, year-on-year, compared with a contraction of 1.4 percent in the corresponding quarter of 2020 and 2.2 percent in the preceding quarter.¹¹¹⁹ Impressive economic growth has also seen Zanzibar attain the lower-middle income status by 2020, which was the goal of the Zanzibar Development Vision 2020.¹¹²⁰

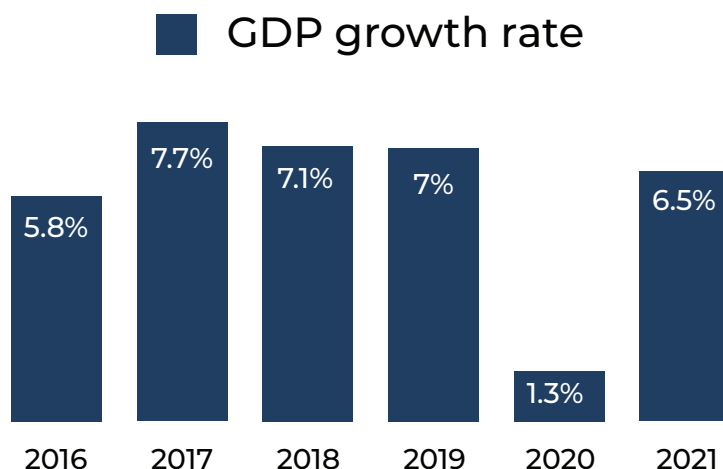


Figure 67: Zanzibar GDP Growth Rate – 2016 to 2021

Source: Zanzibar in Figures 2020 & Bank of Tanzania 2021

1.1.4. Political and Governance Systems

1.1.4.1. Political Background

Since the revolution of 1964, Zanzibar has been led by eight Presidents, namely: Abeid Amani Karume (1st President, 1964-1972); Aboud Jumbe Mwinyi 2nd President, 1972-1984); Ali Hassan Mwinyi (3rd President, 1984-1985); Idrissa Abdul Wakil (4th President, 1985-1990); Dr. Salmin Amour Juma (5th President, 1990-2000); Amani Abeid Karume (6th President, 2000-2010); Dr. Ali Mohammed Shein (7th President, 2010-2020); and the current President, H.E Dr. Hussein Ali Mwinyi (8th President, 2020 to date).

1118 See UNICEF, NATIONAL BUDGET BRIEF 2019/2020 ZANZIBAR, at <https://www.unicef.org/esa/media/8436/file/UNICEF-Tanzania-Zanzibar-2020-National-Budget-Brief-revised.pdf>.

1119 See Bank of Tanzania, ECONOMIC BULLETIN FOR THE QUARTER ENDING SEPTEMBER 2021, VOL. LIII NO. 3, at <https://www.bot.go.tz/Publications/Regular/Quarterly%20Economic%20Bulletin/en/2021121308575263.pdf>.

1120 The Revolutionary Government of Zanzibar, Zanzibar Development Vision 2050, at <http://planningznz.go.tz/doc/new/ZDV2050.pdf>.



1.1.4.2. Governance System

The Zanzibari governing structure comprises of Executive, the Legislature and the Judiciary, established by the Constitution of Zanzibar of 1984.

The Executive

The Executive arm of Zanzibar is established under Chapter Four of the Constitution of Zanzibar of 1984. It is led by the President, who is the Head of the Country, Head of the Revolutionary Government of Zanzibar, and Chairperson of the Revolutionary Council. Other members of the Revolutionary Council are the First Vice President, the Second Vice President, Ministers, and the Attorney General. As of December 2020, Zanzibar had 17 members in the Revolutionary Council.¹¹²¹

The Legislature

The legislative body in Zanzibar is the House of Representatives, established under Chapter Five of the Constitution of Zanzibar of 1984. The House of Representatives is vested with legislative powers in relation to all non-union matters in Zanzibar. It is composed of the Speaker, Deputy Speaker, elected representatives, representatives nominated by President, special seats representatives, and the Attorney General. The majority of representatives are elected members from their constituencies. The House of Representatives also has mandate to oversee and advise the Revolutionary Government of Zanzibar and all its institutions/agencies in discharging their respective duties or responsibilities.

The Judiciary

The Judiciary of Zanzibar is a constitutional organ, established under Chapter Six of the Constitution of Zanzibar of 1984. 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.¹¹²² 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

1121 Tanzania in Figures 2020 (supra)

1122 There are 22 union matters, originally there were only 11 union matters. The Court of Appeal is one of the union matters listed in the First Schedule of the Constitution of Tanzania 1977. Other union matters include foreign affairs, security, police, citizenship, immigration, foreign trade, higher education, aviation and statistics.



be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania. Therefore, not all cases in Zanzibar can be appealed to the Court of Appeal of Tanzania.

1.2. Report Preparation, Objectives, and Structure

1.2.1. Report Preparation & Objectives

The report covers the situation of human rights in Zanzibar for the period of January to December 2021. Reference is also made to the situation in previous years, especially the year 2020, for purposes of showing trends and where specific data for the year 2021 was not obtained. The main objective of this report is to highlight the situation of human rights in Zanzibar during the period under review and discuss reported human rights violations and acts that promote or infringe human rights. The report is also meant to be used as an advocacy and awareness-raising tool, seeking. The report can also be used to promote understanding of human rights and human rights issues, identifying legal and human rights for further research, and act as a starting point in human rights-related researches.

1.2.2. Sources of Data

1.2.2.1. Primary Data

Information and data used to prepare this report was obtained from primary and secondary sources. Primary data was mainly obtained through human rights survey, ZLSC's and ZAFAYCO's engagement with beneficiaries of its programmes, including legal aid beneficiaries. Field survey was conducted in all five regions of Zanzibar, namely: Pemba North; Pemba South; Unguja North; Unguja South; and Urban West. Community members, lawyers/advocates, social welfare officers, CSO/NGO officials, and Covid19 victims were targeted for the survey. Both qualitative and quantitative approaches were employed to gather relevant data, using questionnaire, interview, key informant interview, and observation methods. Purposive and random sampling techniques were used to identify respondents. A total of 708 people responded to the survey, sampled using the Raosoft sampling calculator.



Table 40: #Respondents reached by the Zanzibar Human Rights Survey 2021

Respondents	Target	Reach
Community members	440	525
Lawyers/advocates	33	25
Social welfare officers	11	8
CSO/NGO officials	22	22
Covid19 victims	110	128

Source: Field Data, 2021

The human rights survey focused on the following thematic areas:

- Mob violence
- Juvenile justice
- Criminal Justice
- Access to justice
- Road accidents
- Intimate Partner Violence - killings
- Right to Education
- Right to health
- Property rights
- Right to work and employment
- Impact of Covid19 on human rights in Zanzibar
- Violence against children and women
- Child pregnancy and marriage
- Rights of PWDs
- Rights of PLHIVs
- Rights of the Elderly

A total of 14 experienced research assistants (10 male, 4 female) were engaged and deployed by ZLSC and ZAFAYCO to assist with data collection. Prior to commencement of fieldwork, the research assistants underwent a two-day training, which also covered ethical considerations and quality assurance.

Data collected during fieldwork was analysed using the Statistical Package for Social Scientists (SPSS) analysis software, establishing frequencies and key variables. These data were further be analysed and transformed into tables and figures by using Microsoft Excel and Microsoft Word. Qualitative data were grouped and analysed by the report writers based on the various themes developed.

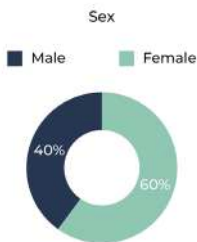


1.2.2. Secondary Data

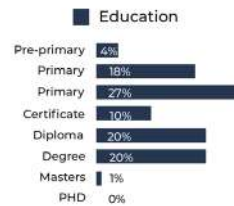
Secondary data was obtained through review of various credible sources, including reports and statements by government and non-government actors. In terms of this type of data, the report is mainly informed by government reports; budget speeches; reports by law enforcement organs, including the Tanzania Police Force; speeches senior government leaders, including the President; and police data/crime statistics. Further, the report benefited a lot from previous human rights reports; reports by local and international CSOs; domestic, regional and international human rights instruments; and decisions of regional and international human rights bodies. The media also provided an important source data for this report, particularly on issues around socio-economic rights and violence against women and children. Different sources of data were used to enable triangulation of data.

1.2.3. Demographic Characteristics of Respondents

Sex



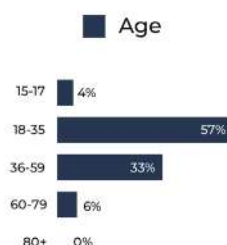
Education



Occupation



Age



1.2.4. Report Structure

Chapter One: Introduction	Provides an overview of Zanzibar, including contextual overview and political and governance systems.
Chapter Two: Civil & Political Rights	Covers situation of key civil and political rights, including freedoms of association, assembly and expression; rights to equality before the law and effective remedy; and right to life.
Chapter Three: Economic, Social, and Cultural Rights	Covers economic, social and cultural rights, including right to work, right to education, right to health, right to water, and right to property.
Chapter Four: Collective Rights	Looks at and discusses realisation of collective rights such as the right to development and right to benefit from natural resources.
Chapter Five: Rights of Vulnerable Groups	Covers rights of women, children, PWDs, the elderly, youth, and PLHIVs.
Chapter Six: Human Rights Mechanisms	Looks at human rights mechanisms at domestic, regional and international levels and discusses their role in human rights protection.
Chapter Seven: Conclusion and Recommendations	Provides general conclusion and recommendations to enhance promotion and protection of human rights in Tanzania.



CHAPTER 2: CIVIL AND POLITICAL RIGHTS

2.1. Overview

Civil and political rights are rights that protect peoples' freedoms from infringement by governments, institutions and private individuals. These rights involve citizens' participation in the establishment of a government and participation in political life. They protect individuals' freedoms from interference by state actors, promote participation in civil society, and are essential for democracy.¹¹²³ These rights are protected and guaranteed under international¹¹²⁴ and regional¹¹²⁵ human rights instruments, as well as the Constitution of Zanzibar.¹¹²⁶ This chapter highlights the situation of key civil and political rights in Zanzibar, namely: Right to Life; Freedom of Expression; Freedom of Assembly; Freedom of Association; Right to Equality before the Law; Right to Liberty and Personal Security; Right to take Part in Governance; and Freedom from Torture.

2.2. Right to Life

2.2.1. Introduction

Right to life is the most fundamental human right, upon which realization of other rights depends on. Various regional and international human rights conventions ratified by Tanzania recognize right to life. These include the International Covenant on Civil and Political Rights (ICCPR) of 1966; the UN Convention on the Rights of Persons with

1123 International IDEA, UN & OHCHR, *Democracy and Human Rights: The Role of the UN*, Discussion Paper September 2013, at <https://www.idea.int/sites/default/files/publications/democracy-and-human-rights-the-role-of-the-united-nations.pdf>.

1124 Key instruments include the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; UN Convention on the Rights of Persons with Disabilities (CRPD) of 2006; the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979; the UN Convention on the Rights of the Child of 1989; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.

1125 Including the African Charter on Human and Peoples' Rights (ACHPR/Banjul Charter) of 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) of 2003; the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; African Charter on Democracy, Elections and Governance of 2007; SADC Protocol on Gender and Development of 2008; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.

1126 The Constitution contains the bill of rights, which guarantees fundamental human rights such as right to life, freedom of expression, freedom of assembly, right to liberty and personal security, and right to take part in governance.



Disabilities (CRPD) of 2006; Convention on the Rights of the Child (CRC) of 1989; the African Charter on Human and Peoples' Rights (ACHPR) of 1981, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003, and SADC Protocol on Gender and Development of 2008. This right is also enshrined in the Universal Declaration of Human Rights (UDHR) of 1948.

Domestically, right to life is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977. In Zanzibar, this fundamental human right is protected under Section 13(1) of the Constitution of Zanzibar of 1984, which provides that "Every person has the right to the preservation of his life." Additionally, "Everyone has the right to live and to the protection of his life by the society in accordance with the law."¹¹²⁷

2.2.2. Mob Violence

2.2.2.1. Police statistics

Mob violence is one of the human rights concerns in Zanzibar, although trends show there has incidents of mob violence have been slightly decreasing since they peaked in 2017, whereby 26 incidents were reported. For the period of 2011 to 2020, the total number of mob violence incidents recorded by police for Zanzibar was 124,¹¹²⁸ averaging 12 incidents per year and one incident per month. In the same timeframe, a total of 7,672 mob violence incidents were recorded by police in Tanzania Mainland, averaging 767 incidents per year and 64 per month.¹¹²⁹

1127 Ibid, Article 13(2).

1128 Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, *TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI*, Januari – Disemba 2020. [https://www.nbs.go.tz/nbs/takwimu/Crime/Crime_Report_January_to_%20December_2020.pdf]

1129 Ibid.



mob violence incidents

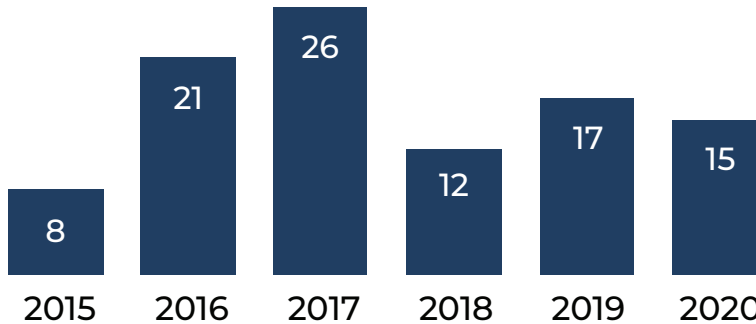


Figure 68: #Mob violence killings in Tanzania, 2015 to 2020

Source: Police data, 2020 & 2021

In 2021, ZLSC and ZAFAYCO could not obtain police data on mob violence. However, they documented at least one incident of mob violence, reported in Pemba, whereby unknown mob attacked and killed Seif Khamis Mohammed (23), resident of Chimba *Shehia* in Micheweni District.¹¹³⁰ The incident occurred in January 2021 and was believed to be motivated by jealousy.

2.2.2.2. Perceptions on mob violence/killings: Human Rights Survey 2021 findings

In the human rights survey, conducted in 5 regions of Zanzibar in 2021, community members who participated in the survey were asked whether they had heard about or witnessed mob violence in the past year and to provide their views on reasons for mob violence/killings in their community.

Regarding hearing about or witnessing mob violence in their community, majority of the respondents (60%) said they had not, while the remaining 40% said they had heard about or witnessed mob violence.

¹¹³⁰ See "Aua na kumfukia shambani kisa wivu wa mapenzi Pemba" UGA TV, 25 January 2021, at <https://www.youtube.com/watch?v=ov5glBE9v-I>.



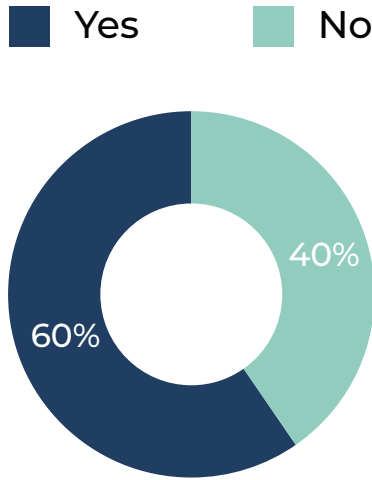


Figure 69: %Survey participants' views on mob violence (N=521)
 Source: Field data, 2021

Regarding reasons for mob violence, seeing an accused person out in the streets following an arrest was mentioned as the biggest reason for people resorting to mob violence (39%). Lack of faith in the police (22%) was identified as the second biggest reason or driver for mob violence among community members, followed by justice taking too long (18%), and low awareness about bail (13%). 5% of the respondents also mentioned lack of faith in the Judiciary as a key factor.

Reasons for mob violence

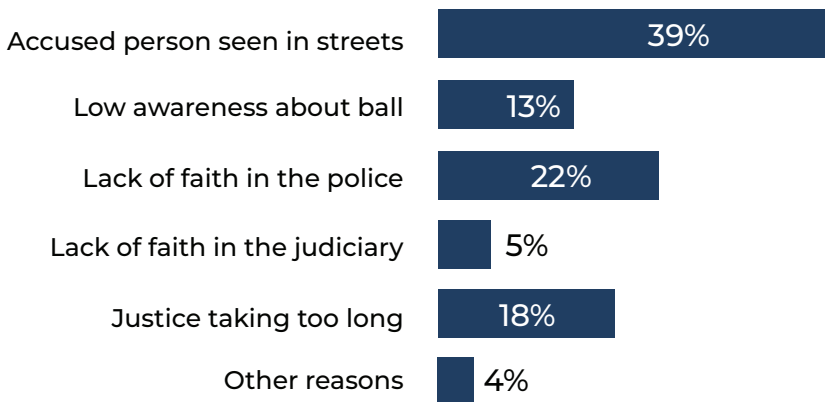


Figure 70: %Responses on reasons for mob violence (N=485)
 Source: Field data, 2021



2.2.3. Extrajudicial Killings and Violence against Law Enforcement Officers

Tanzania is obligated under regional, continental and international human rights treaties to safeguard the lives of its citizens as well as foreigners, doing so through its law enforcement and security officials. The United Nations Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. In other words, 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. When law enforcement officials do not observe this principle of proportionality and people die, they commit extrajudicial killings. In 2021, no incidents of extrajudicial killings and violence against law enforcement officers were reported and documented. Such cases have been rare in Zanzibar.

2.2.4. Witchcraft-motivated Killings and Violence against PWAs

Witchcraft-motivated killings and violence against PWAs are not human rights concerns in Zanzibar, unlike in Tanzania Mainland. However, some of the respondents of the human rights survey conducted in Zanzibar in 2021 revealed that some older persons have been accused of witchcraft, but the allegations have not yet escalated into violence.

2.2.5. Death Penalty

2.2.5.1. Overview

Death penalty threatens right to life, the most fundamental human right protected under the Constitution of the United Republic of Tanzania of 1977, the Constitution of Zanzibar of 1984, as well as regional and international human rights instruments.

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) 1989 requires all signatory States to abolish death penalty in their jurisdictions. Many countries, including Tanzania, have ratified the ICCPR, but they are yet to ratify the Second Optional Protocol to the ICCPR which provides for the total abolition of the death penalty; but allows States parties to retain death penalty in time



of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

2.2.5.2.The death penalty debate

The death penalty has been criticized by many human rights activists on the grounds that it is inhuman and against the right to life. There have been therefore worldwide campaigns calling for the abolition of the death penalty. International instruments have introduced various prohibitions as a way of combating capital punishment. For example, Article 3 of the Universal Declaration of Human Rights 1948 provides that “everyone has the right to life, liberty and security of person.” Another international instrument that prohibits the death penalty is the International Covenant on Civil and Political Rights 1966, which also condemns the penalty as provided under Article 6 (2)⁴⁸⁰ that; “...for the countries which have not abolished death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime...”

This penalty has also received ideological justification from the main religions, in Zanzibar’s 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.¹¹³¹ 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 channeling 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.¹¹³²

2.2.5.3.Death penalty in Zanzibar

Although Tanzania contains death penalty in its criminal law, the last time such sentence was executed was more than 20 years ago, hence Tanzania being recognized as an abolitionist state and considered to be in a state of moratorium. In October 2017, late H.E. President John Pombe Magufuli declared that he would not sign any death warrant to order execution of death row inmates. These are positive developments in terms of Tanzania joining a worldwide movement to abolish death penalty. The death penalty is a government-sanctioned practice

1131 Simon Coldham ‘Criminal Justice Policies in Commonwealth Africa: Trends and Prospects’ Vol. 44 No. 2 (2000) Journal of African law, OUP 218-238

1132 Ibid.



whereby a person is put 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 one of the punishments provided for in the penal laws. It is inflicted when a person is convicted of offences either of murder, treason or any other such offences that warrant the death sentence. The penalty is executed through hanging the convict to death. 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. In addition, the execution of the death penalty cannot be implemented without the approval of the President. Generally, the execution of death penalty has been debatable in Zanzibar and has for a long time been condemned by the general public for not being executed according to the religious beliefs of the majority of the population.

In 2021, there were no reported death sentences imposed by courts of law in Zanzibar that were documented by ZLSC & ZAFAYCO. No executions were also reported.

2.2.6. Road Accidents: Less Accidents and Resulting Deaths

2.2.6.1. Overview

Road accidents become a human rights issue when negligence is involved in terms of drivers of vehicles and quality of roads. Road safety is an essential human right linked to the right to life. As a result of these accidents, communities bear the burden after losing their loved ones, including breadwinners and children. These accidents are usually caused by reckless behaviour and negligence on the part of motor vehicle drivers,¹¹³³ hence jeopardizing right to life.

2.2.6.2. Police statistics on road accidents and resulting deaths

Efforts by the Police Force and other stakeholders have seen road accidents in Tanzania generally decrease from 10,297 incidents in 2016 to 1,714 in 2020, equal to a 68% decline. The number of resulting deaths has also decreased from 3,381 in 2016 to 1,260 in 2020, equal to a 46% decline.

In Zanzibar, the number of road accidents declined from 314 in 2020

¹¹³³ Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, *TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI*, Januari – Disemba 2020.



to 206 in 2021, equal to a decrease of 1 incident. However, unlike in Tanzania Mainland, the number of resulting deaths increased from 166 in 2020 to 169 in 2021.

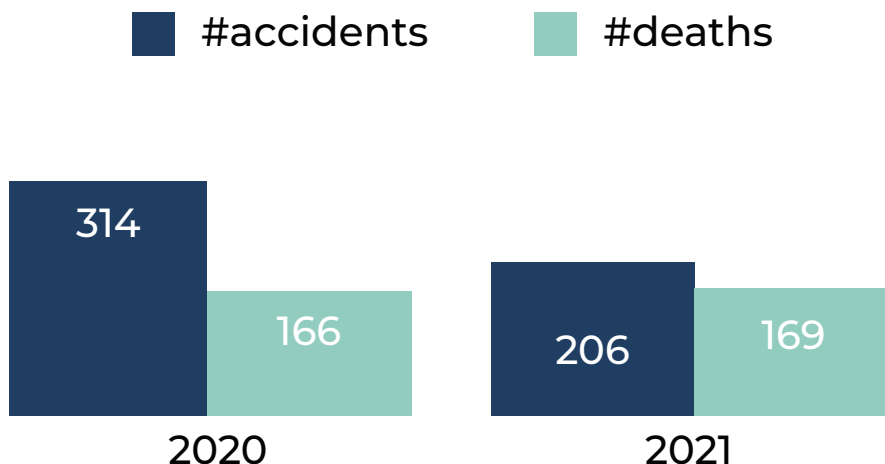


Figure 71: #Road accidents and resulting deaths in Zanzibar, 2020
 Source: Official statistics, 2021

In March 2021, a total of 22 road accidents were reported, decreasing to 20 in April 2021.¹¹³⁴ In September 2021, the Office of the Chief Government Statistician (OCGS) Zanzibar revealed that a total of 15 incidents were reported in August 2021, a decrease of 21.1% compared to the 19 incidents that were reported in July 2021.¹¹³⁵

2.2.6.3. Community perceptions on road accidents

Community members who participated in the human rights survey conducted by ZLSC and ZAFAYCO in 2021 were asked whether they perceive road accidents to have increased or decreased. Over half of them (55%) were of the opinion that the accidents had increased, followed by those who felt that they have slightly decreased (22%), and decreased (14%). Only 4% of the respondents said the accidents have totally decreased, while 6% said they did not know, as indicated in figure 72 below.

1134 "UWASILISHAJI WA TAKWIMU ZA AJALI ZA BARABARANI ZANZIBAR HD 2021" Tifu TV, 19 May 2021, at <https://www.youtube.com/watch?v=MdLUL9ER708>.

1135 OCGS Zanzibar, TOLEO LA TAKWIMU ZA AJALI NA MAKOSA YA BARABARANI AGOSTI 2021 ZANZIBAR, 17 September 2021, at <https://www.youtube.com/watch?v=miYcBSgJtN4>.



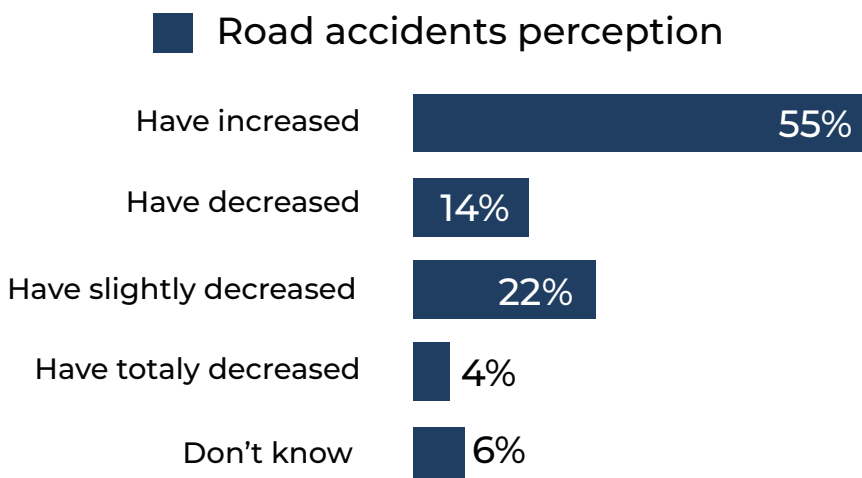


Figure 72: %Community members' perceptions of road accidents (N=515)

Source: Field data, 2021

The perceptions of community members did not match the police data for the years 2020 and 2021. For instance, as shown in Figure 72 above, road accidents decreased from 220 in 2019 to 219 in 2020. However, the number of resulting deaths increased by 20 deaths.

2.2.6.4.Reasons for road accidents

In 2020, the Tanzania Police Force revealed that most road accidents in Tanzania are caused by human error (91.6%), with driver's negligence found to be the leading cause of human error (34.89%), followed by negligence of bodaboda drivers (17.91%) and speeding (15.87%).¹¹³⁶

In 2021, ZLSC and ZAFAYCO conducted a survey in all regions of Zanzibar which also touched on the issue of road accidents. Community members who responded to the survey were asked about the biggest reason for road accidents. Majority of the respondents, nearly a half of them (48%), mentioned negligence of drivers as the leading cause of road accidents, followed by 27% who said it is disregard of traffic laws, and 19% who mentioned over speeding. Only 3% of the respondents mentioned poor road infrastructure, while another 3% mentioned other reasons and 1% said they did not know.

¹¹³⁶ TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, Januari – Disemba 2020 (supra).



Reasons for road accidents

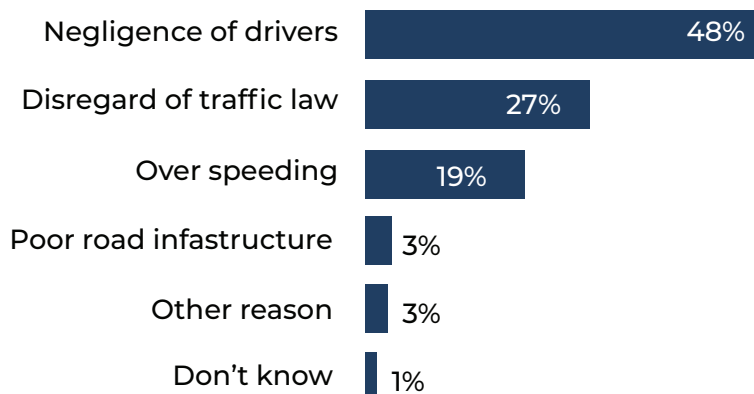


Figure 73: %Reasons for road accidents in Zanzibar (N=515)

Source: Field data, 2021

In 2021, Ms. Ramla Hassan Pandu from the ‘Crimes, Claims and Gender Unit of the OCGS, said public awareness and education about abiding to traffic laws remain important in reducing accidents which normally become fatal.¹¹³⁷ She said this while providing statistics on road accidents for the month of October 2021. During the monthly media briefing, it was revealed that Unguja North A, South, West A and Pemba’s Chake Chake Districts reported more accidents each followed by Unguja urban and West B districts, compared to statistics obtained in September. It was further revealed that road accidents decreased from 23 accidents in September to 19 accidents in October 2021.¹¹³⁸

Negligence/reckless driving continues to be a key factor contributing to road accidents. In some areas, poor road infrastructure also contributes to road accidents. ZAFAYCO and ZLSC commend the Police Force for making efforts to reduce road accidents and ensure those responsible for reckless driving are held accountable. Nevertheless, the rate of accidents is still high, thus the need for more coordinated efforts to address such accidents and preserve human lives.

In November 2021, the Assistant Inspector of Police Mlengi Omar Mgambe from the Zanzibar Road Traffic Bureau’s statistics unit said most of the accidents were due to negligence by drivers and pedestrians, speed, overloading and carrying passengers illegally as well as not

1137 See “BREACH OF TRAFFIC LAWS BLAMED FOR INCREASED ACCIDENTS IN Z/BAR” DAILYNEWS Newspaper [online], 21 November 2021, at <https://www.dailynews.co.tz/news/2021-11-206198fa054dcf0.aspx>.

1138 Ibid.



having a license.¹¹³⁹ He noted that road accidents are responsible for loss of property and loss of lives, as well as permanent injuries.¹¹⁴⁰

2.2.7. Intimate Partner Violence and Killings

In Zanzibar, incidents of intimate partner violence (IPV) and killings have been rare and rarely reported. However, ZLSC and ZAFAYCO have observed that these incidents might have been reported as murder cases, hence making it difficult to determine the extent or magnitude of killings caused by intimate partner violence. In 2021, ZLSC and ZAFAYCO documented one incident of IPV killing, which occurred on 25th September 2021 in Urban West Region, whereby a woman was attacked and killed by her husband because of jealousy.¹¹⁴¹

In 2021, a human rights survey conducted by ZLSC and ZAFAYCO in Zanzibar also probed on the issue IPV killings. Community members who responded to the survey were asked whether they had witnessed or heard about an incident of intimate partner violence and/or incident of a person being killed by their intimate partner. Majority of the respondents, nearly two thirds (65%), said they had not witnessed or heard about such an incident in Zanzibar. The remaining 36% of the respondents said they had actually witnessed or heard about such an incident.

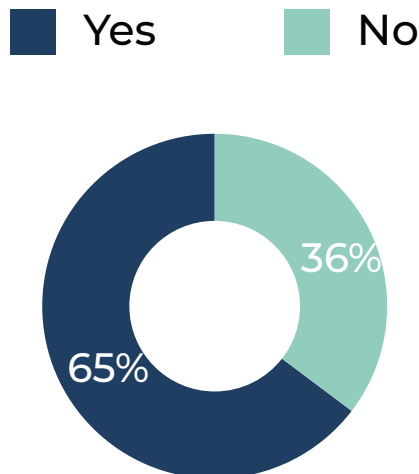


Figure 74: %Responses on whether respondents had witnessed or heard about an incident of intimate partner violence or killing (N=515)

Source: Field data, 2021

1139 Ibid.

1140 Ibid.

1141 See "MAUAJI ZANZIBAR: DADA WA KAZI ALISINGIZIWA, SIRI YAFICHUKA "MUME NDIE ANADAIWA KUMUUA MKEWE" at <https://www.youtube.com/watch?v=dP6Nsb-HhCY>.



2.3. Freedom of Expression

2.3.1. Introduction

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.¹¹⁴² This right is provided for and protected under various international and regional human rights instruments, such as the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the African Charter on Human and People's Rights (ACHPR) of 1981.

Under Article 19, the UDHR provides 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 right under the UDHR is given legal force under Article 19 of IC-CPR, which 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.

ACHPR, which is specific for African countries, provides for the right to freedom of expression as follows:

- 1. Every individual shall have the right to receive information.*
- 2. Every individual shall have the right to express and disseminate his opinion within the law.*

Freedom of expression is also protected domestically under the Constitution of Zanzibar of 1984. Section 18 of the Constitution provides that:

(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

¹¹⁴² ZHRR 2015, P.73



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.

Several principles under international law allow some restrictions on such rights and freedoms but only where they meet certain thresholds or restrictive conditions. 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.”¹¹⁴³ In other words, a state must not only demonstrate that its interference with a person’s right meets a “pressing social need” criteria but also it is proportionate to the legitimate aim pursued, which appears to be necessary in a democratic State.¹¹⁴⁴ Therefore, restrictions on freedom of expression are allowed as long as they meet the conditions of legality (provided by law), necessity, and proportionality, as required under the ICCPR of 1966.

2.3.2. Restrictive provisions in freedom of expression laws

In Zanzibar, there are freedom of expression laws such as the Constitution of Zanzibar of 1984 and the Cybercrimes Act of 2015 and Online Content Regulations of 2020, which apply in both Tanzania Mainland and Zanzibar, which contain provisions which arbitrarily restrict freedom of expression. This is because these provisions have failed to meet international human rights standards and permissible restrictions on freedom of expression. For instance, Section 18(2) of the Constitution of Zanzibar has been said to restrict freedom of expression, particularly the right to information, by narrowing the right to be informed to “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.” This provision implies that enjoyment of the right to seek and impart information largely depends on the conditions imposed by relevant laws without setting boundaries within the Constitution on the permissible restrictions that may be imposed by these laws.¹¹⁴⁵ This constitutional provision has therefore

1143 See Article 19(3) of the International Covenant on Civil and Political Rights, 1966.

1144 ZHRR 2015, p.74.

1145 See Mohamed Khamis Hamad, FREEDOM OF EXPRESSION IN ZANZIBAR: LEGAL REVIEW, Tanzania Women’s Association (TAMWA), 29 April 2019 at <http://www.tamwazanz.or.tz/reports/28560ae0109f7f975c7800d7.pdf>.



fallen short of international human rights standards by failing to meet the three-part test of legality, necessity and proportionality enshrined in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) of 1966.¹¹⁴⁶

Various analyses of the Cybercrimes Act of 2015 and Online Content Regulations of 2020 by local and international organizations have also shown that they contain provisions which are restrictive and fall short of international human rights standards.¹¹⁴⁷ For instance, regarding the Cybercrimes Act, one of the problematic provisions is that on 'publication of false information.' Any person who publishes information or data knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public is said to commit an offence and liable to prosecution.¹¹⁴⁸ The provision has been faulted for containing words or phrases that are too broad and subjective and hence contrary to international standards on freedom of expression.¹¹⁴⁹ The Human Rights Committee has stated in the past that prosecution and punishment of journalists for the crime of publication of false news merely on the ground, without more, that the news was false is a clear violation of Article 19 of the ICCPR.¹¹⁵⁰ Other key concerns with the law include extensive powers of search and seizure granted to police without judicial oversight and disclosure of source and less protection of whistleblowers.¹¹⁵¹

In 2021, the Government made amendments to the Online Content Regulations of 2020, which had replaced the Online Content Regulations of 2018. Amendment of the 2020 Online Content Regulations has been praised for addressing some of the concerns raised in the past, including repealing Regulation 13, which provided various unrealistic obligations to internet café owners.¹¹⁵² Analysis made by ARTICLE 19¹¹⁵³ has shown that other positive amendments include amendment of Regulation 8, which imposed obligation on content service providers

1146 Ibid.

1147 Ibid; LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at www.humanrights.or.tz; LHRC (2020), Tanzania Human Rights Report 2019 at www.humanrights.or.tz; ARTICLE 19, Tanzania: Cybercrime Act 2015, *Legal Analysis*, May 2015, at <https://www.article19.org/data/files/medialibrary/38058/Tanzania-Cybercrime-Bill-TO.pdf>.

1148 Section 16 of the Cybercrimes Act, 2015.

1149 FREEDOM OF EXPRESSION IN ZANZIBAR: LEGAL REVIEW (supra); Tanzania Human Rights Report 2018 (supra); and Tanzania: Cybercrime Act 2015, *Legal Analysis* (supra).

1150 Human Rights Committee, Concluding Observations on Cameroon, November 4, 199, CCPR/C/79/Add (cited in FREEDOM OF EXPRESSION IN ZANZIBAR: LEGAL REVIEW (supra)).

1151 FREEDOM OF EXPRESSION IN ZANZIBAR: LEGAL REVIEW (supra); Tanzania Human Rights Report 2018 (supra); and Tanzania: Cybercrime Act 2015, *Legal Analysis* (supra).

1152 See Regulation 11 of the Electronic and Postal Communications (Online Content) (Amendment) Regulations, 2021, at <https://tcr.go.tz/uploads/newsdocs/en-1629801878-Draft%20-%20Amendmend%20Online%20Content%20Regulations%2018%20August%202021.pdf>.

1153 INGO that advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems.



to use moderating tools to filter ‘prohibited content,’ Regulation 18 concerning protection of children by internet cafes, and Regulation 10, which prohibits any mainstream content service provider with district or regional licence from simulcasting content using online platform.¹¹⁵⁴ However, most other key concerns raised over the 2020 Regulations, including sweeping powers of TCRA and overly broad terms which are subject to abuse, are yet to be addressed.¹¹⁵⁵ Consequently, a consensus has been reached that the Online Content Regulations 2020 should be repealed entirely.¹¹⁵⁶

ZLSC and ZAFAYCO call for review of all laws and regulations relating to freedom of expression to bring them in line with international standards on freedom of expression in order to safeguard human rights. In recent years, restrictive provisions in the freedom of expression laws have also affected freedom of expression online and contributed to decline in internet freedom.¹¹⁵⁷

2.3.3. Performance in World Press Freedom Index

Existence of laws and regulations which contain provisions which fall short of international human rights standards such as the Media Services Act of 2016, the Cybercrimes Act of 2015, and the Online Content Regulations of 2018 and 2020, has largely contributed to Tanzania’s poor performance in the World Press Freedom Index.

In the World Press Freedom Index 2021, prepared by Reporters Without Borders (RSF), Tanzania has maintained its 124th rank that it scored in 2020. Trends show that Tanzania has been dropping steadily in the index since 2016. For instance, it dropped 10 places in the world rankings, from 83rd in 2017 to 93rd in 2018. In 2019, Tanzania further dropped 25 places to sit at the 118th position in the world rankings and in 2020 it further dropped six places. Since 2016, Tanzania has fallen 53 places in the rankings, with no other country suffering such a big fall in recent years.¹¹⁵⁸

2.3.4. Ban and suspension of media outlets

Incidents of ban and suspension of media outlets have been rarely reported in Zanzibar. For the year 2021, there were no reported incidents of ban and suspension of media outlets. However, in the year

1154 See ARTICLE 19, THE ELECTRONIC AND POSTAL COMMUNICATIONS (ONLINE CONTENT) (AMENDMENT) REGULATIONS, 2021 SUBMISSION TO THE TANZANIA MINISTRY OF INFORMATION, CULTURE AND SPORTS, at <https://www.article19.org/wp-content/uploads/2021/09/Submission-to-Tanzania-ministry-of-information-culture-and-sports.pdf>

1155 Ibid.

1156 Ibid.

1157 See LHRC (2021), Tanzania Human Rights Report 2020, at www.humanrights.or.tz.

1158 See RSF, Tanzanian cartoonist detained over cartoon of president, 7 October 2021 at <https://rsf.org/en/news/tanzania-suspends-newspaper-one-month>.



2020, there at least two reported incidents of ban and/or suspension of media outlets.

In 2020, a journalist, Talib Ussi Hamad, was reportedly suspended for six months for breaching the Registration of News Agent, Newspapers and Books Act of 1988. MISA Tanzania issued a statement expressing concerns over the punishment for the journalists considering the various laws which contain unfriendly or restrictive provisions, which affect the press freedom and how journalists conduct themselves professionally.¹¹⁵⁹ While, acknowledging that the journalist in question acted irresponsibly by posting information which he was not supposed to, MISA Tanzania noted that a warning from the Authorities would have been more appropriate and constructive than the ban.¹¹⁶⁰ In 2021, there were no reported cases of ban and suspension of media outlets documented by ZLSC and ZAFAYCO.

2.4. Freedoms of Assembly and Association

2.4.1. Introduction

States are obligated to respect and refrain from interfering with freedom of assembly under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and Peoples' Rights (ACHPR).¹¹⁶¹ In 1984, the Government incorporated the bill of rights, including freedom of assembly, into the Constitution of United of Tanzania of 1977.

Freedom of Association ensures one the right to form and participate in association, either formally or informally. It covers any form of organized groups and professional organizations like political parties, trade unions, public associations and non-governmental organisations. It involves an ability to seek and receive resources for organization, peaceful promotion and respect of human rights.¹¹⁶² This right is guaranteed under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples Rights (ACHPR), and the African Charter on Democracy, Elections and Governance, among other human rights instruments.¹¹⁶³ In Africa, States have an obligation to enact a national legislation on freedom of association that facilitates

1159 See MISA Tanzania, Public Statement On the Suspension/Ban of Journalist & Online Media in the URT, 24 April 2020, at <https://tanzania.misa.org/2020/04/24/public-statement-on-the-suspension-ban-of-journalist-online-media-in-the-urt/>.

1160 Ibid.

1161 Article 20(1) of UDHR; Article 22 of ICCPR; and Article 11 of ACHPR.

1162 Human Rights House Foundation: Freedom of Association at <https://humanrightshouse.org/we-stand-for/freedom-of-association/> (accessed on 24th February 2019)

1163 Article 22(1) of ICCPR; Article 10(1) of ACHPR; Articles 12(3), 27(2); and 28 of the African Charter on Democracy, Elections and Governance, 2007



and encourages establishment of associations and promotes their abilities to pursue their objectives. Members have a choice of joining and leaving associations.¹¹⁶⁴

The only restrictions on freedoms of assembly and association allowed are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others, according to ICCPR.¹¹⁶⁵ Restrictions must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based. Together with freedom of expression, freedoms of assembly and association are key for realization of the right to participate in governance (participation rights).

2.4.2. Legal environment for freedoms of association and assembly in Zanzibar

In Zanzibar, freedoms of association and assembly are guaranteed under laws such as the Constitution of the United Republic of Tanzania, 1977; the Constitution of Zanzibar, 1984; the Political Parties Act,¹¹⁶⁶ the National Elections Act,¹¹⁶⁷ and Zanzibar Elections Act.¹¹⁶⁸ This right is guaranteed for all persons and groups, including workers, CSOs, and political parties. In line with Tanzania's human rights obligations and commitments made through regional and international human rights instruments, laws and regulations governing freedoms of association and assembly must conform to international human rights standards. In the context of politics, laws such as the Political Parties Act and the National Elections Act establish key institutions that regulate the conduct of political parties and elections, such as the National Electoral Commission (NEC), the Zanzibar Electoral Commission (ZEC), and the Office of Registrar of Political Parties (ORPP).

2.4.3. Challenges in realization of freedoms of association and assembly

In recent years, main challenges hindering effective realization of freedoms of association and assembly, especially for political parties, has been existence and application of laws governing freedoms of

1164 ACHPR: Guidelines on Freedom of Association and Assembly in Africa at http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf accessed on 26th February 2019

1165 See Article 22(2) of ICCPR; see also Article 11 of ACHPR and Article 22(2) of ICCPR.

1166 Political Parties Act, Cap. 258 RE 2019.

1167 National Elections Act, Cap. 343 RE 205.

1168 Zanzibar Elections Act, No. 4 of 2018.



association and assembly which contain restrictive provisions and the general ban/restriction on political rallies. The Political Parties Act, amended in 2019, has been faulted for by stakeholders within and outside Tanzania for giving the Registrar of political parties excessive and intrusive powers over political parties and failing to conform to international standards on freedom of association.¹¹⁶⁹ Some of the provisions within the law have been noted to have a serious impact on political development criminalising political activity and granting the Registrar excessive powers to interfere with internal affairs of political party, including stripping membership and removing individuals from leadership position.¹¹⁷⁰ Other key concerns raised by stakeholders regarding the amendments of the Political Parties Act include lack of clarity in some provisions, which leaves loopholes for abuse of powers and creation of fear; criminalisation or regulation of legitimate political activities and expressions; and severe penalties for breaching the law, which are not proportional to the administrative offences.¹¹⁷¹ In 2021, the opposition political party members and freedom of assembly stakeholders continued to express their concerns over restricting political rallies, especially through a ban which was put in place in 2016, requiring political parties and their officials to conduct rallies only in constituencies which they had won.¹¹⁷² The ban has not been officially lifted, a situation which continues to affect effective realization and enjoyment of freedom of assembly for political parties. In Zanzibar, no reported incidents of arbitrary restrictions or infringement on freedoms of association and assembly were documented by ZLSC and ZAFAYCO.

2.5. Rights to Equality before the Law and Effective Remedy

2.5.1. Introduction

Rights to equality before the law and effective remedy are guaranteed and protected under various regional, continental and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).¹¹⁷³ According to the Constitution of Tanzania, 'all persons are equal before the law and are entitled, without any discrimination, to

1169 LHRC, *Tanzania Human Rights Report 2019*, LHRC 2021, at www.humanrights.or.tz.

1170 *Ibid.*

1171 *Ibid.*

1172 See Pius Msekwa "Tanzania: Ban Imposed On Political Rallies - a Critical Lesson in Political Education" *DailyNews Newspaper* (online), 7 July 2016, at <https://allafrica.com/stories/201607070729.html>. accessed 20 January 2022.

1173 Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.



protection and equality before the law.¹¹⁷⁴ The Constitution of Zanzibar of 1984 also recognizes the right to equality before the law.¹¹⁷⁵

The right to effective remedy is provided for where other rights of an individual have been violated.¹¹⁷⁶ Rights derived from these two rights include right to access to justice, right to legal representation,¹¹⁷⁷ right to presumption of innocence and right to fair trial.¹¹⁷⁸

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.”**¹¹⁷⁹

Presumption of innocence

Presumption of innocence is a key principle in criminal justice. The right to be presumed innocent until proven guilty is an established principle under domestic, regional and international law. According to the Constitution of Tanzania, “no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”¹¹⁸⁰ This right is also guaranteed under the ICCPR and UDHR.¹¹⁸¹

Right to legal representation

Right to legal representation is clearly stipulated under Article 13 of the Constitution of the United Republic of Tanzania 1977, and is critical in ensuring administration and access to justice. This means the right of

1174 Article 13(1) of the Constitution of the United Republic of Tanzania of 1977.

1175 Section 12 of the Constitution of Zanzibar, 1984.

1176 Article 2(3) (a) of ICCPR.

1177 See Article 14(3) (b) of the Constitution of Tanzania 1977; Article 7(1)(c) of ACHPR; and Article 14(3)(d) of ICCPR.

1178 Article 13(6) of the Constitution of the United Republic of Tanzania of 1977;

Article 7 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.

1179 See Para 14 of the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Resolution adopted by the General Assembly A / RES / 67 / 1, Sixty-seventh session, 30 November 2012, available at <https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf>, accessed 29th February 2020.

1180 Article 13(6) (b) of the Constitution of the United Republic of Tanzania, 1977.

1181 Article 14(2) of ICCPR; Article 11 of UDHR.



an accused person to a lawyer, who will help to defend them in the court of law. In criminal justice, Tanzania is required under domestic, regional and international law to ensure an attorney is appointed for the defendant where the defendant cannot afford one. Article 14(3) of ICCPR – which Tanzania has ratified – clearly stipulates this obligation on the part of States.

Rights to fair trial and effective remedy

Rights to fair trial and effective remedy are also known as **rights to due process**. Right to fair trial includes the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and right to be tried without undue delay by **an independent, impartial and competent tribunal**.¹¹⁸² Right to effective remedy is closely associated to the right to fair trial; and is also protected under the Constitution of Tanzania¹¹⁸³ and international human rights instruments, including ICCPR.¹¹⁸⁴

2.5.2. Access to Justice

2.5.2.1. Action to improve access to justice

In 2021, the Zanzibar Government and the Judiciary of Zanzibar continued to take various measures to improve access to justice, including determination of cases at different court levels and appointment of new Judges and Magistrates. For instance, two Judges and three Magistrates were appointed in 2021.¹¹⁸⁵ The Judges were Ibrahim Mzee Ibrahim and Haji Omar Haji, who were sworn in by the President of the Revolutionary Government of Zanzibar, H.E Dr. Hussein Ali Mwinyi in February 2021.¹¹⁸⁶

Non-state actors, including CSOs such as ZLSC, ZAFELA, and ZAFAYCO, also played their part in improving access to justice to the people of Zanzibar, including through provision of legal aid and court representation. This was especially done for the marginalized groups in the society, including women and children. Awareness-raising, including on legal and human rights issues, was an important part of the programmes of these organizations in 2021, contributing to enhance access to justice in Zanzibar.

1182 See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.

1183 Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977.

1184 Article 2(3)(b) of ICCPR.

1185 See “Kuapishwa Kwa Majaji wa Mahakama Kuu Zanzibar na Mwenyekiti wa Tume ya Kurekebisha Sheria Zanzibar Walioteuliwa Hivi Karibuni.” HABARI PORTAL, 9 February 2021, at <http://www.pembapress.club/portal/2021/02/09/kuapishwa-kwa-majaji-wa-mahakama-kuu-zanzibar-na-mwenyekiti-wa-tume-ya-kurekebisha-sheria-zanzibar-walioteuliwa-hivi-karibuni/>.

1186 Ibid.



In the human rights survey conducted by ZLSC and ZAFAYCO in Pemba and Unguja, some of the interviewed respondents expressed satisfaction with the progress made in enhancing access to justice, commending the Government and Judiciary for improving dispensation of justice and increase the speed of determination of cases, especially in Unguja.

“Currently, access to justice is somewhat satisfactory as proceedings in court are conducted at a greater speed.”

Community member, Unguja South

2.5.2.2. Barriers to access to justice

Despite the various efforts to enhance access to justice by the Revolutionary Government of Zanzibar, the Judiciary of Zanzibar and other state and non-state actors highlighted above, several challenges continue to create barriers to access to justice. The community members in the five regions of Zanzibar who responded to the human rights survey conducted by ZLSC and ZAFAYCO were asked to mention one or more common barriers of access to justice in their community. Corruption was mentioned as the biggest barrier, with 66%, followed by duration or length of proceedings/cases in courts of law (47%), low awareness of laws among citizens (28%), and legal representation costs (21%). Lengthy legal procedures (cumbersome procedures) and language of the court/law (English) were also mentioned as barriers by 20% and 8% of the respondents respectively, while nearly a quarter of the respondents (14%) mentioned limited access to legal aid as a common barrier and 10% mentioned distance from residence to court. Only 7% of the respondents claimed that they did not know any common barriers to access to justice, as shown in figure 75 below.



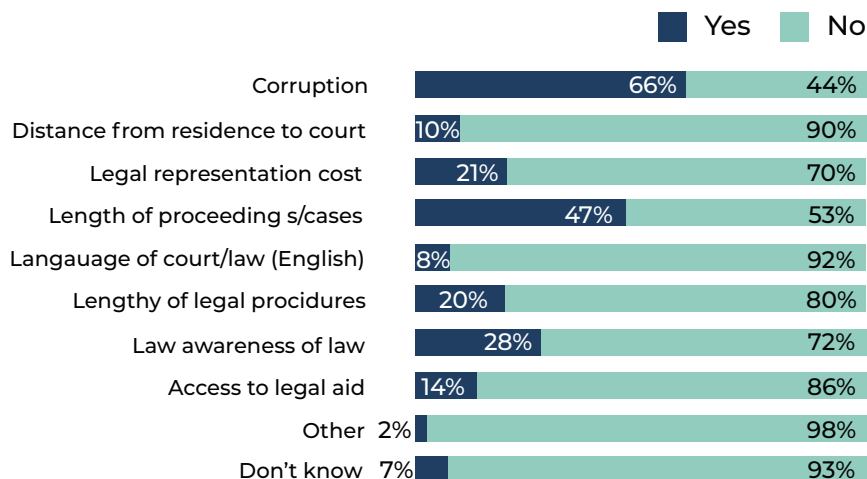


Figure 75: %Responses on barriers to access to justice (N=515)

Source: Field data, 2021

Regarding barriers to access to justice, some of the interviewed respondents had this to say:

“Access to justice has been somewhat limited due to cases taking too long court.”

Community member, Unguja

“The situation of access to justice is not bad, but the challenges are the proximity of courts and length of proceedings.”

Community member, Pemba South

“Corruption is big challenge in administration of justice, as the accused person does whatever they can to avoid justice.”

Community member, Pemba South

Other challenges

Another challenge that was mentioned by some of the interviewed respondents is constant adjournment of cases, which has cost implications on expenses incurred to go to court from time to time. This challenge was also said to contribute to miscarriage of justice, as there is a legal maxim that says, **‘Justice delayed is justice denied’**. This maxim means that victims of crime and those accused of crime



deserve access to a speedy trial and, hopefully, resolution.¹¹⁸⁷

“Constant adjournment of cases is a big barrier to access to justice, something which makes some people lost faith in the Judiciary.”

Community member, Chake Chake

Some of the interviewed respondents also recommended establishment of special courts to address gender-based violence (GBV) and violence against children (VAC). Others recommended intensified efforts in combating corruption in the justice system, especially the criminal justice system.¹¹⁸⁸

Shortage of judicial staff was also mentioned as a challenge, hindering speedy delivery of justice. Regarding this issue, one respondent from Pemba South said:

“There is a shortage of court clerks and magistrates.”

Community member, Pemba South

2.5.3. Criminal Justice Challenges

There have been calls by different criminal justice stakeholders, including senior government officials, to address various challenges in the administration of criminal justice. Senior government figures who have made such calls include H.E the late President John Magufuli in 2020 and H.E President Samia Suluhu Hassan in 2021. Key concerns in the administration of justice in Tanzania that were mentioned in 2020 and 2021 include slow pace of investigation, lengthy pre-trial detention, constant adjournment of cases, and overcrowding of detention facilities. The human rights survey conducted by ZLSC and ZAFAYCO in Zanzibar probed on these and other challenges in administration of justice.

2.5.3.1. Community members’ perceptions on criminal justice challenges

Community members were asked to provide their opinions on various criminal justice challenges, namely denial of bail, trumped-up charges/fabricated cases, police taking too long to take the accused person to court, delays in granting judgement copies, shortage of judicial staff, and lengthy pre-trial detention.

¹¹⁸⁷ See World Medical Association, JUSTICE DELAYED IS JUSTICE DENIED, at <https://www.wma.net/blog-post/justice-delayed-is-justice-denied/>.

¹¹⁸⁸ ZLSC & ZAFAYCO, Human Rights Survey 2021: Pemba Field Report.



Denial of bail

Regarding bail, majority of the respondents, nearly half of them (48%), said denial of bail is a serious problem, followed by over a third of the respondents who felt that it is a moderate problem. Only 15% of the respondents said it not really a problem, including those who felt it is only a minor problem (11%) and those who felt it is not at all a problem (4%).

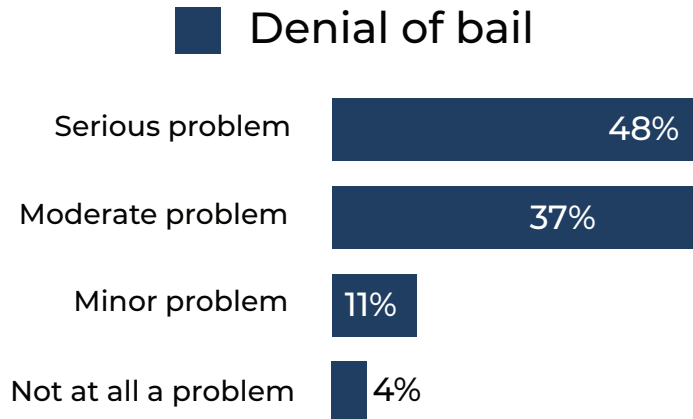


Figure 76: %Responses on extent to which denial of bail in a problem (N=318)

Source: Field data, 2021

Trumped-up charges/fabricated cases

Majority of the respondents of the survey, over half of them (59%), said trumped-up charges/fabricated cases is a serious problem, followed by over a quarter (28%) who felt that it is a moderate problem. 9% of the respondents said this is only a minor problem, while the remaining 4% said it is not at all a problem in their community.



■ Trumped-up charges

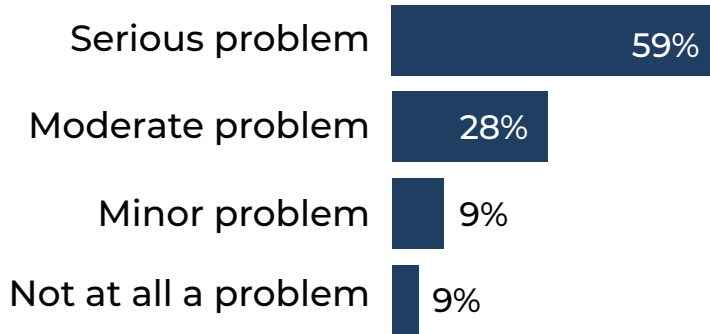


Figure 77: % Responses on extent to which trumped-up charges is a problem (N=297)

Source: Field data, 2021

Police taking too long to take the accused person to court

Regarding police taking too long to take an accused person to court, over half of the respondents (56%) said it is a serious problem, followed by over a quarter (29%) who said it is a moderate problem. 10% of the respondents were of the opinion that the problem is only minor, while the remaining 5% said it is not at all a problem.

■ Taking too long to take accused person to court

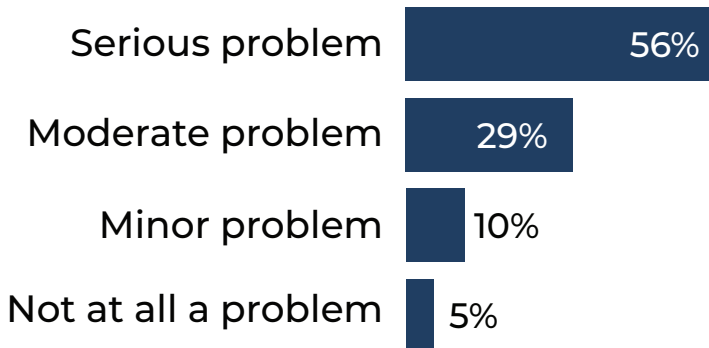


Figure 78: % Responses on extent to which taking too long to produce an accused person before a court is a problem (N=285)

Source: Field data, 2021



Delays in granting judgement copies

When asked to what extent delays in granting copies of judgements is a problem in their community, majority of the respondents (42%) said it is a moderate problem, while a third (35%) said it is a serious problem. 17% and 6% of the respondents said it is only a minor problem and not at all a problem respectively.

■ Delays in granting judgement copy

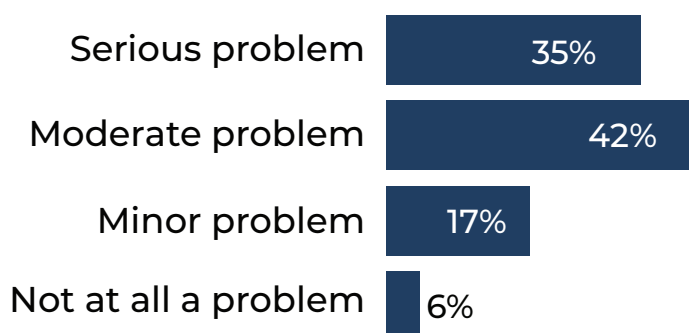


Figure 79: % Responses on extent to which delays in granting judgement copy is a problem (N=272)

Source: Field data, 2021

Shortage of judicial staff

Regarding shortage of judicial staff majority of the respondents, over a third (39%), said it is a serious problem, followed by 36% who said it is a moderate problem. Respondents who felt shortage of judicial staff were 18%, while the remaining 7% felt it is not at all a problem in administration of criminal justice.



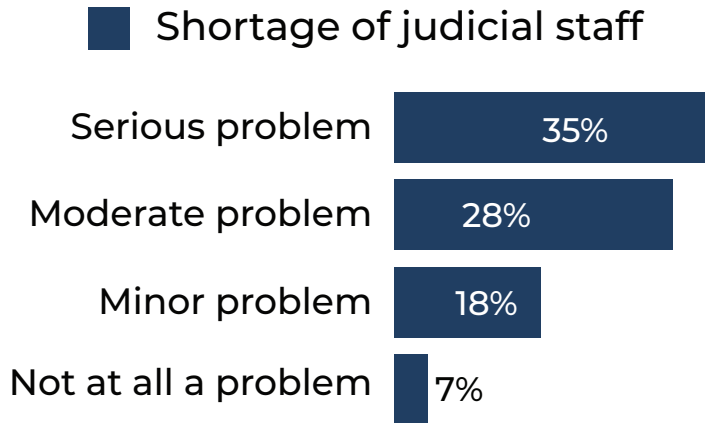


Figure 80: % Responses on extent to which shortage of judicial staff is a problem (N=282)

Source: Field data, 2021

Lengthy pre-trial detention

Nearly two thirds of the respondents (64%) said lengthy pre-trial detention is a serious problem in their community and administration of criminal justice, followed by a nearly a quarter of them (23%) who felt it is a moderate problem. 8% and 5% of the respondents said lengthy pre-trial detention is only a minor problem and not at all a problem respectively.

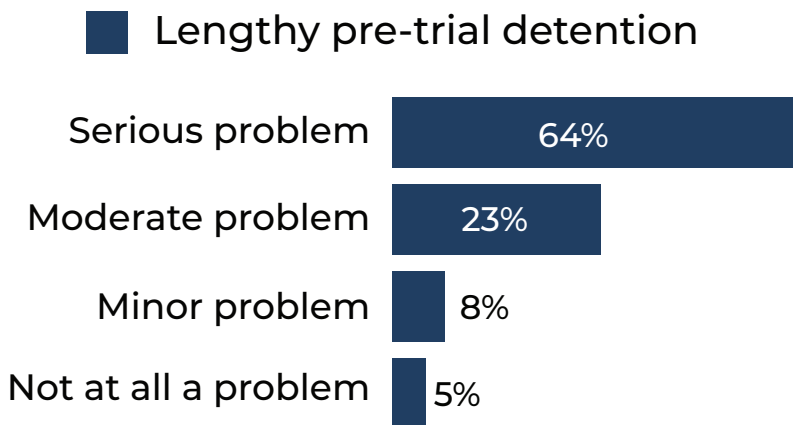


Figure 81: % Responses on extent to which lengthy pre-trial detention is a problem (N=295)

Source: Field data, 2021



Other challenges in administration of criminal justice

Interviewed community members also mentioned other challenges in administration of criminal justice. One of the key challenges that they mentioned is low awareness about criminal laws and criminal justice. One of the respondents in Chakechake, Pemba, said:

“Many people lack criminal justice knowledge.”

Community member, Chakechake

Another key challenge that was mentioned is cases taking too long to conclude in courts of law. This was said to contribute to backlog of cases. Another challenge is costs of legal representation, which presents a challenge for the poor, who are the majority.¹¹⁸⁹

2.5.3.2. Plea bargaining

Overview

In many parts of the world, trials are being replaced by legal regimes that encourage suspects to admit guilt and waive their right to a full trial.¹¹⁹⁰ The trial waiver systems, including plea-bargaining, are widely used in different parts of the world, including in U.S.A, Russia, Scotland, Australia, China, Colombia, Nigeria, Italy, Spain, Poland, Estonia, England and India.¹¹⁹¹ In 2019, Tanzania followed suit by introducing plea bargaining in its criminal justice system via the Written Laws (Miscellaneous Amendments (No. 4) Act of 2019, amending the Criminal Procedure Act (Cap 20), which is applicable in Tanzania Mainland. In Zanzibar, at least two respondents of the human rights survey conducted by ZLSC and ZAFAYCO in Pemba and Unguja mentioned that there is not plea-bargaining law in Zanzibar, but there are plea bargaining rules for some offences.¹¹⁹²

Mixed views on plea bargaining

Most of the interviewed respondents were positive with the existing plea-bargaining arrangement in Zanzibar. They noted that

1189 ZLSC & ZAFAYCO Human Rights Survey 2021: Pemba Field Report.

1190 See Fair Trials (2017), The Disappearing Trial: Towards a rights-based approach to trial waiver systems, at https://www.fairtrials.org/sites/default/files/publication_pdf/Report-The-Disappearing-Trial.pdf accessed 2nd March 2020.

1191 Ibid.

1192 ZLSC & ZAFAYCO Human Rights Survey 2021: Pemba Field Report.



plea bargaining is important given the various challenges in administration of criminal justice as it enables speedy determination of cases.

“Plea-bargaining rules ensure speedy administration of justice and the agreement is voluntary for both parties.”

Lawyer, Chake Chake

Other respondents expressed concerns with the plea-bargaining arrangement, noting that accused persons are denied their right to be presumed innocent by pleading guilty even when they have not really committed a crime. One respondent said:

“The plea-bargaining law needs major amendments because undermines justice by encouraging people to confess to crimes, even when they have not committed them, due to fear, threats, and intimidation..”

Paralegal, Pemba South

2.5.3.3. Bail for criminal offences, including economic crimes

Overview

Tanzania’s criminal justice system recognizes the right to bail, which is also a constitutional right under the Constitution of Zanzibar of 1984. In Tanzania, including Zanzibar, right to bail is not absolute, as there are criminal offences which are notailable. Non-ailable offences include serious crimes such as murder, treason, terrorism, armed robbery, and sexual violence (rape and sodomy). In 2021, there was a debate across Tanzania regardingailable and non-ailable offences.

Community members’ and stakeholders’ views on bail, including for non-ailable offences

In Zanzibar, community members who responded to the human rights survey conducted by ZLSC and ZAFAYCO sought people’s views on bail generally and for non-ailable offences, including for economic crimes. There were generally mixed views regarding granting of bail even for non-ailable offences, as nearly half of the respondents indicated that the existing arrangement



is fine and should not be changed, while the other half believe bail should be granted in for some of the non-bailable offences. Most of those who indicated bail should be granted even for non-bailable offences made an exemption for murder, emphasizing that murder suspects should not be provided with bail.¹¹⁹³

Regarding economic crimes, some lawyers who were interviewed revealed that lesser criminal offences should be left to lower courts instead of being sent to the High Court. They insisted that lower courts should be granted powers to deal with some of the criminal cases. Laws applicable to economic crimes in Zanzibar include the Zanzibar Anti-Corruption and Economic Crimes Act and the Anti-Money Laundering Act.

2.5.3.4. Rights of prisoners and remandees

Rights of prisoners and remandees are protected under various international human rights instruments, including those specific for them. Key among them is the International Covenant on Civil and Political Rights (ICCPR) of 1966, the African Charter on Human and Peoples' Rights (Banjul Charter) of 1981, the Basic Principles for the Treatment of Prisoners of 1990,¹¹⁹⁴ and the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955.¹¹⁹⁵ In 1995, the African Commission on Human and Peoples' Rights noted that **"..the conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical health and sanitary conditions; inadequate recreational, vocational and rehabilitation programmes, restricted contact with the outside world, large percentages of persons awaiting trial,** among others."¹¹⁹⁶

In Zanzibar, community members and stakeholders who responded to the survey conducted by ZLSC and ZAFAYCO were asked to provide their views on protection of rights of prisoners and remandees. Majority of the respondents expressed dissatisfaction with the protection of rights of prisoners and remandees. They mentioned the following as challenges which hinder effective realization of the rights of prisoners and remandees:

1193 ZLSC & ZAFAYCO Human Rights Survey 2021: Pemba Field Report; ZLSC & ZAFAYCO Human Rights Survey 2021: Unguja Field Report.

1194 Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

1195 Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

1196 See 19 Resolution on Prisons in Africa - ACHPR/Res.19(XVII)95, The African Commission on Human and Peoples' Rights meeting at its 17th Ordinary Session held from 13 to 22 March 1995, Lomé, Togo, at <https://www.achpr.org/sessions/resolutions?id=24>.



- Mixing prisoners and remandees
- Unsanitary conditions, which puts them at risk of contracting illness
- Spacing and overcrowding issues
- Putting juvenile offenders in the same detention facility with adult offenders
- Food challenge
- Healthcare access concern

2.5.4. Juvenile Justice

Juvenile justice refers to the structure of the criminal legal system that deals with crimes committed by minors or persons below the age of 18 years, usually between the ages of 10 and 18 years.¹¹⁹⁷ In Unguja and Pemba, respondents of the human rights survey were generally happy with the juvenile justice system of Zanzibar. The major concern they had is the law, Children’s Act of 2011, which, according to them, seems to favour more the juvenile offender rather than the victim. Some of the respondents indicated that the juvenile offenders should be given appropriate punishment.¹¹⁹⁸ Others expressed concerns over shortage of fit persons/families. Juvenile justice is further discussed in sub-chapter 5.2.8 below.

2.6. Right to Liberty and Personal Security

2.6.1. Introduction

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.¹¹⁹⁹ It is also an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR.¹²⁰⁰ 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 in Zanzibar Constitution 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

1197 See Jamie J. Spannhake, Definition of the Juvenile Justice System, Legal Beagle, at <https://legalbeagle.com/6627173-definition-juvenile-justice-system.html>.

1198 LHRC & ZAFAYCO, Human Rights Survey 2021: Pemba Field Report; LHRC & ZAFAYCO, Human Rights Survey 2021: Unguja Field Report.

1199 See: Section 14 (1) of the Zanzibar Constitution 1984.

1200 Article 3 of UDHR; Article 9(1) of ICCPR.



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.¹²⁰¹ This means that the right to liberty is not absolute.¹²⁰² 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.¹²⁰³

2.6.2. Arbitrary arrests and detention

International human rights law prohibits arbitrary arrests and detention. According to the ICCPR, “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”¹²⁰⁴ Accused person must also not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.¹²⁰⁵

In 2021, ZLSC and ZAFAYCO did not document any reported incidents of arbitrary arrests and detention.

2.6.3. Right to bail

2.6.3.1. Overview

Bail may generally be defined to mean a temporary release of an accused person upon certain conditions pending the finalisation of court proceedings.¹²⁰⁶ 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 is granted under the court’s discretion.

2.6.3.2. Community members’ perceptions on denial of bail

Community members who responded to the survey conducted by ZLSC and ZAFAYCO in Unguja and Pemba were asked the extent to

1201 C.M. Peter, *Human Rights in Tanzania: Selected Cases and Materials*, Koln: Rudiger Koppe Verlag, 1997, p. 524.

1202 D.J.Harris, M. O’Boyle, and C. Warbrick, *Law of the European Convention on Human Rights*, London: Butterworths, 1995, p. 97.

1203 Section 14 (2)(a) and (b).

1204 See Article 9(2) of ICCPR of 1966.

1205 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.

1206 Chris Maina Peter, *Human Rights in Tanzania: ...*, op. cit., p.527.



which denial of bail is a problem in their community. Nearly half of the respondents (48%) said it is a serious problem, followed by over a third (37%), who said it is a moderate problem. 11% of the respondents were of the view that denial of bail is only a minor problem in their community, while the remaining 4% said it is not at all a problem.

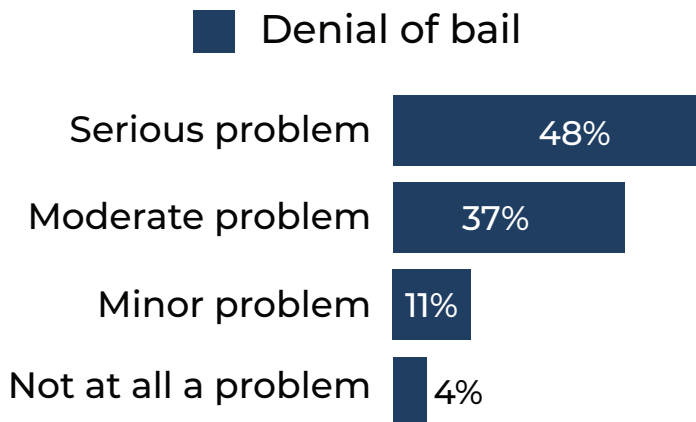


Figure 82: %Responses on the extent to which denial of bail is a problem in the community (N=515)

Source: Field data, 2021

2.6.3.3. Community members’ perceptions on bail for non-bailable offences & LHRC’s study on non-bailable offences

Community members’ perceptions on bail for non-bailable offences

In 2021, interviewed respondents of the human rights survey conducted by ZLSC and ZAFAYCO in Unguja and Pemba were asked to give their views on provision of bail for non-bailable offences. The respondents were nearly divided into two halves in terms of supporting and opposing bail for non-bailable offences.

Table 41: Some of the comments for and against bail for non-bailable offences

Pro bail for non-bailable offences	Against bail for non-bailable offences
<p><i>“Bail is a human right. All offense should be bailable, except for murder.”</i></p> <p>Community member, Chake Chake</p>	<p><i>“In my opinion, not all offences should be bailable. Bail should not be granted for some offences.”</i></p> <p>Community member, Kaskazini A</p>



<p><i>"It is important to grant bail for all offences because denial of bail constitutes violation of the accused person's human right, causing them to languish in jail and no one is there to compensate them when they eventually released."</i></p> <p>Community member, Pemba South</p>	<p><i>"Regarding bail, I suggest for things to remain as they are. Nothing should be changed."</i></p> <p>A lawyer, Urban West</p>
<p><i>"Bail should be granted for all offences because it is not only the right of every accused person, but also a constitutional right."</i></p> <p>Community member, Unguja South</p>	<p><i>"Some offences should not be bailable, as provided by the law. They were made non-bailable for a reason."</i></p> <p>Lawyer, Urban West</p>

LHRC's study on non-bailable offences

In 2021, the Legal and Human Rights Centre (LHRC) conducted a study on right to bail vis-à-vis non-bailable offences, looking at state practices of Kenya, Malawi, Uganda, Zambia, and Zanzibar.¹²⁰⁷ One of the key findings of the study is that constitutions of all countries that were reviewed guarantee the right to bail.¹²⁰⁸ However, in all these countries the right to bail is not absolute, such that there are both bailable and non-bailable offences, as is the case in Tanzania Mainland.¹²⁰⁹

Another key observation made in the study is that in four out of five countries that were compared with Tanzania Mainland, the court has powers to determine and grant bail in non-bailable offences. For instance, in **Kenya**, the High Court has mandate to grant bail in non-bailable offences, and this mandate is derived from Article 49(1)(h) of the Constitution of Kenya of 2010, which allows granting of bail unless there are compelling reasons for not releasing a criminal suspect.¹²¹⁰

In **Zanzibar**, which is part of Tanzania, initially the Chief Justice of Zanzibar had powers to grant bail in any offence, including non-bailable offence, but the powers were removed following a 2019 constitutional petition questioning the constitutionality of the provision granting such powers. The High Court declared the provision unconstitutional, and consequently currently there is no court with mandate to hear and determine a bail application unless and until legislative amendments are made to give the court such powers.

Among the conclusions of the study on non-bailable offences in

¹²⁰⁷ See LHRC (2021), *A Study on Non-Bailable Offences in Tanzania: Drawing Lessons and Inspiration from Kenya, Malawi, Uganda, Zambia and Zanzibar*, at <https://humanrights.or.tz/reports/a-study-on-non-bailable-offences-in-tanzania>.

¹²⁰⁸ Article 49(1) (h) of the Constitution of Kenya of 2010; Article 42(2)(e) of the Malawi Constitution of 1994; Article 13(3)(b) of the Constitution of Zambia; Articles 23(6) and 28(3)(a) of the Constitution of Uganda of 1995; and Articles 14(1) and 16(1) of the Constitution of Zanzibar of 1984.

¹²⁰⁹ LHRC Study on Non-Bailable Offences (above).

¹²¹⁰ See also *Republic v. Joktan Mayende & 4 Others*, Bungoma High Court, Criminal Case No. 55 of 2009.



Tanzania were:

- Even when the society wants to protect itself from accused persons, at least that person should be given an opportunity to appear before an impartial court of law to vindicate his right to liberty and have that court make a pronouncement with regard to that right. That is the reason why in Kenya, Malawi, Zambia, and Uganda the High Court has been mandated to hear and determine bail applications even in non-bailable offences; and
- It is desirable that, like it is in Kenya and Malawi, the burden of proving that an accused person should not be admitted to bail should be on the prosecution and not on the accused persons as in Zambia, Uganda and Tanzania Mainland before 1985.

2.6.3.4. Reported incidents of denial of bail

In 2021, ZLSC and ZAFAYCO did not document any reported incidents of denial of bail.

2.6.4. Human trafficking

2.6.4.1. Overview

According to the United Nations (UN), human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain.¹²¹¹ Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. States are required to adopt legislative and other measures to criminalize human trafficking.¹²¹² Human trafficking is a threat to right to liberty and personal security. It is also a threat to other rights and freedoms such as right to life, right to non-discrimination, freedom from slavery, freedom from torture, freedom from violence, freedom of association, freedom of movement, right to health, right to just and favourable conditions of work, right to adequate standard of living, and right to social security.¹²¹³

2.6.4.2. Elements of human trafficking

1211 See The Office of the United Nations High Commissioner for Human Rights, Human Rights and Human Trafficking, Fact Sheet No. 36 at https://www.ohchr.org/Documents/Publications/FS36_en.pdf, accessed 15 October 2020.

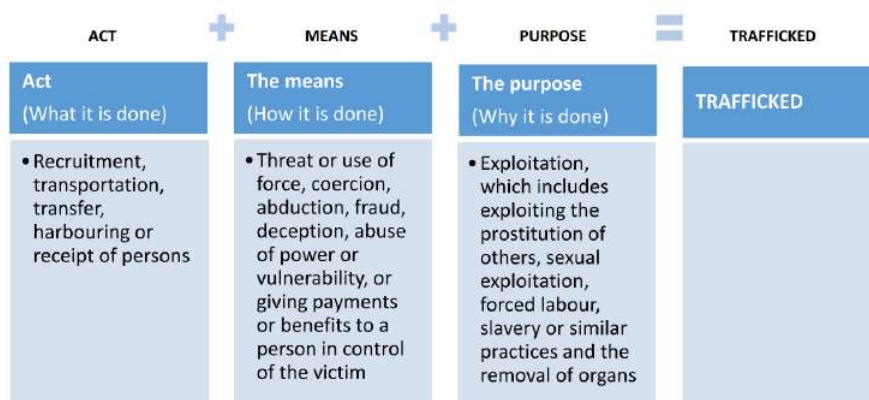
1212 See Article 5(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

1213 Ibid.



According to the United Nations Office on Drugs and Crime (UNODC), there are three key elements of human trafficking, namely an **act**, **means** used to commit an act, and **purpose** (reason for the act). The elements are summarized in the picture below.

Key elements of human trafficking factsheet



Picture 1: Key elements of human trafficking

Source: UNODC¹²¹⁴

2.6.4.3. Situation of human trafficking globally and in Sub-Saharan Africa

In January 2021, the United Nations Office on Drugs and Crime (UNODC) released the Global Report on Trafficking in Persons 2020, which generally revealed that the progress made in tackling human trafficking across the globe was under threat of reversal due to the Covid19 pandemic. According to the report, victims are targeted when they are vulnerable and the Covid19 pandemic has increased vulnerability. In low-income countries, children make up half of the victims detected and are mainly trafficked for forced labour (46%). The main economic sectors where victims are reported to be exploited are domestic work, construction work, fishing, agriculture, catering, street trading, garment, and mining.¹²¹⁵

¹²¹⁴ See UNODC Human Trafficking Key Elements Factsheet at https://www.unodc.org/documents/e4j/Secondary/Human_Trafficking_11_Key_elements_of_human_trafficking.pdf.

¹²¹⁵ Ibid.



In Sub-Saharan Africa, children represent the majority of victims in Sub-Saharan Africa (60%), especially in West Africa, while Southern African and East African countries tend to detect more adults than children. Also, as a destination of trafficking flows, most of the victims are trafficked within their own countries or across the border from neighbouring countries. Additionally, majority of detected victims in Sub-Saharan Africa are trafficked for the purpose of forced labour.¹²¹⁶

2.6.4.4. Situation of human trafficking in Tanzania, including Zanzibar

In Tanzania, human trafficking remains a challenge, although police statistics indicated a downward trend. Most of the trafficking is conducted internally (within Tanzania). In the period of 2016 to 2020, a total of 151 incidents of human trafficking were reported. These include 19 incidents reported in 2020, which are one more than those reported in 2019. However, it has been observed by LHRC, ZLSC, and ZAFAYCO that awareness on human trafficking is generally low and hence there are fears that most incidents go unreported.

In 2021, ZLSC and ZAFAYCO received reports of children trafficked from Tanzania Mainland to work as domestic workers, shopkeepers and street vendors in Zanzibar.¹²¹⁷ It also received reports of some persons with disabilities being used by some people to beg in the streets.

2.7. Freedom from Torture and Inhuman or Degrading Treatment

2.7.1. Introduction

Freedom from torture is a basic human right protected under the regional and international human rights treaties.¹²¹⁸ The Constitution of Zanzibar, 1984 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. 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.¹²¹⁹ However, it also provides for a wider application. According to the the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading

¹²¹⁶ Ibid.

¹²¹⁷ ZLSC & ZAFAYCO Human Rights Monitoring 2021.

¹²¹⁸ Article 5 of ACHPR and Article 7 of ICCPR.

¹²¹⁹ Article 1 of CAT.



treatment or punishment, Nils Melzer, “Any unnecessary, excessive or otherwise arbitrary use of force by law enforcement officials is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment.”¹²²⁰ He notes that the act of a law enforcement official who intentionally and purposefully inflicts pain or suffering on an individual who is powerless and unable to escape or resist arrest is unlawful and amounts to torture.¹²²¹

2.7.2. Challenges in addressing torture

One of the key challenges that we face in addressing torture and increasing accountability of duty bearers is the fact that Tanzania is yet to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Another challenge is non-reporting or underreporting of torture incidents, especially those perpetrated by state agents.

2.7.3. Reported Torture Incidents

In 2021, ZLSC and ZAFAYCO did not document any reported incidents of torture by state agents. However, respondents of the human rights survey conducted by the two organizations in Unguja and Pemba revealed that beating/torture of children (21%) is a common form of punishment.

2.8. Impact of Covid19 on Civil and Political Rights

Like other human rights, civil and political rights were greatly affected by the Covid19 pandemic across the world, and Zanzibar was not spared. The pandemic exacerbated violations or restrictions on civil and political rights in several ways, including: disruption of judicial proceedings; delays in proceedings and adjournment of cases; increased violence against women and children, violating their right to freedom from violence; and increased risk of human trafficking. Covid19 also disrupted the work of NGOs, including ZAFAYCO and ZLSC, as various precautions had to be taken to prevent spread of the disease, including limiting human contact. This affected various programmes by the NGOs such as trainings or workshops, public awareness-raising, and legal aid.

¹²²⁰ See “Arbitrary police violence can amount to torture, even in public spaces, UN expert warns” at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22235&LangID=E>, accessed 23rd December 2018.

¹²²¹ Ibid.



CHAPTER 3: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.1. Overview

ICESCR recognizes the right to education for everyone and calls education to be directed to the full development of the human personality and the sense of dignity. It recognises that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and groups.¹²²² In achieving the full realisation of this right, states are required to ensure: primary education is compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, is made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; and higher education is made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.¹²²³

Despite being internationally recognized under the international instruments, the Constitution of Zanzibar of 1984 has not indicated the right to education as part of bill of rights, Instead, it is mentioned under section 10(f) of the Zanzibar Constitution as a political objective of the Revolutionary Government of Zanzibar. The right to education is provided for under the Education Act of 1982¹²²⁴ which provides for free and compulsory education.¹²²⁵ 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.¹²²⁶ This chapter highlights the situation of right to education, right to health, right to clean and safe water, right to work, right to own property,

1222 Article 13(1) of ICESCR

1223 Ibid, Article 14(2) (a) – (c)

1224 Act No. 6 of 1982.

1225 Section 19 of Act No. 6 of 1982.

1226 Ibid, Section 20 (1-2).



and right to adequate standard of living in Zanzibar in 2021.

3.2. Right to Education

3.2.1. Introduction: Legal and policy framework on right to education

Right to education is essential for effective realization of all other human rights, including the right to take part in governance. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966 explicitly provides for the right to education as one of the basic human rights. Right to education entails right to access education and right to quality education.

The Constitution of Zanzibar (1984) does not include the right to education as one of the enforceable rights. Rather, it is enshrined under Article 10 (6) as one of the political objectives of the government. The right to education is provided for under the Education Act, 1982¹²²⁷ which provides for free and compulsory education.¹²²⁸ 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 lower secondary, which every child in Zanzibar is entitled to be provided with.

In Zanzibar, there is also the Zanzibar Education Policy, which guided by the declaration of compulsory and free basic education for all that was promulgated on 23rd September 1964. The policy ensures that all eligible children are enrolled in and attending school, and that they are entitled under Government commitment to be provided with quality and relevant education and with equal educational opportunities. The Zanzibar education system presently offers 12 years of compulsory education. This means encompasses two years of nursery education, six years of primary education and four years of secondary schooling.
¹²²⁹

3.2.2. Government action to ensure progressive realization of the right to education, including implementation of free education policy

In the period of 2016 to 2020, the Government of Zanzibar has taken various measures to ensure progressive realisation of the right to education. These measures include allocation of budget for the

¹²²⁷ Act No. 6 of 1982.

¹²²⁸ Section 19 of Act No. 6 of 1982.

¹²²⁹ Revolutionary Government of Zanzibar, Zanzibar Education Policy 2006.



education sector, construction of educational facilities, hiring of teachers, provision of special education equipment, and provision of loans to higher education students.

In terms of educational facilities, the number of public education facilities at primary level has increased from 211 in 2016 to 293 in 2020, an increase of 82 facilities.¹²³⁰ Facilities at secondary school level have also increased from 119 in 2016 to 210 in 2020, an increase of 91 facilities.¹²³¹ Government efforts in this regard have contributed to increased enrolment in Standard One in public schools from 45,394 pupils in 2016 to 50,277 in 2020.

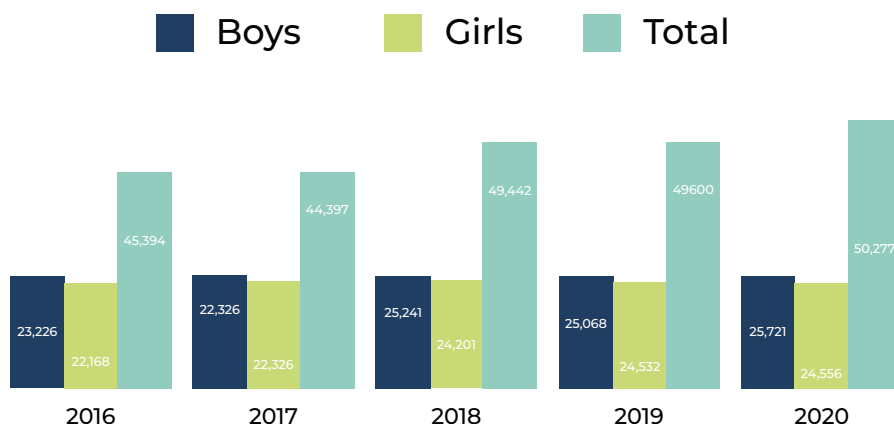


Figure 83: Trends on STD 1 public school enrolment (2016-2020)

Source: Tanzania in Figures 2020

In 2021, the Government of Zanzibar provided loans to students of higher education. By April 2021, a total of Tshs. 4.7 billion, equal to 40.8% of the total budget, had been disbursed by the Zanzibar Higher Education Loans Board (ZHESLB) to 1,535 new students and 2,726 continuing students.¹²³² This represents an increase of 180 students, compared to the 4,081 loan beneficiaries for the financial year 2019/20. A total of 91,074 children (45,319 boys and 45,755 girls), were enrolled for nursery education and 33,516 pupils (15,664 boys and 17,852 girls), were enrolled for primary education in 2021.¹²³³

Recently, in January 2022, the President of the Revolutionary

¹²³⁰ The Revolutionary Government of Zanzibar, Office of the Chief Government Statistician, Zanzibar in Figures 2020, at <http://www.ocgs.go.tz/php/ReportOCGS/Zanzibar%20In%20Figures%202020.pdf>

¹²³¹ Ibid.

¹²³² Serikali ya Mapinduzi ya Zanzibar, *HOTUBA YA WAZIRI WA ELIMU NA MAFUNZO YA AMALI, MH. SIMAI MOHAMMED SAID (MBW), KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA WA FEDHA 2021/2022*, Mei 2021 [House of Representatives, Ministerial Budgets, at <http://www.zanzibarassembly.go.tz/ministerial-budgets.php>]

¹²³³ Ibid.



Government of Zanzibar, H.E. Dr. Hussein Ali Mwinyi, unveiled six new classrooms at Sebleni Primary School in Mjini Magharibi Region (Urban West), constructed as part of the Government's efforts to enhance access to education and reduce the problem of classroom congestion in Zanzibar.¹²³⁴ The President noted that in the period of 58 since the Zanzibar Revolution, the Government has done a lot to increase the number of schools in both rural and urban areas, with the number of schools increasing from 64 in 1964 to 1,621 schools by December 2021, of which 774 are pre-primary/nursery schools, 545 are primary schools, and 302 are secondary schools.¹²³⁵ He added that in collaboration with the United Nations Children's Fund (UNICEF) and the *Education Above All Foundation* from Qatar, the Government has signed a USD 3 million project which seeks to return to school children aged 7-14 years who are currently out of school.¹²³⁶ To address the challenges of shortages of classrooms and toilets/toilet holes, the President stated that his administration was planning to construct 1,131 new classrooms - utilizing a loan from the International Monetary Fund (IMF), construct 1,963 toilets at various schools in Unguja and Pemba, construct teacher houses, and buy 8,000 desks to accommodate 24,000 primary school pupils.¹²³⁷

1234 See Zanzi News Online, Rais wa Zanzibar na Mwenyekiti wa Baraza la Mapinduzi Mhe.Dk.Hussein Ali Mwinyi Amefungua Madarasa Sita Mampya ya Suku ya Msingi Sebleni Ikiwa ni Shamrashamara za Miaka 58 ya Mapinduzi ya Zanzibar, at http://www.zanzinews.com/2022/01/rais-wa-zanzibar-na-mwenyekiti-wa_30.html.

1235 Ibid.

1236 Ibid.

1237 Ibid.





Picture 2: H.E President of Zanzibar, Dr. Hussein Ali Mwinyi (middle), during his visit to unveil new classrooms at Sebleni Primary School in January 2022

Picture source: Zanzi News

3.2.3. Challenges hindering effective realization of the right to education

Despite the various efforts made by the Revolutionary Government of Zanzibar to ensure progressive realisation of the right to education, there are still various challenges that were observed to hinder effective realization of this right in 2021.

Community members reached by ZLSC and ZAFAYCO through the human rights survey conducted in Pemba and Unguja revealed several challenges that are faced in provision of primary and secondary education. These challenges include shortage of teachers, especially science teachers; shortage of classrooms; shortage of toilets and toilet holes; shortage of desks; poor working conditions for teachers; and long distance from residence to school.¹²³⁸ In Micheweni, one respondent said that teachers' morale is low at some schools because of poor working conditions for teachers. Shortage of classrooms has caused students at some of the schools to attend classes in shifts. Through

¹²³⁸ ZLSC & ZAFAYCO Human Rights Survey 2021: Pemba Field Report; ZLSC & ZAFAYCO Human Rights Survey 2021: Unguja Field Report.

human rights monitoring, ZLSC and ZAFAYCO also received reports of some students sitting on the floor at some primary schools in Urban West.¹²³⁹

Other challenges that affect learning and teaching environment in Zanzibar include violence against children, especially sexual violence, and budgetary constraints. An analysis of the Zanzibar budget for the financial year 2019/20 showed that the budget allocated for the education sector, which was Tshs. 196.2 billion, was 4.8% less than the Tshs. 206 billion allocated for the financial year 2017/18.¹²⁴⁰ According to UNICEF, the budget allocated for the financial year 2019/20 was equal to 13.8% of the total budget and a significant reduction from its share of 18.9% in the financial year 2017/18.¹²⁴¹ The education sector budget for the financial year 2019/20 also significantly fell short of the 20% Education for All (EFA) target.¹²⁴²

Other key challenges facing the education sector in recent years that have been highlighted by stakeholders are teacher absenteeism and student-to-teacher ratio. For instance, in 2020 teacher absenteeism stood at 41%, with poor teaching environment cited as a contributing factor, especially in remote areas.¹²⁴³ Increased enrolment, driven by the introduction of compulsory pre-primary education and fee-free basic education, has not gone hand in hand with increase in number of teachers.¹²⁴⁴

One of the respondents to the human rights survey conducted by ZLSC and ZAFAYCO, resident of Urban West identified teacher absenteeism as a big challenge at some schools in Zanzibar.¹²⁴⁵ She noted that it had become normal for teachers, especially female teachers, to have an emergency and having to leave or not show up at school, especially on Fridays, because they want to go and attend social events, including weddings.¹²⁴⁶ Another community member highlighted several challenges that teachers face, including inadequate salaries, lack of promotion, and shortage of teaching aids.¹²⁴⁷

In the education sector in Zanzibar, there is also a challenge in curriculum design across all levels.¹²⁴⁸ For instance, pre-primary and

1239 ZLSC & ZAFAYO, Human Rights Monitoring 2021.

1240 See Revolutionary Government of Zanzibar & UNICEF, EDUCATION BUDGET BRIEF 2019/2020: ZANZIBAR, at <https://www.unicef.org/esa/media/8446/file/UNICEF-Tanzania-Zanzibar-2020-Education-Budget-Brief-revised.pdf>.

1241 Ibid.

1242 Ibid.

1243 EDUCATION BUDGET BRIEF 2019/2020 (supra).

1244 Ibid.

1245 ZLSC & ZAFAYCO Human Rights Survey 2021: Unga Field Report.

1246 Ibid.

1247 Ibid.

1248 Zanzibar Development Vision 2050, p. 29.



primary education “does not adequately promote the acquisition of basic knowledge of literacy and numeracy” and at secondary level and beyond, “there is not enough focus on higher-order skills, such as critical thinking, creativity and innovation, as well as labour market-oriented skills development in students’ specialisations.”¹²⁴⁹ Vocational education is also faced with challenges, as it is currently mainly designed for school-drops, hence limiting the scope and potential for developing a diversified workforce.¹²⁵⁰ It has further been observed that there are noticeable gaps in the quality and quantity of qualified teachers in science and mathematics.¹²⁵¹

3.3. Right to Health

3.3.1. Introduction

Right to health is a key for realization of other rights, including the fundamental right to life. This right means that hospitals, clinics, medicines and doctors’ services must be accessible, available, acceptable, and of good quality for everyone on an equitable basis, where and when needed. This right is guaranteed and protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises enjoyment of the highest attainable standard of physical and mental health.¹²⁵² States parties to the ICESCR are required to take several steps towards full realization of the right to health, including creating conditions which would assure to all medical services and attention in the event of sickness and prevention, treatment and control of epidemic, occupational and other diseases.¹²⁵³ States thus have a primary duty to ensure that necessary measures are taken to protect the health of their people and to ensure that they receive medical attention when they are sick.¹²⁵⁴ This right is also guaranteed under regional treaties that Tanzania is bound to, such as the African Charter on Human and Peoples’ Rights (ACHPR), African Charter on the Rights and Welfare of the Child (ACRWC) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).¹²⁵⁵ Right to health includes right to access health services and right to quality health services.

This subchapter looks at the situation of the right to access health

1249 Ibid.

1250 Ibid, p. 30.

1251 Ibid.

1252 Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1977

1253 See Article 12(2) of ICESCR.

1254 Article 16(2) of the African Charter on Human and People’s rights, 1981.

1255 See Article 16(1) of ACHPR; Article 14 of ACRWC; and Article 14 of Maputo Protocol.



services and right to quality health services as key components of the right to health, focusing on the year 2021.

3.3.2. Government action to ensure progressive realisation of right to health

In the period of 2016 to 2020, the Government of Zanzibar took various measures to ensure progressive realisation of the right, including construction of health facilities and employment of health workers. For instance, the number of doctors (specialists) has increased from 7 in 2016 to 64 in 2020, while that of medical doctors has increased from 144 in 2016 to 270 in 2020.¹²⁵⁶ The number of nurses has also significantly increased from 1,111 in 2016 to 1,342 in 2020.¹²⁵⁷ Overall, the number of health workers has increases from, 2,449 in 2016 to 3,179 in 2020.¹²⁵⁸ In 2021, measures taken to ensure progressive realization of the right to health included adding new healthcare workers, allocating budget for the health sector, and provision and distribution of medicines and medical supplies.

3.3.3. Challenges hindering effective realization of the right to health

Despite the various efforts made by the Revolutionary Government of Zanzibar to ensure progressive realisation of the right to health, there are still various challenges that were observed to hinder effective realization of this right in 2021.

In his ministry's budget speech for the financial year 2021/22, the Minister of Health, Social Welfare, Elderly, Gender, and Children, Hon. Nassor Ahmed Mazrui highlighted several challenges in the health sector. These challenges include shortage specialists, including in the field of radiology and pharmacy; shortage of medical equipment; and shortage of some of the medicines.¹²⁵⁹

Community members reached by ZLSC and ZAFYCO through the human rights survey in Pemba and Unguja also highlighted some challenges they face in accessing health services in their communities. These challenges include shortage of medicines and medical supplies, unethical conduct by doctors and nurses, shortage of nurses and doctors, long distance to a health facility/centre, overcrowding at some of the health centres, and mistreatment of some of the patients, especially by nurses. One of the respondents said:

¹²⁵⁶ *Zanzibar in Figures 2020* (supra).

¹²⁵⁷ *Ibid.*

¹²⁵⁸ *Ibid.*

¹²⁵⁹ HOTUBA YA WAZIRI WA AFYA, USTAWI WA JAMII, WAZEE, JINSIA NA WATOTO, MHESHIMIWA NASSOR AHMED MAZRUI KWA MWAKA WA FEDDHA 2021/22, <http://www.zanzibarassembly.go.tz/files/budgets/ministerial-budget/1622732556.pdf>.



“The biggest challenge in for health centres is shortage of nurses and doctors.”

Community member, Mjini Magharibi

Some of the interviewed respondents singled out nurses for criticism, noting that some of them lack professionalism. One of the respondents said:

“There are many nurses, but most of them lack professionalism.”

Community member, Mjini Magharibi

Like in other countries across the world and Tanzania Mainland, the Covid19 pandemic affected enjoyment of the right to quality health services. The pandemic disrupted the provision of health services and created a big burden for healthcare workers. Another public health concern for Zanzibar is drug abuse and addiction. It was reported in June 2021 that there were approximately 2,600 drug addicts in Zanzibar.¹²⁶⁰

Discrimination and stigma in provision of health services was reported to be a key challenge caused by the Covid19 pandemic. One community member in Urban Wes mentioned that she witnessed a patient that was suspected of having Covid19 being taken into the Covid19 ward before even the test results were taken.¹²⁶¹ Some of the health centres and hospitals also reduced the number of patients to be attended daily, hence severely limiting access to health services and causing congestion at some of the health facilities. Another community member said that even after the pandemic erupted women in maternity wards continued to share beds, due to shortage of beds.¹²⁶² There was increased commitment and progressive efforts on the part of the Government to raise awareness around the pandemic, report Covid19 cases, take preventive measures, encourage citizens to vaccinate, and provide necessary health services.¹²⁶³

3.4. Right to Water

3.4.1. Introduction

The UN Committee on Economic, Social and Cultural Rights defines the right to water as the right of everyone to **sufficient, safe, acceptable and physically accessible** and **affordable** water for personal and domestic uses.¹²⁶⁴ It is also known as right to water and sanitation and

¹²⁶⁰ Jesse Mikofu “Watu 2,600 wanatumia dawa za kulevya Zanzibar” *Mwananchi* Newspaper, July 2021.

¹²⁶¹ ZLSC & ZAFAYCO Human Rights Survey 2021: Unguja Field Report.

¹²⁶² Ibid.

¹²⁶³ Ibid.

¹²⁶⁴ See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.*



is essential and indispensable in ensuring life with dignity.¹²⁶⁵ Right to water is not expressly provided for under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966, instead, according to the UN Human Rights Council, it is derived from Article 11 of the convention, which provides for the right to adequate standard of living.¹²⁶⁶

Unlike other countries like South Africa whereby the right to water is enshrined in their constitution,¹²⁶⁷ the right to water is not provided in the Constitution of Zanzibar. However the Revolutionary Government of Zanzibar has taken various measures to ensure that all people in Zanzibar enjoy this right. Different policies, strategies, plans, programmes and projects were formulated to address issue of water in Zanzibar. These included the Water policy (RGoZ, 2004), Forest policy (1996), Education policy (RGoZ, 2006), Tourism policy (RGoZ, 2005), and Environmental policy (RGoZ, 1992, 2013).

3.4.2. Government action to ensure progressive realization of the right to water

In Zanzibar, the duty to produce clean and safe water falls under the government executive agent, the Zanzibar Water Authority (ZAWA).¹²⁶⁸ The authority is responsible for formulating water policies, supply of clean water and collection of nominal charges from water recipients. ZAWA has a duty to contact international organizations on improvement of water.¹²⁶⁹ The authority provides water services in both urban and rural areas. Currently those who enjoy the right to water are more than 76 per cent of Zanzibaris, the vast majority of whom live in rural areas and who now have access to safe water.¹²⁷⁰ The target of the authority is to give water services to not less than 250 meters from where people are living in rural area.¹²⁷¹ However, the water supply in urban area is a problem. Most of the inhabitants of the town area use privately owned wells as their source of water and in most cases, the water not really pure, clean and is usually salty.

Addressing the House of Representatives during his budget speech in

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].

1265 Article 1.1 of the General Comment No. 15. *The right to water*, UN Committee on Economic, Social and Cultural Rights, November 2002,

1266 International Bank for Reconstruction and Development (IBRD), World Bank. *The Human Right to Water. Legal and Policy Dimensions*. 2004. www.wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2004/10/18/00009034120041018135134/Rendered/PDF/302290PAPER0Human0right0to0H20.pdf (accessed on 20th May 2015). 331SC McCaffrey 'The basic right to water' in EB Weiss et al (eds) *Fresh Water and International Economic Law* (2005) 93-94.

1267 Section 27(1) of the Constitution of South Africa 1996.

1268 Zanzibar Water Authority Act No. 4 of 2006.

1269 Ibid.

1270 Zanzibar Celebrates Safe Rural Water with the African Development Bank.

1271 Budget speech of Ministry of Water and Energy 2020/2021.



2020, the Minister responsible for water claimed that in the financial year 2019-2020 the Ministry had implemented different projects which included projects for the supplying of water to both Zanzibar Town and the rural areas.¹²⁷² The Government has been working closely with several development partners including China, Japan, ADB, BADEA, and some private local institutions to make sure that safe water is available to the people by constructing bore holes and water wells.¹²⁷³ For instance, the ruler of Ras al Khaiman has sponsored a project of drilling 150 deep wells in the urban areas.¹²⁷⁴

In 2019, 150 wells were drilled under the aid of the government of Ras al Khaimar where up to 2019-20 are already operational. Also, the Zanzibar Urban Water Supply Project (ZUWSP) is working hard to ensure constant water supply in 27 Shehia of Stone Town and Ngambu ya Zamani. Likewise, three big water tanks are expected to be built at Saateni and Mnara wa Mbao.¹²⁷⁵

In 2021, ZAWA also succeeded in ensuring provision of clean and safe water in some of the areas which previously lack such service in Unguja and Pemba. This was made possible by repair of water pumps and motors at 39 centres, of which 17 were in Unguja and 22 were in Pemba.¹²⁷⁶ During the financial year 2020/21, the Government also purchased 19 new water pumps and motors to replace those which were damaged at some of the wells in Unguja and Pemba.¹²⁷⁷ A total of 31 wells in Unguja and 21 in Pemba were also cleaned to ensure people get access to clean water.¹²⁷⁸

3.4.3. Challenges hindering effective provision of clean and safe water

Despite the various efforts made by the Revolutionary Government of Zanzibar to ensure progressive realisation of the right to water, there are still various challenges that were observed to hinder effective realization of this right in 2021.

Challenges affecting enjoyment of the right to clean and safe water include climate change, which has affected rainfall; water loss and leakages; and lack of access to clean and safe water in some areas in

1272 See SERIKALI YA MAPINDUZI YA ZANZIBAR WIZARA YA MAJI, NISHATI NA MADINI HOTUBA YA WAZIRI WA MAJI, NISHATI NA MADINI MHESHIMIWA SULEIMAN MASOUD MAKAME KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA WA FEDHA 2021/2022, MEI, 2021, at <http://www.zanzibarassembly.go.tz/files/budgets/ministerial-budget/1622470998.pdf>.
1273

1274 Ibid, p. 18.

1275 Speech of the Zanzibar President in commemoration of 57 years Anniversary of Zanzibar Revolution.

1276 See HOTUBA YA WAZIRI WA MAJI, NISHATI NA MADINI (supra).

1277 Ibid.

1278 Ibid.



Zanzibar. In recent years, ZAWA has claimed to have 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. Other factors contributing to limited access to clean and safe water in some areas include contamination of water sources, old water infrastructures, and non-payment of water bills. However, in his ministry's budget for the financial year 2021/22, the Minister of Water, Energy and Minerals, Hon. Suleiman Masoud Makame, revealed that during the financial year 2020/21, the Government reduced water loss in different parts of Unguja and Pemba, by addressing a total of 1,489 leakages in Unguja and 1,382 in Pemba.¹²⁷⁹ He added that his ministry also raised public awareness on importance of paying water bills in 81 areas, through 15 television and radio programmes, social media, and public meetings.¹²⁸⁰ As a result of these programmes, citizens in urban areas were said to be more motivated to pay water bills.¹²⁸¹

We recommend that the government should improve provision of water supply with the view to alleviate the 20% deficit of water supply. It is our hope that, this undertaking will be fulfilled for the benefit of Zanzibaris, hence saving a lot of money for people who have had to buy water thereby adding another burden over and above the persistent poverty facing people. In addition a proper supply of water will reduce time spent by all, men women and children looking for clean water especially in the urban areas.

Some of the interviewed community members who responded to the human rights survey in Zanzibar pointed out that in some areas people pay water bills, but they do not get the water service often.¹²⁸² For instance, in Kiembesamaki, it was revealed that some people may not get access to water for up to two weeks. There are also areas such as Stone Town and Kwarara in Unguja and Machomane and Chake Chake in Pemba, which were said to experience limited access to clean and safe water.¹²⁸³

The Zanzibar Development Vision 2050 has also highlighted some challenges in the WASH services, including in the water sub-sector.¹²⁸⁴ According to the Vision, WASH services face several operational challenges caused by pressure imposed by a growing population and

1279 See HOTUBA YA WAZIRI WA MAJI, NISHATI NA MADINI (supra).

1280 Ibid.

1281 Ibid.

1282 ZLSC & ZAFAYCO Human Rights Survey 2021.

1283 Ibid.

1284 Zanzibar Development Vision 2050, p. 37.



energy-intensive economic activities.¹²⁸⁵ In the water sub-sector, main challenges relate to the maintenance and operation of water supply as well as high operational costs, while in sanitation, waste is largely collected unsustainably.¹²⁸⁶

3.5. Right to Work

3.5.1. Introduction

Right to work is provided for under the various international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and The African Charter on Human and Peoples' Rights (ACHPR).¹²⁸⁷ It gives an individual an opportunity to gain a living by work they freely choose or accept.¹²⁸⁸ An emphasis is made for governments to set up social, civil, political and economic mechanisms to enable full and progressive realization of the right to work.¹²⁸⁹ Right to work includes right to gain living by work and right to just and favourable working conditions.

In Zanzibar, the right to work is provided under section 21 (3) and (4) of Constitution of Zanzibar (1984), which states that all people have the right to work and are entitled to equal rights and privileges and can hold any position in employment under jurisdiction of Zanzibar. The constitution further asserts that the right should be enjoyed without discrimination of any kind, and remuneration should be given according to one's work, that is, the extent of the work he does and his competency.

3.5.2. Government action to promote right to work

To safeguard the right work for the Zanzibaris, the Government of Zanzibar has taken various measures, including putting in place a supportive legal framework. The Employment Act of 2005 is one of the key pieces of legislation that promotes and safeguards labour rights, covering both employers and employees. The ministry responsible for labour plays a leading role in promoting labour rights and ensure implementation of labour laws and regulations, including the Employment Act of 2005. Zanzibaris are also required to produce a Zanzibar ID before they can be employed, helping to secure their employment right.

3.5.3. State of employment in Zanzibar

1285 Ibid.

1286 Ibid.

1287 Article 15 of ACHPR.

1288 Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, 1966

1289 Ibid 6(2)



In 2014, there were 528,090 employed persons in Zanzibar of which 56% were males and 40% were females.¹²⁹⁰ For both rural and urban areas, males were more likely to be employed than females, as males accounted for 60.3% of urban employed persons and 53.4% of rural employed persons. Majority of employed persons (61.5%) lived in rural areas. Urban West (39.3%), Pemba North (18.3%), and Pemba South (17%) recorded the highest proportion of employed persons, while Unguja North (14.2%) and Unguja South (11.2%) recorded the lowest proportion of employed persons.¹²⁹¹

In terms of underemployed persons, the 2014 Zanzibar Integrated Labour Force Survey showed that the total underemployment rate was 11.9%, whereby rural areas accounted for 11.6% of underemployment and urban areas accounted for 12.3%.¹²⁹² Females (13%) were more likely to be underemployment than males (11%) and most of them found in rural areas. The majority of underemployed persons were found in Urban West Region (42.1%).¹²⁹³

Regarding unemployment, according to the labour force survey, there were 87,997 unemployed persons in 2014, of whom 61,904 were in urban areas and 26,195 were in rural areas.¹²⁹⁴ Females constituted the majority of the unemployed persons in urban areas (22.9%), while unemployment rate for males was 6%. The region with the highest unemployment rate was again Urban West, with 23.1%, followed by Unguja North with 10.1%. Overall, unemployment rate in 2014 was 14.3%, whereby in urban areas it was 23.3% and in rural areas it was 7.5%.¹²⁹⁵

For youth, the labour force survey showed that 68.8% of youth were either working or seeking work and on average, the youth employment ratio to the population ratio (absorption rate to total youth) was 57.4% in which males had higher rate (67.7%) than females (48.2%).¹²⁹⁶ Employed youth in 2014 were 265,107, with males constituting 55.4% and females 44.6%. for both rural and urban areas, there were high proportions of males employed than females. Among the 265,107 youth, 73,448 were underemployed, hence the underemployment rate of 14.1%. Overall inactivity rate for youth was 27.2%, with males having a lower rate of 24.4% compared to females, who had the rate of 29.6%. The inactivity rate was more common in urban areas (33.2%) than rural areas (21.9%).¹²⁹⁷

1290 See Revolutionary Government of Zanzibar, Office of Chief Government Statistician President's Office, Finance, Economy and Development Planning Zanzibar, Zanzibar Integrated Labour Force Survey, 2014, , at <http://www.ocgs.go.tz/php/ReportOCGS/LFS%202014%20Final.pdf>.

1291 Ibid.

1292 Ibid.

1293 *Zanzibar Integrated Labour Force Survey, 2014* (supra).

1294 Ibid.

1295 Ibid.

1296 Ibid.

1297 Ibid.



In 2021, it was revealed that the Revolutionary Government of Zanzibar had taken various measures to promote the right to work during the financial period of 2020/2021. For instance, the Minister of Information, Youth, Culture, and Sports, Hon. Tabia Maulid Mwita (MoHR), stated in May 2021 that the Government had allocated Tshs. 2,000,000,000 for the youth employment programme, and by then 30% of the budget had been used.¹²⁹⁸ He noted that his ministry had also created employment opportunities for 100 youth (51 females, 49 males).¹²⁹⁹ A total of 383 youth were also trained on economic activities and provided 246 youth with carving and welding equipment during the financial year of 2020/21. Hon. Tabia Maulid Mwita also noted that the financial year 2021 the budget requested for the youth employment programme was Tshs. 7,000,000,000.¹³⁰⁰

The Minister of the President's Office – Labour, Economy, and Investment, Hon. Mudrik Ramadhan Soraga (MoHR), revealed in May 2021 that his ministry's dignified employment programme had facilitated employment of 1,272 people (603 males, 669 females) in the private sector, particularly in the sectors of hotel/hospitality, industry, private school and security.¹³⁰¹ He also noted that ministry facilitated fieldwork for 106 youth (35 females, 71 males) in the field of hospitality. During the financial year 2020/21, the ministry also inspected workplaces to check compliance with labour laws, including the Occupational Health and Safety Act of 2005.¹³⁰² A total of 157 workplaces were inspected, of which 106 were in Unguja and 51 in Pemba. Television and radio programmes on occupational health and safety and labour laws were also created and aired. To promote the right to work, the ministry reported that the Government had provided economic empowerment loans to a total of 156 groups of youth, women, and persons with disabilities. A total of Tshs. 637,425,000 was provided to the groups.¹³⁰³ The Government also continued to engage and empower youth, including through promoting entrepreneurship and creating market opportunities. Market opportunities are created through various trade fairs organized by the Revolutionary Government of Zanzibar, including *Tamasha*

1298 See SERIKALI YA MAPINDUZI ZANZIBAR HOTUBA YA BAJETI YA WAZIRI WA HABARI, VIJANA, UTAMADUNI NA MICHEZO. MHESHIMIWA TABIA MAULID MWITA (MBM) KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KATIKA BARAZA LA WAWAKILISHI KWA MWAKA WA FEDHA 2021/2022, at <http://www.zanzibarassembly.go.tz/files/budgets/ministerial-budget/1622621931.pdf>.

1299 Ibid.

1300 Ibid.

1301 See SERIKALI YA MAPINDUZI YA ZANZIBAR HOTUBA YA AFISI YA RAIS KAZI UCHUMI NA UWEKEZAJI MHE. MUDRIK RAMADHAN SORAGA (MBM) KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA WA FEDHA 2021/2022 KATIKA BARAZA LA WAWAKILISHI ZANZIBAR, Mei, 2021, at <http://www.zanzibarassembly.go.tz/files/budgets/ministerial-budget/1620712363.pdf>.

1302 Ibid.

1303 Ibid.



la Biashara, Tamasha la Mwani, Tamasha la Wajasiriamali, Spice Festival, and Seafood Festival.

3.5.4. Community members' perceptions on right to work and state of employment: Human rights survey findings

Community members who responded to the human rights survey conducted by ZLSC and ZAFAYCO in 2021 were asked to give their views on the right to work and state of employment in their community. Most of them acknowledged government efforts to create employment, but noted that unemployment is still a big challenge, especially for youth. Others, especially in Pemba, claimed that the job market is tainted with corruption and discrimination in employment. Other challenges relating to employment that were mentioned include low-pay, reluctance on the part of youth to self-employ, and child labour.

“Youth’s right to work is recognized, but in practice there is discrimination and nepotism in employment.”

Community member, Pemba South

“Young people should not just and wait to be employed. They should instead seek to employ themselves, and the Government should create an enabling environment, including low interest loans.”

Community member, Urban West

“Unemployment is a big challenge for youth, contributed by corruption.”

Community member, Mcheweni – Pemba North

Some interviewed respondents were concerned that while many youth graduates after completed their higher education each year, there are few job opportunities, causing most of them to loiter around and hang out at some public places without doing anything.¹³⁰⁴ Some of the respondents stated that some youth, who are capable of working, make no attempt to employ themselves, instead choosing to wait until they can get employed. Most university graduates prefer with colour jobs.¹³⁰⁵ In January 2021, the President of the Revolutionary Government of Zanzibar, H.E. Dr. Hussein Ali Mwinyi, insisted that the Government will always take measures to resolve the unemployment challenge but urged youths not to select jobs or make job preference when employment opportunities present themselves.¹³⁰⁶

1304 ZLSC & ZAFAYCO, Human Rights Survey 2021: Unguja Field Report; ZLSC & ZAFAYCO, Human Rights Survey 2021: Pemba Field Report.

1305 Ibid.

1306 See “MWINYI STRESSES ROLE OF YOUTHS IN REFORMS” DAILYNEWS Newspaper



3.5.5. Challenges hindering effective realization of the right to work

Apart from the challenges highlighted by the respondents of the survey above, other challenges that affected enjoyment and realization of the right to work in 2021 included shortage of workers, especially in the health sector; poor working conditions; and loss of employment, aggravated by the Covid19 pandemic. Loss of employment was especially felt in the tourism industry, as the number of tourists visiting Zanzibar significantly decreased during the Covid19 era, especially in 2020 and the first half of 2021. Another challenge, which is specific for the hospitality sector (hotels) is preference of hotels to hire more skilled foreign nationals, especially in management.¹³⁰⁷ However, the recently developed Blue Economy Policy to formalise blue development provides hope in terms of employment as it is expected generate more employment.¹³⁰⁸

3.6. Right to Own Property

3.6.1. Introduction

Article 17 of the Universal Declaration of Human Rights of 1948 recognizes the right of everyone to own property alone as well as in association with others; and that they shall not be deprived of that right arbitrarily by anyone.¹³⁰⁹

Right to acquire land in Zanzibar is governed by various laws. The main laws are: the Constitution of Zanzibar of 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 the acquisition is of 'utmost importance' and 'absolutely important' to legalise acquisition of a person's property.

Although the Constitution of Zanzibar 1984 directs the Government, when it acquires the private lands for public interest, to compensate a holder fairly and adequately,¹³¹⁰ there exists no interpretation on what constitutes fair and adequate compensation. The Land Tenure Act 1992

[online], 1 January 2021, at <https://dailynews.co.tz/news/2021-01-105ffb3804216a4.aspx>.

1307 See the Zanzibar Development Vision 2050 (supra).

1308 Ibid.

1309 Article 17 of the Universal Declaration of Human Rights,

1310 Section 17 of the Constitution of Zanzibar, 1984



declares that a holder would be compensated according to the market value and unexhausted improvements.¹³¹¹

3.6.2. Government action to promote right to own property

In 2021, the Revolutionary Government of Zanzibar continued to take various measures to promote and safeguard the right to own property, including implementation of various land related programmes, including land administration and management. For instance, through implementation of such programmes, for the financial year 2020/21, the Government, through the Judiciary, received a total of 237 land dispute by March 2021, of which 74 were resolved and 163 were under investigation.¹³¹² In her ministry's budget speech for the financial year 2021/22, the Minister of Lands and Housing Developments, Hon. Riziki Pembe Juma (MoHR), revealed that from the year 2006 to March 2021, a total of 3,603 land disputes had been filed in Zanzibar, of which 2,125 were from Unguja and 1,485 from Pemba. She stated that 94% of these disputes had been resolved.¹³¹³

Apart from resolving land disputes, the Government also continued to issue titles to landowners and register titles and ensure proper administration and management of land to reduce land disputes and safeguard land rights. For instance, a total of 574 titles were issued, of which 429 were issued in Unguja and 145 in Pemba.¹³¹⁴

3.6.3. Community members' perceptions on enjoyment of the right to own property: Survey findings

Community members who participate in the human rights survey conducted by ZLSC and ZAFYCO in Unguja and Pemba were asked to provide their views on their enjoyment of the right to own property. Majority of interviewed respondents identified land disputes and land grabbing, including at family level, as main barriers to enjoyment of their right to own property.¹³¹⁵ Other barriers that were mentioned include denial of inheritance rights by some of the family members, corruption, discrimination in property ownership and acquisition in the community among women, and low awareness about land rights in some areas.¹³¹⁶

1311 Section 56 of the Land Tenure Act, 1992

1312 See HOTUBA YA WAZIRI WA ARDHI NA MAENDELEO YA MAKAAZI MHESHIMIWA RIZIKI PEMBE JUMA (MBM) KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA WA FEDHA 2021/2022 KATIKA BARAZA LA WAWAKILISHI ZANZIBAR, at <http://www.zanzibarassembly.go.tz/files/budgets/ministerial-budget/1622271726.pdf>.

1313 Ibid.

1314 Ibid.

1315 ZLSC & ZAFAYCO Human Rights Survey 2021: Pemba Field Report; ZLSC & ZAFAYCO Human Rights Survey 2021: Unguja Field Report.

1316 Ibid.



“Land disputes, including border disputes, are becoming a big challenge, contributed by improper land use.”

Community member, Urban West

3.6.4. Women’s property and inheritance rights

3.6.4.1. Overview

Like in Tanzania Mainland, in Zanzibar concerns over women’s property and inheritance rights persist. The legal environment in both part of the United Republic of Tanzania has been said to be not very supportive for women’s property and inheritance rights. There have also been concerns community attitudes over women’s right to own and inherit property, with women continuing to be seen by some members of the community as not deserving of inhering property because ‘they will get married and move into properties of their husbands.’ According to the Zanzibar Development Vision 2050, nearly 45% of Zanzibar women were employed in the informal economy and only 27.2% had the right of land occupancy as of 2015, which suggests that there is inequitable share of economic growth.¹³¹⁷

3.6.4.2. Political will to safeguard widows’ rights

One of the groups of women who have been victims of denial or infringement of property and inheritance rights in Tanzania Mainland and Zanzibar are widows. In April 2021, the President of the Revolutionary Government of Zanzibar, H.E Dr. Hussein Ali Mwinyi, met with a delegation from the Zanzibar Widows Organization (ZAWIO) to discuss various challenges that widows were facing in enjoying their property and inheritance rights.¹³¹⁸ During the meeting, the President agreed with ZAWIO that there is a need for legal reforms to safeguard widows’ rights in Zanzibar and pledged to take action in that regard. He requested ZAWIO to develop recommendations that will inform amendment of laws to safeguard property rights of widows and commended the organization for their good and voluntary work to provided assistance to widows in the country. The President also donated Tshs. 10 million to the organization to assist in running of the day-to-day activities and provision of *iftar* to widows.¹³¹⁹

¹³¹⁷ Zanzibar Development Vision 2050, p. 39.

¹³¹⁸ Elias Msuya “Dk Mwinyi: Kuna haja kurekebisha sheria kandamizi kwa wanawake wajane Zanzibar” Mwananchi Newspaper [online], 20 April 2021, at <https://www.mwananchi.co.tz/mw/habari/kitaifa/dk-mwinyi-kuna-haja-kurekebisha-sheria-kandamizi-kwa-wanawake-wajane-zanzibar-3369702>.

¹³¹⁹ Ibid.





Picture 3: President of Zanzibar, H.E Dr. Hussein Ali Mwinyi, addressing a delegation from ZAWIO at State House in April 2021

Photo credit: Issa Michuzi Blogspot

In April 2021, the Board Chairperson of ZAWIO also called for legal reforms to safeguard widows' rights during a press conference organized to highlight the progress made by the organization since its establishment in 2019.¹³²⁰ He noted that the existing laws do not provide adequate protection to widows, who are often left with nothing and a burden of taking care of children on their own.¹³²¹

3.6.5. Land conflicts/disputes

In 2021, land disputes were identified as a key issue affecting realization of the right to own property in Zanzibar. In February 2022, H.E President Dr. Hussein Ali Mwinyi revealed during a press conference that his government was planning to form a commission that will address land disputes in various parts of Zanzibar.¹³²² The President acknowledged that there are injustices in the land sector, including property grabbing, which is why formation of the commission cannot come soon enough. While the President's announcement about formation

¹³²⁰ See "KUOMBA SHERIA IBADILISHWE KULINDA WANAWAKE WANAOPEWA TALAKA" HabariLeo Newspaper [Online], 25 April 2021, at <https://habarileo.co.tz/habari/2021-04-2460842c9a81160.aspx>.

¹³²¹ Ibid.

¹³²² Lukelo Francis "Watendaji Wasio Waadilifu Watajwa Kuchochea Migogoro ya Ardhi Zanzibar" The Chanzo, 1 March 2022, at <https://thechanzo.com/2022/03/01/watendaji-wasio-waadilifu-watajwa-kuchochea-migogoro-ya-ardhi-zanzibar/>.



of the commission was generally met with relief, it was reported that some of the people who have been involved in land disputes were less optimistic, given the corruptness and unethical conduct of some of the land administration officials.¹³²³ One woman in Pemba indicated that she had been involved in a land dispute that remains unresolved for 20 years. One person even recommended that commission members should come from Tanzania Mainland, leveling his mistrust of Zanzibari officials.¹³²⁴ Non-government stakeholders such as the Zanzibar Female Lawyers Association (ZAFELA) and the ZLSC also commented on the issue of land disputes, citing various factors which contribute to the disputes, including lack of integrity among those tasked with resolving land disputes; the culture of ‘trust’ among the Zanzibari, which cause some people to enter into land agreements orally; and lack of awareness.¹³²⁵

In the period of July 2020 to March 2021, the Zanzibar Land Tribunal received a total of 139 new land disputes, filed in Unguja and Pemba.¹³²⁶ A total of 132 cases were also resolved during this period, while 218 cases were continuing in both Unguja and Pemba.¹³²⁷

Table 42: Land disputes received and determined by the Zanzibar Land Tribunal – July 2020 to March 2021

Region	New Cases	Resolved Cases	Continuing Cases
Urban West	28	21	51
Unguja North	55	53	88
Unguja South	15	08	30
Pemba North	18	21	29
Pemba South	23	29	20
Total	139	132	218

Source: Lands and Housing Developments Budget Speech, 2021/22

3.7. Right to Adequate Standard of Living

3.7.1. Introduction

An adequate standard of living is a human right recognized under various

¹³²³ Ibid.

¹³²⁴ Ibid.

¹³²⁵ Ibid.

¹³²⁶ HOTUBA YA WAZIRI WA ARDHI NA MAENDELEO YA MAKAAZI MHESHIMIWA RIZIKI PEMBE JUMA (MBM) KUHUSU MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA WA FEDHA 2021/2022 KATIKA BARAZA LA WAWAKILISHI ZANZIBAR, at <http://www.zanzibarassembly.go.tz/files/budgets/ministerial-budget/1622271726.pdf>.

¹³²⁷ Ibid.



international human rights instruments and is understood to establish a minimum entitlement to food, clothing and housing at an adequate level. According to the Universal Declaration of Human Rights (UDHR), “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.”¹³²⁸ This right is also provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹³²⁹ It includes right to food and right to shelter.

3.7.2. Government action to boost adequate standard of living

Right to adequate standards of living is closely associated and dependent on the rights to education, health, water, work, and own property. In 2021, government action to promote realization of these rights, as discussed above, contributed to promoting the right to adequate standard of living.

3.7.3. Challenges hindering effective realization of the right to standard of living

In 2021, challenges that hindered effective realization of the rights to education, health, water, work, and own property for some Zanzibaris also acted as barriers to enjoyment of the right to adequate standard of living. However, the situation was exacerbated by the impact of the Covid19 pandemic, which caused challenges such as loss or reduction of income, loss of employment or work, and delays in payment of wages.

While since the revolution of 1964 the Revolutionary Government of Zanzibar has done well to ensure proper housing for Zanzibaris, population growth and unplanned settlements (especially in and near urban centres) continue to present a challenge in terms of realization of the right to adequate housing.¹³³⁰

In the words of the Government, this is in line with the low quality of housing and accompanying infrastructure, such as water, sanitation, and energy, calling for wider expansion and modernisation of settlements.¹³³¹

¹³²⁸ Article 25(1) of UDHR.

¹³²⁹ Article 11(1) of ICESCR

¹³³⁰ Zanzibar Development Vision 2050, p. 46.

¹³³¹ Ibid.



3.8. Impact of Covid19 on Economic, Social and Cultural Rights

The whole of Tanzania, including Zanzibar, felt the impact of Covid19 in 2020 and 2021. Overall, the pandemic negatively affected economic and social rights in various ways, including disrupting provision of social services. Community members who responded to the human rights survey conducted by ZLSC and ZAFAYCO in Pemba and Unguja were asked whether the pandemic contributed to loss or reduction of income, loss of employment, mental health deterioration, limited access to health services, increase in crime and disruption of education. They were also asked whether the pandemic has created made it more difficult to access quality or nutritious food and forced them to change source of income. Over half of the respondents said they the pandemic caused all these challenges. Loss or reduction of income (88%), mental health deterioration (86%), changing source of income (73%), and increase in crime (72%) were said to be top challenges during the Covid19 era of 2020 and 2021.

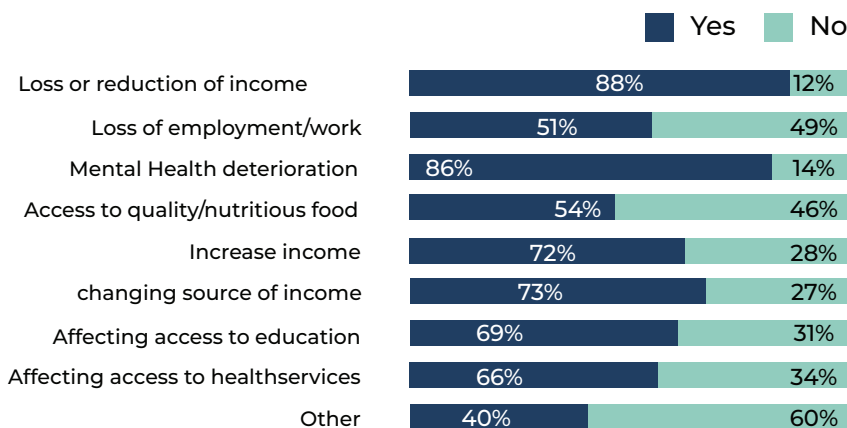


Figure 84: %Responses on effects of Covid19 on social and economic rights in Zanzibar

Source: Field Data, 2021



CHAPTER 4: COLLECTIVE RIGHTS

4.1. Overview

Collective rights are the rights that belong to the group of people as opposed to individual rights. An individual enjoys collective rights as part of a group,¹³³² which is they are also called solidarity rights. These rights are form the third generation of human rights and are provided for under several international and regional human rights instruments, including the: the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; the African Charter on Human and People's Rights (ACHPR) of 1981 and the United Nations Charter of 1945. Examples of collective rights are the right to self-determination, the right to clean and safe environment, the right to enjoy and benefit from natural resources, the right to peace and the right to development.

This chapter looks at the right to development, the right to enjoy and benefit from natural resources, and the right to clean and healthy environment in Zanzibar for the period of 2021.

4.2. Right to Development

4.2.1. Introduction

The United Nations (UN) has defined development as “...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”¹³³³

To ensure effective realization of this fundamental right, Governments are obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals ensure meaningful

1332 Andrea, N. (2018) Collective Rights: In The United Nations Declaration On The Rights of Peasants And Other People Working In Rural Areas, Fian International available at https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/droits_collectifs_UK_web.pdf, accessed on 18th March 2019.

1333 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 2021.



participation in development¹³³⁴ and fair distribution of benefits resulting from such development. States from different parts of the world are also required to co-operate with each other in ensuring development and eliminating obstacles to development.¹³³⁵

In line with the interdependent and interrelated nature of human rights, right to development cannot be achieved without considering other human rights. In Zanzibar's context, realization of human rights enshrined in the bill of rights in the Constitution of Zanzibar (1984) is essential for realization of the right to development.

4.2.2. Situation of enjoyment and realization of the right to development

According to the UN Declaration on the Right to Development, the right to development entails the right to economic development, the right to social development, the right to cultural development, and the right to political development.¹³³⁶

In Zanzibar, realization of the right to development is governed by the Zanzibar Development Vision 2050, which replaced the Zanzibar Development Vision 2020, which spanned from the year 2000 to 2020. In October 2020, the Revolutionary Government of Zanzibar announced that Zanzibar had successfully achieved the Zanzibar Development Vision 2020's goal of attaining lower-middle income status by 2020, largely contributed by the high rate of economic growth.¹³³⁷

Other key achievements of the Vision include: nearly eradicating abject poverty with 9.3% of the population below poverty line in 2019/20; achieving universal education with gross enrollment ratio of 118.1 in 2019; improved quality and accessibility of healthcare with continuous increase in healthcare budget; expanded opportunities for disadvantaged groups, including PWDs, women, children, and the elderly.¹³³⁸

The Zanzibar Development Vision 2050 was developed through a series of stakeholder consultations and sectoral analyses to determine national priorities in policy making, project planning and decision-making, taking into account the unfinished agenda in the previous Vision and the impact of the Covid19 pandemic. The new Vision rests

1334 Ibid.

1335 Ibid Article 3(3)

1336 Article 1(1) of the UN Declaration on the Right to Development.

1337 See The Revolutionary Government of Zanzibar, Zanzibar Development Vision 2050, October 2020, at <http://planningznz.go.tz/doc/new/ZDV2050.pdf>.

1338 Ibid.



on four main pillars,¹³³⁹ namely: Pillar I: Economic Transformation;¹³⁴⁰ Pillar II: Human Capital and Social Services;¹³⁴¹ Pillar III: Infrastructural Linkages;¹³⁴² and Pillar IV: Governance and Resilience.¹³⁴³

Through these pillars, Zanzibar seeks to attain upper middle-income status by the year 2050 through sustainable and inclusive human development.

Considering the measures and progress made since the year 2020, it is fair to conclude that Zanzibar has fared well in terms of economic and infrastructural development. However, as stated in Chapter Three above, realization of economic rights in 2021 was not without its challenges and addressing these challenges will be key in achieving the goal and targets in the new development vision.

According to the UN Declaration on the Right to Development, "States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development."¹³⁴⁴

In the context of social development, this includes provision of quality education, health, and water services, as well as creating favourable conditions for enjoyment of the right to work. These factors are essential for ensuring human development and reducing poverty, including through improving adequate standard of living. However, as stated in Chapter Three above, despite progress made in ensuring progressive realization of social and economic rights, various challenges persist in the key sectors of education, health, and water, including budgetary constraints, shortages of facilities and equipment, unemployment and underemployment, and shortages of human resources. Low quality of housing and accompanying infrastructure such as water, sanitation, and energy¹³⁴⁵

is also a barrier to realization of the right to social and economic development. Consequently, progress made in enjoyment of human/personal development, particularly through reduction of poverty, has been slow.

Under the UN Declaration on the Right to Development, States are required to stake steps to eliminate obstacles to realization of civil and

1339 Ibid.

1340 Priority areas are: Agricultural production; Industrialisation and Trade; Tourism; Blue Economy; Oil and Gas; Creative and Digital Economy; and Finance and Investment.

1341 Priority areas: Education and Training; Research and Innovation; Health; Water, Sanitation and Hygiene; Social Protection and Employment; and Culture, Heritage and Sports.

1342 Priority areas: Housing and Settlements; Land Transportation; Seaports and Marine Transportation; Airports and Air Transportation; Energy; and Information and Communications.

1343 Priority areas: Land Utilization and Management; The Environment and Climate Change; Safety, Security and Disaster Management; and Governing Institutions and Public Services.

1344 Article 3(1) of the UN Declaration on the Right to Development.

1345 See the Zanzibar Development Vision 2050, p. 46.



political rights.¹³⁴⁶

As observed in Chapter Two of this report, several obstacles to realization of civil and political rights continued to exist in 2021, including in the administration of justice, criminal justice, and political participation. Most of these obstacles are generated by gaps in legal frameworks, with some of the laws and regulations containing provisions with fall short of international human rights standards. In political participation, women are disproportionately affected by gender gaps in the electoral and decision-making legal framework. The amendments made in the Political Parties Act have also hindered effective enjoyment of the freedom of association of political parties, and consequently limited the enjoyment of the right to political development.

The UN Declaration on the Right to Development also stipulates that “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”¹³⁴⁷

Additionally, States are required to undertake effective measures to ensure that women have an active role in the development process.¹³⁴⁸

As pointed out above, equality of opportunity is still a big challenge in for women, youth, and PWDs in Zanzibar. Additionally, the Revolutionary Government of Zanzibar has itself acknowledged that “..despite progress in upholding disability rights, many PWDs continue to face difficulties in finding decent employment and education.”¹³⁴⁹

Regarding the right to cultural development, Zanzibar continues to make significant progress to ensure progressive realization of cultural rights. The Zanzibari people freely enjoy their right to culture as interference with cultural rights is almost non-existent. The Revolutionary Government of Zanzibar has also continued to take measures to preserve different cultural heritage sites in Zanzibar.

4.3. Right to Enjoy and Benefit from Natural Resources

4.3.1. Introduction

The right to natural resources is recognized under various international

¹³⁴⁶ Article 6(3) of the UN Declaration on the Right to Development.

¹³⁴⁷ Ibid, Article 8(1).

¹³⁴⁸ Ibid.

¹³⁴⁹ See the Zanzibar Development Vision 2050, p. 40.



and regional human rights instruments, as the same is recognised under the municipal laws in Zanzibar. 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: individual and state sovereignty over natural resources; exploitation of natural resources for the benefit of the people; necessity to reach consensual agreements to exploit natural resources; and utilization of natural resources for the purposes of human development.¹³⁵⁰

This right is connected to the right to development and right to self-determination; and is also recognized and protected under Article 21 of the African Charter on Human and Peoples’ Rights (Banjul Charter) of 1981. According to the Banjul Charter, “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.”¹³⁵¹

4.3.2. Situation of realisation and enjoyment of the right to enjoy and benefit from natural resources

In Zanzibar, natural resources include soil/land, oil and gas, water, forests, flora and fauna, marine resources. These natural resources are essential for generation of revenue and provide employment for many Zanzibaris, especially in the tourism, hospitality, agriculture, and fishing industries. Recognizing the importance of marine sources in driving the economy of Zanzibar, the Revolutionary Government of Zanzibar has adopted the Zanzibar Blue Economy Policy of 2020¹³⁵² and included blue economy as a priority area in the Zanzibar Development Vision 2025, considering “Zanzibar relies heavily on the sea for both social and economic activities.”¹³⁵³ The policy has been developed as a guiding framework for the implementation of the sea-based economy and aims to work in the priority areas of fisheries and aquaculture, maritime trade and infrastructure, energy, tourism and marine and maritime governance.¹³⁵⁴ Through implementation of this policy, it is believed that Zanzibar has the opportunity to increase employment, improve the balance of trade, promote food and nutritional security and maintain environmental resilience.¹³⁵⁵

Other measures taken by the Revolutionary Government of Zanzibar

1350 Ibid

1351 Article 21(1) of the Banjul Charter.

1352 See the Zanzibar Blue Economy Policy, October 2020, at <http://planningzanz.go.tz/doc/new/BE%20Policy-2020.pdf>.

1353 Ibid.

1354 Ibid.

1355 Zanzibar Blue Economy Policy, October 2020.



to promote the right to enjoy and benefit from natural resources include putting in place and implementing the legal and policy frameworks on natural resources, including water, environment, land, and oil and gas laws, regulations, and policies. Relevant government authorities also continued to take measures to ensure management, protection, and preservation of natural resources.

Despite the various measures taken to ensure realization of the right to enjoy and benefit from natural resources, several challenges persist and hinder effective realization of this right. These challenges include overexploitation of resources and environmental degradation, largely contributed by the growing population; climate change; tax evasion and avoidance; and corruption. High prices and low purchasing power among citizens have also contributed to limited access to land, which is a key natural resource. Corruption and tax evasion and avoidance lead to loss of revenue, which is essential for progressive realization of socio-economic and collective rights.

4.4. Right to Clean and Healthy Environment

4.4.1. Overview

Explicitly, the right to a healthy environment was first recognized in international environmental law during the Stockholm Conference in 1972, whereby the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972)¹³⁵⁶ was adopted.¹³⁵⁷

This conference is considered an important starting point in developing environmental law at international, regional, and national levels. It influenced legal and institutional developments in the field of environment, including creation of the United Nations Environment Programme (UNEP), and led to the development of the United Nations Conventions on the Law of the Sea (UNCLOS), a comprehensive framework for the establishment of global rules on the protection of the marine environment and marine living resources.¹³⁵⁸

Another key conference which contributed to the development and recognition of the right to environment is the Rio Conference, during which the Rio Declaration on Environment and Development 1992 (Rio Declaration)¹³⁵⁹ was adopted¹³⁶⁰.

¹³⁵⁶ Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972), <https://docenti.unimc.it/elisa.scotti/teaching/2020/22646/files/stockholm-declaration>.

¹³⁵⁷ See "The Right to A Healthy Environment" at <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module15.htm>.

¹³⁵⁸ Ibid.

¹³⁵⁹ Rio Declaration on Environment and Development 1992, <https://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf>,

¹³⁶⁰ The Right to A Healthy Environment (supra).



The right to a healthy environment is also implied under key human rights instruments such as the Universal Declaration of Human Rights (UDHR) of 1966 and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966. For instance, the UDHR provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...”¹³⁶¹

Article 12 of the ICESCR of 1966 goes further to suggest steps that a State Party should take to achieve full realization of this right. These include steps for preservation, treatment, and control of epidemic, endemic, occupational and other diseases.¹³⁶²

Article 24 of the African Charter on Human and Peoples’ Rights provides for a right to a satisfactory environment that is conducive to development.

Right to development is also provided for or implied in various other environmental-related conventions, including the 1972 World Heritage Convention, the 1985 Vienna Convention, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (UNEP), and the 1992 Convention on Biological Diversity (UNEP).¹³⁶³

According to World Health Organization (WHO), 24% of all global deaths, roughly 13.7 million deaths a year, are linked to the environment, due to risks such as air pollution and chemical exposure.¹³⁶⁴

This means that almost 1 in 4 of total global deaths are linked to environment conditions.

4.4.2. Key milestone: Right to environment now officially a human right

In 2021, the United Nations (UN) Human Rights Council recognised, for the first time, that having a clean, healthy and sustainable environment is a human right.¹³⁶⁵ The recognition was made through adoption of Resolution 48/13,¹³⁶⁶ called on States around the world to work together, and with other partners, to implement this newly recognised right.¹³⁶⁷ Delighted by this key milestone, the UN High Commissioner for Human Rights, Michelle Bachelet, issued a statement, calling on States to take bold actions to give prompt

1361 See Article 25 of the UDHR.

1362 Article 11 of ICESCR.

1363 See “The Right to A Healthy Environment” at <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module15.htm>.

1364 See World Health Organization, Environmental health, at https://www.who.int/health-topics/environmental-health#tab=tab_2.

1365 See “Access to a healthy environment, declared a human right by UN rights council” UN News, 8 October 2021, at <https://news.un.org/en/story/2021/10/1102582>.

1366 The text was proposed by Costa Rica, the Maldives, Morocco, Slovenia and Switzerland, and was passed with 43 votes in favour and 4 abstentions - from Russia, India, China and Japan.

1367 Ibid.



and real effect to the right to a healthy environment, following a UN Human Rights Council's landmark decision.¹³⁶⁸

She also paid tribute to the efforts of a diverse array of civil society organisations, including youth groups, national human rights institutions, indigenous peoples' organizations, businesses and many others worldwide who have been advocating for full international recognition of this right.¹³⁶⁹

Additionally, she stressed the importance that the rights to participation, access to information and access to justice are also respected in order for the human right to a healthy environment to be fully realized.¹³⁷⁰

In another resolution, Resolution 48/14, the Human Rights Council also increased its focus on the human rights impacts of climate change by establishing a Special Rapporteur dedicated specifically to that issue.

4.4.3. Situation of realization of the right to clean and healthy environment

In Zanzibar, key policy and legal documents that provide for and govern the right to environment are the Zanzibar Environmental Policy-2013 and the Environment Management Act 2015. According to the law, every Zanzibari has a right to a clean, safe, and healthy environment¹³⁷¹ and a duty to maintain, safeguard and enhance a clean, safe, and healthy environment.¹³⁷² Every person in Zanzibar is also obligated to protect the environment for the welfare of the present and future generations and ensure development plans and activities are implemented in an environmentally sound and sustainable manner.¹³⁷³ The environment law also establishes the Zanzibar Environmental Management Authority (ZEMA),¹³⁷⁴ whose key functions include: undertaking and coordinating enforcement of the law; coordinating the Environmental Impact Assessment process for any activity or investment; coordinating environmental audits in respect of any activity or investment; carrying out environmental monitoring to support proper management and conservation of the environment; public awareness-raising; and receiving and working on the complaints related to environment.¹³⁷⁵

1368 See Office of The High Commissioner for Human Rights, Bachelet hails landmark recognition that having a healthy environment is a human right, 08 October 2021, at <https://www.ohchr.org/en/2021/10/bachelet-hails-landmark-recognition-having-healthy-environment-human-right?LangID=E&NewsID=27635>.

1369 Ibid.

1370 Ibid.

1371 Section 5(1) of the Environment Management Act 2015.

1372 Ibid, Section 5(2).

1373 Ibid, Sections 3 & 4.

1374 Section 14(1) of the Environment Management Act 2015.

1375 Ibid, Section 22(1).



Despite the various efforts made by the Revolutionary Government of Zanzibar to promote and protect the right to clean and healthy environment, effective realization of this fundamental right continued to be hindered by various challenge sin 2021. These challenges include environmental degradation, largely contributed by growing population and human activities that are not environmentally friendly; inadequate enforcement of laws and regulations relating to environment; corruption; and environmental pollution caused by operations of businesses. Economic development activities that are carried out without proper planning and care lead to pollution and environmental degradation.¹³⁷⁶

Recognizing this predicament, the Zanzibar Development Vision 2050 emphasizes that “It is important to note that the sustainable management of the environment and natural resources (ENR) as well as improved climate change resilience is not only compatible with economic development, but it will also help Zanzibar achieve key development goals, ranging from food security, agricultural stability, health and poverty reduction.”¹³⁷⁷

Right to a clean and healthy environment is essential in realization of key SDG targets, namely: Goal 1: No Poverty; Goal 5: Gender Equality; Goal 12: Sustainable Consumption and Production; Goal 13: Climate Action; Goal 15: Life on Land; Goal 16: Peace, Justice and Strong Institutions; and Goal 17: Partnerships for the Goals.

4.5. Impact of Covid19 on Collective Rights

As stated above, enjoyment of collective rights is dependent on enjoyment of individual rights covered under chapters two, three, and five of this report. As such, the impact of the Covid19 on these rights, as highlighted in the respective chapters above, also apply to collective rights. The tourism sector, which is a key sector for the development of Zanzibar, was hit the hardest by the Covid19, especially in 2020 and the first half of 2021 when the number of tourisms significantly declined. This impact was also felt by the hospitality sector, contributing to reduced revenue for the Revolutionary Government of Zanzibar.

¹³⁷⁶ See the Zanzibar Development Vision 2050, p. 62.

¹³⁷⁷ Ibid, pp. 62 & 63.



CHAPTER 5: RIGHTS OF VULNERABLE GROUPS

Vulnerable groups refer to those groups which are more likely to suffer violations of human rights. For purposes of this report, these groups are: women; children; persons with disabilities; the elderly; and persons living with HIV/AIDS. These groups require special protection in order to safeguard their human rights. This is why there are several regional and international human rights conventions that specifically provide for their rights. These include: the UN Convention on the Rights of the Child (CRC) of 1989; Convention on the Elimination of all Form of Discrimination Against Women (CEDAW) of 1979; Convention on the Rights of Persons with Disabilities (CRPD) of 2006; African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003.

At the national level, the Constitution of Zanzibar protects the rights of vulnerable groups despite the nonexistence of the specific provision on the matter. Under section 12 of the Constitution of Zanzibar, the rights of these groups can be expressed in relation to the equality before the law, thus requires equal treatment of all people without any discrimination.¹³⁷⁸

This chapter provides an assessment of the situation of rights of vulnerable groups for the year 2021, while making comparisons with previous years or showing trends, stretching back to 2015.

5.1. Women's Rights

Women's rights are protected under several international and regional human rights instruments, most notably the Convention on the Elimination of all Form of Discrimination Against Women (CEDAW) of 1979; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003; and SADC Protocol on Gender and Development of 2008.

Women's rights are also protected under the Constitution of Zanzibar, which prohibits discrimination of any for and provides for equal

¹³⁷⁸ See Section 12(1) to (5), respectively, of the Constitution of Zanzibar 1984.



enjoyment of rights for all regardless their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life.¹³⁷⁹

Women's right are also protected under several legislations, including: the Penal Act No 6 of 2004; Criminal Procedure Act No 7 of 2004; Spinster and Single Parents Children Protection Act No 4 of 2005; and Employment Act No 11 of 2005.¹³⁸⁰

This sub-chapter looks at the situation of women's rights in Zanzibar in 2021, focusing on their rights to freedom from violence and right to non-discrimination.

5.1.1. Gender-based violence (GBV) and violence against children (VAC): A key human rights concern for women and children

Like in Tanzania Mainland, GBV and VAC continue to be a key human rights concerns, especially for women and children. Women and children continue to be subjected to various form of violence, including physical violence, sexual violence, psychological/emotional violence and economic violence. Sexual violence has particularly been a bigger concern these two vulnerable groups, especially children. Common acts of violence in Zanzibar include rape, sodomy, child neglect, and beatings.

5.1.1.1. Trends on gender-based violence (GBV) and violence against children (VAC): Police crime statistics

Crime statistics released by the Tanzania Police Force (TPF), released in January 2021, show that in the period of January to December 2020, a total of 42,414 incidents of GBV were reported in the whole of Tanzania, representing an increase of 3,049 incidents (7.7%).¹³⁸¹ Regions (police regions) with most incidents were Arusha (5,740), Manyara (2,972), Tanga (2,848), Lindi (2,390) and Temeke (2,114). Regions which recorded the least incidents were mostly from Zanzibar, including Pemba North (69), Unguja South (86), Pemba South (95), and Unguja North (98).¹³⁸²

In 2020, a total 741 incidents of GBV and VAC were reported in the period of January to December in Zanzibar. Most of these incidents (637) were acts of rape and sodomy, majority of which (340) were reported in Mjini Magharibi (Urban West). For instance, a total of 268 incidents of rape

¹³⁷⁹ Section 12(5) of the Zanzibar Constitution 1984,

¹³⁸⁰ Zanzibar Human Rights Report, 2016

¹³⁸¹ Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, JANUARI – DESEMBA 2020. [Tanzania Police Force & National Bureau of Statistics, Crime and Traffick Incidents Statistics, January to December 2020]

¹³⁸² Ibid.



and 72 of sodomy were reported in this region alone, equal to 53%, more than the incidents reported in all other regions combined.

Box: 5.1.1.1. A: Urban West Region the leading region for GBV & VAC
Based on the police crime statistics of 2020, Urban West is the leading region for GBV & VAC in Zanzibar. According to the statistics, this region alone recorded 393 incidents of VAC in 2020, while all the other regions (Pemba North, Unguja North, Pemba South & Unguja South) recorded 348 incidents combined, which are still 45 incidents less than those recorded in Urban West Region.

■ Reported incident of GBV & VAC by region jan to Dec 2020

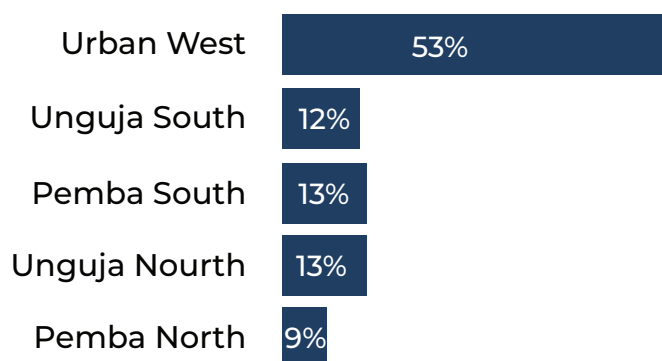


Figure 85: Reported Incidents of GBV & VAC In Zanzibar by Region – 2020 (N=741)

Source: Police crime statistics, 2020

Analysis of police data on GBV and VAC for the year 2020, released in January 2021, shows that women and girls constitute the overwhelming majority of victims of GBV and VAC. According to the statistics, 79% of the victims of VAC and VAW in 2020 were female, while the remaining 21% were male. This speaks to greater vulnerability of women to GBV than men.



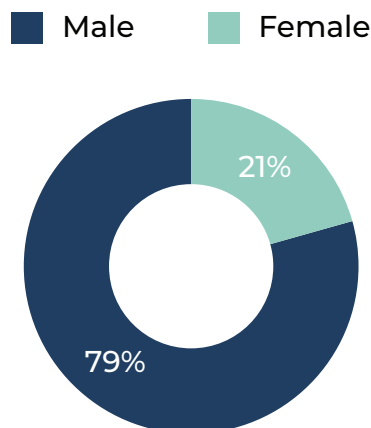


Figure 86: %Male and female victims of GBV & VAC in Zanzibar – 2020 (N=741)

Source: Police crime statistics, 2020

5.1.1.2. Trends on gender-based violence (GBV): Records of CSOs in Zanzibar

In July 2021, the Zanzibar Women Lawyers Association (ZAFELA) expressed concern over duplication of GBV statistics in Zanzibar.¹³⁸³ According to ZAFELA Chairperson, Ms. Safia Abbas, ZAFELA had put in place a system that will allow different stakeholders to collaborate in data recording, creating more reliable GBV data. She mentioned that the system will strengthen collaboration between police, courts of law and CSOs in documenting and reporting GBV cases.¹³⁸⁴ According to the Chairperson in 2020 ZAFELA recorded 130 GBV cases while in the period of January to June 2021 alone it had already documented more than 200 cases, majority of which were on sexual violence. Increased reported of GBV was attributed to increased public awareness.

5.1.1.3. Key issues affecting women’s rights: Zanzibar Human Rights Survey findings

In 2021, several key issues which affect effective realization of women’s rights were identified in Zanzibar. These issues include:

- Child neglect/family abandonment by husbands/partners
- Sexual violence
- Economic violence
- Psychological violence

¹³⁸³ “PLANS TO END DATA DUPLICATIONS ON GBV IN OFFING” DAILY NEWS Newspaper [online], 28 July 2021, at <https://dailynews.co.tz/news/2021-07-2861010881896bb.aspx>.

¹³⁸⁴ Ibid.



5.1.2. Violence against women (VAW)

5.1.2.1. Trends on violence against women (VAW): Police crime statistics

According to the police data, released in January 2021, a total of 23,685 incidents of VAW were documented by police in the period of January to December 2021, an increase of 2,859 incidents (12.1%), compared to those documented in 2019. Top five regions in VAW were Arusha, Manyara, Lindi, Tanga, and Temeke (regional police), while regions which recorded the least incidents were mainly from Zanzibar, including Pemba North, Pemba South, Unguja South, Unguja North and Urban West.

For Zanzibar, a total of 89 GBV incidents were documented, the lowest recorded in Pemba North (5) and the highest in Urban West (56). Of the 89 GBV incidents, majority of them (69%) were acts of VAW.

5.1.2.2. Situation of violence against women: Zanzibar Human Rights Survey findings

Common acts of VAW

During the undertaking of the Human Rights Survey 2021, respondents were asked about forms or acts of gender-based violence (GBV) and violence against children) that are common in their community. Rape was mentioned as the most common act of violence against women (66%), followed by sodomy (47%), and child marriage (29%). Child neglect and verbal abuse/humiliation were also mentioned as key abuse issues of violence against women and children by at least a quarter of the respondents.



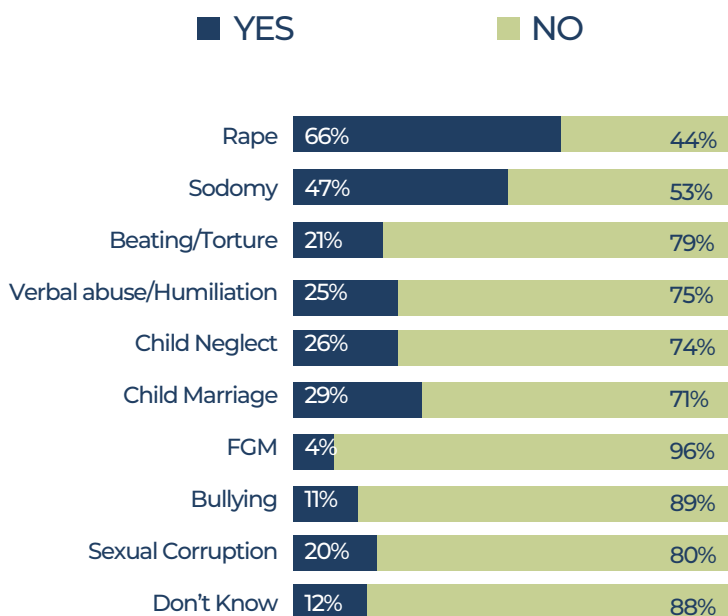


Figure 87: %Responses on common acts of VAW and VAC (N=514)

Source: Field data, 2021

One of the respondents who participated in the survey had this to say about the situation of violence against women in his community:

“Violence against women is a moderate problem, and most incidents of incidents of such violence are acts of rape, sodomy, beating, and verbal abuse.”

Community member, Unguja South

Reporting of GBV/VAW

Majority of interviewed respondents also indicated that there has been increased reporting of GBV incidents, including VAW. One of them noted:

“There is increased readiness to report acts of violence against women. Incidents are reported nearly every day. This has been largely contributed by increased community awareness.”

Community member, Unguja North

“There is increased readiness to report acts of violence, that’s why more cases are reported each day.”

Community member, Pemba South



However, some few other respondents, including NGO officials, said non-reporting of GBV and VAC incidents is still a big challenge in their community, especially where violence has occurred within home settings. One of them said:

“Although there have been improvements in reported, many incidents still go unreported, mainly due to ‘the need to conceal family shame.’”

Community member, Pemba North

Causes of GBV/VAW

Respondents of the survey generally identified the following as causes of VAW:

- Jealousy
- Excessive drinking/alcoholism
- Greed
- Inappropriate clothing
- Poor parenting
- Moral decay
- Low awareness about GBV/VAW and its impact in the community
- Economic hardship
- Unemployment
- Poverty
- Child maintenance battles

Perpetrators of VAW

Respondents of the survey generally identified the following as perpetrators of VAW:

- Husbands/fathers
- Close relatives such as uncles and nephews
- Strangers
- Older male persons

“Men and male youth are the major perpetrators of violence against women. They are usually implicated in such incidents.”

Community member, Unguja North

“Major perpetrators of violence against women are close relatives or family members, including uncles and in-laws.”

Community member, Urban West



What needs to be done to address VAW?

When asked what needs to be done to address VAW in Zanzibar, the respondents generally provided the following answers:

- Increase public awareness on VAW and women's rights
- Provide human rights education
- Strong legal action against perpetrators of VAW
- Encourage more people to come out and report incidents and testify in courts
- Provide marriage education to people before they get married
- Enact laws with severe punishment for offenders/perpetrators
- Awareness-raising on marriage and impact of divorce/separation
- Women's economic empowerment

5.1.3. Physical violence against women

Most recent police crime statistics, released in January 2021 and covering the period of January to December 2020 indicate that physical violence against women is not a common form of VAW in Zanzibar. According to police data, no incidents of physical violence, including beatings, were reported in all five regions of Zanzibar in the period of January to December 2021.¹³⁸⁵ Even the majority of community members who responded to a questionnaire (79%) did not perceive acts of physical violence such as beatings to be common in their community. Majority of the key informants also mentioned other forms of VAW, such as sexual and psychological VAW, to be more common forms of VAW in Zanzibar.¹³⁸⁶

5.1.4. Domestic violence: A concern for women and a driver of divorce in Zanzibar

Domestic violence refers to violence that occurs in home settings, usually perpetrated by and against an intimate partner. Such violence is usually extended to children as well.

In 2021, domestic violence emerged as an issue of concern for women and a driver of divorce in Zanzibar. An investigation by *The Chanzo* media in August 2021 revealed that there had been several cases of married women and their children suffering domestic abuse, including psychological/emotional abuse and sexual violence against children.¹³⁸⁷ The media reported at least two cases of married women who had to seek divorce from their husbands (step fathers to their children) after

¹³⁸⁵ TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, JANUARI – DESEMBA 2020 (supra).

¹³⁸⁶ Field data, 2021 (Pemba South, Pemba North, Unguja South, Unguja North, & Urban West).

¹³⁸⁷ Najjat Omar "Ukatili Kwenye Ndoa Watajwa Kuchochea Talaka Zanzibar" *The Chanzo*, 31 August 2021, at <https://thechanzo.com/2021/08/31/ukatili-kwenye-ndoa-watajwa-kuchochea-talaka-zanzibar/>.



finding out that they had been sexually abusing their children. One incident the woman's child was raped by her stepfather and in another incident a woman's child was sodomized by her stepfather.

Domestic violence was said to be a key driver of divorces in Zanzibar, which have been said to be increasing in the past four years. Various stakeholders, including the Tanzania Media Women's Association (TAMWA) and the Zanzibar Female Lawyers Association (ZAFELA) expressed concern over the divorce rate in the country but emphasized that domestic violence should not be tolerated in the sense that women should not feel that they should continue staying in abusive relationships and continue suffering just to preserve marriage. Similar comments were by the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Nassor Ahmed Mazrui. The Minister revealed that the President Mwinyi administration was in the final stages of forming a special team/task force to combat different forms of abuses, including against women.

In May 2020, it was reported that the Deputy Speaker of the House of Representatives, Hon. Hassan Juma, called upon the Grand Mufti's Office of Zanzibar to establish special offices in each district to provide marriage lessons as a way of curbing the increased divorce rate. In 2018 alone, a total of 1600 divorce applications were made to the Grand Mufti's Office of Zanzibar.

5.1.5. Sexual Violence against Women and Girls

Sexual violence against women and girls has been a common form of violence in Zanzibar. Police data for the year 2020 show that a total of 58 adult women were reportedly raped across the five regions of Zanzibar, majority of them (29) reported in Urban West. For girls, a total of 485 girls were reportedly raped across the regions, and once again the majority of them (239) in Urban West.



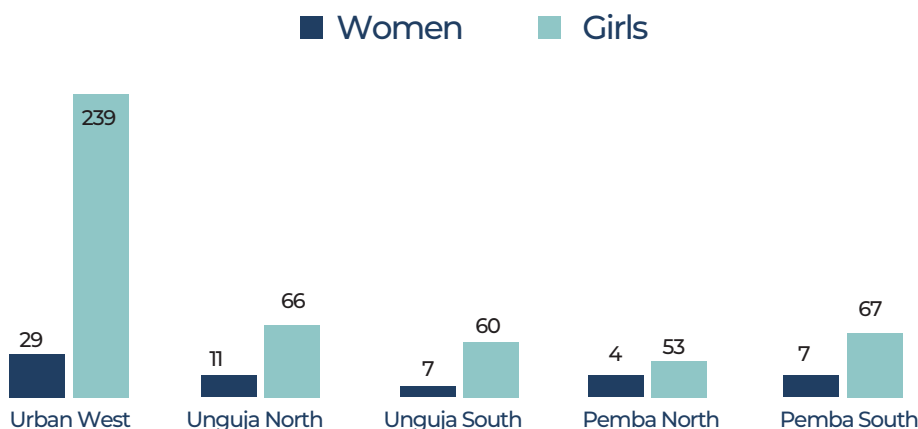


Figure 88: Reported incidents of rape perpetrated against women and girls in 2020

Source: Police force data, 2021

In 2021, majority of the respondents of the Human Rights Survey, both questionnaire respondents and key informants, mentioned various forms of sexual violence against women as common. Rape and sodomy were particularly mentioned as most common forms of sexual violence against women and girls/children. One of the respondents said:

“Most cases which are documented are rape, sodomy, and child neglect/family abandonment cases.”

CSO official, Unguja

In July 2021, the Zanzibar Women Lawyers Association (ZAFELA) revealed that while in had documented 130 GBV cases in the whole of 2020, in the first six months of 2021 alone it had recorded more than 200 such cases, majority of them being sexual violence cases.¹³⁸⁸ In August, the Tanzania Media Women’s Association (TAMWA) revealed that it had documented a total of 230 cases of violence against women and children (VAWC) in the period of January to July 2021¹³⁸⁹. Out of these cases, 115 were rape cases, 65 were sodomy cases and 4 were attempted rape cases.

5.1.6. Sexual Corruption

Among the community members who participated in the Human Rights Survey, 20% said sexual corruption is among the key challenges

1388 “PLANS TO END DATA DUPLICATIONS ON GBV IN OFFING” DAILY NEWS Newspaper [online], 28 July 2021, at <https://dailynews.co.tz/news/2021-07-2861010881896bb.aspx>.

1389 Najjat Omar “Ukatili Kwenye Ndoa Watajwa Kuchochea Talaka Zanzibar” The Chanzo, 31 August 2021, at <https://thechanzo.com/2021/08/31/ukatili-kwenye-ndoa-watajwa-kuchochea-talaka-zanzibar/>



that women in their community. This was especially said to be case in the job market, where young girls are sometimes asked for a sex bribe in order to secure employment. Regarding this issue one respondent said:

“Sexual violence, especially sexual corruption, is a challenge for young women seeking employment at some offices, as they are sometimes asked for a sex bribe to secure employment.”

Community member, Unguja South

5.1.7. Economic Violence against Women

Economic violence refers to Any act or behaviour which causes economic harm to an individual. Economic violence can take the form of, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as alimony.¹³⁹⁰ Alimony is financial support that a person is ordered by a court to give to their spouse during separation or following divorce; maintenance. It is the financial assistance and monetary support provided by one spouse to another after a marriage ends in divorce.¹³⁹¹

In 2021, economic violence against women was not said to be a key challenge or problem for women. However, existence of various gender norms ensure that women and girls have limited access to education compared to men and boys, which has lifelong impact on their lives. For instance, it is common and considered normal in Zanzibar and other parts of Tanzania for girls to use most of their time performing household chores while boys have more time on their hands to play, study, and do homework.¹³⁹² Limited access to quality education limits women’s access to financial resources and good jobs. In 2015, it was revealed that 22.8% of households were headed by women; majority of these women (44%) had no education.¹³⁹³ Although the gap in literacy levels is decreasing, the proportion illiterate remains higher among women.¹³⁹⁴

Denial of employment opportunities also constitutes economic violence against women. Sexual corruption also perpetuates economic

¹³⁹⁰ See European Institute for Gender Equality “economic violence” at <https://eige.europa.eu/thesaurus/terms/1096#:~:text=Any%20act%20or%20behaviour%20which,economic%20responsibilities%2C%20such%20as%20alimony.>

¹³⁹¹ Legal Information Institute “Alimony” at <https://www.law.cornell.edu/wex/alimony>.

¹³⁹² See “GIRLS ARE HIGH PERFORMERS AT PRIMARY SCHOOLS IN ZANZIBAR” USAID, 23 November 2020, at <https://www.usaid.gov/tanzania/news/girls-are-higher-performers-primary-schools-zanzibar>.

¹³⁹³ See Revolutionary Government of Zanzibar, Office of the Chief Government Statistician, WOMEN AND MEN IN ZANZIBAR Facts and Figures, February, 2019, https://data.unwomen.org/sites/default/files/inline-files/Tanzania-Zanzibar_Women%20and%20Men%20in%20Zanzibar-2018.pdf.

¹³⁹⁴ Ibid.



violence against women, especially young female graduates seeking employment. Sex bribe contributes to the challenge of unemployment among young Zanzibari women. According to the 2014 Integrated Labor Force Survey (ILFS), unemployment was higher among women compared to men; among the unemployed persons 78 percent are women.¹³⁹⁵

Child neglect and non-payment of child maintenance also contributes and constitutes economic violence against women.¹³⁹⁶ In Zanzibar, complaints of child neglect and family abandonment by men was reported in most of the surveyed areas. Women who are left with children and with no means of earning their daily bread usually seek and are desperate for a new marriage just to get that financial security, but usually end up in more abusive relationships, leaving not only them as victims or survivors of violence, but also their children, who have been known to be targeted by stepfathers in some areas of Zanzibar.

“In our community, the main form of violence against women is child neglect, perpetrated by fathers.

Community member, Unguja South

In his budget speech for the financial year 2021/22, the Minister of Health, Community Development, Elderly, Gender and Children, Hon. Nassor Ahmed Mazrui, stated that for the financial year 2020/21 his ministry received a total of 167 complaints from citizens, including complaints child neglect/family abandonment by husbands, distribution of matrimonial assets following divorce, divorce, beatings, and verbal abuse.¹³⁹⁷ Out of these complaints, 93 were from Unguja and 74 from Pemba.

5.1.8. Women’s economic empowerment

According to UN Women, investing in women’s economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth.¹³⁹⁸ Globally, lack of economic or financial security is key concern for most women, especially in rural areas, and is one of the major reasons they decide to stay in abusive relationships. In Zanzibar the Government has been taking various initiatives to

¹³⁹⁵ Ibid.

¹³⁹⁶ See “HC: Small amount as monthly maintenance is economic abuse” The Times of India, 16 January 2021, at <https://timesofindia.indiatimes.com/city/mumbai/hc-small-amount-as-monthly-maintenance-is-economic-abuse/articleshow/80294879.cms>.

¹³⁹⁷ HOTUBA YA WAZIRI WA AFYA, USTAWI WA JAMII, WAZEE, JINSIA NA WATOTO, MHESHIMIWA NASSOR AHMED MAZURI, at [House of Representatives, Ministerial Budgets, at <http://www.zanzibarassembley.go.tz/ministerial-budgets.php#>]

¹³⁹⁸ See UN Women “Economic empowerment” at <https://www.unwomen.org/en/what-we-do/economic-empowerment>.



ensure women are economically empowered. This includes provision of technical support to women's entrepreneurship/economic groups. For instance, according to the Minister of Health, Community Development, Elderly, Gender and Children, Hon. Nassor Ahmed Mazrui, for the financial year 2020/21 a total of 25 women's groups (16 in Unguja and 9 in Pemba), including 4 of women with disabilities, were reached and provided with technical support.

5.1.9. Women's political participation and representation in Zanzibar

5.1.9.1. Legal framework on women's political participation and representation in Zanzibar

The right of Zanzibari women to participate in political life is protected and guaranteed internationally, regionally, and domestically. Internationally, Tanzania is a party to various international human rights instruments that guarantee women's political participation, including the Universal Declaration of Human Rights (UDHR) of 1948, the Convention on the Political Rights of Women (CPRW, 1952), and the International Covenant on Civil and Political Rights (ICCPR) of 1966. Tanzania has also ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979, which is a specific convention for women's rights. CEDAW requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country on equal terms with men.¹³⁹⁹

At the African level, Tanzania is party to key human rights instrument such as African Charter on Human and Peoples' Rights (Banjul Charter) of 1981, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003, and SADC Protocol on Gender and Development of 2008. These human rights instruments guarantee the right to women to participate freely in the government of their country, either directly or through freely chosen representatives and require States Parties,¹⁴⁰⁰ including Tanzania (Mainland and Zanzibar), to adopt and implement affirmative or special measures to eliminate barriers for women's political participation.¹⁴⁰¹ The SADC Gender Protocol goes further to require a 50-50 representation

¹³⁹⁹ Article 7 of CEDAW, 1979.

¹⁴⁰⁰ Article 13(1) of the Banjul Charter.

¹⁴⁰¹ Article 9 of the Maputo Protocol; Article 5 of the SADC Protocol on Gender and Development.



in leadership positions.¹⁴⁰²

At domestic level, both the Constitution of the United Republic of Tanzania, 1977 and the Constitution of Zanzibar, 1984 guarantee the right of all citizens, including women, to participate in politics and hold leadership positions. They also provide for the right to equality and the right to non-discrimination, which are key pillars for women's political participation. The Constitution of Zanzibar specifically provide that each Zanzibari has a right to participate in public affairs, either directly or through freely chosen representatives.¹⁴⁰³ It also provides for the right to participate in making decisions that affect people's lives and the nation at large.¹⁴⁰⁴

5.1.9.2. Status of women's political participation and representation in Zanzibar

Like the Union Government, the Revolutionary Government of Zanzibar has taken various measures over the years to enhance women's political participation in line with international human rights obligations. However, as it has been the case in Tanzania Mainland and most other African countries, the progress has been slow.

According to the first Women's Political Participation (WPP) Africa Barometer 2021, women constitute 24% of the 12,113 parliamentarians in Africa - 25% in the lower houses, and 20% in the upper houses of parliament.¹⁴⁰⁵ In East Africa, 32% of MPs are women. In terms of the highest female representation in parliament, Rwanda currently sets the pace with over 60% of female MPs.

One of the key measures taken to enhance women's political participation is affirmative action through incorporation of quotas. Like in the Union Constitution, the Zanzibar Constitution contains quota for female representation in parliament. However, Zanzibar has taken a step closer to achieving a 50-50 representation in parliament through the constitutional amendments of 2010 which has seen the quota for female MPs increasing from the original 30% to 40%.¹⁴⁰⁶

Efforts to improve the legal and policy environments to ensure more women participate in politics and are represented in decision-making positions has seen the number of Zanzibari women holding key leadership and decision-making positions increased albeit in slower pace than that anticipated in the aftermath of the Beijing Declaration

¹⁴⁰² Article 12(1) of SADC Gender Protocol.

¹⁴⁰³ Section 21(1) of the Constitution of Zanzibar, 1984.

¹⁴⁰⁴ *Ibid*, Section 21(2).

¹⁴⁰⁵ GENDERLINKS, Women's Political Participation Africa Barometer 2021 (supra).

¹⁴⁰⁶ See Sections 67(1) of the Constitution of Zanzibar (revised edition of 2006) and Constitution of Zanzibar (revised edition of 2010).



in 1995. For instance, women MPs in the House of Representatives increased from 21 in 2017 to 30 in 2020. However, in other positions such as Minister and Members of Revolutionary Council, the number of women has dropped by one when the two years are compared.

Table 43: #Women holding some of the key leadership and decision-making positions in 2017 and 2020

Position	#Women	
	2017	2020
Ministers	5 out of 16	4 out of 14
Deputy ministers	3 out of 10	
Member of revolutionary council	5 out of 19	4 out of 17
Members of Parliament (House of Representatives)	21 out of 67	30 out of 78
Judges	3 out of 8	3 out of 8

Source: Office of the Chief Government Statistician data, 2017 & 2020

As of December 2020, there the Deputy Speaker was female and there were 4 female cabinet ministers (29%). In the House of Representatives, the number of women MPs stood at 30, which equals to 38% of the MPs. The percentage of female judges also stood at 38% as of December 2020. Statistics produced by the Office of the Chief Government Statistician also indicate trends of big gap between women and men holding positions of Regional Commissioners (RCs), District Commissioners (DCs), Regional Administrative Secretaries (RASs), District Administrative Secretaries (DASs), District Executive Directors (DEDs), councilors, and local leaders (*shehas*).¹⁴⁰⁷

Table 44: %Women holding some of the key leadership and decision-making positions as of December 2020

Position	#Female	%Female
Speaker	0	0
Deputy Speaker	1	100

¹⁴⁰⁷ Women and Men in Zanzibar 2017 (supra); Zanzibar in Figures 2020 (supra).



Ministers	4	29
Members of House of Representatives	30	38
Judges	3	38
Councilors	56	27

Source: *Office of the Chief Government Statistician data, 2020*

President Samia Suluhu Hassan: First women to hold the highest office in Tanzania and a motivation for Zanzibari women

In March 2021, H.E President of the United Republic of Tanzania, Samia Suluhu Hassan, made history by becoming the first ever President of the Union Government, following the untimely death of the late H.E John Pombe Magufuli. Previously President Samia was holding the position of Vice-President, again the first woman to hold such position in Tanzania. Samia Suluhu Hassan's rise to power should serve as an inspiration to Zanzibar women aspiring for leadership and presents an opportunity for women in both parts of the Union to really kickstart their quest for a 50-50 representation in leadership and decision-making positions in line with the Beijing Declaration of 1995 and the SADC Protocol on Gender and Development.

5.1.9.3. Barriers to women's political participation

Like in Tanzania Mainland, key barriers to women's political participation in Zanzibar include:¹⁴⁰⁸

- Gender gaps in electoral laws and practices
- Customs, traditions, and gender stereotypes
- Lack of or limited access to financial resources for women political aspirants
- Lack of adequate support from political parties and exclusion from decision-making party structures
- Gender-insensitive political party policy documents, including constitutions and manifestos
- Inadequate media coverage/negative portrayal of female political

¹⁴⁰⁸ See Victoria Lihuru, A Gender Analysis of Political Parties Policy Documents in Tanzania, Women in Law and Development in Africa, October 2020, at <https://wildaiftanzania.or.tz/wp-content/uploads/2021/03/political-agender.pdf>; Genderlinks, Women's Political Participation Africa Barometer 2021, <https://genderlinks.org.za/wp-content/uploads/2021/03/3WPP-Africa-FOREWORD-EXEC-SUMM.pdf>; and Ruth Meena, Mary Rusimbi, & Caroline Israel, Women and Political Leadership: Facilitating Factors in Tanzania, UONGOZI INSTITUTE, 2017.



candidates

- The dual burden and a disproportionate share of domestic work
- Limited access to education

5.1.9.4. Strategies to enhance Zanzibari women's political participation

To enhance women's political participation in Tanzania, including Zanzibar, several measures have been proposed, including:¹⁴⁰⁹

- Legal reforms to address gender gaps in electoral laws
- Establishing mandatory women's quota in intra-party politics and leadership
- Capacity building and mentoring of female political aspirants within political parties
- Establishing internal party structures that promote gender equality
- Sustained advocacy on gender equality, including through strategic litigation/constitutional petition
- Institutionalizing gender equality within party structures, processes, and practices
- Ensuring availability of adequate funding for female political aspirants and equitable access to media
- Introducing a legal requirement of candidate nomination process to be transparent, fair, and women-friendly
- Political parties to introduce voluntary party quotas
- Ensure women can balance personal and professional life in political parties
- Making gender a part of a political party's electoral strategy

5.1.10. Gender statistics initiatives coordinated by the Office of the Chief Government Statistician (OCGS) Zanzibar

Currently, Office of the Chief Government Statistician is executing one project with the aim of strengthening gender statistics in Zanzibar.

This project is named **"Making Every Woman and Girl Count"** is implemented under the support of **UNWomen**. The project bring together all stakeholders of gender statistics under coordination of **OCGS and MLEEWC**.¹⁴¹⁰ The main focus is to ensure the availability of gender statistics for monitoring the implementation of Sustainable Development Goals and other international, regional and national

¹⁴⁰⁹ Genderlinks, Women's Political Participation Africa Barometer 2021; Ruth Meena, Mary Rusimbi, & Caroline Israel, Women and Political Leadership: Facilitating Factors in Tanzania, UONGOZI INSTITUTE, 2017; EIGE. Advancing gender equality in political decision-making. European Institute for Gender Equality, 2016., at file:///C:/Users/USER/Downloads/mh0415104enn_0.pdf; and Julie Ballington et al, Empowering Women for Stronger Political Parties: A Guidebook to Promote Women's Political Participation, UNDP & NDI, February 2012, at <https://www.ndi.org/sites/default/files/Empowering-Women-Full-Case-Study-ENG.pdf>.

¹⁴¹⁰ See OCGS website at <http://www.ocgs.go.tz/gender/>.



commitments on gender equality and women empowerment (GEWE) as well as on violence against women and children (VAWC).

5.2.Children’s Rights

Children’s rights in Zanzibar are protected at international, continental and domestic levels. They are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989 and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, which require Tanzania to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation;¹⁴¹¹ and to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.¹⁴¹²

In Zanzibar, children’s rights are protected under the Constitution of Zanzibar (1984) and Children’s Act of No. 6 of 2011. The Children’s Act also provides for obligations to protect children from all forms of violence.

5.2.1. Violence against children (VAC)

In 2021, key VAC issues which hindered effective realization of children’s rights included: sexual violence, especially rape and sodomy; child neglect; physical violence; and child labour.

Another commendable action taken by the RGoZ with the support of development partners is the recognition of issues of violence against women and children through the formulation of the National Plan of Action to End Violence Against Women and Children. Nevertheless, women and children continue to be at risk of violence and abuse while child marriage remains a challenge in some areas.

- Zanzibar Development Vision 2050 (pp. 39 & 40)

5.2.1.1.Trends on VAC: Police crime statistics

Police crime statistics, released in January 2021, show that a total of 15,870 incidents of VAC were reported and documented in the period of January to December 2020.¹⁴¹³ This constitutes an increase of 190

1411 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.

1412 Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.

1413 Jeshi la Polisi Tanzania & Ofisi ya Taifa ya Takwimu, TAKWIMU ZA HALI YA UHALIFU NA MATUKIO YA USALAMA BARABARANI, JANUARI – DESEMBA 2020. [Tanzania Police Force & National Bureau of Statistics, Crime and Traffick Incidents Statistics, January to December 2020].



incidents (1.2%) compared to the incidents reported in 2019. Regions (police regions) which recorded most incidents of VAC were Tanga (1,026), Mbeya (738), Mwanza (738), Dodoma (727) and Kilimanjaro (656). Police regions which recorded the least incidents were Pemba North (64), Unguja South (78), Unguja North (85), and Pemba South (88).¹⁴¹⁴

Top three reported VAC incidents were rape (5,867), impregnating a schoolgirl (3,631), and sodomy (1,000).

In Zanzibar, a total of 652 incidents of VAC were reported in the period of January to December 2020. Most of these incidents (566) were acts of rape and sodomy, majority of which (299) were reported in Mjini Magharibi (Urban West) Region. For instance, a total of 239 incidents of rape and 60 of sodomy were reported in this region alone, equal to 53% of rape and sodomy incidents and more than half of the incidents reported in all other regions combined.

Box: 5.2.1.1. A: Urban West Region the leading region for VAC
Based on the police crime statistics of 2020, Urban West is the leading region for VAC in Zanzibar. According to the statistics, this region alone recorded 337 incidents of VAC in 2020, while all the other regions (Pemba North, Unguja North, Pemba South & Unguja South) recorded 315 incidents combined, which are still 22 incidents less than those recorded in Urban West Region.

■ Reported incidents of VAC by region - Jan to Dec 2020

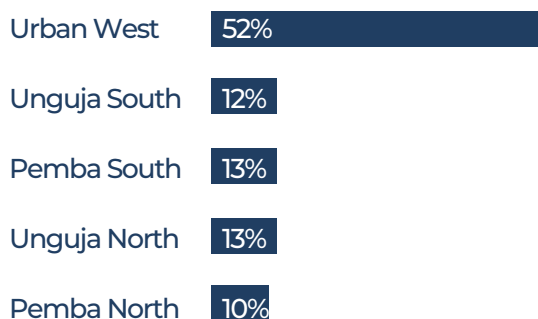


Figure 89: Reported Incidents of VAC In Zanzibar by Region – 2020 (N=652)

Source: Police crime statistics, 2020

¹⁴¹⁴ Ibid.



Analysis of police data on VAC, released in January 2021, shows that female children (girls) constitute the overwhelming majority of victims of VAC. According to the statistics, 81% of the victims of VAC in 2020 were female, while the remaining 19% were male. This speaks to greater vulnerability of girls to VAC by girls compared to boys. However, in the case of sodomy, boys are at greater risk than girls of being victims. 79 incidents out of a total of 81 incidents (98%) of child sodomy in 2020 were perpetrated against boys. Majority of these incidents (73%) were reported in Urban West.

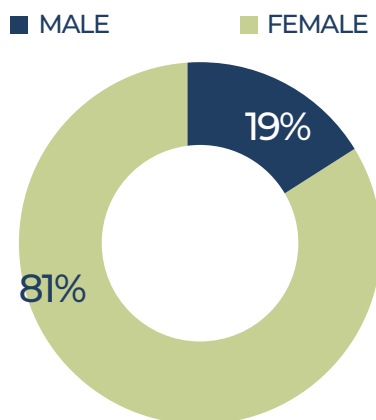


Figure 90: %Male and female victims of VAC in Zanzibar – 2020 (N=652)
 Source: Police crime statistics, 2020

5.2.1.2. Key VAC issues affecting children’s rights: Human Rights Survey findings

The Human Rights Survey 2021 probed various issues around children’s rights and violence against children (VAC), including common forms of VAC, causes of VAC, perpetrators of VAC, settings where VAC occurs, situation of VAC, and reporting of VAC.

Common forms and acts of VAC

When asked which forms VAC are common in their community, majority of the interviewed respondents mentioned sexual violence and psychological violence. In terms of acts of violence, majority mentioned rape, sodomy, child neglect, and verbal abuse. Other acts which were mentioned include beatings, hand burning, child labour and exploitation, and humiliation. Majority of respondents stated that children in the age category of 5 to 17 years were at greater risk of VAC.



Causes of VAC

When asked about causes of VAC the respondents generally provided the following answers:

- Greed among perpetrators
- Poor parenting
- Single parenting
- Parental neglect (failure to provide a child with necessities)
- Lost humanity
- Vulnerability of children
- Child trafficking
- Dropping out of school
- Low awareness about impact of VAC
- Non-reporting of most incidents of VAC
- Witchcraft belief
- Preventing/concealing family shame ('muhali)
- Separation/divorce
- Moral decay
- Globalization
- Inadequate enforcement of law

Perpetrators of VAC

Respondents were asked about possible perpetrators of VAC, including relatives or family members, parents, neighbours, teachers, *bodaboda* drivers, fellow pupils/students, and strangers. Relatives/close family members were mentioned as major perpetrators the most (40%), followed by strangers (37%), neighbours (32%), and parents (26%). Overwhelming majority of respondents, 78% and 76%, did not consider teachers and *bodaboda* drivers respectively to be among the major perpetrators of VAC, which is the opposite in Tanzania Mainland.



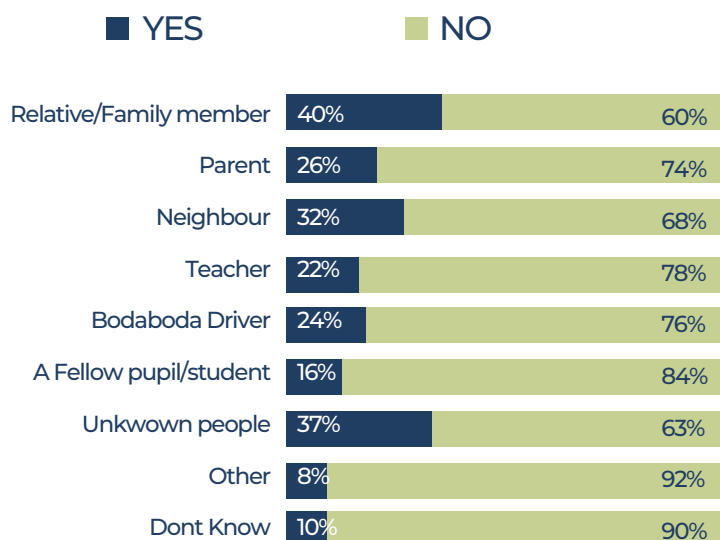


Figure 91: %Responses on major perpetrators of VAC (N=514)

Source: Field data, 2021

During interviews, some of the respondents, especially in Kaskazini A and Kaskazini B, claimed that perpetrators are usually males in the age category of 20 to 50 years. Another respondent mentioned that out-of-school children are at greater risk of being victims of VAC, especially sexual VAC. Another respondent claimed those who economically well-off are also among the major perpetrators of VAC.¹⁴¹⁵

“People close to the children, including fathers, relatives, and brothers, are the major perpetrators of violence against children.”

Community member, Unguja South

Settings where VAC occurs

In terms of settings in which VAC occurs, respondents were provided with various options, including home settings, in the street, on the way to school, at a house away from home and in transport vehicles. Streets were mentioned as the settings in which VAC usually occurs by the overwhelming majority of the respondents (64%), followed by home settings (35%), and on the way to school (33%). Less than a third of the respondents were of the opinion that VAC usually occurs in other settings, including school (22%) and another house (15%).

¹⁴¹⁵ ZLSC & ZAFAYCO, Zanzibar Human Rights Survey 2021.



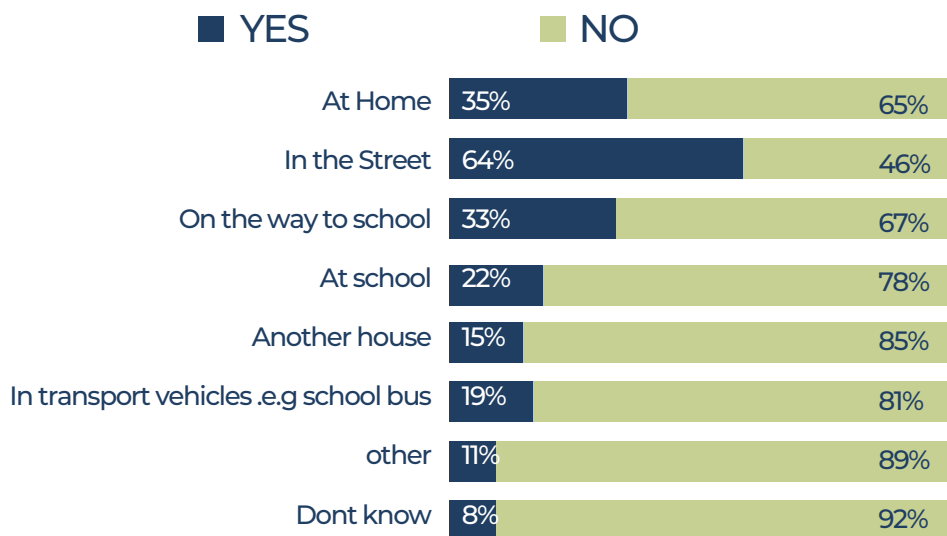


Figure 92: %Responses on settings in which VAC usually occurs (N= 514)
 Source: Field data, 2021

Interviewed respondents in Kaskazini A, Kaskazini B and Micheweni District mentioned some of the hotspots for VAC in the districts. For instance, in Kaskazini A unfinished buildings and beach areas were mentioned in this regard, while in Kaskazini B areas such as Mkadini, Kwa Gude, Kiwengwa, Bumbwini, Mahonda, Mkwajuni, and Donge were mentioned as hotspots. In Micheweni, interviewed respondents mentioned Tumbe Shehia, Shumba, Chamboni, Msuka, Makangale, Konde, Wingwi and Shumba Vyamboni.

Situation of VAC and specific forms of violence

Interviewed respondent generally revealed that VAC in Zanzibar was a problem in 2021, but only a moderate one. An exception was made for the Urban West Region, where most respondents indicated VAC is a serious problem. This corresponds with the police crime statistics for the year 2020, which show that Urban West leads in both the number of reported GBV cases and number of reported VAC cases.

“Violence against children is a big problem in Urban West, many incidents are reported.”

Community member, Urban West

When asked specifically about sexual VAC, whether is increasing or



decreasing, majority of the interviewed respondents, especially in Michweni and Kaskazini B Districts as well as Urban West West Region, indicated that sexual VAC has been increasing, especially when compared to the year 2020. Some of the interviewed respondents in Kaskazini A revealed that the problem of sexual VAC has somewhat decreased in their community.

“Compared to the previous years, sexual violence against children has increased.”

Community member, Kaskazini B

One of the respondents mentioned that child trafficking contributes to children being exposed to different forms of sexual VAC. He said:

“Child trafficking is one of the drivers of violence against children, as children are exploited in various ways..”

Community member, Kaskazini B

Reporting of VAC

Majority of the interviewed respondents were of the view that there has been an increased reporting of VAC issues, as evidenced by increased number of VAC cases. Other respondents indicated that the rate of reporting is still not satisfactory, especially where family members or close relatives are implicated as perpetrators, as families seek to conceal ‘shame’ and settle matters at family level.

“There has been increased reporting of violence against children. The main cause of this is public awareness on violence against children, including reporting of such violence.”

Local official, Pemba South

5.2.2. Sexual Violence

5.2.2.1. Police crime statistics

Based on police crime statistics released in January 2021, a total of 652 incidents of VAC were reported in the period of January to December 2020. Most of these incidents (566) were acts of rape and sodomy, majority of which (299) were reported in Mjini Magharibi (Urban West) Region. For instance, a total of 239 incidents of rape and 60 of sodomy were reported in this region alone, equal to 53% of rape and sodomy incidents and more than half of the incidents reported in all other regions combined. In the period of 2016 to 2020 girls have constituted the overwhelming majority of rape victims.



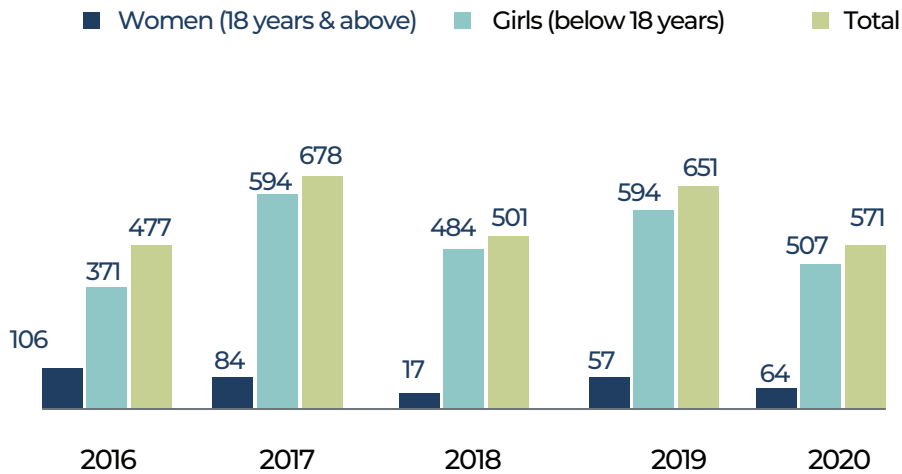


Figure 93: Reported cases of rape of women and girls in Zanzibar – 2016 to 2020

Source: Zanzibar in Figures 2020

Trends of reported cases of rape of girls in Zanzibar show that in the period of 2016 to 2020, such cases have been increasing in one year and decreasing, albeit slightly, the following year. However, overall, girl rape incidents have increased from 371 in 2016 to 507 in 2020. Based on the police crime statistics covering this period, a total of 2,550 girls have been raped, equal to an average of 510 each year, 42 each month, and at least 1 each day.

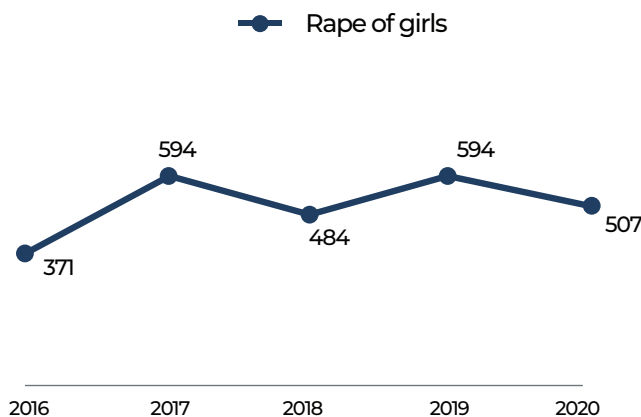


Figure 94: Trends of rape of girls in Zanzibar – 2016 to 2020

Source: Zanzibar in Figures 2020



Sodomy cases, majority of which involve children as victims, have also increased from 83 in 2016 to 103 in 2020.¹⁴¹⁶ The peak was the year 2019 when a total of 157 sodomy cases were reported.

5.2.2.2. Human Rights Survey findings

As stated above, majority of community members who responded to the human rights survey, especially in Michweni and Kaskazini B Districts as well as Urban West Region, indicated that sexual VAC has been increasing, especially when compared to the year 2020. Most local officials who were interviewed also revealed that common acts of violence against children in their community are rape and sodomy.

“Most common acts of violence against children are sodomy and rape, incidents of which seem to be increasing.”

Local official, Unguja

Child-on-child sexual abuse was also mentioned as a challenge in some areas. For instance, one official in Pemba South said:

“This type of violence against children has become a big challenge, as most cases involve persons below the age of 18 years as offenders. Also, parents are in favour of settling such disputes at home.”

Local official, Pemba South

5.2.3. Physical and Psychological Violence against Children

In 2021, it was revealed that cases of physical violence were fewer as sexual violence, particularly in the forms of rape and sodomy, dominated. However, incidents of psychological violence were said to be common among children, especially those who have suffered sexual violence. Verbal abuse, which constitutes psychological or emotional violence, was also said to be a common act of VAC.

5.2.4. Action to Address VAC

In 2021, law enforcement organs, including the Police, and the Judiciary, continued to take action against perpetrators of VAC, including arrests, prosecution, and sentencing of such offenders. The major challenge in prosecution of VAC cases, especially sexual VAC, remains to be poor cooperation from family members, who prefer to ‘conceal family shame’ and settle matters at home.

5.2.5. Child labour and exploitation

5.2.5.1. Overview

¹⁴¹⁶ Zanzibar in Figures 2020 (supra).



In June 2021, the International Labour Organization (ILO) released its report on child labour, showing global estimates and trends, revealing that child labour has risen to 160 worldwide, an increase of 8.4 million children since 2016.¹⁴¹⁷ The report warns that progress to end child labour has stalled for the first time in 20 years, reversing the previous downward trend that saw child labour fall by 94 million between 2000 and 2016.¹⁴¹⁸ According to UNICEF, children who are subjected to child labour are denied the fundamental human rights through exposure to bodily and mental harm, slavery, sexual or economic exploitation, and school dropout.

5.2.5.2. Domestic legal framework on child labour and exploitation

In Tanzania, child labour is prohibited under various domestic legislations. In Zanzibar, such prohibition is found in the Employment Act No. 11 of 2005 and the Children's Act No 6 of 2011. As a general rule, child labour, including worst forms of child labour, is prohibited under the Employment Act of 2005. However, exceptions have been made under several circumstances, as is the case in Tanzania Mainland.

Regarding **restrictions on employment of children**, to the Employment Act of 2005 provides that:¹⁴¹⁹

- No person shall employ a child in any type of work except domestic work.
- In assessing domestic work to a child, a parent or guardian must ensure that a child has sufficient time to attend to matters pertaining to education and sufficient time to rest.
- Any person who employs a child or procures a child for employment contrary to the provisions of the Act shall be guilty of an offence and could be, upon conviction, sentenced to a fine of not less than Tshs. 500,000 or, in default of fine, to imprisonment for a term of not less than six months.

Regarding **prohibition of worst forms of child labour**, to the Employment Act of 2005 provides that:¹⁴²⁰

- No person is allowed to engage or employ any child in any worst forms of child labour.
- Worst forms of child labour include: all forms of slavery or practices similar to slavery such as slave and trafficking of children,

1417 International Labour Office and United Nations Children's Fund, Child Labour: Global estimates 2020, trends and the road forward, ILO and UNICEF, New York, 2021. License: CC BY 4.0.

1418 See "Child labour rises to 160 million – first increase in two decades" ILO, 10 June 2021, at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_800090/lang-en/index.htm.

1419 Section 6 of the Employment Act No. 11 of 2005.

1420 Ibid, Section 7.



debt bondage and serfdom and forced or compulsory labour; the use procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The Employment Act of 2005 also speaks about **condition of employment of young persons**. In this regard, the Act provides that:¹⁴²¹

- No person is allowed to employ a young person who attends or is required to attend compulsory education.
- A person may employ a young person if: such young person shall not be assigned to heavy duties, duties involving chemicals or any other duty which may be injurious to the health and safety of a young person; such young person has undergone medical check up and the medical officer has certified that he/she is fit to be employed in particular work according to his/her age; and the employer has ensured that the young person undergoes regular medical check up until attainment of 21 years.
- No person is allowed to employ a young person in any industrial undertaking except where only members of a young person's family are employed or where a young person is assigned management or administrative duties or service that may not affect the health and safety of a young person.
- The employer of a young person shall keep record of medical check-ups on such young person and make them available to the labour officer or inspector when so required.
- Any person who employs a young person contrary to the provisions of the Act shall be guilty of an offence and liable to a fine of not less than Tshs. 400,000 or to imprisonment for a term of not less than 3 months.

There is also an exemption from restriction of employment of children and young persons. According to the Act, the provisions on restriction on employment of children and young persons shall not apply to students undergoing training in Government or other technical schools and vocational training centres registered in accordance with the Education Act No. 8 of 1982 and or the Vocational Training Act No. 17 of 1986.¹⁴²² However, a child shall not be eligible to undertake any

¹⁴²¹ Ibid, Section 8.

¹⁴²² Section 9 of the Employment Act of 2005.



such training unless he/she has attained the minimum age of 14 years. The Children's Act also prohibits employment or engagement of a child in any activity that may be harmful to such child's health, education, mental, physical or moral development.¹⁴²³ The Act also recognizes the child's right to work, subject to the need to promote and safeguard his best interests, 15 years being the minimum age for employment, and such child only doing light work.¹⁴²⁴ **Light work** is defined as work which is not likely to be harmful to the health or development of the child and does not prevent or affect the child's attendance at school, participation in vocational orientation or training programmes or the capacity of the child to benefit from school work.

The Children's Act further prohibits exploitative labour and hazardous work; recognizes the right to remuneration; and prohibits forced labour. Regarding **exploitative labour**, the Act provides that:¹⁴²⁵

- No person is allowed to employ or engage a child in any kind of exploitative labour.
- Every employer is required to ensure that every child lawfully employed is protected against any discrimination or acts which may have a negative effect on him taking into consideration his age and evolving capacities.
- A person is prohibited to employ a child in the employment that is inappropriate for a child of that age and that places at risk child's well-being, education, physical, or mental health, or spiritual, moral or social development.
- Labour is exploitative if: **it deprives the child of his health or development; it exceeds six hours of a day; it is inappropriate to the child's age or stage of development; it requires a child to work after eight o'clock at night and before six o'clock in the morning.**

Regarding **prohibition of hazardous work**, the Act stipulates that:¹⁴²⁶

- It is unlawful to employ or engage a child in any hazardous work.
- Work is considered hazardous if it poses a danger to the health, safety or morals of a person.
- Hazardous work shall include: mining and quarrying; portage of heavy loads; work in manufacturing industries where chemicals are produced or used; work in places where machines are used; and any other hazardous work as it shall be declared by the Minister.

¹⁴²³ Section 97 of the Children's Act (No 6) of 2011.

¹⁴²⁴ Ibid, Section 98.

¹⁴²⁵ Ibid, Section 99.

¹⁴²⁶ Section 100 of the Children's Act (No 6) of 2011.



- A child may be allowed at worksites for purposes of training and as long as the health, safety, and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or training in the relevant work or activity.

Regarding the right to remuneration, the Act specifically provides that a child who is permitted to do work has the right to be paid remuneration equal to the value of the work done.¹⁴²⁷ This right is also recognized under various children's rights and labour instruments, including the ILO conventions.

The Act also provides for registration of a child in industrial undertakings. According to the Act, an employer in any industrial undertaking is required to keep a register of children employed or engaged by him and the dates of their births, if known, or probable dates of birth if the date of birth is unknown.¹⁴²⁸

5.2.5.3. Situation of child labour and exploitation in Zanzibar

Despite various efforts to combat child labour and exploitation in Zanzibar, child labour persists in its various forms, denying children the fundamental rights, including right to education and protection from harmful employment. **In Tanzania, child labour is common in sectors such as agriculture, mining, and livestock.**

Like in Tanzania Mainland, child labour and exploitation is a challenge in Zanzibar. According to the 2014 Integrated Labour Survey, 11.8% of children aged 5-17 years were employed in Zanzibar, with boys (61.4%) dominating compared to girls (38.6%).¹⁴²⁹ Hazardous child labour accounted for 13,614, most boys (63.7%).¹⁴³⁰ Majority of the employed children in rural areas were engaged in agriculture, forestry and fishing, while in urban areas they were mostly engaged in service sector. In rural areas, 69% of boys and 48% of girls were engaged in agriculture forestry and fishing and in urban areas 56% of girls and 51% of boys were engaged in service sector.¹⁴³¹ According to the survey, supplementing household income, assisting household enterprises, food upbringing and peer pressures were cited as main reasons behind child labour. Additionally, children aged 12-14 were more likely to be engaged in child labour, and child labour rate for boys was higher compared to that

¹⁴²⁷ Ibid, Section 101.

¹⁴²⁸ Ibid, Section 104.

¹⁴²⁹ See Revolutionary Government of Zanzibar, Office of the Chief Government Statistician, *WOMEN AND MEN IN ZANZIBAR Facts and Figures*, February, 2019, https://data.unwomen.org/sites/default/files/inline-files/Tanzania-Zanzibar_Women%20and%20Men%20in%20Zanzibar-2018.pdf.

¹⁴³⁰ Ibid.

¹⁴³¹ Ibid.



of girls, for both rural and urban areas. There were also 13,185 children aged 5-11 years who were employed.¹⁴³²

5.2.6. Child Neglect and Abandonment

5.2.6.1. Overview

According to the Committee on the Rights of the Child, Neglect means the failure to meet children's physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children's care have the means, knowledge and access to services to do so.¹⁴³³ It includes:¹⁴³⁴

- **Physical neglect:** failure to protect a child from harm, including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care;
- **Psychological or emotional neglect:** including lack of any emotional support and love, chronic inattention to the child, caregivers being "psychologically unavailable" by overlooking young children's cues and signals, and exposure to intimate partner violence, drug or alcohol abuse;
- **Neglect of children's physical or mental health:** withholding essential medical care;
- **Educational neglect:** failure to comply with laws requiring caregivers to secure their children's education through attendance at school or otherwise; and
- **Abandonment:** a practice which is of great concern and which can disproportionately affect, inter alia, children out of wedlock and children with disabilities in some societies.

The African Charter on the Rights and Welfare of the Child of 1990 requires States Parties to take specific legislative, administrative, social, and educational measures to protect the child from abuse, torture, and neglect.¹⁴³⁵

5.2.6.2. Situation of child neglect and abandonment

As pointed out above, child neglect and abandonment is one of the key challenges in Zanzibar. This was confirmed by interviewed community members in both Pemba and Unguja. Parental separation was said to be the major driver of child neglect.

¹⁴³² Ibid.

¹⁴³³ See Committee on the Rights of the Child, *The right of the child to freedom from all forms of violence*, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrI CAqhKb7yhsq1kirKQZLK2M58RF%2F5F0vFKtnY3RFBX0eVOrGEVYulm9CsHNwh1HrjED9fVmGn%2BaZ1TGy6vH1lek6kukGyB%2FFCGBbSOP0uwpKf24vcxkEnv>.

¹⁴³⁴ Ibid.

¹⁴³⁵ Article 16(1) of the African Charter on the Rights and Welfare of the Child, 1990.



“There is a challenge of fathers neglecting their children, especially where they have separated from their wives.”

Community member, Pemba South

5.2.7. Child Marriage and Pregnancy

In Zanzibar, child marriage and pregnancy are not as big a problem as in Tanzania Mainland. According to the most recent police reports, released in 2021 and covering the period of January to December 2020, show that there were only 2 child pregnancy cases reported during the period, both of them in Pemba South.

Child marriage not a serious problem: Community members' views

Community members who responded to the Human Rights Survey 2021 had mixed views on child marriage. Majority of respondents indicated that child marriage was not a serious problem in their community. However, in some areas such as Kaskazini B District, some of the respondents said child marriage is a problem. In Micheweni, one respondent said child marriage cases have significantly decreased in comparison with previous years.¹⁴³⁶

“Male children are also implicated in child pregnancy and marriage. When a girl becomes pregnant, the only solution that is left is to marry them.”

Community member, Kaskazini B

“The situation of child marriage has significantly improved compared to previous years..”

Community member, Micheweni

“Fewer incidents of child marriage have been reported, due to awareness-raising and good work of the ministry responsible for education..”

Community member, Unguja South

Child pregnancy a concern: Views of community members and local officials

Despite police data for 2020 showing only 2 cases of children pregnancy were reported, views of community members who responded to the survey indicate the problem to be bigger. While some of the interviewed respondents, including community members, claimed there has been

¹⁴³⁶ ZLSC & ZAFAYCO, Human Rights Survey 2021.



a decrease in child marriage, majority of them, including local officials, said child pregnancy rates have been on the rise. One respondent mentioned that increase of child pregnancy is also attributed to child rape.¹⁴³⁷

“Cases of child pregnancy are still reported, although sometimes parents do their best to hide them.”

Community member, Kaskazini B

In Kaskazini A, 124 cases of child marriage and pregnancy cases were reported in the first six months of 2021.¹⁴³⁸ In Kaskazini B, it was reported that there had been 57 cases of child marriage and 78 of child pregnancy during that period. In Kaskazini B there were no reported of child pregnancy during that period, but the 4 cases of child marriage were reported. In Micheweni, it was reported that there were 4 cases of child marriage.¹⁴³⁹

5.2.8. Juvenile Justice

5.2.8.1. Domestic legal framework and key applicable regional and international standards

In Zanzibar juvenile justice is mainly governed by the Children’s Act of 2011. Part V of the Act covers children in conflict with the law. Among the key provisions of this law is:

- a child under the age of 12 years to be not criminally responsible for any act or omission;¹⁴⁴⁰
- the court to determine the age of a child in conflict with the law (make due inquiry);¹⁴⁴¹
- a child not to be arrested and not be arrested using handcuffs unless there are compelling reasons;¹⁴⁴²
- any child who has been arrested for alleged commission of an offence to be assessed by a probation officer or a welfare officer, if practicable, before being brought before Children’s Court;¹⁴⁴³
- juvenile proceedings to be held in camera and to be as informal and friendly to the child as possible.¹⁴⁴⁴

Tanzania has ratified various international and regional treaties that protect children’s rights and stipulate how juvenile justice is to be administered. Key underpinning principles in this regard are: **the**

1437 Ibid.

1438 ZLSC & ZAFAYCO, Human Rights Survey 2021: Zanzibar Field Report.

1439 Ibid.

1440 Section 35(1) of the Children’s Act, 2011.

1441 Ibid, Section 36(1).

1442 Ibid, Section 37.

1443 Ibid, Section 41.

1444 Section 43(1) of the Children’s Act, 2011.



best interests of the child; non-discrimination; right to survival and development; and views of the child.

Various international and regional standards are applicable to Tanzania's juvenile justice system, including the Zanzibar juvenile justice system. They include the UN Convention on the Rights of the Child (CRC) of 1989; the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") of 1985. These standards provide for procedures for administration of juvenile justice and fair trial rights of children in conflict with the law. For instance, under the African Charter on the Rights and Welfare of the Child (ACRWC), 1990, the **principle of best interests of the child** takes the centre stage in administration of juvenile justice. According to this principle, **in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.**¹⁴⁴⁵ Right to be heard is also an important pillar of administration juvenile justice under the ACRWC. Article 17 of the ACRWC provides how juvenile justice is to be administered. This includes ensuring every child accused or found guilty of committing a crime has a right to special treatment in manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others¹⁴⁴⁶. In juvenile justice, States are also required to ensure a child who is detained or imprisoned is **protected from torture**, inhuman or degrading treatment or punishment and is **separated from adults in a detention facility or prison.**¹⁴⁴⁷ The ACRWC also provides for fair trial rights of a juvenile offender, including **the right to be presumed innocent until duly recognized guilty; the right to be promptly informed of charges against them** in a language they can understand; the **right to legal representation**; and **the right to expeditious trial.**¹⁴⁴⁸ Additionally, the press and **the public should be prohibited from the trial** (trial should be private) and there should be a minimum age below which a child is presumed not to have the capacity to commit a crime.¹⁴⁴⁹ More importantly, the ACRWC provides that **"The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his or her family and social rehabilitation."**¹⁴⁵⁰

1445 Article 4(1) of the ACRWC.

1446 Ibid, Article 17(1).

1447 Ibid, Article 17(2)(a) & (b).

1448 Article 17(2)(c) of ACRWC.

1449 Ibid, Article 17(2)d) & (4).

1450 Ibid, Article 17(3).



5.2.8.2.Zanzibar’s juvenile justice system: Children’s Act hailed as innovative

In 2017, a team from the World Future Council (WFC), visited Zanzibar to meet with local stakeholders and government actors involved in administration of juvenile justice.¹⁴⁵¹ Prior to the visit, in 2015 WFC ‘gave Zanzibar’s Children’s Act a Future Policy Award in recognition of these achievements as a proven policy solution helping to secure children rights and to protect children.’ The rights of children team from WFC was happy to see the effects of the implementation of the law to secure child rights, participation and juvenile justice in action and were impressed with the commitment from everyone they met, including the Director of Public Prosecutions and senior members of the Justice and Women and Children’s Ministries and youth councils working to empower young adults, to ensure that further progress is made.

The Children’s Act has been hailed for serving as ‘a promising model both for its drafting process which involved a pioneering community-level child participation process and its provisions which have led to a marked societal change in attitudes towards children and their rights.’¹⁴⁵² It has also been observed that the process of developing this law included a far-reaching child consultation process, led by the Revolutionary Government of Zanzibar in partnership with UNICEF, working with Save the Children which involved an innovative programme of community-level child participation. Children in all districts were provided with an opportunity to participate in the process and make critical suggestions on issues affecting their lives.

5.2.8.3.Community perceptions on juvenile justice

In Unguja and Pemba, respondents of the human rights survey were generally happy with the juvenile justice system of Zanzibar. The major concern they had is the law, Children’s Act of 2011, seeming to favour more the juvenile offender rather than the victim. Some of the respondents indicated that the juvenile offenders should be given appropriate punishment.¹⁴⁵³ Others expressed concerns over shortage of fit persons/families.

1451 See World Future Council, *Empowering youth and protecting child rights: Zanzibar’s Children’s Act*, 8 February 2017, at <https://www.worldfuturecouncil.org/empowering-youth-protecting-child-rights-zanzibars-childrens-act/>.

1452 Future Policy, *ZANZIBAR’S CHILDREN’S ACT Zanzibar’s Children’s Act*, <https://www.futurepolicy.org/rightsofchildren/zanzibars-childrens-act/>.

1453 LHRC & ZAFAYCO, *Human Rights Survey 2021: Pemba Field Report*; LHRC & ZAFAYCO, *Human Rights Survey 2021: Unguja Field Report*.



“In my opinion, the juvenile justice system favours the juvenile offender and does not put primary consideration in the best interest of the victim.”

Community member, Pemba South

“The way I see it, the law does not punish the child in conflict with the law, instead punishing the parent. I think the law should be amended to hold the child in conflict with the law more accountable.”

Community member, Chake Chake

Common forms of juvenile crimes that were mentioned were:

- Rape and sodomy
- Stealing
- Drug use
- Smoking marijuana
- Physical assault

Poor parenting was mentioned as one of the factors contributing to juvenile delinquency. Peer pressure and impact of globalization and tourism were also mentioned as other contributing factors, as well as drug abuse. Interviewed community members called for coordinated efforts to prevent and address juvenile delinquency, including provision of life skills education to juvenile offenders. Some of the juvenile crimes were also said to be motivated by revenge or past experience of violence.

5.2.9. Child trafficking

5.2.9.1. Overview

According to the International Labour Organization (ILO), child trafficking is about taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation.¹⁴⁵⁴

According to the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF), and the Inter-Agency Coordination Group against Trafficking (ICAT), children account for nearly one-third of identified trafficking victims globally.¹⁴⁵⁵

According to the latest report on human trafficking by UNODC, released in January 2021:

- **Victims are targeted when they are vulnerable and the Covid19 pandemic has increased vulnerability**
- Traffickers of children target victims from extremely poor house-

¹⁴⁵⁴ See ILO “Trafficking in children” at <https://www.ilo.org/ipec/areas/Traffickingofchildren/lang-en/index.htm>.

¹⁴⁵⁵ UNODC, Global Report on Trafficking in Persons 2020 (United Nations publication, Sales No. E.20.IV.3); UNICEF, Children account for nearly one-third of identified trafficking victims globally, *Press Release*, 29 July, 2018, at <https://www.unicef.org/press-releases/children-account-nearly-one-third-identified-trafficking-victims-globally>.



holds, dysfunctional families or those who are abandoned with no parental care

- In low income countries, children make up half of the victims detected and are mainly trafficked for forced labour (46%)
- In Sub-Saharan Africa, children have been trafficked to work on plantations, in mines and quarries, on farms, as vendors in markets and on the streets
- Victims of trafficking for domestic servitude are exposed to multiple forms of exploitation and violence, including sexual, physical, and psychological abuse that is rarely seen in other forms of trafficking. Victims of this type of trafficking are usually women, who often work and live with the perpetrators of exploitation, making them particularly vulnerable
- Besides domestic servitude, sea fishing, agriculture and mining are among the sectors of the economy where exploitation and trafficking have been well documented
- Children represent the majority of victims in Sub-Saharan Africa (60%), especially in West Africa, while Southern African and East African countries tend to detect more adults than children
- Majority of detected victims in Sub-Saharan Africa are trafficked for the purpose of forced labour

5.2.9.2. Child trafficking in Zanzibar

According to the recent human trafficking reports, prepared by the U.S Department of State, Tanzania, including Zanzibar, is a source, transit, and destination country for child trafficking for forced labor and commercial sexual exploitation.

In 2020, it was reported that the United Republic of Tanzania had made minimal advancement in efforts to eliminate the worst forms of child labor. It was also reported that The Revolutionary Government of Zanzibar increased funding of its labor inspectorate and hired an additional 16 labor inspectors. However, despite these efforts, child trafficking remains a concern for Zanzibar, especially in the wake of the Covid19 pandemic, as internal trafficking remains more prevalent and children continue to be subject to worst forms of child labor, including in mining, quarrying, and domestic work, each sometimes as a result of human trafficking. In Zanzibar, it has also been reported that some children are trafficked to the country for child sex tourism.¹⁴⁵⁶

In 2021, ZLSC and ZAFAYCO did not receive any reports of child trafficking in Zanzibar.

¹⁴⁵⁶ ECPAT International, *Confronting the Commercial Sexual Exploitation of Children in Africa*, September 2007, at https://riselearningnetwork.org/wp-content/uploads/2015/09/confronting_csec_eng_0.pdf; United States Department of State, *2018 Trafficking in Persons Report - Tanzania*, 28 June 2018, available at: <https://www.refworld.org/docid/5b3e0a624.html> [accessed 29 February 2022]



5.3. Rights of Persons with Disability

5.3.1. Introduction

As part of Tanzania, Zanzibar has various obligations under regional and international human rights conventions to promote and protect the rights of persons with disability (PWDs). Globally, a key milestone in protection of the rights of PWDs was reached in 2006 when the international community adopted the UN Convention on the Rights of Persons with Disabilities (CRPD) of 2006.

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.¹⁴⁵⁷

Zanzibar did not waste time to domesticate the CRPD, doing so immediately in 2006 through enactment of the Persons with Disabilities (Rights and Privileges) Act, No.9 of 2006. Under the Act, every PWD in Zanzibar has the right to education,¹⁴⁵⁸ right to employment,¹⁴⁵⁹ right to medical care,¹⁴⁶⁰ accessibility and mobility.¹⁴⁶¹ There are several organizations established for the purpose of promoting and protecting interests and welfare of PWDs. These include the Zanzibar Association of the Blind (ZANAB), Zanzibar Association for People with Developmental Disabilities (ZAPDD), the Association of People with Disabilities in Zanzibar (UWZ), Zanzibar Centre for Disability and Inclusive Development (ZACEDID) and others.

5.3.2. Protection of Rights of PWDs

As highlighted above, the Government of Zanzibar acted fast to domesticate the CRPD and has taken several other measures to promote and protect the rights of PWDs, including providing access to empowerment loans, promotion of inclusive education.

Community members who participated in the survey were asked to provide their opinion on the protection of the rights of PWDs. Over half of the respondents (54%) said the rights of PWDs very well protected, followed by 27% who said the rights are somewhat protected, while 13% said they are not very well protected and 3% said they did not know. The remaining 3% of the respondents said they did not know whether

1457 See CRPD at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

1458 Ibid, section 9

1459 Ibid, section 7

1460 Ibid, section 11

1461 Ibid, section 12



the rights of PWDs are well protected or not.

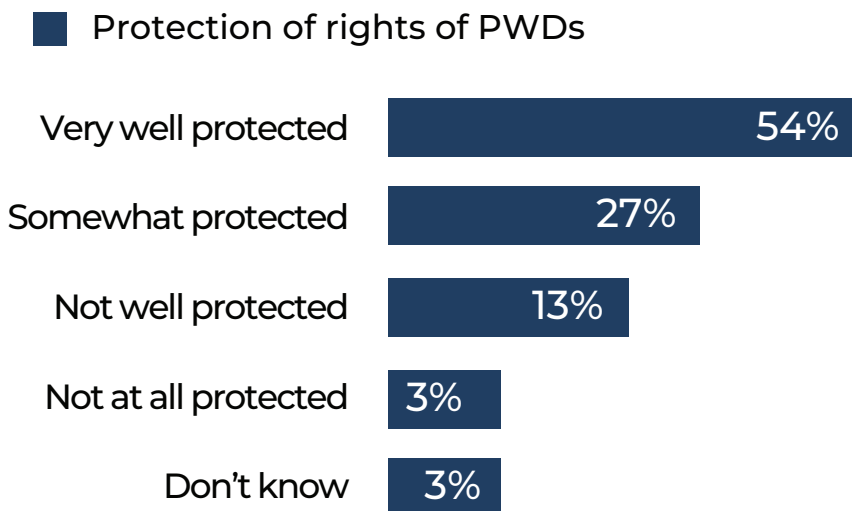


Figure 95: Survey participants' perceptions on protection of rights of PWDs (N=514)

Source: Field data, 2021

5.3.3. Key challenges that affect enjoyment and realization of the PWDs' rights

Respondents were also asked to highlight some key challenges that PWDs face in the community. The following key challenges were identified:

- Exclusion/marginalization
- Harassment
- Unemployment
- Limited access to education

"Lack of disability-friendly infrastructure is a big challenge for PWDs. Lack of tools and equipment for special needs education is also a challenge for them."

Community member, Pemba South

- Lack of relevant equipment
- Different forms of violence, including sexual violence
- Denial of education and freedom of movement

"Some parents tend to hide their children with disabilities, denying them their basic rights in the process."

Community member, Unguja South



- Stigma and discrimination
- Accessing transportation services

By the Revolutionary Government of Zanzibar's own admission, despite progress made in upholding disability rights, many PWDs continue to face difficulties in finding decent employment and education.¹⁴⁶²

5.4. Rights of the Elderly

5.4.1. Introduction

Unlike other vulnerable groups such as women, children, and PWDs, there is no international convention on the rights of the elderly. Nevertheless, their rights, like those of other groups, are guaranteed under various international and regional conventions, including the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966, and African Charter on Human and Peoples' Rights (Banjul Charter) of 2003. Domestically, their rights are guaranteed under the Constitution of the United Republic of Tanzania, 1977 and the Constitution of Zanzibar, 1984.

5.4.2. Protection of the rights of the elderly

In 2016, the Revolutionary Government of Zanzibar started providing a monthly pension to older people aged 70 years and above, making history by becoming the first country in the Eastern African region to offer social pensions to older people.¹⁴⁶³ In 2020, the pension was increased by 20% in response to economic challenges posed by the Covid19 pandemic.

In Zanzibar, the Elderly Affairs Bill was signed into Law by the former President, H.E Dr. Ali Mohammed Shein in June 2020,¹⁴⁶⁴ a key milestone for protection of the elderly rights in Zanzibar. Among other things, the law recognizes the right to universal pension for older people in Zanzibar. Many other countries in the world have in place the elderly rights law.

Community members who participated in the survey were asked to provide their opinion on the protection of the rights of the elderly. Like

¹⁴⁶² See Zanzibar Development Vision 2050, p. 40.

¹⁴⁶³ "Zanzibar responds to COVID-19 economic challenges with a 20% rise to their universal social pension" *HelpAge International*, 22 July 2020, at <https://www.helpage.org/newsroom/latest-news/zanzibar-responds-to-covid19-economic-challenges-with-a-20-rise-to-their-universal-social-pension/#:~:text=universal%20social%20pension-,Zanzibar%20responds%20to%20COVID%2D19%20economic%20challenges%20with%20a%2020,to%20their%20universal%20social%20pension&text=The%20COVID%2D19%20pandemic%20affects,often%20fall%20within%20these%20categories.>

¹⁴⁶⁴ See HelpAge International, Elderly affairs bill signed into Law in Zanzibar, at <https://www.helpage.org/newsroom/latest-news/elderly-affairs-bill-signed-into-law-in-zanzibar-tanzania/>.



it was for the case of the rights of PWDs, overwhelming majority of the respondents felt that the rights of the elderly are either very well protected and somewhat protected in Zanzibar (84%). Nearly half of them (48%) said their rights are very well protected, while only 10% and 2% said the rights are not well protected and not at all protected respectively.

■ Protection of rights of the elderly

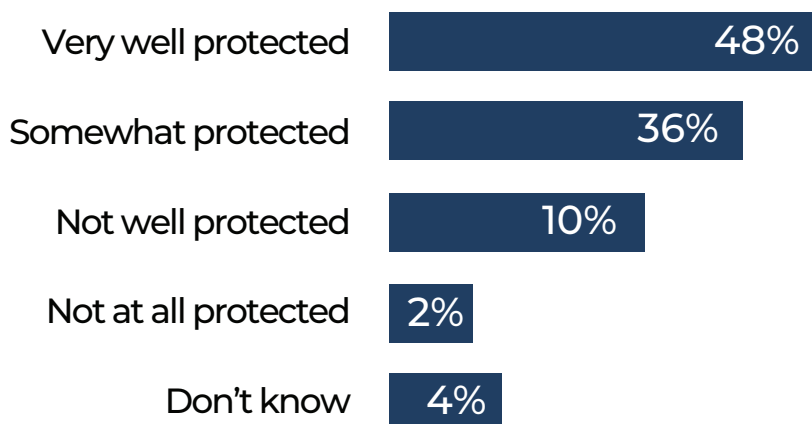


Figure 96: Survey participants' perceptions on protection of rights of the elderly

Source: Field data, 2021

5.4.3. Key challenges that affect enjoyment and realization of the elderly's rights

Respondents were also asked to highlight some key challenges that the elderly face in the community. The following key challenges were identified:

- Economic hardships
- Harassment and being disrespected, especially by youth
- Lack of social protection and delays in receiving retirement benefits
- Difficulties accessing quality health services
- Accusations of being 'witches' or practicing witchcraft
- Exclusion/marginalization, especially at family level
- Social protection

Regarding social protection, the Revolutionary Government of Zanzibar has observed that social assistance has room for expansion, especially



in the wake of the Covid19 pandemic.¹⁴⁶⁵ It has also observed that even with a strong safety net, individuals cannot prosper in the society without decent and fulfilling employment.¹⁴⁶⁶

5.5. Rights of Persons Living with HIV/AIDS

5.5.1. Introduction

Like other human beings, rights of persons living with HIV/AIDS are provided for and protected under various regional, continental and international human rights instruments, including the Universal Declaration on Human Rights (UDHR),¹⁴⁶⁷ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁴⁶⁸ the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)¹⁴⁶⁹ and the Convention on the Rights of the Child (CRC).¹⁴⁷⁰ They are also enshrined in the African regional and sub-regional human rights instruments including the African Charter on Human and Peoples' Rights.¹⁴⁷¹

In 2013, the Revolutionary Government of Zanzibar passed the Zanzibar HIV and AIDS Prevention and Management Act No.18 of 2013, to provide for, 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.¹⁴⁷² The Act prohibits any kind of discrimination directly or indirectly against people living with HIV.¹⁴⁷³ The Act has 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 disease.¹⁴⁷⁴

In Zanzibar, HIV prevalence is said to be a “concentrated epidemic” whereby HIV prevalence is said to be highest among certain groups or sub-populations, also called Most-At-Risk Populations (MARP). These groups are female sex workers (FSW), people who inject drugs (PWID), men who have sex with men (MSM); and correctional facilities students (prisoners).¹⁴⁷⁵

1465 Zanzibar Development Vision 2050, p. 40.

1466 Ibid.

1467 Article 25 of UDHR.

1468 Article 12 of ICESCR.

1469 Article 14 of CEDAW.

1470 Article 14 of CRC.

1471 Article 12 of African Charter on Human and Peoples' Rights.

1472 See the long Title of the HIV and AIDS Prevention and Management Act No.18 of 2013

1473 Ibid, section 23

1474 Ibid, section 3

1475 See Zanzibar AIDS Commission (ZAC), National AIDS Spending Assessment (NASA) ZANZIBAR, Financial Years 2016/17 & 2017/18, at https://www.unaids.org/sites/default/files/media/documents/NASA_Zanzibar_2016-2018_en.pdf.



5.5.2. Protection of rights of PLHIVs

Government action to promote rights of persons living with HIV/AIDS (PLHIVs) in 2021 included allocation of a budget for HIV-related services, provision of such services and reminding the public to refrain from discrimination based on HIV/AIDS.

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 disease.¹⁴⁷⁶

Among the functions of the Commission 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 HIV infection reduction target. 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.¹⁴⁷⁷

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).¹⁴⁷⁸

5.5.3. Key challenges faced by PLHIVs

Like their counterparts in Tanzania Mainland, main challenges faced by PLHIVs are stigma and discrimination. In 2021, there were no reported incidents of violations of rights of PLHIVs that were documented.

5.6. Youth Rights

5.6.1. Overview

While there is no universally agreed international definition of the youth age group, Tanzania, including Zanzibar,¹⁴⁷⁹ consider youth to be people who fall in the age category of 15 to 35.¹⁴⁸⁰ According to the

1476 Budget Speech of the Second Vice President, 2017/2018.

1477 See Part III of Act No. 18, 2013.

1478 Zanzibar Human Rights Report, 2016.

1479 See UN, *Global Issues: Youth*, at <https://www.un.org/en/global-issues/youth>.

1480 African Youth Charter, adopted by the Seventh Ordinary Session of



United Nations (UN), youth “can be a positive force for development when provided with the knowledge and opportunities they need to thrive.”¹⁴⁸¹

Youth rights are protected under various international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and political Rights (ICCPR) of 1966; the African Charter on Human and Peoples Rights (Banjul Charter) of 1981; and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1981. In Africa, youth rights are enshrined in the African Youth Charter of 2006.¹⁴⁸² Among the rights recognized in the Charter are right to non-discrimination; freedom of movement; freedom of expression; freedom of association; right to own and inherit property; right to development; right to education of good quality; right to gainful employment; right to adequate standard of living; right to health; and fair trial rights.

The African Youth Charter imposes a number of obligations upon States Parties, including developing a comprehensive and coherent youth policy; eliminating discrimination against girls and young women in with international human rights obligations; taking measures to protect right of mentally and physically challenged youth; and taking measures to eliminate harmful social and cultural practices. Youth responsibilities are also provided for, including becoming custodians of their own development; protecting and working for family life and cohesion; partaking fully in citizenship duties including voting, decision making and governance; engage in peer-to-peer education to promote youth development; reject and expose corruption; and defending democracy, the rule of law and all human rights and fundamental freedoms.¹⁴⁸³

5.6.2. Key challenges youth face

According to the UN, youth are increasingly demanding more just, equitable and progressive opportunities and solutions in their societies but are faced with various challenges, including access to education, health, employment and gender equality.¹⁴⁸⁴

In Tanzania, including Zanzibar, youth are faced with various challenges that hinder effective realization of their human rights, including.¹⁴⁸⁵

the Assembly, held in Banjul, The Gambia on 2nd July 2006.

1481 UN, *Global Issues: Youth* (supra).

1482 African Youth Charter, adopted by the Seventh Ordinary Session of the Assembly, held in Banjul, The Gambia on 2nd July 2006.

1483 Article 26 of the African Youth Charter, 2006.

1484 UN, *Global Issues: Youth* (supra).

1485 Derived from other parts of this report; Tanzania Human Rights Report 2020; the African Youth Charter of 2006; the National Youth Development Policy of 2007; UN reports; media



- **Limited knowledge about sexual and reproductive health and rights:** This challenge can be overcome by provision of comprehensive sexuality education (CSE) and improving access to information regarding sexual and reproductive health and rights. According to stakeholders, one of the challenges in provision of CSE in schools is omission of key topics considered to be culturally insensitive and age inappropriate.
- **Harmful cultural practices such as child marriage:** Practices such as child marriage continue to be a thorn for girls and young women in Zanzibar.
- **Human trafficking:** As discussed above, human traffickers in Africa and Tanzania target youth the most, especially adolescent youth and young women and men, usually for labour and sex trafficking. Lack of accurate information and the problem of unemployment leaves them particularly vulnerable.
- **Unemployment and underemployment:** Most youth have identified unemployment/lack of jobs as their biggest challenge.¹⁴⁸⁶ This problem is usually accompanied by the problem of underemployment. STATISTICS ZA YOUTH UNEMPLOYMENT IN ZANZIBAR.
- **HIV/AIDS pandemic:** Youth remain the group that at the highest risk of HIV infection as evidenced by different forms of sexual violence against them, such as rape and sodomy, and the increasing number of schoolgirls who become pregnant each year – which attests to their engagement in unprotected sex.
- **Poor quality education and inadequate training:** While the Revolutionary Government of Zanzibar has done well to increase access to education, especially more recently through implementation of the free education policy and expanding basic education, the quality of education provided remains a challenge, and an area that needs significant improvement. For the young people in higher education, concerns over quality of education and how it prepares them for the ever-competitive job market continue to be raised and subject to public debates, amid the claims that most college and university graduates in Tanzania, and including Zanzibar lack employability skills, which contributes to their unemployment.
- **Restricted access to health services and information:** Despite improvements, access to health services and information is still a challenge for youth, especially those who are in rural areas.
- **Drugs/substance abuse:** This continues to be a key health issue for youth, who are vulnerable to drugs and substances, especially those who are idle.
- **Crime and criminal justice:** Poverty and lack of equal opportunities put youth who come from a poor background and in socially disadvantaged communities at higher risk of committing crimes and even higher risk of infringement of their rights as accused per-

reports; and Justina Ochieng" PROBLEMS THE AFRICAN YOUTH FACE" 4 July 2021.

1486 See British Council, *NEXT GENERATION Youth Voices in Tanzania*, Summary Report, July 2016, at <https://www.britishcouncil.org/research-policy-insight/research-reports/next-generation-youth-voices-tanzania>.



sons when in conflict with the law (criminal justice concerns).

- **Globalization and the pressure of social networking:** Globalization and social networking has have come with their good and bad. There is fear that most youth in Tanzania do not know how to make proper use of these tools, for instance for purposes of entrepreneurship. There is a lot of content that is detrimental to youth, including porn content, thus necessitating youth to be equipped with the right and accurate information to help them safely navigate through such content and focus on their personal development.
- **Child labour and exploitation:** Child labour and exploitation denies young children and adolescents their basic rights, including right to education, negatively impacting their future prospects for employment and good life. They are also vulnerable to trafficking and different forms of violence, including sexual violence.
- **Exclusion in the decision-making processes or lack of meaningful participation:** The African Youth Charter and other regional and international human rights instruments applicable to youth emphasize on their right to participate in making decisions that affect their lives. But concerns over exclusion in decision-making processes or lack of meaningful participation persist in Zanzibar.
- **Poverty:** Poverty is a big barrier for effective realization of youth rights in Zanzibar, as is the case in most African countries, especially in Sub-Saharan Africa.
- **Lack of proper information:** Misinformation is also a big issue for youth in Zanzibar, due to limited access to accurate information. Youth also lack information-seeking behaviour.
- **Mental health:** In Zanzibar, mental health has not been given the importance and priority it deserves, leaving people psychologically affected and vulnerable to stress and suicidal tendencies. In recent years, suicide has emerged as key mental health issue, with reports of people committing suicide, including youth, increasing.
- **Gender based violence (GBV):** Youth, especially young women in universities and fresh graduates seeking employment are at great risk of sextortion.

5.7. Impact of Covid19 on the Rights of Vulnerable Groups

In 2021, vulnerable groups, especially children, women, and PWDs, were reported to have been affected more by the Covid19 pandemic. Community members who participated in the Human Rights Survey 2021 in Zanzibar were asked about which group was affected the most by Covid19; domestic violence; women and girls and Covid19; children and Covid19; and impact of Covid19 on socio-economic rights.



Groups mostly affected by Covid19

When asked which group was affected the most by Covid19, nearly a third of the respondents (27%) mentioned women and men each, followed by children (22%) and PWDs (17%). 7% of the respondents said other groups were affected the most.

■ Groups mostly affected by Covid19

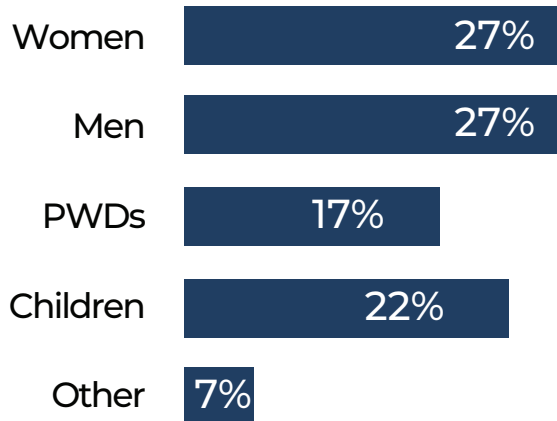


Figure 97: %Responses on community members' perception of groups mostly affected by Covid19

Source: Field Data, 2021

Domestic violence

When asked to what extent domestic violence was a problem during the pandemic, majority of the respondents, over a third (39%), said it was a serious problem, followed by 37% of the respondents who said it was a moderate problem. Only 18% of the respondents said it was a minor problem, while 6% said it was not at all a problem.



■ Groups mostly affected by Covid19

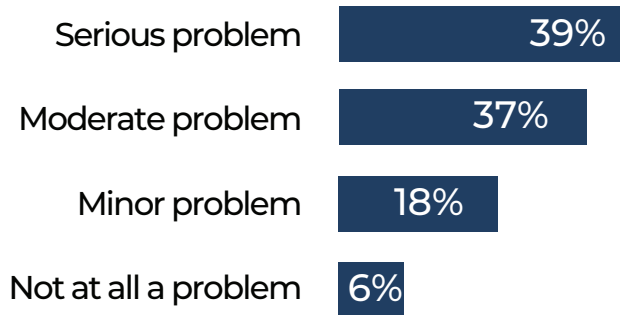


Figure 98: % Responses of respondents of extent of the problem of domestic violence during the Covid19 pandemic

Source: Field Data, 2021

Women and girls and Covid19

Community members who participated in the survey were asked whether violence against women (VAW) increased during the pandemic. Majority of the respondents, nearly a half (48%) indicated that VAW increased during the pandemic, while a third (34%) said it actually increased a lot. Only 18% of the respondents (nearly a third) were of the view that VAW did not increase during the pandemic.



■ VAW during Covid19

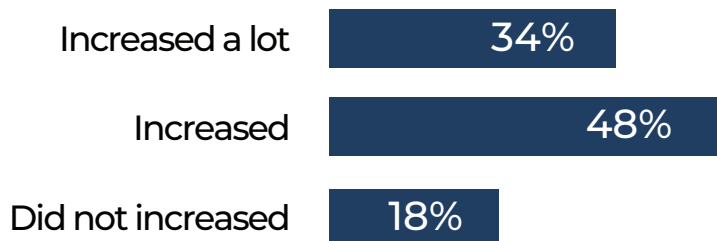


Figure 99: %Responses on whether VAW increased during the Covid19 pandemic

Source: Field Data, 2021

For women, increased unpaid domestic work was also cited as a serious problem during the Covid19 pandemic. Over a half of the respondents (54%) said it was a serious problem, followed by nearly a third (32%) who were of the view that it was a moderate problem. The remaining 18% said it was either a minor problem (10%) or not at all a problem (8%).

■ Increased unpaid domestic work during Covid19

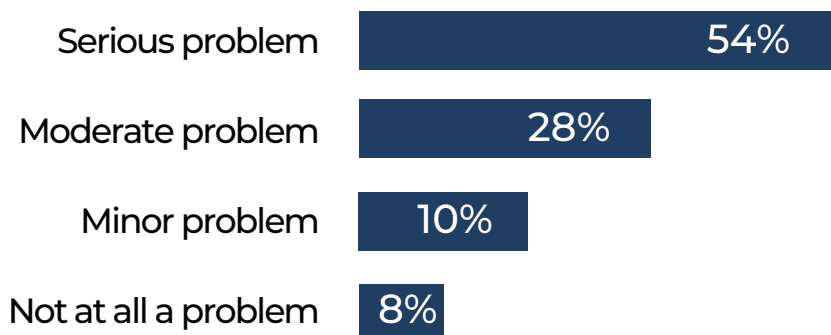


Figure 100: % Responses of respondents on extent of the problem of increased unpaid domestic work during Covid19

Source: Field Data, 2021



Regarding the impact of Covid19 on women and girls, majority of the respondents also identified challenges such as child marriage, child pregnancy, availability and affordability of sanitary pads as moderate and serious problems during the pandemic. Their responses in this regard are as indicated in table 45 below.

Table 45: %Responses of respondents on extent of various problems facing girls and young women during the Covid19 pandemic

Problem	Extent (%)			
	Serious	Moderate	Minor	Not at all
Child marriage	23	33	28	16
Child pregnancy	31	29	26	14
Availability & affordability of sanitary pads	41	39	10	10

Source: Field Data, 2021

Children and Covid19

When asked whether violence against children (VAC) increased during the Covid19 pandemic, majority of the respondents (44%) indicated that it had increased a lot, followed by those who felt that it had just increased (38%), and 18% who felt it did not increase.

■ VAC during Covid19

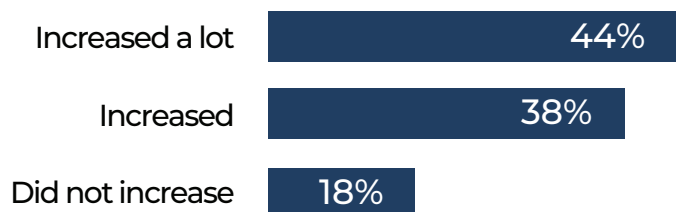


Figure 101: %Responses on whether VAC increased during the Covid19 pandemic

Source: Field Data, 2021



Respondents of the survey were also asked about specific issues regarding children's rights and welfare that were commonly raised during the pandemic, namely physical violence, sexual violence, risky sexual behaviours among girls, child neglect, child marriage, and child pregnancy. They were asked to what extent these were problems in their community during the pandemic, and generally majority of them were of the opinion that they were serious or moderate problems, as indicated in table 46 below.

Table 46: Responses of respondents on extent of various problems facing children during the Covid19 pandemic

Problem	Extent (%)			
	Serious	Moderate	Minor	Not at all
Physical violence	52	29	11	8
Sexual violence	40	32	10	18
Risky sexual behaviours among girls	23	31	25	21
Child neglect	31	26	12	31
Child pregnancy	33	32	18	17
Child marriage	27	39	15	19

Source: Field Data, 2021

Interviewed respondents mentioned that children, both girls and boys, were at greater risk of different forms of violence, especially sexual violence. Rape and sodomy were particularly mentioned as key concerns for children during the Covid19 era.

Impact of Covid19 on other vulnerable groups

The pandemic also affected other vulnerable groups such as PWDs and youths. For instance, for youth, the problem of unemployment and underemployment was exacerbated by the Covid19, especially in the tourism industry and hospitality sector in Zanzibar. Loss of employment means loss of income, hindering effective realization of the right to adequate standards of living.

Impact of Covid19 on socio-economic rights

Globally, the impact of Covid19 on socio-economic rights and national development has been huge, and Zanzibar has not been spared, like



most other African countries. Respondents of the survey in Unguja and Pemba were asked the extent to which Covid19 impacted socio-economic rights of the vulnerable and other groups in terms of access to health services, personal income, and access to food/nutritious food.

Regarding access to health services, the respondents were asked to what extent limited access to health services was a problem during the pandemic. Majority of them, over a third (36%) said it was a moderate problem, followed by a quarter (25%) who said it was a serious problem. 21% of the respondents did not consider access to health services to have been affected in the Covid19 era, while 18% said it was not at all a problem for community members.

■ Access to health services during Covid19

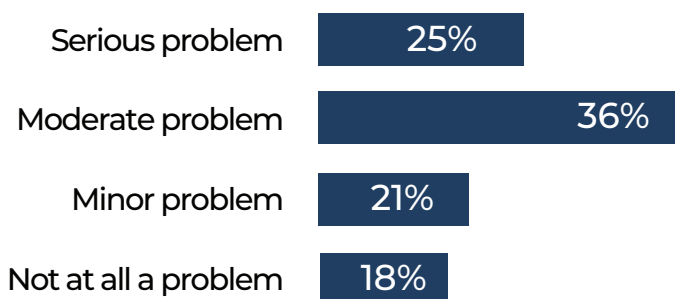


Figure 102: %Responses on extent to which accessing health services was a problem during Covid19

Source: Field Data, 2021

In terms of income, which has a big implication on the right to adequate standard of living, respondents of the survey were asked the extent to which loss of income was a problem for vulnerable and other groups in the community. Overwhelming majority of the respondents, over two thirds (65%), said loss of income was a serious problem in the community, followed by 20% who said it was a moderate problem. The remaining 15% said it was only a minor problem and not at all a problem.



■ Loss of income during Covid

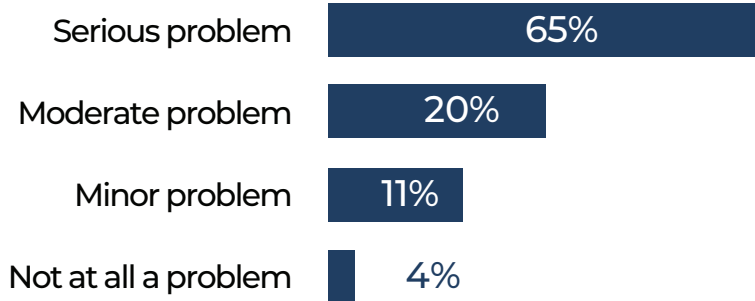


Figure 103: % Responses of community members on extent to which loss of income was a problem in the community during Covid19

Source: Field Data, 2021

Regarding access to food/nutritious food, majority of the respondents generally indicated that there was reduced access to food and/or nutritious food during the pandemic, mainly contributed to loss of income. Nearly a half of the respondents (44%) said this was a serious problem in their community, followed by 30% who said it was only a minor problem, and 20% who felt it was a moderate problem. Only 6% said it was not at all a problem.

■ Access to food/nutritious food during Covid19

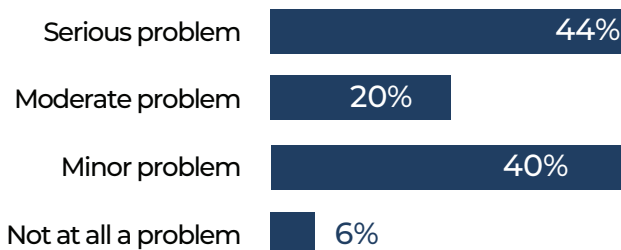


Figure 104: % Responses of community members on extent to which access to food/nutritious food was a problem during Covid19

Source: Field Data, 2021



The socio-economic right of education was also greatly affected as the pandemic disrupted provision of quality education at all educational levels. Like in Tanzania Mainland, schoolchildren had to temporarily stop going to school as a strategy of containing the spread of the pandemic.



CHAPTER 6: HUMAN RIGHTS MECHANISMS

6.1. Overview

Human rights mechanisms comprise of laws and institutions that promote and protect human rights. These mechanisms exist at national, regional, and international level. National level mechanisms that are discussed under this chapter are the Judiciary; the Commission for Human Rights and Good Governance (CHRAGG); Law Review Commission of Zanzibar (LRCZ); Office of the Director of Public Prosecutions (DPP); and the Police Force.

Regional and international human rights mechanisms accessible by Zanzibar include: Universal Periodic Review Mechanism (UPR); Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination Against Women; the Committee on the Elimination of Racial Discrimination; the Committee on the Rights of Persons with Disabilities; the African Court on Human and Peoples' Rights; the African Commission on Human and Peoples' Rights; African Committee of Experts on the Rights and Welfare of the Child; and the East African Court of Justice. In this Chapter, we focus on the Universal Periodic Review Mechanism (UPR), since Tanzania's human rights record was yet again examined in 2021.

6.2. National Human Rights Mechanisms

6.3. The Judiciary of Zanzibar

6.3.1. Legal framework & role in promoting and protecting human rights

The Judiciary of Zanzibar is comprised of the High Court of Zanzibar, Kadhis Court, and other courts established and provided for under Chapter Six of the Constitution of Zanzibar (1984) and the Magistrates



Court Act, 1985. The Court of Appeal of the United Republic of Tanzania has the made to determine an appeal case from the High Court of Zanzibar, except where the subject matter is interpretation of the Zanzibar Constitution, Islamic case originating from Kadhis Court, and other matters reserved in the Constitution of Zanzibar and other laws enacted by the House of Representatives.¹⁴⁸⁷

The Judiciary of Zanzibar has final decision in dispensation of justice in Zanzibar. It administers justice through interpretation and application of laws, rules, and regulations as well as international human rights standards. In this regard, it plays a very important role in safeguarding human rights through administration of justice, preventing human rights violations and ensuring effective remedy is provided where such violations occur.

6.3.2. Challenges

- Shortage of judicial staff.
- Corruption, especially in lower courts.
- Delays in dispensation of justice, mainly contributed by delays in police investigations
- Constant adjournment of cases.
- Delays in execution of judgement.
- Backlog of cases, contributed by shortage of judicial workers and delays in completing investigations

6.3.3. Tanzania Police Force

6.3.3.1. Legal framework & role in promoting and protecting human rights

The Tanzania Police Force (TPF) is established under the Police Force and Auxiliary Services Act.¹⁴⁸⁸ Police mandate includes investigation of human rights violations, for instance arrested and taking to court perpetrators of violence against women and children. Preventing crime includes raising awareness on crimes and criminal laws as well as road safety, for instance the “*Nenda kwa Usalama*” road safety campaign conducted by Traffic Police.

In 2021, police continued to take action to protect citizens and their property, including arresting and taking to court perpetrators of human rights violations such as people accused of committing acts of physical and sexual violence. Fewer crimes have been documented by police in recent years, including in the period of 2020/2021.¹⁴⁸⁹

¹⁴⁸⁷ See Section 99 of the Constitution of Zanzibar (1984).

¹⁴⁸⁸ Section 3 of the Police Force and Auxiliary Services Act, [CAP 322].

¹⁴⁸⁹ See HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE. GEORGE BONIFACE



6.3.3.2.Challenges

- Corruption
- Shortage of police officers: According to the IGP, Simon Sirro, there is currently one police officer for 2,000 people, while the international standard is one police officer for 450 people.
- Excessive use of force during arrest or interrogation, sometimes leading to extrajudicial killings
- Arbitrary arrest and detention
- Negative perception about rights of accused person, including right counsel
- Trumped-up charges/fabrication
- Holding accused persons beyond 24 hours before taking them to court
- Lengthy investigations, causing delays in dispensation of criminal justice
- Long distance from resident to some police stations.

6.3.4. Commission for Human Rights and Good Governance

6.3.4.1. Legal framework & role in promoting and protecting human rights

The Commission for Human Rights and Good Governance (CHRAGG) is established under Article 129(1) of the Constitution of the United Republic of Tanzania, 1977. It has operational mandate in the whole of Tanzania, overseeing human rights and good governance issues. Key functions include: human rights and good governance sensitization and public awareness-raising; receiving and addressing complaints of human rights violations as the national human rights institution (NHRI); and conducting inquiry on matters relating to infringement of human rights and violation of principles of good governance.

In 2021, CHRAGG continued carrying out its key functions, including: sensitizing about preservation of human rights and duties; and receiving complaints in relation to violation of human rights. CHRAGG also continued to closely work with CSOs in Zanzibar, including ZLSC and ZAFAYCO.

6.3.4.2.Challenges

- Shortage of funds: Like for most other government institutions, budgetary constraints is a challenge for CHRAGG in terms of providing and expanding its services.

SIMBACHAWENE (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2021/2022 at <https://www.moha.go.tz/sw/blog/2021-05-03/hotuba-ya-waziri-wa-mambo-ya-ndani-ya-nchi-mhe-george-boniface-simbachawene-mb>.



- Lack of offices in most regions in Tanzania: Currently, CHRAGG only has one in Zanzibar (Unguja). This limits its ability to reach many people and provide timely services.

6.3.5. Zanzibar Anti-corruption and Economic Crimes Authority

6.3.5.1. Legal framework & role in promoting and protecting human rights

In 2011 the Revolutionary Government of Zanzibar (RGOZ) developed and adopted a good governance policy and shortly thereafter an Anti-Corruption and Economic Crimes Act was passed by the Zanzibar House of Representatives.¹⁴⁹⁰ The Act establishes the Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA) operationalized in 2012 with a three-pronged mandate of Prevention, Education and Investigations for both public and private sector.¹⁴⁹¹ Fighting corruption is essential for safeguarding human rights, especially economic and social rights such as education, health, and water. Corruption has also proven to be an enemy of administration of justice in Zanzibar. Therefore, the role of the national anti-corruption body, such as ZAECA, in promoting and protecting human rights cannot be underestimated.

In 2021, ZAECA continued to take various measures to prevent and address corruption, including awareness-raising and arrest and prosecution of perpetrators of corruption.

In 2021, Transparency International released another report on performance of different countries across the world in preventing and addressing corruption. Tanzania's performance in the report, Corruption Perceptions Index 2021, continued show slight improvement in combating corruption in Tanzania, including Zanzibar, although the problem of corruption is still serious both Tanzania Mainland and Zanzibar. In 2020, Tanzania's jumped two more places in the world rankings to 94th after scoring one more point. In 2021, Tanzania jumped further in the rankings to the 87th position after scoring another point to make it 39 points.¹⁴⁹²

1490 See the Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA) website at <https://zaeca.go.tz/background.html>.

1491 Ibid.

1492 See Transparency International's Corruption Perceptions Index 2021: Tanzania, at <https://www.transparency.org/en/countries/tanzania>.



6.3.6. The Office of Director of Public Prosecutions

6.3.6.1. Legal framework & role in promoting and protecting human rights

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 1984.¹⁴⁹³ 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 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.

In 2021, the DPP Office continued to perform its various roles in administration of criminal justice in Zanzibar, including charging criminal suspects in courts of law and conducting investigations to assist in prosecution of cases.

6.3.6.2. Challenges

- Delays in police investigations
- Lengthy pre-trial detention and other challenges in the criminal justice

¹⁴⁹³ 1984 Section 56A



6.3.7. The Law Review Commission of Zanzibar

6.3.7.1. Legal framework & role in promoting and protecting human rights

Another National Human Right Mechanism in the country is Law Review Commission of Zanzibar (LRCZ). This commission was established was established under Section 3 of the Law Review Commission of Zanzibar Act No: 16 of 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.

6.3.7.2. Challenges

- The Commission has not been very active in reviewing laws that have been identified by various stakeholders, both within and outside Zanzibar and Tanzania, as containing provisions which infringe on human rights. It has also not been vocal in this regard.

6.4. Regional and International Human Rights Mechanisms

6.4.1. Legal Framework

Tanzania, Zanzibar inclusive, is part of various regional and international human rights mechanisms. These include the Universal Periodic Review Mechanism (UPR) - whereby it submits its reports on promotion and protection of human rights; and bodies established under various human rights treaties.

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 periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against



Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice.

6.4.2. Universal Periodic Review (UPR): Tanzania on the Spotlight in 2021

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.¹⁴⁹⁴ 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 fulfil their international human rights obligations.¹⁴⁹⁵

In 2021, Tanzania's human rights record was yet again examined by the UN Human Rights Council's Universal Periodic Review (UPR) Working Group for the third time on 5th November 2021, following the first and second UPR reviews in October 2011 and May 2016.¹⁴⁹⁶ The documents on which the reviews are based are: 1) national report - information provided by the State under review; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information provided by other stakeholders including national human rights institutions, regional organizations and civil society groups. During the interactive dialogue, 92 delegations made statements.

The Tanzania national report highlighted developments since previous review and status of implementation of accepted recommendations.¹⁴⁹⁷

Prior to the UPR process for Tanzania, various CSOs in Tanzania, including from Zanzibar, submitted shadow reports to the UPR Working Group. One of the reports was prepared in 2019, looking at the status of implementation of accepted recommendations during the 2nd cycle in 2016.¹⁴⁹⁸

The November 2021 UPR process, a total of 108 recommendations

1494 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.

1495 Ibid.

1496 OHCHR "Tanzania's human rights record to be examined by Universal Periodic Review" at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27747&LangID=E>.

1497 Human Rights Council Working Group on the Universal Periodic Review, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: United Republic of Tanzania*, Thirty-ninth session, -12 November 2021, at <https://undocs.org/A/HRC/WG.6/39/TZA/1>.

1498 TANZANIA CSOs UPR MID TERM REPORT OCTOBER 2019 https://www.ohchr.org/Documents/HRBodies/UPR/NGOs/MidTermReports/Tanzania_CoalitionCSOsHRDefenders.pdf.



(43%) enjoyed the support of Tanzania, 12 recommendations will be examined (5%), and 132 recommendations (52%) were noted.¹⁴⁹⁹ Among the recommendations which enjoyed the support of Tanzania were: Accelerate implementation of the Convention on the Rights of Persons with Disabilities (Australia); Continue efforts to halt all forms of discrimination against women (Libya); Continue measures to prevent trafficking in persons (Nepal); and Improve access to adequate housing, safe drinking water and adequate sanitation (Ukraine).

Among the recommendations to be examined are: Enact a law on the protection of older persons in society on the mainland of the United Republic of Tanzania (Kenya); Take additional steps to ensure women's rights in matters of inheritance, succession and land rights (Japan); and Implement measures to provide non-discriminatory universal health coverage (Mauritius).

Among the recommendations which were noted are: Ratify the international human rights treaties to which the United Republic of Tanzania is not yet a party (Ukraine); Intensify efforts to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Chile); Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Mongolia); and End illegal pretrial detention which contravenes constitutional guarantees and the internationally recognized right to a fair trial (United Kingdom of Great Britain and Northern Ireland).

¹⁴⁹⁹ UPR Working Group Report on URT, December 2021.



CHAPTER 7 CONCLUSION AND RECOMMENDATIONS

7.1. Conclusion

Civil and Political Rights

While the Zanzibari generally continued to enjoy their civil and political rights, enjoyment of such rights was jeopardized by various factors. For right to life, key issues for the year 2021 included mob violence; death penalty; and road accidents, majority of whom have been said to be caused by human error, especially negligence by drivers. For freedom of expression, the major barrier to effective enjoyment and realization of this fundamental right continued to be legal provisions in some of the laws, which are not in conformity with international standards on freedom of expression, hence restrictive. For instance, various analyses of the Cybercrimes Act of 2015 and Online Content Regulations of 2020 by local and international organizations have also shown that they contain provisions which are restrictive and fall short of international human rights standards. However, in 2021, the Union Government made some few positive amendments to the Online Content Regulations of 2020 to address some of the concerns.

Regarding freedoms of assembly and association, key issues in 2021 included existence of provisions that are restrictive in the laws such as the Political Parties Act, which among others, have had a serious impact on political development. In 2021, opposition political parties also continued to express concern over a political rally ban which was introduced in 2016 and is yet to be officially lifted.

In 2021, the people of Zanzibar also continued to enjoy their right to equality before the law, which includes the right to access to justice and fair trial rights in criminal justice. The Revolutionary Government of Zanzibar and the Judiciary of Zanzibar continued to take various measures to enhance access to justice. However, several factors hindered effective realization of this right for some community members,



including corruption, lengthy court proceedings, low awareness about laws, legal representation costs, and lengthy and cumbersome legal procedures. In criminal justice, challenges mentioned by community members who responded to the human rights survey in Pemba and Unguja included denial of bail, fabrication of charges or cases, taking too long to present accused persons to court, lengthy pre-trial detention, and shortage of judicial staff. Regarding the juvenile justice, majority of respondents expressed satisfaction with Zanzibar's juvenile justice system.

Regarding the right to liberty and personal security, key issues that were identified in 2021 included denial of bail, especially considering the current challenges faced in the criminal justice system such as delays in concluding investigations and lengthy pre-trial detention; and human trafficking.

On freedom from torture, the major concern is the fact that Tanzania is yet to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Another concern raised in 2021 was non-reporting or underreporting of torture incidents, especially those perpetrated by state agents.

Challenges in enjoyment of civil and political rights in 2021 were exacerbated by the Covid19 pandemic, which erupted in March 2020. The pandemic did this in several ways, including disruption of administration of justice, increasing the risk of violence against women and children, and increasing the risk of human trafficking. The work of NGOs, including provision of legal aid, was also disrupted.

Economic, Social and Cultural Rights

To ensure Zanzibaris progressively enjoy economic, social, and cultural rights, the Revolutionary Government of Zanzibar continued to take various measures, including budgetary allocation for key sectors such as health, education, and water; implementation of free education policy; construction and renovation of facilities; and provision of loans for higher education students. However, several challenges continued to affect realization of these rights. In education, such challenges included shortage of teachers; shortage of classrooms; shortage of toilets and toilet holes; and poor working conditions for teachers. In health, shortage of workers was also cited as a key challenge, as well as mental health, while for the right to water, key concerns included water loss and leakages and lack of access to clean and safe water in



some areas. These challenges were also exacerbated by the impact of the Covid19 pandemic. Challenges in enjoyment of the right to work, including unemployment and underemployment, were also compounded by the Covid19 pandemic, as community members reported increased loss of employment and income, especially in industries such as hospitality and tourism. This situation also created serious consequences for the right to adequate standard of living.

For the enjoyment of the right to own property, denial of women's property and inheritance rights, including for widows; and land disputes, were key issues which came to the spotlight in 2021.

Collective Rights

Collective rights, such as the right to development and right to enjoy and benefit from natural resources, are dependent on the enjoyment of civil and political rights and economic, social, and cultural rights. For the year 2021, challenges that affected enjoyment of these rights also affected realization of collective rights. Like it was the case for other human rights, the Covid19 compounded the challenges in enjoyment of collective rights, including unemployment and underemployment, and tax evasion and avoidance.

Rights of vulnerable groups

In 2021, the Revolutionary Government of Zanzibar continued to take steps to ensure realization of rights of women, children, PWDs, the elderly, and PLHIVs. However, key challenges such as violence and discrimination continue to hinder effective realization of the human rights of these groups, especially freedom from violence and right to non-discrimination. Gender-based violence (GBV) and violence against children (VAC) constituted major violations of women's and children's rights in 2021. Common acts of violence that were reported were rape, sodomy, child neglect, and beatings. People close to the victims/survivors were identified as major perpetrators of GBV and VAC. As an important strategy to address GBV, in 2021 the Government continued to implement women's empowerment programmes, including provision of loans to women's groups. For children, child labour, neglect, child trafficking, and child pregnancy were also mentioned as key issues by community members.

For PWDs, despite Government efforts to improve their welfare and



protect their rights, they continued to face various challenges, including exclusion/marginalization, harassment, unemployment, and different forms of violence. For the elderly, key challenges include economic hardships; harassment, especially by youth; exclusion at family level; and difficulties in accessing quality health services. For PLHIVs, the main challenges were stigma and discrimination.

For youth, despite the various initiative by the Government to promote their rights, majority of them still face several challenges that hinder effective realization of their human rights. These challenges include limited knowledge about sexual and reproductive health and rights; unemployment and underemployment; and exclusion in decision-making processes.

The impact of the Covid19 pandemic was felt the most in terms of realization of the rights of vulnerable groups. Women, youth, children, and PWDs, and the elderly were disproportionately affected by the pandemic, which exacerbated violence against women and children (VAWC), economic hardships, and unemployment and underemployment.

Human rights mechanisms

In 2021, national human rights mechanisms such as the Judiciary of Zanzibar, the Tanzania Police Force, the Commission for Human Rights and Good Governance, the Zanzibar Anti-Corruption and Economic Crimes Authority, and the Office of Director of Public Prosecutions, continued to provide various services that promote and protect human rights. However, these mechanisms were faced with various challenges, including shortage of staff/officers, corruption, delays in conducting investigations and administration of justice; and budgetary constraints. Internationally, the year 2021 saw Tanzania's human rights record examined once again under the UN Human Rights Council's Universal Periodic Review (UPR) human rights mechanisms. Tanzania was reviewed in November 2021.

7.2. Recommendations

7.2.1. Civil and Political Rights

- The Tanzania Police Force to ensure police officers respond timely to prevent mob violence and legal action is taken against perpetrators.
- Public awareness-raising is also important to address the problem of mob violence. As such, the ministry responsible for home affairs,



the police and other stakeholders such as CSOs operating in Zanzibar should collaborate to conduct awareness-raising programmes.

- Community members to refrain from engaging in mob violence practices.
- The Commission for Human Rights and Good Governance (CHRAGG) and the Tanzania Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address police misconducts, including extrajudicial killings.
- Tanzania has become an abolitionist state in practice when it comes to death penalty. As such, the Government should move to abolish death penalty in its penal laws.
- The Revolutionary Government of Zanzibar to collaborate with the Union Government take measures to amend laws and regulations governing freedom of expression, particularly the Cybercrimes Act of 2015 and the Online Content Regulations of 2020, to bring them in line with international human rights standards.
- The Revolutionary Government of Zanzibar to collaborate with the Union Government to take measures to amend laws and regulations governing freedoms of association and assembly, especially the Political Parties Act, to bring them in line with international human rights standards.
- The Zanzibar Anti-Corruption and Economic Authority to work closely with other stakeholders, including NGOs, to intensify prevention and combating of corruption initiatives, as part of a strategy to address corruption in administration of justice.
- The Police Force should refrain from conducting arbitrary arrests and arbitrarily detain accused persons instead of sending them court within a specified period of time (usually 24 hours) as required by the law, in order to the right to liberty. Police officers implicated in this behaviour should be held accountable.
- The Police Force should ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be held accountable. Establishment of an independent police oversight body would be a good move in this regard.
- CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as encouraging community members to obey the law and respect human rights of others.
- CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance with knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.
- Religious and community leaders should also use their platforms and influence to speak out against human rights violations, especially violations of civil and political rights.
- The Revolutionary Government of Zanzibar should collaborate with the Union Government to ratify the UN Convention against Torture (CAT) of 1984.



7.2.2. Economic, Social and Cultural Rights

- The Revolutionary Government of Zanzibar should intensify efforts to increase budgetary allocation for education and health sectors in line with international standards, which require allocation of at least 15 to 20% of the overall budget.
- The Government to take measures to address shortages of human and material resources in key sectors such as health and education.
- The Government, through the ministry responsible for education, to take measures to address challenges faced by teachers in primary and secondary schools as part of a strategy to improve quality of education in Zanzibar.
- The Government to spearhead legal reforms to protect women's property and inheritance rights.
- The Government, through the ministry responsible for land, and the Zanzibar Land Tribunal to increase efforts to resolve or address land disputes to safeguard the right to own property.
- The Government to continue with efforts to address employment-related challenges such as unemployment and underemployment in order to safeguard the right to work and the right to adequate standard of living.
- The Government, through the ministry responsible for education, to collaborate with non-state actors to address the problem of employability skills among college and university graduates.
- CSOs should work with relevant government ministries, such as the ministry responsible for women and ministry responsible for land, to promote and protect economic and social rights, including conducting awareness-raising sessions and campaigns.
- Members of the public are encouraged to seek knowledge and access information about their economic and social rights, including right to work and right to own property, including popular versions on laws relating to these rights prepared by government and non-government actors.
- Members of the public are also encouraged to report violations of their economic and social rights to relevant authorities, including trade unions and the Commission on Human Rights and Good Governance.
- In order to promote and ensure quality education, the responsible for education should ensure school inspections are conducted regularly and meals are available at primary schools, especially in rural areas.
- Community members should be encouraged to write wills to safeguard property and inheritance rights.
- The private sector to continue supporting the Government to address key challenges in health, education, and water sectors, as part of their corporate social responsibility.
- Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.
- Members of the public to refrain from damaging infrastructures, especially water infrastructures.



7.2.3. Collective Rights

- The Government, through relevant agencies such as ZAECA and the Zanzibar Revenue Board (ZRB), to take measures to address issues of corruption and tax avoidance and evasion as a way of safeguarding collective rights, especially the right to development.
- The Government to ensure respect of human rights in the course of attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on right to development and right to benefit from natural resources.
- Community members are encouraged to preserve and protect natural resources, which is their constitutional duty.
- Community members are also encouraged to pay their taxes, since these are key in realization of the right to development.

7.2.4. Rights of Vulnerable Groups

- The Government, through the responsible for women and the Zanzibar Law Review Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights, which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
- The Government to collaborate with CSOs to increase public awareness raising on GBV and VAC.
- The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.
- The Government to ensure increase employment and economic opportunities for persons with disabilities and address all forms of violence and discrimination against them.
- CSOs and social welfare departments within local governments to increase awareness on violence against women and children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.
- CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.
- Community members to perform their duties of protecting and safeguarding children's rights refraining from conducting acts of abuse to children.
- Community members should refrain from discriminating all children, including street children and children with disabilities.
- Community members to refrain from protecting perpetrators of violence against children simply because they need 'to conceal family shame.'
- Women and children are encouraged to come forward and report acts of violence against them in order to receive relevant assistance,



including legal and health services. They are also encouraged to cooperate with the Prosecution and social welfare, including testifying in court, in order to ensure perpetrators of violence are held accountable and justice is achieved.

7.2.5. Human Rights Mechanisms

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights.
- ZAECA should intensify efforts to address corruption in the national human rights mechanisms and ensure individuals are held accountable.
- CSOs must collaborate with CHRAGG build capacity for national human rights mechanisms officials to apply a rights-based approach in their work
- CSOs to engage human rights mechanisms at national, regional, continental and international levels as a way of promoting and protecting human rights.
- CSOs should sensitize the public about different national, regional/continental and international human rights mechanisms accessible to Zanzibaris and their role in promoting and protecting human rights.
- Members of the public are encouraged to engage different levels of human rights mechanisms, either individually, or with assistance of CSOs when their human rights are violated, as a way of seeking remedy.





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