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(ZLSC)



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Legal and Human Rights Centre
Justice Lugakingira House, Kijitonyama
P.O Box 75254, Dar es Salaam, Tanzania
Tel: +255222773038/48,
Fax: +255222773037
Email: lhrc@humanrights.or.tz
Website: www.humanrights.or.tz

&

Zanzibar Legal Services Centre
P.O Box 3360, Zanzibar, Tanzania
Tel: +2552422384
Fax: +255242234495
Email: info@zlsc.or.tz
Website: www.zlsc.or.tz

Partners - LHRC

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Editorial Board – Part One

Dr. Helen Kijo-Bisimba

Adv. Imelda Urio

Ms. Rose Ngunangwa Mwalongo

Ms. Felista Mauya

Adv. Anna Henga

Mr. Castory Kalemera

Researchers/Writers

Mr. Pasience Mlowe

Mr. Paul Mikongoti

Mr. Fundikila Wazambi

Design & Layout

Rodrick Maro

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Dr. Helen Kijo Bisimba
LHRC- Executive Director
Director

Ms. Harusi Mpatani
ZLSC Executive

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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
ASP	Afro-Shirazi Party
BoT	Bank of Tanzania
BPIJ	Basic Principles of the Independence of Judiciary
BRN	Big Results Now
CADE	Convention Against Discrimination in Education
CBOs	Community-Based Organizations
CCBRT	Comprehensive Community-Based Rehabilitation in Tanzania
CCM	Chama Cha Mapinduzi
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
CHRAGG	Commission for Human Rights and Good Governance
CRC	Constitutional Review Commission
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
CSR	Corporate Social Responsibility
CURT	Constitution of the United Republic of Tanzania, 1977
DLHT	District Land and Housing Tribunal
DPP	Office of the Director of Public Prosecutions
EIA	Environmental Investigation Agency
EWURA	Energy and Water Utilities Regulatory Authority
FCC	Fair Competition Commission
GBV	Gender-Based Violence
GN	Government Notice
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	International Centre for Settlement of Investment Disputes
IGP	Inspector General of Police
IOM	International Organization of Migration
IRaWS-T	Inmates Rehabilitation and Welfare Services Tanzania
LHRC	Legal and Human Rights Centre
LSF	Legal Services Facility
MIPAA	Madrid International Plan for Ageing
MLFD	Ministry of Livestock and Fisheries Development
MoEVT	Ministry of Education and Vocational Training
MoHSW	Ministry of Health and Social Welfare
MoWI	Ministry of Water and Irrigation
MSD	Medical Stores Department
NACSAP	National Anti-Corruption Strategy and Action Plan

NAO	National Audit Office
NAPs	National Action Plans
NEMC	National Environment Management Council
NGO-LAPS	Non-Governmental Organization Legal Aid Providers
NHRPS	National Human Rights Protection System
PAC	Parliamentary Public Accounts Committee
PCCA	Prevention and Combating of Corruption Act
PCCB	Prevention and Combating of Corruption Bureau
PEDP III	Primary Education Development Programme, Phase Three
PMO-RALG	Prime Minister’s Office-Regional Administration and Local Government
PSVs	Passenger Service Vehicles
PWA	People with Albinism
PWD	Persons with Disabilities
SEDP II	Secondary Education Development Programme, Phase Two
SHIVYAWATA	Shirikisho la Vyama vya Watu Wenye Ulemavu Tanzania
TACCEO	Tanzania Civil Society Consortium for Election Observation
TAMWA	Tanzania Media Women Association
TANESCO	Tanzania Electric Supply Company
TAWLA	Tanzania Women Lawyers Association
TBS	Tanzania Bureau of Standards
TFDA	Tanzania Food and Drugs Authority
TFS	Tanzania Forest Services Agency
TLR	Tanzania Law Report
TLS	Tanganyika Law Society
TPA	Tanzania Ports Authority
TPS	Tanzania Women and Children Welfare Centre
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGPs	UN Guiding Principles on Business and Human Rights
UNWG	Working Group on Business and Human Rights
VIPAA	Vienna International Plan of Action on Ageing
WAT	Women Advancement Trust
WHO	World Health Organization
WHO	World Health Organization
WLAC	Women Legal Aid Centre
ZLSC	Zanzibar Legal Services Centre

List of Legislations, Regulations and Policies

1. *The Associations Act or Trusteeship Incorporation Act, Cap 318.*
2. *The Basic Rights and Duties Enforcement Act, 1994.*
3. *The Commission of Human Rights and Good Governance, 2001 (Act No. 7 of 2001).*
4. *The Companies Act, Cap 212 [R.E 2002].*
5. *The Constitution of the United Republic of Tanzania, 1977.*
6. *The Constitutional (Consequential, Transitional and Temporary Provisions) Act, 1985.*
7. *The Court Fees Rules, GN No. 308 of 1964.*
8. *The Courts (Land Disputes Settlements) Act, (Act No. 2 of 2002).*
9. *The Criminal Procedure Act, Cap 20 [R.E 2002].*
10. *The Employment and Labour Relations Act, 2004 (Act No. 6 of 2004).*
11. *The Environmental Management Act, 2004 (Act No. 20 of 2004).*
12. *The Fair Competition Act, No. 8 of 2003 (Act No. 8 of 2003).*
13. *The Highways Act, 1932, Cap 167.*
14. *The Interim Constitution of Tanzania (Amendment) Act, (Act No. 8 of 1975).*
15. *The Judges (Remuneration and Terminal Benefit) Act, 2007.*
16. *The Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators) Rules G.N No. 66 of 2007.*
17. *The Labour Institutions (Mediation and Arbitration Guidelines) Rules G.N No. 67 of 2007.*
18. *The Labour Institutions (Mediation and Arbitration) Rules G.N No. 64 of 2007.*
19. *The Labour Institutions Act of 2004 (Act No. 7 of 2004).*
20. *The Land Act 1999, Cap 113 [R.E 2002].*
21. *The Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003.*

22. *The Law of Marriage Act, 1971, Cap 29 [R.E 2002.]*
23. *The Law of the Child Act, No. 21 of 2009.*
24. *The Legal Aid (Criminal Proceedings) Act, Cap 21 [R.E 2002].*
25. *The Local Authorities Pensions Fund Act, CAP 407.*
26. *The Local Government (District Authorities) Act, 1982, Cap 287.*
27. *The Local Government (Elections) Act, Cap. 292 [R.E. 2002].*
28. *The Local Government (Urban Authorities) Act, Cap.288 [R.E. 2002].*
29. *The Local Government Laws (Miscellaneous Amendments) Act, 1999, (Act No. 6 of 1999).*
30. *The Local Government Laws (Miscellaneous Amendments) Act, 2006, (Act No. 13 of 2006).*
31. *The Magistrates Court Act, Cap. 11, [R.E. 2002].*
32. *The Medical Stores Department Act, No. 13 of 1993.*
33. *The Motor Vehicles (Third Party) Insurance Act, 1945, Cap 169.*
34. *The Motor Vehicles Driving Schools (Licensing) Act, 1965, Cap 163.*
35. *The National Defence Act, Cap. 192, [R.E. 2002].*
36. *The National Elections Act, Cap 343, [R.E 2010].*
37. *The National Health Insurance Fund Act, [Cap 395].*
38. *The National Natural Gas Policy of Tanzania, 2013.*
39. *The National Prosecutions Service Act, 2008 (Act No. 27 of 2008).*
40. *The National Social Security Fund Act, Cap 20.*
41. *The Non-Governmental Organizations Act, 2002 (Act No. 24 of 2002).*
42. *The Parastatal Organizations Pensions Scheme Act, Cap 372.*
43. *The Penal Code, Cap 16.*
44. *The Persons' with Disabilities Act, 2010 (Act No. 9 of 2010).*
45. *The Police Force and Auxiliary Services Act, Cap 322.*

46. *The Police Force Services Regulations, 1995.*
47. *The Police General Orders (PGOs).*
48. *The Policy on Women in Development, 1992.*
49. *The Prevention and Combating of Corruption Act, 2007 (Act No. 11 of 2007).*
50. *The Proposed Constitution of the United Republic of Tanzania, 2014.*
51. *The Public Service (Retirement Benefit) Act, 1999.*
52. *The Public Service Retirement Benefits Act, Cap 371.*
53. *The Regional Administration Act, Cap.97, [R.E. 2002].*
54. *The Road Traffic Act, 1973, Cap 168.*
55. *The Roads Act, 2007 (Act No. 13 of 2007).*
56. *The Social Security (Regulatory Authority) Act, (Act No. 8 of 2008).*
57. *The Standards Act, 1975, Cap 130.*
58. *The Surface and Marine Transport Regulatory Authority Act, (Act No. 9 of 2001).*
59. *The Tax Revenue Appeals Act, Cap 408 [R. E 2006].*
60. *The Transport Licensing Authority Act, 1973, Cap 317.*
61. *The United Republic of Tanzania, Ministry of Education and Culture, Education and Training Policy, 1995.*
62. *The United Republic of Tanzania, Ministry of Health (2003), National Health Policy.*
63. *The United Republic of Tanzania, the National Social Security Policy, Ministry of Labour, Youth Development and Sports, January 2003.*
64. *The United Republic of Tanzania, Vice-President's Office, National Environmental Policy 1997.*
65. *The Village Land Act, 1999, Cap 114 [R.E 2002].*
66. *The Witchcraft Act, Cap 18 [R.E 2002].*

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1. African Charter on Human and Peoples' Rights, 1981.
2. African Charter on the Rights and Welfare of the Child, 1990.
3. American Convention on Human Rights, 1969.
4. Convention Concerning Workers with Family Responsibilities, 1981.
5. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
6. Convention on the Rights of Persons with Disabilities, 2006.
7. Convention on the Rights of the Child, 1989.
8. Convention on the Rights on Persons with Disabilities, 2006.
9. Declaration on Equality of Opportunity and Treatment for Women Workers, 1979.
10. Equal Remuneration Convention, 1951.
11. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.
12. Geneva Convention, 1949.
13. IBA Minimum Standards of Judicial Independence (adopted in 1982)
14. ILO Social Security (Minimum Standards) Convention, 1952 (No. 102).
15. International Covenant on Civil and Political Rights, 1966.
16. International Covenant on Economic Social and Cultural Right, 1966.
17. Maternity Protection Convention, 1952 (Revised in 2000).
18. SADC Protocol on Gender and Development, 2009.
19. Second Optional Protocol to the International Covenant on Civic and Political Rights, 1989.
20. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

21. UN Declaration on Elimination of Violence Against Women, 1993.
22. UN Standards Minimum Rules for the Administration of Juvenile Justice, 1985 [Beijing Rules].
23. United Nations Basic Principles of the Independence of Judiciary (BPIJ), 1985.
24. United Nations Convention Against and other Cruel and Degrading Punishment, 1984.
25. Universal Declaration of Human Rights, 1948.

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1. *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interfricaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire* (Communication Nos. 25/89, 47/90, 56/91, 100/93, Ninth Activity Report 1995-1996).
2. *Jawara v. Gambia* (2000) AHRLR 107 (ACHPR 2000).
3. *Legal and Human Rights Centre & Others v. Dowans Tanzania Limited & Others*, Miscellaneous Civil Application No. 8 of 2011.
4. *Legal and Human Rights Centre vs. the Attorney General; the Ministry of Health and Social Welfare; Ministry of Home Affairs and Ministry of Education and Vocational Training*, Misc Civil Application No. 15/2009.
5. *LHRC & Another v. Hon. Mizengo Pinda & Another*, Misc. Civil Cause No. 24 of 2013, High Court of Tanzania (Unreported).
6. *LHRC & Others v. the Attorney General*, Misc. Civil Cause No. 77 of 2005, High Court of Tanzania (Unreported).
7. *LHRC and others versus Dowans Holding SA (Costa Rica) and Dowans Tanzania LTD*, Misc. Commercial Cause No. 8 of 2011.
8. *LHRC vs. Attorney General (2006) TLR 240* and *Christopher Mtilika vs. Attorney General (2006) TLR 279*.
9. *Misperesi K. Maingu v. Hamisi Mtongori and 9 Others*, Civil Case No. 16 of 1988, High Court of Tanzania at Mwanza (Unreported).
10. *Ngwegwe s/o Sangija and 3 others v. Republic*, Criminal Appeal No. 72 of 1987, High Court of Tanzania at Mwanza (Unreported).
11. *Olam Tanzania Limited and 3 others V. Selemani S. Selemani and 4 others*, Consolidated Civil Revision No. 2,3,4,5 & 6, Court of Appeal of Tanzania at Mtwara (Unreported).
12. *Premchand Rainchad Ltd and Another vs Quarry Services of East Africa Ltd and others* (No. 3) [1972] E.A 162.
13. *R v Mushi Dominic*, Criminal Case No. 14 of 1991, High Court of Tanzania.
14. *Rev. Christopher Mtikila v. the Attorney General*, Misc. Civil Cause No. 10 of 2005, High Court of Tanzania (Unreported).
15. *Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited*, ICSID Case No. ARB/98/8.
16. *Zakalia Kamwela & Another v. the Minister for Education and Vocational Training & Another*, Civil Appeal No.3 of 2012, Court of Appeal of Tanzania (Unreported).

List of Government Notices

1. The Government Notice No. 263, Published on 3/8/2012.
2. The Government Notice No. 308 of 1964.

Preface

About LHRC & ZLSC

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

The LHRC was established in 1995 out of experiences and lessons generated from The Tanzania Legal Education Trust (TANLET) and the Faculty of Law of the University of Dar es Salaam (UDSM). The founders of the LHRC were lawyers who had participated in the legal Aid Committee of the Faculty of Law of the University of Dar-es-Salaam and its legal Aid camps. They were somehow disillusioned by the nature of the State and its policies which were increasingly departing from the interests of majority of the people. They observed the increase of human rights violation. For instance evictions of Maasai pastoralists from their lands and abuses to the people of Hanang' whose land were acquired by the Government and turned into big wheat farms of NAFCO.

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

Vision

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

Mission

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

LHRC's Values

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

Integrity

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

Equality

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

Transparency

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

Accountability

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

Professionalism

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

Voluntarism and Volunteerism

LHRC staff operate and are guided by the spirit of volunteering by ensuring that they undertake their responsibilities willingly and with dedication not necessarily working for payment but working while believing more on the value of the work rather than the amount of money or material benefit that one gains.

Zanzibar Legal Services Centre (ZLSC) is a non-governmental, independent and non-profit organization established to promote access to justice and advocacy for the respect and observance of human rights, popularization of the knowledge of law and production of publications in all areas of legal concern to the people of Zanzibar. The Centre was established in 1992 and was formally registered as a Trust under the Land (Perpetual Successions) Decree of Zanzibar in May, 1992, and acquired a Certificate of Compliance under the Societies Act, 1995 (Act No. 6 of 1995).

The Vision of the Centre

Rights and Access to Justice for all.

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

The Mission of the Centre

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

Prof. Geoffrey Mmari,

**Chairperson,
LHRC Board.**

Prof. Peter, Chris Maina,

**Chairperson,
ZLSC Board.**

Introduction

The Tanzania Human Rights Report, 2014, is a collaborative activity undertaken by the Legal and Human Rights Centre (LHRC) and Zanzibar Legal Services Centre (ZLSC). The LHRC collects data and compiles Part One of the Report that covers human rights situation in Tanzania Mainland, whereas ZLSC does the same in Part Two, covering human rights situation in Zanzibar.

The Report aims at documenting the situation of human rights in the country, incidents of human rights violations, and recommendations for policy, legal and practice reforms in the community. This report, which is divided into ten chapters in each part, provides detailed information on human rights violations. It captures human rights violations in; civil, political, economic, social, cultural and collective or group rights. It shows how violations of basic rights affects vulnerable groups such as women, children, persons with disabilities, elderly people, victims of trafficking in persons and refugees. The violations of basic human rights have adverse effect to the country's governance and accountability. The report touches on abuse of power and corruption in Tanzania. Chapter Nine of the Report provides an extensive discussion of issues of embezzlement and corruption in the country. In 2014, the issue of *Tegeta Escrow Account* came into the public domain as one of the biggest corruption scandals in the United Republic of Tanzania. The scandal involved a wide-range of individuals from the Central Government, departments such as Tanzania Revenue Authority (TRA) and RITA, as well as religious leaders, who were also beneficiaries of fraudulent payments made through Mkombozi Bank. The *Tegeta Escrow Account* corruption scandal not only tarnished the image of the Central Government (the Executive) but also other organs of the state. For instance, within the judiciary there were judges who were implicated in the scandal. LHRC considers this scandal to be a sign of moral decay within the society, as trusted institutions and organs were also involved in those corrupt transactions. Corrupt practices and illegal procurement processes in public domain affect not only the economy of the country but also the citizens, who have had to do with provision of poor social services while those given mandate to provide those services abuse their offices and engage in corrupt practices aimed at accumulating personal wealth.

Chapter Four of this report documents statistics and facts about provisions of social services such as health, education and water. Poor provision of health services endangers citizens' right to life, while scarcity of water in a country with abundant water sources denies and limits rights of women and girls as they waste a lot of time searching and fetching water. Provision of education which is not quality limits personal career development. The amount of money lost to grand corruption and illegal procurements such as the *Tegeta Escrow Account* could be utilized to improve

social services, especially in rural areas.

In 2014, land-related conflicts were experienced in different parts of the country. For instance, in early January, several people were killed in such conflict in Kiteto District, Manyara Region. The report explains the causes of land-related conflicts and proposes recommendations to reduce such conflicts in the future. For instance, LHRC proposes a study on a comprehensive land use plan at the national level before resorting to village land use plans. The village land use plans have failed to a great extent since it is now a fact that pastoralists and farmers cannot co-exist in same locality and share land without engaging in land conflicts. The details of land conflicts are found in Chapter Five in this report.

Political rights are guaranteed not only by international human rights instruments but also the Constitution of the United Republic of Tanzania. People enjoy political rights by forming and joining political parties, trade unions, civil societies and other assemblies. In 2014, there were several violations of these rights. For instance, some prospective aspirants did not participate in Local Government Elections of 2014 due to procedural technicalities such as improper filling in of forms and improper stamping. On the part of civil societies, there were intimidations and threats, whereby some of them were even barred from conducting their activities. SIKIKA, for example, was barred from operating in Kondoa District. In Dodoma, the Regional Commissioner prohibited CSOs to conduct public meetings on the current constitution-making process. LHRC was barred from providing civic education on the Proposed Constitution by Regional Commissioners in Kilimanjaro, Geita, Rukwa and Kagera.

In this report, LHRC commends the Government of United Republic of Tanzania for introducing Biometric Voters Registration (BVR). This is positive move towards ensuring free and fair elections. However, the National Electoral Commission (NEC) needs to work on irregularities discussed in Chapter Three of this report.

Further, the LHRC observed the following with respect to human rights situation in Tanzania Mainland for the year 2014:

- (a) During the Local Government Elections of 2014, there were irregularities and human rights violations. For instance, improper ballot papers, absence of secret ballot, short time for campaign and registration of voters. There was also destruction of properties and chaos that resulted into injuries to candidates and citizens.
- (b) Continued phenomenon of incidents of violation of right to life through witchcraft killings, mob-violence and killings of persons with albinism (PWA). For instance, up to June, 2014, 320 people were killed as a result of allegations

of involvement in witchcraft compared to 303 within the same period in 2013, 473 people were victims of mob-violence and 3 PWA were killed, with one child missing by the writing of this report. It was noted that for the year 2014, the victims of extra-judicial killings went down to 5 people from 22 in 2013.

- (c) LHRC is deeply concerned with increased brutal killings of law enforcers (police officers). For the year 2014 2 police posts were invaded and 3 officers were brutally killed. LHRC condemns such killings and calls upon the Government to accommodate police officers in barracks so as to safeguard their right to life and reinforce police posts located in remote areas.
- (d) On the right to education the LHRC found out there are several challenges affecting the education sector, such as poor working environment for teachers; shortage of learning materials and facilities; problems with English as a medium of instruction; lack of proper training for teachers; shortage of teachers; teenage pregnancy; absenteeism; and shortage of funds (capitation grants).
- (e) For the FY 2014/15, the Government allocated only 8.1 percent to health sector. This hampers provision of better health services to the citizens, especially in rural areas where women and children are most affected members of the society. The budget falls short of standards set out in the Abuja Declaration, requiring allocation of 15% of the national budget to the health sector.
- (f) There is little social protection for the citizens in the country. LHRC observes that the social security schemes in Tanzania are characterized by low coverage as it only covers employees in the formal sector, which constitutes only 10 percent of the population; inadequate benefits; social security is regarded as a privilege rather than a right; delays in making payments; and bureaucracy in receiving the benefits.
- (g) Increased national debt: Amongst East African countries, Tanzania ranks third in national debt, which currently stands at 42.7 percent of its Gross Domestic Product (GDP).
- (h) Illegal poaching is a big challenge for the Government, whereby elephants are targeted for ivory. It is estimated that every year, about 11,000 elephants are killed.
- (i) Counterfeit products dominate in markets in the country and pose danger to health and life of the consumers. In 2014, there were several incidences of seizure and destruction of fake products. The major products were counterfeit include consumable goods (food and drugs) and non-consumable goods, especially electronics.

- (j) Under-budgeting for bodies mandated to protect human rights is a major challenge that accelerates violation of human rights in the country. These bodies include the Commission for Human Rights and Good Governance, the Police Force and the Tanzania Prison Services
- (k) Rights of women and children are still massively violated. Women as a result of gender-based violence (GBV) and Female Genital Mutilation practices. For instance, in 2014 more than 1,000 young girls were mutilated in Mara Region (Tarime and Serengeti). Also, many incidences of rape have been reported in different parts of the country. From January to June, 2014, about 2878 incidents of rape were reported at police stations in Tanzania mainland.

Therefore, LHRC and ZLSC urge the responsible state organs and individuals to work on the recommendations proposed in different areas so as to improve the human rights situation in Tanzania. LHRC realizes that most of the violations are a result of lack of enough education and knowledge on legal and non-legal procedures but it should not be used as an excuse for the violations. Key stakeholders, both state and non-state actors, should actively engage in disseminating findings and situation as presented in this report so as to inform and engineer positive changes in the society.

Dr. Helen Kijo-Bisimba
Executive Director - LHRC

Chapter One

Background Information on Tanzania

1.0 Introduction

The United Republic of Tanzania is a sovereign independent state that is an outcome of the union between Tanganyika territory as then was, that attained its independence on 9th December, 1961, and Zanzibar, that attained its independence through revolution on 12th December, 1964. These two independent states united to form Tanzania on 26th April, 1964.¹ The union was engineered by the founding fathers of the two independent states, the Late Mwl. Julius Kambarage Nyerere, who died in 1999, and the Late Abeid Karume, who was shot dead in 1974. The country has remained stable politically and socially, and as a result it is one of the few countries in Africa that have never experienced bloodshed caused by political upheavals and civil wars. However, the country waged a war against the Iddi Amin regime in Uganda in 1978/79 following General Amin's invasion of Kagera Region in Tanzania. This chapter contains introductory information for the reader about Tanzania Mainland, while information about Zanzibar will be covered in Part Two of the report.

1.1 Geography

Tanzania is found in Eastern part of Africa. It lays between longitude 29^o and 41^o East, Latitude 1^o and 12^o South.² In terms of topography, the country is endowed with good geographical scenery, which includes mountain ranges and valleys. For instance, the highest free standing mountain in Africa, Mt. Kilimanjaro, is found in Tanzania; and attracts tourists from different countries across the worlds who visit every year. It has mountains ranges and valleys which determine climatic conditions of different regions. For instance, the Southern Highland regions are very cold compared to the coastal regions which have lower altitude.

The country is endowed with natural vegetation cover, with the exception to the central part, which is semi-arid. Such natural vegetation cover includes the Kitulo Natural Garden in Makete District, which has 350 different flora species.³ The Kitulo Garden is famously known as *Garden of God* and others have dubbed it "Serengeti of Flowers". It occupies an area of 2,600 meters between the peaks of Kipengere, Poroto and Mt. Livingstone.⁴ The Great Rift Valley cuts across the country from the western and central parts of the country running through to Mozambique. The Great

1 Nyerere, J.K (1995), *Our Leadership and the Destiny of Tanzania*, African Publishing Group, Zimbabwe, page 1.

2 LHRC & ZLSC Tanzania Human Rights Report, 2012 page 1.

3 www.tanzaniaparks.com/kitulo.html visited on 1st December, 2014.

4 *Ibid.*

Rift Valley provides ground for pastoralist activities and agriculture due to its fertile soil that supports growth of different crops. For instance, Usangu Valley is famous for rice production in Mbeya Region.

The country is gifted with natural water bodies which extend to neighbouring countries. Lake Tanganyika lies on the western regions of Kigoma, Katavi and Rukwa bordering Zambia, Democratic Republic of Congo (DRC) and Burundi, while Lake Victoria borders Uganda and Kenya. Lake Nyasa borders Zambia, Malawi and Mozambique. Also, there are permanent rivers, which create conducive environment for irrigation. These rivers include Rufiji, Ruvuma, Malagarasi, Kagera, Pangani, Wami, Ruvu, Ruaha, Kilombero and Mara, which flow throughout the year. These are big rivers, but there are a number of small rivers, which ensure availability of water for domestic use, hydro-power generation, irrigation and fishing.

Tanzania borders the Indian Ocean to the east, alongside which there are four major ports, namely: Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area), which is set to be expanded and become the biggest port in Africa. These ports have the potential to boost our country's economic growth as landlocked countries bordering Tanzania depend on them for exportation and importation of goods.⁵

Tanzania is one of the countries with tropical climatic condition. In the highlands temperatures range between 10°C to 20°C during the cold and hot seasons respectively. In the rest of the country, the temperature never falls below 20°C. Normally, around October to February it is very hot, especially in the coastal regions of Dar es Salaam, Pwani, Tanga, Lindi and Mtwara. The cooler period occurs between May and August in the highlands, where temperatures may drop down to 10°C.

The rainfall distribution in the country is divided into two areas: unimodal areas, which experience rainfall once per year; and bimodal areas, which experience rainfall two times a year. Unimodal areas include the following localities:⁶

- (a) Western regions (Rukwa, Katavi, Tabora and Kigoma);
- (b) Central regions (Dodoma and Singida);
- (c) Southern highlands (Mbeya, Iringa, Njombe and Southern Morogoro); and
- (d) Southern regions and Southern Coast regions (Ruvuma, Mtwara and Lindi).

The bi-modal areas include the following:

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

6 www.meteo.go.tz visited on 1st December, 2014.

- (a) Lake Victoria basin (Kagera, Mara, Mwanza, Geita, Simiyu and Shinyanga);
- (b) Northern coast and hinterlands (Dar es Salaam, Tanga, Coast, Extreme Northern Morogoro areas, and isles of Unguja and Pemba); and
- (c) North-eastern highlands (Kilimanjaro, Arusha and Manyara).

The bi-modal regions experience short rainfall (*vuli*) around October to December and heavy rainfall season starts around the end of March to early June.⁷ Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of sufficient rainfall, food security and availability have been satisfactory in recent years. Food crops produced in Tanzania are sold to the neighbouring countries as the internal market cannot absorb all available food crops.

The country's climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley, in the highland plains and along the coast on Indian Ocean.⁸ Therefore, this climatic condition attracts investors in the tourism sector, agriculture and semi-processing industries in rural areas.

Further, Tanzania is blessed with abundant natural resources (living and non-living). The country is endowed with different minerals such as Tanzanite, Gold, Diamond, Copper and Iron. Tanzanite is only found in Tanzania. Apart from minerals, Tanzania has a trillion cubic meters of natural gas in its coastal regions that have attracted heavy foreign direct investment.⁹ In the near future upon completion of the Kinyerezi Power Plant, the power generation will to a large extent depend on natural gas, therefore projected to lower production costs of industrial products, which in turn will make Tanzania the best destination for industrial production in Africa.¹⁰

The country also has beautiful islands within the Indian Ocean and in fresh water bodies (Lakes Victoria and Tanganyika). Islands found within the Indian Ocean include Unguja, Pemba, Mafia, Songosongo, Kilwa Kisiwani, Tumbatu, Chumbe, Fundo and Vundwe. In fresh water bodies there are island like Ukerewe and Gombe, found in Lakes Victoria and Tanganyika respectively.

7 *Ibid.*

8 Federal Ministry of Economics and Technology (gtz); Project Development Programme East Africa, "Tanzania's Wind Energy Market: Target Market Analysis" 2009 page 1.

9 The National Natural Gas Policy of Tanzania, 2013 page 2.

10 www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts visited on 1st December, 2014.

1.2 Population

The population of the country is rapidly growing, at the growth rate of 2.7 per annum. The population of Tanzania mainland has reached 43,625,354, whereas the population of Zanzibar is now 1,303,569. By gender, the number of female outweighs the number of male, with women accounting for 51.3 percent of the total population and men 48.7 percent. 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.

The National Population and Housing Census of 2012 indicate that the number of non-citizens living and working in Tanzania is 662,287. The number has grown faster as a result of an increase of foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad has reached 421,456 (diaspora).

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

1.3 Economic situation

The Government planned to spend 19,853,331 trillion in the budget for the 2014/2015 Financial Year (FY). Domestic revenue stands at 12,178,038 shillings. Other sources include; domestic borrowing 2,995,227; Non-Concessional borrowing 1,320,000, general budget support 922,168, Foreign Loans and grants including Millennium Challenge Account (MCA (T) and Local Government Authorities through its own sources is expected to contribute 458,471 shillings.¹¹

The Government has allocated 13,408,218 as recurrent and 6,445,113 for development expenditure.¹² The 2014/15 budget sets aims at; achieving real GDP growth of 7.2% in 2014 and 7.4% in 2015; continuing to control inflation at single digit level and eventually 5.0% by June 2015; enhancing domestic revenue ratio to GDP to reach 18.8% by 2014/15; and accumulating gross official reserves adequate to cover at least 4-month imports of goods and services by June 2015 and maintain a stable and market

11 URT, Ministry of Finance, Budget Speech 2014/15.

12 *Ibid.*

determined exchange rate.¹³

Detailed economic situation in the country, including implementation of the Big Results Now (BRN), the Five Years Development Plan and Long term plan 2011/12-2025/26 that aim at transforming country's economy to middle-income will be discussed in chapter five of this report.

1.4 Historical Overview: Colonialism to Present

The history of present Tanzania can be traced back to 1st Century Before Christ (B.C) through various historians. Tanzania, known as Tanganyika when the colonialists invaded Africa in 1885, was placed under German rule and later under the British rule, together with Rwanda and Burundi, which used to be called Ruanda-Urundi.¹⁴ Zanzibar (Unguja and Pemba) were also colonized by the British.

Tanganyika's interaction with foreigners is a long history. From the historical perspective, in the 1st Century, B.C, the Cushites from Ethiopia came and settled in Tanganyika. In 2nd Century A.D, the agriculturalist from Cameroon and Nigeria came to Tanganyika; and it is during this time when iron technology developed. It has been documented that Swahili civilization along the coast of East Africa to the present Zanzibar and coast of Tanganyika begun to develop in the 12th Century A.D. Due to the interaction and expansion of African tribes and movement of various groups, the local inhabitants started to develop chiefdoms and kingdoms around 15th Century A.D. It was during this Century that the long distance trade between the coastal city states and the Arabs thrived.¹⁵

The scramble for and partition of Africa in 1884-85 saw Tanganyika become the Germany colony. However, it was not easy for the Germans to rule the people of Tanganyika as they received stiff resistance from well-established Kingdoms in Western Tanganyika. Chief Mirambo of the Nyamwezi tribe, for example, strongly opposed the German rule, as did Mkwawa of the Hehe tribe in the Southern Highlands, Chief Mangi Meli of the Chagga tribe in the Northern part of the territory and Abushiri Bin Salim, who led rebellion against German colonialists along the coast of Tanganyika from 1888 to 1889. The areas along coastal regions were known as the *Swahili Strip*.

The local resistance against the German colonial rule was very stiff during the *Maji Maji* uprising from 1905 to 1907. The uprising involved the tribes in southern and Eastern parts of Tanganyika, who were fighting against the German colonialists. A

13 PWC Insight and Analysis "Understanding Tanzania's 2014/15 National Budget" Commentary, 2014 page 2.

14 LHRC & ZLSC (2012) Tanzania Human Rights Report 2012 page 6.

15 www.fijibure.com/tang.html

heavy fight was recorded at present day Mahenge, where Germany had a strong base of its administration. The *MajiMaji* resistance was inspired by Kinjekitile, a spiritual leader in Southern Tanzania whose medicine allegedly prevented the “white man’s bullets” from harming his followers.¹⁶

Germany’s colonial rule in Tanganyika ended in 1919 when the First World War ended, with Germany on the losing side. Most of Germany’s colonial territories in Africa, including Tanganyika, were taken by the British as the League of Nations mandated territory. After the Second World War in 1946, Tanganyika became a United Nations Trust Territory, subject, again, to British control. However, it began to demand towards self-governance and independence (independence struggle), through the Tanganyika African National Union (TANU) party.

The independence struggle by TANU under Julius Kambarage Nyerere led to Tanganyika’s independence on 9th December, 1961. A year later, it became a republic, with Julius Kambarage Nyerere becoming its first President. Zanzibar, on the other hand, became independent on 10th December 1963, but was still under the domination of the Sultan of Zanzibar. The Sultanate was overthrown on 12th January 1964 through the revolution led by the Afro-Shirazi Party (ASP). On 26th April 1964, the two independent states (Tanganyika and Zanzibar) merged to form the United Republic of Tanzania.

Examining Tanzania’s history from a human rights perspective, there is no doubt that the German and British colonial spells in Tanganyika negated and suppressed human rights. When one state colonizes another, it violates the right to self-determination of the colonized people. There is no law that can justify colonialism. Colonial powers rarely allowed the colonized people to enjoy any human rights.¹⁷

From 1961 to 1964, Tanganyika and later Tanzania was a multi-party state. In 1965, it adopted a single-party political system. Despite this system, there were two political parties operating in Tanzania between 1965 and 1977, TANU in the Mainland and ASP in Zanzibar. On 5th February 1977, TANU and ASP merged to form *Chama Cha Mapinduzi (CCM)*. From 1977 to 1992, CCM was the only political party allowed to operate in Tanzania. In 1984, a Bill of Rights and Duties was incorporated into the *Constitution of the United Republic of Tanzania of 1977* through the fifth constitutional amendment, after a long struggle by human rights activists. In 1992, multiparty politics was re-introduced and Tanzania became a democratic multi-party

16 LHRC & ZLSC (2012) Tanzania Human Rights Report, 2012 page 6.

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

state.¹⁸

The first independent administration under Julius Nyerere led Tanganyika/Tanzania from 1962 to 1985. In 1985, Ali Hassan Mwinyi succeeded him and served two terms from 1985 to 1995. In 1995, Tanzania held its first multi-party election, which saw Benjamin William Mkapa of CCM become President and serve two presidential terms until 2005. In October 2010, Mkapa's successor, Dr. Jakaya Mrisho Kikwete, also from CCM, was re-elected for his second term the fourth president in Tanzania's history, having also won the 2005 general elections.

The human rights situation in post-colonial Tanzania, like in many other African states, has been overshadowed by the need for development. Nationalist leaders conceived the process of economic development to be one that did not necessarily promote or respect human rights.¹⁹ The adoption of a Bill of Rights designed to protect human rights was denied at first apparently due to nationalistic ideas regarding the need for economic development.

1.5 Governance System

In Tanzania, the governing structure comprises the Executive, the Legislature and the Judiciary. These three bodies are established under Article 4 of the *Constitution of the United Republic of Tanzania of 1977*. Equally the interim Constitution of United Republic of Tanzania, 1965 and the Union Constitution 1964 recognized the same structure of governance system. Before 1963, there was recognition of chiefdoms, but these chiefdoms were abolished in 1963, when a bill to repeal *the African Chiefs Ordinance* was passed. The chiefs who were in power at that time were outraged by the abolition of chiefdoms. Hence, 1963 the ruler of *Chagga Council*, Chief Thomas Marealle filed an application at the court praying for compensation for loss of office and he won. The Government was ordered to compensate him 45,000 pounds. The Government was not happy with that decision, hence moved the Parliament to pass another law called *The Chiefs (Abolition of Office) (Consequential Provisions) Act*, which barred any chief in Tanganyika to claim any relief from court a result of loss of office.²⁰

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

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

20 Pius Msekwa; *Ungozi na Utawala wa Mwalimu Julius Kambarage Nyerere "Miaka 25 ya Utumishi Wangu kwa Umma Chini ya Uongozi wa Mwalimu Julius Kambarage Nyerere*, Nyambari Nyagwine Publishers (2012), Dar es Salaam at pages 71-72.

1.5.1 The Executive

The Executive arm of the state is made up of the President, who is the head of state and the Government, and the Cabinet. The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers. The Vice-President assists the President with all union matters. Zanzibar has a semi-autonomous government that has the power to deal with all non-union matters in the Isles. Details about the Zanzibar government are provided in Part Two of this report. In 2010, the Union Executive is composed of 26 Ministers and 24 Deputy Ministers. Among them, 8 are women making up 27.6 percent of all cabinet members. Another three (3) women are deputy ministers, making up 14.3% of all deputy ministers, who according to the Constitution of United Republic of Tanzania are not members of the Cabinet.²¹

1.5.2 The Legislature

The President of the United Republic of Tanzania and the members of the National Assembly are elected for a five year term through a direct popular vote.²² The President appoints a Prime Minister, who must be approved by the Parliament. The Prime Minister serves as the leader of government business in the National Assembly.²³ The President appoints his cabinet from National Assembly members.²⁴ The President also nominates 10 individuals from non-elected members to be part of the Parliament.²⁵

The majority of MPs are elected by the people in their constituencies. However, there are ten MPs who are appointed by the President and 102 special seat MPs who are appointed by their respective political parties. Additionally, there are 5 MPs who are members of the Zanzibar House of Representatives and the Attorney General of Tanzania, who is a Member of Parliament by virtue of his/her office. Laws passed by the National Assembly are only valid in Zanzibar if they address specifically-designated union matters and have been presented to the Zanzibar House of Representatives by the responsible minister.²⁶

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.²⁷

21 Article 55(2) “...All Deputy Ministers shall not be members of the Cabinet.”

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

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

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

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

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

27 The House of Representatives is established under Articles 63 and 64 of the *Constitution of*

There are currently 70 members in the Zanzibar House of Representatives.²⁸ The House has the ability to make laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and the Mainland is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

There are also central and local governments that operate pursuant to Article 145 of the *Constitution of the United Republic of Tanzania, 1977* and local government laws that apply to the regional and district levels of government.²⁹ Today, Tanzania has 30 regions, following the creation of the new regions of Katavi, Simiyu, Geita and Njombe, in 2010.

1.5.3 The Judiciary

The Judiciary is a constitutional organ and an arm of the state vested with powers to interpret the laws of the country.³⁰ Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.³¹ The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following courts: the Court of Appeal, which is the highest court in the country; the High Court of Tanzania; Resident Magistrates Courts; District Courts; and Primary Courts. In the Court of Appeal and High Court, adjudicators are called judges. In all other courts, they are called magistrates.

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- Zanzibar of 1984*. It consists of: elected members from the Constituents; nominated members by the President of Zanzibar, female members (special seats 30% of all elected members) appointed by political parties and represented in the House of Representatives, Regional Commissioners; and the Attorney General of Zanzibar. The matters that are considered to be union matters are set out in the *Constitution of the United Republic of Tanzania, 1977* at 1st Schedule.
- 28 Reith, S (2010) Tanzania after the Parliamentary and Presidential Elections of 2010: KAS International Report, at page 115.
- 29 The local government laws include the *Local Government (District Authorities) Act*, Cap. 287, R.E. 2002 of the Laws of Tanzania; the *Local Government (Urban Authorities) Act*, Cap.288 R.E. 2002 of the Laws of Tanzania; the *Local Government (Elections) Act*, Cap.292 R.E. 2002; the *Regional Administration Act*, Cap.97, R.E. 2002 of the Laws of Tanzania. These laws have been amended by the *Local Government Laws (Miscellaneous Amendments) Act, 1999*, Act No. 6 of 1999 and the *Local Government Laws (Miscellaneous Amendments) Act, 2006*, Act No. 13 of 2006.
- 30 Article 107(A) 1 of the Constitution of United Republic of Tanzania, 1977 provides that “*The Authority with final decision in the dispensation of justice in the United Republic shall be the Judiciary.*”
- 31 See: Articles 108, 114 and 117 of the *Constitution of the United Republic of Tanzania of 1977* also provisions of the *Magistrates Court Act*, Cap. 11, [R.E. 2002].

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania.³² Magistrates are appointed directly by the Commission.³³ The High Court of Tanzania has three major divisions, dealing with land, labour and commercial matters respectively.

There is also a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.³⁴ Moreover, there is a special Constitutional Court, which is an *ad hoc* court for resolving disputes related to interpretation of the *Constitution of the United Republic of Tanzania, 1977*.³⁵ The sole function of the special Constitutional Court is to make decisions on disputes about the interpretation or application of the Constitution between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.³⁶ One half of the members of the Special Constitutional Court are appointed by the Government of the United Republic of Tanzania and the other half are appointed by the Revolutionary Government of Zanzibar. Tribunals have also been established under various laws to adjudicate on other matters, including labour, taxes and land issues.³⁷

Zanzibar, as discussed in Part two of this report, has its own judicial system consisting of (in descending order): the Court of Appeal of Tanzania; the High Court of Zanzibar; Regional and District Magistrate Courts; Primary Courts; *Kadhi* Appeal Courts; and *Kadhi* Courts. These courts have jurisdiction over cases arising in Zanzibar that involve non-union matters.³⁸ The High Court of Zanzibar is the highest court for matters originating from *Kadhi* Courts and the interpretation of the Constitution of Zanzibar. However, the appeal process for a case originating from a magistrate court is slightly different, as the case may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

LHRC urges that, in order for the Judiciary to protect and promote human rights,

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

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

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

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

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

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

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

it must be independent. As the process of constitution-making is on progress, the idea of guaranteeing judicial independence should be paramount. The current settings jeopardize independence of the judiciary as senior court officers, including the Chief Justice, are political appointees (appointed by the President). All other judges are also appointed by the same appointing authority, thus putting independence of the judiciary at stake. Independence of the judiciary means every judge or magistrate, as the case may be, is free to decide matters brought before him/her in accordance with his/her assessment of the facts and his understanding of the law without any improper influence, inducement, or pressure, direct or indirect, from any person or authority. This is in accordance with the oath of office, which they take “to do justice without fear or favour, affection or ill will”.³⁹

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

Chapter Two

Civil Rights and Liberties

2.0 Introduction

The two terms, “civil rights” and “civil liberties” are usually used interchangeably; and while they are synonymous, there is a distinction that can be drawn from them. Civil rights are described as the basic rights from unequal treatment based on certain protected characteristics such as race, gender and disability; that they are positive actions that the government takes to ensure equal treatment for all without discrimination. Civil liberties, on the other hand, are described as the basic rights and freedoms that are guaranteed and protected, either explicitly by the Constitution or interpreted by courts of law; that they are the protection against government action.

Civil rights and liberties are both basic rights that every individual should possess to ensure their participation in the civic and political life of a country. They are provided for in the *International Covenant on Civil Rights and Political Rights, 1966* (ICCPR). Article 2 (1) of the Covenant requires the States Parties to ensure that they respect and ensure rights of all individuals within their territories, without distinction of any kind, irrespective of race, colour, sex, language, religion, political or any other opinion, national or social origin, property, birth or other status. Article 2 (2) requires States to ensure that they take necessary legislative and other measures to give effect to the rights recognized in the Covenant. Apart from the ICCPR, civil rights and liberties are also provided in the *Universal Declaration of Human Rights, 1948*, the *African Charter on Human and People’s Rights, 1981* and the *UN Convention on the Rights of Persons with Disabilities, 2007*.

The road to protection and recognition of civil rights and liberties in Tanzania has not been a smooth one. During the colonial time, civil rights and liberties were basically nonexistent. Upon the attainment of independence, the British, pushed for the inclusion of fundamental rights in a form of some sort of Bill of Rights in the new constitution of Tanganyika. It is argued that this move by the former colonial masters was a desperate attempt to ensure protection of interests of the Europeans and their subjects who remained in the country.⁴⁰ The Tanganyika nationalists refused to have a Bill of Rights included in the Constitution, arguing that such a move would make it difficult for the new Government to bring about economic development. During the first years of independence, there was enjoyment of some civil and political rights in the country. This manifested through, for example, establishment of several political and civil organisations which operated in different parts of the country.

40 Peter Chris Maina: Human Rights in Tanzania: selected cases and materials.

The honeymoon period for enjoyment of these rights was rather short. The then ruling party, Tanganyika African National Union (TANU), began to push for a single-party system in the country. In 1963, TANU proposed that it becomes the sole political party in the country. This proposal was made during the TANU annual conference by the then Party Chairman, Julius Nyerere, who argued that Tanzania was a country divided in fundamental issues, and thus having multi-party system, with the parties' differences so fundamental, would create a civil war situation.⁴¹ The TANU National Executive Committee thus decided to introduce the single-party system in Tanzania; and the *Interim Constitution of 1965* declared Tanzania a one-party State, acknowledging the existence of TANU in Mainland Tanzania and Afro Shirazi Party (ASP) in Zanzibar. This arrangement continued until 1977 when the two parties merged to form a single party *Chama cha Mapinduzi* (CCM).

The declaration of the country into a one-party State had a great negative impact as far as fundamental rights of individuals were concerned. This is because the party had to establish itself in all spheres of State affairs. The party assumed supremacy even over the National Assembly.⁴² The supremacy of the party was cemented in 1975 with the amendment of the Interim Constitution of 1965,⁴³ according to which all political affairs in the country, functions and organs of the State were to be conducted under the auspices of the party.⁴⁴ These amendments were later incorporated in the *Constitution of the United Republic of Tanzania, 1977*.⁴⁵ Single-party system meant that all opposition against the party and the Government had to be crushed. This led to violation of fundamental rights of the people and the Parliament was thus turned into a rubber stamp of the party and had to agree with everything that the party forwarded to it.

The year 1984 was meant to be a turning point in the country as far as protection of fundamental rights is concerned. This is the year when the Bill of Rights was enacted and incorporated in the *Constitution of the United Republic of Tanzania, 1977* and became operational in 1988. However, the justifiability of the basic rights and freedoms in the court of laws was suspended for a period of three years through the *Constitutional (Consequential, Transitional and Temporary Provisions) Act, 1985*.⁴⁶ The Government claimed that the reason behind the suspension was the need to make necessary arrangements for the implementation of the Bill of Rights. Critics, however,

41 NYERERE, Julius K., *Freedom and Unity: A Selection from Writings and Speeches 1952 – 1965*, Dar es Salaam: Oxford University Press, 1966, p. 196.

42 Peter Chris Maina: *Human Rights in Tanzania: selected cases and materials*. See also MSE-KWA, Pius, *Towards Party Supremacy*, Arusha: Eastern African Publications Ltd., 1977.

43 Act No. 8 of 1975 which amended Section 3 of the Interim Constitution of 1965.

44 *Ibid*

45 Article 10.

46 Section 5(2).

argue that the Government's move was meant to delay justifiability of Bill of Rights in courts of law, noting that nothing significant was done by the Government during the three years grace period meant to allow smooth implementation of the same.⁴⁷

Enactment of the Bill of Rights did not improve much the conduct of the Government as far as fundamental rights and freedoms were concerned. People were still not free to participate in civic and political life of the country. The single-party system remained intact, and any opposition to this system was suppressed through arrests, detentions and internal deportations.⁴⁸ However, calls for change intensified in the country, and the Government had to succumb to these calls and abandon the one-party system. In 1992, the multi-party system was re-introduced in the Tanzania, allowing participation to civic and political activities through registered political parties. The transition to the multi-party system was not smooth, and has continued to face challenges to date as politicians from the opposition political parties have continued to face hardships in their political endeavours.

The *Constitution of the United Republic of Tanzania, 1977* guarantees civil rights and liberties in. However, the constitutional guarantee is not absolute as the rights and freedoms provided in the Bill of Rights have been limited in various ways. A good example is the provision of the *Basic Rights and Duties Act, 1994*, which requires a three-judge panel for proceedings in a court of law related to infringement of the rights and freedoms contained in the Bill of Rights. The reality within the Tanzanian Judiciary has indicated that securing a three-judge panel is not an easy task as the Judiciary faces its own challenges, among them being lack of enough appointed Judges. This has in many times led to unnecessary delays in hearing and determining constitutional cases. A vivid example of such delays was revealed in two different cases filed by LHRC. One of the cases was filed against the Government, urging it to protect Tanzanian citizens with PWA, whereas the other case was filed in Arusha, challenging the citizenship Act that discriminates female Tanzanians married to foreigners.⁴⁹

47 The Law Reform Commission was expected to look and make necessary amendments at laws in the statute books which were contrary to the spirit and provision of the Bill of Rights. This was however not done as with the end of the three years grace period, all laws were still intact.

48 A classical example is the one involving a politician James Mapalala, who end up "deported" to the Mafia Island and all those associated with him and his opposition philosophies end up detained in police cells. See Peter Chris Maina: *Human Rights in Tanzania: selected cases and materials*. See also MSEKWA, Pius, *Towards Party Supremacy*, Arusha: Eastern African Publications Ltd., 1977.

49 Legal and Human Rights Centre vs. The Attorney General; the Ministry of Health and Social Welfare; ministry of Home Affairs and Ministry of Education and Vocational Training; and Misc Civil cause No 13/2002 Sion Gabriel Jonas vs. AG, High Court of (T) At Arusha respectively. The later was filed in 2002 and finalised in 2012 In most cases this case was delayed and postponed several times for lack of quorum.

2.1 Right to Life

The right to life is the most important of all human rights. There would be no meaning of having other human rights if there was no right to life. That being said, an argument can be made that all other human rights revolve around the right to life. The right needs to be protected even during the times of public emergencies which threaten the life of a nation.⁵⁰

It is because of the importance of the right to life that the same is protected by several international human rights instruments. The *Universal Declaration of Human Rights, 1948* clearly declares that everyone has the right to life, liberty and security of person.⁵¹ The right to life is further protected under the *International Covenant on Civil and Political Rights, 1966*, providing for the inherent right to life and the need for this right be protected by law and the need to abstain from arbitrary deprivation of one's right to life.⁵² Right to life is also covered in several regional human rights instruments, including the *European Convention for the Protection of the Human Rights and Fundamental Freedoms, 1950*.⁵³ In America the right to life is protected under the *American Convention on Human Rights, 1969*.⁵⁴ In the African, the right to life is protected under the *African Charter on Peoples and Human Rights, 1981*.⁵⁵ Domestically, the right to life is provided for in the *Constitution of the United Republic of Tanzania, 1977* under Article 14. The guarantee of the right to life in Tanzania is however not absolute, as the right is subjected to the provisions of other laws. The position is likely to remain the same, as the constitution-making process taking place in the country has failed to change it. The Proposed Constitution passed by the Constituent Assembly has included a provision similar to the one in the *Constitution of the United Republic of Tanzania, 1977*.⁵⁶

2.1.1 Death Penalty

Death penalty or capital punishment is one of the most controversial issues in several jurisdictions. The death penalty entails taking the life of a convicted person for crimes that he has committed. This is done through several ways such as hanging by the neck until the convicts dies; using the gas chamber to suffocate the convict to death; use of lethal injection which contains a combination of lethal toxic chemicals that causes the death of a convict; the use of electric chair where a convict is subjected to electrical shock that causes the death of a convict., and so on. In other jurisdictions the use of

50 Office of the High Commissioner for Human Rights: 'General Comments No. 6: the right to life (article 6), 30th April, 1982.

51 Article 3.

52 Article 6(1).

53 Article 2(1).

54 Article 4.

55 Article 4.

56 Article 33 of the Proposed Constitution.

public stoning is also employed, where the convicted is subjected to stoning by the public until s/he dies.

Debate on imposition of the death penalty has been fierce around the world, with opinions divided. On the one hand there are those advocating for retention of the penalty and on the other hand, those advocating for its abolition. Both groups put forward reasons for their advocacy. Those advocating for retention of the death penalty maintain that death penalty is the only way of a just retribution for particular serious crimes.⁵⁷ States are usually the main advocates of death penalty and usually maintain that death penalty is a legal punishment just like any other punishment provided for in the laws of their country.⁵⁸

For those campaigning against death penalty and its abolition, their argument is that this punishment is irrevocable, and once executed one cannot be brought back to life. They further argue that death penalty has no difference with murder as it is a pre-meditated action by the State; and also that there is no evidence that death penalty deters commission of serious crimes within the society.⁵⁹

In Tanzania, death penalty is provided in the *Penal Code* for crimes of treason and murder.⁶⁰ The method of execution of a person convicted for these crimes is through hanging.⁶¹

There has been an increased effort worldwide for the abolition of death penalty, as manifested in international human rights instruments. The ICCPR, for example, does not ban death penalty but rather puts restrictions on its application. It stipulates that States Parties which have not abolished death penalty should make sure that the punishment is given in accordance with the laws and limited to the most serious crimes.⁶² However, there is a question of “what constitutes the most serious crime”, which seems to have been left to be answered by the relevant authorities of the

57 SAPIENZA, R., “International Legal standards on Capital Punishment.”

58 In Tanzania this position was held by the Court of Appeal in overturning the decision rendered in *R v Mushi Dominic* by the High Court of Tanzania in Criminal Session Case No. 14 of 1991 which ruled that death penalty was unconstitutional. The Court of Appeal held that death penalty is not unconstitutional as it is provided by the provisions of Article 30 of the *Constitution of the United Republic of Tanzania, 1977*.

59 See HOOD, Roger, the *Death Penalty: A world Wide Perspective – A report to the United Nations Committee on Crime Prevention and Control*, Oxford: Clarendon Press, 1989, p.167. This was a study conducted for the United Nations to provide a possible scientific proof that death penalty deter commission of crimes. The study concluded that it had failed to provide a scientific proof that execution had a greater deterred effect than life imprisonment.

60 Sections 39, 40, 196 and 197.

61 Section 322 of the *Criminal Procedure Act* [R.E 2002].

62 Article 6(2).

respective state. The Covenant goes further to provide that death penalty shall be imposed in accordance with laws which were in place during the commission of the crime in question.⁶³

Another international instrument that supports abolition of death penalty is the *Second Optional Protocol to the International Covenant on Civic and Political Rights, 1989*.⁶⁴ This Protocol restricts death penalty, providing that “no one within the jurisdiction of a State party to the Protocol shall be executed”.⁶⁵ States are also required to take necessary measure to ensure that death penalty is abolished within their jurisdictions.⁶⁶ States Parties to the ICCPR, however, have to sign, ratify or accede to the Protocol for it to take affect within their jurisdictions.⁶⁷

2.1.1.1 People on Death Row

Tanzania is said to be an abolitionist country in practice. The last recorded execution took place in 1994.⁶⁸ This, however, has not stopped Tanzanian courts from imposing death penalty on people convicted for crimes thereof. As a result, jails around the country have continued to experience an influx of inmates waiting for execution of death penalty without knowing exactly when that will happen. The law requires that for one to be put on death row after conviction, the President must issue a death warrant or an order of death to be commuted.⁶⁹ Records show that during their terms in office, former President, Mkapa, and the sitting President, Kikwete, have not issued a warrant of death or order of death to be commuted against a convicted inmate, hence the state of moratorium. This delay of execution has brought nothing to the inmates but anguish, agony and stress. The delay has also resulted into unnecessary congestions in the prison cells, since those sentences to death cannot be mixed with other inmates.

People are increasingly convicted and sentenced to death by the High Court each year. This has resulted in an increase in the number of inmates on death row, adding to the fact that there is a state of *de facto* moratorium in Tanzania. According to reports, death row prison cells hold three inmates instead of one, as required by law.⁷⁰ These prisoners live in a state of agony and despair of not knowing their fate; and as a result,

63 *Ibid.*, and Article 15.

64 United Nations General Assembly Resolution 128/44 of 15th August, 1989.

65 Article 1(1).

66 Article 1(2).

67 Article 7.

68 Please read previous LHRC & ZLSC Human Rights Reports.

69 Section 325 (3) of the *Criminal Procedure Act*, CAP 20 of the Laws of Tanzania.

70 According to Deputy Commissioner John Nyoka, the Executive Director of Inmates Rehabilitation and Welfare Services Tanzania (IRaWS-T), during a training workshop for Tanzania Prisons Services on April, 2014.

they are increasingly becoming dangerous to themselves and those taking care of them. Because of the congestion and the hardships they face, death row inmates are likely to resort to riots once their demands are not met.⁷¹

According to official records obtained by LHRC from the Tanzania Prisons Service (TPS), there are 410 prisoners in various jails in the country on death row.⁷² Out of these inmates, 186 have their cases completed after their sentences had been upheld by the Court of Appeal.⁷³ An appeal to the Court of Appeal is open to any person convicted and sentenced to death.⁷⁴ If an appeal is not preferred by the convict or the sentence is upheld by the Court of Appeal, then the process of execution can begin. The matter is then taken to the President who has the power to either issue a death warrant or an order of death to be commuted against the convict.⁷⁵ Statistics of TPS show further that 209 prisoners are still waiting for their cases to be decided by the Court of Appeal, either to uphold their conviction or to overturn it.⁷⁶

2.1.1.2 Efforts to Abolish Death Penalty in Tanzania

Over the years, there have been efforts to abolish death penalty in Tanzania. These efforts include issuing of court rulings and judgments. A good example is the judgment passed by Justice Mwalusanya (as he then was) in *R v. Mbushuu alias Domic Mnyaore*⁷⁷ in 1994. This judgment, among other things, held that death penalty infringes constitutional right to life, as it is a cruel, inhuman and degrading punishment. This judgment, though overruled by the Court of Appeal, had enjoyed a wide precedence across the African continent as far as campaigning for the abolition of death penalty is concerned. There have been many other court decisions which challenged the imposition of death penalty, but have all been overruled by the Court of Appeal.⁷⁸

Tanzania is currently in the constitutional review process aimed at obtaining a new Constitution. The Proposed Constitution has been issued by the Constituent Assembly, now awaiting the referendum, whereby Tanzanians will get an opportunity to accept it (YES) or reject it (NO). The process was expected to be the turning point for the

71 *Ibid.*

72 Letter to LHRC from Tanzania Prison Services with Ref. No. 298/Vol.II/94 of 28th January, 2015.

73 *Ibid.*

74 Section 323 of the *Criminal Procedure Act*, CAP 20 of the Laws of Tanzania

75 *Ibid.*, Section 325.

76 Letter to LHRC from Tanzania Prison Services with Ref. No. 298/Vol.II/94 of 28th January, 2015.

77 [1994] TLR 146, High Court of Tanzania.

78 See Chapter Two of LHRC & ZLSC (2013): Tanzania Human Rights Report.

campaign against the death penalty.⁷⁹ It is unfortunate, however, that the Proposed Constitution has retained provisions supporting the death penalty. It continues to subject the right to life to the laws of the country;⁸⁰ and specifically empowers the President to authorize executions and show mercy to the death row inmates.⁸¹ This is despite the fact that during the collection of people's views by the Constitutional Review Commission (CRC), majority were in favour of abolition of death penalty. Opinions calling for abolition of death penalty amounted to 44.2% in Tanzania Mainland, whereas in Zanzibar the same amounted to 40%.⁸² Opinions calling for death penalty not to be abolished amounted to 33.9% in Tanzania Mainland and 30% in Zanzibar.⁸³ The Constituent Assembly thus adopted the stance by the CRC in the 2nd Draft Constitution and retained the death penalty in the Proposed Constitution.

Table 1: People's Views on the Right to Life [Abolition of the of Death Penalty]

Opinion	Tanzania Mainland	%	Zanzibar	%
Death Penalty should remain as it is	498	8.1	3	15
Death Penalty should not be abolished	2,096	33.9	6	30
Death Penalty should be abolished	2,735	44.2	8	40

Source: Extract from *Takwimu za Ukusanyaji wa maoni ya Katiba JMT*

Inclusion of such Articles in the Proposed Constitution means that the laws of the country are mandated to impose death penalty for the crimes that such laws describe. This is a complete setback in the fight for the abolition of the death penalty.

The efforts of the abolition of death penalty have been undermined by several factors. One of the most serious factors is lack of political will on the side of the Government. The Government has, over the time, been using an excuse that having death penalty in the country's laws is necessary for combating serious crimes. This excuse has been supported by the recent brutal killings of people with albinism. The Prime Minister was once quoted in 2009 calling upon retribution against people caught red handed in acts of killing people with albinism during his visit of the lake regions.

79 The Law Reform Commission of Tanzania in 2009 had conducted a research on death penalty and came with recommendations that it should be abolished. Likewise, the Minister for Justice and Constitutional Affairs, Mr. Mathias Chikawa, was on 9th September, 2013 quoted saying that death penalty should not be included in the Constitution.

80 Article 32 of the Proposed Constitution.

81 Article 92 (1) (b) of the Proposed Constitution.

82 Jamuhuri ya Muungano wa Tanzania; *Takwimu za Ukusanyaji wa Maoni ya Wananchi Luhusu Mabadiliko ya Katiba ya Jamuhuri ya Muungano wa Tanzania*, Disemba, 2013; page 58.

83 *Ibid.*

LHRC calls upon the Government to make sure it takes steps to abolish the death penalty. A good start would be making sure that Tanzania ratifies the *Second Optional Protocol to the International Covenant on Civic and Political Rights, 1989*; which calls upon all countries to abolish death penalty. Tanzania should as well make sure that it resolves the problem of congestion of death row inmates. The *Constitution of the United Republic of Tanzania* gives the President power to pardon any person irrespective of the offence committed. The President may substitute the sentence to a less severe form of punishment; or remit the whole or part of any punishment imposed on any person for any offense.⁸⁴ This can be used to solve the congestion problem facing the death row inmates; especially to those that have remained in custody for longer periods of time. The fact that the last execution in Tanzania took place in 1994 would suggest that there are inmates waiting for execution since 1994 without knowing when exactly they will face execution.

2.1.2 Mob Violence

Mob violence is one of the rapidly increasing human rights violations in the country, with statistics showing an increase in these acts each passing year.⁸⁵ Mob violence occurs when a group of individuals physically punishes another individual without trial, without legal procedure and very often without evidence. In short, mob violence involves a situation of taking law in own hands by arresting, prosecuting and punishing an individual at the same time.

Mob violence employs such barbaric means as public lynching, setting suspects alight, and brutal beatings. Victims of mob violence are usually poor, unemployed youths in the urban areas. They are usually accused of petty theft, burglary and to a lesser extent robbery. Statistics from the Police Force show that during the period between January and June 2014, there were 473 people who lost their lives through mob violence.⁸⁶ Reports on the number of people who died from mob violence from July to December could not be found before finalising this report. However, newspaper reports indicate that a number of people who died from this type of violence keep on increasing.

84 Article 45(1).

85 LHRC & ZLSC (2013), Tanzania Human Rights Report, pages 28-29.

86 LHRC 2014: Bi Annual Human Rights Report.



Picture 1: A victim of mob violence

Mob violence as a means of achieving justice has been prevalent in societies around the world for centuries. However, modern social constructions, with established judicial system have deemed mob violence unacceptable and barbaric.

There are many causes of mob violence, including public distrust of formal institutions, such as the police and other law enforcement organs of the country. The police are accused of corruption and improper handling of investigations. The public perception of corruption within the Police Force is quite high. People believe that an accused can easily be left to walk free as long as they can bribe a police officer. This belief can as well be due to public's ignorance as far as criminal justice administration is concerned. For instance, some people may not be aware that an accused has the right to bail, except for some serious crimes stipulated in different criminal laws.

Crimes have been on the rise around the country, especially in urban areas. The Police Force, either due to incompetence or being overburdened with crimes, fails to properly deal with the increase in criminal acts. This has led to the public resorting to mob violence as a way of dealing with the problem at hand. On the other hand, crime

increase is closely related to poverty. The majority of Tanzanians live in poverty. Urban areas experience massive migration of youths from rural areas in search for better life. Unfortunately, the reality on the ground is brutal to these youths, who thus end up engaging in criminal activities in order to sustain themselves. Close ties between poverty and crime rate increase can explain why most acts of mob violence have been in response to theft.

It has become extremely difficult for authorities to combat mob violence. People involved in mob violence are rarely arrested and/or charged for the crimes they commit. This could be because it is difficult to ascertain who specifically within the mob has committed the crime (of mob violence). Police usually arrive late when called to a crime scene and thus usually arrive late, only to find and collect the victim's body. In some few occasions, they been accused of arriving in time at the scene but remain witnesses to acts of mob violence, waiting to only collect the body of the victim.



Picture 2: A petty thief suspect being beaten at Kijitonyama, Dar es Salaam

It should be remembered that acts of mob violence are criminal acts and against the law of the country. Victims of mob violence are usually accused of committing a criminal offence, especially petty theft. That does not justify the way they are treated when caught by the mob or the Police. The *Constitution of the United Republic of Tanzania, 1977* recognizes the right to equality before the law, stipulating that:

“All persons are equal before the law and are entitled without any discrimination, to protection and equality before the law.”⁸⁷

87 Article 13 (1).

Suspects of criminal acts should be brought before justice and be dealt with according to the law. Punishing them by mob acts is pre-supposition of their guilty which is against the spirit of the laws of the country,⁸⁸ and there is always a danger of even punishing the wrong person. The duty to prove the innocence or guilt of any person is the Court of Law, after due process.⁸⁹

The State has the duty to protect its citizens. Citizens have the right to protection against both internal and external aggression in order to feel safe and be able to participate in their citizenry duties. The rising number of incidents of mob violence is associated largely with lack of reliable security and safety due to collapse of order.⁹⁰ This fact is manifested by the establishment of locally organized security groups such as *Sungusungu*, *Ulinzi Shirikishi*;⁹¹ and the recent increase of private security companies which have also taken the role of patrolling the streets where they are hired for security. All these measures by citizens are for their protection and that of their property. This has unfortunately left the poor and not well communally organized neighbourhoods resorting to mob violence in response to security threats.

88 Article 13 (6)(b) states that “no person charged with criminal offence shall be treated as guilty of the offence until proven guilty of that offence.”

89 Article 107A (1).

90 Peter, Chris Maina: Human Rights in Tanzania: selected cases and materials; Chapter Sixteen. Justice Mwalusanya in different occasions, [in *Ngwegwe s/o Sangija and 3 others v. Republic* (High Court of Tanzania at Mwanza, Criminal Appeal No. 72 of 1987, Unreported) and in *Mis-peresi K. Maingu v. Hamisi Mtongori and 9 Others* (High Court of Tanzania at Mwanza, Civil Case No. 16 of 1988, Unreported)] had ruled *intra alia* that the activities of *Sungusungu* were illegal and unconstitutional; and that continuation and justification for various reasons poses a serious danger to rule of law in the country.

Table 2: Some Incidents of Mob Violence Recorded for the Period of January-June, 2014

No.	Victim	Date	Place	Alleged Perpetrator	Incident
1.	Unknown	May, 2014	Dar es Salaam	<i>Wananchi</i> (angry mob)	The victim was beaten and later set ablaze to death by an angry mob following theft allegations.
2.	Julius John (30)	May, 2014	Kasomela village, Kahama	<i>Wananchi</i>	Beaten and set ablaze leading to his death following allegations that he stole a bicycle and a sack of groundnuts from his aunt.
3.	Mohamed Ngulanjwa (36)	21 st February, 2014	Mbagala Mianzini, Dar es Salaam	<i>Wananchi</i>	Beaten and killed by <i>wananchi</i> following allegations that the victim had previously killed his <i>Madrasa</i> pupil.
4.	Unknown	January, 2014	Kagungwa Ward	<i>Wananchi</i>	The victim was beaten and set ablaze to death following theft allegations.
5.	2 youths	10 th April, 2014	Sinza Kumekucha, Dar es Salaam	<i>Wananchi</i>	The victims were beaten and badly wounded following allegations of attempted theft.
6.	2 youths	10 th May, 2014	Kijitonyama, Dar es Salaam	<i>Wananchi</i>	The victims were beaten and badly wounded following the allegations of stealing a hand bag belonging to one Magdalene John (21).
7.	24 houses	February, 2014	Geita	Members of an opposing clan	The houses were dismantled and set ablaze following the dispute between two opposing clans as a result of the previous murder of a member of one clan, one Felista Mathias (55) allegedly by members of an opposing clan.
8.	Mtei Bus	January, 2014	Singida	<i>Wananchi</i>	The bus was burned down by <i>wananchi</i> for alleged involvement in an accident which led to deaths of two <i>bodaboda</i> riders.

2.1.3 Extra-Judicial Killings

Extra-judicial killings are the killings by law enforcement officials outside the ambit of the law. It violates the right to life of an individual as it pre-empts the presumption of innocence. The *Constitution of the United Republic of Tanzania, 1977* provides that:

*“no person charged with criminal offence shall be treated as guilty of the offence until proven guilty of that offence.”*⁹²

During their conduct, law enforcement officials, especially the police, are sometimes forced to resort to force in order to affect an arrest of an accused person. In many occasions, the use of force has proved to be fatal to the accused. Thus, some accused persons have lost their lives in the hands of the police through the use of lethal force.

Use of force by law enforcement officials should be in accordance with the laws. The *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*⁹³ states that;

“Law enforcement officials, in carrying out their duties, shall as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

Tanzanian domestic laws also prohibit the use of force against a suspect unless it is absolutely necessary. The *Police Force and Auxiliary Services Act* provides that the use of force is to be the last resort to be employed by a police officer when a person is attempting to escape from custody, or is assisting another person to do the same.⁹⁴ The *Criminal Procedure Act* goes further to provide that the use of force should be proportionate to the circumstances.⁹⁵ It further insists that the police officer may use all means necessary to affect an arrest if a person forcibly resists an arrest or attempts to escape from lawful custody of the police officer.⁹⁶ However, the arrested individual shall not be subjected to more restraint than necessary to effect arrest.⁹⁷

The use of lethal force outside the ambit of the law should be prosecuted in accordance with the law. The prosecution should deal with an officer using lethal force illegally

92 Article 13(6) (b).

93 Havana 27 August-7 September, 1990 UN Doc A/CONF.144/28/Rev.1, principle 4.

94 Section 29 of CAP 322.

95 Sections 11 and 12 of Cap 20 [R.E 2002].

96 *Ibid.*

97 *Ibid.*

without any discrimination as it deals with any other criminals. Officers accused of using lethal force are seldom brought to justice, suggesting unwillingness on the part of the prosecution to do so. This can be because of lack of independence of the prosecution machinery.⁹⁸ The Director of Public Prosecution, as the head of the National Prosecution Service, has the power to institute, prosecute and supervise criminal prosecutions in the country.⁹⁹ The powers of the Director of Public Prosecutions are further elaborated in the *National Prosecutions Serving Act, 2008*.¹⁰⁰

The Tanzania Police force has been accused of using force against the accused persons, leading to several deaths. In September, 2014, for example, the police at Stakishari Ukonga, Dar es Salaam was accused of causing the death of one Liberati Matemu (55).¹⁰¹ It was reported that Mr. Materu was detained at the Stakishari Police post on 22nd August, 2014, for a period of eight days. It was further reported that during his detention, Mr. Materu was beaten by the police officers at the station. When his condition deteriorated, he was taken to Amana hospital, and later referred to Muhimbili hospital.¹⁰² Report from the Medical Officer In-charge at Amana Hospital showed that Mr. Materu had sustained massive injuries on different parts of his body, particularly the head. The injuries were believed to be caused by severe beating. On 31st August, 2014, Mr. Materu lost his life due to the severe injuries that he had sustained.¹⁰³

Following the death of Mr. Materu the police force at the Dar es Salaam Special Zone convened a team of investigators to look into the case.¹⁰⁴ In its report, the Police Force Dar es Salaam Special Zone indicated that the deceased had sustained injuries when he was arrested¹⁰⁵ and that the injuries were a result of a fight he had with one Hamisi Magoma, with whom they had prior altercations. The report, however, did not indicate whether any charge was made against Hamisi Magoma for causing injuries leading to Mr. Materu death. The report also suggested that Mr. Materu's injuries were a result of mob violence that the deceased had been victimized.¹⁰⁶ At the time of the writing of this report LHRC had not received the results of the convened team of investigators. The measures taken by Commissioner Kova are welcomed. However, the convened team lacks independence, as the police are basically acting judge and jury in its own

98 National Prosecutions Service.

99 Article 59B (2) of the *Constitution of the United Republic of Tanzania, 1977*.

100 Section 9 of act No. 27 of 2008.

101 Raymond Kaminyonge *na* Pamela Chilongola, "*Polisi Stakishari matatani*", Mwananchi Newspaper 2nd September, 2014.

102 *Ibid.*

103 *Ibid.*

104 Tanzania Police Force Press Release on 2nd September, 2014; issued by S. H Kova, Commissioner of Police, Special Zone Dar es Salaam.

105 *Ibid.*

106 *Ibid.*

case. It is difficult to imagine that a team composed completely of police officers can investigate a matter fairly in which they or their fellow police are implicated. Moreover, the law requires that when there is an occurrence of death of a person under suspicious circumstances, then the coroner's court should be convened to investigate the cause of the death.

Table 3: Some Incidents of Extra-Judicial Killings

	Mid-Year	Number of persons killed by law enforcement agencies (Police, militia, soldiers)
1	2014	Official police report could not be obtained before finalising this report. However, there were several allegations of people being killed extrajudicially, including one Hamisi Seif (Viti village, Lushoto); Salehe Said of Kigogo, Da es Salaam (allegedly killed by police from Ubungo Bus Terminal post); Emmanuel Mtungari from Rung'abwe Village, Serengeti (shot dead at African Barick North Mara, allegedly by a policeman); Elineema Massawe, allegedly beaten and killed by police from <i>Mbezi Kwa Yusufu</i> police station; Liberati Materu, allegedly died following police beating while in custody at Stakishari Police station in Dar es Salaam.¹
2	2013	22
3	2012	

2.1.4 Attacks against the Police/Law Enforcement Officers

There has emerged a wave of attacks against the police force and its officers. In the year 2013 these attacks had an aura of "angry citizens" attacking police posts and police officers. However, in the year 2014 another wave emerged, involving criminal gangs (organized, armed men) invading police post, especially in remote areas. At least two such attacks were reported for the year 2014. These attacks have claimed the lives of police officers who were guarding the said police stations. The armed invaders robbed the police posts, taking arms stored in the stations. Intention of the armed gangs invading the police posts is not known. However, it is believed that the guns and firearms robbed are used in criminal activities. LHRC is greatly concerned with this wave of criminal activity and calls upon the authorities, specifically the Police Force to ensure that police posts are well guarded to prevent future attacks. The Government should as well ensure that families of victims of such attacks are compensated to ensure their sustainability and in honour of the victims service to this nation.

Table 4: Incidents of attacks and invasion of police stations in 2014

No.	Victim	Date	Place	Alleged perpetrator	Incident
1.	Boniface Chacha Maguko (20)	March, 2014	Kenyamanyuri village, Tarime	Mwita Simoku and Nyang'oro Chachari	The victim was stabbed and injured because he was community police [<i>polisi jamiu</i>].
2.	Joseph Nkonyani	10 th June, 2014.	Mkamba, Kimanzichana	Unknown people	The perpetrators attacked the police station, killing PC Joseph Nkonyani and stealing several firearms.
3.	WP 7106 Uria Mwandiga and G. 2615 PC Dustan Kimati	6 th September 2014	Geita main Police Station at Bukombe	Unknown	The police officers were killed. The perpetrators also stole 10 SMG guns and several bullets and firearms.
4.	Venance Francis	10 th June, 2014.	Mkamba, Kimanzichana	Unknown	Sustained injuries when armed men invaded the Police station killing one police officer.
5.	Mariam Mkamba	10 th June, 2014.	Mkamba, Kimanzichana	Unknown	Sustained injuries when armed men invaded the Police station killing one police officer.

Source: The Media



Picture 3: Funeral procession of a police officer Joseph Ngonyani killed in an attack at the Police Post in Kimanzichana

Table 5: Some Incidents of Police Attacks in the Last Three Years

S/n	Year	Police killed on/off duty and invasion of police stations
1	2014	6
2	2013	8
3	2012	3

Source: The Media

2.1.5 Road Accidents

Road accidents have continued to cost lives of many Tanzanians year after year. Road accidents have been ranked second to malaria as a major cause of death in Tanzania. Road accidents not only cost lives but have also left thousands of people with serious injuries. They are one of the major health concerns in recent years and efforts should be taken to seriously address this problem.

2.1.5.1 Legal Framework of Road Transport

Road transport is regulated by several principal and subsidiary laws. In one way or another, these laws provide guidelines on crucial matters in the transportation sector. The laws concern safety, licensing of vehicles according to their use and creating

regulatory authorities and enforcing agencies. The legislations regulating road transport are as follows:

- i. *The Road Traffic Act, 1973* Cap. 168.
- ii. *The Transport Licensing Authority Act, 1973* Cap. 317.
- iii. *The Surface and Marine Transport Regulatory Authority Act, Act No. 9/2001.*
- iv. *The Motor Vehicles Driving Schools (Licensing) Act, 1965* Cap. 163.
- v. *The Highways Act, 1932* Cap. 167.
- vi. *The Roads Act, 2007.*
- vii. *The Local Government (Urban Authorities) Act, 1982* Cap. 288.
- viii. *The Local Government (District Authorities) Act, 1982* Cap. 287.
- ix. *The Motor Vehicles (Third Party) Insurance Act, 1945* Cap. 169.
- x. *The Standards Act, 1975* Cap. 130.
- xi. *The Fair Competition Act, 2003* Act No. 8/2003.

The above laws are complimented by a number of regulations. Ministers in their respective areas are empowered to make regulations to compliment laws specific to their areas. Generally speaking, Tanzania has a comprehensive legal framework regarding road transport and safety. There is, however, a challenge in implementation and enforcement of the laws. There is a need to amend most of these laws in order to meet current requirements and demands. For instance, there is a need to revisit these laws in areas where they impose fines, such that the fines match the current currency value.

2.1.5.2 Situation of Road Accidents

Despite the good legal and institutional framework, road accidents have continued taking lives of thousands of Tanzanians each year. For the period between January and June, 2014, 8,405 accidents were reported countrywide.¹⁰⁷ These accidents caused deaths of 1,743 people and 7,523 injuries.¹⁰⁸ Casualties resulting from these accidents were reported to have subsided by 0.02 percent whereas injuries decreased significantly, by 24 percent. As one can notice, there is a small drop in number of accidents occurring in the country when one compares to the same period in 2013. In the same period in 2013 there were 11,311 accidents, causing deaths of 1,739 people

107 Frank Aman, "Number of accidents drop," the Guardian 20th August, 2014.

108 *Ibid.*

and injuries to 9,889 people.¹⁰⁹

For the period between January and December, 2014, number of accidents decreased compared to the year 2013. 21,791 accidents were reported, a decrease of 38.2% in comparison to reported accidents of the year 2013.¹¹⁰ These accidents caused the deaths of 3,437 Tanzanians, a decrease of 5.63% compared to the year 2013, which witnessed 3,642 deaths.¹¹¹ In terms of injuries, there was also a decrease in 2014, whereby 13,495 injuries were reported (a decrease by 28.27%) compared to 18,813 injuries caused in 2013.¹¹²

Urban areas continue to account for a large number of accidents in the country. Kinondoni District was reported to lead the country's figures with 2,140 accidents, amounting to 25.5 percent of all accidents which occurred in the country.¹¹³ Kinondoni was followed by Ilala District with 1,561 accidents, amounting to 18.6 percent of all accidents countrywide; Temeke District with 1,351 accidents (16.1 percent of all accidents); Morogoro Region, with 514 accidents (6.1 percent); and Kilimanjaro Region, with 332 accidents (4 percent). Dar es Salaam Region recorded more than half of all road accidents, with 5,052 accidents recorded which amounts to approximately 60.2 percent of all accidents which occurred all over the country.

However, there were some improvements in number of accidents recorded for the period between January and June, 2014 in some areas of the country that are notorious for road accidents. These areas are such as Pwani Region, which recorded 435 accidents, amounting to 59 percent decrease of road accidents; Kinondoni District, with 919 accidents, amounting to 30 percent decrease; Arusha Region, with 399 accidents, amounting to 71 percent decrease; and Morogoro Region, with 117 accidents, amounting to 19 percent decrease. The decrease in the number of road accidents in 2014 is attributed to efforts by the Police Force Traffic Department's intervention in enforcing road safety laws as well as public education that has been conducted through media.¹¹⁴

In some areas, the increase of accidents is attributed to an increase in population as well as the number of people in those specific areas. A good example is the Dar es

109 LHRC 2013: Bi Annual Human Rights Situation Report.

110 Mhariri, "*Jitihada kupunguza ajali ziendelezwe*", Nipashe Newspaper 26th December, 2014.

111 *Ibid.*

112 *Ibid.*

113 Frank Aman, "*Number of accidents drop*," the Guardian 20th August, 2014.

114 The Police Force Traffic Department through its commander Mohamed Mpinga has in several occasions been quoted revealing that Police intervention has resulted in decrease in road accidents. Also see Mhariri, "*Jitihada kupunguza ajali ziendelezwe*", Nipashe Newspaper 26th December, 2014.

Salaam Region, which has experienced an influx of people from the hinterland seeking a better life. Whereas there is greater increase of people and motor vehicles, the same cannot be said over the improvement of the infrastructure. The same infrastructure designed for the city two decades ago is still supporting the city now. It is thus very difficult to fathom a decrease in road accidents in such areas and the effects associated with them.

Another reason for an increase in number of road accidents is the lack of education on road use in general. This concerns all road users, both drivers and pedestrians. The law requires that before one is issued with a driving license, he/she is supposed to produce a certificate from a certified driving school. However, this has not been much observed in practice. New drivers can now be issued with driving license without even producing evidence of driving competence. This fact could be attributed to corruption as well as the practice of forgery of such certificates. On the other hand, the present driving schools are not competent enough to provide the required training for new drivers. As a result, drivers end up using roads without proper learning experience, especially on road regulations.

Road users in general lack the basic road use education. It is seldom to find a driver in Dar es Salaam who observes zebra crossing and other important signs like the traffic lights. The Police Traffic Department has in several occasions conducted safe road use trainings in different schools. This has significantly improved the status of the road use in those specific areas where the training has been conducted. LHRC is of the opinion that road use education should be incorporated in school curriculum, especially in primary school curriculum. This will help to nurture the pupils into better road users in the long run when they grow up.



Picture 4: Reckless driving and non adherence to road signs and regulations, a bus overtaking other vehicles in a dangerous spot

In 2014 LHRC conducted a mini-study on the adherence to human rights standards in the transportation sector. The study was conducted in Tanga, Arusha, Kahama, Tuduma, Iringa and Dodoma Regions. The study was also conducted at the Misugusugu Check Point in Pwani Region. These are areas with busy transportation activities, involving PSVs and cargo transportation. The findings of the study revealed that there is a massive abuse of human rights in the transportation sector. The abuse is attributed to the fact that the sector has been run without much regulation. These facts cannot be ignored as one considers the contribution of commercially-operated vehicles to road accidents. Many of the abuses are made by vehicle owners against drivers and other vehicle operators such as conductors. The findings revealed that about 90 percent of the respondents do not have proper employment contracts; 83.6 percent are not provided with any kind of leave benefit; and 59 percent work for about 11 to 16 hours continuously per day. The study further revealed that 17 percent of workers in the transportation sector work beyond 17 hours continuously per day; 75 percent do not receive their salaries on time, usually receiving them in instalments and via mobile phone transactions; and 85.5 percent are not registered with any social security scheme, with 88 percent not having any health and medical coverage. 38 percent of the respondents reported to have been subjected to torture, while 36 percent claimed to have been racially discriminated by their employers.

It is important that we acknowledge the efforts made by the Police Force Traffic Department to reduce road accidents in the country. The Department has in many instances been working under difficult conditions, experiencing shortage of modern equipment to manage and regulate road use. There is shortage of equipment such as motor vehicles to make follow ups, modern radio communication equipment, and surveillance equipment such as CCTV cameras and radars. The Department is also faced with the challenge of corruption, with some of its officers involved in corrupt practices. All these challenges hinder a better management of road use in the country, which would significantly reduce the number of fatalities and injuries caused by road accidents. LHRC calls upon the Government to ensure that the Police Force Traffic Department is equipped with the necessary modern equipment to enable that them perform their duties in a much professional manner and reduce the rate of road accidents. The Government should also make sure that salary increments of Traffic Police officers are improved to prevent them from bribery.

An increase of road accidents is also attributed to the increase in the use of motorcycles and motorbikes. This is especially true with an increase of the commercially-operated motorcycles used to carry passengers, commonly known as *bodaboda*. An increase of *bodaboda* is attributed to the collapse of public service system in major cities of the country. The number of accidents caused by *bodaboda* is very significantly alarming. Most of the *bodabodas* are not operated in accordance with road use and safety

laws. For instance, most of the *bodaboda* drivers do not possess driving licences as required by the law and seldom observe road signs, whether knowingly or because they lack the understanding of the signs. They do not wear protective gear required for motorcyclists, especially helmets; and they usually carry passengers and luggage beyond the permitted capacity.



Picture 5: A Motor cyclist interviewed by traffic police for carrying luggage beyond capacity

In the period between January and June, 2014, 2,402 accidents involving the *bodabodas* and other motorcycles were reported.¹¹⁵ These accidents resulted into a staggering 423 deaths and 2,301 injuries.¹¹⁶ The reported accident figures suggest that there are many deaths resulting from *bodaboda* and motorcycle accidents as compared to other accidents. Approximately, in every 6 *bodaboda* and motorcycle accidents there is one death, compared to 1 death per approximately every 5 accidents caused by other motor vehicles. LHRC calls for a special attention to be given on regulation of *bodaboda* by going through the legislation guiding the same and also implementation and enforcement of such regulations. LHRC further calls upon the Government to ensure that public transport system is improved, by improving both the infrastructure and increasing scrutiny of the Passengers Service Vehicles (PSVs) to make sure that they operate in accordance with the required regulations and standards. This will enable Tanzanians to stop relying on *bodabodas* as a means of transport and instead use public transport, which will be safer and cheaper.

115 Frank Aman, "Number of accidents drop," the Guardian 20th August, 2014.

116 *Ibid.*

2.1.6 Witchcraft Killings and Harassment

On 20th July, 2014, Regina Geoffrey (14 months old) was strangled to death by her own father, one Geoffrey Kilingwa alias Simbaiwe. The father claimed that he killed his daughter because during birth, she came out with her buttocks first. The father of the child is a witchdoctor (*mganga*). He alleged that the act of the child being born coming out with her buttocks first is a bad omen to his business as a witch doctor.

Meanwhile, on 6th October, 2014, at Murufiti village in Kasulu, Kigoma, a total of seven people were burnt to death at night while sleeping following allegations that they were involved in practicing witchcraft against their fellow villagers.¹¹⁷ Those killed are John Mavumba (68), Elizabeth Kaje (55), Dyaba Kitwe (55), Vincent Ntiyaba (42), Herman Ndabiloye (78), Redempa Mdogo (60) and Ramadhani Kalaliza (70). It is alleged that a group of youths invited a witchdoctor to come to their village to expose those witches. A total of 20 houses were torched down during the killings.

The above are just a few examples of incidents of killings and harassment resulting from witchcraft beliefs in 2014. Witchcraft is a common practice in Tanzania through all walks of life. It has existed for generations, even before the introduction of modern major religions of Islam and Christianity. Witchcraft beliefs and practices are now a fact of everyday life, existing side by side with these major modern religions.



Picture 6: A Practitioner of Witchcraft under arrest

117 Diana Rubanguka *na* Antony Kayanda, “*Mauaji ya Kutisha Kigoma, Saba Wateketezwa*,” *Mwananchi* Newspaper, 10th October, 2014.

Prof. Chris Peter Maina identifies sources of witchcraft belief and practice as anger, hatred, envy, lust and greed.¹¹⁸ Witchcraft is thus associated with storms, lightning, sudden death of a supposedly healthy person, miscarriages, infertility, lack of rain, death as a result of various illnesses, road accidents etc.

The *Constitution of the United Republic of Tanzania, 1977* guarantees the right of respect and security of a person; to him/herself, his/her family and his/her place of abode.¹¹⁹ Killings and other harassments as a result of witchcraft beliefs amount to violation of this constitutional guarantee. Belief in witchcraft is getting worse day after day. One would expect that with the level of education and eradication of illiteracy in Tanzania, belief in witchcraft would have somehow subsided. Unfortunately, the opposite is true as there is an alarming increase in witchcraft beliefs. The result is people taking law into their own hands in a form of mob violence, ending up punishing the alleged witches for things that cannot be proved.

LHRC collected a report from the Police Force showing that for the period of six months from January to June 2014, a total of 320 people were reported to have been killed as a result of witchcraft allegations.¹²⁰ This number shows a high increase in the number of people killed for allegations of practicing witchcraft. The number is very high taking into account that the killings took place in a shorter period of only six months. The magnitude can also be viewed in comparison to the reported incidents in the previous years of 2012 and 2013, where the reported incidents amounted to 336 and 303 respectively.¹²¹

The gender biasness that witchcraft problem has taken is also very alarming. Most of the witchcraft killings and harassment victims are older poor women. LHRC obtained reported incidents from the Police Force involving 27 women of the age above 60, who were killed for allegedly practicing witchcraft.¹²² Studies have shown that these women have been victimized due to the mere fact that they have red eyes, which is perceived to be a sign of one engaging in witchcraft practices. Gender biasness of the problem can be explained as a result of women marginalization in the society.¹²³ This is especially true in the rural areas where, due to long use of firewood for cooking, a woman usually ends up having red eyes as a result of being subjected to firewood smoke.

118 Peter Chris Maina: Human Rights in Tanzania: selected cases and materials, Chapter Four.

119 Article 16.

120 LHRC Bi-Annual Human Rights Situation Report, 2014.

121 *Ibid.*

122 *Ibid.*

123 Peter Chris Maina: Human Rights in Tanzania: selected cases and materials, Chapter Four.



Picture 7: An old woman, victim of witchcraft attack

Another reason of targeting women in witchcraft killings is associated with property ownership, whereby old women with land or any other immovable property become vulnerable to attacks and killings by using witchcraft as an excuse to obtain their property. The truth, however, is that the killers want to eliminate those women in order to take over their properties. Unfortunately, those who kill are might be close relatives to the victims, including their own sons.¹²⁴

Witchcraft in Tanzania is regulated by the *Witchcraft Act, [R.E 2002]*.¹²⁵ This legislation has many shortcomings and has failed to address the problems caused by witchcraft beliefs and practices. Among the shortcomings is the meaning of “witchcraft”, whereby the definition so provided in the Act is very broad and does not give a clear picture of what witchcraft is. According to the Act, witchcraft:

“...includes sorcery, enchantment, bewitching, the use of instruments of witchcraft, the purported exercise of any occult power and purported possession of any occult knowledge.”¹²⁶

124 This fact was released in a workshop conducted by LHRC in Meatu, Simiyu region where the participants mentioned this as one reason for the killings of old women, and in some cases even old men.

125 Cap 18.

126 Section 2.

Further, the legislation does not provide sufficient guidance in the very areas of the law that it purports to regulate. The law itself is also contradictory, such that it is difficult to ascertain whether it recognizes the existence of witchcraft or not, while on the other hand it acknowledges that witchcraft can cause harm and even death. This is likely to pose a problem while applying criminal law in relation to witchcraft. A question arises as to whether witchcraft can be used as a mitigating factor when one has committed a criminal act as a result of their belief in witchcraft, used as a plea of self defence, provocation or insanity. In many cases, such pleas have been used in the court of law. However, the general position in East Africa is almost unanimous, that witchcraft is taken as a negative *mens rea* in crimes such as murder.

The *Witchcraft Act* was enacted during the colonial period and was inherited after independence. The colonialists had their own reasons and enacted this law as a solution to contain the practices of the *natives*. As a society, we should ask ourselves as to whether this English rooted law corresponds to criminal laws appropriate to witchcraft cases.

The witchcraft Act was heavily criticized by the Presidential Commission on Single Party or Multi Party System in Tanzania, 1991 (the Nyalali Commission).¹²⁷ The Commission had noted that the law violates Article 17 (1) of the *Constitution of the United Republic of Tanzania, 1977* as it extends the power to a District Commissioner to restrict a person without the usual judicial safeguards.¹²⁸ This restricts the freedom of movement of individuals. It also curtails freedom of residence and interferes with the due process of the law. The Commission thus recommended the repeal of this law.

However, the Law Reform Commission opposed the recommendations made by the Nyalali Commission, arguing that witchcraft abhors negative impacts in the society, including terror and threat, which in turn foster disharmony and hatred, thus it is essential to retain the Witchcraft Act in order to curb the terror, threat and hatred within the society posed by belief and practice of witchcraft.

LHRC strongly believes that the law has failed to address challenges posed by witchcraft beliefs in the country and thus recommends that in order to address the problems posed by beliefs in witchcraft, a socio-economic solution is necessary.

127 Government of the United Republic of Tanzania, *the Report and Recommendations of the Presidential Commission on Single Party or Multi Party System in Tanzania, 1991 on the Democratic System in Tanzania, Dar es Salaam: Dar es Salaam University Press, 1992, (Book 1).*

128 Section 8.

Table 6: Some Incidents of Witchcraft-related Killings

No.	Year	Number of People Killed (By June)
1	2014	320
2	2013	303
3	2012	336

Source: LHRC Human Rights Monitoring

2.1.6.1 Butiama and Geita Killings

In the early months of 2014, there were reports from some villages in Mara region of killings of women related to beliefs in witchcraft. These killings took place between the months of January and April, 2014. It was reported that a total of 15 women were killed over a period of three months only. Most of them were found to have been either strangled or beheaded, leading to their deaths. These killings were reported from the villages of Kigeretuma, Nyakatende, Mugange, Etaru and Nyegire in Musoma Rural.¹²⁹

Several reasons for these killings were cited, including witchcraft beliefs, revenge and jealousy. However, the leading cause of the killings is believed to be witchcraft beliefs.¹³⁰ Most of the bodies of women killed were found with some parts, mostly private parts, missing as they were cut off. It is believed that these body parts are used to create charms for good luck and prosper. It is a wider belief in the lake zone among the fishermen community that charm increases ones yield in fishing.¹³¹ Thus, fishermen tend to visit witchdoctors in search of charms which will attract more fish in their nets. Thus witchdoctors would order the fishermen to bring women private parts to make the charms.

Women are usually attacked while alone at home, in the field work [*shamba*] or while going to fetch water or firewood. The attackers usually strangle the victims using ropes or *khangas*, and then cut off their private parts in order to take them to the witchdoctors for charm making. Women reported to have been killed include Anastazia Shore, Anastazia Mang'ombe, Catherine Mandela, Mkaguru Magee, Nyamata Gwanumbu, Monda Nyamsha, Yasinta Kate Matiku and Matinde Waryuba.¹³²

Following the increase in these killings, the Police Force announced that 26 people
 129 LHRC 2014: Fact Finding Report on the Brutal Killings Targeting Women in Butiama and Musoma Rural.

130 *Ibid.*

131 Shomari Binda, "Ushirikina unavyopelekea mauaji ya wanawake Mara," Jambo Tanzania Newspaper, 6th April, 2014.

132 LHRC 2014: Fact Finding Report on the Brutal Killings Targeting Women in Butiama and Musoma Rural; Also Shomari Binda, "Ushirikina unavyopelekea mauaji ya wanawake Mara," Jambo Tanzania Newspaper, 6th April, 2014.

were arrested in connection with these killings.¹³³ Among them, 10 were charged with murder connected to the killings, while investigation was ongoing for the remaining suspects. The Police Force also announced that a special police unit will be created in Butiama District in order to provide closer protection to women of that area.¹³⁴

LHRC commends efforts taken by the Police Force and the Government in general to make sure that these killings against innocent women are eradicated. However, LHRC is of the opinion that the problem has much deeper roots. This is due to the fact that the lake zone regions have been experiencing different types of killings as a result of witchcraft beliefs. Such killings include killings of persons with albinism, killings of people and skinning of their bodies, killings of people and removal of their body parts as well as killings of elderly women. Modes of killing varies and changes, especially when the authorities begin to take action against the killings.

LHRC recommends that greater efforts be made to change the mindset of the people in the lake zone regions. People should be educated to understand that wealth can never be brought by witchcraft means. Efforts should as well be taken to educate people on alternative means of earning their living. People depend too much on fishing that they are not eager to engage in any other economic activities.

2.1.6.2 Operesheni Saka Wachawi in Geita¹³⁵

In the months of April to July, 2014, there were reports of killings of elderly women in Geita Region. These killings were allegedly performed by a local vigilante group known as *Chinja Chinja* (roughly meaning slaughtering). The victims were older women above 50 years old, accused of bringing bad omen to the society through witchcraft means. The name of the vigilante group is derived from the manner in which the killings were performed. The victims were attacked with machetes and stabbed or beheaded, leading to their deaths. It is said that the group later changed the killing tactics and employed the use of small axes, used to strike the victim in their backbone, which killed the victims instantly and preventing them from screaming for help. These killings are said to have originated from the regions around the Lake Zone of Mwanza and Shinyanga. They later spread to regions of Tabora, Simiyu and Geita.

The rate of belief in witchcraft is very high in these regions. There is a belief that bad omen are caused by others performing witchcraft acts. Such bad omen are like deaths from “unknown” diseases, occurrence of diseases, animal deaths, poverty, infertility and many others. The belief in occurrence of these omens lead people to seek answers

133 Florence Focus, “*Polisi Musoma kuweka kituo maalumu wilayani Butiama.*” Mwananchi Newspaper 15th April, 2014.

134 *Ibid.*

135 Victor Bariety, “*Operesheni saka wachawi yatikisa Geita.*” Jamuhuri Newspaper, 5th August, 2014.

from witchdoctors. The witchdoctors usually predict the reasons for the bad omens and even mentioning the names of the people to which the findings of the witchdoctors have revealed to be the ones responsible for the omens. As a result, the vigilante group is then employed to act against those mentioned by the witchdoctors.

Nine elderly women were reported to have been attacked and killed by the *Chinja Chinja* vigilante group. The manner through which these killings were performed was very similar, involving attacks by machetes and later using small axes. This suggests that the killings were organized crimes, performed by the same group of people. The victims were usually attacked while at home or in fields while farming, fetching water or firewood. Victims of these killings were mostly elderly widowed women.

Table 7: People killed by the Chinja Chinja vigilante group

SN	NAME	PLACE	DATE	INCIDENT
1.	Lidya Mhola (60)	Misheni street, Geita	5 th July, 2014	Attacked and killed by <i>chinja chinja</i> vigilante group for allegedly being a witch.
2.	Chanila Masaga (50)	Rwezela village Bugando division	30 th June, 2014	-do-
3.	Yulita Boniventure (45)	Nyanguku village	24 th May, 2014	-do-
4.	Nyanzala Kitungulu (75)	Nyawilimilwa at Kagu ward	27 th April, 2014	-do-
5.	Kulwa Kapalata (67)	Katoma village	23 th April, 2014	-do-
6.	Joyce Dotto (70)	Butandwa and/or Kasamwa	27 th April, 2014	-do-
7.	Yombo Petro (50)	Butandwa and/or Kasamwa	27 th April, 2014	-do-
8.	Kabula Yohana (60)	Butandwa and/or Kasamwa	27 th April, 2014	-do-
9.	Mwanamayila Mwanamatanga (50)	Not mentioned	Not mentioned	Killed by her own sons because of allegedly practicing witchcraft. The sons were later killed by an angry mob

Source: LHRC Human Rights Monitoring

Among the root causes of these killings include dispute in land inheritance, witchcraft

beliefs, poverty as well as ignorance on the right to life. However, witchcraft is said to be the lead cause resulting to these killings.

Another cause of the killings is differences resulting from issues of land inheritance. It is a custom in the Lake Zone that a grandchild is the one who inherits land when grandfather dies. Traditionally, women do not inherit land, thus widows usually pass the land to their grandchildren, which creates a tension among the widow, the children of the deceased and the grandchildren. In many occasions, this tension results into the children resorting to use *Chinja Chinja* vigilantes to “eradicate” the problem. This means the killing of the widow so as to free the land for inheritance. Children later go to witchdoctors to cleanse them of the curse that might befall them as a result of killing their parents.

Table 8: Some Incidents of Witchcraft Killings Recorded between January-June 2014

No.	Victim	Date	Place	Perpetrator	Incident
1.	Meluti Mbwilo (70)	14 th March, 2014	Makete	Sadick Sanga	The perpetrator killed the victim (his own mother) using a <i>panga</i> by cutting her on head and legs.
2.	Mwananjela Kalimanzila (43)	4 th May, 2014	Iyala - Mbarali	Unknown	The victim was killed while at <i>shamba</i> farming. The perpetrator killed the victim using a matchette.
3.	Said Siraji (13)	March, 2014	Kahama, Shinyanga	The victim's father	The father attempted to cut off the victim's neck using a matchette for witchcraft-related beliefs.
4.	A male youth (b/n 20-25)	January, 2014	Mbezi-Luis, Dar es Salaam	Mob	The young man was beaten to death by a mob for allegedly being a wizard, after he had "fallen" from the sky while he was wizardly travelling in conduct of his witchcraft activities.
5.	An old woman [Name withheld] (70)	March, 2014	Kinondoni Shamba, Dar es Salaam	<i>Wananchi</i>	The woman was badly beaten by <i>wananchi</i> following the allegations that she had consumed the flesh of a young girl, who had previously died. The woman was then taken to a football field where she was raped repeatedly by a mob of young men. She was later rescued by the police.
6.	John Mavumba (68)	6 th October, 2014	Murufiti village in Kigoma region	Unknown	Killed when a mob burned down his house and 20 other houses. 7 other people died during the attacks.
7.	Elizabeth Kaje	-do-	-do-	-do-	-do-
8.	Dyaba Kitwe (55)	-do-	-do-	-do-	-do-

No.	Victim	Date	Place	Perpetrator	Incident
9.	Vincent Ntiyaba (42)	-do-	-do-	-do-	-do-
10.	Herman Ndabiloye (78)	-do-	-do-	-do-	-do-
11.	Redempa Mdogo (60)	-do-	-do-	-do-	-do-
12.	Ramadhani Kalaliza (70)	-do-	-do-	-do-	-do-

2.1.7 Brutal Killings, Attacks and Mutilation of People with Albinism (PWA)

People with Albinism (PWA) have continued to live in fear in their own country. They have continued to be attacked for their body parts which supposedly brings good luck. The trend of attacks on people with albinism seemed to have slowed down in the year 2013 but has risen very rapidly in the year 2014. In 2013, several attacks were reported, with one death resulting from such attacks.¹³⁶ In the first six months of the year 2014, 2 deaths were reported and several other attacks which left the victims with permanent injuries.¹³⁷

By the end of the year 2014, a total of 3 people were reported to have been killed due to brutal attacks and many others were left injured as a result of such attacks, with 1 child still missing after being abducted from her home.¹³⁸ The abducted child's name is Pendo Emmanuel (4) and was abducted from her home in Ndami Village, Kwimba District, on 27th December 2014. Those who were killed include Mungu Masaga (35) from Buhekela Village, Igunga District, who was attacked and had her hand chopped off and left to bleed to death.¹³⁹ The husband of the victim was also killed in the attack when he was trying to

¹³⁶ LHRC & ZLSC 2013: Tanzania Human Rights Report, Chapter Two.

¹³⁷ Statistics obtained from the Tanzania Police Force to LHRC for LHRC 2014 Bi Annual Human Rights situation.

¹³⁸ LHRC 2014: Media Perusal.

¹³⁹ Roberty kakwesi, "Man dies in defence of wife." The Citizen August 18, 2014.

protect her from the attackers.¹⁴⁰ In Mwachalala Village in Simiyu Region, Munghu Lugata (40) was also killed as a result of a brutal attack, whereby the attackers chopped off her left leg, two fingers and an upper part of her left thumb.¹⁴¹

Another incident of a murdered PWA happened in March, 2014, in Singida Region. This is rather a very disturbing case as the alleged perpetrator is the mother of the victim. In this case, the victim was a boy named Richard Daudi Paul, who was reported to have been strangled to death by his own mother, who later cut off the private parts of the poor child.¹⁴² There were many other attempted attacks and those that did not result in any death left the victims with permanent injuries and disabilities.



Picture 8: The mutilated body of the late Munghu Lugata after the heinous attack

LHRC is very concerned with what seems to be the re-emergence of attacks and killings of PWAs. The Government seems to have failed to provide protection to PWAs, leaving them to live in fear and uncertainty of what tomorrow holds. Most of the incidents of attacks against PWAs occur in regions around Lake Victoria (Lake Zone).

140 *Ibid.*

141 Faustine Phabian, "Wananchi wataka ulinzi kwa albino," Mwananchi newspaper May 16, 2014.

142 Nathaniel Limu, "Albino Mbaroni kwa Kumchuna Ngozi Mtoto Sehemu za Siri", MoBlog, 16th March, 2014. The story can be viewed at <http://dewjiblog.com/2014/03/16/albino-mbaroni-kwa-kumchuna-ngozi-mtoto-sehemu-yake-ya-siri/>, accessed in June 2014.

The Lake Zone boasts a lucrative fishing industry, whereby the majority of residents are involved in fishing activities. It has been observed that fish products from Lake Victoria have declined significantly in the last decade. On the other hand, the regions in the Lake Zone are endowed with minerals, creating a good environment for mining industry. The area is blessed with gold and diamond deposits. All these economic activities attract a huge workforce, hence a lot of competition. As a result, when yield in the respective industry declines, those engaging in it tend to look for an easy way to increase the yield. As a result, witchdoctors in the area exploit the opportunity by telling people that body parts of PWAs can be used to create a charm that is likely to increase yields as well as their wealth.

Body parts of PWAs have become a very “lucrative business” [*sic*]. In 2009, it was estimated that a complete set of body parts belonging to PWA costs a staggering US\$ 75,000.¹⁴³ The money surrounding this business suggests that it involve a well organized syndicate. The syndicate involves witchdoctors, people involved in fish and mining industry, dealers in PWA body parts as well as the actual attackers, who go after PWAs in their homes. Family members should as well not be left out of the syndicate as in many incidents it has been revealed that some family members took active role in PWA attacks. In some areas, local leaders have also been suspected to be involved in the syndicate.

There are allegations as well that albino attacks and killings tend to increase during the period approaching political elections. These allegations suggest that politicians and political aspirants turn to witchcraft to “ensure” victory in elections. LHRC could not substantiate these allegations. However, the fact that there is a lot of money involving PWA body parties would make one comes to that conclusion. Also, statistics of PWA killings and attacks during these respective periods strengthen as well these allegations, with statistics showing that in 2008 more than 35 PWA were reported to have been killed; in 2009 more than 10 PWA; and those killings escalated in 2014.¹⁴⁴

143 2009 International Federation of Red Cross and Red Crescent Societies; Through Albino Eyes; the Plight of Albino People in Africa’s Great Lakes Region and a Red Cross response, advocacy Report.

144 Please refer to LHRC & ZLSC Tanzania Human Rights Reports for the respective years.



Picture 9: Children with Albinism enjoying a happy moment with others

LHRC urges the government to make sure that urgent measures are taken to curb the tragedy of PWA attacks, killings and subsequent mutilation of their body parts. Measures taken so far do not seem to have brought satisfactory results. Among the measures taken include the banning of witchdoctor practices, opening of PWA care centres, and communal public voting to reveal suspects of PWA attacks. All these measures do not seem to have brought the desired results, with witchdoctors still continuing to practice, PWA aftercare centres abandoned for lack of funds, thereby exposing to danger PWA living in them even more and community voting leading to capture of non-significant perpetrators of PWA killing whose prosecution becomes difficult for lack of evidence.

2.2 Access to Justice

In simple language access is defined as “an opportunity or ability to enter approach, pass to and from, or communicate with.”¹⁴⁵ The word justice on the other hand is plainly defined as “the fair and proper administration of laws.”¹⁴⁶ Access to justice is a right which emanates from human rights standards that require equality for all before the law, the right to be treated fairly by any tribunal, among others.¹⁴⁷

145 Black’s Law Dictionary, Ninth Edition.

146 *Ibid.*

147 The Universal Declaration of Human Rights 1947, Articles 6, 8, 9, 10 and 11.

2.2.1 Access to Justice as an Integral Part of Rule of Law

Access to justice is an integral component of the rule of law. The *Constitution of the United Republic of Tanzania, 1977* declares that all persons are equal before the law and are entitled without discrimination, to protection and equality before the law.¹⁴⁸ This Article of the Constitution is similar to article 14 of the *International Convention on Civil and Political Rights* (the ICCPR). Tanzania ratified the ICCPR in 1977.

The concept of the right to access to justice simply means that the justice machinery is easily accessible by all without any unnecessary encumbrances. Access to justice can simply mean the ability of citizens to use the justice system in order to obtain solutions to their problems and settle disputes. The constitutional guarantee of access to justice can mean nothing unless the citizens are able to use the justice system of the country to give solution to their problems.

The ICCPR provides five minimum standards that must be met in order to secure access to justice.¹⁴⁹ The first one is the availability of independent and impartial tribunals and courts. The second one is the presence of competent and accessible tribunals or courts, with sufficient resources, such as Judges, Magistrates, court rooms and facilities necessary for the Court to administer justice. Thirdly, there must be good laws which are understood by majority of people. Fourthly, sufficient and qualified lawyers must be available to represent those who cannot defend themselves in Courts of law and tribunals. Lastly, there must be timely and fair trial for all, regardless of their socio-economic and political status. This sub-chapter will explore the concept of access to justice in Tanzania by examining the minimum standards as provided by the ICCPR. The sub-chapter will explore as to whether these standards are met in the provision of justice in Tanzania.

2.2.2 Availability of Independent and Impartial Tribunals and Courts

The Judiciary is an integral institution in the provision of justice and promotion of the rule of law. The Constitution mandates the Judiciary to dispense justice in the country.¹⁵⁰ For the Judiciary to be able to promote access to justice it must be independent, free from interference from any authority or body. This means that the Judiciary as one pillar of the State should not be subjected to reprehensible influence from other pillars of the State, the Executive and the Legislature. Independence of the Judiciary will essentially mean that the Judges and Magistrates will be able to freely decide matters brought before the Court based on facts and their understanding of the law, without any improper influence, inducements or pressure, whether direct

148 Article 13(1).

149 General Comment 13 – 21st session Geneva 1984- Compilation of the general comments and general recommendations Adopted by Human Rights Treaty Bodies. UN. Doc. HRI/GEN/1Rev.1 at 14 (1994)

150 Article 107A (1).

or indirect, from any quarter. Thus, independence of the judiciary should not mean the independence of the institution, but rather should extend to the independence of judges and magistrates from internal and external control.

Independence of the Judiciary is provided for in different international human rights instruments. The *Basic Principles of the Independence of Judiciary (BPIJ)* provides for adherence of impartiality when dealing with cases brought before judges.¹⁵¹ The UN Charter, *inter alia*, affirms determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination. The Universal Declaration of Human rights on its part enshrines in particular the principles of equality before the law, of presumption of innocence and the right to fair and public hearing by a competent, independent and impartial tribunal established by law. The ICCPR guarantees the same in its provisions.¹⁵²

Domestically, independence of the judiciary is provided for in the *Constitution of the United Republic of Tanzania, 1977*. The preamble of the *Constitution of the United Republic of Tanzania, 1977* states that:

“WHEREAS WE, the people of the United Republic of Tanzania have firmly and solemnly resolved to build in country a society founded in the principles of freedom, fraternity and concord.

AND WHEREAS those principles can only be realized in a democratic society in which the executive is accountable to a legislature composed of elected members and representatives of the people, and also a Judiciary which is independent and dispense justice without fear or favour; thereby ensuring that all human rights are preserved and protected and the duties of every person are faithfully discharged:”

The Constitution requires the judges to observe constitutional principles while dispensing justice.¹⁵³ This shows that judicial independence in Tanzania is not a mere concept, rather “a concept which is the cornerstone of all State activities”.¹⁵⁴

151 Adopted by the Seventh United Nations Congress on the Prevention of Crimes and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

152 Article 14.

153 Article 107B.

154 In the words of the Hon. Justice (retired) Lameck M. S Mfalila in 2007: Legal and Human Rights Centre: Law and Justice in Tanzania; Quarter Century of the Court of Appeal.

From the above, one can definitely see that the *Constitution of the United Republic of Tanzania, 1977* guarantees by all levels independence of the Judiciary, and thereby the rule of law. The story however can be very different on the ground as far as the applicability is concerned.

In order to examine as to whether Tanzania adheres to the principles of independence of the Judiciary, it is important to understand the methods by which independence and impartiality of the Judiciary can be established. The following are the methods to establish the same:

i. Selection and Appointment of Judges

Selection and appointment of judges can have a strong impact on whether the judges will be independent and partial. The process of selection should be of a proper procedure, free of any irrelevant and external factor.

In Tanzania, judges are appointed by the President after consultation with the Judicial Service Commission.¹⁵⁵ The President is vested with powers to appoint, control of discipline and removal of judges from office.¹⁵⁶ The Judicial Services Commission is an Appointment Advisory Commission for Judges and Magistrates in Mainland Tanzania.¹⁵⁷ The system of appointment of Judges seems to be fair enough. However, it lacks effectiveness as the President is not required to adhere with the recommendations by the Commission. The Commission is a mere advisory body and lacks a final say in the selection and appointment of Judges. However, the Commission has the powers of appointment, confirmation, discipline and removal of magistrates of the lower courts in Mainland Tanzania.¹⁵⁸ This can be derived from the functions of the Judicial Services Commission as stipulated in the Constitution.¹⁵⁹ The Constitution states that:

“The functions of the Commission shall be-

- (a) To advise the President regarding appointment of Judges of the High Court;*
- (b) To advise the President on matters relating to discipline of Judges;*
- (c) To advise the President in relation to salaries and remuneration for Judges;*
- (d) To advise the President in respect of appointment and discipline*

155 Article 109(1).

156 Article 113 (2).

157 Article 112(1).

158 Article 113 (4).

159 Article 113(1).

for Registrar of the High Court;

(e) Appoint magistrates and control their discipline.

The system of Judges' appointment as it is in Tanzania leaves a room for the Executive to have a say on who can be appointed as a Judge, leaving the Judiciary vulnerable to undue influence from the Executive. Tanzania is in the process of reviewing its constitution. The short comings so revealed would thus be expected to be dealt with by the Constitutional review process by amending the provisions of the current Constitution. LHRC is of strong opinion that the recommendation made by the Constitution Review Commission (CRC) under Judge Joseph Warioba (rtd) should have been adopted in the Proposed Constitution of the United Republic of Tanzania so that the Judges' appointment process reflects independence and impartiality of the Judiciary. In the Second Draft Constitution presented to the Constitutional Assembly, CRC recommended the process which would bind the President in appointing Judges, to adhere to names recommended by the Judicial Services Commission.¹⁶⁰ CRC further recommended that, appointment of Chief Justice and the Deputy Chief Justice would base again on names recommended to the President by the Judicial Services Commission.¹⁶¹ More importantly, after the Chief Justice and the Deputy Chief Justice are appointed, CRC recommended that their names be submitted to the Parliament of the United Republic of Tanzania for approval.¹⁶²

Some elements of the above recommendations by the CRC were retained by the Constituent Assembly in the Proposed Constitution of the United Republic of Tanzania. However, the Constituent Assembly rejected some of the CRC recommendations which LHRC believes to be very important in ensuring the independence and impartiality of the Judiciary, as far as the appointment of judges are concerned. The Constituent Assembly rejected the recommendations of submitting names of the appointed Chief Justice and Deputy Chief Justice before the Parliament of the United Republic of Tanzania for approval.¹⁶³

ii. Remuneration

It is important that judges receive adequate remuneration. Adequate remuneration will ensure that no room is left open for manipulation by the Judge to influence the outcome of the decisions on matters before the Judge. This will in turn help to ensure independence of the Judge individually and thus in the long run independence of the Judiciary.

160 Article 160(1) of the Second Draft of the Constitution of the United Republic of Tanzania, 2013.

161 Article 158(1), 159(1) *ibid.*

162 Article 158(2), 159(2) *ibid.*

163 Article 176(1), 177(1) of the Recommended Constitution of the United Republic of Tanzania, 2014.

International standards call for securing remuneration by law.¹⁶⁴ In Tanzania, judges' remunerations are provided for under the Constitution and other laws.¹⁶⁵ However, remuneration of Judges is largely determined by the President.¹⁶⁶ The Judicial Service Commission may propose to the President any necessary reviews in regard to remuneration of Judges, the proposals of which are in the discretion of the President to agree or to disagree.¹⁶⁷

Tanzanian Judges are well remunerated. As pointed out above, Judges' remuneration is guaranteed by law. The law stipulates the salary, allowances, benefits and other entitlements for judges. Judges remunerations are stipulated in the law, irrespective of whether the Judges are in office or retired. The law as well stipulates the judges' remunerations when they die while in office or retired.

Apart from Judges, other judicial personnel have remained to be among the poorly paid civil servants. These include magistrates, court clerks and other lower rank judicial personnel. These are important personnel in making sure that the Judiciary performs well in dispensing justice. Poor payment of the judicial personnel leaves room for manipulation of the same in carrying out their activities. Poor payment undermines professionalism of the Judiciary and leave room for corruption.

The Judiciary was among the public institutions that scored high in corruption perception in 2014. A survey conducted in 2013 by Transparency International (TI) in collaboration with ForDia-Tanzania revealed that the judiciary ranked second in the country at 38%, as most corrupt in the list of top ten most corrupt sectors in the country.¹⁶⁸ The survey further showed that most of the people surveyed said they gave bribes to hasten up services.¹⁶⁹

Accusations of magistrates asking for bribes from citizens were common in 2014. A Resident Magistrate of Urambo District, Oscar Bulugu, was convicted for one count of soliciting bribe from the accused person, and two counts of accepting bribe from the accused person.¹⁷⁰ The convict was sentenced to three years in jail or to pay 1.5/-

164 IBA Minimum Standards of Judicial Independence (adopted in 1982).

165 Article 113(1) (c) of The Constitution of the United Republic of Tanzania; Judges (Remuneration and Terminal Benefit) Act, 2007; the Public Service (Retirement Benefit) Act, 1999.

166 Section 4 of the Judges (Remuneration and Terminal Benefit) Act, 2007.

167 Section 5(1), 5(4) *ibid.*

168 Bernard Lugongo, the Citizen reporter: "Dar Police is EAC's most corrupt," the East African, Tuesday October 29, 2013.

169 *Ibid.*,

170 Lucas Raphael, Tabora: "Hakimu aliyekula rushwa mil. 2/- atozwa faini mil.1.5/-," Habari Leo newspaper, 5th August, 2014.

million Shillings.¹⁷¹ In Bunda District in Mara region, Kewnkombo Primary Court Magistrate, Emmanuel Mng’wale, was charged at the Bunda District Court with soliciting bribe from unsuspecting local fishermen.¹⁷² In Ilala District, Dar es Salaam, a Buguruni Court Magistrate was charged, together with the clerk of the court, Rose Kuhima, with receiving bribe from the accused person.¹⁷³ In another incident in Kibaha District, Pwani Region, a magistrate of Maili Moja was apprehended by the PCCB on 4th March, 2014 for allegations of accepting bribe from the accused.¹⁷⁴

LHRC opines the Judiciary to improve remuneration of its personnel apart from Judges. This is true especially with Magistrates and other personnel working in the lower courts at primary and district levels, as most of corruption allegations arise from these courts.

iii. Security of Tenure

Security of tenure of judges guarantees their confidence in executing the law. It gives assurance that the Judge cannot be punished for giving out a decision that the Executive may think is wrong. It further removes the threat to the Judge that he can be a subject to removal by either the Executive or the Legislature. In the long run, security of tenure allows the Judge to execute the law without fear or favour. Security of tenure of Judges in Tanzania is guaranteed by the *Constitution of the United Republic of Tanzania, 1977*.¹⁷⁵

iv. Terms of service

Judges’ terms of service are permanent and pensionable until they retire. The High Court Judges retire at the age of 60 years, while the Justices of Court of Appeal retire at the age of 65 years. On retirement a Judge can be given contractual terms of employment.¹⁷⁶ Contractual term of employment is upon the President’s discretion and can be renewable. It is a good thing that upon retirement a judge is given an opportunity of a short-term contract. This may help ease the pressure on the retiring judges to complete the matters at their desks in spite the fact that the Constitution guarantees them with ample time to complete all pending matters.¹⁷⁷ However, this arrangement somehow casts a shadow on independence of the Judge on contractual terms and expecting renewal of the term. It will not be expected, at least before the eyes of ordinary citizens, that this Judge will be impartial and independent against the

171 *Ibid.*

172 www.ukomboz.blogspot.com/2014/05/hakimu-kortin-kwa-kupokea-rushwa.html accessed in December, 2014.

173 Hadija Jumanne, “*Shahidi ‘amkaanga’ hakimu mahakamani*,” Mwananchi 17th July, 2014.

174 Sanjito Msafiri, “*Hakimu mbaroni kwa tuhuma ya rushwa*,” Mwananchi 7th March, 2014.

175 Article 110(1).

176 Article 110(3).

177 Article 110(4).

Executive to which he is expecting to renew his contractual term. LHRC recommends that the contractual terms of a retiring Judge be of a fixed time and non-renewable. This will remove any “expectations” from the Judge.

v. ***Qualifications***

Appointment of Judges should be based on no consideration other than merit, qualifications and integrity. Judges should be highly qualified both in experience and intellect. A highly qualified Judge is likely to be independent and withstand strong public opinion in execution of his judicial duties. This is especially true in the present time where our society is faced with strong opposing opinion coming from the government and the citizens. A highly qualified Judge should be able to tell the government that it is wrong when the government is wrong.

2.2.2.1 Judicial infrastructure: Human resources and Facilities Number of Courts and Decision Makers

In order for the court to undertake effectively its duty of dispensing justice, it is important that this important arm of the State is well equipped. The equipment is in terms of facilities in human resource and infrastructure. It is important that the court is equipped with qualified human resources and that there are enough court houses as well living houses for the personnel.

i. **Human Resources**

Human resources are very important in making sure that the Judiciary performs effectively. The Judiciary should be equipped with sufficient and well qualified personnel to make sure that they undertake effectively the judicial duties.

Table 9: Number of Adjudicators who Dispense Justice in Our Courts

Number of Justices of Appeal		Number of judges of the High Court		Number of District Court/Resident Magistrates and Primary Court Magistrates	Number of Chairpersons in District Land and Housing Tribunal
2005	2014	2005	2014		
9	13	35	76	677	49
					42 working

At the end of 2014, there were a total of 13 Justices of Appeal and 76 Judges of the High Court making a grand total of 89 Judges.¹⁷⁸ 38 of the Judges are women Justices of Appeal and Judges of the High Court.¹⁷⁹ The actual requirement for Judges of the High Court is 120 Judges, thus there is a shortage of 44 Judges.¹⁸⁰

Statistics further show that there are 682 resident magistrates countrywide, 10 district magistrates and 335 magistrates of primary court.¹⁸¹ The Judiciary has shown some improvement in increasing the number of resident magistrates, as 300 resident magistrates were employed in 2013.¹⁸² These resident magistrates were placed in primary courts around the country in efforts of transforming the primary court. The government is planning to allow appearance of advocates in primary courts; thus efforts are made to make sure that all primary courts are presided over by a resident magistrate with a law degree before advocates are allowed to appear before them. Currently statistics from the Judiciary show that there are 335 magistrates of primary court. It is however not clear whether this number includes the 300 resident magistrates employed in 2013; thus, making a total of 1,027 magistrates countrywide. LHRC was not made aware of the actual requirement of magistrates to the District Courts and Resident Magistrates' of the country.

ii. Facilities at the Judiciary: Number of Court Houses

It is equally essential that the judiciary is equipped with appropriate infrastructure. This will include the number of court houses for all levels of the Judiciary, starting from the Primary courts to the Court of Appeal. The Judiciary is faced with a critical

178 Statistics obtained from the Judiciary made available to LHRC through letter of 10 February, 2015 with reference Kumb. Na.AB 196/434/01/33.

179 Speech by the President of the United Republic of Tanzania H.E Jakaya M. Kikwete; on the commemoration of Tanzania Law Day at Dar es Salaam on 4th February, 2015.

180 *Ibid.*

181 Statistics obtained from the Judiciary made available to LHRC through letter of 10 February, 2015 with reference Kumb.Na.AB 196/434/01/33

182 Speech by the President of the United Republic of Tanzania H.E Jakaya M. Kikwete; on the commemoration of Tanzania Law Day at Dar es Salaam on 4th February, 2015.

shortage of court houses especially at the lower levels of primary and district courts. These are the courts that serve most of ordinary Tanzanians with legal disputes. Most of disputes are presented at these courts thus necessity of having appropriate infrastructure to enable dispensing of justice.

Shortage of court houses is experienced in both inadequate numbers of court houses as well as available courthouses being in a very bad condition to house the noble court of the country. A clear picture of shortage of court buildings can be well observed when one looks at primary courts in the country. Statistics show that there are 960 primary courts buildings in the country.¹⁸³ There is a shortage of 296 buildings around the country.¹⁸⁴ Among the available buildings, 157 buildings are dilapidated and in very bad condition.¹⁸⁵ However statistics obtained from the judiciary show that there are 2,511 established primary courts in the country.¹⁸⁶ There are as well 127 district courts and 24 resident magistrates' courts.¹⁸⁷ On part of the High court there are 13 established zones of the High Court around the country and 3 High Court divisions.¹⁸⁸



Picture 10: Dilapidated building hosting the Kibaha Primary Court

183 LHRC 2014: Bi Annual Human Rights situation.

184 *Ibid.*

185 *Ibid.*

186 Statistics obtained from the Judiciary made available to LHRC through letter of 10 February, 2015 with reference Kumb.Na.AB 196/434/01/33.

187 *Ibid.*

188 *Ibid.*



Picture 11: Lavatory at the Kibaha Primary Court

2.2.3 Accessibility of Tribunals and Courts

Access to justice is not about having courts and tribunals only; it is rather paramount is about accessibility to the tribunals and courts. . This means that an ordinary Tanzanian can be able to bring matters before courts to obtain redress without unnecessary hitches.

There are several factors that may hinder access of the courts by ordinary citizens. Among them is ignorance of the law and court costs. Courts costs are the costs that require one to pay to the court in order to move the court to hear the case. Costs may also involve those associated with representation, such as assigning an advocate to work on one's behalf.

2.2.3.1 Court Costs: Land Tribunal Costs

The District Land and Housing Tribunals (DLHT) were established by Act No. 2 of 2002, Chapter 216 of the Laws of Tanzania.¹⁸⁹ Establishment of the tribunal is pursuant to the provision of the Land Act, Chapter 113. Section 167 of the Land Act states that,

¹⁸⁹ Section 3(2) (c).

“every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.” This position was later clearly stated by the Court of Appeal where *inta alia* it was held that, “*Districts Land and Housing Tribunals have jurisdiction to hear and determine all land disputes arising under the Land Act, regardless of whether the said land is registered or not.*”¹⁹⁰

The District Land and Housing Tribunals [DLHT] started operating on 1st October, 2003 when the law came into operation. The rationale for the establishment of the District Land and Housing Tribunal was to facilitate the aim of the National Land Policy in finding solution to land matters through an independent organ, to ensure land matters are quickly decided and judgments executed in an expeditious manner than in the other ordinary courts.

However, experience reveals something different. DLHTs became overwhelmed by a number of cases referred to them. Between the year 2010 and 2011, there were 12,643 cases filed at the DLHTs countrywide, among them 10,092 were decided.¹⁹¹ In between the years 2012 and 2013, there were 12,074 filed cases, with 9,831 being decided.¹⁹² Between these years, there was an average of 2,000 pending cases per annum.¹⁹³ Number of cases has continued to increase over the years. By July 2013, there were 18,328 cases filed, and up to April, 2014, there were 11,548 cases filed.¹⁹⁴ Between the years 2013-2014, there were 18,444 cases pending before DLHTs.¹⁹⁵

The District Land and Housing Tribunal has been facing many other challenges in solving land matters. Apart from the bulk of cases referred to it, another challenge facing DLHT is a small number of established tribunals around the country. DLHTs were supposed to be established in every district of the country to give a clear meaning to its name. However, up to the financial year 2014/2015 there were only 49 tribunals established around the country, with only 42 being operational.¹⁹⁶ However, according to the Ministry of Lands, Housing and Urban Development, there are only 39 tribunals established around the country.¹⁹⁷

190 Olam Tanzania Limited and 3 others V. Selemani S. Selemani and 4 others, Court of appeal of Tanzania at Mtwara. Consolidated Civil Revision No. 2,3,4,5 and 6 (unreported).

191 Godyfrey Eliseus Massay, 2013: adjudication of Land Cases in Tanzania: a Bird eye Overview of the District Land and Housing Tribunal.

192 *Ibid.*

193 *Ibid.*

194 Budgetary speech of the Minister of Lands, Housing and Urban Development at the Parliament of the United Republic of Tanzania for the financial year 2014/2015.

195 *Ibid.*

196 *Ibid.*

197 http://www.ardhi.go.tz/index.php?option=com_content&view=article&id=205&Itemid=112, visited on December, 2014.

In August, 2012, the *Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003* were amended through the *Government Notice No. 263*.¹⁹⁸ The amendments increased tremendously the fee structure of filing cases before the District Land and Housing Tribunal. The increase exceeded 100% the previous fees. The newly introduced fees are very high to be afforded by an ordinary Tanzanian. Experience from legal aid providers revealed that there has been an increase in the number of people seeking legal aid in land matters, not because they actually need legal aid but because they cannot afford meeting the newly established fees, thus they believe that by going through legal aid providers they will obtain legal aid certificates which in turn will exempt them from tribunal fees.¹⁹⁹

Below are the figures depicting fees relating to land matters as in previous regulations and the newly amended ones.²⁰⁰

Table 10: Comparison of Fees Relating to Land Matters

No.	Item	Fee in shillings (before amendments)	Fee in shillings (after amendments)
1.	On obtaining application forms	500/=	4,000/=
2.	On filing an application, where the subject matter does not exceed ten million	5,000/=	40,000/=
3.	On filing an application, where the subject matter exceeds ten millions	15,000/=	120,000/=
4.	On filing written statement of defence	2,500/=	20,000/=
5.	On filing chamber application	5,000/=	40,000/=
6.	On filing an affidavit	1,500/=	12,000/=
7.	On filing annexures to pleadings, each document	500/=	4,000/=
8.	On filing memorandum of appeals arising from the Ward Tribunal	2,000/=	16,000/=
9.	On filing petition to the Land Division of the High Court	As may be applicable to the High Court (Land Division)	As may be applicable to the High Court (Land Division)

198 Published on 3/8/2012.

199 LHRC 2014: Kinondoni Legal Aid Clinic.

200 The Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003; and GN. 263

No.	Item	Fee in shillings (before amendments)	Fee in shillings (after amendments)
10.	On filing Reply to the petition of appeal to the High Court	As may be applicable to the High Court (Land Division)	As may be applicable to the High Court (Land Division)
11.	For a copy of proceedings for each typed page	500/=	4,000/=
12.	For a copy of Judgment or Ruling	2,000/=	16,000/=
13.	For copy of decree or drawn order	500/=	4,000/=
14.	For service of application, written statement of defence, chamber application or affidavit within the City or Municipality, the Process Server shall be paid	3,000/=	24,000/=
15.	For service of application, written statement of defence, chamber application or affidavit in any other areas other than the City or Municipality, the Process Server shall be paid	2,000/=	16,000/=
16.	On issuing witness summons or notice	500/=	4,000/=
17.	On filing bill of costs	5,000/=	40,000/=
18.	On filing application for execution	2,000/=	16,000/=
19.	On filing or obtaining any other document which is not specified in this Schedule	500/=	4,000/=

Increase in court fees has a direct impact on access to justice. This is because more and more people cannot afford to bring their matters before the tribunals. At the same time, even when clients receive legal aid certificate they again face another challenge when they go to the tribunals. Clients at the legal aid clinics have revealed that most of the time when they go to file cases with legal aid certificate, the clerks at the tribunals refuse to accept their cases and force them to pay the fees.

Another challenge facing the DLHTs is the fact that they are under the Ministry of Lands and Housing Development. This fact has proved troublesome in many occasions where DLHTs have refused or delayed tendering records to the High Court Land Division when required for filled appeals from DLHT. As a result, the High Court cannot hold DLHT accountable since the law does not provide the same. This is a very serious challenge as it undermines access to justice by unnecessarily delaying determination of appeals at the High Court. LHRC recommends that the law is

amended and that a clear relationship between the High Court and DLHT is expressed in the law to make sure that the High Court can hold responsible DLHTs in delaying or/and refusal in tendering records to the former.

2.2.4 Right to Legal Representation

A common man without legal training cannot easily understand what transpires in proceedings in a court of law. This is because of legal technicalities that are involved in court proceedings. Thus, it is important for a person in a legal dispute to acquire services of a trained legal professional. This is even more evident in criminal cases, where there is a greater danger of a faulty conviction which may lead to a jail sentence.

Right to legal representation is an essential part of access to justice. Only then can justice be said to have been done, when all parties in a conflict, regardless of their social status, are treated equally in the legal dispute. The *Constitution of the United Republic of Tanzania, 1977* guarantees right to equality, and specifically equality before the law.²⁰¹ The Constitution goes further and guarantees the right to a fair hearing, when ones rights and duties are being determined by a court of law.²⁰²

Right to legal representation is provided under the *Criminal Procedure Act, 1985*.²⁰³ Section 310 states that, “Any person, accused before a criminal court other than a primary court, may of right be (sic) defended by an Advocate of the High Court, subject to the provisions of any written law relating to the provision of professional services by advocate.”²⁰⁴ This provision should be read to mean that all the accused, have the right to legal representation, whether they have the means to afford it or not. Practice and traditions in Tanzania has been that the right to legal representation is restricted only when “serious offenses” are involved. According to Professor Peter Chris Maina, this attitude originates from the colonial period and has been inherited after independence.²⁰⁵

Legal representation should be extended to those who cannot afford it. In fact, the court should have the duty to inform the accused of his right to legal representation, to be provided in the expenses of the State.

2.2.4.1 Legal Aid Provision

The Lilongwe Declaration²⁰⁶ defines legal aid as including legal advice, assistance,

201 Article 13(1).

202 Article 13(6)(a).

203 Chapter 20 of the Laws of Tanzania.

204 Section 310.

205 Peter, Chris Maina: Human Rights in Tanzania: selected cases and materials.

206 The Lilongwe Declaration on Access to Legal Aid in the Criminal Justice system in Africa was

representation, education and mechanisms for alternative dispute resolution; and as including a wide range of stakeholders, such as non-governmental organizations, professional bodies and academic institutions. To a layman, legal aid is described as a general term used to cover the provision of legal advice and representation to individuals at no cost, at reduced cost, to individuals.

Legal aid is provided under several international instruments. Article 7 of the *Universal Declaration of Human Rights, 1948*, for example, provides for equality before the law without any discrimination. Article 11(1) of the same provides for presumption of innocence for a person charged with a criminal offence. This Article goes further to provide that such an accused person should have guarantees necessary for his defence. Article 14 of the *International Convention on Political and Civil Rights, 1966 (ICCPR)* also provides for legal aid. This provision has requirements needed while conducting criminal trials. Such requirements are the rights that the accused person has such as right to fair trial and public hearing. Right to a fair hearing has been defined in a much wider context. That, right to fair hearing to a greater extent comprises the right to legal representation and access to qualified lawyers, who will represent the client in accordance with their established professional standards.²⁰⁷

In Tanzania, the *Constitution of the United Republic of Tanzania, 1977* provides for right to a fair trial.²⁰⁸ This is the only provision in the Constitution that guarantees to some extent the right to legal representation, which one could argue that extends to right to provision of legal aid.

In criminal proceedings, the *Legal Aid (Criminal Proceedings) Act [R.E 2002]* provides for legal aid in certain circumstances.²⁰⁹ Section 3 of the act states that:

“where in any proceeding it appears to the certifying authority that it is desirable in the interest of justice, that an accused should have legal aid in preparing and conducting his defence or appeal as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do,

adopted by the Conference on Legal Aid in Criminal Justice: the Role of Lawyers and Other Service Providers in Africa held in Lilongwe from 22 to 24 November, 2004. The Declaration has been adopted by the African Commission on Human and People’s Rights and formally endorsed by ECOSOC.

207 Human Rights Committee, General Comment 13, on Art. 14 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies U.N Doc. HRI/GE/!/Rev.1 at 14(1994).

208 Article 13(6)(a).

209 Chapter 21 of the Laws of Tanzania.

assign the accused an advocate for the purpose of preparation and conduct of his defence or appeal, as the case may be.”

The above can be said to be the only state-funded legal aid scheme in the country. However, the scheme itself is limited to certain offences only. This is despite the fact that the provision above does not suggest that legal aid provision be in only certain offences. Thus in Tanzania, practice is that legal aid is provided for crimes of murder and treason only. Addressing the issue on whether the government would consider financing legal aid to other offenses than murder, President Kikwete responded that the government is working on the recommendations and that it will consult stakeholders in making sure that the recommendations are worked upon.²¹⁰

The scheme, limited as it is, has not itself been very affective. The mechanism over which legal aid is provided even in these limited circumstances is done in such unorganized manner. The Judge In-charge of the High Court zone or the Judge presiding over a case is left with a decision to allocate the case as *dock brief* to advocates available.²¹¹ This has been particularly so because of inadequate compensation that the lawyers are provided for their services.²¹²

Legal aid is as well reflected in the *Court Fees Rules*.²¹³ Provisions of these rules allows for a person being assisted by organizations with legal aid certificates from paying court fees.²¹⁴ Legal aid is essential in realization of access to justice, which is a basic human right without which the enjoyment of many other rights cannot be guaranteed.²¹⁵ The scheme of legal aid provision in Tanzania as it is today cannot be said that it serves the purpose of access to justice.

For years now, legal aid provision has been mostly undertaken by non-governmental organizations. This as well has been a bit problematic as most of organizations providing legal aid focus on urban areas. Most of these organizations conduct mobile legal aid services in some rural areas where they camp for a certain period of time to provide legal aid to those in need. The challenge with this arrangement is that due to budgetary constraints, Legal aid Providers fail to reach as many people as they would wish. Again, the LAPs are only at a certain area for only a limited period of time. Once the LAPs leave these places the people there are left on their own to make follow ups on their cases. This brings us to another problem, as we all are aware of the problems

210 Speech by the President of the United Republic of Tanzania H.E Jakaya M. Kikwete; on the commemoration of Tanzania Law Day at Dar es Salaam on 4th February, 2015.

211 Chris Peter Maina: “*Examining the Criteria for Provision of Legal assistance*”: Zanzibar Legal Services Centre 2003: Perspectives of Legal Aid and Access to Justice in Zanzibar.

212 *Ibid.*

213 GN No. 308 of 1964.

214 Rule 8(5).

215 Haroub Othman “Perspectives of Access to Justice in Zanzibar.”

of case delays in the country, whether because of shortage of magistrates or some other reason. Also, people in rural areas are very poor and experience has shown that most cases that mobile legal aid attends are cases related to land matters. Land matters are adjudicated in District Land and Housing Tribunals. These tribunals were meant to be in every district of the country, however only 39 (or 49) districts have established tribunals so far.²¹⁶

Currently, legal aid is provided by NGO legal aid providers. There are no combined figures of the number of cases and clients assisted by NGO-LAPS. The law does not allow legal aid provision by non-state actors on criminal matters. Statistics show that as of 2014, LHRC Legal Aid Clinics attended 15,297 clients with different matters.²¹⁷ Out of these clients, 4,051 were empowered and enabled to represent themselves in courts of law without being represented by an advocate.²¹⁸ Land issues amounted to most cases that clients sought assistance, ranking it at 41% of all cases. 23% of the cases were labour related, while 10 percent were matrimonial and 5% probate matters. Women have revealed to be among the social group mostly in need of legal aid, especially in probate matters.

Table 11: Number of Clients who visited LHRC Legal Aid Clinic

TYPES OF CASE	Jan	Feb	Mar	April	May	Jun	July	Agus	Sept	Oct	Nov	Dec	Total
Employment	178	269	341	315	331	329	351	343	345	337	249	149	3,537
Matrimonial	108	116	130	120	138	152	142	114	184	154	127	58	1,543
Land	394	553	612	593	526	555	538	576	626	617	410	270	6,270
Contract	17	18	38	10	18	16	17	21	28	37	21	18	259
Children Rights (affiliation, rape, maintenance)	22	15	22	12	20	23	15	20	20	18	16	10	213
Tort	15	28	6	12	6	6	15	40	35	37	18	17	235
Probate	56	58	74	50	58	77	58	54	81	97	37	41	741
Insurance	8	19	23	18	13	10	20	19	22	26	13	15	206
Others- (loan, banking, compensation)	172	231	337	228	212	205	220	93	179	205	147	67	2,296
TOTAL	970	1,307	1,583	1,355	1,322	1,373	1,376	1,280	1,520	1,528	1,038	645	15,297

216 Please refer to sub-chapter 2.2.3.1 on Court Costs: Land Tribunal Costs.

217 LHRC 2014: Annual Report.

218 *Ibid.*

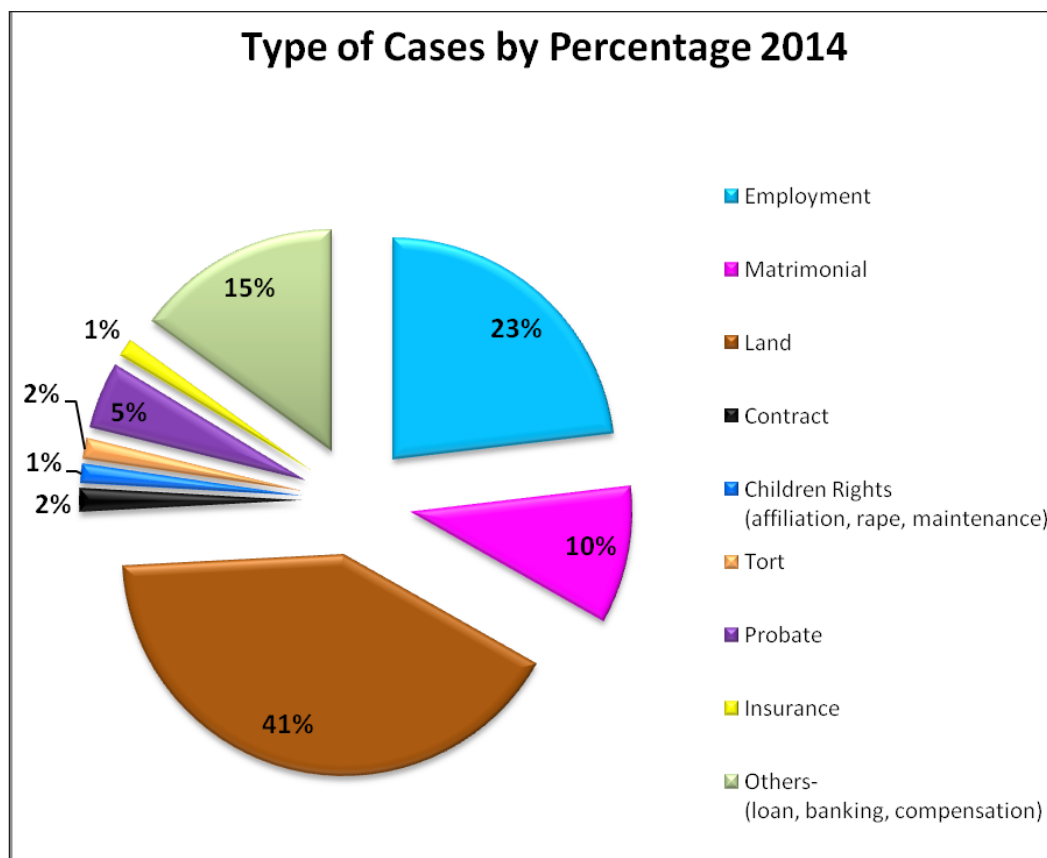


Figure 1: Proportion of Cases Attended in 2014 by LHRC Legal Aid Clinics

The Government has shown interest in re-organizing legal aid provision in the country. Efforts have been made to make sure that a new law is enacted to enable smooth running of legal aid provision. This would create a legal framework for legal aid in accordance to human rights standards.

2.2.4.2 Availability of Sufficient and Qualified Lawyers

Legal representation is one of the important aspects of access to justice. Legal representation has been well elaborated in aspect under the title Legal Representation under item 2.2.4 of this report. There is a significant shortage of qualified layers in Tanzania. Statistics show that as of 12th December, 2014, there were 4,661 advocates registered in the Roll of Advocates.²¹⁹ These statistics suggests that for the total population of about 45 million Tanzanians, every advocate serves at least 9,639 people. This is an improvement if one considers that in 2009 there were 1,200 enrolled advocates in Tanzania.²²⁰ It should also be noted that not all the registered advocates

219 Tanganyika Law Society 2014.

220 LHRC & ZLSC 2009: Tanzania Human Rights Report.

are active. There are those who are deceased, inactive, struck off and others suspended. Tanzania's neighbour, Kenya, has advanced in the number of advocates with 12,025 registered advocates in the roll.²²¹

Table 12: Number of Registered Advocates and their Status²²²

STATUS	NUMBER OF ADVOCATES
	1
DECEASED	204
FAILED TO PAY FEES	1
FAILED TO PAY TLS FEES	9
JUDGE/NON PRACTISING MEMBER	16
NON PRACTISING MEMBER	193
NOT KNOWN	302
PRACTISING	4
PRACTISING MEMBER	3834
PRACTISING MEMBER(EXEMPTED TO PAY PRACTITIONERS' FEES	1
PRACTISING MEMBER	1
PRACTISING CERTIFICATE WITHHELD PENDING CLE DECISION	1
PRINCIPAL JUDGE/NON PRACTISING MEMBER	1
SUSPECT PRACTICE	1
SUSPEND PRACTICE	65
SUSPEND PRACTICE (TILL 2014)	1
SUSPEND PRACTICE(TILL 2014)/NON PRACTISING	1
SUSPEND PRACTICE/ NON PRACTISING MEMBER	3
SUSPEND PRACTICE/NON PRACTISING	5
SUSPEND PRACTICE/NON PRACTISING	5
SUSPEND PRACTICE/NON PRACTISING MEMBER	1
SUSPEND PRACTICE-NON PRACTISING MEMBER	2
SUSPEND/NON PRACTISING	7
SUSPENDED SINE DIE	1
	4660

221 Law Society of Kenya Online, at www.online.or.ke, accessed on March 2015.

222 Tanganyika Law Society 2014.

Apart from the fact of deficit of advocates in the country, the available advocates are mostly concentrated in urban areas, in big cities and towns, where there is potential of them conducting business. This poses a problem for people living in rural areas because they cannot afford to travel long distances to find a lawyer to represent them. Adding to the fact that advocate fees are also very high, one can appreciate the magnitude of the shortage.

Another factor undermining the right to legal representation is the fact that advocates are not allowed to appear before primary courts in Tanzania. Primary courts are the courts encountering to resolve disputes of many average Tanzanians, as they deal with difference surrounding their daily walks of life. The Government has shown the intention of amending the law to ensure that in the future advocates will be allowed to represent their clients in primary courts. Thus, efforts have begun to restructure the settings of the Primary Court by firstly making sure that the Magistrates of the Primary Courts have an education of a First degree to meet such demand. LHRC calls upon the Government to ensure that there is speedy implementation of this intention as per recommendations of the Law Reform Committee.²²³

2.2.4.3 Role of Paralegals in Dispensing of Justice

In order to address the challenge of shortage of qualified lawyers in the country, creative ideas were brought about. These ideas include the training of individuals at the grassroots of the community to enable them provides basic legal aid at their respective communities. These individuals are those referred to as paralegals.

A paralegal is defined as a person who has some education in law and assist a lawyer in duties related to the practice of law but who is not licensed attorney.²²⁴ In Canadian law, a paralegal is defined as a non lawyer who is legally qualified through experience or special training and is licensed to provide limited legal services in certain fields.²²⁵

Initiative of training and using paralegals has again been taken by the CSOs. Civil Society organizations realized that they could not be everywhere at all the time because of the challenges that they themselves face. Thus, they invented the idea of using paralegals in remote places of the country, to assist the organizations in reaching the services to the people in even marginalized communities, in forgotten rural areas.

Thus, individuals with certain qualifications within the society are selected and are trained in legal knowledge to allow them assist their fellow community members

223 The Law Reform Committee 2014 Press Release: “*Taarifa kwa Vyombo vya Habari, 09 Septemba 2014.*”

224 Black’s Law Dictionary: Ninth Edition.

225 *Ibid.*

with their legal problems. Paralegals usually are trained to deal with non-complicated cases where they will give advice, take statement, draft simple correspondences, draft court papers (as far as the law permits) and assist in negotiations and reconciliations. Paralegals are as well trained to undertake community mobilization for action, advocacy and lobbying, conflict resolution and peace building. Paralegals are also trained to monitor human rights situation in their respective communities.

There is no clear formula of paralegal establishment. For paralegals to get recognition they need to be registered as an entity. To do so, paralegals need to organize themselves as Community Based Organizations (CBOs). Only then can they be registered as nongovernmental organizations under the *Non Governmental Organizations Act, 2002*. Only then can paralegals be granted with legal status to operate. Paralegals can as well be registered under other laws such as the *Companies Act CAP 212* of the Laws of Tanzania [R.E 2002], *Associations Act or Trusteeship Incorporation Act CAP 318* of the Laws of Tanzania [R.E 2002]. However, the *Companies Act, 2002* requires that any entity that would prefer to operate as an NGO, even when registered under other law, such an entity is still required to obtain a certificate of compliance.

There are a number of CSOs which train paralegals and assist them in registering as Community Based Organizations (CBOs). With registration it is then easy for the CBOs to even seek for the badly needed funds to run the organizations. Such Civil society Organisations are the Legal and Human Rights Centre (LHRC), the Women Legal Aid Centre (WLAC), Envirocare, Tanzania Women Lawyers Association (TAWLA), Women Advancement Trust (WAT), Tanzania Women and Children Welfare Centre (TWCWC), Caritas Dar es Salaam and Tanzania Women of Impact Foundation.

The importance of paralegals in dispensing justice can no longer be ignored. This is because of the increase of organizations training and assisting paralegals and thereby access to justice to the marginalized. There has also been a greater increase in the number of paralegals around the country. By June 2014, Legal Services Facility (LSF) reported greater increase of organizations (legal aid providers) under its grant program.²²⁶ For the period of January to June 2014, the number of grantees by LSF increased by 24% as compared to 2013, from 38 to 47 grantees.²²⁷ This increase as well had impact on the number of paralegals, where there was an increase by 20% (by 3,000 paralegals by June 2014 compared to 2,500 paralegals by the end of the year 2013). During the same period a number of districts covered by basic legal services

226 Legal Services Facility is a basket fund for enhancement of legal aid in Tanzania, which provides grants to legal aid providers, with a particular emphasis on legal empowerment and the protection of women's rights. In 2013, LSF was incorporated as a non-profit Company Limited by Guarantee without share capital.

227 Legal Services Facility: Facts of Legal Services Facility; Facts of Paralegal Practice, found at www.lsftz.org/facts.php#6, accessed in February, 2015.

increased from 110 districts in 2013 to 144 in up to June 2014, which is an increase of 31%.²²⁸

Another key factor indicating significance of paralegals is the number and types of disputes and grievances reported to paralegals. In the first 6 months of 2014, it was reported that 15,000 cases were reported to paralegals, being an increase of 50% of cases reported to first recruited paralegals that became operational from July 2013.²²⁹ LSF estimated that by the end of 2014 40,000 cases would have been reported to paralegals.²³⁰

It is equally important to ascertain the importance of paralegals by looking at the types of disputes and cases that were solved by paralegals in 2014. Below is the table depicting types of disputes reported to paralegals supported by LSF.

Table 13: Status and type of disputes for January – June 2014²³¹

Type of case	On-going	Referred	Resolved	Total received
Child Maintenance	188	71	471	757
Civil Case	273	99	920	1,291
Criminal	319	92	310	623
GBV	107	52	291	388
inheritance	254	46	248	596
Labour Disputes	53	19	110	176
Land disputes	861	179	1002	2,393
Matrimonial	517	135	955	1,689
TOTAL	2,572	693	4,307	7,913
Percentage 2014	37%	9%	54%	100%
Percentage 2013	46%	9%	45%	100%

The table above shows that there was a significant increase in the number of cases resolved by paralegals as compared to the last six months of 2013. This clearly shows that paralegals are getting even more experience in solving legal disputes.

The Legal and Human Rights Centre (LHRC) reported that in the year 2014 paralegals under its umbrella managed to provide legal assistance to 19,866 people in their areas of operation. The legal assistance provided was on issues of land conflicts, gender based violence, child maintenance, probate, rape, employment, HIV/AIDS, divorce and issues of property ownership.

228 *Ibid.*

229 *Ibid.*

230 *Ibid.*

231 *Ibid.*

It is evident the significance of the work done by paralegals in dispensing of justice. Despite the good work done, there are a number of challenges facing paralegals and legal aid in general. Among these challenges are lack of legal recognition and lack policy and comprehensive legal framework to govern provision of legal aid in the country. Other challenges include lack of sustainability due to limited resources and low morale by paralegals. The Government has been very reluctant in ensuring that there is an enactment of a legislation that will regulate the conduct of paralegals in the country. Among the reasons for the government reluctance is that paralegal concept is perceived to be a new concept in the country that make it difficult to ascertain exactly how it can fit in the current set-out of the justice system.

LHRC calls upon the Government to make sure that the work of paralegals is officially recognized. This can only be done by ensuring that legislation is enacted to regulate the conduct of paralegals in the country. Paralegals can also be used to ease the challenges that the country is facing due to shortage of qualified lawyers especially in the rural areas.

2.2.4.4 Access to Justice in Pro-bono Public Interest Litigation: Dowans' Bill of Cost to LHRC

In January 2011, the Legal and Human Rights Centre (LHRC), together with Lawyers Environment Action Team (LEAT), SIKIKA and a prominent journalist Timothy Kahoho, filed a petition in the High Court of Tanzania (Commercial Division).²³² The case was filed intending to block the government from paying Dowans Holdings SA the sum amounting to 97 billion shillings resulted from a ruling of the International Chamber of Commerce (ICC) for breach of contract by Tanzania Electric Supply Company (TANESCO). The applicants were asking the court to block the said payment for the reasons that the said breached contract was *null and void*. The applicants further urged that the payment was hefty and the amount awarded to Dowans Holding SA was unjust.²³³

The Petition was struck out by the High Court with costs. Among the reasons for striking out the petition the High Court was that the applicants had no mandate or *locus standi* to file the petition against Dowans Holdings SA. The Court held that the applicants could not represent the public as that is the mandate of the Attorney General (sic).

232 Legal and Human Rights Centre & Others v. Dowans Tanzania Limited & Others, Miscellaneous Civil Application No. 8 of 2011.

233 Lazaro Felix, "LHRC files case against paying Dowans 97bn/-." The Guardian 12 January, 2011.

On March, 2014, LHRC received a demand notice from an advocate, Mr. Kennedy Fungamtama (who represented DOWANS Holdings SA), requiring it to pay the amount of TShs. 2,823,455,040/- as an award of costs following a taxation ruling on 14th March, 2014.²³⁴ The said amount was claimed to be the cost incurred by the 1st and 2nd respondents in defending Misc. Cause No. 8 of 2011. The taxation ruling followed the fact that Mr. Fungamtama was heard *ex-parte* by the taxation officer of the High Court on his application for bill of costs and was awarded the said amount. Efforts by LHRC to challenge the Taxing Officer's decision have so far been futile.

The decision by Hon. Mushi J. on his 06/09/2011 to award cost is a great threat to work done by organizations such as LHRC. The petition by LHRC and other petitioners in the case arose out of concern of public interest. LHRC and other petitioners were not after any interest of their own, but rather that of the society as a whole. The petitioners were seeking to protect taxpayer's money from misappropriation. Further, the petitioners were not expecting any economic interest from the outcome of such litigation. The petitioners had not engaged in any vexatious, frivolous abusive conduct, and that what the petitioners were expecting is that the final decision of the court could have contributed to a proper understanding of the issues in question. The above clearly justify the fact that the petition involved public interest.²³⁵

Access to justice is promoted and protected when courts are determined to see that litigants have access to courts to determine their constitutional rights and other issues of broad social significance without having to fear the burden of bearing the adverse costs. The law has set that courts have discretionary powers in deciding over awarding costs. Section 30(1) of the *Civil Procedure Code*, CAP 33 [R.E 2002] states that:

“subject to such conditions and limitations as may be prescribed and to the provision of any law from the time being in force, the costs of, and incidental to, all suits shall be in discretion of the court and the court shall have power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.”

234 In the High Court of Tanzania (Dar es salaam District Registry) at Dar es Salaam; misc. Civil Application No. 8 of 2011

235 As depicted in Chris Tollefson et al: “Towards Costs Jurisprudence in Public Interest Litigation.

Also in Pinda’s Case,²³⁶ the court used its discretionary powers to strike out the case without costs. The Judges in this case *inta alia* held that:

“Consequently, we order that the petition be, and is hereby, struck out. Costs are within the Court’s discretion, though they usually follow the event. However, as the case falls within the category of public interest litigation, we would refrain from making any order as to costs.”

In the light of the above, LHRC is of the opinion that Hon. Mushi J did not use the discretion of the court wisely. This is a great setback in promoting and protecting access to justice especially by organizations such the petitioners who stand to safeguard rule of law and democracy in the country.

2.3 Freedom from Torture

Torture is defined differently, depending on the context. The *United Nations Convention Against and other Cruel and Degrading Punishment, 1984* defines torture as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted in a person for such a purpose as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at instigation of or with the consent acquiescence of a public official or other person acting in an official capacity. It does include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”²³⁷

The Tokyo Declaration made by the World Medical Association (WMA) defines torture as:

“the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the order of any authority, to force another person to yield information, to make a confession or for any other reason.”²³⁸

236 LHRC & Another v. Hon. Mizengo Pinda & Another, Misc. Civil Cause No. 24 of 2013 (HC) (Unreported). Also see the following cases: LHRC & Others v. the Attorney General, Misc. Civil Cause No. 77 of 2005 (HC) (unreported); Rev. Christopher Mtikila v. the Attorney General, Misc. Civil Cause No. 10 of 2005 (HC) (unreported); Zakalia Kamwela & Another v. the Minister for Education and Vocational Training & Another, Civil Appeal No.3 of 2012 (ca) (Unreported).

237 Article 1(1).

238 This definition is quoted in SORENSEN, Bent and Inge Kemp Genefke, “Medical Aspects of

These definitions, however, are not exhaustive and have to be read together with other international instrument and national legislation. Torture may take different forms, both physical and psychological. The physical form may involve systematic and unsystematic beating. Systematic beating involve beatings in specific parts of the body like the famous one used in Tanzania, where victims are hit with *virungu* (bats) in body joints, especially in legs and arms. Unsystematic beatings involve the beating which does not select which part of the body to beat. These may involve beatings using rifle butts, truncheons, and through whipping. Torture may as well be sexual where a victim becomes sexually assaulted. Electronic torture may also be one form of physical torture when electricity is inflicted in the body of the victim through the sensitive parts of the body. Water torture is also usually deployed, where a victim's head is forced to submerge in water (dirty or clean) to near suffocation where the exercise will begin again and again.

Psychological torture may not be visual but can be the cruelest form of torture. This is because effects of psychological torture may take even a lifetime to heal. Psychological torture include verbal abuse by insulting and swearing, threat to put someone to death, blind folding, force someone to undress, force someone to witness torturing or death of another person, starvation as well as holding someone in a dark room whilst denying them of any other facilities such as toilet.

International efforts to combat torture began long ago by enacting several international instruments to combat torture. The *Universal Declaration of Human Rights, 1948* among other things declares that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.²³⁹ The *Geneva Convention of 1949* at the common article 3 of the Convention forbids treatment and torture of persons taking no active part in hostilities. All these efforts are cemented by the *International Convention on Civil and Political rights, 1966* which comes and lays foundation for internationally accepted movement of combating torture worldwide. Article 7 of the convention state that;

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

The above was amplified in the *United Nations Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975*. Article 3 of the declaration provides that:

Torture,” in CASSENE, Antonio (ed.), *The International Fight against Torture*, Baden-Baden: Nomos Verlagsgesellschaft, 1991, p. 11.

239 Article 5.

“No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”

In 1984, a new convention followed, the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*. In Africa, the *African Charter on Human and Peoples Rights (ACHPR)* addresses issues of torture and degrading treatment.²⁴⁰ The ACHPR provides that every person has the right to have his physical, mental and moral integrity respected. It further provides that no one shall be subjected to torture or cruel, inhuman or degrading punishment or treatment.

The *Constitution of the United Republic of Tanzania, 1977* contains a general prohibition against torture. Article 16(6)(e) of the Constitution states that:

“No person shall be subjected to torture or in human or degrading punishment or treatment.”

It is however very unfortunate that this constitutional stance is not reflected in the country’s laws. There is no law in the country that defines what torture is; and torture has not been criminalized. To make matters worse, Tanzania has not ratified the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*. Ratification of this convention would have opened the door for Tanzania to amend all its laws which condones torture. Among the laws that condone torture in Tanzania is the *Penal Code* which have provisions which allow death penalty by hanging and also the provisions which allows corporal punishment as a form of penalty. For some other offenses, corporal punishment has even been made mandatory.

The state machinery is usually accused of inflicting torture to individuals through state agents, police, security and military as well as paramilitary officers. Torture by these agents are usually conducted during arrest, while in custody, during interrogation, in prison or during operations conducted by the state machinery. In 2014 LHRC registered a number of incidents involving torture.

240 Article 5.



Picture 12: Police mishandling a suspect during one of their operations

2.3.1 Torture while in Police Custody

The Police Force has been constantly accused of torture. Incidents of torture usually occurs during arrest of suspects, during interrogation and while suspects are in custody. It has become a common phenomenon to see suspects being taken to court wounded and limping. The usual explanation by the authorities is that the suspect has been a victim of mob justice or that has been a victim of gang beating while in custody.

2.3.2 Citizens Injured during Police Operations

Mwanaharusi Hamisi: On 1st August 2014, it was reported that the police were conducting an operation in Mbagala area. The operation involved arrests of alleged *bodaboda* thieves around the area. During the operation, the police used hand grenades and one of the grenades landed in Mwanaharusi Hamisi's yard and exploded, injuring and leaving her without her right hand.

The victim was assisted to obtain a PF3 so that she could get medical attention. The victim reported that on 16th September, 2014, OC-CID of Maturubai-Mbagala Kizuiani, together with some police officers, visited the victim at her home and offered cash amounting to 70,000/- and three boxes of some medicines for the wound. By the time of writing of this report, the victim's case was still at the Police Headquarters and the victim was told to write her testimony for further follow up. Further feedback is yet to be received.



Picture 13: Miss Mwanaharusi Hamisi revealing her amputated arm to the LHRC officer

Ibrahim Abdallah: In the evening of 6th July 2014, Ibrahim Abdallah was in his neighborhood around Arusha Street at Ilala area. He reported to have heard gun shots and suddenly realized that he had been hit by a bullet in the left thigh. It was suspected that the bullet came from the police guns, specifically from policemen named Hamad and Hamis. Ibrahim was taken to Amana Hospital for treatment. At the hospital, he was told that a surgery was required in order to remove the bullet from his leg. While at the hospital, Ibrahim stated that he was visited by a policeman by the name Katiti, who offered him some money, 100,000 Shillings.

Ibrahim was in great pain from the wound inflicted by the bullet, taking into account that the bullet was still in his thigh. Ibrahim could not meet the expenses for performing the surgery to remove the bullet. According to the proforma invoice from the Police Force to Muhimbili Orthopaedic Institute, the costs for the surgery reaches 1,448,400/- Tshs.²⁴¹ He then requested the police to assist him to meet the medical costs since they were responsible for his predicament. Ibrahim's complaints reached the office of the

241 LHRC has the copy of the Proforma Invoice dated 13th November, 2014.

IGP, who directed Ilala region police under its RPC to deal with the matter. Police at Ilala

Baraka Paulo: On 17th May 2014, Baraka Paulo was at the city centre around in Posta, Dar es Salaam, where he undertakes the activities of car washing. While he was at there, he heard voices of people chasing a thief, who came and hid near the area that Paulo was. The police later arrived and took the alleged thief to the police station. Later on, a police officer named Shunda Mohamed came to Paulo's work place, who was accompanied by OCS Mushi from Police Central. According to Mr. Paulo, OCS Mushi then withdrew his pistol and fired two shots at him, with one of the bullets hitting him on his leg. It was further revealed that OCS Mushi opened more fire, whereby one of the bullets hit another person who was sitting near Mr. Paulo on the thigh. Mr. Paulo reported that the two of them were then ordered to climb into the police vehicle and were taken to Police Central, where they were offered PF3 forms and then taken to Muhimbili Hospital for treatment. Mr. Mushi was admitted until 18th May 2014, when he was discharged.



Picture 14: Mr. Baraka Paulo revealing his injured leg to LHRC officials

Table 14: Some Recorded Incidents of Torture in 2014

No.	Victim's Name	Place	Alleged Perpetrator	Incident
	Charles Chiganga (27)	Buguruni Police Post	Police	The victim was arrested at Sinza Uzuri at around 3am and taken to Buguruni Police post and later on to Stakishari police post. He reportedly to have been beaten by police, leaving him with a broken leg and was suffering from dysentery.
	Madongo Rashidi	Uhuru street Kariakoo	Police	That on 31 st May, 2014 the victim was shopping at Kariakoo and was arrested by police for allegedly conducting business illegally at the area. he reported to have been taken to Msimbazi police post where he was tortured and needed medical treatment.
	Abubakari Robert		Police (FFU)	The victim was stopped by the police on his way home from his daily activities. There was a demonstration taking place at the area and the police was trying to contain it. The police interrogated him and let him go. A grenade was then thrown on his way, injuring him very badly in his leg leading to its amputation.
	Ibrahim Abdallah	Ilala, Dar es Salaam	police	On 6 th July 2014 the victim was hit by a bullet from a police gun. The bullet hit in the right thigh and needed a surgery to remove it.
	Sheikh Farid Hadi Ahmed	Dar es Salaam	Police	The victim is a member of the Zanzibar <i>Uamsho</i> society. he was apprehended and for terrorist related charges. The victim claimed that while in police custody he was subjected to torture, including sodomy and that a piece of wood was forced through his colon.

There have been many accusations of torture by men of law enforcement forces of the country. Verification of many of these accusations has always been a challenge. On one part this has been because of the reluctance of leadership of the law enforcement forces to independently give out information concerning these allegations. On the other part, the victims themselves can be very unreliable in giving out the information. LHRC had experienced this challenge, with clients coming to report human rights abuses and violations. On many occasions, after being assisted, clients seldom come back to give feedback on the allegations that they have reported. Another challenge is that the victims will sometimes come into communication with the law enforcement without consulting LHRC to whom they first complained over the abuse, and in many a times the victims will end up withdrawing their complaints altogether.

2.3.3 Incompetency of Commission formed to Probe into Issues by Police

It is one thing for the law enforcement officials to be accused of torturing citizens while performing their activities. However, it is quite a different and an alarming thing when those allegations are not dealt with accordingly by the law enforcement officials themselves or any other body with the mandate to do the same. The situation is even worse when the truth about the true perpetrators of assault is known, yet there is reluctance in making sure that they are dealt with in accordance with the laws and regulations.

During the last five years, the country has experienced the some serious crimes committed against Tanzanian citizens. One such incident is the torture of Dr. Steven Ulimboka, which took place in June 2012.²⁴² In the same year, 2012, Tanzania witnessed the brutal and barbaric killing of a journalist Daudi Mwangosi by a policeman while covering news for the opposition political party.²⁴³ Another incident of torture occurred to Dr. Sengondo Mvungi in the night of 2nd November, 2013, leading to his death on 12th November, 2013.²⁴⁴ Apart from these incidents, which involved torture of Tanzanian citizens, Tanzania witnessed incidents never before in the country. These are incidents of bomb blasts, which all took place in Arusha city.

For the above incidents, the Government had at different time for each specific incident, announced for the formation of a special committee to probe into the story behind each incident. Almost in each of the above incidents, the Government was in one way or another been accused of involvement in such incidents. The Committees created were composed of officers of the same Government, who were implicated in those incidents. As a result, a fair decision is not guaranteed. The reports of the committee created have in almost all occasions been non-conclusive, leaving the matters in hanging. LHRC suggests that such incidents, especially ones involving deaths of the victims are investigated in accordance with the *Inquest Act* by formation of coroner's court.

242 LHRC & ZLSC 2012: Tanzania Human Rights Report, pages 57-59.

243 *Ibid.*, pages 53-54.

244 LHRC 2014: Sengondo Mvungi; Breathing the Constitution.

Chapter Three

Political Rights

3.0 Introduction

The word politics is derived from the Greek word “*polis*” which means city-state.²⁴⁵ According to Aristotle, *polis* or city-state is a small independent self contained political society.²⁴⁶ Therefore politics is connected to life of the people in a given society. The political rights in general entails the power to participate directly or indirectly in the establishment or administration of government, such as the right of citizenship, the right to vote, and the right to hold public office. The exercise of political rights includes; freedom of association, assembly and right to take part in governance.²⁴⁷

Political rights in general are governed by *the International Covenant on Civil and Political Rights, 1966*. The political rights are constitutional protected in the United Republic of Tanzania. Therefore this chapter will discuss the situation of political rights in Tanzania for the year 2014.

3.1 Freedom of Association

The freedom of Association is a fundamental right that is guaranteed by *the African Charter on Human and Peoples Rights, 1981*. The charter clearly provides that; “*every individual shall have the right to free association provided that he abides by the law.*’ *Freedom of association is enunciated as an individual right and is first and foremost a duty of the state to abstain from interfering with the free formation of associations. There must always be a general capacity for citizens to join, without state interference, in associations in order to attain various ends.*”²⁴⁸

The African Court on Human and Peoples rights gave judicial interpretation of this provision in the case of *Nigeria Bar Association v Nigeria*²⁴⁹ that; “*In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards*”²⁵⁰

245 M. Murali et al, Political Science; Higher Secondary-First year, Government of Tamilnadu; Tamilnadu Textbook Corporation, Reprint Edition 2005 page 5.

246 *Ibid.*

247 [http://legal-dictionary.thefreedictionary.com/Political Rights](http://legal-dictionary.thefreedictionary.com/Political+Rights) visited on 12th December, 2014.

248 Article 10(1).

249 (2000) AHRLR 186 (ACHPR) 1995; Read also *Jawara v. Gambia* (2000) AHRLR 107 (ACH-PR 2000)

250 Paragraph 15.

Freedom of association is guaranteed under the *Constitution of United Republic of Tanzania, 1977* however its enjoyment is not absolute.²⁵¹ For instance, whereas provisions of Article 20(4) of the Constitution prohibits any person to be forced to join any association or organizations,²⁵² other provisions in the same Constitution compels one to be endorsed by a political party in order to contest in any election in the URT.²⁵³ The Proposed Constitution of United Republic of Tanzania of 2014 has expanded the scope of freedom of association to include right to religion’’²⁵⁴

Therefore, this sub-chapter examines the situation of the exercise of freedom of association in 2014, by the Non-governmental Organizations, trade unions and political parties.

3.1.1 Freedom of Association for Civil Societies

Freedom of Association for civil societies in Tanzania includes all civil societies’ organizations registered under different legislations. These organizations include non-government organizations (NGOs) registered under *the Non-government Organizations Act, 2002*,²⁵⁵ faith-based organizations (FBOs), and community-based organizations (CBOs) registered under the Societies Act and coordinated by the Ministry of Home Affairs.

Civil society Organizations (CSOs) in Tanzania play an important role in enhancing demand for access to information, service provision, advocating for accountability, human rights and good governance. These organizations differ in terms of coverage, areas of work and power of influence. However, there has been an increase of the number of civil societies recently that operate in rural areas and play an important role in changing people’s livelihoods and attitudes. For instance, in 2013, the Foundation for Civil Society funded 822 organizations and 90% of these organizations are based in rural areas, while only 10% are based in urban settings.²⁵⁶

251 Article 20.

252 Art. 20(4) provides that; “*It shall be unlawful for any person to be compelled to join any association or organization, or for any association or any political party to be refused registration on grounds solely the ideology or philosophy of that political party*”

253 Articles; 39, 47 and 67 compels anyone wishing to contest in election (General or Local Government election) to be nominated by political party.

254 Article 41 [“*Kila mtu anastahili kuwa huru bila kuathiri sheria za nchi, kukutana na watu wengine kwa hiari yake na kwa amani, kujumuika na kushirikiana na watu wengine, kutoa mawazo hadharani, na kwa ajili hiyo kuanzisha au kujiunga na vyama au mashirika yaliyoanzishwa kwa madhumuni ya kuhifadhi au kuendeleza imani au maslahi yake au maslahi mengineyo.*”]

255 Act No.

256 News@ The Foundation; Jarida la the Foundation for Civil Society, Issue No. 30 July-September, 2013 page 20.

The role of CSOs in Tanzania is to a greater extent recognized despite challenges that exist. This is substantiated by roundtable discussions and interventions between the three arms of the state and CSOs. For instance, the Parliament involves and engages CSOs in bill analysis; the government engages CSOs in the fight against human rights violations, for instance, anti-FGM campaigns. Normally, civil societies work together and exchange ideas with government ministries; and civil societies assist the judiciary through provision of legal aid, in dispensation of justice.²⁵⁷

3.1.1.1 Prohibitions of and Restrictions on the Operations of Registered CSOs

Civil societies are registered under the *Non-governmental Organizations, Act, 2002* or under the *Societies Act*. These registered societies are free to operate in the designated areas as per terms of registration. It can be at district, regional or national levels. The legal frameworks set out registration procedures and conduct of CSO activities. In 2014, a number of civil societies were subjected to intimidations, threats and prohibitions from implementing their activities in different areas without any valid reasons. The following are some of the prohibitions that CSOs experienced from district and regional authorities:

3.1.1.2 Suspension of SIKIKA Operations in Kondoa District

SIKIKA is a national NGO that was registered in 1999, advocating for the improvement of the delivery of health services.²⁵⁸ SIKIKA operates in Tanzania Mainland, with a special focus on Dodoma, Manyara, Pwani, Singida and Dar es Salaam. In Dodoma, SIKIKA implements its activities on health, governance and accountability in Kondoa and Mpwapwa Districts. In July 2014, SIKIKA's operations in Kondoa District were arbitrarily suspended. LHRC considers this suspension to be illegal and is the following opinion:

It is important to take into account that freedom of association is a constitutional right as provided under Article 20 of *the Constitution of United Republic of Tanzania, 1977*. SIKIKA is a duly registered organization, registered under *the Non-governmental Organizations Act No. 24 of 2002*, and thus has every right to enjoy the right to freedom of association as enshrined in the Constitution.

The NGOs Act, among other things, vests powers on the NGO Coordination Board, which has supervisory powers to registered NGOs. The Board has the powers to suspend or cancel operations of any NGOs in a stipulated area. The Board has the power to investigate on the conduct of NGOs in order to ascertain whether they have violated their constitutions. The Board also has powers to advise the Government on the conduct of an NGO.

257 LHRC (2014) Anti-FGM Day in Singida Report, 2014

258 www.sikika.or.tz

The Kondo District Council did not file any complaints to the Board, instead made a resolution to suspend the organization's activities, in violation of Section 7 of the NGOs Act, 2002. The Council thus acted *ultra vires* as it is not vested with the powers to suspend Sikika's operations.

Further, in its decision rendered against Sikika the District Council did not cite any law upon which the decision was based. This violates the principles of natural justice and rule of law. The principles of natural justice require a party accused of wrongdoing to be provided with reasons for a decision reached.

The principles of natural justice also provide for a rule against bias, according to which "*a decision maker should be disinterested and/or not have interest in the matter to be decided*" (*Nemo debet esse iudex in propria causa/no one ought to be a judge in his/her own case*). In this case, the Kondo District Council was the aggrieved party and the decision maker at the same time, which suggests that it was biased towards itself as no one should be a judge of their own case.

The Council's decision was thus invalid, not only as per the Constitution of United Republic of Tanzania, 1977 (Article 13), but also the Local Government (District) Authorities (Councilors Code of Conduct) Regulations, G.N 280 of 2000. Rule 7(j) of the Regulations provides that; "*the councilor shall refrain from discussion and voting on any matter in which he has a direct or indirect pecuniary or personal interest.*" The councilors had interest on the matter at hand and thus justice could not be done as they were judges of their own case.

There was also non-compliance with grievance mechanisms set out in the Client's Service Charter of 2010. The charter is a social pact between the Prime Minister's Office, Regional Administration and Local Government (PMO-RALG) and its customers. Sikika conducts its affairs in the health sector as one of the potential customers of PMO-RALG as it involves citizens of the given locality. In case of a dispute between a district council and its customers, dispute resolution mechanisms are set out in the Charter. For the case of Kondo District Council, the Council was supposed to lodge their complaints in writings with the Permanent Secretary of the responsible Ministry, and thereafter other actions would follow. Thus, in handling complaints against Sikika the Charter was violated.²⁵⁹

3.1.1.3 Restriction on Civil Society Organizations

The *Constitutional Review Act*²⁶⁰ recognizes the role of civil societies in imparting civic education on the community.²⁶¹ Civil societies engaged in the constitutional

259 LHRC (2014) Legal Opinion Brief to SIKIKA 2014.

260 Cap 83 R.E [2012]

261 Section 33(2)

review process by conducting training, publicizing different materials on constitution depending on thematic areas, engage with media and conducting public meetings. The Local government authorities in several ways restricted freedom of association of CSOs in implementing different activities. For instance:

- (i) On, 4th August, 2014, the Dodoma Regional Commissioner suspended all CSOs, to conduct public meetings on the current constitution-making process. The reason behind this ban was Constituent Assembly sessions that were going on in Dodoma.
- (ii) LHRC conducted a big bang campaign aimed at empowering the community to understand the contents of the First and Second Draft Constitutions drafted by the Constitutional Review Commission chaired by Hon. Joseph Sindi Warioba (J). The campaigns were conducted at the national, regional and district levels. However, the Regional Commissioners in Kilimanjaro, Geita, Rukwa and Kagera banned LHRC from conduct the campaign in their respective areas.²⁶²
- (iii) Songea-Non-Governmental Organisation Network (*Songo-Net*) has been facing similar restrictions since 2010. The restrictions are mainly based on seeking permission from the District Commissioner before implementing any activity related to the constitutional review process.²⁶³
- (iv) 17 NGOs working in Ngorongoro District receive frequent intimidations and threats from the Government and investors due to a natural resource conflict. The Maasai pastoralists in Loliondo, who are the majority of people living in the District have remained landless as most part of their land has been designated reserved land and some parts have been handed over to some Arabic investors, Ortello Business Corporation (OBC). Therefore, most CSOs who engage in advocating for land rights of the Maasai in Loliondo are most of the time threatened by both the Government and the investor.²⁶⁴

3.1.1.4 Bill of Costs against CSOs in Public Interest Litigations

Public interest litigation has been defined in several judicial decisions in Tanzania. In the case of *Attorney General versus Sisi kwa Sisi Enterprises* the court made reference to a definition of public interest as provided for in Stroud's Judicial Dictionary that; "*Public Interest is that in which a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected*"²⁶⁵ And courts have

262 LHRC (2014) Big Bang Campaign Phase II Report, 2014 page 5.

263 These instructions were given through a letter No. AB.308/398/k02/6 of 26th May, 2010.

264 THRDC (2014), Civil Societies Space in Tanzania Report, 2014 page 5.

265 *Attorney General Versus Sisi Enterprises*, in the Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No 30 of 2004 Unreported)

always determined public interest cases based on the interests of the society at large as in the case of Mtikila;²⁶⁶ the court held that; “*In matters of public litigation this court will not deny standing to a genuine and bona fide litigant even where he has no personal interest in the matter;It is not the type of litigation which meant to satisfy the curiosity of people, but it is a litigation which is instituted with a desire that the court would be able to give effective relief to the whole or a section of the society.*”

Bill of Costs is defined in the Law Dictionary and the second edition of the Black’s Law Dictionary as a certified, itemized statement of the amount of costs in action or suit.²⁶⁷ The Bill of costs in *Premchand Rainchad Ltd and Another vs Quarry Services of East Africa Ltd* and others;²⁶⁸ the court directed itself that; “*courts owes a duty to the general public to see that costs are not allowed to rise to such a level as to deprive access to court by all but the worthy*” In awarding bill of costs, the cited case establishes a supra principle vital for access to justice for all.

In 2011, the LHRC, Lawyers Environmental Action Team and Sikika filed an application challenging registration of the ICC Tribunal’ award to Dowans Holding SA (Costa Rica) and Dowans Tanzania LTD of a tune of 94 billion Tanzania tax payer’s monies for public interest.²⁶⁹ The applicants were represented by learned counsel the late Dr. Edmund Sengondo Mvungi *pro bono*.²⁷⁰ The High Court ruled in favor of the respondents, whereby the case was struck out with costs. An application for costs was entered expert at the end of 2013 without knowledge of the petitioner’s during the time when the counsel for the petitioners the late Dr. Mvungi was, hospitalized in South Africa.

In early 2014, LHRC was served with a notice to pay costs of the case amounting to Tshs. 2,823,455,040, being total costs incurred by the respondents. This amount is extremely high for the CSOs to concur with as non-profit organizations which depend heavily on development partners for funding of their operations. The LHRC and the other CSOs had filed the application on public interest due to the whole transactions and business conducted by the judgment holder. This matter originates from the Richmond corruption scandal of 2007 that led to resignation of the Prime Minister, Hon. Edward Lowassa. This was due to his involvement in the whole transaction that awarded Dowans, a non-existent and frivolous company, a contract to supply electricity in the country as an emergency measure. Based on the principle “*A right*

266 Christopher Mtikila Versus Attorney General [1995] TLR 31

267 [thelawdictionary.org /bill-of-costs/](http://thelawdictionary.org/bill-of-costs/) visited on 12th January, 2015.

268 (No. 3) [1972] E.A 162

269 LHRC and others versus Dowans Holding SA (Costa Rica) and Dowans Tanzania LTD in Misc. Commercial Cause No. 8 of 2011.

270 *Pro bono* public; [for public good usually shortened *pro bono*] is a latin phrase for professional work undertaken voluntarily and without fees.

cannot accrue from nullity”, LHRC and others filed this application for the public interest.²⁷¹

The non-award of costs in public interest cases is a position of law and practice which was relied on in various cases such as the Takrima Case, Sion Gabriel Case and the recent one of the *Legal and Human Rights Centre and Tanganyika Law Society versus Hon. Mizengo Pinda and Attorney General* whereby the Court ruled that; “*Consequently, we order that the petition be, and is hereby, struck out. Costs are within the Court’s discretion, though they usually follow the event. However, as the case falls within the category of public interest litigation, we would refrain from making any order as to costs*”²⁷²

3.1.1.5 The Case against Prime Minister: “A silent Revolution” on the Powers and Privileges of the Members of Parliament

In 2013, the LHRC and the Tanganyika Law Society (TLS) filed a petition against the Prime Minister of the United Republic of Tanzania Hon. Mizengo Pinda and the Attorney General.²⁷³ The Petition challenged the statement made by the Prime Minister while in Parliament perpetrating disregarding of the Constitution and rule of law by law enforcers whereby it was ordered that; whoever does not abide by the law has to be beaten. The statement was unconstitutional as it violated the provisions of the Constitution of United Republic of Tanzania. The High Court ruled that:

In the final analysis, therefore, we would summaries our findings in respect of the three points of preliminary objection discussed herein, as follows

1. Article 100 (1) of the Constitution is absolute and the privileges granted thereby cannot be challenged anywhere outside the National Assembly, by any organ in the United Republic, including a Court of law.
2. Article 100 (2) of the Constitution is not absolute. It is subject to other provisions of the Constitution and other laws. Hence, its constitutionality can be challenged in a Court of Law. The ratio in *Mtikila (2)* is distinguishable in the sense that article 100 (2) has subjected itself to other provisions of the Constitution and other laws.
3. The immunities enjoyed by MPs under article 100 (2) of the Constitution are not absolute. They can be challenged by individuals pursuant to rule 71 of the Standing Orders and by corporate persons by other means available in law, including a constitutional petition.

271 The public interest cases which the court entered judgment without costs for example is *LHRC vs. Attorney General (2006) TLR 240* and *Christopher Mtilika vs. Attorney General (2006) TLR 279* in which the court clearly ruled “this being public interest litigation the parties shall bear their own costs.”

272 In the High of Court of Tanzania at Dar es Salaam, Misc. Civil Cause No. 24 of 2013 (Unreported)

273 *Ibid.*

4. Under Section 4 of Cap. 3, the petitioners herein have no *locus standi* to institute the present petition because the nature of the injury complained of cannot be suffered by juristic, legal or corporate bodies but by individuals, who have a remedy under rule 71 of the Standing Orders. Any individual who desired to take action against the 1st respondent's utterances had the opportunity of doing so under that rule.

5. As corporate bodies, the petitioners could not invoke rule 71 of the Standing Orders. Had their complaints herein been in relation to themselves and not others, it would have been open for them to invoke Section 4 of Cap. 3 and file a constitutional petition pursuant to Article 30 of the Constitution. However, since the relevant provision covering their situation would have been Article 26 (2) of the Constitution (which they have not cited), and the procedure under Section 4 of Cap. 3 does not apply to public interest litigation, they have no *locus standi* to institute this case.

In view of the above, therefore, we would partly sustain the first point of preliminary objection [in respect of Article 100 (1), but not Article 100 (2)]. We would also sustain the fourth and fifth points in their entirety. We hold that while this Court has powers to inquire into the exercise of parliamentary immunities in appropriate cases, this is not one of such cases, as the petitioners are not covered by the provisions of Section 4 of Cap. 3. Having held as we have done, we see no need of engaging ourselves in what would be a purely academic exercise of determining the other points of preliminary objection raised by the respondents. Consequently, we order that the petition be, and is hereby, struck out.

The petitioners in this case have lodged an appeal in this case to the Court of Appeal of Tanzania to have the matter of *locus standi* be determined further.

3.1.2 Freedom of Association for Trade Unions

Freedom of Association for trade unions is a global concern in the world of capitalism, whereby the major means of production is capital. The capital can be in any form, financial, human resources, raw materials and goods. The origin of trade union can be traced back to during industrialization of Europe where human resource was highly needed and was an exploited class meant to maximize profit. Workers had to work for long hours in poor working conditions, low salaries with remunerations and employment security being uncertain. Under capitalism the employer has the power to hire and fire at his or her own peril.²⁷⁴

There was need to realize the right to associate themselves, henceforth the formation of trade unions in order for workers to have strong bargaining powers. The freedom of association to trade union is a powerful tool for collective bargaining, one of the

274 <http://www.decent-workworldwide.org/index.php?> Visited on 13th December, 2014.

core labour standards under the International Labour Organisation (ILO).²⁷⁵ Labour standards are provided in the following Conventions:

- (a) *Freedom of Association and Protection of the Right to Organize Convention, 1948 – C87;*
- (b) *The Right to Organize and Collective Bargaining Convention, 1949 – C98;*
- (c) *Workers Representative Convention, 1971 – C135;*
- (d) *Workers Representatives Recommendation, 1971 – C143;* and
- (e) *Collective Bargaining Convention, 1981 – C154.*

Therefore, freedom of association for trade unions is provided in the international labour legal instrument, which is expressed as; “*workers and employers, without distinction whatsoever have the right to establish and, subject only to the rules of the organization concerned to join organization of their own choosing without previous authorization*”²⁷⁶

The freedom of association for trade union and labour relations in Tanzania is governed by the Employment and Labour Relations Act, 2004 and the Labour Institutions Act, 2004. The law provides that, in any work place where there are more than six employees there is need to form a trade union that will safeguard working conditions and labour standards at workplace. The Labour Institutions Act, 2004 recognizes the role of trade union as one key stakeholder in labour disputes. Other instruments that provide for the same are:

- (a) The Labour, Economic and Social Council (LESCO), under Section 4 of the Labour Institutions Act, 2004 requires that, in its composition out of 16 members four (4) members should be trade union representatives;
- (b) The Commission for Mediation and Arbitration has mandate to advise both employee and employers organizations and trade union on prevention and settlement of disputes;²⁷⁷
- (c) The trade unions play a role in the Wage Board (WB) by promoting collective bargaining during review of wages as provided for in Section 34.

3.1.2.1 Position of Trade Union in Labour Disputes

A dispute in labour matters means (a) any dispute concerning a labour matter between any employer and registered employers association on the one hand and any employee

²⁷⁵ ILO has concluded a number of Conventions that are aimed at establishing freedom of association and the right to collective bargaining, the abolition of forced and child labour, as well as the prohibition of discrimination in employment occupation. In Tanzania; the Employment and Labour Relations Act, 2004 safeguard these important labour standards.

²⁷⁶ Article 62 Convention 87 of 1948.

²⁷⁷ Section 12.

or registered trade union on the other hand, and (b) include an alleged dispute.²⁷⁸ The Labour Institution Act, 2004 creates labour institutions that are responsible in dispute mechanisms. The Commission for Mediation and Arbitration,²⁷⁹ calls for an aggrieved party to make an appeal or revision to the High Court Labour division and subsequently to the Court of Appeal of Tanzania if need be. The High Court Labour Division as well can entertain labour disputes that were administratively handled, referred to it from the Registrar of Trade unions or the Minister responsible.

The procedures of handling cases in labour institutions created under LIA allow legal representation of clients by representatives of trade union. Most trade union leaders are not lawyers, thus less competent on legal matters. This trend provides for improper representation sometimes to the extent that, it delays justice.

LHRC calls upon the need to harmonize legal representation in labour institutions such as trade union with legal knowledge and background to be representatives of their members in the dispensation of justice. This will enhance the performance of these labor institutions.

3.1.2.2 Re-calculations of Terminal Benefits by SSRA

Pension benefits are among final entitlements of an employee upon termination of employment contract or when a contract has come to an end. The Employment and Labour Relations Act, 2004 provides for the following entitlement falling under terminal benefits in Tanzania;²⁸⁰

- (a) Any remuneration for work done before termination
- (b) Any annual leave pay due to an employee for leave that employee has not taken
- (c) Any annual leave pay accrued during any incomplete leave cycle
- (d) Any notice pay due
- (e) Any severance pays due if an employee qualifies for this
- (f) Any transport allowance that be due

278 Mwalongo, F. A. paper titled; “Labour Disputes Handling Procedures in Tanzania” page 1 (*Unpublished*).

279 The Commission is established under section 12 of the Labour Institution Act of 2004. The conduct of mediation and arbitration is governed by the Labour Institutions (Mediation and Arbitration) Rules G.N No. 64 of 2007 and Labour Institutions (Mediation and Arbitration Guidelines) Rules G.N No. 67 of 2007 while the conduct of mediators and arbitrators is regulated by Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators) Rules G.N No. 66 of 2007.

280 Section 44.

These benefits are not automatic but depend on a number of factors such as the number of years of service, reasons for termination, and type of contract. Pension benefits are calculated differently by various social security's funds.

For instance, in the year 2014 the Social Security Regulatory Authority (SSRA) harmonized calculation of terminal benefits for all social security's schemes. These are PPF, NSSF, PSPF, LAPF, and GEPF. However these new calculations that were introduced do not benefit all categories of employees registered in the different social security schemes. In 2014 the Tanzania Local Government Union (TALGWU) opposed the standardized calculations of terminal benefits for all employees in local government as the number of terminal benefits has been reduced.²⁸¹

3.2 Freedom of Association for Political Parties

In a democratic state like Tanzania that follows multiparty democracy, political party and participation envisage an alliance of like-minded people who work together to win elections and control government. Each party works in its ideologies and manifesto to convince the general population to vote in their favor. The political rights are constitutionally guaranteed and protected. Political parties aim at responding to social problems to improve livelihoods of its citizens. The late Julius Kambarage Nyerere wrote that:

“TANU is to work for the people. We cannot be truly people's party if we do not involve ourselves in the normal problems of our people..... I have given example of somebody's house being burnt as one of the problems that daily face our people. There are so many problems of this type. Sickness, death, harvest, food at least for one day, various travelling problems, and many different problems that face our brother's every day. If we are people's leaders, and our party is for people, there is no problem of people that we can say does not concern us.”

The political rights under international community are safeguarded and promoted under a number of international legal instruments such as; the International Covenant on Civil and Political Rights, (ICCPR). There are a number of other international legal documents that promote enjoyment of political rights in different groups within the community; For instance *the International Convention on the Rights of Persons with Disabilities, 2006* promotes persons with disabilities to participate in political life and State parties should ensure such protection. *The Convention on Elimination of All Forms of Discrimination against Women (CEDAW)* together with *Maputo Protocol* in Africa promotes women participation in leadership positions. The Maputo Protocol calls for State Parties to ensure that political parties provide room for women to take

281 www.habarileo.co.tz/index.php/habari-za-kitaifa/ visited on 27th December, 2014.

part in governance of their political parties thus, guarantee opportunities for women to contest in different positions.

3.2.1 Crossing the floor to Enhance Right to Representation

Crossing the floor or party switching is not a new phenomenon in commonwealth countries. It is the practice whereby a political leader nominated by a political party has the ability to switch from the nominating party to other political party while retaining his position. Crossing the floor, in not necessarily that the defecting member permanently quits from the nominating party but also can mean when one has a different opinion from that of his/her party can be counted as crossing the floor.

The Constitution of the United Republic of Tanzania, 1977 and other laws that govern the conduct of political parties do not allow crossing the floor as permissible practice.²⁸² Since the introduction of multiparty democracy in the country, political parties have withdrawn political membership to leaders that necessitated a call of by-election, for instance, Chama Cha Mapinduzi withdrew membership of Hon. Mansoor Yusuph Himid from Kiembesamaki Constituency, which necessitated a by-election to fill the vacant post²⁸³ in early January, 2014.²⁸⁴

Members of Parliament are obliged to comply with political party directives even if they do not agree on the position set within such political party. In a growing democracy, different opinion on approach and conducts within political party are obvious.

3.3 Right to take part in Governance

Right to take part in governance is the most important right entitled to all citizens.²⁸⁵ The element of participation is very important in all stages of democracy.²⁸⁶ Participation involves engagement by the public in the conduct of public affairs, which can be political, social, economic, or cultural through policy and decision making processes as individuals or through their elected representatives. It is important to consider “participation” as it signifies “*will of the people in decision making, acceptability of decisions, political legitimacy about needs and priorities of individuals, communities and different interested groups*”²⁸⁷ The Right to take part in governance and involvement in public affairs is safeguarded in a number of international treaties and declarations.

282 Articles 47 and 67

283 Abdallah Vuai, “Uchaguzi Kiembesamaki uwe kipimo cha siasa safi Zanzibar” Mwananchi Newspaper, 22nd January, 2014.

284 LHRC&ZLSC (2013) Tanzania Human Rights Report, 2013 page 75.

285 Human Rights Bulletin; “Right to Participate in Governance” Number, 58 English; January, 2011 page 1, available at www.hrforumzim.org/wp-content/uploads-2012/03/RIGHT-TO-PARTICIPATE-IN-GOVERNANCE-ENG.pdf accessed on 29th December, 2014.

286 *Ibid.*

287 *Ibid.*

For instance, the *International Covenant on Civil and Political Rights, 1966*.

It is a global agenda to see gender balances in decision-making bodies and empowering persons with disabilities to take part in governance. The gender balance in decision making is provided for in the *Convention on Elimination of All forms of Discrimination against Women, 1979 (CEDAW)*, The *Protocol to the African Charter on Human and Peoples Rights on the Rights of Women, Maputo Protocol*. The *Convention on the Rights of Persons with Disabilities, 2006* advocates for state machinery to ensure that, persons with disabilities participate in governance of their country and have representation in decision making bodies.

The URT as democratic multiparty state as stipulated in *the Constitution of United Republic of Tanzania, 1977* recognizes this important right and entitlement through election.²⁸⁸ It conducts two types of election; the General Election and Local Government Elections. In 2014 Tanzania held its local government election. However, there were few localities whereby elections were not conducted due to poor preparations and irregularities.

3.3.1 The Local Government Elections, 2014

In Tanzania the Local governments are established by virtue of Article 145 of the URT Constitution, 1977 the local government elections are coordinated by the Prime Minister's Office of Regional Administration and Local Government (PMORALG). The principal legislations that govern the Local Government Elections are *the Local Government Authorities Act (Urban Authorities)*²⁸⁹ and *Local Government Authorities Act (District Authorities)*²⁹⁰. The PMORALG is also mandated to prepare regulations in each year when local government elections are to be held. For 2014, the PMORALG prepared Codes of Conduct and regulations for local Government election, 2014.²⁹¹ The election was held in 3741 streets, 12443 villages and 64616 hamlets.²⁹² According to the report issued by PMORALG, the expected registered voters were 18,587,742.²⁹³ However, the number of registered voters in the 2014 local government elections in Tanzania mainland was 11,491,661 (62%). This trend signifies voters' apathy. This is partly attributed to the short time allocated for registration of voters. In 2014, only one week was set for registration where as three weeks were set for the same in 2009.²⁹⁴

288 Article 5.

289 Cap. 288.

290 Cap. 287.

291 G.N 320, G.N 321, G.N 322 and G.N 323.

292 LHRC&TACCEO Local Government Election Report, 2014.

293 <http://www.pmoralg.go.tz/> accessed on 11th December 2014.

294 LHRC & TACCEO Local Government Election Report, 2014 page 31.

3.3.2 Irregularities and Human Rights Violations during Local Government Elections

The Local Government Elections of 2014 were marred by several irregularities and human rights violations, which hindered the right to take part in governance. These challenges were observed by LHRC and TACCEO at different stages such as during registration, campaign period, voting or election day, and after the elections. This part critically examines these irregularities to inform stakeholders in the election process to address them before the General Elections in 2015.

3.3.2.1 Registration Process

The local government regulations require that the Chief Returning Officer has power to nominate registration officers. The registration officers are mandated to register voters 21 days before the elections.²⁹⁵ The rules that govern local government elections in District Councils (Urban Authorities)²⁹⁶ also provide the same.

The LHRC and TACCEO observed the whole process of registration of voters in selected areas and noted the following challenges:

- The limited amount of time allocated for registration is one of the challenges that led to low turnout of voters in the local government election. During the 2009 Local Government Elections, three weeks (from 4th to 24th October, 2009) were set for registration exercise, but in 2014, only one week was reserved for the exercise (23rd to 29th November, 2014). As a result, in Same District only 22 percent of voters were registered and only 21 percent in Kilindi;
- Lack of civic awareness on the registration exercise was also observed as one of the key challenges. Citizens in selected regions informed LHRC and TACCEO during monitoring that they were not aware of the registration exercise and thus did not have the chance to register. For instance, LHRC and TACCEO interviewed one opposition political party leader in Kilwa Masoko, who had this to say:²⁹⁷

295 G.N No 322 of 2014.

296 G.N No 320 of 2014 and No. 321 of 2014.

297 LHRC & TACCEO Local Government Election Report, 2014 page 34.

“hili zoezi ni kama walikurupuka au halikua kwenye mipango ya serikali maana wakati wa uandikishaji wala hatukutangaziwa, ni juhudi zetu binafsi za kuwaambia wanachama wetu pamoja na wapenzi kujitokeza, lakini wananchi hawakutangaziwa kabisa”.

“it seems like there were no preparations for the registration process by the Government; the exercise was not announced to citizens, our members received the information due to our own efforts; but the citizens had no information of it.”

- There were complains of double registration at different polling stations. For instance, in Kibo-Kinondoni District there were complaints that citizens from neighboring streets of Msewe had also registered in their area. This happened due to lack of clear administrative boundaries in urban settings and non-verification of residence of the prospective voters;
- Tenants in some areas were denied the right to vote as they were not registered on the basis that they were not permanent residents the areas they reside. This was reported in Dar es Salaam at Kimara-Baruti where students from KAM College were denied the right to register and thus to vote;
- Registration of voters during local government elections does not involve issuance of voters’ identity cards or certificates of any kind. It was thus difficult to control and monitor the voters’ register of in a designated area. The LHRC and TACCEO observed this as one of the shortcomings in registration process as it left room for dishonest returning officers or any other officer to temper with the register.

Therefore, the LHRC recommends the amendment of law so that local government elections can be supervised by the National Electoral Commission (NEC). This will reduce costs for registration of voters as Biometric Voters Registration Cards can be used in both local and general elections. It will also enhance efficiency in terms of time and coordination as NEC is specialized in management of election compared to PMORALG.

3.3.2.2 Political Campaigns and Rallies

Political parties are established under *the Political Parties Act, 1992* and conduct different programs using public meetings and rallies. The electoral campaigns are a central part of democratic processes whereby political parties strive to convince voters to vote on their favour according to parties election manifesto. It is a sensitive stage in the electoral processes as it may result into violence, killings, torture, or at times death of citizens. The United Republic of Tanzania has enacted *the Election*

Expenses Act, 2010 to limit and control election expenses in order to combat illegal practices in election processes.

During elections, the electoral laws guide the conduct of campaigns in terms of time, locality and manner in which political parties engage in campaigns. For instance, in terms of time, the laws and regulations require campaigns to be conducted during day time, from 8:00 am to 6:00 pm.

Political parties in respective district councils, under the coordination of the Chief Returning Officer, are required to submit and agree on a campaign time table. In multiparty democracy, campaign timetable is mandatory in order to prevent chaos or violence that might occur in case political parties collide in one area campaigning at the same time. During the Local Government Election in 2014, LHRC and TACCEO observed the following issues:

- Non-observance of statutory time limit for campaigns: It was observed that campaigns were conducted even during night time. The political parties employed the use of local (urban) dance famously known as “*vigodoro*” in some of the areas, whereby participants in political party’s uniforms danced and campaigned in favour of a certain candidate. Also, candidates, both from the ruling party and the opposition parties, together with their teams, conducted door-to-door campaigns at night, past the 6.00 pm legal limit;²⁹⁸
- Poor attendance in election campaigns meetings: LHRC and TACCEO observed that there was a poor attendance in campaign meetings and it was dominated by men compared to women. For instance, in Kilipwike Village in Lindi, one interviewee said that; “*There is no need to attend the campaigns as we already know who is going to win;*”²⁹⁹
- There were incidences of human rights violations against individuals and candidates. These incidences were reported in different areas, whereby individuals were attacked and beaten, while others were injured after suffering acid attacks. Also, in some areas incidences of chaos and violence were reported.

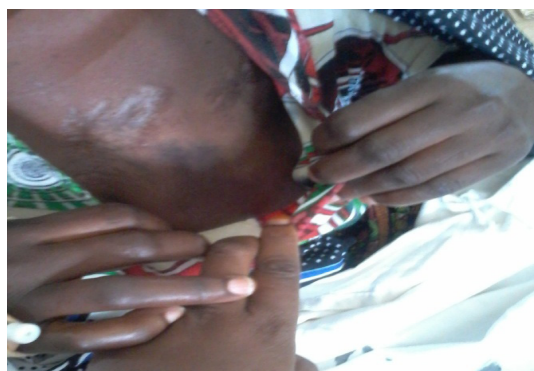
298 LHRC & TACCEO Local Government Election Report, 2014 page 43.

299 *Ibid.*

Table 15: Human Rights Violations in Political Campaigns/Rallies

Name of the Victim/ Violence/Chaos	Place	Brief Explanations
Agatha Komba	Ruvuma – Matarawe ward at Sabasaba	A CCM candidate was reported to have been attacked by CHADEMA followers. She sustained serious injuries and was admitted to the District Hospital.
Peter Sebastian	Maswa Nyalikungu	- A CHADEMA candidate was allegedly attacked by CCM followers and sustained facial burns.
Gudi Lugala	Kihesa – Mwaing’ong’ola	He sustained injuries on upper limb during a fight with a CCM driver, Jose Mgongolwa.
Joyce Lupubwe	Madaba ward	In her CCM t-shirt, was attacked by three men who tore her t-shirt and membership card, and thereafter was beaten and lost her money.
Party followers	Babati Township at Sawe street	A fight occurred between CHADEMA and CCM followers as one of the CCM supporters took away a CHADEMA flag.
Party followers	Arusha – Unga Limited	During a fight between CHADEMA and CCM followers, one person from CHADEMA was stabbed with a knife and sustained serious injuries.
Party followers	Karatu – Mang’ola Barazani	A fight occurred between followers of two rivalry parties that caused injuries and destruction of properties as two cars belonging to the two parties CHADEMA and CCM were destroyed.
Bahati Mayala	Rigicha Ward Serengeti	Bahati Mayala, the CHADEMA Ward Secretary for ideology and publicity at Rigicha Ward, sustained injuries caused by an arrow from CCM supporters. ²

Source: LHRC and TACCEO Local Government Election Report, 2014



Picture 15: Ms. Agatha Komba (L) and Mr. Peter Sebastian (R) who sustained injuries during the local government election of 2014

- Non adherence to scheduled timetable for campaigns caused chaos in some areas. The LHRC and TACCEO witnessed such incidences in the following areas:

Table 16: Areas that erupted chaos during the 2014 Local Elections

Area	Brief explanations and effects
Musoma	CHADEMA followers, together with the Musoma MP, Vincent Nyerere, passed through CCM campaign meeting, resulting into chaos and arrests of several people.
Njombe	Regular confrontations of candidates in Njombe were observed due to high political tension in the area.
Mpanda	Clashes erupted at Semulwa Kwamkumbo area in Miganzini Ward, Mpanda Distirct, when CCM invaded CHADEMA campaign meeting. As a result several people were injured.

- Use of abusive language intimidation, mockery and figurative language was experienced in the local government election in Tanzanian Arusha, Lindi, Njombe-Makambako Township. LHRC and TACCEO observed that there is a growing trend in Tanzania during elections whereby party followers use abusive language and no actions are taken against them. There is a need for responsible authorities to take measures to address this situation as it deters women, youth and persons with disabilities to take part in democratic processes.



Picture 16: Abusive language intimidation, mockery during the Local Elections of 2014

- Use of government resources in political party’s campaign was also observed. Similar acts have been reported in different reports produced by the LHRC and TACCEO on election observation but still no one is taking action to stop them.³⁰⁰ During the Local Government Elections of 2014

300 LHRC & TACCEO General Election Report, 2010, LHRC & TACCEO Arumeru Constitu-

government resources such as motorcars and helicopter were used during the ruling party’s campaigns. For instance, Hon. Mwigulu Nchemba, the Deputy Minister of Finance, used a government helicopter in Iramba West Constituency and in every district of Simiyu.³⁰¹

LHRC continues to urge that in a multiparty democratic state, distinction should be made between party activities and government endeavours. Government resources are meant to serve public in general, regardless any political affiliation or discrimination.



Picture 17: Elections Campaigns of the Local Government of 2014

- Harassment of local observers during campaigns: The LHRC and TACCEO local observer, one Rehema Kitaly, was attacked on suspicion of spying on CCM. Her working gadgets were taken under instruction of Hon. Aggrey Mwanri in Siha district.³⁰²

LHRC urges all political parties and the Government to observe international standards in democratic processes including recognition of internal and external observers. The election observers normally remain unidentified in the election democratic process. Therefore, attacking unknown people in public meetings would jeopardize the work of election observers.

3.3.2.3 Human Rights Violations and Irregularities on Voting Day

The Local Government Elections of 2014 were conducted on Sunday the 14th December, 2014. Most regions were able to prepare and conduct successful election

ency by-election, 2011.

301 LHRC & TACCEO Local Government Election Report, 2014 page 44.

302 *Ibid.*

on the mentioned date. But there were several district authorities that failed to conduct the local government election as planned due to poor preparations such as inadequate ballot boxes and incomplete and incorrectness ballot papers.³⁰³ The LHRC and TACCEO observed the following irregularities:

- Polling stations were located in unofficial premises and areas. It was observed that not all voting polls were located in public premises instead there were polling stations located under the trees. This practice lowers reputation of the process itself and attracts malpractice and election abuse as was the case at Kashaulili Bus Terminal in Katavi.³⁰⁴
- Insufficient voting materials such as ballot boxes, ink and ballot papers: For instance, voters at the Kashaulili Bus Terminal polling station were marked using marker pens instead of ink.



Picture 18: An election officer using marker pen to mark a voter who has casted his vote

- Violation of secret ballot principle: It was observed that in most areas there were no voting booths that guaranteed secret ballots. Voting process was done in an open area where everyone witnessed. Violation of secret ballot attracts voting under influence.

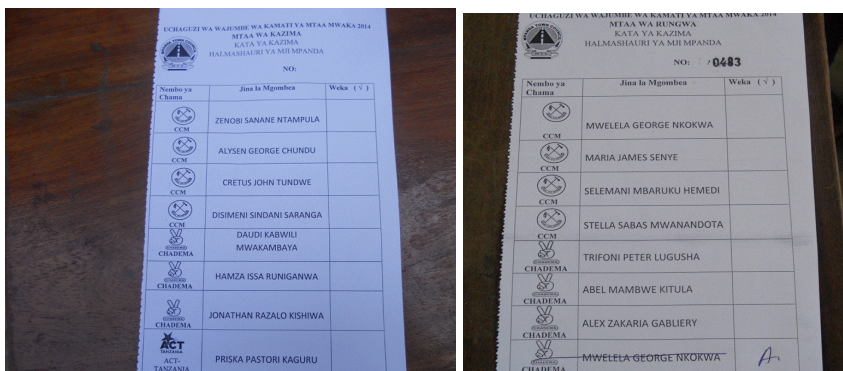
303 These following regions successful conducted the LGE on 14th December; Arusha, Iringa, Dodoma, Mtawara, Mbeya, Kagera, Njombe, Singida, Lindi, Ruvuma, and Geita. But the following regions and district councils were did not conduct its election as scheduled; Kilimanjaro - (Rombo and Hai district councils), Manyara (Hanang and Mbulu district councils), Morogoro (Ulanga and Mvomero), Shinyanga (Msalala) Simiyu (Busega and Itilima), Kigoma, Mwanza, Tabora, Rukwa, Tanga, Mara, Rukwa and Dar es Salaam.

304 LHRC & TACCEO Local Government Election Report, 2014 page 60.



Picture 19: Women casting their votes in an open area in violation of the principle of secret ballot

- Irregularities on ballot papers were also experienced during the local government election. For instance, the Ngome Polling Station in Iringa had ballot papers with a name of one Fauster Kilave, who was not a candidate in any post. At Ndiuka Polling Station, Iringa ballot papers were brought bearing no names of candidates.³⁰⁵ Also, in other areas ballot papers contained names of candidates with logos of different political parties, for instance at Kazima Polling Station in Kigoma Region.



Picture 20: Ballot papers with irregularities

- Destruction of properties in some regions occurred due to delayed election processes of voting, counting and announcing results. Angry citizens in Sumbawanga District, for example, destroyed CCM offices and set ablaze documents and other amenities in the office.

305 *Ibid.*



Picture 21: Angry mob burning the CCM office in Sumbawanga

3.3.3 Post-election Situation

The Local Government Election of 2014 recorded a number of human rights violations and chaos after counting and announcing the results. These incidents occurred in different parts of the country, as follows:

- Violence erupted in different streets as returning officers delayed in announcing the results. For instance, delays in releasing the results, in most polling stations, such as Mkoani Road (Geita rural), Kitangiri Ward and Mihama Secondary (Ilemela Mwanza), Molongo primary School Milongo Ward (Nyamagana) and Kariakoo in Nyabange Ward – Musoma (Urban).³⁰⁶
- In some areas, party supporters started celebration of results even before they could be announced by returning officers. For instance, supporters of CHADEMA, ACT and CCM at Kibirizi Ward in Kigoma Municipal were all found celebrating unannounced results and were arrested. It is LHRC's observation that such acts may trigger violence and chaos if results come out different from supporters' expectations.³⁰⁷

306 *Ibid.*

307 *Ibid.*



Picture 22: Arrested Rioters at Kibirizi

- Destruction of properties was observed in Kitoma Villlage in Kyerwa District, Kagera Region. Supporters of CHADEMA demolished the house of a CCM candidate and uprooted his banana trees because they disagreed with the results. ³⁰⁸



Picture 23: Destructions Made by CHADEMA Supporters at Kyerwa District

LHRC and TACCEO opine that there is need for authorities to learn from malpractice experienced in local government election 2014 to improve the coming elections. There is a need to provide civic education to citizens to enable them understand the electoral

308 *Ibid.*

processes. LHRC has observed that civic awareness education is only provided by civil societies instead of responsible authorities such as NEC and PMOLARG.

3.3.4 Political Party Performance during the 2014 LGE

The opposition political parties that participated in the 2009 Local Government Elections have gained popularity in 2014 through increasing number of representatives in their localities. For instance, the newly-formed political party, the Alliance for Change and Transparency (ACT), which participated for the first time in Local Government Election, won in 17 hamlets. The table below summarizes comparative statistics on political party performance in LGEs in 2009 and 2014 for the major political parties.

Table 17: Comparison Statistics of Political Parties’ Performance (2009/2014)

Urban Authorities (streets)				Rural District authorities (villages)			
2009		2014		2009		2014	
CCM	2242	CCM	2116	CCM	9,800	CCM	7290
CHADEMA	134	CHADEMA	753	CHADEMA	289	CHADEMA	1248
CUF	133	CUF	235	CUF	407	CUF	946
NCCR	1	NCCR- <i>Mageuzi</i>	8	NCCR- <i>Mageuzi</i>	38	NCCR	

3.4 By-elections in 2014

The by-election is organized to fill vacant positions of a Member of Parliament or any other leader at local levels. Usually, by-elections are conducted when or as the result of any vacant post left open due to death, resignation, termination by his/her party or by any reason.³⁰⁹ In 2014, there were two by-elections, held in Kalenga and Chalinze Constituencies following the demise of their MPs.³¹⁰

The Second Draft Constitution of 2013 abolished the conduct of by-election by suggesting that, by whatever reasons, whenever the post of a Member of Parliament becomes vacant, the nominating party shall appoint another member to fill in the vacant post.³¹¹ The Proposed Constitution of 2014, however, retains the current practice that

309 Section 37(3) of the *National Elections Act, Cap 343 R.E 2010* requires that when a member of parliament resigns or dies, the Speaker shall notify in writing the Chairperson of the National Electoral Commission (NEC) and by notice published in the Gazette declare the vacant post in the seat of the Member of Parliament. For the purpose of conducting parliamentary by-elections the National Electoral Commission (NEC) within 50 days after receiving notification from the Speaker has to announce the vacant posts for the political parties to compete.

310 The late Hon. Dr. William Mgimwa and Hon. Said Bwanamdogo of Kalenga and Chalinze Constituencies respectively.

311 Article 116(4) [*Endapo Mbunge anayetokana na chama cha siasa atapoteza sifa za kuwa mbunge kwa sababu yoyote isiyokuwa ya Bunge kumaliza muda wake, Tume Huru ya Ucha-*

whenever there is vacant post by any reason, by-election has to be conducted.³¹²

3.4.1 Challenges Experienced During By-Elections

LHRC and TACCEO participated as internal observers during the Kalenga and Chalinze by-elections. The two institutions monitored the campaign, voting day and post-election situation. The following were some of the challenges experienced during by-election that needs further action in order to improve the future or coming similar elections in the country:

- Use of government resources in politics seems to be a common habit that the ruling party has refused to abandon. Government resources were used during campaigns in these two constituencies. For instance, the first lady, Mama Salma Kikwete, and campaigned for her son, Ridhiwani Kikwete, together with the President of Zanzibar, Dr. Ally Mohamed Shein, both using government resources to travel to Chalinze.



Picture 24: Ridhiwani Kikwete Celebrates after winning the Parliamentary Seat, representing Chalinze Constituency

312 *guzi ya Jamhuri, kwa mujibu wa masharti yatakayowekwa na sheria itakayotungwa na Bunge kwa ajili hiyo, itamteua na kumtangaza kuwa mbunge mtu mwingine kutoka kwenye orodha ya majina ya wagombea iliyowasilishwa na chama hicho kwa mujibu wa Ibara ndogo ya (5)].*
 Article 134(2) [Kutakuwa na uchaguzi wa mbunge katika Jimbo la Uchaguzi ikiwa kiti cha Mbunge aliyechaguliwa kuwakilisha jimbo la uchaguzi kitakuwa wazi kwa sababu nyingine yoyote isiyohusika na Bunge kumaliza muda wake].

- It was observed that the illiteracy level in the two constituencies is so high that some had to seek assistance to cast their votes. It was observed that during the by-election in Chalinze Constituency, CCM leaders took advantage of the illiteracy of some citizens to assist voters to vote in their favour. For instance, Mr. Ally Marzuia Rajabu was seen assisting five women to cast their votes at Magome polling station (no. 00006354).³¹³
- The turnout of voters on the election date was very low. In almost all polling stations, the number of those who went to vote was less than half of the voters in the register. According to the Permanent National Voters Register, the eligible voters for Chalinze constituency were 92,939 but those who voted were only 24,422, equal to 26.3% of the registered ones.³¹⁴ In Kalenga, registered voters were 71,964 but only 29,541 (41.05%) voted.³¹⁵ Voting polls in Kalenga were also observed to be of poor standard.

This is a serious case that can create loopholes for election fraud and threatens the security of election officers, especially during vote counting and announcing of the winner. LHRC recommends that NEC should ensure that polling stations are located in safe places in order to enhance democracy.³¹⁶



Picture 25: Sub-standard polling station at Kalenga

- Other polling stations were located within residential areas and not at public buildings as required by the law.

313 LHRC and TACCEO, Chalinze By-Election Report, 2014 page 20.

314 *Ibid.*

315 LHRC and TACCEO, Kalenga By-Election Report, 2014 page 21.

316 *Ibid.*



Picture 26: Polling stations located in residential areas

- During the two by-elections, incidences of attacks and violence were observed. In Kalenga, for example, followers of CHADEMA, including the Member of Parliament (special seat) Hon. Rose Kamili, were beaten by CCM's green guards.³¹⁷ Similarly, during the Chalinze by- election, a CCM Ward Chairperson, Jesca Daudi, was attacked by CUF members, led by their candidate, Fabian Skauki, on March 25th, 2014. The incident took place at Ubenazomози.

Also, on 03rd March, 2014 the AFP candidate, Mr. Ramadhani Mgaya, was assaulted by unidentified people.³¹⁸



Picture 27: Hon. Rose Kamili of CHADEMA being led by police after she had been attacked by CCM's green guards

317 *Ibid.*

318 LHRC and TACCEO, Chalinze By-Election Report, 2014 page 19.

LHRC calls upon the responsible authorities and the legislature to ensure that by-elections are abolished in the electoral system. The costs incurred in conducting such elections should be allocated to other developmental programmes such as the provision of basic social services. It calls for citizens to call for its abolition during the constitutional review process. The new Constitution of the United Republic of Tanzania should provide for the flexibility of the nominating party to appoint other representatives in case there is a vacant seat in the constituency.

3.5 Registration of Voters for the 2015 General Elections

3.5.1 Biometric Voters Registration (BVR) Pilot Test

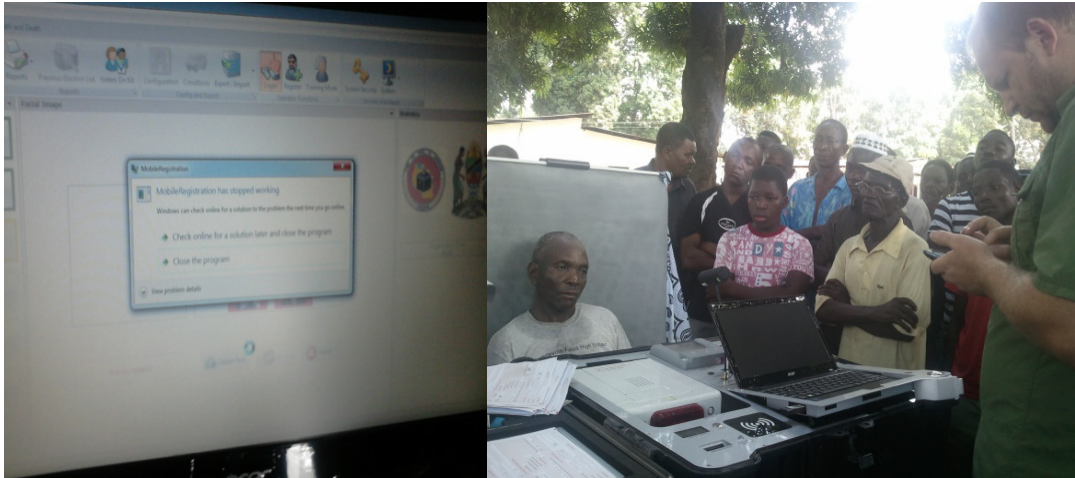
The National Electoral Commission (NEC) is mandated to supervise the general elections and local government elections. For the general election, NEC is mandated to supervise election of President of United Republic of Tanzania and Members of Parliament. On part of the local governance structure, NEC supervises the election of ward councilors. *The Constitution of United Republic of Tanzania, 1977*, under Article 5(3), and *the National Elections Act*, Sections 11, 12 and 15(5), give NEC mandate to register voters in the Permanent Voters Register (PVR). The Act also gives NEC mandate to update PVR twice before the following general election. Further, *the Local Government Elections Act, Cap 292* gives NEC mandate to register voters in PVR for ward councilor elections under Sections 15B and 21.

The United Republic of Tanzania is moving from the Permanent Voters Registration (PVR) that uses *Optical Mark Recognition (OMR)* technology to *Biometric Voters Registration (BVR)*. The BVR is a highly-advanced technology through which biometric information system allows enrolling and identifying considerable number of voters timely with limited errors. The advantage of using biometric identifiers minimizes the possibility of election fraud and at the same time accelerates voter identification. The BVR technology will further minimize risks of multiple entry and duplication of information for voters registered in different areas.

In 2014, NEC conducted a pilot study on registration of voters by using BVR technology in three electoral constituencies namely; Kawe-Dar es Salaam; Kilombero-Morogoro; and Mlele-Katavi. The following observations were made:

- *BVR kit malfunctioning*: There were many incidents of BVR kits malfunctioning, forcing the kit operators to restart the programme and the process afresh. In other incidents, the kits failed to restart and operators had to wait for them to be replaced, at times for up to two or three hours. This was time consuming and made people (voters) wait for a long time before they could register and obtain their new voter identity cards. For example, on December 18th, 2014, one of the BVR kits stopped working for more than three hours at the Dovya Centre in Bunju Ward, prompting some potential

voters to leave without registering. Similarly, the registration of voters at some registration centres in Mlele and Ifakara was affected affected by malfunctioning of BVR kits.³¹⁹



Picture 28: A resident sits in despair as he waits for the BVR kit to function

- *Lack of awareness of the exercise:* Most of the people who were at the centres claimed that they were not aware of the exercise and found out about the exercise by chance as they were passing by;
- *Insufficient Number of BVR kits:* At the beginning of the exercise there was only one BVR kit at most centres, while a big number of people had turned up to register. More BVR kits were deployed towards the end of the exercise;
- *Lack of technical expertise:* Most BVR kit operators were unskilled and had to wait for experts to rectify the situation whenever the equipment malfunctioned;
- *Long queues during registration:* Long queues were mostly observed during the filling in of forms to be used to biometrically register voters. This is because as time went by the number of registrants increased, whereas there was often just one person who was questioning voters and filling their information in BVR forms;
- *BVR kits affected by heat:* It was observed at centres monitored in Dar es Salaam, Kilombero and Mlele, where the climate is predominantly hot and humid, that the BVR equipment was adversely affected by the heat. In most instances, the equipment heated up and stopped working by noon, forcing the registration exercise to stop as its operators and registrants waited for kits to be replaced;

319 LHRC, *BVR Pilot Study Observation Report*, 2014 page 16.

- *Difficulty in taking pictures of the elderly:* BVR operators experienced difficulty and took more time in taking pictures of the elderly due to eye-problems caused by old age;
- *Unreadable prints:* Some prints were unreadable, especially for the elderly;
- *Errors on voter IDs:* Some voter IDs contained errors made by BVR operators when entering the information in the BVR kit. Most of them were made with regards to year of birth.



Picture 29: An ID of one of the registered voters with an incorrect year of birth

- *Women formed majority of those who turned out to register:* Many women turned out for the biometric voter registration exercise during the pilot study in respective areas compared to men.



Picture 30: Many women turned up for the BVR pilot exercise in Kilombero

LHRC commends NEC for taking steps to adopt BVR technology in improving the Permanent Voters Register. There is a need for the Government to allocate sufficient resources for this important exercise to guarantee citizens' rights to participate in the democratic process in the country. Further, LHRC calls upon the Government and NEC to rectify all the shortcomings experienced during the pilot test to improve the exercise in the future.

3.6 The Constitution-making Process and its Challenges

The *Constitutional Review Act, R.E 2012* governs the constitution-making process in the United Republic of Tanzania. In 2014, the process that commenced in 2011 reached at a stage whereby the Second Draft Constitution of December, 2013, was tabled before the Constituent Assembly (CA).

3.6.1 Composition of C.A

According to *the Constitutional Review Act* the CA is composed of:³²⁰

- (a) *all members of the National Assembly of the United Republic;*
- (b) *all members of the House of Representatives of Zanzibar; and*
- (c) *two hundred and one members drawn from the following: (i) Non-Governmental Organisations; (ii) Faith Based Organisations; (iii) all fully registered political parties; (iv) institutions of higher learning; (v) groups of people with special needs; (vi) Workers Association; (vii) an association representing farmers; (viii) an association representing pastoralists; and (ix) any other group of persons under whatever name having common interest.*

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Section 22.

The increase of members of CA from one hundred and sixty six to two hundred and one (thematic groups) was achieved through the amendment of the *Constitutional Review Act* in 2012.

LHRC and *Jukwaa la Katiba Tanzania (JUKATA)* observed that most of the members nominated in the CA under category (c) of the *Constitutional Review Act* have are more affiliated to the ruling party rather than the intended thematic groups. For instance, one Sixtus Raphael Mapunda, who was nominated as a representative of the civil societies group is the General Secretary of CCM's youth wing. Others include prominent politicians such as Hon. Kingunge Ngombale Mwiru and Paul Kimiti. It can be argued that the majority of CA members were nominated to represent the interests of the ruling party rather than the interests of the public at large. This can be substantiated by a number of statements issued by different religious groups and civil societies on the role of the members of CA and its general trend. The following are some of the press statements have been issued:

- (a) On 5th August, 2014, JUKATA issued a press statement to condemn the undemocratic debate in the CA;
- (b) On 2nd August, 2014, the Tanzania Episcopal Council (TEC) issued a press statement calling for the CA to consider views of the people as proposed in the Second Draft Constitution;
- (c) On 28th August, 2014, the Tanzania Episcopal Conference (TEC), the Council of Pentecostal Churches of Tanzania (CPCT), the Christian Council of Tanzania (CCT) and the Seventh Day Adventist (SDA) issued a joint press statement to reflect on the undemocratic debate within the CA. The statement provoked the CA chairperson Hon. Samwel Sitta who said that; "*Nawaombeni waumini wa makanisani, muwe wangaalifu sana na nyaraka zinazosomwa siku hizi kwenu, baadhi ya nyaraka hazina utukufu wowote wa Mwenyezi*" "I beg of you worshipers, to be careful of seculars read nowadays in churches, for some of them do not have God's blessings."
- (d) Members of Constituent Assembly from opposition parties and some civil societies formed a coalition known as "*Umoja wa Katiba ya Wananchi UKAWA*" walked out of the assembly due to dissatisfaction with debate procedures in parliament.

LHRC urges that, citizen centered constitution is an outcome of public wants and needs. No political party or a group of citizens should influence constitutional making in any nations. In order to have people's centered constitution involvement of the citizens themselves is must.

Chapter Four

Social Rights

4.0 Introduction: Overview of Social Rights in Tanzania

There are a number of social rights guaranteed in the international human rights instruments. These rights include among others the right to health³²¹, right to social security³²², and right to education³²³. They are rights without which meaningful participation of people in the life of the society becomes impossible. These are entitlements of an individual citizen of which the State ought to protect.

Social rights are specifically recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), as part of the International Bill of Rights³²⁴. In the Tanzanian legal context, social rights are contained in the Constitution of United Republic of Tanzania of 1977 and other laws such as the Law of the Child Act of 2009, Social Security Act of 1997 Social Security Laws (Amendments) Act of 2012, and Public Health Act, 2009 to mention but a few.

4.1 Social Rights and the 2014 Constitutional Review Process

The year 2014 saw the continuation of the constitutional review process, which began in 2011, aimed at a participatory citizen-centered Constitution of Tanzania. The process started following a public outcry for a new constitution that was long overdue. It began with the enactment of the Constitutional Review Act (CAP 83) in 2011, which was amended in 2012 and 2013. Pursuant to the Act, President Jakaya Kikwete appointed 32 members of the Constitutional Review Commission (CRC), headed by the former Prime Minister, Rtd. Judge Joseph Sinde Warioba. The CRC was mandated to collect public views and opinions across the country on the contents of the new Constitution for a period of 20 months, starting May 1, 2012. The Warioba-led Commission completed its work in December, 2012, after requesting for an additional 59 days; and produced the First Draft Constitution. This Draft was immediately distributed for public scrutiny, whereby Tanzanians got an opportunity to evaluate and provide more views and comments, culminating into the Second Draft Constitution by the CRC released in June, 2013.

321 ICESCR, Article 12.

322 ICESCR, Article 9.

323 ICESCR, Article 13.

324 Apart from the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Bill of Human Rights includes the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Optional Protocol to the International Covenant on Civil and Political Rights, and Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty.

During the constitutional review process, social rights, among other key issues, took the centre stage. During the discussions, many people called for the inclusion of basic social rights like the right to education, right to health and right to clean and safe water, all of which are either not stipulated or not enforceable in the current Constitution. The right to health and the right to water are not provided for in the present Constitution of the United Republic of Tanzania of 1977. The right to education is provided but is not enforceable and does not form part of the Bill of Rights.³²⁵

4.1.1 Social Rights in the First Draft Constitution

The right to education was included in the First Draft Constitution, prepared by the CRC under Articles 41(1)³²⁶, 42(1)³²⁷, 44(1)³²⁸ and 45(1)³²⁹. Also, the right to health was provided under Articles 42(1)³³⁰ and 46(1)³³¹, while the right to clean and safe water and the right to social security were left out in this Draft Constitution.

4.1.2 Social Rights in the Second Draft Constitution

In the Second Draft Constitution, the right to education and right to health featured. The right to education was provided under Articles 42(1)³³², 43(1) (c)³³³ and 45(1)

325 Constitution

326 *Haki ya elimu na kujifunza*: 41.-(1) Kila mtu ana haki ya:

- (a) kupata fursa ya kupata elimu bila ya vikwazo;
 - (b) kupata elimu bora ya msingibila ya malipo na inayomtayarisha kikamilifu mwanafunzi ama kuendelea na elimu ya ngazi inayofuatia au kuweka msingi wa kuanza kujitegemea;
 - (c) kwa elimu inayotolewa nje ya utaratibu wa umma, kupata elimu kwa gharama nafuu; na
 - (d) kupata fursa sawa ya kupata elimu ya juu ili mradi ana sifa stahiki kupata elimu hiyo, bila ya ubaguzi wa aina yoyote.
- (2) Kwa madhumuni ya Ibara ndogo ya (1), kila mtu ana haki ya kuchagua taaluma na ajira anayoitaka kwa mujibu wa elimu yake na ujuzi aliyonao.]

327 *Haki ya mtoto*: 42.-(1) Kila mtoto ana haki ya- (c) kucheza na kupata elimu;

328 *Haki za Watu wenye Ulemavu*: 44(1)(b) kupata elimu kwa kutumia vifaa maalum na kushiriki katika shughuli za kijamii

329 *Haki za Makundi madogo katika jamii*: 45(1) (b) yanapewa fursa maalum za elimu na fursa za kujiendeleza kiuchumi na fursa za ajira;

330 *Haki ya mtoto*: 42.-(1) Kila mtoto ana haki ya- (e) kupata lishe bora, makazi na huduma ya afya

331 *Haki za wanawake*: 46.-(1) Kila mwanamke ana haki ya: (g)kupata huduma ya juu ya afya inayopatikana.

332 *Haki ya elimu na kujifunza*: 42.(1) Kila mtu ana haki ya:

- (a) Kupata fursa ya kupata elimu bora bila ya vikwazo; (b) kupata elimu bora ya msingi bila ya malipo na inayomtayarisha kikamilifu mwanafunzi ama kuendelea na elimu ya ngazi inayofuatia au kuweka msingi wa kuanza kujitegemea; (c) kupata elimu bora inayotolewa nje ya utaratibu wa umma kwa gharama nafuu; na (d) kupata fursa sawa ya kupata elimu ya juu ilimradi ana sifa stahiki kupata elimu hiyo, bila ubaguzi wa aina yoyote.

333 *Haki ya Mtoto*: 43(1) Kila mtoto ana haki ya- (c) kucheza na kupata elimu bora

(b)³³⁴. The right to health was stipulated under Articles 43(1) (e)³³⁵ and 47(1) (g).³³⁶ However the right to clean and safe water and right to social security were not included in the Second Draft Constitution.

4.1.3 Social Rights in the Proposed Constitution

The Proposed Constitution provides for the right to education, right to health, and right to clean and safe water, but not the rights to food and social security. The right to education is covered under Articles 52³³⁷ and 53(1) (c)³³⁸. The right to health is provided under Article 51(1) of the Proposed Constitution.³³⁹ The right to clean and safe water is also included in this Article³⁴⁰.

4.1.4 Link between Social Rights and Other Rights

There is a close link between social rights and other rights, such as civil and political rights.³⁴¹ Social rights complement civil rights and liberties, laying a foundation for one to enjoy such rights. Rights to food and health, for example, are essential if one is to enjoy civil, political, economic and environmental rights; and have a direct impact on the right to life. Lack of access to food and medical services may impair a citizen's chances of enjoying their rights such as right to vote and freedom from torture.

Social rights are also interdependent and interrelated. For example, access to food (the right to food) depends on the availability of water (right to water). When the right to food is not realized, resulting to hunger and malnutrition, children may be forced to drop out of school and engage in child labour, hence denying them their right to education. In other cases, they may remain in school but will not be able to fully enjoy this right. For the case of adults, who are the workforce in formal and informal sectors, ill health and limited access to food may hamper their ability to work in order

334 *Haki za watue wenye ulemavu*: 45. (1) Mtu mwenye ulemavu anastahiki: (b) kupata elimu kwa kutumia vifaa maaalum na kushiriki katika shughuli za kijamii;

335 *Haki ya mtoto*: 43(1) Kila mtoto ana haki ya-(e) kupata lishe bora, huduma ya afya, makazi na mazingira yanayomjenga kimaadili

336 *Haki za wanawake*: 47(1) Kila mwanamke ana haki ya: (g) kupata huduma bora ya afya.

337 *Haki ya elimu*: 52.-(1) Kila mtu ana haki ya kupata elimu bora ya msingi inayomtayarisha kikamilifu kuendelea na elimu ya ngazi inayofuatia au kuweka msingi wa kuanza kujitegemea. (2) Kila mtu ana fursa ya kupata elimu ya juu ilimradi ana sifa stahiki.

338 *Haki za mtoto*: 53.-(1) Kila mtoto ana haki ya: (c) kuwekewa mazingira bora ya kucheza na kupata elimu ya msingi;

339 *Haki ya afya na maji safi na salama*: 51 – (1) Kila mtu ana haki ya kupata huduma ya afya na maji safi na salama. (2) Mamlaka ya niche itahakikisha kwamba huduma zilizorejewa katika ibara ndogo ya (1) zinapatikana kwa urahisi kwa kuzingatia mahitaji ya nchi na rasilimali zilizopo.

340 *Ibid.*

341 *See* Office of the UN High Commissioner for Human Rights, The Right to Adequate Food, Fact Sheet No. 34, Available at <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

to guarantee food on the table for themselves and their families.

Denial of the right to education minimizes chances of a person to find descent employment and effectively take part in public affairs, including politics.

4.2 Basic Social Rights in Tanzania

4.2.1 Right to Education

Education is the backbone of all sectors of a country's economy, more so for third world countries like Tanzania. It is essential at creating a competitive workforce in a bid to build and improve the economy. This makes it a vital component of social rights in Tanzania as it is an important tool in the promotion of human rights, apart from being a right in itself. It lays the foundation for meaningful enjoyment of other rights, such as right to work and right to take part in public affairs, enabling citizens to increase their chances of employment and make informed decisions when it comes to taking part in public affairs.

Education can be divided into two major categories, formal education and information education. Formal education in Tanzania is divided into pre-primary, primary, secondary and higher education.³⁴² Pre-primary education is from 0-6 year-olds, provided both at home and pre-schools such as day-care centers and nursery schools.³⁴³ Primary education is usually provided for children in the age group of 7-14 years and aims at preparing citizens for lifelong education, training and learning processes.³⁴⁴ Tertiary, higher education and trainings lead towards obtaining certificates, diplomas and degrees and aims at preparing students for professional work in different sectors of the economy.³⁴⁵

Secondary education is provided to students who have successfully completed primary education.³⁴⁶ It aims, among other things, at preparing these students for tertiary and higher education as well as vocational, technical or professional training.³⁴⁷

The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR)

342 See United Republic of Tanzania, Ministry of Education and Culture, *Education and Training Policy*, 1995.

343 Ibid, p. 2.

344 Ibid, p. 5.

345 Ibid, p. 8.

346 Ibid, p. 6.

347 *Ibid.*

has provided four basic features of the right to education.³⁴⁸ These features are:³⁴⁹

Availability: Functioning educational institutions and programmes have to be available in sufficient quantity. The institutions require buildings, sanitation facilities for sexes, safe drinking water, trained teachers, and competitive salaries for teachers and teaching materials, among other things. The situation in Tanzania as far as availability of the right to education is concerned is not satisfactory. Government efforts have concentrated more on buildings and less on learning and teaching materials, and teachers' welfare.

Accessibility: Educational institutions and programmes have to be accessible to everyone, without discrimination. This requirement has three overlapping requirements, which are: non-discrimination, meaning that it must be accessible to all, including vulnerable groups; physical accessibility, meaning it has to be within safe physical reach in terms of attendance at some reasonably convenient geographic location or via modern technology (distance learning); and economic accessibility, meaning it has to be accessible to all.

Accessibility of education is still a problem in Tanzania, especially in rural areas, where children have to walk long distances to get to school. There is also the case of Universal Primary Education (UPE), a programme meant to facilitate free primary education in Tanzania. Despite the law clearly stating that primary education should be free and any contributions previously demanded from parents should be abolished. Different studies indicate that such education is not exactly free, given the fact that parents are required to make other contributions that are not labeled "school fees".³⁵⁰ According to the 2011 *Haki Elimu* Report on the right to education, parents are forced to make indirect contributions through compulsory, education-related contributions to Local Government Authorities. This situation continued in 2014, whereby several incidents of children being sent home for school for failure of their parents to make such contributions were reported.

Acceptability: The form and substance of education, including curricula and teaching methods, have to be acceptable (relevant, culturally appropriate and of good quality)

348 See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html> [accessed 2nd December, 2014].

349 Ibid, para 6.

350 *Hakielimu* (February 2011), *Litigating the Right to Education in Tanzania: Legal, Political, and Social Considerations and Potential Applications*, pg. 1, Available at http://hakielimu.org/files/publications/Litigating%20the%20Right%20to%20Education%20in%20Tanzania_1.pdf [accessed 2nd December, 2014]

to students and, in appropriate cases, parents. But this is subject to provisions of Article 13 of the ICESCR.

Education provided in most schools, especially public schools, is not of good quality. This can be attributed to lack of qualified teachers, particularly in public schools, and shortage of learning materials, including books and laboratory equipment.

Adaptability: Education has to be flexible so as to adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. Education system in Tanzania, particularly public education, is not flexible enough to adapt to the needs of the society today; and this is especially attributed to the fact that it is more theoretical than practical and the focus is on increasing enrollment rather than quality of education. What the modern Tanzanian society needs is a type of education that is more practical and enables the students to later on can employ themselves.



Figure 2: Basic Features of Right to Education

4.2.1.1 Legal and Policy Framework of Education in Tanzania

At the international level, the right to education is contained in two of the three major international human rights instruments that constitute the international bill of human rights. These are the Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of

1966. It is also provided for in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the UN Convention on the Rights of the Child (CRC) of 1989, the Convention on the Rights of Persons with Disabilities (CRPD) of 2006, and the Convention Against Discrimination in Education (CADE) of 1960. Tanzania has ratified all these instruments,³⁵¹ except UDHR, which cannot be ratified owing to its nature.³⁵²

Within the UDHR, the right to education is provided for under Article 26 (1).³⁵³ The ICESCR, on the other hand, provides for the right to education under Article 13(1).³⁵⁴ It limits this right, however, subject to availability of resources. It specifically stipulates that all social-economic rights, right to inclusive education, are to be progressively realized depending on the availability of resources.³⁵⁵ However, minimum core obligation exists for all ICCPR States Parties, including Tanzania, to ensure the satisfaction of minimum essential levels of these rights.³⁵⁶ These States are obligated to respect, protect and fulfill the right to education.³⁵⁷

The CRC, which is the major international convention specific for rights of children,

351 ICESCR was ratified in 1976; CRC was ratified in 1991; CEDAW was ratified in 1985; CRPD was ratified in 2009; and CADE was ratified in 1979.

352 UDHR is not a legally binding instrument among states as it is not a treaty under the Vienna Convention on the Law of Treaties of 1969. However, most of its provisions have been recognized to constitute customary international law and thus binding. These provisions were also codified in the 1966 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). The Declaration is the basis for all human rights conventions and considered to be the first reference as far as human rights are concerned.

353 *See* UDHR, Article 26(1) [Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.]

354 *See* ICESCR, Article 13(1) [The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace].

355 ICCPR, Article 2(1) [Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures]

356 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.htm> [accessed 2nd December, 2014].

357 *Ibid*, para 47.

includes the right to education under Article 28(1).³⁵⁸ It calls for progressive realization of the right to education through:

- Making primary education free, compulsory and available to all;
- Encouraging the development of different forms of secondary education, including general and vocational education;
- Making educational and vocational information and guidance available and accessible to all children; and
- Taking measures to encourage regular attendance at schools and reduction of drop-out rates.

The International Convention on the Rights of Persons with Disabilities 2006 (CRPD) was established to protect the rights and dignity of persons with disabilities. It provides for the right to education for persons with disability. This right is provided for under Article 24(1).³⁵⁹ Realization of this right is meant to end discrimination against persons with disabilities in the education sector, which has been the case over the years.

At the regional level, the right to education is mainly governed by the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, which is the major instrument for protection of children in Africa. Article 11(1) of this Charter clearly stipulates that every child has a right to an education. The African Charter on Human and Peoples' Rights (ACHPR) of 1981 also includes the right to education under Article 17.³⁶⁰ Tanzania is a Party to and thus bound by ACRWC and ACHPR, ratified in 2001 and 1984 respectively.

At the national level, the right to education is contained in the Constitution of the United Republic of Tanzania of 1977, the Law of the Child Act of 2009 and Education Act of 1978 (as amended in 1995 and 2002).

The Constitution provides for one's right to access education³⁶¹ and obligates the Government to make appropriate provisions for the realization this right.³⁶² This right is also covered by sections 31 and 56 of the Education Act of 1978 (R.E. 2002)³⁶³ and

358 Article 28(1) [States Parties recognize the right of the child to education...].

359 CRPD, Article 24(1) [States Parties recognize the right of persons with disabilities to education..].

360 ACHPR, Article 17 [Every individual shall have the right to education].

361 Constitution of the United Republic of Tanzania, 1977, Article 11(2).

362 Ibid, Article 11(1).

363 s. 31(1) [It shall be compulsory for every child who has reached the age of seven years to be enrolled for primary education.]; s. 56(1) [Subject to the national policy on national education and to other national plans and priorities appropriately specified from time to time, every citizen of the United Republic shall be entitled to receive such of category, nature and level of

the Law of the Child Act of 2009³⁶⁴, which contains fundamental rights and principles derived from the African Charter on the Rights and Welfare of the Child (ACRWC).

Tanzanian education is regulated by the Education and Training Policy of 1995, which contains and provides for³⁶⁵;

- ♦ Aims and objectives of education and training;
- ♦ System and structure of education and training;
- ♦ Access and equity in education and training;
- ♦ Management and administration of education and training;
- ♦ Formal education and training;
- ♦ School curricula, examination and certification;
- ♦ Vocational education and training;
- ♦ Tertiary education and training;
- ♦ Non-formal education and training;
- ♦ Financing education and training; and
- ♦ Summary of policy statements.

Ministries responsible for formal and non-formal education in Tanzania are the Ministry of Education and Vocational Training; Ministry of Communication, Science and Technology and the Prime Minister's Office-Regional Administration and Local Government (PMO-RALG).³⁶⁶ Formal education system in Tanzania is structured in such a way that pre-primary education takes 2 years, primary education 7 years, ordinary level secondary education 4 years, advanced level secondary education 2 years and university level education a minimum of 3 years.³⁶⁷

4.2.1.2 Education Programmes/Initiatives and Enrollment

In 2014, the Government continued with implementation of various programmes initiated to boost education in Tanzania in an effort to fulfill Tanzania's obligations under various international and regional human rights instruments. These programmes are Primary Education Development Programme, Phase Three (PEDP III) and

national education as his ability may permit him.]; s. 56(2) [No person may, within the United Republic, be denied opportunity to obtain any category, nature or level of national education for the reason only of his race, religion or political or ideological beliefs: Provided that any school may, in its admission procedures, afford preference to citizens of the United Republic].

364 Law of the Child Act, 2009, s. 9(1) [A child shall have the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents].

365 See United Republic of Tanzania, Ministry of Education and Culture, Education and Training Policy, 1995.

366 Ibid, p. 11.

367 Ibid, p. 12.

Secondary Education Development Programme, Phase Two (SEDP II).³⁶⁸ These programmes aim at supervising and managing primary and secondary education in Tanzania.³⁶⁹ Education is also a focal point in the Millennium Development Goals [MDG] and Tanzania Development Vision 2015.

In 2013, the Government introduced what it calls ‘Big Results Now’ (BRN), a programme that aims at boosting development in four six priority areas of economy, namely: energy and natural gas; agriculture; water; education; transport; and mobilization of resources.³⁷⁰ The programme was replicated from Malaysia’s “Big Fast Results Initiative” and has been implemented since the 2013-2014 financial year.³⁷¹

The introduction of these programmes/initiatives has led to an increase in the number of educational institutions, particularly primary and secondary schools, which in turn has led to a slight increase in enrollment. The table and charts below indicate the trend of enrollment in pre-primary, primary and secondary education in Tanzania from the year 2010 to the year 2013.

Table 18: Pre-Primary, Primary and Secondary Education Enrollment (2010-2013)

LEVEL	NUMBER OF ENROLLEES				
	2009	2010	2011	2012	2013
Pre-Primary Education	896,146	925,465	1,069,208	1,034,729	1,026,466
	<i>M=445,867 F=450,279</i>	<i>M=461,628 F=463,837</i>	<i>M=538,478 F=530,730</i>	<i>M=530,425 F=504,304</i>	<i>M=512,798 F=513,668</i>
Primary Education	8,441,553	8,419,305	8,363,386	8,247,172	8,231,913
	<i>M=4,248,764 F=4,192,789</i>	<i>M=4,203,269 F=4,216,036</i>	<i>M=4,159,740 F=4,203,646</i>	<i>M=4,086,280 F=4,260,892</i>	<i>M=4,066,287 F=4,165,626</i>
Secondary Education	1,466,402	1,638,699	1,789,547	1,884,272	1,804,056
	<i>M=812,945 F=653,457</i>	<i>M=910,171 F=728,528</i>	<i>M=986,993 F=802,554</i>	<i>M=1,010,473 F=873,799</i>	<i>M=939,191 F=864,865</i>
TOTAL	10,804,101	10,983,469	11,222,141	11,166,173	11,062,435

Source: Ministry of Education and Vocational Training (BEST National Data)

368 SEDP II is the continuation of SEDP I (2004-2009) and aims at improving access to, quality and delivery of education in Tanzania. This programme calls for a secondary school in every ward in the country.

369 See United Republic of Tanzania, Prime Minister’s Office – Regional Administration and Local Government, Strategic Plan 2011/12-2015/16, page ix.

370 See Prime Minister’s Office-Regional Administration and Local Government website at <http://www.pmoralg.go.tz/quick-menu/brn/>, accessed 27th December, 2014.

371 Ibid .

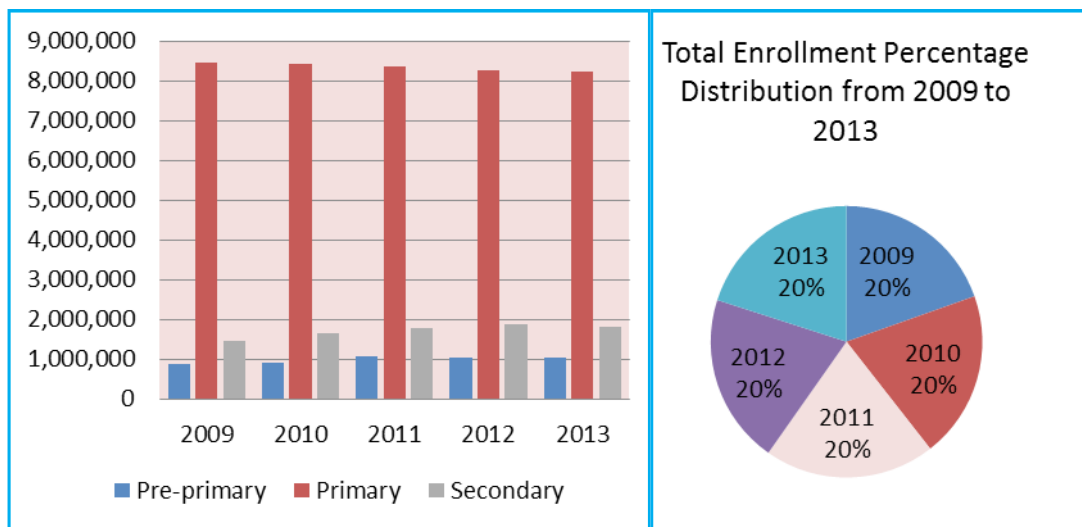


Figure 3: Enrolment in Primary and Secondary Schools

As the charts above indicate, there is a slight increase in the enrollment in pre-primary and secondary education in the past four years, total enrollment in pre-primary, primary and secondary education has remained somewhat constant from 2009 to 2013 at 20%. Decrease of enrollment in secondary education is contributed by school dropout and students not passing Standard VII national examinations. The trend suggests the situation of enrollment to be the same for the year 2014.

4.2.1.3 Situation in Public Secondary Schools: LHRC's Study Findings

Despite the continued implementation of various education programmes, the situation has not improved much in terms of quality of education provided, particularly in public schools.

LHRC study on the right to education with specific reference to public secondary education conducted in 2014 revealed several challenges that continue to affect education provided in Government-owned secondary schools. The study was conducted in six regions of Mainland Tanzania, namely: Mtwara, Iringa, Pwani, Dodoma and Kilimanjaro.³⁷² Among the major challenges/factors that affect student performance revealed by the study are:

- ♦ *Poor working environment for teachers:* Most of the teachers who were surveyed complained about poor working environment that they are subjected to. Their grievances include lack of or poor housing (teachers forced to rent at nearby houses), shortage of teaching aids/materials, poor remuneration (majority cannot sustain a decent life as a result) and salary delays. These

³⁷² See LHRC (2014), The Right to Education in Tanzania: Survey on the Quality of Education Provided in Government Secondary Schools.

grievances have forced some of the teachers to resort to doing business during school hours to supplement their low incomes. Also contribute to lack of seriousness by teachers;

Linked to the issue of salary (low) is the feeling amongst teachers that they their profession is a low paying job and does not command the same respect as other professions.

- ♦ *Shortage of learning materials and facilities:* Availability of sufficient learning materials and facilities which are in good condition creates an atmosphere that is conducive for learning. However, availability of text books, especially science books, has been an issue of concern in schools that were surveyed. There are limited textbooks and most of the students come from poor families as such they cannot afford to buy them.
- ♦ *Problems with English as a medium of instruction:* Students in most public secondary schools are struggling with English as a medium of instruction. This is partly contributed by poor English background at pre-primary and primary schools.
- ♦ *Lack of proper training for teachers:* LHRC survey unveiled minimal or lack of on job training for teachers, as they are not exposed to different teaching materials and methods. Teachers are also not provided with refresher courses to help them cope with changing curriculums, syllabus and learning trends. LHRC recommends regular training for teachers on effective ways to impart knowledge and trigger critical thinking to students. What most teachers do is to transmit notes to students for them to memorize and reproduce in the examination. This does not help them to become critical thinkers and apply their knowledge in real life as entrepreneurs and problem solvers. Training on how to use various teaching methods will also go a long way to improve the quality of teaching. Proper training for teachers will enable them to inspire students and help them develop critical thinking and analytical skills.
- ♦ *Shortage of teachers:* Most public schools have shortage of teachers, especially in science subjects. According to the Ministry of Education and Vocational Training, Tanzania is faced with the shortage of 26,000 teachers.³⁷³ This problem is compounded by qualified teachers leaving public schools to seek greener pastures in private schools. Some teachers abandon the teaching profession altogether for business or other professions. Additionally, some teachers appear qualified (on paper) but are not quite competent and this is attributed to the myth that a good teacher is the one with the best grades in their certificates. The shortage led the Government to train new teachers.

373 The Citizen, *Teachers shortage hurting Tanzania*, 14th October, 2014, available at <http://www.thecitizen.co.tz/News/national/Teachers-shortage-hurting-Tanzania/-/1840392/2485582/-/ks33acz/-/index.html#>, accessed 20th January, 2015.

This initiative was meant to accommodate the many Ward secondary schools that were established in the last 9 years as an effort to increase enrollment in primary and secondary education.

- ♦ *Teenage pregnancy and absenteeism:* Teenage pregnancy and absenteeism have a major challenge in primary and secondary school education in Tanzania. For example in Kyela District, Mbeya Region, 94 secondary school girls became pregnant from 2010 to 2014.³⁷⁴ In the same District, a total of 645 secondary school students dropped out of school from 2010 to 2014.³⁷⁵ In Ulanga District, Morogoro, 400 students failed to continue with secondary education because of teenage pregnancy and absenteeism.³⁷⁶

- ♦ *Shortage of funds:* Teachers that were involved in LHRC's study on quality of education complained about insufficiency and delays of capitation grants needed for the day-to-day running of the schools. The funding problem stems from shortage of budget in the financial year 2014/2015 which was set at Tshs. 3.465 trillion, equivalent to 17% of the total national budget (Tshs. 19,853 billion). Education is one of the areas that the Government has set as one of its priorities as evidenced in the recent budget trend and the Big Results Now (BRN) Initiative of 2013. However, the budget set has failed to meet the standards set by UNESCO and Dakar Commitment, requiring states to allocate 9% of GDP in education. Tanzania's budget for the financial year 2014/2015 is equivalent to 6% of its GDP.³⁷⁷ The 17% allocation is also short of UNESCO's target of 20%.³⁷⁸

374 Revealed by the Prime Minister's Office on 27th February, 2015 when the Prime Minister, Hon. Mizengo Pinda, visited secondary schools in Kyela District in February, 2015.

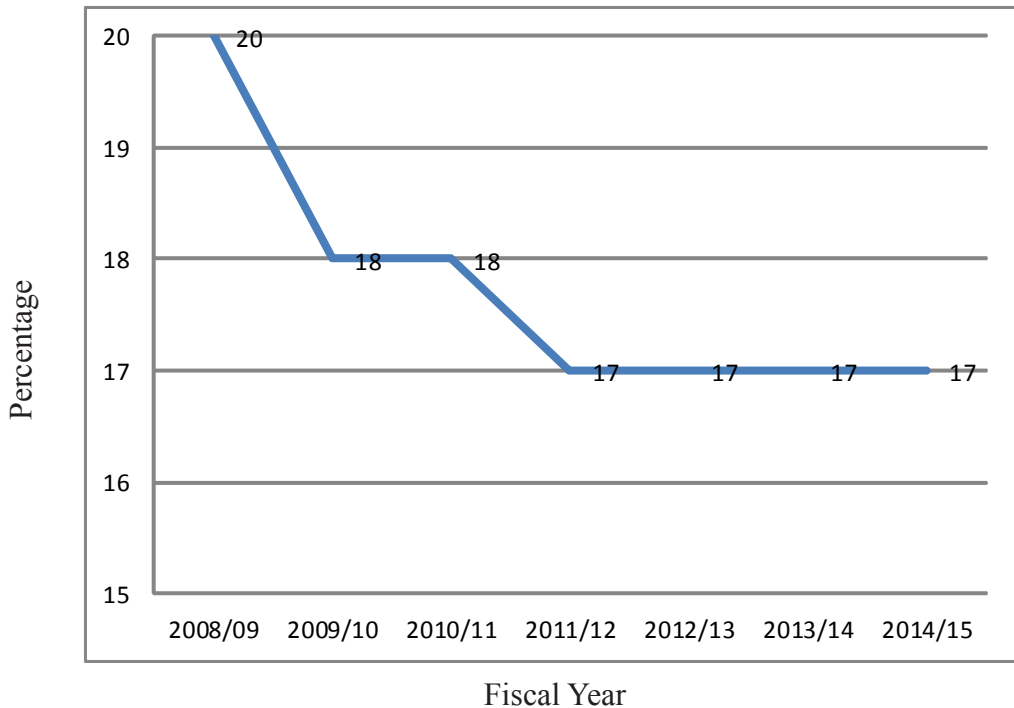
375 Ibid.

376 Esther Mwibula, *400 waacha shule kwa mimba, utoro*, *Mwananchi* Newspaper, 18th November, 2014, accessed 14th February, 2015.

377 Hakielimu (2014), *The Paradox of Financing Education in Tanzania "The 2014/15 Post Budget Brief"*, Policy Brief No. 3.

378 Ibid.

Figure 4: Funds allocated into Education Sector



Source: Hakielimu

- ◆ Education sector budget is also affected by overdependence on donor funds. 46% (Tshs. 93.6 billion) of funds allocated for the implementation of PEDP III and SEDP II in the financial year 2014/2015, for example, is contribution from donors.³⁷⁹ But experience shows that sometimes the Government does not obtain the full amount promised by donors, as it was the case during the financial year 2013/14, whereby donors had promised to contribute Tsh. 53.7 billion but managed to give only Tshs. 8.3 billion.³⁸⁰ Funds (capitation grants) for public schools are also not sufficient and do not reach the schools in time.

A teacher is a very important piece of the education puzzle. Building new classrooms and supplying teaching and learning materials alone will not improve the quality of education, for a school is like a machine and a teacher the machine operator. On that note, LHRC calls on the Government to seriously look into and address teachers' grievances in a bid to ensure realization of not only the right to education but rather the right to quality education. Teachers need to be motivated in order to give their best, and this can be achieved by timely payment of salary and allowances, among others.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

4.2.1.4 Performance in National Examinations 2014: From Division System to GPA System in Secondary Education

In 2014, the Government, through the Ministry of Education and Vocational Training (MoEVT), introduced a new grading system for secondary education national examinations. The previous grading system was based on Division, whereby a student could score Division I, II, III, IV, or 0. In the system, A was pass mark from 81-100, B was 61-80, C was 41-60, D was 21-30 and F was 0-20.

The new grading system is now based on GPA like in the higher education, whereby a student may score Distinction, which is GPA of 3.6-5.0; Merit, which is a GPA of 2.6-3.5; Credit, which is the GPA of 1.6-2.5; Pass, which is the GPA of 0.3-1.5; and Fail, which is the GPA of 0.0-0.2.

Table 19: The New Grading System

	Distinction	Merit	Credit	Pass	Fail
GPA	3.6 - 5.0	2.6 - 3.5	1.6 - 2.5	0.3 - 1.5	0.0 - 0.2

According to the new grading system, A=75-100; B+=60-74; B=50-59; C=40-49; D=30-39; E=20-29; and F=0-19.

National Standard 7 Examinations

The 2014 National Standard Seven Examination results were released in December 2014.³⁸¹ A total of 451,392 out of 792,122 pupils passed the 2014 National Standard Seven Examinations.³⁸² However, not all pupils who passed were selected to continue with secondary education in public schools. This was due to shortage of public secondary schools in Tanzania. There were 12, 432 students who passed the examination but were not selected for secondary education although the results represent an increase of 6.7% compared to the 2013 results.

381 See Mtanzania Newspaper, 438, 960 kwenda kidato cha kwanza mwaka 2015, 19th December, 2014; Mwananchi Newspaper, Wanafunzi 400,000 wachaguliwa kidato cha kwanza, 19th December, 2014.

382 Ibid.

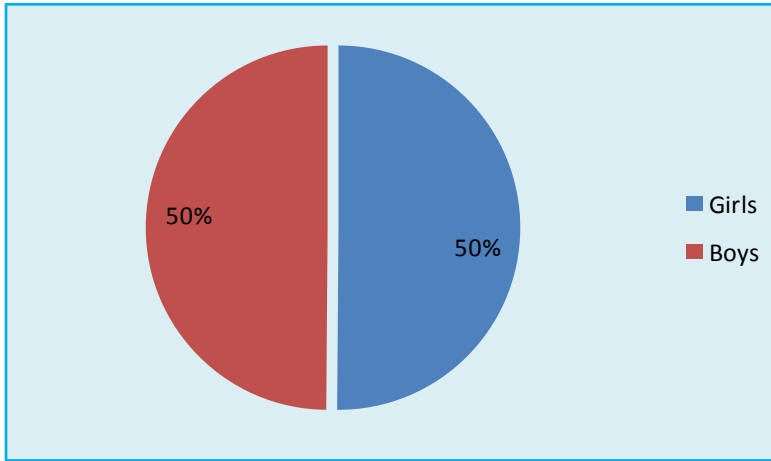


Figure 5: Percentage of Pupils Selected into the Secondary Schools

As the table above indicates, both boys and girls account for 50% of pupils who passed the examination. This shows that efforts to bring about equality in education have to a big extent succeeded.

Table 20: Number of Pupils Selected to Continue with Secondary Education in 2014

<i>Region</i>	<i>No. of Pupils Selected</i>
Dar es Salaam	36,610
Pwani	13,242
Lindi	7,527
Mtwara	15,327
Ruvuma	15,209
Morogoro	21,087
Iringa	14,650
Mbeya	28,780
Rukwa	7,852
Kigoma	12,264
Kagera	24,501
Mwanza	37,017
Mara	18,385
Shinyanga	13,439
Tabora	14,199
Singida	11,380
Dodoma	15,258
Manyara	12,249
Arusha	23,250
Kilimanjaro	26,192
Tanga	26,261
TOTAL	379,352

National Form 2 Examinations

The 2014 National Form Two Examinations results revealed an increase of 3.32%, passing rate compared to the previous year. A total of 375,434 out of 405,204 candidates passed the exams equivalent to 92.66%. Out of the candidates who passed the exams, 195,328 were girls and 180,106 were boys.

National Form 4 Examinations**Table 21: National Form Four Exam Results**

	2013		2014	
	Passed	Average	Passed	Average
Male			106,960	
Female			89,845	66.61%
TOTAL	235,227	58.25%	196,805	68.33%

The table above indicates that the passing rate for the form four national examinations in 2014 increased by 10.08% compared to 2013. It should be noted, however, that the increase has been boosted by the new grading system, which has widened the grade scopes. A total of 73,832 candidates, 27,991 being female and 45,841 male, equivalent to 30.72% of the successful candidates, scored Distinction, Merit and Credit GPAs,. Those who obtained Pass were 93,811 (39.04%) and those who failed were 72,667 (30.24%).

National Form 6 Examinations

In 2014, 95.98% of the candidates passed the National Form 6 Examinations. This is an increase of 8.13% compared to the 2013 results. The table below indicates, 97.66% of female candidates and 95.25% of male candidates who sat for the examinations passed.

Table 22: National Form Six Exam Results

	2013		2014	
	Passed	Percentage	Passed	Percentage
Male	29,744	87.21%	26,825	95.25%
Female	14,622	89.19%	12,080	97.66%
TOTAL	44,366	87.85%	38,905	95.98%

4.2.1.5 Conclusion: Have Education Programmes Been Effective?

Overall, the education programmes introduced by the Government over the past ten years have made a positive impact on education. Despite an increase in primary and secondary school enrolment through the PEDP and SEDP programmes there has been less focus given on the quality of education provided. The two programmes were designed to focus more on quantity, that is to increase enrollment by putting in place

more infrastructure, including building new classrooms. The quality of education, which is the outcome, has been given less attention and this has vastly contributed to the falling of the quality of education in Tanzania as attested by poor Form Four Results in 2012.

The lack of focus in quality has had a wider impact in the Tanzanian Community and has contributed to some students struggling at the university level because of poor foundation set in primary and secondary education. This will in the long run affect their chances of securing good jobs in the labour market, which gets more competitive every year.

LHRC calls upon the Government, through the Ministry of Education and Vocational Training, to re-examine its education programmes and ensure that they focus equally on inputs (quantity) and outputs (quality). Additionally, the Government needs to re-visit the issue of grading student's performance. Currently, as has been the case in the past, it is measured by one set of exam (national standard seven, form four and form six examinations), which may not reflect the true capabilities of the student.

4.2.2 Right to Safe and Clean Water

4.2.2.1 Availability of clean and safe water

It is impossible for any form of life to exist without water. We depend on water for our own survival and development. Water is used for different purposes such as drinking, farming, washing, generating electricity and so forth. Clean and safe water is a vital component of human life. It is a fact that more than 50% of a human body is made up of water. Also economically, water is very essential in the agricultural and industrial sectors.

The 1977 Constitution of the United Republic of Tanzania does not provide for the right to water.³⁸³ This right, derived from Articles 11 and 12 of the ICESCR and considered to be an integral part of international human rights law,³⁸⁴ has been defined by the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 15 as “the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses”.³⁸⁵ It is linked to rights to health, right to food and right to adequate standard of living; and

383 It however recognized under Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Article 24 of the UN Convention on the Rights of the Child (CRC).

384 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 275

385 Ibid (The Committee note that the ‘right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival’).

contains the following elements:³⁸⁶

- ♦ *Availability*: Water must be available in the sense that its supply is sufficient and continuous for all uses, including personal and domestic uses.
- ♦ *Quality*: The water that people are entitled to must be of adequate quality, meaning it should be clean and safe, free from any substances that would endanger the health of users.
- ♦ *Accessible*: Clean and safe water must be easy to access for all the people, without discrimination. It must be physically accessible, meaning that water facilities are located near the households and institutions; economically accessible, meaning that water facilities and services are affordable, not expensive; and must be provided without discrimination of any kind.

Tanzania has extensive sources of water, including the Indian Ocean, rivers, lakes and streams. The lakes include Victoria; Nyasa; Lake Tanganyika; Lake Manyara; and Lake Natron. The rivers include Kagera; Wami, Ruvu, Rufiji, and Ruaha to name but a few. The Government has a duty under international human rights law to ‘progressively ensure access to adequate sanitation, as a fundamental element for human dignity and privacy’ as well as ‘to protect the quality of drinking-water supplies and resources.’³⁸⁷

Water sector is one of the priorities in the National Strategy for Growth and Poverty Reduction (MKUKUTA) and experienced a significant increase in its budget since the introduction of the National Water Sector Development Strategy in 2006. Water supply and management is regulated by the National Water Policy (NAWAPO) of 2002,³⁸⁸ Water Supply and Sanitation Act of 2009³⁸⁹ and Water Resource Management Act of 2009. In urban areas there are urban water supply authorities (UWSAs), which are regulated by the Energy and Water Utilities Regulatory Authority (EWURA). Ministries responsible for water and sanitation are the Ministry of Water and Irrigation (MoWI) and Ministry of Health and Social Welfare (MoHSW).

386 Sepulveda, Magdalena et al (2004), Human Rights Reference Handbook, University for Peace, p. 274

387 Office of UN Human Rights, UN Habitat & WHO, *The Right to Water*, Fact Sheet No. 35, p. 3, Available at <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf> accessed 20th January, 2015.

388 The policy is implemented through the Water Sector Development Programme (WSDP) that was introduced by the Government in 2006. The Programme has four components, namely: Water Resources Management; Rural Water Supply and Sanitation; Urban Water Supply and Sewerage; an Institutional Development and Capacity Building. The components aim at achieving the National Development Vision 2025, which proclaims access to water supply services in urban areas by 20125.

389 The Act stipulates responsibilities of government authorities responsible for water supply and sanitation in the water sector.

4.2.2.2 Water Projects and Budgeting

In 2006, the Government, through the Ministry of Water (now the Ministry of Water and Irrigation), launched a programme called Water Sector Development Programme (WSDP). This Programme aimed at achieving improved water supply, sanitation and water management contained in the Development Vision 2025³⁹⁰ and National Strategy for Growth and Reduction of Poverty (MKUKUTA).

WSDP consists of three sub-programmes, namely: the Water Resources Management Programme (WRMP); the National Rural Water Supply and Sanitation Programme (NRWSSP); and the Urban Water and Sewerage Programme (UWSSP).³⁹¹ NRWSSP is meant to improve water and sanitation services in the rural population in terms of quality and quantity while UWSSP is meant to achieve the same in urban areas.³⁹² These programmes resulted into various water projects throughout the country, with a budget of \$1.42 billion funded by the World Bank, which contributed \$200 million, various other donors and the Government.³⁹³ Despite this huge investment in the water sector, that has witnessed installation of many water points in different parts of the country; the project has failed to reach most of its goals. It has been reported that during the beginning of the project, 54% of the people in the country had access to improved water source (water point), whereas the latest data from the World Bank shows that there has been a decrease of 1%, with 47% of Tanzanians still lacking access to improved water sources.³⁹⁴

Challenges facing the Water Projects:

- *Increased population*: This has been cited as one of the reasons for the projects to seem to be failing. Increasing population has resulted into an increase in water demand, which in turn has decreased access to water;
- *High maintenance costs*: Most rural communities find it very difficult or are unable to operate and maintain water systems;
- *Short-term solution approach*: Some experts have criticized the programme for targeting short-term rather than long-term solutions;
- *Water points failing*: Most of the water points fail and stop functioning at;

390 For a detailed account of the Development Vision see United Republic of Tanzania, (1999), "Development Vision 2025 for Tanzania" Dar es Salaam.

391 United Republic of Tanzania, Ministry of Water, *Water Sector Development Programme (2005-2015)*, July 2006, p. viii, available at http://www.egov.go.tz/egov_uploads/documents/Water_Sector_performance_report_en_sw.pdf, accessed 25th December, 2014.

392 Ibid, p. ix.

393 Jacob Kushner and Tom Murphy, *The World Bank's water failure in Tanzania*, November 24, 2014, available at <http://www.globalpost.com/dispatch/news/regions/africa/141121/world-bank-tanzania-water-failure>

394 *Ibid*.

- Mpwapwa, five water systems were put in place during the first phase of the project, but currently three of them are not functioning.³⁹⁵
- Masagali Village in Mpwapwa, a water storage tank built under the WSDP project cracked and the community could not raise enough funds to repair it.
- In another village called Chalodewa the engine of a water pump broke down and is yet to be fixed.
- Goima area, Kondoa District, a pump-based system built under the first phase of the WSDP project failed to function.
- Rukwa, nine out of ten projects had technical problems and had to be re-designed.



Picture 31: A Broken Water Pump at Mlanda Village

Source: The Ground Truth Project/Global Post

- *Underfunding of the water sector:* The Big Results Now (BRN) initiative, introduced in May 2013, has helped to improve water supply through the installation of 16,784 water points between July 2013 and June 2014.³⁹⁶ This has seen more people, more than 4 million people, getting access to clean and safe water. The water sector, however, is one of the least funded sectors as evidenced in the 2014/2015 in which the sector has been allocated a

³⁹⁵ Jacob Kushner and Tom Murphy, *The World Bank's water failure in Tanzania*, November 24, 2014, available at <http://www.globalpost.com/dispatch/news/regions/africa/141121/world-bank-tanzania-water-failure>

³⁹⁶ See the Ministry of Water and Irrigation website at <http://www.maji.go.tz/?q=en/big-results-nowbrn> (According to the Ministry website, between July 2007 and June 2013, 16, 062 were installed).

budget of a little over half-a-trillion (Tshs. 665.1 billion).³⁹⁷ Education and transportation receive the biggest portion of the budget at Tshs. 3.465 trillion and Tshs. 2.109 trillion respectively.³⁹⁸ Most of the funds in the sector's budget for the financial year 2014/15 have been set aside to improve urban and rural water infrastructure, including constructing 10 water wells in every Local authority.³⁹⁹

4.2.2.3 Water Problems Continue: The Case of Women and Girls in Rural Areas

Despite the existence of extensive water sources in Tanzania and introduction of various water projects, water supply for domestic and productive uses is still inadequate. Access to clean and safe water is low, particularly for people residing in rural areas, where the water problem is acute. Water problems in Tanzania particularly affect women and girls in rural areas, where fetching water is considered to be a role for women and girls, in the following ways:

- ♦ Women are forced to travel long distances in search for water, sometimes up to two kilometres;
- ♦ Girls also fetch water before they go to school, causing them to miss school and thus severely affecting their chances of academic success as they fall behind in class. They arrive at school late and tired, which reduces concentration.



Picture 32: Women fetching Water at Uwiro Village

Source: The Ground Truth Project/Global Post

397 Speech by The Minister for Finance Hon. Saada Mkuya Salum (MP) Introducing to the National Assembly, the Estimates of Government Revenue and Expenditure for Fiscal Year 2014/2015, p. 32.

398 *Ibid.*

399 *Ibid.*

According to World Vision Tanzania,⁴⁰⁰ women and girls in some villages spend up to three hours during rainy seasons and 6 hours during dry seasons in search of water, walking for up to 7 kilometers.⁴⁰¹ Fetching water causes girls to spend less time in school and contributing in school dropouts.⁴⁰² Scarcity of water sources, most of which are unclean, leaves them at a risk of contracting water borne diseases, including diarrhea, which is responsible for deaths of 250,000 children under the age of five in Eastern and Southern Africa.⁴⁰³

According to UNICEF, women and girls in Africa are the major victims of lack of access to safe water and sanitation facilities because they are the main providers of household water supply and sanitation.⁴⁰⁴ Lack of access to safe water and sanitation facilities reduces time for other activities and makes it difficult for girls menstruating to regularly attend school.⁴⁰⁵

4.2.3 Right to Health

Health is a human right, fundamental in realizing other rights, including the right life. This right is dependent on other socio-economic rights such as rights to food, housing, water and environment,⁴⁰⁶ as contained in different international and regional human rights instruments. States have a duty to achieve full realization of this right, which includes: reduction of stillbirth-rate, reduction of infant mortality and ensuring health development of a child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of diseases; and assure medical attention in the event of sickness.⁴⁰⁷

Health as a human right under international human rights law can be traced back to the United Nations Conference in 1945, after which the World Health Organization (WHO) recognized this right in the Preamble of its Constitution upon its establishment a year

400 A Christian relief, development and advocacy NGO. Among its roles is to increase access to and supply safe and potable water to households in rural communities.

401 See World Vision Tanzania website at <http://www.wvi.org/tanzania/article/half-century-later-water-finally-flows-mwasung%E2%80%99ho>

402 Ibid.

403 UNICEF, *Gender and water, sanitation and hygiene (WASH)*, available at http://www.unicef.org/esaro/7310_Gender_and_WASH.html, accessed 12th February, 2015.

404 Ibid.

405 Ibid.

406 Sepulveda, Magdalena (2004), *Human Rights Reference Handbook*, University for Peace, p. 284; Committee on Economic, Social and Cultural Rights, Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000), Twenty-second session, Geneva, 25 April-12 May 2000, Agenda item 3.

407 International Covenant on Economic, Social and Cultural Rights, Article 12(2).

later.⁴⁰⁸ This laid the platform for incorporation of the right to health in international human rights instruments.

The right to health is now contained in various international and regional human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR);⁴⁰⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);⁴¹⁰ UN Convention on the Rights of the Child (CRC);⁴¹¹ Convention on the Protection of the Rights of Migrant Workers and Members of their Families;⁴¹² International Convention on Elimination of All Forms of Racial Discrimination (CERD);⁴¹³ African Charter on the Rights and Welfare of the Child (ACRWC);⁴¹⁴ African Charter on Human and Peoples' Rights (ACHPR);⁴¹⁵ American Convention on Human Rights;⁴¹⁶ European Social Charter;⁴¹⁷ and the Universal Declaration of Human Rights (UDHR).⁴¹⁸

Several elements have been identified as entailing the right health that the state must guarantee regardless of whether or not there are sufficient resources. These elements are: access to maternal and child health; immunization against major infectious diseases; appropriate treatment of common diseases and injuries; essential drugs; adequate water and basic sanitation supply; freedom from serious environmental health threats.⁴¹⁹

Tanzania as a state and party to key international human rights instruments, including the ICESCR, has certain obligations towards its citizens as far as the right to health is concerned. One of these obligations is to respect equal access to health services and

408 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 283.

409 Article 12 (Article 12 (1) reads "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.").

410 Articles 12 and 14.

411 Article 24.

412 Article 28.

413 Article 5.

414 Article 14.

415 Article 16.

416 Articles 10 and 11.

417 Article 11.

418 Universal Declaration of Human Rights, 1948, Article 25 (1) (*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.*).

419 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 283.

refraining from activities which may negatively affect people's health.⁴²⁰ The other obligation is to protect; which includes taking measures to ensure equal access to health services provided by third parties and protecting people from health infringements by third parties.⁴²¹ The third and last obligation is to fulfill; which includes adopting a national health policy and allocate sufficient budget for the health sector.⁴²²

The right to health is not explicitly stipulated in the 1977 Constitution of the United Republic of Tanzania but implied under Article 11(1), according to which the Government has a duty to ensure realization of the right to social welfare at times of sickness. The 2014 Proposed Constitution, however, includes the right to health under Article 51.

Parameters of the Right to Health

There are four major factors which guide the guarantee of full realization of the right to health, as follows:

- *Availability*: This means that health facilities and services must be available and adequate. There must be essential drugs, sufficient number of medical staff, hospital buildings and sanitation facilities.⁴²³
- *Accessibility*: Health facilities and services must be accessible to every person without discrimination of any kind.⁴²⁴ These facilities and services must also be physically accessible in the sense that all kinds of people, including those with disability and the elderly, can reach them. Additionally, the services should be affordable for all people in line with the principle of equity and people should be able to seek, receive and impart health-related information.⁴²⁵

420 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 283.

421 Ibid.

422 Ibid; See also African Commission on Human and Peoples' Rights decision in Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire (Communication Nos. 25/89, 47/90, 56/91, 100/93, Ninth Activity Report 1995- 1996, cited in Sepulveda, Magdalena (2004), *Human Rights Reference Handbook*, University for Peace, p. 283.

423 Committee on Economic, Social and Cultural Rights, Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000), Twenty-second session, Geneva, 25 April-12 May 2000, Agenda item 3, para 12; Sepulveda, Magdalena (2004), *Human Rights Reference Handbook*, University for Peace, pp. 283 and 284; Karin Wiedenmayer, *Access To Medicines, Medicine Supply: Lessons Learnt In Tanzania And Mozambique*, A capitalization report established in the frame of the SDC Backstopping Mandate 2004 of the Social Development Division's Health Desk, p. 5, available <http://apps.who.int/medicinedocs/documents/s18422en/s18422en.pdf>, accessed 28th December, 2014.

424 Ibid.

425 Ibid.

- *Acceptability*: The health facilities and services must command respect of the local community by being culturally acceptable and able to improve their health status.⁴²⁶
- *Quality*: This is an important component of health services; and in order to achieve quality, there are must be skilled medical staff, essential drugs and equipment, adequate sanitation and adequate buildings.⁴²⁷

4.2.3.1 Health Facilities in Tanzania

According to the Ministry of Health and Social Welfare (MoHSW), there are 6, 878 health facilities in Tanzania Mainland.⁴²⁸ This number is inclusive of government and private health facilities. These health facilities provided health care at different levels as indicated in the table below.

Table 23: Levels in Provision of Health Services in Tanzania

Infrastructure Level	Administrative Level	Target Population	Services Provided
Village Health Service	Community	<5,000	Community-based preventive and promotive health services
Dispensary Services	Village	6,000 to 10,000	Preventive, promotive and outpatient curative health services, outreach care.
Health Centre Services	Ward	50,000	Preventive, promotive, outpatient, curative, maternity, inpatient services emergency surgery and blood transfusion and laboratory services.
District Hospitals	District	500,000	In addition to the services offered at HC other general services are provided. It also provides in-service training, consultation and research to community based health care programmes

426 Ibid.

427 Ibid.

428 United Republic of Tanzania, Ministry of Health and Social Welfare, *Human Resource for Health and Social Welfare Country Profile 2013/2014*, Human Resources Development Directorate 2014, page 10.

Infrastructure Level	Administrative Level	Target Population	Services Provided
Regional Referral Hospitals	Region	>1,000,000	In addition to services offered at the District hospital, Region has Specialists in various fields . Such services include; psychiatry, ear, nose and throat (ENT), ophthalmology, dentistry, intensive care, Gyn&Obs, radiology, pathology, higher level surgical and medical services
Zone, Specialized, Consultant and National Hospitals	Zone and National		These provide comprehensive specialist services. In addition, they are involved in teaching and research.

Source: MoHSW 2014

The 6, 878 health facilities in Tanzania Mainland are divided as shown in the table below in the 6 levels of provision of health services:

Table 24: Number of Health Facilities at 6 Levels of Health Service Delivery in Tanzania

Facility Level	2012			2013		
	Private	Government	Total	Private	Government	Total
Dispensary	1, 358	4,322	5,680	1,144	4,469	5,913
Health Centre	244	498	742	222	489	711
Hospital	129	112	241	140	114	254
Total	1,731	2,932	6,663	1,806	5,072	6,878

Source: MoHSW Budget Speech 2014

4.2.3.2 Situation of Health Services in Tanzania

Health services in Tanzania are regulated by the Ministry of Health and Social Welfare (MoHSW), which is responsible for policy formulation and overall supervision of health services across the country.⁴²⁹ Within the Ministry, there is a department called the Medical Stores Department (MSD), which is a key player in provision of health services, responsible for procurement and distribution of drugs at the national level.⁴³⁰

429 See United Republic of Tanzania, Ministry of Health (2003), *National Health Policy*, p. 2.

430 See Medical Stores Department Act, No. 13 of 1993.

Recent studies by the LHRC on the provision of health services in Tanzania⁴³¹ and different stakeholders of health services has revealed the following major problems that hinder provision of quality health services:

♦ **Shortage of essential medicines, medical supplies and equipment**

Health facilities, particularly public hospitals, still face shortage of essential medicines, medical supplies and equipment necessary for provision of quality health services. The problem is acute in rural areas where majority of Tanzanian population resides.

Equipment that are in short supply include laboratory equipment, ultra-sound machines and beds; and some of the equipment are not fully functional. Recent statistics by the World Health Organization (WHO) indicate that the country has 7 beds per 10,000 people,⁴³² which has rendered sharing of beds by two or more patients a common practice in public health facilities in Tanzania.⁴³³

There is also the problem of lack of regular check and repair of equipment and irregular supply of essential drugs, leading to shortage of medicines. The unavailability of essential medicines and medical supplies force doctors in many cases to refer patients to higher-level health facilities, which leads to patient congestion.

Shortage of essential medicines, medical supplies and equipment is mainly attributed to shortage of funds for the health sector.⁴³⁴ The budget allocated for provision of public health services is insufficient and procurement of medicines and medical supplies at MSD is usually accompanied by long and complex procedures. As well as late supply of the medicines and supplies, which also contributes to shortage of essential medicines and medical supplies?

431 The study was conducted in November and December, 2013 at six health facilities in Dar es Salaam Region, namely Juhudi Dispensary, Zakhem Dispensary, Mwenge Dispensary, Sinza Hospital, Mwananyamala Hospital, Amana Hospital, Temeke Hospital and Muhimbili National Hospital. The study involved interviews with clinical officers, medical doctors, medical officers, assistant medical officers, nursing officers, health officers, medical technicians, laboratory technicians, pharmacists, medical attendants, hospital health secretaries and patients.

432 Prof. Phares G.M. Mujinja & Dr. Tausi M. Kida (2014), *IMPLICATIONS OF HEALTH SECTOR REFORMS IN TANZANIA: POLICIES, INDICATORS AND ACCESSIBILITY TO HEALTH SERVICES*, The Economic and Social Research Foundation (ESRF): Background Paper No. 8, Discussion Paper 62.

433 Ibid.

434 Prof. Phares G.M. Mujinja & Dr. Tausi M. Kida (2014), *IMPLICATIONS OF HEALTH SECTOR REFORMS IN TANZANIA: POLICIES, INDICATORS AND ACCESSIBILITY TO HEALTH SERVICES*, The Economic and Social Research Foundation (ESRF): Background Paper No. 8, Discussion Paper 62, p. 28.

Table 25: Government Expenditure on Health in the Last Three Years

<i>Year</i>	2014/2015	2013/2014	2012/2013
<i>Budget Allocated</i>	1,588.2 billion	1,498 billion	1,288.8 billion
<i>Percent</i>	8.1%	8.2%	10%

Source: Budget Speeches (2012-2015)

As indicated in the table above, the Government allocated Tshs 1,498 billion for the health sector⁴³⁵ in the financial year 2013/2014, compared to the Tshs 1,288.8 billion allocated for the sector in the financial year 2012/2013, which marks an increase of 16.2 percent.⁴³⁶ This amount equals to 8.2% of the total budget, which is 18,248.98 billion and thus below the 15% standard set in the 2006 Abuja Declaration⁴³⁷.

For the financial year 2014/2015, the budget for the health sector is 1,588.2 billion (1,588.2 trillion)⁴³⁸ out of the 19, 649.5 billion, which is the total budget.⁴³⁹ This budget equals 8.1% of the total budget, hence once again short of the standard proposed in the Abuja Declaration of 2006. The table indicates that the budget of the health sector has been increasing considerably in recent years but nonetheless still insufficient to meet increasing challenges that the sector faces, including growing population. In terms of meeting the Abuja Declaration standard, the budget has been decreasing, as the table above shows.

♦ Shortage of health workers

Despite an increase of health workers graduating from different health institutions inside and outside the country compared to the situation a decade ago, there is still severe shortage of health workers, a problem that is visible in both the public and private sectors. Staff shortage is more acute in rural areas due to the fact that most health staff are concentrated in urban areas.⁴⁴⁰ According to MoHSW human resource profile, 74% of medical doctors are in urban areas.⁴⁴¹

435 United Republic of Tanzania Ministry of Finance Government Budget for Financial Year 2013/2014, Citizens' Budget Edition, p. 11, Issued by Ministry of Finance in collaboration with Policy Forum, Available at http://www.mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET_%20Final_English_2013_14.pdf

436 Ibid, p. 11.

437 See World Health Organization, *The Abuja Declaration: Ten Years On*, p. 1, available at <http://www.who.int/healthsystems/publications/Abuja10.pdf>

438 Speech by the Minister For Finance Hon. Saada Mkuya Salum (MP) Introducing To The National Assembly, The Estimates Of Government Revenue And Expenditure For Fiscal Year 2014/2015, pp. 32 & 33.

439 Ibid, p. 29.

440 Prof. Phares G.M. Mujinja & Dr. Tausi M. Kida (2014), *IMPLICATIONS OF HEALTH SECTOR REFORMS IN TANZANIA: POLICIES, INDICATORS AND ACCESSIBILITY TO HEALTH SERVICES*, The Economic and Social Research Foundation (ESRF): Background Paper No. 8, Discussion Paper 62, p. 11.

441 United Republic of Tanzania, Ministry of Health and Social Welfare, *Human Resource for*

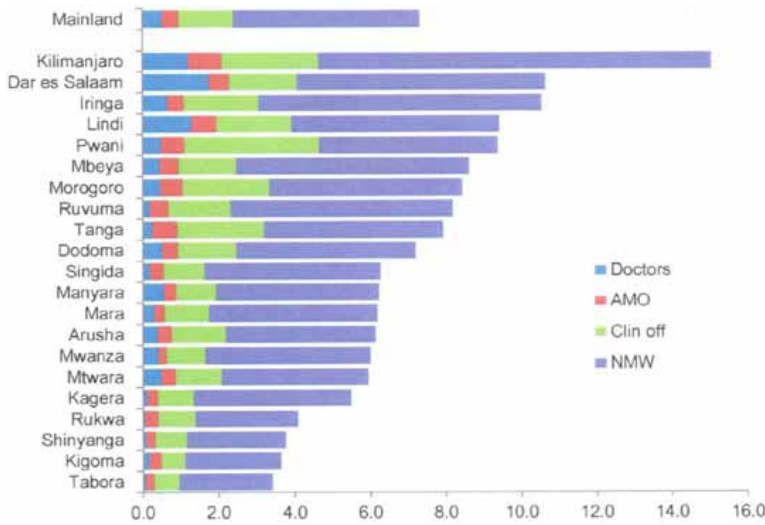


Figure 6: Health Workers per 10,000 Populations by Region

Source: MoHSW, 2013

As the table above indicates, in 2013 Dar es Salaam and Kilimanjaro, which are predominantly urban areas, host a higher number of health staff compared to other regions like Kigoma and Tabora, which are predominantly semi-urban and rural. According to the human resource profile of the MoHSW, the total health workforce stand at 70,244, which serves the more than 44 million Tanzanians, an estimation of 15 per 10,000 population.⁴⁴² Dar es Salaam, with an estimated population of 4.7 million, has 10,075 health workers.⁴⁴³ Kilimanjaro, with an estimated population of 1.6 million, has the second highest number of health staff at 5,911, closely followed by Mbeya, which has 5,691 health staff serving an estimated population of 2.8 million.⁴⁴⁴

Table 26: Number of Some of the Health Workers Available at Health Facilities

<i>Health Worker</i>	<i>Faith-based Org.</i>	<i>Private</i>	<i>Public</i>	<i>TOTAL</i>
Medical Officers	236	34	1,439	1,709
Assistant Medical Officers	244	20	1,473	1,737
Nursing Officers	316	21	1,624	1,961
Assistant Nursing Officers	1,231	55	4,615	5,901
Clinical Officers	646	128	5,390	6,164
Medical Attendants	4,545	539	15,538	20,622
Health Secretaries	48	1	344	393
Nurses	2,647	364	12,069	15,080

Health and Social Welfare Country Profile 2013/2014, Human Resources Development Directorate 2014, page 26.

442 Ibid, p. 14.

443 Ibid.

444 Ibid.

Pharmacists	42	1	312	355
Physiotherapists	47	1	135	183
Radiologists	19	6	81	106

Source: MoHSW 2014

Despite boasting the highest number of health staff in the country, there is still serious shortage of key health workers in Dar es Salaam, including at the Muhimbili National Hospital as the table below indicates.

Table 27: Vacancies at Muhimbili National Hospital

Facility Level <i>Profession</i>	Muhimbili National Hospital		
	<i>Available</i>	<i>Required</i>	<i>Shortage</i>
Medical Specialists	178	382	204
Assistant Dental Officer/Dental Therapist	-	-	-
Assistant Medical Officer	10	-	-
Assistant Nursing Officer	730	1,613	883
Allied Health Professionals	245	337	92
Clinical Assistants	-	-	-
Clinical Officers	2	-	-
Dental Specialists & Dental Officers	-	8	8
Support Staff	196	289	93
Environmental Health Staff	2	4	2
Assistant Health Laboratory Technologist	18	14	+
Health Laboratory Scientists	28	3	-
Health Laboratory Technologists	37	63	26
Managers	-	-	-
Medical Attendants	730	826	96
Medical Doctor	207	265	58
Enrolled Nurse	256	646	390
Nursing Officer	94	919	825
Allied non-Health Professionals	201	268	67
Pharmacists	18	27	9
TOTAL	2,952	5,664	2,753

Source: MoHSW 2014

♦ Problems with accessibility of health services

Health services continued to be not easily accessible for majority of Tanzanians in the year 2014. For those in urban areas, the problem has been mainly that of economic accessibility whereby they fail to keep with the medical fees, which are high taking into account that more than 30% of Tanzanians live below the poverty line.⁴⁴⁵ These

445 Ibid, p. 24.

people can hardly afford two meals a day and are therefore not in a position to afford high medical fees.

Patients have also been complaining against corrupt practices by health staff, whereby they are solicited for bribe as a condition for receiving treatment. This has been a common practice amongst health facilities in Tanzania and health institutions have been included among the most corrupt institutions. It was revealed in December, 2014, for instance, that doctors and nurses were soliciting bribes from patients with impunity at Bariadi District Hospital in Simiyu Region.⁴⁴⁶ PCCB office in the region discovered that patients were solicited bribes ranging from Tshs. 3000 to 5000 before they could get any health services.⁴⁴⁷ According to a study conducted by the regional PCCB office, nurses are more corrupt than doctors in Simiyu Region, and apart from soliciting bribes they use abusive language to patients, especially expectant mothers.⁴⁴⁸

♦ Grievances of health workers

Health workers generally work under difficult conditions, given the unavailability of sufficient essential medical supplies and medicines, which is among their major grievances. Other grievances include poor salaries, lack of promotion, heavy work load and lack of motivation. These grievances have resulted in the provision of poor health services and care.

4.2.3.3 Maternal and Child Health

Under Millennium Development Goals number 4 and 5, the Government of Tanzania is tasked with reducing child mortality and improving maternal health respectively by the year 2015. Considerable progress has been made in recent years in achieving Goal 4 whereas slow progress has been made in improving maternal health. Recent statistics show a decrease in infant mortality from 58 per 1000 live births in 2008 to 51 per 1000 live births in 2010.⁴⁴⁹

Over the years, the Government has made some key health interventions in a bid to improve maternal health in Tanzania. Nevertheless, maternal health remains to be a major public concern in the country as is the case in other developing countries, with Tanzania ranked among top 20 countries with the highest rate of maternal mortality.⁴⁵⁰

446 Salehe Edward, *Hospital staff under scrutiny in wake of allegations of rampant corruption*, The Guardian, 15th December, 2014.

447 Ibid.

448 Ibid.

449 Prof. Phares G.M. Mujinja & Dr. Tausi M. Kida (2014), *IMPLICATIONS OF HEALTH SECTOR REFORMS IN TANZANIA: POLICIES, INDICATORS AND ACCESSIBILITY TO HEALTH SERVICES*, The Economic and Social Research Foundation (ESRF): Background Paper No. 8, Discussion Paper 62, p. 17.

450 The United Republic of Tanzania, National Audit Office, *PERFORMANCE AUDIT ON*

Based on the 2010 Demographic and Health Survey, mortality ratio in Tanzania stands at 454 for every 100,000 live births.⁴⁵¹

Table 28: Trend of Maternal Mortality Ratio, 200-2010

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

Source: National Bureau of Statistics – Tanzania Demographic and Health Survey 2010

So far, the Government has taken various initiatives to address the problem of maternal mortality, including the revision of the National Health Policy in 2007 and introductions of the Health Sector Reforms and Health Sector Strategic Plan (2003-2007), Reproductive and Child Health Strategy (2005-2010) and the National Road Map Strategic Plan to Accelerate the Reduction of Maternal and Newborn Mortality (2008-2015)⁴⁵². Ministry of Health and Social Welfare (MoHSW), is responsible for developing policies and standards for health care entities. Prime Minister’s Office – Regional Administration and Local Government (PMO-RALG), responsible for implementation of health policies; Regional Medical Officers (RMO), under Regional Authorities; District Medical Officers (MCO), under Local Government Authorities; and health facilities.⁴⁵³

According to the National Road Map Strategic Plan to Accelerate Reduction of Maternal, Newborn and Child Deaths in Tanzania 2008 – 2015, direct causes of maternal mortality in Tanzania include obstetric hemorrhages, obstructed labour, pregnancy-induced hypertension, eclampsia, sepsis and abortions.⁴⁵⁴ General challenges facing the health sector, include shortage of essential medicines and medical supplies, shortage of skilled health workers, and inadequate infrastructure also contribute to maternal deaths. At the moment, at least 50% of women do not deliver in health facilities and thus lack skilled attendance at child birth, which contributes to maternal mortality.

The 2011 Report of the Controller and Auditor General on monitoring, evaluation and

THE MONITORING, EVALUATIONS AND BUDGET ALLOCATION FOR MATERNAL HEALTH CARE ACTIVITIES IN TANZANIA, A Report of the Controller and Auditor General of the United Republic of Tanzania, p. vii, available at http://www.tanzania.go.tz/egov_uploads/documents/777_sw.pdf, accessed 28th June, 2014.

451 Ibid, p. 1.

452 Ibid, p. 3.

453 Ibid, pp. 10 & 11.

454 Shija, Angela et al (2011), *Maternal health in fifty years of Tanzania independence: Challenges and opportunities of reducing maternal mortality*, Tanzania Journal of Health Research DOI: Volume 13 (Suppl 1), p. 1, available at <http://www.ajol.info/index.php/thrb/article/view/71723/65637>, accessed 28th December, 2014.

budget allocation for maternal health care revealed three major problems, namely: inadequate monitoring of the level of maternal health care in Tanzania; inadequate provision of guidance to health facilities on maternal health education; and lack of budget model for funds allocated for maternal health.⁴⁵⁵ To what extent the Government has addressed these challenges remains to be seen.

Monitoring and evaluation are important components that guarantee success in any program. LHRC calls upon the Ministry of Health and Social Welfare (MoHSW) to adequately monitor and evaluate its various programmes in order devise ways to improve maternal and child health. There is also a need to increase funding for the health sector given the growing nature of the Tanzanian population and to increase provision of maternal health education.

4.2.4 Right to Food and the Situation of Food Security

4.2.4.1 Food as a Human Right

Right to food has been defined by the Committee on Economic, Social and Cultural Rights (CESCR) as:

*The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.*⁴⁵⁶

The right to food is contained in the ICESCR, which states that everyone has a right to adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.⁴⁵⁷ States Parties to ICESCR, Tanzania inclusive, have a duty to take appropriate steps to ensure realization of this right,⁴⁵⁸ including improving methods of food production, conservation and distribution.⁴⁵⁹ According to CESCR, right to food is realized when “every man, woman and child, alone or in community with others, have physical and

455 The United Republic of Tanzania, National Audit Office, PERFORMANCE AUDIT ON THE MONITORING, EVALUATIONS AND BUDGET ALLOCATION FOR MATERNAL HEALTH CARE ACTIVITIES IN TANZANIA, A Report of the Controller and Auditor General of the United Republic of Tanzania, p. viii, available at http://www.tanzania.go.tz/egov_uploads/documents/777_sw.pdf, accessed 28th December, 2014.

456 Office of the High Commissioner for Human Rights, CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5), para 8, available at <http://www.refworld.org/pdfid/4538838c11.pdf>, accessed 26th December, 2014.

457 ICESCR, Article 11(1).

458 Ibid.

459 Ibid, Article 11(2).

economic access at all times to adequate food or means for its procurement.⁴⁶⁰

Right to food is fundamental to the enjoyment of other human rights, including the right to health, right to education and right to life; and is linked to inherent dignity of the human person.⁴⁶¹ It involves three key elements: availability, accessibility and adequacy.⁴⁶²

Availability: This means that people should be able to feed themselves and their families directly through food production by cultivation and other economic activities like fishing and animal husbandry. It also means food should be available for purchase in markets and shops.⁴⁶³

Accessibility: Accessibility is both economic and physical. Economic accessibility implies that food should be affordable such that ordinary people can afford to acquire food without compromising other basic needs.⁴⁶⁴ Physical accessibility refers to accessibility of food by all people, including the elderly and persons living with disabilities.⁴⁶⁵

Adequacy: Food available must satisfy dietary needs, with necessary nutrients for physical and mental development, taking into account different factors including age, health and occupation.⁴⁶⁶

Food is essential to life. However, it is neither included as a human right in the current Constitution nor in the Proposed Constitution. LHRC recommends inclusion of this right in national legal framework.

4.2.4.2 Food Security Situation in Tanzania

Tanzania is heavily dependent on agriculture, which employs more than 80% of the population and one of the major contributors to the GDP, for food and exports.⁴⁶⁷ Despite being endowed with extensive tracks of arable land, agricultural yields

460 CESCR General Comment No. 12, para 6.

461 Ibid, para 4.

462 Officer of the High Commissioner for Human Rights, *The Right to Adequate Food*, Fact Sheet No. 34, p. 2, available at <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>, accessed 26th December, 2014

463 Ibid; CESCR General Comment No. 12, para 12.

464 Fact Sheet No. 34, p. 2; CESCR General Comment No. 12, para 13.

465 Ibid.

466 Fact Sheet No. 34, p. 3; CESCR General Comment No. 12, para 9.

467 Kiratu, Sheila et al (2011), *Food Security: The Tanzanian Case*, Series on Trade and Food Security, International Institute for Sustainable Development, p. 2.

remain low in Tanzania.⁴⁶⁸ According to the Ministry of Agriculture, Food Security and Cooperatives, Tanzania has 44 million hectares of arable land.⁴⁶⁹ However, only 23% of this land is currently used for effective cultivation.

In August, 2009, the Government launched a programme called *Kilimo Kwanza*, which literally translates “Agriculture First”, aimed at accelerating agricultural transformation in a bid to modernize and commercialize agriculture in Tanzania.⁴⁷⁰ The programme is the brainchild of Tanzania National Business Council (TNBC), whose members are from both private and public sectors.

Prior to the introduction of *Kilimo Kwanza*, the Government has introduced several other initiatives and programmes to boost and develop the agriculture sector to improve food security. These initiatives and programmes include *Azimio la Arusha* (Arusha Declaration of 1967), *Vijiji vya Ujamaa* (Villagelization Programme), Tanzania Development Vision 2025, National Strategy for Growth and Reduction of Poverty (NSGRP), and Agricultural Sector Development Programme (ASDP).⁴⁷¹ Unlike these initiatives and programmes, *Kilimo Kwanza* is an initiative by both the Government and the private sector.

Despite the existence of various programmes and initiatives, the agriculture sector in Tanzania is still faced with several challenges which cause food insecurity, including the use of traditional farming methods using low technology;⁴⁷² inadequate use of improved seeds and fertilizers, whereby farmers use an average of 19.3 kilograms per hectare, which is very low compared to Kenya’s 100 kilograms per hectare and only

468 Ibid.

469 Ministry of Agriculture Food Security and Cooperatives, KILIMO KWANZA: THE DECLARATION OF TANZANIA’S AGRICULTURAL TRANSFORMATION, Presented by Revelian S. Ngaiza, Head Unit of Investment Policies and Private Sector Development, Department of Policy and Planning at the *FAO-University of Nairobi -Regional Workshop on an Integrated Policy Approach to Commercializing Smallholder Maize Production* at Norfolk Hotel in Nairobi-Kenya June 6-7, 2012, available at http://www.fao.org/fileadmin/templates/esa/Workshop_reports/Smallholders_2012/Presentations_1/Ngaiza_Kilimo_Kwanza_Tanzania.pdf, accessed 24th December, 2014.

470 Ministry of Agriculture Food Security and Cooperatives, KILIMO KWANZA: THE DECLARATION OF TANZANIA’S AGRICULTURAL TRANSFORMATION, Presented by Revelian S. Ngaiza, Head Unit of Investment Policies and Private Sector Development, Department of Policy and Planning at the *FAO-University of Nairobi -Regional Workshop on an Integrated Policy Approach to Commercializing Smallholder Maize Production* at Norfolk Hotel in Nairobi-Kenya June 6-7, 2012, available at

http://www.fao.org/fileadmin/templates/esa/Workshop_reports/Smallholders_2012/Presentations_1/Ngaiza_Kilimo_Kwanza_Tanzania.pdf, accessed 24th December, 2014.

471 Ibid.

472 Kiratu, Sheila et al (2011), *Food Security: The Tanzanian Case*, Series on Trade and Food Security, International Institute for Sustainable Development, p. 2.

16.8% of households using improved seeds;⁴⁷³ and lack of irrigation infrastructure, with only 490, 392 hectares under irrigation out of 29.4 million hectares.⁴⁷⁴ Other challenges are poor storage facilities; unreliable rains; lack of adequate processing facilities to add value to produce; growing population; fluctuation of food prices; and poor rural transport infrastructure, which affects accessibility of some rural areas in terms of both input and output. These problems have largely contributed to food insecurity and malnutrition, with 8.3% of households in Tanzania having poor dietary intake due to insufficient intake of calories and diversity of diet.⁴⁷⁵

Only 10% of land cultivation in Tanzania is done by using tractor. 20% is done by using oxen, while the remaining 70% is done by using hand hoe.

LHRC calls upon the Government to strengthen its grip on agricultural programmes, including *Kilimo Kwanza*, and make sure farmers in the village benefits from technological advancements made in the sector instead of continuing to heavily rely on the hand hoe. There is also a need to increase supply of improved seeds to farmers and improve irrigation infrastructure so as to reduce overdependence on rain-fed farming.

4.2.5 Right to Social Security and Protection

4.2.5.1 Right to Social Security under International Human Rights Law

According to the International Labour Organization, social security refers to:

*“The protection society provides for its members through a series of public measures against economic and social distress that would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, or death.”*⁴⁷⁶

It is provided in a three-tier structure, which consists of social assistance schemes (tier one) providing services such as primary health, primary education and food security; mandatory schemes (tier two) which are usually compulsory and contributory in nature,

473 PCD Impact Assessment on Food Security in Tanzania, Consultation Workshop Module 2, Economic and Social Research Foundation (ESRF) & European Centre for Development Policy Management ECDPM, 17 September 2014, Dar Es Salaam, available at www.esrf.or.tz/docs/M2SC_Report.pdf, accessed 24th December, 2014.

474 Ibid.

475 PCD Impact Assessment on Food Security in Tanzania, Consultation Workshop Module 2, Economic and Social Research Foundation (ESRF) & European Centre for Development Policy Management ECDPM, 17 September 2014, Dar es Salaam, available at www.esrf.or.tz/docs/M2SC_Report.pdf accessed 24th December, 2014.

476 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 262

financed by employer and employee; and voluntary or supplementary schemes (tier three), which include personal savings, cooperative societies and private schemes.⁴⁷⁷ Benefits enjoyed under social security include medical care, sickness, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit and survivors' benefit.

The right to social security is included in several international instruments such as the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102); Universal Declaration of Human Rights,⁴⁷⁸ ICESCR,⁴⁷⁹ CEDAW,⁴⁸⁰ and CRC.⁴⁸¹ It involves five core elements,⁴⁸² the first one being *comprehensiveness*, which means that beneficiaries are protected from all circumstances which threaten their ability to earn an income. The second element is *universality*, which entails access to social security for everyone. The third element is *adequacy and appropriateness*, which suggest benefits provided to be sufficient and appropriate. The fourth one is *non-discrimination*, entailing that beneficiaries should not be discriminated in any way; and the last one is *respect for procedural rights*, which entails fair social security rules and effective legal remedies.

4.2.5.2 Situation of Social Security in Tanzania

In Tanzania, there are several social security schemes. These include the National Social Security Fund (NSSF), offering social security to employees of private sector and non-pensionable parastatal and government employees; the Public Service Pension Fund (PSPF), for employees of Central Government; the Parastatal Pensions Fund (PPF), for employees of both private and parastatal organizations; the Local Authorities Provident Fund (LAPF), for employees of Local Government and private

477 See The United Republic of Tanzania, *The National Social Security Policy*, Ministry of Labour, Youth Development and Sports, January 2003, p. 3.

478 Article 22 of UDHR stipulates that "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Article 25 also touches on social security, providing that "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."

479 ICESCR, Article 9 [The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.] & Article 10 (2) [Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits].

480 Article 11 of CEDAW recognizes the right of women to social security.

481 Article 26 of CRC recognizes the right of children to social security.

482 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 262

; and the National Health Insurance Fund (NHIF), providing health insurance to pensionable employees of the Central Government. Each of these schemes has been established by an Act of Parliament⁴⁸³ and regulated by the Social Security Regulatory Authority (SSRA), which was established in 2008.⁴⁸⁴ Among the functions of the SSRA are; regularly monitoring and reviewing the performance of social security sector; regulating and supervising the performance of social security schemes; and conducting programmes for public awareness.⁴⁸⁵

Apart from legal set up, there is also a policy framework on social security contained in the National Social Security Policy, which was adopted by the then Ministry of Labour, Youth Development and Sports in 2003. The policy provides for two types of social security, formal social security, which refers to conventional social security schemes stated above; and informal social security which is a family and community-based social protection through self-help groups.⁴⁸⁶ It sets its objectives in three key elements, namely; social assistance schemes, which are non-contributory and income-tests and provided to groups such as the elderly and people with disabilities; mandatory schemes, where employees and employers contribute; and private saving, where people voluntarily save for retirement, working capital and make insurance arrangements in case of emergency situations.⁴⁸⁷

Despite the existence of various schemes and more than ten years since the social security policy was put in place, service delivery in the social security sector has made little progress and is faced with the following problems:

- *Low Coverage:* Formal social security schemes only cover employees of the formal sector only, who constitute less than 10% of the Tanzanian labour force. The majority of the population, which resides in rural areas, are not covered.
- *Inadequate benefits:* The benefits provided by most schemes are not sufficient to address contingencies.
- *The schemes are not flexible:* Members do not have a say on how the funds contributed are invested.
- *Social security is regarded as a privilege:* Although members contribute to the various existing schemes, social security is still regarded as a privilege rather than a right.
- *Delays in making payments and bureaucracy:* Members usually do not receive

483 See National Social Security Fund Act, CAP 20; National Health Insurance Fund Act, CAP 395; Local Authorities Pensions Fund Act, CAP 407; Parastatal Organizations Pensions Scheme Act, CP 372; Public Service Retirement Benefits Act, CAP 371.

484 s. 4(1) of the Social Security (Regulatory Authority) Act, No. 8 of 2008

485 Ibid, S. 5(1).

486 The United Republic of Tanzania, *The National Social Security Policy*, Ministry of Labour, Youth Development and Sports, January 2003, pp. 5 & 6.

487 Ibid, pp. 4 & 5.

payments on time, forced to wait a long time, sometimes years before receiving their benefits.

4.3 Conclusion

Rights to education, water, health, food and social security are essential for both human and national development. They are also vital in our fight against poverty in Tanzania, realization of which would improve the overall wellbeing of the workforce and those who depend on them. If the people are healthy because of good access to adequate food and quality health services, then they can produce more, earn more and increase government revenue by spending more on both essential and non-essential goods and services. If children in schools are well-fed and learning materials are available, their chances of passing their exams will increase. If young girls in the villages do not have to worry about walking long distances in search for water, their school attendance will improve and there will be no school drop-outs.

Full realization of this right would therefore be a win-win situation. Thus the Government should not hide behind the principle of “progressive realization of social and economic rights” like many governments do across the third world. The principle does not exclude immediate obligations as States are required to take immediate steps towards progressive realization.⁴⁸⁸ They are also prohibited to take deliberate and unjustified retrogressive measures, which include making unjustified reduction in public expenditures devoted to implementing social rights, in the absence of adequate compensatory measures aimed to protect those affected.⁴⁸⁹

488 Sepulveda, Magdalena et al (2004), *Human Rights Reference Handbook*, University for Peace, p. 267.

489 Ibid, p. 281.

Chapter Five

Economic and Cultural Rights

5.0 Introduction

Most developing countries have not embedded economic rights in their Constitutions. Equally, the issue of cultural rights brings controversial among scholars of human rights due cultural diversity in the world. Therefore this chapter examines economic and cultural rights in Tanzania with special emphasis on economic rights and land related conflicts for the year 2014.

5.1 Economic Rights

Economic rights are considered to be the second generation of human rights which encompass the right to work, right to free choice of employment and to just and favourable conditions of work, the right to form and join trade unions, the right to strike, the right to social security; and the right to own property. The Office of the UN Commissioner on Human Rights category urges that the denial of economic rights can cause serious problems to the community than expected. For example denial on the right to own property by evicting people and demolishing their houses; causes state of homelessness to the community, economic rights causes conflicts, denial of right to work creates society classes (rich and poor), discrimination, abuse of power and corruption.⁴⁹⁰

The economic rights are protected under the *International Covenant on Economic, Social and Cultural Rights, 1966*. It is as well articulated in different treaties that promote group rights as indicated in other international conventions such as *the Convention on Elimination of All Forms of Discrimination against Women, (CEDAW) 1979* and *International Convention on the Rights of Persons with Disabilities, (ICRPD) 2006*. These conventions promote equal opportunities in employment and prohibit discrimination at work place against women and persons with disabilities.

The regional treaties such as the *African Charter on Human and Peoples Rights, (ACHPR), 1981* and the *African Protocol on the Rights of Women (Maputo Protocol)* also promote the economic rights in Africa. The ACHPR in its preamble, urges member States that when advocating for the right to development and enjoyment of civil and political rights, one cannot dissociate from economic, social and cultural rights.⁴⁹¹

490 Office of the United Nations, High Commissioner for Human Rights; Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet No. 33 page 4.

491 Preamble, of the ACHPR paragraph 7.

5.1.1 Economic Situation in the country

Tanzania is one of the t growing countries in Africa that works towards realization of the Development Vision 2025. In order to attain this, the country enhances its economy through different plans and programmes. In every financial years the government aims at achieving its Developmental plans by implementing the following;

- (a) The Annual Development Plan issued by the Ministry of Finance and Planning;
- (b) The Big Results Now in Areas Selected as Key Results;
- (c) National Strategy for Growth and Poverty Reduction Phase II (MKUKUTA II);
- (d) Public Sector Reform Programmes;
- (e) Millennium Development Goals 2015 (MDGs) ; and
- (f) The Ruling Party Election Manifesto 2010-2015 that comes to end next year.

The County's economy relies on the agricultural sector, which employs more than 80% of the population in rural Tanzania. However, the majority of Tanzanians engaging in agriculture are small scale farmers. They reflect poverty due to poor agricultural practices that are characterized by poor agricultural implements, lack of technology, shortage of capital, unpredictable climatic change.⁴⁹² These problems have been there for a number of years despite the prioritization of the sector in different government phases. For instance, during the first phase under the late Mwl. Julius, different agricultural programmes were set up, with slogans such as "*Siasa ni Kilimo*" (*Politics is all about agriculture*) and "*Kilimo ni Uti wa Mgongo*"⁴⁹³ (*Agriculture is the Backbone of the Economy*). Under President Jakaya M. Kikwete's leadership we have witnessed the introduction of "*Kilimo Kwanza*" (*Green Revolution*). However, all these initiatives have not been able to transform the livelihood of 80% Tanzanians in rural areas.⁴⁹⁴

Other sectors that the country depends on to drive its economy include tourism, transportation, mining, communication, and trade. Some sectors of the economy have improved while others have declined. The data below indicates that there is steady growth in communication, while agriculture has remained stable, with 4.3% growth rate. Importation of goods growth rate has grown by 6.6% mainly due to high demand of fuel in the country by 27.4%.⁴⁹⁵

492 URT, Agricultural Sector Development Programme (ASDP), 2005.

493 *Ibid.*

494 *Ibid.*

495 PWC Insight and Analysis "*Understanding Tanzania's 2014/2015 National Budget*" Commentary 2014

LHRC is concerned with the decline of the growth rate of important sectors that can employ many people in the country. The table below indicates that growth rate in export of goods and services, fishing sector, transport sector and manufacturing has declined.⁴⁹⁶

Table 29: Export of Goods and Services

Sector	Value in 2012	Value and Decrease/Increase in % in 2013	
		Value	Decrease/Increase
Trade: Exportation of Services	USD 8,675 mn	USD 8,532.0 mn	1.7% Decrease
Trade: Importation of goods	USD 12,678 mn	13,517.6 mn	6.6% Increase
Agriculture			4.3% Increase as in 2012
Other Sector trends in growth rate in percentages			
Fishing	2.9%	2.2%	0.7% Decrease
Transport	7.1%	6.2%	0.9% Decrease
Construction	7.8%	8.6%	0.8% Increase
Manufacturing	8.2%	7.7%	0.9% Decrease
Communication	20.6%	22.6%	2% Increase

Source: Extract from The budget speech - Ministry of Finance

LHRC urges the Government to set priorities depending on the needs of its people. Long-term plans should be well articulated by key players in development so as to enhance participation. For instance, the issues of Big Results Now (BRN) are not clearly understood by most Tanzanians, including personnel in key ministries and departments. BRN is implemented through the Presidential Delivery Bureau, thus other players feel uncomfortable to explain in a nutshell what BRN aims at achieving. LHRC observed this dilemma in different district councils through ward councilor trainings.

Again, in order for BRN to be sustainable, focusing in the six results areas identified in initial plan is vital. These areas are education, water and sanitation, health, electricity, agriculture, energy, and resource mobilization. For example, LHRC has observed that in 2014, the judiciary adopted BRN to fast-track cases that have been pending in courts for years. This is a good plan for the provision of access to justice as delay of cases has been one of the most serious impediments of the right to access to justice. Needless to say, quality of judgment and justice delivery in timely manner rather than

496 *Ibid.*

the numbers (quantity) should be a priority. Therefore, LHRC urges the government to implement various programs that would impact on livelihood of its citizens. Public participation should be paramount; otherwise the “*failure to plan is planning to fail*” quote will be relevant at this point.

5.1.2 The Situation of the Country’s National Debt

Tanzania, like most other developing countries, faces a challenge of having a huge national debt.⁴⁹⁷ The country struggles to repay its national debt, which keeps on growing as there is interest appended to it on yearly basis. For instance, between July, 2013 to April, 2014 the Government paid 1,694.53 billion Tshs. Amongst the East African countries, Tanzania ranks third on the size of national debt at 42.7 percent of its Gross Domestic Product (GDP). Percentages of the debts of other East African countries are as follows:

Table 30: National Debt Compared

Country	Kenya	Burundi	Tanzania	Uganda	Rwanda
National Debt in %	53.5	47.1	42.7	30.7	23.5

Source: Extract from IMF and CIA report⁴⁹⁸

In 2013, the Government, through the Ministry of Finance, made the national debt sustainability analysis and came up with the following recommendation to the cabinet on how to manage the National Debt.⁴⁹⁹

497 The National Debt refers to the amount of government debt a country has. It is sometimes referred to as “*public sector debt*”. External debt includes all the debts a country has (both public and private sector) owe to foreign companies and individuals.

498 www.economicshelp.org/blog/774/economics/list-of-national-debt-by-country/ accessed on 12th December, 2014.

499 The URT, Ministry of Finance, National Debt Sustainability Analysis Report, September 2013 page 32.

1. Fiscal consolidation is imperative to ensure long-term debt sustainability therefore; the Government should maintain macroeconomic stability; prudent management of public debt; monitoring and managing of any potential contingent liabilities arising from issuance of guarantees.
2. The Government is advised to use other sources to finance development projects such as Public Private Partnership (PPP) arrangement, issuance of Municipal Bonds, Unit Trust of Tanzania project financing in order to reduce debt burden.
3. The Government should strengthen capacity in debt management at the Ministry of Finance by hastening establishment of the Debt Management Office.
4. The Government should recognize the actual contingent debt arising from guarantees issued to MDAs and liabilities from Government employees' contributions to pension funds as part of the domestic debt and provide funds for servicing these liabilities.
5. The Government should deploy non-concessional loans strictly to finance projects with high financial and economic returns, while putting more efforts in soliciting funds from concessional sources such as China, Japan and South Korea.
6. The Government should continue to develop the domestic financial markets to enable the government to substitute external borrowing with domestic borrowing at relatively cheaper cost and risk.
7. Cognizant of the debt service implication from the issuance of Sovereign Bond, the Government may consider establishing a sinking fund with a view to smoothen the debt service profile.

LHRC urges the government to effectively implement the recommendations given following the study analysis, in particular recommendation No.2, which emphasizes on alternative funding sources of development projects such as Public Private Partnership (PPP). The proposed partnership works effectively where unnecessary bureaucratic procedures are reduced or removed. Therefore, there is a need for the Government to conduct a study on PPP by engaging different developmental partners abroad and within the country. Further, the Tanzania Investment Centre (TIC) should identify potential areas for PPP to be made available in public domain.

Furthermore, the Government should diversify its economy by harnessing unexploited opportunities in natural resources, review contracts in natural resources, improve transport infrastructural networks especially Air Tanzania so as to enhance tourism sector, reduce unnecessary barriers at the Dar es Salaam Port, and improve other ports

in Tanga and Mtwara. Through these initiatives, the country will be able to generate more funds internally rather than depending on foreign aid, affecting the country every year especially on development programmes.

5.1.3 Right to own Property

Right to own property is protected under *the Constitution of United Republic of Tanzania, 1977*.⁵⁰⁰ The Constitution, however, does not clearly define property, leaving it open to different interpretations, including landed and non-landed properties, movable and immovable properties.

5.1.3.1 Sources of Land-related Conflicts in Tanzania

In recent years, land conflicts in Tanzania have intensified, to the extent that in 2014 the Parliament formed a special parliamentary committee to probe into the matter. Subsequently, LHRC conducted a study on related-conflicts in several districts in Tanzania Mainland in which land conflicts have been regular. The nature of land conflicts determined the interventions and/or recommendations needed to solve the land disputes. LHRC's study revealed the following as notable causes of land-related conflicts in the districts that were surveyed in Morogoro, Kagera and Manyara Regions:

- *Political leaders taking sides:* In a community where there are pastoralists and farmers, political leaders tend to take sides, usually with the rich against the poor majority. This was revealed by PAICODEO, a pastoralist NGO based in Morogoro, following its study during the local government elections, whereby one respondent was quoted saying that:

“Hawa wafugaji huku ni shida kabisa hawatakiwi Kilosa kabisa, CCM imepoteza viti vingi vya kwenye uchaguzi wa Serikali za Kijiji vimeenda CHADEMA hususani hapa Kilosa mjini kwa sababu wagombea wa CCM waliungwa mkono na matajiri wa Kimasai hapa ambao ni wafugaji wakubwa. Wananchi kwa hasira wakawachagua wagombea wa CHADEMA” “Pastoralists are a big problematic and are not accepted in Kilosa, CCM lost many seats in Local Government elections which were won by CHADEMA especially here in Kilosa town council, because CCM contestants were supported by wealthy Maasai pastoralists. CHADEMA won the elections because of people's anger.”

- *Corrupt government officials:* Corrupt government and local government officials contribute to massive influx of farmers and pastoralists from other places, resulting into land-conflicts as the two sides compete for land. Normal procedures for non-natives to be allowed to settle in a village are usually not

⁵⁰⁰ Article 24.

followed, with local political leaders abusing their office when it comes to land allocation. This has precipitated land conflicts between farmers and pastoralists, who once lived together in harmony for many years. This situation is more prevalent in Kiteto, Mabwegere and Mbwade – Kilosa.⁵⁰¹

of a government official abusing his office occurred in Kibingo Village in Kyerwa District, Kagera Region, whereby a District Commissioner (DC) ordered the demolition of houses without following the due process of law. He also intentionally disregarded the stop order issued by the High Court of Tanzania at Bukoba⁵⁰² in which Hon. G.J.K Mjemmas ordered that:

I think it is just a proper to grant the prayer. In the case of *V.G Chavda V The Director of Immigration Services and Others [1995] TLR 125* it was held that “The High Court has power to grant an interlocutory injunction before hearing application for leave to apply for a prerogative order.” The first respondent the District Commissioner of Kyerwa District and his agents or employees are hereby restrained from harassing, evicting the applicants from their residences and or destruction of their properties pending final determination of this application. Hearing of P.O on 10.7.2014

However, the D.C intentionally declined to abide by the court order, instead ordered demolition of the remaining houses during the public meeting held on 26th April, 2014 at the Rwenkende Primary School grounds. He was quoted saying that:

“Amri ya Mahakama ilikuwa imekosewa na Jaji aliyeandika alikuwa hajui kingereza na walalamikaji waliopewa amri hiyo hawakuielewa kwa kuwa ilikuwa imeandikwa kwa kiingereza”

“The Court’s decision had a lot of mistakes because the Judge who wrote is not fluent with English language and the complainants did not understand the decision since it was written in English.”



Picture 33: Some of the houses that were demolished in Kibingo Village in 2014

501 LHRC, Study on Land Related Conflicts, 2014 page 30.

502 Misc. Civil Cause No 2 of 2014 In the High Court of Tanzania at Bukoba

- *Regular evictions of pastoralists:* Evictions of pastoralist in communal lands have accelerated land conflicts between pastoralists and farmers, for instance the Government's decision to conduct eviction operations, for example eviction of pastoralists along the Ihefu Valley in Mbarali District, Mbeya Region. A number of pastoralists reallocated themselves in different parts of the country. The evictees have not settled until today, causing them to enter into disputes with the land holders as they try to settle and seek pastures for their livestock.
- *Failure to release the report on impact of Ihefu eviction:* The report by the Commission of Enquiry led by the Chief Justice, Hon.Othman Chande, is important in resolving the land disputes and assessing the impact of of the eviction and resettlement of pastoralists along the Ihefu Valley in Mbarali District.
- *Delay of cases in courts of law:* Congestion of cases in courts, including land disputes, contributes to acceleration of land-related conflicts. For instance, following an operation to reduce the size of livestock in Kilosa held in 2009 affected community members filed a case at the High Court in Dar es Salaam,⁵⁰³ which has been pending for a long time (almost three years).
- *Interference by district council authorities in land issues:* This is another factor that contributes to occurrence and intensification of land-related conflicts. For instance, the former DC of Kilosa, Mr. Sosthenes Kasapila, removed all the old beacons demarcating the Mabwegere boundaries. In 2008, a case was filed and the court ordered re-installation of the beacons, but the Government and local authorities have not expressed willingness to execute the order to-date. On 21st January, 2014, the former Regional Commissioner of Morogoro, Hon. Joel Bendera, informed the *Laigwanan* community members at his office that he was not ready to supervise re-installation of removed beacons.
- *Land grabbing for investment purposes:* This is another cause of land conflicts in Tanzania. Such conflicts are experienced in areas with natural resources such as minerals, wildlife and areas with fertile soil suitable for agricultural activities such Kiru-Six Village in Babati District, and Matebete and Kapunga Villages in Mbarali District.
- *Poor communication amongst state organs:* This has affected timely feedback to the affected communities. For instance, during when chaos erupted in Kiteto the Government's team led by the Prime Minister went to Kiteto and and promised to return with a permanent solution to their land disputes. However, to date the promise of a permanent solution made by the Government has not been fulfilled.

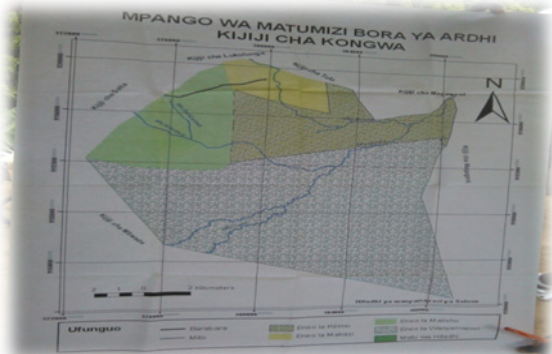
503 Case No. 22 of 2012.

Another example is that in Kyerwa and Karagwe Districts, whereby LHRC was informed that the Parliamentary Committee went to solve land disputes but failed to provide feedback on amicable dispute resolution over the matter.



Picture 34: Prime Minister, Mizengo Pinda, in Kiteto District addressing public at Emborley Murtangosi

- *Lack of village land use plans:* Lack of these plans and non-adherence to them in some villages also contribute to land conflicts.



Picture 35: Village Land Use Plan

Therefore, LHRC urges the Government, through the responsible Ministry, to address these challenges in order to reduce land-related conflicts and save lives and properties. Further, co-existence of farmers and pastoralists in one village is another factor that needs to be re-examined since the nature of their activities is more likely to result into conflicts.

5.1.3.2 Types of Common Land Conflicts

(a) Farmers *Versus* Pastoralists

There have been regular conflicts between pastoralists and farmers in different parts of the country. Areas that are notorious for such conflicts include Morogoro Region (Kilombero, Kilosa, Mvomero, Morogoro Rural (Mvuha) and Ulanga; Mbeya Region (Mbarali District); Manyara (Kiteto); and Kagera (Ngara, Kyerwa, Karagwe and Misenyi). For instance, in Mbarali District, conflicts between farmers and pastoralists are common in the following areas:

Table 31: Conflicts between Farmers and Pastoralists in Mbarali

DIVISION	WARD	VILLAGE	CONFLICT
Rujewa	Madibira	Mahango	Grazing areas were allocated to farmers. The DC is expected to make the final decision as to what should be done.
		Madibira	Pastoralists are accused of causing damage to irrigation schemes.
	Igava	Isunura	Pastoralists from neighbouring villages invaded farmers' plots, especially during the dry seasons.
	Imalilo - Songwe	Mwanavala	The pastoral land was sold to investors by ward leaders. For instance, one Mwandulame bought pastoral land for agricultural use.
		Warumba	The village chairperson and village council members leased land to pastoralists, as a result pastoralists invaded the farms and a conflict erupted, which was referred to DC
Ilongo	Chimala	Igumbilo	Pastoralists are accused of grazing their cattle in irrigation schemes and cause damages thereto during dry seasons
	Mapogoro	Mbuyuni	Pastoralists are accused of grazing their cattle in irrigation schemes and cause damages thereto during dry seasons
		Uturo	Pastoralists are accused of grazing their cattle in irrigation schemes and cause damages thereto during dry seasons
	Igurusi	Uhambule na Chamoto	Pastoralists destroyed vegetable gardens and a conflict arose. According to available information, the conflict is being handled at Igurusi Police Station and at the ward level

Ilongo	Luhanga	Luhanga	Village council restricted investors/farmers to use land legally acquired
	Itamboleo	Kapunga	Pastoralists are accused of grazing their cattle in irrigation schemes and cause damages thereto during dry seasons
		Matebele	Pastoralists are accused of grazing their cattle in irrigation schemes and cause damages thereto during dry seasons
	Ruiwa	Malamba	The Village Council is accused of selling land reserved for cattle dip, forestry and grazing
		Ijumbi	Conflict between two groups over water sources for irrigation and for herds in Gwiri
		Wimba Mahango	Farmers invaded area set for grazing and dip

Mabwegele is a village in Kilosa District within the Magole Division in Dumila Ward. The Mabwegele villagers are mainly pastoralist. It is believed that this village has existed since 1956, when the first pastoralists of the Maasai tribe settled in the area. In 1966, there was a big conflict between pastoralists and farmers over the use of land; and the then Area Commissioner of Kilosa intervened by asking the pastoralists to relocate to an area which will be suitable for them to settle and graze their livestock away from the farmers.⁵⁰⁴ The pastoralists relocated to the grassland areas of Mfulu, Twatwatwa and Rutindi (in Wami lowlands) and settled.⁵⁰⁵

In 1989-1990, the Morogoro regional land and the land of Kilosa District were surveyed. The survey resulted into the creation of 126 villages, Mabwegele inclusive. The village obtained a certificate of occupancy No. 36042, with registration number 327558.⁵⁰⁶ In 1998, the villagers requested to establish a village. The same was approved at the District Council meeting. In, Mabwegele was officially registered as a village, with registration number MG/KIJ.522, in accordance with the *Local Governments (District Authorities) Act no. 7 of 1982*.⁵⁰⁷

Mabwegele village borders the villages of Mbigiri, Mfuru, Msowero, Dumila and Mambegwa. All these villages are inhabited by farmers. Mabwegele has conflict with almost all these villages over the boundaries.

504 A letter from the Area Commissioner's Office, Kilosa to the Maasai pastoralists of 3rd February, 1966 with Ref. No. PI/13/244.

505 A letter of 8th March, 1966 from Losinyo Kibasisi to the Area Commissioner, Kilosa.

506 RV/MG/L.O NO. 884.

507 Chapter 22 of the Laws of Tanzania.

In 2014, land conflict between pastoralist and farmers in Kiteto was very brutal as there were violation of human rights that caused loss of life and destruction of properties. LHRC formed a team that went to probe into the situation in Kiteto and came up with the following findings:

(i) Causes of Emborey Murtangosi Land Disputes

- *Poor governance and accountability at national, regional, district and village levels:* Originally, mass influx of farmers into Kiteto, Emborley Murtangosi in particular, commenced in early 1980s. The indigenous community (Maasai) received them and provided land for settlement and farming. In recent years, the number of farmers has tripled, and as result land conflicts started to erupt more often. From 1989 to 2002, eight farmers were reported killed but no legal action was taken against the perpetrators. The DC decided to allocate the pastoralists another land in villages of Nhati, Enguserosidani, Kimana, Loltepesi, Emalti, Ndirigishi and Namelok in 1998, 2002, 2003 and 2006. The same land, including Emborey Murtangosi, was declared protected land.⁵⁰⁸ The dispute was reported at the responsible ministry under the Prime Ministers' office but was resolved until when 50 farmers filed a suit.
- *Non-adherence to legal requirement of land acquisition in rural areas:* Section 8 (1) of the Village Land Act provides that the Village Council is the trustee of village land.⁵⁰⁹ The Act gives powers to the Village Assembly to make final decisions on all dispositions and allocations of village land.⁵¹⁰ However, LHRC found out that the majority of farmers in Kiteto do not adhere to procedures for land acquisition. For instance, one interviewee stated that *"Farmers just bought village land from pastoralists by paying cash or in kind. Just working in their farms for two or three years thereafter they owned that land"*

508 According to registered map 'Jumuiya ya Hifadhi ya Mazingira Emborley Murtangosi' covers an area of 133,333.15 hectares. Today 'Jumuiya ya Hifadhi ya Mazingira Emborley Murtangosi' has its own Constitution registered under the Society Act Cap. 337 R.E 2002, as Jumuiya ya Hifadhi ya Mazingira Emborley Murtangosi. Registrar of Societies Ministry of Home affairs granted a certificate of Registration No. S.A 19130 dated 25th October, 2013.

509 Section 8(1).

510 Section 8(5).



Picture 36: LHRC team with members of the press share findings during a land saga in Kiteto in 2014



Picture 37: Mr Joseph Mboga from Njombe District bought his land from a pastoralist in 1994 for 500,000/= as part of the agreement, which included the seller (Maasai) being allowed to graze livestock in that farm that after harvesting

There was no meaningful participation of villagers in the formation of *Jumuiya ya Uhifadhi Emborley Murtangosi*. LHRC found out that signatures of villagers that were in the minutes were forged to make it look like they had consented to its formation. For instance, minutes of Ndirigishi Village dated 30th September, 2003, indicated that 444 out of 3196 villagers attended the meeting and were in favour of the formation of the protected land. However, the minutes were not signed; and other meetings were held to discuss village business other than '*Jumuiya ya Hifadhi ya Mazingira Emborley Murtangosi*'.



Picture 38: Combo pics: A map and a residential area of Emborley Murtangosi

This doubt over participation of all villagers on the issue of Emborey Murtangosi was confirmed by the Prime Minister, Mizengo Pinda, when he visited Kiteto. He said that:

“Sina uhakika kama vijiji vyote saba walikaa na kukubaliana kuanzisha hifadhi ya Emborley Mutrangosi”

“I am not sure if all seven villages sat together and agreed Emborley Murtangosi to be reserved land”

(ii) Human Rights Violations

The right to life:

Several people were killed in Emborley Murtangosi, in violation of their right to life. Three farmers were shot dead by armed Maasai men who invaded their farms within the Mtanzania farming camp.⁵¹¹



Picture 39: A resident of Kiteto narrates the Mtanzania camp’s killings to officers of LHRC and the press

511 LHRC (2014) Kiteto Fact Finding Report, 2014 page 13.

Within the Milinga and Laitini camps in Lamelok Village, a total of 7 farmers were reported to have been gunned down and slaughtered.⁵¹² This brings the total sum of people killed to 10.⁵¹³



Picture 40: Bodies of the Killed People in Kiteto

Right to own property was also infringed during the fight as several houses and properties were set on fire. The dispute resulted into destruction and loss of property and food. Houses/huts and family properties were destroyed by fire. In Ndirigishi Village, the team found Maasai huts and food storage rooms destroyed, and bags of maize were stolen.⁵¹⁴ In other areas where disputes arose such as *Laitini*, *Mtanzania* and *Milinga* hamlets, camps were set on fire. The LHRC team was unable to ascertain the extent of damage caused.



Picture 41: The LHRC team at the scene where several houses were set ablaze at Laitini sub-village in 2014

512 *Ibid.*

513 *Ibid.*

514 *Ibid.*

Right to Peace and Security:

The killings and destruction of property have threatened peace and security, especially for the farmers. The team observed that a number of people, mainly farmers, were left helpless and hopeless due onslaught of the Maasai pastoralists. On the other hand, Maasai pastoralists have run away with cattle to other distant places, including Kilindi, to avoid police investigations and arrests.⁵¹⁵



Picture 42: Farmers who fled from the Namelok land conflict gather for a meeting

Right to Liberty and Freedom of Movement:

Arrests and prolonged investigations caused some people to be detained for a longer period without being taken to court and others remained under police custody for up to five days. Some suspects kept on reporting to police station for interrogation without being charged. The table below indicates such groups of suspects. On the other hand, the threat of being killed by Maasai pastoralists has resulted into the denial of the right to freedom of movement.⁵¹⁶

Table 32: Cases in Kiteto

s/n	Numbers	Remarks
1	12	Committed before the Kiteto District Court for Charge of Murder
2	10	Still under investigation
3	7	Are set free; investigation shows that they are not connected with murder
4	6	Are under interrogation.
Total	35	Arrested

515 *Ibid.*

516 *Ibid.*

LHRC condemns the killings and violence that occurred in Kiteto and calls upon the Government to ensure that such they do not recur. There is a need to develop a countrywide land use plan that will establish agricultural zones and pastoral zones to avoid clashes and bloody conflicts between farmers and pastoralists.

(b) Village Against Village Land Conflicts

Most of villages in Tanzania emanate from *Operation Vijiji* Plan under *Ujamaa* Policy implemented in 1970s. The operation aimed at bringing together people in rural areas to strengthen agricultural production by encouraging communal farming and improve access and provision of social services to citizens. The operation was successful to great extent but failed in 1980s, forcing some people to return back to their original villages and land conflicts ensued in some areas following the enactment of new land laws in 1999. The village land is now governed by the Village Land Act, 1999.⁵¹⁷ The Village land is clearly explained under section 7 of the village Land Act as follows;

a). *Village land shall consist of:-*

- i) *land within the boundaries of a village registered in accordance with the provisions of section 22 of the Local Government (District Authorities) Act,*
- ii) *land designated as village land under the land Tenure (Villages settlements) Act*
- iii) *Any other land demarcated administratively or agreed by village council by any other law before coming into force of this act.*

In 1992, the President of United Republic of Tanzania formed the Presidential Commission of Inquiry on Land Matters (*Shivji Commission*). The Commission addressed several challenges, including conflicts between one village and another, especially on land boundaries. Some of the village to village land conflicts observed by the Commission include:

(i) Ukwavila Village Versus Kapunga

Kapunga Village is in serious dispute with Ukwavila Village, claiming that its 595 acres of village land has been taken. The village chairperson of Ukwavila is accused to have allocated farming plots to villagers but the land belongs to Kapunga village. The District Land Officer involved elders of both villages in indicating original boundaries as then was. But the dispute became complicated as titles were issued to individuals and associations. For instance, *Uamsho wa Wakristu Tanzania* have filed a land case against Village Executive Officers (VEOs) of the two villages. The Village Chairperson and VEO of Kapunga Village blame the District Council for failure to resolve the conflict amicably and timely as both villages have village maps.

⁵¹⁷ Act No. 5 of 1999.

(ii) Mkunywa Village Versus Igomaa (Mahango) Village

There was ongoing conflict between Mkunywa village and Igomaa in Madibira ward. The conflict between the two villages is over the boundary dividing them. The villages were founded in 1942 and a map was produced during the colonial period, according to the Ward Executive Officer (WEO) of Madibira Ward, but the villages do not possess the map. Ideally, the wisdom of the elders in these two villages is highly desirable. Conflict began in early 2010, when Vodacom Tanzania installed telecommunication tower, with each village complaining that the area belongs to them. The DC has formed a committee involving twenty members from the two villages to try to resolve the boundary dispute.

(iii) Village versus other Villages Conflicts

- Lesoit Village in Kiteto District has been in constant conflict with the neighbouring villages of Mafisa and Kijungu. There are frequent conflicts between pastoralists and farmers from these villages. The conflict was mainly caused by non-native farmers from other regions who entered and settled throughout Kiteto District. In 2000s, there were no such conflicts; and that is why it was possible to initiate a land use plan in Lesoit in 1997. The plan was highly respected but today the situation is different as land conflicts are never adequately resolved. These land conflicts cause deaths, injuries and destruction of properties.
- The Elerai Village has a land-related case with the neighboring village, Kwamalingwa, at the District Housing and Land Tribunal in Korogwe.⁵¹⁸ However, the Kwamalingwa Village refuses to recognize the existence of Elerai Village and claims they do not share any boarder with Elearai Village; instead they share a boarder with Kibirashi. This was used as a technique to grab pastoralists' land as Kwamalingwa and Kibirashi are both occupied by Wanguu, who are traditionally farmers. The Land Tribunal has ordered that the *status quo* of the disputed land should be maintained until determination of the main suit but Kwamalingwa has decided to disregard and disobey the Tribunal's order. Farmers have continued with farming activities, arrest warrants have issued but arrests have been made so far. The District Security Council had a meeting but nothing fruitful came out of it as activities on the disputed land continue as usual.
- Kwamagome and Madebe Villages have a land conflict, with a dispute over the Mount Usaje.⁵¹⁹
- The land conflict over village boundaries between Pingo and Chamakweza Villages that was ended by the former DC of Bagamoyo, Magesa Mulongo,

518 Case No. 21 of 2014.

519 PAICODEO, Report on the State of Pastoralist Human Rights Situation in Tanzania, 2013-2014 page 24.

has recurred. Currently, high tension exists between the two villages, which are located in Bagamoyo District, and fighting can occur at any time if necessary steps are not taken by the relevant authorities.

LHRC calls upon the District Council Authorities to develop dispute resolution mechanisms on land disputes that do involve village against another village(s) within the district. The current practice is that most villages receive no support or serious intervention from the District authorities. This poses enmity and hatred among the villagers in dispute. In future, District Authorities should revisit all village maps to set clear boundaries that will reduce land conflicts.

5.2 Cultural Rights

An element of cultural aspect should be taken aboard as it forms an integral part of the community. Cultural values affect peoples' livelihood in a number of ways, including on matters of inheritance, taboos that enhance moral rights, language, dressing style, entertainment, food and drinks.⁵²⁰ However, cultural rights are the most difficult components of human rights that to some extent may defeat principles of human rights such as universality principle. To examine its complexity within the society and legal protection under international human rights treaties, cultural rights are defined differently as follows:⁵²¹

“Acquaintance with and taste in fine arts, humanities, and broad aspects of science as distinguished from vocational and technical skills”

“The integrated pattern of human behavior that includes thought, speech, action, and artifacts and depends upon man’s capacity for learning and transmitting knowledge to succeeding generations”

“The customary beliefs, social forms, and material traits of a racial, religious, or social group”

The Cultural Rights are promoted and protected in *the International Covenant on Economic, Social and Cultural Rights, 1966*.⁵²² In Africa, *the Banjul Charter* recognizes cultural rights and in 2004, the African Union endorsed *the Pretoria Declaration on Economic, Social and Cultural Rights in Africa, 2004* to enhance promotion of cultural Rights in Africa. The Pretoria Declaration recognizes cultural rights in Africa

520 UNESCO, Gender Equality Heritage and Creativity, 2014 page 15.

521 <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module17.htm> visited on 12th December, 2014.

522 Articles; 14,15, 16, 17, 18, 21 and 22 of the Banjul Charter provides for the Economic, Social and Cultural Rights.

by guaranteeing the following:⁵²³

The right to culture under Articles 17 and 18 of the African Charter entail among other things the following:

- *Positive African values consistent with international human rights realities and standards;*
- *Eradication of harmful traditional practices that negatively affect human rights;*
- *Participation at all levels in the determination of cultural policies and in cultural and artistic activities;*
- *Measures for safeguarding, protecting and building awareness of tangible and intangible cultural heritage, including traditional knowledge systems;*
- *Recognition and respect of the diverse cultures existing in Africa*

Therefore, in the African context the cultural rights stipulated in the Pretoria Declaration are not only guaranteed as a matter of human rights but also limit cultural practices which violate human rights such as Female Genital Mutilation/Cutting as discussed in Chapter Six of this report. The Declaration further imposes obligation to States Parties to establish constitutional protection of economic, social and cultural rights subject to non-discrimination and equality.⁵²⁴

There cultural rights are also safeguarded in the following international treaties: *the Universal Declaration on Cultural Diversity, 2001; the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities of 1993; the United Nations Declaration on the Rights of Indigenous Peoples of 2007; UNEP Malmoe Ministerial Declaration of 2000; the ILO Convention on Indigenous and Tribal Peoples of 1989; the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005; the Convention on Biological Diversity of 1992; the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003; and the Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972.*

5.2.1 Protection and Promotion of Cultural Heritage in Tanzania

Cultural heritage in Tanzania is protected under the *Antiquities Act, 1964*.⁵²⁵ The Ministry of Natural Resources and Tourism has established the Antiquities Division, tasked with protecting and promoting cultural heritages in Tanzania. The following are some of the cultural heritages found in Tanzania:

523 Article 9.

524 Article 11(iii) of the Pretoria Declaration.

525 Cap 550 [R.E 2002].

Table 33: Heritage Sites of Tanzania

Cultural Heritage	Place	Type	Dating
Oldupai Gorge	Ngorongoro	Stone Age site (Paleontology)	1.75 Million Years (My)
Laetoli Foot print	Ngorongoro	Footprint site	30-36 My
Amboni Caves	Tanga Urban	Geological Site	Not Known
Tongoni Ruins	Tanga Urban	Swahili Cultural Ruins	14 th C
Bagamoyo Historic Town	Bagamoyo	Historic Town	19 th C
Kaole	Bagamoyo	Swahili Cultural Site	13 th C
Kondoa Irangi Rock Art	Kondoa	Rock art painting	5000 Years
Kwihara Livingstone Memorial Museum	Tabora urban	Historic Site	19 th C
Ujiji Livingstone Memorial Museum	Kigoma	Historic Site	19 th C
Mbozi Meteorite	Mbozi	Geological Site	Not Know
Isimila	Iringa rural	Stone Age (Acheulian)	100,000-40,000 Years
Kalenga Museum	Iringa urban	National Monument	19 th C
Kilwa Kisiwani ruins	Kilwa	Early Coastal settlement (late iron age)	19 th C
Songo Mnara ruins	Kilwa	Swahili cultural site	14 th C
Mikindani Historic Town	Mtwara urban	Historic Town	19 th C
Bweranyage Museum	Karagwe	Iron age site	13 th C
Kunduchi Ruins	Kinondoni	Swahili Cultural Site	20 th C
Magomeni	Kinondoni	Museum	13 th C
Engaruka irrigation Furrows	Monduli	Historic irrigation furrow	1400 A.D

Source: The Ministry of Natural Resources and Tourism

LHRC calls upon the Government to promote cultural heritages inside and outside the country as most of them are unknown not only to foreigners but also to the natives. For instance, Swahili cultural sites such as the Kunduchi Ruins, Songo Mnara and Tanga could be ideal centers for construction of Swahili language centres or colleges for foreigners to learn Swahili language and culture.

There is a need for the responsible ministry to improve the infrastructure and encourage and attract investment, both domestic and foreign. These areas are to a greater extent almost forgotten and abandoned. For instance, LHRC visited Isimila Old Stone Age site and found it so dilapidated that that there was no way it could attract any tourists, local or international.

Chapter Six

Vulnerable Groups

6.0 Introduction

Human rights instruments are meant to protect all those who are vulnerable to violations of their fundamental human rights. There are some particular groups within the society which, for various reasons, are in a greater danger of being victims of human rights violations. These groups are termed “vulnerable groups” and often require more protection so that they can effectively enjoy their fundamental human rights.

Several international human rights instruments provide for additional guarantees to make sure that the fundamental rights of these groups are given sufficient protection. The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) is an example of these instruments.⁵²⁶ The ICESCR has proven to be the vehicle for the protection of vulnerable groups within the society, requiring states to extend special protection to them and ensure they are given some degree of priority, even in face of severe resource constraints.

Groups that are vulnerable to human rights violations include women and girls, children, refugees, internally displaced people, stateless people, national minorities, indigenous people, migrant workers, people living with disabilities, the elderly, people living with HIV/AIDS and many others. Each group experiences social discrimination in one way or another. Women and children have continued to be victims of violence, sexual assault and exploitation, economic exploitation, child labour and family instability.

People living with disability are usually marginalized in the society, whereby they cannot easily access proper education, excluding them from meaningful participation in economic activities that can help them to earn a living. As a result, they have continued to live in abject poverty, forcing them to rely on others for economic support. That is one of the reasons that the majority of beggars on the streets being people living with disability. In the last decade, people living with disability have as well been facing other forms of discrimination and exploitation. For instance, people with albinism (PWAs) have been vulnerable to brutal killings for witchcraft beliefs; PWAs face such insecurity even from within their own families, causing them to flee to areas where there is at least less occurrence of incidents of killings and attacks of PWA. As a result, they are not free to participate in socio-economic activities.

⁵²⁶ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with Article 27.

The elderly are also vulnerable to attacks and human rights violations, usually becoming victims of torture, attacks and killings as a result of beliefs in witchcraft. They also lack proper social protection, including health care and food security, forcing them to totally rely on the mercy of their children, other family members, relatives, or strangers on the streets.

Tanzania has an obligation of taking care of all its own citizens, especially those who belong to the vulnerable groups. However, this has not been the case due to several reasons, among them lack of statistics of people in these vulnerable groups, which are supposed to be considered in different national plans and policies designed to provide protection to vulnerable groups. Such policies do not take into account the demographics of people in these groups, making it difficult to properly implement such plans and policies.

6.1 Women Rights

Our societies generally view women (females) as inferior and subordinate to men (males). Historically, the social structure reflects subordination of females;⁵²⁷ and this subordination occurs within the origin and conduct of warfare, the hierarchical ordering of influential religions, institutions, attribution of political power, authority of the Judiciary and influences that shape the content of the law.⁵²⁸

The struggle for equality between men and women began long time ago. The adoption of the *Universal Declaration of Human Rights* (UDHR) in 1948 was as step taken by the international community to ensure the protection of the rights of all human beings, regardless of their gender and status in the society. Article 2 of UDHR states that:

“Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

However, it was not until the adoption of the *UN Convention on Elimination of All Forms of Discrimination Against Women* (CEDAW) in 1980 that the concept of equality between women and men gained significant momentum and put seriously into practice.⁵²⁹ CEDAW has been one of the most prominent international human rights instruments in the protection of women’s human rights, elevating the status of women to that of men in area of human rights. States Parties to CEDAW recognize that that, the “full and complete development of a country, the welfare of the world,

527 Understanding Human Rights: Human Rights and Vulnerable Groups, (citing Bunch 1991), at www.sagepub.com/upm-data/11973_chapter_5.pdf visited on December, 2014.

528 *Ibid.*,

529 *Ibid.*,

and the cause of peace require the maximum participation of women on equal term with men in all fields.”⁵³⁰

There are several other international human rights instruments that provide for the rights of women. The *International Convention on civil and Political Rights, 1966* (ICCPR) provides for equality between men and women in the enjoyment of civil and political rights.⁵³¹ The *Convention on the Right of the Child, 1980* (CRC) provides for non-discrimination of children based on gender, race or any other qualification whatsoever.⁵³²

Apart from these international instruments, women’s rights related to labour are protected under the International Labour Organization (ILO) conventions. The ILO has in place a number of conventions and declarations which protect women’s labour rights. These treaties include the *Equal Remuneration Convention, 1951*, the *Maternity Protection Convention, 1952* (revised in 2000), the *Declaration on Equality of Opportunity and Treatment for Women Workers, 1979* and the *Convention Concerning Workers with Family Responsibilities, 1981*.

At the Africa level, there is the *African Charter on Human and People’s Rights on the Rights of Women in Africa, 2003*, which contains women’s rights. There is also the *SADC Protocol on Gender and Development, 2009* and the East African Community initiative called the *East African Strategic Plan for Gender, Youth, Children, Social Protection and Community Development, 2011-2015*. The Protocol and Strategic Plan provide for women’s rights on a gender perspective.

Domestically, the *Constitution of the United Republic of Tanzania, 1977* (CURT) provides for equality of all human beings. Article 12(1) of CURT provides that:

“All human beings are born free, and are all equal.”

The *Employment and Labour Relations Act, 2004* provides for non-discrimination in employment opportunities as well as the right to maternity leave.⁵³³ The *Land Act, 1999* and the *Village Land Act, 1999* both include women’s rights with regard to land ownership and use. They both have provisions ensuring equality before the law for women in both statutory and customary tenure. The Land Act states as one of its fundamental principles that:

530 CEDAW Preamble.

531 Article 3.

532 Article 2.

533 Sections 7(4) and 33.

“The right of every woman to acquire, hold, use, and deal with, land shallot the same extent and subject to the same restrictions be treated as a right of any man.”⁵³⁴

The same principle is explicitly laid down in the Village Land Act to cover customary rights of land. The VLA renders invalid any customary practices that discriminate against women and children.⁵³⁵ In 1992, Tanzania formulated the *Policy on Women in Development*. The policy highlights the situation of women in Tanzania, the rationale of formulating the policy, and finally the goals to be achieved as far as women development is concerned.

6.1.1 Gender-Based Violence

Gender-based violence (GBV) is defined as “an umbrella term for any harmful act that is perpetuated against a person’s will and that is based on socially ascribed (gender) differences between males and females.”⁵³⁶ The term “gender-based violence” is often used interchangeably with the term “violence against women”. The UN Declaration on Elimination of Violence Against Women⁵³⁷ defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering for women, including threats such as coercion, or arbitrary deprivations of liberty, whether occurring in public or private life.”⁵³⁸

Gender-based violence takes many forms, including physical, sexual, psychological and economic violence.⁵³⁹ Acts involving gender-based violence and violence against women include battering (beatings), sexual abuse and harassment, rape (including marital rape), female genital mutilation (and other traditional practices harmful to women), human trafficking and forced prostitution.

The 2010, Tanzania Demographic and Health Survey indicated that almost half (45%) of women aged 15-49 had experienced either physical or sexual violence.⁵⁴⁰ According to the survey, 1 in 2 ever-married women aged 15-49 reported having experienced either one or combination of emotional, physical and sexual violence at the hands of

534 Section 3(2).

535 Section 20(2).

536 Inter Agency standing Committee 2005: Guidelines for Gender Based Violence Interventions in Humanitarian settings; Focusing on Prevention of and Response to sexual Violence in Emergencies.

537 A/RES/48/104 85th Plenary Meeting 20 December 1993.

538 Article 1.

539 Article 2, *Ibid*.

540 United Republic of Tanzania National Bureau of Statistics and ICF Macro, “Tanzania Demographic and Health Survey 2010,” <http://www.nbs.go.tz/takwimu/references/2010TDHS.pdf> (accessed on December, 2014).

their current or former husbands.⁵⁴¹

Table 34: Gender-Based Violence as of June 2014

	Mid- Term	Incidents of Gender based violence
1	2014	26 Women killed in Mbeya Region alone
2	2014	3633 Gender Based Violence incidences reported

6.1.2 Women and Spousal Battery

Women beating are prevalent in Tanzania. Studies show that four in ten men believe that wife beating is justified.⁵⁴² It is even more common for women to experience violence at the hands of their spouses. What is more alarming is that this type of violence against women is usually not openly talked about. It has become an acceptable norm among many tribes in Tanzania that a woman should be educated and punished by her husband. In some traditions women even believe that spousal battery is a form of a man showing his wife that they care and love them. There has also been reluctance in reporting incidents of spousal battery. Even when these incidents are reported to the police, some police officers tend to ignore them and refuse to register their cases because, they say, spousal battery is a matter between a man and his wife and the Government has nothing to do with spousal differences.

6.1.3 Sexual Violence and Harassment

Sexual violence includes, but is not limited to rape. It can be defined as any act of sexual nature, or an attempt to obtain a sexual act, carried out through coercion. Sexual violence also includes physical and psychological violence directed at a person's sexuality, including unwanted comments or advances, or acts of traffic such as forced prostitution or sexual slavery.

Sexual violence is a serious public health and human rights problem, with both short and long term consequences on women's mental, sexual and reproductive health. This does not mean that men and boys do not experience sexual violence; rather that the problem is more prevalent amongst women and girls. The problem of sexual violence and harassment is very acute in Tanzania. Studies suggest that 17% of women in rural areas had their first sexual experiences through forceful means.⁵⁴³

Acts of sexual violence against women have been on the rise. Among the reasons

541 *Ibid.*

542 *Ibid.*

543 WHO, Violence Against Women: Intimate Partner and sexual Violence Against Women. Fact Sheet No. 239 Updated on November 2014. www.who.int/mediacentre/factsheets/fs239/en/

for this trend is the culture of impunity in punishing those committing these heinous acts. Reluctance on the part of the society to report acts of violence against women is another reason for increase of these acts. A report conducted by TAMWA revealed that more than half of the female respondents (girls) did not report acts of sexual violence against them.⁵⁴⁴ 60% of the girls revealed that they did not report the incidents because of “family and/or social reasons,” while 26% cited “personal reasons” hindering them from reporting incidents of sexual violence against them.⁵⁴⁵ Social norms and traditions hinder victims of sexual violence from reporting such acts because of fear of exclusion from their communities and societies. A local civil society organization for women and men rights in Karagwe (WOMEDA) reported that in the period between January and September 2014, there were 280 cases of sexual violence reported to WOMEDA.⁵⁴⁶ WOMEDA cited ignorance of the basic laws and rights, culture of male dominance and poverty as the major causes of increased sexual violence against women.⁵⁴⁷

Rape is one aspect of sexual violence that victimises women every day. Incidents of rape have been occurring more regularly, although they have slightly decreased compared to those reported in 2013. Norms and traditions hinder victims from reporting these incidents to the police because of fear of being excluded by family and community members. By June 2014, there were 2,878 incidents of rape were reported to the police.⁵⁴⁸ LHRC recommends that the Government and the Police Force to strengthen the capacity of the police gender desks to enable them deal rape cases and other incidents of violence against women. Evidence laws should as well be amended to reflect the challenges that hinder accused rapists being brought to justice.

Table 35: Reported Rape Incidents by Mid Year for the Past Three Years

	2014	2013	2012
Reported rape incidents	2878	2965	3074

6.1.4 Female Genital Mutilation

Female Genital Mutilation (FGM) is a practice involving the cutting or removal of the external genitals, mostly for traditional and cultural reasons. WHO defines FGM as involving removing and damaging healthy and normal female genital tissue, and

544 TAMWA 2014 report.

545 *Ibid.*

546 Emmanuel Julius , “Ukatili wa kijinsia washamiri,” Mtanzania newspaper 19 September 2014.

547 *Ibid.*

548 LHRC 2014: Bi Annual Human Rights Situation Report.

hence interferes with the natural function of girls' and women's bodies.⁵⁴⁹

According to WHO, 100 to 140 million girls and women in the world today have undergone some form of FGM, while 2 million girls are at risk of undergoing the same each year. The 2010 Demographic Health survey in Tanzania indicates that 14.6% of women between the ages of 15-45 have undergone FGM. The year 2014 witnessed reports of number of cases of FGM across the country. It was reported that in Singida the trend of women undergoing FGM has been increasing in the last three years. 19,649 out of 96,717 women who underwent delivery in Singida Regional Hospital were found to have undergone FGM from 2012 to 2014.⁵⁵⁰ Statistics show that the number has been shooting with 5,249 women to have been mutilated in 2012, about 5,388 in 2013 and a staggering 9,012 women in 2014.⁵⁵¹

Table 36: Cases of FGM Detected during Labour & Delivery in Singida from 2012 to 2014⁵⁵²

Year	2012		2013		2014	
District	Total Facility Delivery	Total FGM cases	Total Facility Delivery	Total FGM cases	Total Facility Delivery	Total FGM cases
SGD MC	6419	1957	7465	2798	8455	2701
Ikungi	0	0	5493	1444	7303	2819
SGD DC			3519	659	3317	966
Iramba	9114	32	5429	46	5807	144
Mkalama	0	0	3137	22	3415	179
Manyoni	8482	3260	8963	419	10399	2203
TOTAL	24015	5249	34006	5388	38696	9012
% FGM		21.9		15.8		23.3
Average %						20.3

FGM is usually practiced on girls before they attain the age of marriage. This practice has however changed in recent years. The change has been mainly due to condemnation of the practice of FGM altogether as being barbaric and against women and girls'

549 www.who.int/topics/female_genital_mutilation/en/, visited on December 2014.

550 Suleiman C. Muttani MD, MMED, MBA: Health sector support to end FGM. A presentation at the commemoration of FGM International Zero Tolerance Day held in Singida, Tanzania.

551 *Ibid.*

552 *Ibid.*

rights. These condemnations have led to criminalization of FGM.⁵⁵³ As a result, those practicing FGM to girls have resorted to practicing it to even young girls because it would make it difficult to be noticed by the law enforcement, thus making it easy to escape prosecution.⁵⁵⁴ FGM has been reported as well to be conducted on women of older age when they are about to give birth, especially through local (traditional) midwives.

However, FGM practice has now taken a new trend, whereby some medical practitioners are now also conducting FGM on women.⁵⁵⁵ In Rombo District in Kilimanjaro Region, some nurses are reported to charge Tshs. 100,000/- to conduct FGM on a single woman. This type of FGM practice involves a wider section of the society, the families of the victims. Sometimes the woman may not be willing to undergo the FGM but the family members engage medical practitioners to conduct it when the woman goes for labour, exploiting the fact that the woman will be in too much labour pain to notice the mutilation.

Tarime District continues rate highly in FGM practice in Tanzania.⁵⁵⁶ It is estimated that six out of ten girls undergo FGM in the District.⁵⁵⁷ 2014 was declared to be a cutting season by Tarime local leaders; and it was reported that during this season a total of 1,402 girls underwent the ritual.⁵⁵⁸ These girls were from different clans in Tarime District; 212 from Bukira clan; 230 from Bukenye clan; 800 from Iregi clan; and 160 from Nyabasi clan. The Timbaru clan was reported to have refrained from the actual cutting rather ceremonially performing the ritual to 208 girls. It was further reported that 601 girls escaped to Massanga shelter, fleeing from the cutting ritual.

There is a need of finding a new way to fight FGM. This is especially so because of the changing trend in FGM practice. There is thus a greater need of involving medical professionals in the fight, whose involvement has proven to be effective at least in recognizing the magnitude of FGM problem as it was revealed in Singida Region.

Education remains the best way of tackling FGM in Tanzania. This is because the practice is has deep roots in the communities where it is practiced, and connected to their beliefs, customs and traditions. It is thus preferable to educate those practicing FGM so that they leave the practice on their own free will. It should also be remembered that the rites of passage involving FGM is a big celebration in the areas

553 Section 169 of the Penal Code, CAP 16 of the Laws of Tanzania.

554 28TooMany, FGM Let it end: Country profile, FGM in Tanzania; December, 2013.

555 WHO indicates that at least 1 out of 5 and in some other areas 3 out of 5 women mutilated, are mutilated by medical practitioners.

556 Beldina Nyakeke, *“Experts suggest new ways to end FGM.”* The Citizen, February 9, 2014.

557 Ibid.

558 2014 LHRC: Gender and Children Desk.

it is practiced. The ritual is thus closely connected to poverty and economy of the areas it is practiced. *Ngoma* performers, *ngaribas*, traditional leaders, families of the girls and the community at large depend in one way or another on the ritual festivities. LHRC thus opines that an alternative economic solution is found for all involved in order to make them abandon the practice altogether.

LHRC further recommends that all stakeholders find an alternative practice of rites of passage. As it has been explained, FGM practice is deeply rooted in beliefs, customs and traditions, thus the communities must be given an alternative way of celebrating the rite of passage of their girls and boys. This will ensure that the girls and boys undergo rites of passage beneficial to the youth upbringing. Girls will avoid mutilation, child marriage as well as teenage pregnancies. The Termination of Female Genital Mutilation (TFGM) Masanga Centre, located in Tarime District, provides alternative rite of passage training. For the past seven years, 2,001 girls at the Centre have undergone training of alternative rite of passage.⁵⁵⁹ Currently, Masanga centre harbours 836 young people, 634 being girls and 202 being boys from Tarime and Loliondo.⁵⁶⁰ The young people undergo alternative rite of passage training. The training also involves former *ngaribas*, who give their testimonies on the horrors of the practice.⁵⁶¹



Picture 43: Girls and boys at Masanga centre on their rite passage graduation

559 Sawiche Wamunza, UNFPA 2014: “Mara Youth, Vessels and Voices of Change in ending FGM.”

560 *Ibid.*

561 *Ibid.*

6.1.5 Approaching 20 years after the Beijing Conference

In 1995, the UN Commission on the Status of Women organized the Fourth World Conference on Women (the Beijing Conference). 17,000 participants and 30,000 activists from around the globe attended the opening of the conference.⁵⁶² The conference was held for the purpose of ensuring gender equality and empowerment of all women around the globe. It lasted for two weeks; and 189 government representatives also attended. On the other hand, 30,000 non-governmental activists attended a parallel Forum and kept the pressure on governments by networking, lobbying and training media spotlight.

The Beijing Conference adopted the Beijing Declaration and Platform for Action, the blueprint for advancing women's rights. The Platform for Action was to be used as a framework for change and had comprehensive commitments under 12 critical areas of concern, calling upon governments to take action to address these areas of concern. These areas are women and environment; women in power and decision making; the girl child; women and the economy; women and poverty; violence against women; human rights of women; education and training of women; institutional mechanism for the advancement of women; women and health; women and the media; and women and armed conflicts.

The Beijing Platform for Action also requires all governments to develop strategies or national plans of action to implement it domestically. The national plans of action for each country should outline specific activities that the national government will undertake to improve the situation of women, including addressing violence against women.

Member States commitments were reaffirmed in at the UN General Assembly; and member states also agreed on regular assessment of the implementations of the Beijing Platform for Action. In 2005, progress was assessed and new initiatives considered. The UN Commission on Status of Women was mandated to undertake a review and appraisal of the implementations.

As we are marking 20 years of the Beijing Conference, review of the implementation will be made in 2015. Governments are called upon to cover all trends, achievements and remaining gaps and challenges, as well as future plans to accelerate implementation at the national level. States were called upon to complete their reports and submit by May, 2014. These reports would be used for review and appraisal that UN women would prepare and submit during the 59th Session of the Commission on Status of Women (CSW59).

562 <http://beijing20.unwomen.org/en/about#sthash.xzOM7dLp.dpuf> accessed on January 2015.

Tanzania submitted its report on its progress towards implementation of the Beijing Platform for Action on May, 2014.⁵⁶³ The Platform identified 12 critical points of concern to which member States had to report upon on the progress made and challenge encountered in implementing these points. In its report, Tanzania reaffirmed its commitment to implement all 12 critical points of concern.⁵⁶⁴ However, the Government concentrated on four broad areas of concern which the Government identified as its priority areas after the Beijing Conference due to restricted resources.⁵⁶⁵ The four broad areas of concern identified by the Government are (i) enhancement of women's legal capacity; (ii) Economic empowerment of women and poverty eradication; (iii) women's political empowerment and decision making; and (iv) women's access to education and empowerment. This sub-chapter will examine these four areas of concern identified by the government. The sub-chapter will as well try to examine the progress made by the country in addressing the 12 critical areas of concern as were put forward by the Beijing Platform for Action.

(i) Enhancement of women's legal capacity

In this area the Government has high lightened that gender and children desks have been established in various police stations to receive complaints and prosecute cases on violence against women. The Tanzania Police Force in November 2014 launched its Action Plan for Gender and Children's Desks for the period of 2013-2016. The action plan was to ensure that there is effective response to all cases of gender based violence (GBV) and violence against women. The aim is to establish gender and children's desks at every police station around the country with staffed and trained officers, offering safe spaces in which children and adults alike can feel confident reporting cases of violence and abuse. However, few desks have so far been established in very few police stations around the country. In 2014, there were only 417 gender and children desks established countrywide.⁵⁶⁶ Budget constraint is among the major challenge that hinders the establishment of such desks. As a result, in some few stations where such desks are established, the desks are deprived of trained staffs to serve women and children in a more safe space.

In the government report legal aid clinics is another area which has been mentioned as an achieved area. This area, however, still faces a lot of challenges. To start with, the law in Tanzania recognizes legal aid provision only for few criminal offenses, which are murder and treason. For others offences the law does not guarantee the provision

563 The United Republic of Tanzania, May, 2014: Country Report on the Review and Progress made and Challenges Encountered in Implementation of Beijing Declaration and Platform for Action and Outcomes of the Twenty Third special Session of the General Assembly-Beijing +20.

564 *Ibid.*

565 *Ibid.*

566 2014/15 Budget speech of the Ministry for Community Development Gender and Children.

of legal aid by the State machinery. As a result, a lot of ordinary poor Tanzanians are denied their right to legal representation and there much undermining the rule of law in the country. Another challenge facing legal aid provision in the country is the fact that even for the few offenses for which legal aid is available, the mechanism over which it is provided is very cumbersome to the point that most of the time the accused persons do not receive proper legal representation as advocates entitled to provide legal aid are very poorly remunerated.

The Government has been very reluctant to recognize the work done by paralegals. CSOs have been very active in this area by organizing paralegal units in rural areas to give assistance to poor Tanzanians living in rural areas and cannot afford legal representation provided by advocates. However, paralegals are not recognized by the law and their work is very limited. They cannot appear in court to represent their clients and can only draft some simple legal documents.

The Government has as well mentioned in its report that the Human Rights Commission (the Commission for Human Rights and Good Governance) has introduced a gender desk “to deal with rights of women and children issues.” LHRC believes that the issue is not introduction of the desks but rather the work that has been done by these desks in ensuring that women and children’s rights are respected in the country.

On violence against women, the Government’s report has highlighted some efforts that have been made by the Government to make sure that violence against women is reduced and eradicated. Efforts made by the Government include policy formulation. Acts of violence against women are still high in the country. Policy formulation without a clear implementation mechanism is as good as nothing. For instance, the enactment of the *Anti-trafficking of Persons Act* was meant to answer the challenge of trafficking in Tanzania. Yet, not much has been achieved in that respect. There are no statistics of how many people have been prosecuted for trafficking in person but experience shows that there are very few cases that have been brought before to court which have actually resulted to prosecution of the accused.

The gender and children desks of the Police Force are still very few. Official statistics reveal that there are only 147 desks in the country; and most of these desks are poorly equipped, both in terms of trained manpower and infrastructure. LHRC opines that the time has come for the Government and other stakeholders to take drastic measures and implement the good plans on papers to ensure that violence against women and children is reduced and eventually eradicated in the country.

In its report, the Government should have provided recent statistics concerning violence against women and children. Efforts to deal with the problem will never

be realized as long as there is no knowledge of the magnitude of the problem. The Government should make sure that it exploits the expertise at its disposal to conduct studies in order to obtain the statistics. It is a good thing to use the statistics collected by the National Bureau of Statistics, however, in order to understand whether any improvement has been made, more recent statistics are required.

(ii) Economic empowerment of women and poverty eradication

This is another area where Tanzanian women have continued lagging behind. In rural areas, women are the main producers in agricultural activities. Despite this fact, they have continued to live in abject poverty, as the profits made from agricultural produce are usually spent by men. To make matters worse, when husbands die women are usually excluded from the family wealth and denied inheritance. Traditional practices are very discriminative in property ownership by women. Family wealth is usually perceived to belong to men/husbands, thus once the husband dies, the wife ends up with nothing.

Economic situation is still one of the major challenges women face in achieving their right. Economic independence would enable women concentrate in production in other sectors.

(iii) Women's political empowerment and decision making

This is one of the areas that have shown some progress. In the last decade, the number of women in decision making bodies such as the Parliament has risen. This is a result of special measures that have been employed by the Government, through legal reforms and also political will. Thus, the Constitution was amended to make sure that there are special parliamentary seats for women representatives.⁵⁶⁷ Article 66 (1) (b) of the Constitution of the United Republic of Tanzania requires that women occupy at least 30% of all members of Parliament. The Constitution also gives powers to the President to appoint ten Members of Parliament (MPs), among whom five (5%) must be women.⁵⁶⁸

The above reforms are what is popularly known as quota system. The quota system aims at addressing historical imbalances to enhance women participation in decision making. The reforms resulted in an increase in the number of women representatives in the Parliament. Following the 2010 general election, the number of women representatives increased to 35% of all representatives in the Parliament.⁵⁶⁹

The quota system has however failed to address challenges facing women in political participation in Tanzania. Few women contest for MP positions and other political

567 Constitutional amendments with Act No. 3 of 2000; and further with Act No. 1 of 2005.

568 Article 66(1) (e).

569 TGNP (Undated): Achieving Gender Parity in Political Participation in Tanzania, page 5.

posts in their constituencies. One of the reasons for poor participation in contesting for leadership and political positions is limited access to resources.⁵⁷⁰ During the 2010 general elections, only 18 women representatives were elected from constituencies.⁵⁷¹ This also diminishes the chances of women appointment to governmental ministerial positions.

6.2 Rights of the Child

Children are the most valuable members of the society. They ensure continuity of the society. They are also the most vulnerable members of the society as they depend entirely on the adult members of the society. It is thus of paramount importance that the lives and welfare of children are protected.

The international community has taken protection of children seriously. This has been done through formulating different international instruments for protection of children and their welfare. Among the first international instruments is the Geneva Declaration of 1924, which was adopted by the Assembly of the League of Nations. This declaration endorsed the Declaration of Rights of Children prepared in 1923 by the Council of the Non-Governmental organization called *Save the Children*. Among the principles of the Geneva Declaration was protection of the child in all spheres of life, regardless of their race, nationality or creed.

The principles of the Geneva Declaration were expanded and elaborated by the 1948 Declaration of the Right of the Child and the United Nations Declaration of the Right of the Child. Both documents endorsed the need for a special protection and priority care to the child.⁵⁷²

In 1989, the Convention on the Rights of the Child (CRC) was unanimously adopted by the United Nations General Assembly.⁵⁷³ The Convention covers all areas of human rights, including civil, political, economic, social and cultural rights. Under the Convention, States undertake to respect and ensure the rights contained in the Convention to each child within their jurisdiction without discrimination of any kind.⁵⁷⁴ States are also obligated to take all appropriate measures to ensure the protection of the child against all forms of discrimination.⁵⁷⁵

570 UNDP 2007: Electoral Financing to Advance Women's Political Participation. A Guide for UNDP Support, page 11.

571 TGNP (Undated): Achieving Gender Parity in Political Participation in Tanzania.

572 Peter chris Maina, 1997: Human Rights in Tanzania; selected cases and materials.

573 Resolution 44/55 of 20th November, 1989.

574 Aerticle 2(1).

575 Article 2(2).

Apart from these international instruments, there are also regional instruments for protection of the rights and welfare of the child. In Africa there is the African Charter on the Rights and Welfare of the Child, 1990. This is a human rights instrument specific for the African child, stipulating the rights of this child and duties of African states and societies in protecting and promoting the rights.

There is controversy, however, over the definition of a child. Different countries define a child differently in their domestic laws. This may be the reason why even the United Nations Convention on the Right of the Child has intentionally avoided providing a clear definition of a child by.⁵⁷⁶ Article one of the Convention states that:

“For the purpose of the Present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

The wording of the above provision of the CRC leaves room for States to define a child the way they see fit, even where it is not in the best interests of the child. The Tanzanian legislation has contradicting provisions (definitions) of a child. The *Law of the Child Act, 2009* defines a child as any person below eighteen years.⁵⁷⁷ The law further states that in all considerations regarding this child the best interest of the child shall be of a primary consideration.⁵⁷⁸ The spirit of this provision of the law seems to be defeated by other laws which leave room for maltreatment of children. These are such as the *Law of Marriage Act, 1971*, which recognizes marriage of a child at a tender age of 15 years old.⁵⁷⁹ This law is even discriminatory as it allows a boy child to get married at the age of 18 years.⁵⁸⁰ To make the matters worse, the *Law of Marriage Act, 1971* even allows a child (both boys and girls) to be placed for marriage at the tender age of 14 years, with the consent of the parents or the court.⁵⁸¹

LHRC believes that the law allows mistreatment of a child by allowing them to be placed for marriage at that tender age. The wording ‘placed for marriage’ is not accidental. LHRC believes that it is not possible for a child at the age of 14 and 15 years to make sensible decision of entering into a serious institution of marriage. This is especially true when one considers experience on the ground where children are usually placed for marriage with men older beyond the age of the child. Marriage is defined as the voluntary union of a man and a woman intended to last for their joint

576 Peter Chris Maina, 1997: Human Rights in Tanzania; Selected Cases and Materials.

577 Section 4(1).

578 Section 4(2).

579 Section 13(1).

580 *Ibid.*,

581 Section 13(2).

lives.⁵⁸² It does not make any sense that the legislator allows the child to make such a serious decision at such a tender age whereas the same legislator does not see the same logic when it comes to right to vote and being voted for.⁵⁸³ This makes one ask them as to which decision requires more maturity, marriage which amounts to creating and taking care of a family or electing and being elected a political leader.

Statistics show that Tanzania is among the leading countries in the world with the largest number of early child marriages. According to the 2010 Demographic Health Survey, 37% of women between the ages of 20-24 were married before attaining the age of 18. Prevalence among Tanzanian regions in early child marriage is as follows; Shinyanga (59%), Tabora (58%), Mara (55%), Dodoma (51%), Lindi (48%), Mbeya (45%), Morogoro (42%), Singida (42%), Rukwa(40%), Ruvuma (39%), Mwanza (37%), Kagera (36%), Mtwara (35%), Manyara (34%), Pwani (33%), Tanga (29%), Arusha (27%), Kilimanjaro (27%), Kigoma (26%), Dar es Salaam (19%) and Iringa (8%).

Early child marriage has immense effects on the child. This is because, as mentioned earlier, at the tender age of 15 a girl child does not have ability to make sensible and mature decisions concerning her own life, let alone the whole family. As a result, the child is exposed to sexual exploitation to which she is not old enough to participate. It is to that effect that the 2010 Demographic Health Survey estimates that only 12% of married children between the ages of 15-19 make use of methods of family planning, this given the fact that contraceptive prevalence rate for women and girls in Tanzania is 34% among all married women and girls. As a result, the rest of children are left in danger of their lives during delivery. Reports have as well revealed that most of early marriages do not last long. UNICEF has revealed that 99% of early child marriages do not last as married girls cannot sustain constant abuses from their husbands. Girls forced into early marriage usually face abuses from their husbands, including physical as well as sexual abuses. Children are placed in great danger of rape while in marriage. The law (Penal Code) does not criminalize rape in marriage, which has immense affects on the child in marriage. As a result, most of the girls usually walk out of marriage and flee to urban areas to look for an alternative means of sustaining their lives. An NGO in Shinyanga called AGAPE revealed that in 2013, the organization managed to rescue 300 girls who were abused in their marriages in Shinyanga, Kishapu and Kahama.

Girls who are not in school are particularly vulnerable to early marriage. This is because parents fear that they will get pregnant and bring shame to the family as well as burden the family with an extra mouth to feed. Tanzania Media Women's Association (TAMWA) conducted a survey in 2013 in Shinyanga Region and found that girls are

582 Section 9(1) of the *Law of Marriage Act, 1971*.

583 Election laws recognizes the right to vote when one attains the age of 18 years of age.

usually pressured and forced to perform poorly in their primary education exams thus hindering them from continuing to secondary school. This gives the families ability to force these girls to marry as they are not likely to face the arm of the law. In some other instances, girls are discontinued from schools in order to get married. Tanzania Gender Network Program (TGNP) conducted a survey in 2012 in Kishapu District, also in Shinyanga Region and found that 31 girls were discontinued from school and forced into marriage with older men.

LHRC opines that the Parliament amends the laws affecting the welfare of the child by making it mandatory that the minimum age for marriage for all people to be 18. This will be in the interest of the welfare of the child. Senior government officials have been quoted several times admitting that the *Law of Marriage Act, 1971* is an obstacle to the campaign against child marriage in the country.⁵⁸⁴ The same is as well reflected in the National Action Plan for Prevention and Eradication of Violence against Women and Children, 2001-2015. The National Action Plan recognizes the need to amend laws that affect women's and children's rights, including the *Law of Marriage Act* of 1971. It further calls for minimum marriage age of 18 years as well as the need to create awareness about the impact of early marriage. LHRC recommends that the National Action Plan should be re-visited in order to include a comprehensive strategy to address child marriage. Mere recognition is not enough.

6.2.1 Child abuse and Torture

Children in Tanzania have continued to face abuse and torture at the hands of the people who are supposed to take care of them. The abuse has been either physical or psychological, including physical and sexual abuse. Most of these abuses and acts of torture are, sadly, done by people close to the child, including close relatives and family friends. In August 2014, for example, two children were reported to have been tortured by their father in Mbagala Dar es Salaam.⁵⁸⁵ The father burned the hands of the two boys as punishment because they came back home late from watching a football match a neighbour's house. The father was arrested by police. The mother of was reportedly afraid of reporting the incident to the authorities because if the husband was to be imprisoned she would be left alone to take care of their three children.⁵⁸⁶

584 Mo Blog Correspondent, "*Serikali yakiri sheria ya ndoa 1971 haifai*," 26th August, 2014.

585 Jimmy Mfuru, "*Unyama wa mzazi*," Nipashe newspaper 2nd August, 2014.

586 *Ibid.*



Picture 44: Children Tortured by their own Father

Source: IPP Media

The incident involving the two children pictured above is just one example of many incidents of child abuse that occur regularly in Tanzania. These incidents seem to be escalating by day.



Picture 45: The child above was tortured by her own parent for allegedly stealing some money



Picture 46: Another child tortured by her own parent

Tanzanian children also face abuse and torture in form of corporal punishment. Corporal punishment is practiced in schools and is provided for in criminal laws as a punishment.⁵⁸⁷ The law specifically provides corporal punishment to boys of 18 years and below.⁵⁸⁸

Table 37: Incidents of Child abuse and torture

No.	Victim	Date	Place	Alleged Perpetrator	Incident
1.	Said Siraji (13)	March 2014	Kahama, Shinyanga	The child's father	The father attempted to harm the child by cutting his neck

587 Section 25(c), 28 of the Penal Code, Chapter 16 of the Laws of Tanzania.

588 Section 131(2) (a) (b), 131A (3).

2.	A toddler (2 weeks old)	February, 2014	Ibamba-Bukombe, Geita	The child's father	The toddler was strangled by the father because the child was actually another man's, according to the father.
3.	An infant	29 th January, 2014	Mbagala Nzasa, Dar es Salaam	Unknown	The body of an infant was found dumped in deteriorated state.
4.	An infant	5 th June, 2014	Kirongaya-Mwanga, Kilimanjaro	Zainab Abdallah (25)	The infant was strangled to death and buried in a field behind the perpetrators' home (mother) soon after birth.
5.	A 4 years old girl	18 th March, 2014	Mivumoni-Madale, Dar es Salaam	Iddi Mgosi	The girl was raped and badly wounded in her private parts. The case was reported at Wazo Police post, with reference WH/RB/1891/2014.
6.	An infant	March, 2014	Mhongolo, Kahama	Unknown	The body of the infant was found dumped and in a deteriorated state.
7.	Jamal	February 2014	Mbagala Charambe, Dar es Salaam	Mohamed Karangwa	The victim was killed by the perpetrator (<i>Madrassa</i> teacher) by cutting his throat. The perpetrator was later stoned to death by an angry mob.

6.2.2 Juvenile Justice

Juvenile justice system can be defined as the legal procedure which is applied in the resolution of conflicts involving children in conflict with the law or, as commonly known, "juvenile offenders". The term "juvenile justice" is associated with a person below the age at which ordinary criminal prosecution is possible.⁵⁸⁹ The *UN Standards*

589 Jaba Shadrack 2012: Theoretical context and concepts of juvenile justice system (Tanzania).

Minimum Rules for the Administration of Juvenile Justice [Beijing rules] states that “A child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult.”⁵⁹⁰ Children in conflict with the law are the ones considered to be beyond the parental control and that it is necessary to be brought before the court system.

There is a noted increase of children coming in conflict with the law. Some children offenders have been placed together with adult offenders in different prisons around the country. In May 2014, the Commission for Human Rights and Good Governance (CHRAGG) released a report following a survey it had conducted to ascertain the condition of children living in Tanzania prisons and in police custody around the country.⁵⁹¹ The survey was conducted for the period of 2012-2013, whereby CHRAGG visited 102 prisons and police stations in 12 regions.⁵⁹² The survey revealed that there were 570 children in prisons and police stations, among them 47 being infants accompanying their mothers.⁵⁹³ The survey further revealed that in the surveyed prisons and police stations, 452 children were placed together with adult prisoners.

Statistics obtained from the Tanzania Prison Service indicate that there are 459 children in Tanzanian prisons throughout the country.⁵⁹⁴ Moreover, there is only 1 prison facility designated for children in Morogoro known as *Gereza la Wami Vijana*.⁵⁹⁵ It is not clear from the statistics whether this figure indicates the number of children in all prisons in the country or whether all these children are hosted in this single facility. However, several reports have suggested that children have been placed together with adult offenders in different prison facilities of the country.

Placing children offenders with adult offenders in a single facility is a massive violation of international standards set out by international instruments for treatment of children in conflict with the law basing on the principle of adherence to the “best interest of the child.” The *Law of Children Act 2009* as well requires that children offenders be placed in a separate place from the adults. However, the law has not been discreet enough on the issue, as it states that:

“The police officer shall make arrangements for preventing, so far as practicable, a child while in custody, from associating with an adult

590 Rule 2(2) (a).

591 “*Kashfa ya utesaji watoto magerezani*,” Mwananchi newspaper 31st May, 2014.

592 *Ibid*,

593 *Ibid*.,

594 Letter obtained by LHRC from the office of the Commissioner General of Prison with Reference No. 298 Vol.II/94 of 28th January, 2015.

595 *Ibid*.

*charged with an offence unless he is a relative.*⁵⁹⁶

From the wording of the provision above it shows that the police officer is not required to prevent a child from associating with adult offenders. The provision only places that requirement upon a police officer only as far as it is applicable. Many police stations in Tanzania are in a very poor condition, with most of them having just one holding cell. Leaving a loophole like this in the law means that the police officer has discretion of making sure that juveniles are not placed with adults while in custody. As a result, many juveniles end up being placed with adult offenders. Placing children offenders together with the adult ones is likely to result into abuse of the children physically, sexually as well as psychologically.

Juvenile justice is governed by the *Law of the Child Act, 2009*. Enactment of this law was meant to revolutionalise the way over which children in conflict with the law are dealt with. This law in most cases embeds most of the objectives of several international instruments which set out international standards in handling children in conflict with the law. However, there are a lot of shortcomings that children in conflict with the law face. These shortcomings include treatment of children when arrested which may amount to torture; lack of legal representation; non-attendance of parents or guardians in the proceedings concerning their children; and flaws in procedure for arrest. 79.6% of the children interviewed by CHRAGG revealed that they were not given reasons for their arrest and others were tortured and harassed during the arrests.⁵⁹⁷

Another challenge facing administration of juvenile justice is reduced number of social workers at the district level. The police are required to be accompanied by social workers when arresting children suspects. But the police usually disregard this legal requirement.

Remand homes for children are also scarce; and as a result, children are remanded in same remand facilities as adults. CHRAGG found that remand prisons and police stations had 314 children.⁵⁹⁸ In worst instances even young children were also found accompanying their mothers in remand prisons. 47 young children were found in prisons; among them 17 were infants (below 12 months).⁵⁹⁹ Separation of infant children would not be in conformity with the best interest of the child. However, better means of accommodating mothers with infants should be adopted. Facilities should be built so that nursing mothers with children under 2 years can be accommodated away

596 Section 102.

597 *Ibid.*

598 *Ibid.*

599 *Ibid.*

from the general population in the prison as required by the law. The State should also ensure that these children receive all necessary needs for their continuing health growth, such as milk and adequate healthcare.

Convicted children also face coercion in the form of corporal punishment. Corporal punishment is provided under criminal laws of the country such as SOSPA, the Minimum Sentences Act, the Penal Code and the Corporal Punishment Act. Corporal punishment exalts physical and psychological pain to a child. This is against the spirit of the *Law of the Child Act* and international instruments which protect the rights and welfare of the child. The *Law of the Child Act* provides that children should be protected from torture and any other degrading treatment.⁶⁰⁰ However, wording of the *Law of the Child Act* may suggest that torture caused by corporal punishment is only “unjustified” if it is “unreasonable in kind and degree”, in consideration to the age of the child.⁶⁰¹ The law does not stipulate how the degree of reasonableness is measured, nor does it stipulate the age limits for corporal punishment. Nevertheless, corporal punishment is unacceptable form of punishment and should not be imposed to anybody, let alone to a child.

The concept of juvenile justice system entails that children in conflict with the law receive treatment that will address the root causes of their offending behaviour and implement measures to prevent such behaviour in the future.⁶⁰² This, however, is not the case with Tanzanian children in conflict with the law. Mixing up these children with adult offenders does nothing but turn these them into future had core offenders themselves. As a result, when these children leave prisons after they have served their jail time they are likely to end up committing the same crimes they were firstly jailed for or even worse. LHRC recommends that the Government provides the Tanzania Prison Services (TPS) with budgetary incentives to allow them develop jail infrastructure that will be suitable for children in conflict with the law.

6.3 Rights of Persons with Disabilities

Disability is defined as an objectively measurable condition of impairment, physical or mental.⁶⁰³ The *Persons’ with Disabilities Act, 2010* defines disability in relation to an individual to mean loss or limitation of opportunities to take part in normal life of the community on an equal level with others due to physical, mental or social factors.⁶⁰⁴ WHO defines disability as an umbrella term, covering impairments, activity limitations and participation. Disability, therefore, is a far more complex phenomenon, going beyond a health problem. Disability involves interaction between features of

600 Section 13(1) of Act No. 21 of 2009.

601 Section 13(2).

602 Jaba Shadrack 2012: Theoretical context and concepts of juvenile justice system (Tanzania).

603 Black’s Law Dictionary: Ninth Edition.

604 Section 3 of Act No. 9 of 2010.

a person’s body and features of the society in which he or she lives in. A person with disability faces problems in body function or structure (impairment), encounter limitations in executing a task or action (activity limitation) and experience problems in involvement in life situations (participation restrictions).

Persons with Disability (PWDs) face discrimination and many barriers, which restrict them from participating in activities in the society in equal basis with other members of the society. PWDs find it difficult to enjoy their rights, including education, employment, free movement, voting, participation in cultural activities, enjoyment of social protection, and access to justice. PWDs should enjoy the same standards of equality, rights and dignity as everyone else in the society.

The year 2006 saw the adoption of the *Convention on the Rights on People with Disabilities*. Adoption of this Convention signalled a shift in approach from traditional charity-oriented, medical-based approaches to one based on human rights. The Convention offers sufficient standards of protection for civil, cultural, economic, political and social rights of people with disabilities on the basis of inclusion, equality and non-discrimination. The Convention goes further to make it clear that people with disabilities live independently in their communities, to make their own choices and play active role in society.

In Tanzania, rights of PWDs are guaranteed by the *Constitution of the United Republic of Tanzania, 1977*.⁶⁰⁵ Their rights are further provided for in the *Tanzania Disability Policy* of 2003. The Policy focuses on engaging people with disabilities in productive work and social security. The Policy further integrates issues relating to people with disabilities in the country’s legislation. Thus, issues related to vocational training, employment, care of PWDs and other essential services. Coordination of issues related to people with disabilities is vested with the Ministry of Health and Social Welfare.

Table 38: Types of Disabilities in Tanzania⁶⁰⁶

(a) Albinism – 16,477
(b) Seeing – 848,530
(c) Hearing – 425,322
(d) Walking – 525,019
(e) Remembering – 401,901
(f) Self-care – 324,725
(g) Other Disability – 99,798

605 Article 12 and 13(5).

606 National Bureau of Statistics 2010.

In 2010, Tanzania enacted the *Persons with Disabilities Act, 2010*. The law is in conformity with the *Convention on the Rights of Persons with Disabilities, 2006* and the *Policy on People with Disabilities, 2009*. Among other things, the law provides that people with disabilities have the right to participate in political and public life in an inclusive setting and the right to quality healthcare services. In most part, the law has embodied most of the provisions provided for in the Convention, making the law one of the best laws enacted for people with disabilities. Its implementation however is a different question altogether.

Despite the legislative efforts, PWDs in Tanzania still face many challenges in their daily life. One of the challenges they face is access to health care services, with high costs of medical services and stigma acting as barriers. This relates to purchase of drugs and other medical materials in private pharmacies as the same are not available in public health facilities.

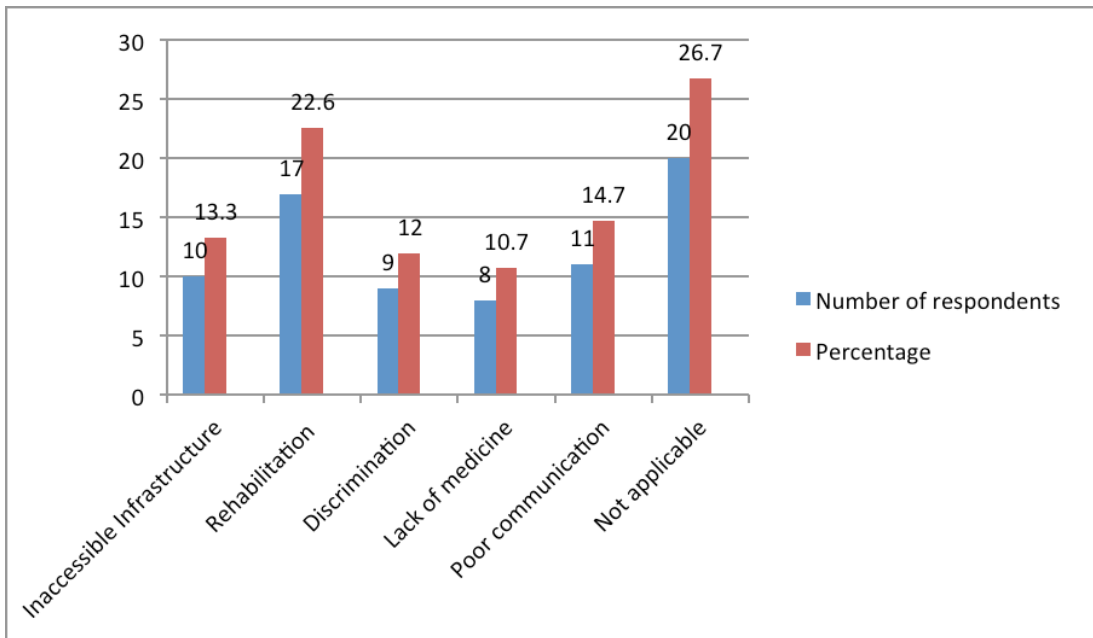


Figure 7: Challenges facing PWD in accessing primary health care services in hospitals⁶⁰⁷

Affordability of health services is another big challenge PWDs face in accessing health services. Most of them cannot afford to pay for their medical services. A study by SHIVYAWATA conducted in 2014 revealed that 94% of the respondents (PWDs) could not afford to pay for their medical services.⁶⁰⁸ PWDs are exempted from paying

607 SHIVYAWATA 2014: Impact Assessment on “Tanzania-Basic Health Services Project” on People with Disabilities.

608 *Ibid.*

for medical services as per directives of the Ministry of Health and Social Welfare. However, they are still asked to pay for medical services in some hospitals. This could be attributed to lack of uniformity in implementing the Ministry's directives whereas in some areas PWDs are required to obtain exemption documents from both the local authorities and the Ministry; and in some areas of the country medical officers are not aware of the Ministry's directives.⁶⁰⁹

PWDs face stigmatization when seeking medical services.⁶¹⁰ Public health facilities face lack of special services for people with disabilities. There are also poor and unfriendly infrastructures which create difficulty in communication.

Quality of health care for PWDs remains very low. According to a survey conducted by CCBRT on access to health and education for PWDs in 2014, most PWDs who visit public health facilities express dissatisfaction with the services they receive from health facilities.⁶¹¹ This dissatisfaction is attributed to poor and unfriendly infrastructure, shortage of drugs, lack of special assistive devices and materials, lack of specialized health care services, stigma of health care providers towards people with disabilities as well as communication difficulties for the deaf and visually impaired people.

PWDs also face challenges when it comes to accessing education. Attendance of PWDs in schools is very low. This was revealed in during the survey conducted by CCBRT in primary schools in Dar es Salaam.⁶¹² The survey revealed that of the 22,515 pupils surveyed from 20 primary schools, only 278 pupils were PWDs. This amounts to only 1% of the total number of all pupils. Among the reasons attributed to low attendance rate include poor infrastructure, high education costs, lack of specialized teachers, stigmatization, and inadequate learning materials. In the survey conducted by SHIVYAWATA, it was revealed that physical access difficulties, lack of sign language interpreters, parents' lack of knowledge and awareness about rights of PWDs are among the barriers hindering PWDs access to education.⁶¹³

Despite the existence of good legislations and policies on PWDs in Tanzania, implementation of the same remains a problem. This could be attributed to shortage of budget. Government budget is key for policy and legislative implementation.

609 *Ibid.*

610 CCBRT 2014: Survey Excerpt: Access to Health and Education Services for People with Disabilities, as well as their involvement in planning processes at local level.

611 CCBRT 2014: Survey Excerpt: Access to Health and Education Services for People with Disabilities, as well as their involvement in planning processes at local level.

612 *Ibid.*

613 SHIVYAWATA 2014: Monitoring the Status of Rights of Persons with Disabilities in Tanzania. Can be found at <http://goo.gl/uLgb1D> (SHIVYAWATA website), accessed on February, 2015.

Amount of public resources directly allocated for disability-related programs is very little and fluctuates every year.⁶¹⁴ The current structure of the government budget does not provide sufficient room to delineate disability specific expenditures from the broader pool of vulnerable groups in the public spending.⁶¹⁵ Budget for PWDs is usually under the umbrella of vulnerability, which include many other groups such as women, children etc.

Increasing government expenditure does not go together with direct allocation of the same to disability-related programs and issues. Across four ministries which are in a better place to address PWD needs and Local Government Authorities (LGAs), direct funding for disability is around 1% of the total government budget.⁶¹⁶ It is a good thing that the increased expenditure is aiming at expanding access and quality of education and health services, which in the long run benefits PWDs. However, accessibility of these services to PWDs is still questionable.⁶¹⁷

LHRC calls upon the government to make sure that services should be disability inclusive and that budget should be allocated in a transparent manner, taking into consideration specific needs for people with disabilities. PWDs should be engaged fully in planning, implementation and reporting of government programmes and strategies to make sure that they address issues relating to PWDs. The Government should as well ensure that the National Disability Fund is established and allocated with enough funding. The National Disability Fund is provided for under the *Persons with Disabilities Act, 2010*.

Generally, there is shortage of statistics of people with disability in the country. The last official survey conducted for PWDs was in 2008 by the National Bureau of Statistics.⁶¹⁸ This makes it difficult to assess their situation and plan better ways of improving the same. Specific sectors which have regular contact with PWDs as well do not have statistics of how many PWDs they service at a particular period of time. Having statistics of PWDs would be useful to ascertain their needs. This, in the long run, would ensure that government planning is conducted in such a way to include issues of PWDs. LHRC calls upon the government to conduct another survey to ascertain the number PWDs and the special needs that they may have. This will help to determine how much resources need to be allocated for PWDs.

614 CCBRT 2013: Budget Analysis with Disability Perspective.

615 *Ibid.*

616 *Ibid.*

617 *Ibid.,*

618 The United Republic of Tanzania, Ministry of Finance: the National Bureau of Statistics: the Tanzania 2008 Disability Survey.

6.4 Rights of Elderly People

The definition of old age varies from one society to another. Whereas in most Western Societies of Europe and America old age is when a person reaches the age of 65+ the same cannot be said for African societies. There are different ways of considering old age. In Tanzania and most Sub-African societies, old age is recognized based on age, responsibilities and the status one has in the society. Aged people have thus been considered to be important members of the society because they are considered to be wise and thus give guidance on important matters concerning the society.

Most societies use the age at which a person begins to receive pension benefits. The UN has itself not adopted a standard criterion for defining old age, but generally use 60+ years to refer to the older population of the society. However, in many instances the age at which a person becomes eligible for statutory and occupational retirement pension has become the default definition.

Population of ageing people keeps increasing globally, year after year. UNFPA estimates that in 1950 there were 205 million old people, over 60 years, whereas in 2012, the population has risen to 810 million.⁶¹⁹ It is projected that by the year 2050, the population of aged people globally will reach 2 billion aged people.⁶²⁰ For Africa, it is projected that by 2050, 10% of the population will be 60 years and above.⁶²¹ Population of aged people can no longer be ignored. The population increase will be reflected in health and overall quality of life of this important group of people in the society.

Social and economic implications of population increase of the aged people are profound and touches on the broader society. The greatest challenge is ensuring social security protection while keeping in mind that the health care system is already overburdened. It is thus important that issues of ageing people be incorporated into national development plans and poverty reduction strategies. There has been experienced increase in abuse, neglect and violence against older people, thus creating a greater need to formulate effective prevention strategies and stronger legislations that can protect their rights.

Demographic ageing has and will have increasingly major implications for all facets of life; economic growth, savings, investments, consumption and labour force participation.⁶²² It also influences family composition and living arrangements, housing

619 UNFPA and Help Age 2012: Ageing in the Twenty-First Century: A Celebration and a Challenge.

620 *Ibid.*

621 *Ibid.*

622 UNECA-UNDESA: MIPAA 2nd Review and Appraisal in Africa: Interactive Training Workshop.

demand, migration trends, epidemiology and the need for health care services. It can also be expected to impact on voting patterns and political representation.

6.4.1 International Legal Framework of the Rights of the Elderly

The rights of elderly people were first considered during the adoption of the *Vienna International Plan of Action on Ageing* of 1982 (VIPAA). VIPAA is the first international human rights instrument on the ageing. VIPAA was adopted by the UN General Assembly in 1982.⁶²³ It creates guiding thinking and formulation of policies and programs on ageing. VIPAA aims at strengthening capacities of governments and Civil Society Organisations to deal effectively with ageing of population and address development potential and dependency needs of older people. VIPAA has 62 recommendations for action addressing research, data collections and analysis, training and education, as well as sectoral areas of health and nutrition; protection of elderly consumers; housing and environment; family; social welfare; income security and employment; and education.

The Madrid International Plan for Ageing (MIPAA) was adopted in 2002. MIPAA is an updated version of VIPAA, with a strong focus on human rights. MIPAA calls for realisation of fundamental rights and freedoms for older persons and ensuring full enjoyment of economic, social and cultural rights as well as civil and political right, aiming at eliminating all forms of violence and discrimination against older people.

Rights of older people or of the elderly are also covered by several other international instruments. They are covered in these instruments because they are universal human rights concerning all, regardless of gender, colour, language, religion or age. These rights are provided in the: *Universal Declaration of Human Rights, 1945* (articles 2, 22 and 25); the *International Covenant of Economic, Social and Cultural Rights* (article 2, 7, 9, 11 and 12); the *International Covenant on Civil and Political Rights* (articles 2, 7, 10 and 17); and the *Covenant on Elimination of All Forms of Discrimination against Women* (Articles 11, 12 and 14).

In Africa, the rights of the elderly people are protected under the *African Charter on Human and Peoples' Rights* (the African Charter). Article 18(4) of the African Charter specifically states that the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

In July 2002, the African Union Heads of State and Government adopted the African Union Policy Framework and Plan of Action on Ageing (PFPA). In comparison, PFPA and MIPAA complement each other as they both call for development of policies, enactment of legislation to protect the rights of the elderly, inclusion

623 Resolution 37/5.

and participation of older people in all development processes and decisions that affect them.⁶²⁴ There is, however, a need to recognise the complementary nature of international and continental policies and seek to package simple communication materials. There is as well a need for joint action by UNECA and the African Union Commission so that governments do not have their attention divided.

6.4.2 Domestic Legal Framework of the Rights of Elderly

Tanzania is yet to enact a specific law to address the rights of the elderly. Enactment of this law was among the main objectives of the National Ageing Policy of 2003. To date, the *National Ageing Policy, 2003* is the main guideline addressing issues of the elderly. The policy was formulated in 2003 and, among other things, defines the old age whereby it stipulates that an old person is an individual who is 60 years and above. The policy has gone further to stipulate the rights of aged people including the right to independence, participation, care, self-fulfilment and dignity.⁶²⁵ Having no legislation in place to address issues of the elderly is a major setback in realising their rights and addressing their concerns. LHRC calls upon the Government to ensure that this legislation is tabled before the Parliament and passed into law to make possible implementation of the issues addressed in the National Ageing Policy.

Issues of elderly people are also addressed in other policies such as the *National Social Security Policy of 2003*, the *National Health Policy of 2003* and the *Public Service Act No. 8 of 2002*. These policies recognise 60 years as the age of retirement. There are also some provisions in laws guiding social security schemes, which provide for provision of pension to older people. The National Development Policies such as Tanzania Development Vision 2025 and MKUKUTA II recognise the contribution that old people can have in development of the country and recognise the importance of providing protection and care to older people, especially those who cannot sustain themselves.

LHRC calls upon the Government to make sure that there is a single law that addresses issues affecting the welfare of older people is enacted. Formulation of the National Ageing Policy is a good beginning in making sure that this law is enacted. One of the main objectives of the policy was enactment of such a law. It is high time that this law is put in place to give legal guidance in ensuring that the welfare of the older people is given the priority it deserves. Article 13(1) of the Constitution of the United Republic of Tanzania recognises the right of all people to protection and equality before the law, thus the rights of the elderly should not be neglected at all.

624 UNECA-UNDESA: MIPAA 2nd Review and Appraisal in Africa: Interactive Training Workshop.

625 These rights are in conformity with the UN Declaration No. 46 of 1991.

6.4.3 Status of the Elderly in Tanzania

Older people in Tanzania are facing many challenges. Among them are: inadequate health services, universal social pension for all older people regardless of their status, lack of participation in important decisions, HIV/AIDS, dehumanisation and brutal killings especially for older women, income poverty and burden for their care to their dependants.

As has been discussed above, an increase in the population of older people is a global phenomenon. Tanzania has the population of approximately 2,507,568 elderly people aged 60 years and above accounting for 5.6% of the total population.⁶²⁶ There is also a significant number of people of 65 years and above at 1,736,851, amounting to 3.9% of the total country's population.⁶²⁷

The national census shows that majority of Tanzanians live in rural areas as only 29.6% of the population live in urban areas.⁶²⁸ Women make majority of the country's population as they amount to 51.7% of the total population. These combined facts are important when one considers that there are even older women above the age of 60 are living in rural areas. Older people have been victims of discrimination and abuse. This has been true especially for older women, who have been hunted and victimised for accusations of witchcraft. As a result, they have been brutally attacked and killed by merciless perpetrators. To make the matters worse, the alleged perpetrators have not, in many instances, been brought to justice to account for their heinous acts.⁶²⁹

Victimisation of older women because of witchcraft allegations is very strong in northern-eastern Tanzania, in the regions of Mwanza, Shinyanga, Simiyu and Geita (*Sukuma land*). About 27 older women, for example, were killed in Butiama District during the first six months of the year 2014 alone, because of allegations of witchcraft.⁶³⁰ Within the same period, other 10 older women were killed in Musoma District for different reasons, including jealousy, vengeance and other family conflicts.⁶³¹

626 The United Republic of Tanzania, the Ministry of Finance, Tanzania Bureau of Statistics: Age and Sex Distribution Report, 2012.

627 *Ibid.*

628 *Ibid.*

629 More on witchcraft attacks and killings have been discussed extensively in Chapter Two of this report.

630 LHRC 2014: Bi Annual Human Rights Situation Report.

631 *Ibid.*



Picture 47: An Elder Woman brutally Killed

Older people have as well been denied their right to own property. Most of the victims here are the widows. According to some customs, women are not allowed to inherit property earned with their late husbands. There is thus the existence customary laws that are discriminative towards women. As a result, women are left vulnerable as they are left with no means to sustain their lives once they are robbed off every possession that they acquired during their marriages.

Statistics show that most of Tanzanians live in rural areas where engage in subsistence farming as a major economic activity.⁶³² Denying them the right to own property, which in most cases is land, leaves them with no means which to sustaining themselves; and as a result, they continue to live in poverty and being dependant on family members.

Another challenge the elderly people face is access to health services. As they are growing older, the elderly tend to have more and more healthy concerns. This is caused by demographic and epidemiological transitions from predominance of infectious diseases to non-commucable ones.⁶³³ Among the main concerns as far as access to health by older people is concerned is the issue affordability of the services. The National Ageing Policy provides that older people should receive free medical services. This right is however denied due to several reasons.

632 2012 census shows that 11,359,090 Tanzanians engage in farming activities.

633 UNFPA and Help Age 2012: Ageing in the Twenty-First Century: A Celebration and a Challenge.

Access to health facilities has its own challenges. Among them is the distance in reaching these facilities. MKUKUTA strategy requires that health facilities should be established within 5 kilometres from the household. However, this is not the case in rural areas where health facilities are located very far. Rural areas also have poor infrastructure and lack reliable means of transport. This is addition to the fact that older people are faced with poverty, thus cannot afford to reach these health facilities.

The health facilities available in rural areas usually lack or are short of qualified personnel. Older people require full attention of qualified doctors who in most cases are only located in district and regional hospitals. This poses a great challenge to older people living in rural areas.

The elderly are also faced with the challenge of establishing proof of their age in order to receive free health care. Local government authorities have been assigned the duty of providing identification for that matter. However, most of the elderly people do not have birth certificates; and this has in some instances led to some of them being denied their right to free healthcare in public facilities.

Availability of medical supplies is yet another challenge. Health facilities are faced with lack or shortage of medical facilities in general, let alone specialised supplies for the elderly. As a result, elderly people are required to buy supplies from privately-owned pharmacies. Majority of elderly people are poor and one cannot expect them to be able to afford these supplies.

Lastly, income security is another challenge the elderly people face. Lack of income security has resulted in subjecting the elderly people to poverty and dependence on others, especially members of their families for sustainability. The social security system provides for provision of pension once one retires. This means the system mostly recognises those in the formal sector. The pension provided is itself usually insufficient to sustain the needs of the retiree. Yet, the majority of the elderly people do not qualify for these benefits as most of them live in rural areas and were not employed in the forma sector. Once these people are unable to work in their farms because of old age, they are left at the mercy of their families or the community to provide for favour to enable them sustain their needs.

6.5 Rights of Refugees: Granting of Citizenship to former Burundian Refugees in Tabora

Tanzania has for many years been receiving refugees from different African countries. Refugees have been coming to Tanzania mostly because they are fleeing from massacres taking place in their respective countries and internal conflicts. Most of them have been from the neighbouring countries of Rwanda, Burundi and the Democratic

Republic of Congo (DRC). Some refugees have also been coming from as far as South Africa, Mozambique, Angola, Namibia and Zimbabwe. In 2000, there were estimated 1 million refugees living in Tanzania from different countries of the Great Lakes, the majority of them being from Burundi.⁶³⁴

The trend of refugees flocking in the country has subsided significantly. This has been due to many factors, among them improvement of security situation in the countries that refugees have been coming from. Tanzania has always been a refugee-friendly country, going back to as far as the country's independence. It has been practicing the so called "open-door" policy where refugees are welcomed in the country, irrespective of where they came from. There was however a change of this policy in the early 1990s, when the country's attitude towards refugees began shifting, when the policy became "refugee-free country" where many refugees were even denied entry into Tanzania. One such example is the expulsion of an estimated 60,000 Rwandese and Burundian refugees in 2006.

The change of policy could be explained by the change in social-economic situation on the ground. General attitude of the societies around the areas where refugees were settled began to change. Refugees were accused of several wrong doings. Among them is participation in criminal activities and degradation of environment around areas of their settlement. As a result, Tanzania began advocating for repatriation of refugees back to their countries of origin. More harsh policies were even employed, including closure of borders and *refoulement*.⁶³⁵ As a result, the Government, in collaboration with organisations dealing with refugees, began working on programmes which would see the repatriation and/or integration of refugees.

In 2013, the Government conducted a campaign aimed at identifying 'illegal immigrants' living in Tanzania. The campaign followed the issuance of a Presidential order requiring all illegal immigrants in the country to leave the country before they can be forced to leave. As a result about 20,000 illegal immigrants were reported to have left voluntarily the country following the order.⁶³⁶ This campaign was criticized by human rights activists as a campaign which not only grossly violated human rights but did not take into consideration people who qualified for refugee and asylum status.⁶³⁷ Worse enough, this campaign victimised naturalised refugees and even some Tanzanian citizens.⁶³⁸

634 Roos, 2005.

635 Human Rights Watch report of 2007.

636 Faraji Msona: "Over 20,000 immigrants leave voluntarily," *The Citizen*, 28th August, 2013.

637 LHRC 2013: Fact Finding Mission on *Operesheni Kimbunga*.

638 *Ibid.*

Burundians were among the many refugees that Tanzania played host to. They began coming to Tanzania as early as the 1970s following a breakdown of civil wars in their country and were hosted in different camps in Tanzania. They were hosted in refugee camps at Katumba and Mishamo in Mpanda and Ulyankulu in Tabora. Tanzania, in collaboration with the UNHCR, began to repatriate these Refugees from these camps back to Burundi. Most of them had lived in Tanzania for a very long time and thus had been well established. They had become self supporting and even tax paying members of the society for growing not only subsistence crops but even cash crops such as tobacco and coffee. Some had acquired properties and others had intermarried with Tanzanian citizens and even had children. Thus, repatriation programmes had immense effect on many refugees as some had nowhere to call home but Tanzania, since they had never been to Burundi or had already been established in Tanzania.

By the year 2013, Tanzania had closed all but one of its refugees' camps.⁶³⁹ The remaining camp was hosting Congolese refugees only. There were many other refugees around the country who had their status undefined and most of them were of Burundian origin.

In 2007, the Government expressed its willingness to offer citizenship by naturalisation to Burundian refugees in the country in an effort to end protracted refugee situation in the country. During this process more than 160,000 refugees were identified and found to be eligible for naturalisation.⁶⁴⁰ However, the process ran into some obstacles, causing naturalisation of only 750 refugees. The program was then halted, leading to a lot of uncertainty by the refugees on their status. At the same time more than 53,000 Burundian refugees had opted to return to Burundi in between 2008 and 2009. They were assisted by the UNHCR in collaboration with the governments of Tanzania and Burundi.⁶⁴¹

In 2014, Tanzania again announced that it had revived its willingness to grant naturalisation to Burundian refugees. Thus, on 14th October, 2014 about 162,156 Burundian refugees were granted naturalisation.⁶⁴² In a ceremony held at Tabora, President Jakaya Kikwete ceremonially granted citizenship certificates to about 100 refugees. The Government has announced that more 60,000 Burundian refugees are in the process to undergo naturalisation process.

639 UNHCR 2013: Global Appeal Update, United Republic of Tanzania.

640 Erol Kekic, "Tanzania Plans to Naturalise 160,000 refugees", The CWS Blog, 5th November, 2014.

641 UNHCR 2002: Global Report.

642 www.unhcr.org/5441246f6.html, accessed in December, 2014.



Picture 48: President Jakaya Kikwete (in glasses) hands a certificate of citizenship to a naturalised refugee in Tabora in October, 2014

Meanwhile, in 2014, the Government granted citizenship to 3,000 Somali refugees.⁶⁴³ These refugees are of Tanzanian ancestry, from the Zigua and Zaramo ethnic groups. Historically, they were captured by the Arab slave masters and taken to Somalia. They fled to Tanzania in 1992 following the Somali civil war and subsequent fall of the Siad Barre regime.

The decision by the Government is one to be welcomed. It sets an example of a solution that can be achieved in settling the problem of refugees who have been exiled for a long period of time. The decision is also a welcome development as one considers that in the past naturalised refugees were given limitation as to place of settlement after their naturalisation.⁶⁴⁴ With the 2014 naturalisation, the new Tanzanian citizens were given the freedom to choose where they wish to settle. This is a very good step in ensuring that they enjoy the very basic right of settlement as any other Tanzanian citizen as provided for under the 1951 Convention.

643 Eric Kabendera, "Refugees to call Tanzania home," *the East African* 7 June, 2014.

644 International Refugee Rights Initiatives 2013: Former Burundian Refugee Struggle to Assert their New Tanzanian Citizenship; a Working Paper for Citizenship and Displacement in Great Lakes Region.

There are still about 60,000 refugees from the Democratic Republic of Congo in the only remaining refugee camp in Tanzania, the Nyarugusu Camp. The United States of America has reportedly agreed to resettle more than 30,000 of the DRC refugees in USA on a five year plan, beginning from 2015.⁶⁴⁵

Despite the good measures taken by the Government in collaboration with other stakeholders, there are still significant numbers of people who need assistance. The UNHCR has used the term “people of concern” to refer to this group of people. They include refugees, asylum seekers and other people of concern.⁶⁴⁶ Among them are the Congolese refugees who fled their country in 1996 and Burundian refugees who fled their country in 1990s. The UNHCR estimates that by December 2015, there will be about 270,780 people of concern.⁶⁴⁷ All these people are still in need of international and local protection to ensure that their rights continue to be protected. The new Tanzanian citizens (former Burundian refugees) are as well still in need of assistance in making sure that there is a smooth process of settling them to their new settlements, either in the former camps or in other places that they will choose to settle.

Planning figures

Type of population	Origin	Jan 2015		Dec 2015	
		Total in country	Of whom assisted by UNHCR	Total in country	Of whom assisted by UNHCR
Refugees	Burundi	37,790	12,790	39,310	13,300
	Democratic Republic of the Congo	59,440	59,440	57,820	57,820
	Various	160	160	170	170
Asylum-seekers	Democratic Republic of the Congo	2,200	2,200	2,200	2,200
Others of concern	Burundi	189,700	189,700	197,290	197,290
Total		289,300	264,290	296,780	270,780

Figure 8: UNHCR 2015 planning figure for people of concern⁶⁴⁸

There is a great concern for the so called urban refugees living mainly in urban areas of the country, especially in Dar es Salaam. These people have no clearly defined status as some used to live in refugee camps and have since then move to urban areas. Others had at once been repatriated back to their home countries but returned due to various reasons, among them being wars and violence in their countries of origin. This group of people specifically lacks legal protection as the law does not recognise them, hence leaving them in a vulnerable position of exploitation and abuse. They are sometimes tolerated by the authorities, though at times they are harassed by the

645 UNHCR: Global Appeal 2015 Update; United Republic of Tanzania.

646 UNHCR: Global Appeal 2015 Update; United Republic of Tanzania.

647 *Ibid.*

648 *Ibid.*

same. These people usually depend on individual good will as well as on charities from some non-governmental organisations. This is because the UNHCR provides assistance to only refugees living in established camps. The Government had at one time shown its willingness to review its refugee legislation so that it can take on board concern of these people as well. However, this effort is yet to materialise.

LHRC calls upon the Government to speed up the process of reviewing its refugee legislation, by involving all the stakeholders to address these concerns. Specifically, LHRC urges the Government to ratify the African Convention for the Protection and Assistance of Internally Displaced Persons in Africa and accede to the international statelessness instruments. Tanzania should continue building up on the *de-facto* recognition policy of urban refugees as it has been doing in the past.⁶⁴⁹ Efforts should be made to make sure urban refugees are legally categorised to ensure easy monitoring and evaluation of Government policies.

6.5.1 Trafficking in Persons

Tanzania is a source, transit and destination of human trafficking victims. This is due to the geographical position of the country, which borders eight different countries. Some of these countries bordering Tanzania are land-locked countries and depend on Tanzania for importation and exportation of goods.

In the recent years, Tanzania has become a transit centre for immigrants coming from the horn of Africa to South Africa usually, and even Europe and Asia. Victims of trafficking in persons usually enter Tanzania through its borders with Kenya, where they are transferred in difficult and dangerous conditions to the southern regions bordering Zambia and Malawi en route to South Africa.



Picture 49: Law enforcers guard illegal immigrants from Ethiopia intercepted while on transit to another destination

649 In 2011 urban refugees began to be granted with working permits showing the willingness of the Government in legally recognizing this group of people.

Table 39: Some of incidents involving immigrants reported by the media

No.	Immigrants arrested	Period	Place
1.	11 Ethiopians immigrants	August 2014	Pwani region
2.	48 Ethiopian Immigrants	August 2014	Found abandoned in a forest in Visakazi Ubena at Chalinze. They were found in a very bad condition, that that they could not even eat anything. 11 of them had to be rushed to hospital for medical attention.
3.	100 Ethiopian immigrants	February 2014	Pwani region
4.	57 Ethiopian immigrants		At Ghona Village in Chekereni Ward in Moshi District, Kilimanjaro Region. The immigrants were allegedly being transferred using <i>bodaboda</i> through the border with Kenya to Chekereni where they would board a lorry to Dar es Salaam en route to South Africa.
5.	115 Ethiopian immigrants	June, 2013	The International Organisation for Migration (IOM) announced that they were repatriating these Ethiopian immigrants back to Ethiopia. IOM revealed that most of these immigrants entered the country as minors that they had to be assisted since they never had any form of identification in their life.
6.	12 Ethiopian immigrants		The victims were found in Tanga hiding in a lorry en route to Dar es Salaam.
7.	Sultan Said Ramadhani (31), Mwanza resident		He was arrested in Mwanza for allegedly trafficking illegal immigrants. He had in his company four Ethiopian immigrants who he was allegedly transferring to Mtwara en route to South Africa through the Mozambican border.
8.	46 Ethiopian immigrants	March 2014	Arrested in Gezaulole at Ruaha in Kilolo District hiding in bushes.
9.	17 Ethiopian immigrants	November 2014	Arrested in Morogoro hiding in bushes, believed to have been abandoned by traffickers.
10.	55 Ethiopian immigrants	May 2014	They were found hiding in a forest in Himo, Kilimanjaro Region, believed to have been abandoned by their traffickers.

One of the challenges that victims of human trafficking face is that they are usually intersected by the Tanzania Police force and end up in prison because they are usually perceived as illegal immigrants who have violated immigration laws. IOM reported that there were 453 Ethiopian immigrants detained in Tanzanian jails during the verification mission in its assisted voluntary return.⁶⁵⁰

Tanzanian prisons are already overcrowded and adding illegal immigrants in them creates a potential humanitarian crisis. LHRC thus recommends that efforts be made to ensure that screening methods are improved for the arrested persons in order to screen illegal immigrants from victims of human trafficking so that they can receive the assistance required. Voluntary return should be offered to those willing to do so. IOM has been assisting stranded immigrants to return home voluntarily in its assisted voluntary return mission. In June 2013, 115 Ethiopian immigrants, for example, were assisted by IOM to return home voluntarily whereas 253 immigrants were assisted in 2014.⁶⁵¹ From the screening so conducted, it will also be possible to ascertain those who actually are asylum seekers, given the circumstances that they have been forced to leave their home countries.



Picture 50: Policeman inspecting a lorry used in human trafficking

650 Ashery Mkama, “IOM repatriates 253 Ethiopian migrants,” Daily News 28th November, 2014.

651 Ashery Mkama, “IOM repatriates 253 Ethiopian migrants,” Daily News 28th November, 2014.

Tanzania is as well reported to be the destination of some of victims of human trafficking. These mostly come to Tanzania as in search of employment opportunities. People from as far as Asia and the Arab sub-continent have been reported to have been trafficked to Tanzania for that purpose. This can be well explained as the engagement in business transactions increases between Tanzania and Asian countries such as China and India.

Domestic trafficking, however, continues to be the largest human trafficking problem in Tanzania. Victims are usually from poor rural areas brought to cities to work as domestic workers, beggars, street vendors, prostitutes and bar maids. The victims are usually of very young age, as young as 9 years old to 19 years old. Women and children are the most affected group of human trafficking in Tanzania. Children are usually brought to towns to work as domestic servants, either as *shamba* boys or the so called “house girls”. In the rural areas, the situation is even worse as children usually make the majority of manual workers in plantations, factories and even mining. There are limited statistics to show the exact figures of children working in these fields.

Chapter Seven

Collective Rights

7.0 Introduction

Collective rights are rights that an individual enjoys as part of a group, in which people exercise these rights together. Collective rights belong to the third generation of Human Rights⁶⁵² and include; the right to development; the right to self-determination; and right to safe and clean environment.⁶⁵³ The right to natural resources also falls under this category.

Collective rights form an essential part of the African Human Rights system, shaped in part by a communal way of life which prevailed amongst African societies before colonial invasion. This Chapter focuses on the situation and realization of the right to safe and clean environment and the right to benefit from natural resources.

7.1 Natural Resources Management in Tanzania

7.1.1 Overview

Natural resources in Tanzania include land, sea, rivers, lakes, forests, wildlife and minerals. These resources form the backbone of the economy by contributing through economic activities like tourism, farming, mining and timber production. Natural resources are materials extracted or purified from their natural state as opposed to materials produced through human effort; and they are used by manufacturing industries, mining industries, and the tourism industry.

The right to natural resources is recognized under international and regional Human Rights law. For instance, the right is contained in the African Charter on Human and Peoples' Rights, 1981, which provides that "all peoples shall freely dispose of their wealth and natural resources" and "this right shall be exercised in the exclusive interest of the people."⁶⁵⁴ This right is also covered under the UN 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:⁶⁵⁵

- i. Individual and state sovereignty over natural resources;
- ii. Exploitation of natural resources for the benefit of the people;

652 Sepulveda, Magdalena *et al* (2004), *Human Rights Reference Handbook*, University for Peace, p. 13.

653 Ibid.

654 African Charter on Human and Peoples' Rights, 1981, Article 21(1).

655 Ibid.

- iii. Necessity to reach consensual agreements to exploit natural resources; and
- iv. Utilization of natural resources for the purposes of human development.

The right of Tanzanians to benefit from natural resources is also implied under Article 9 of the Constitution of the United Republic of Tanzania, which 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.”⁶⁵⁶ Nevertheless, this provision is unenforceable as it is not in the Bill of Rights within the Constitution.

Management of natural resources has been faced with several challenges over the years, particularly depletion of such resources due to deforestation, illegal fishing and poaching. There is also a problem of mismanagement or misuse of natural resources by the people vested with management of such resources. These challenges have had a direct impact on the right of Tanzanians to benefit from their natural resources. This sub-chapter focuses on management and challenges facing the sectors of forestry, wildlife, fisheries, and minerals in the year 2014.

7.1.2 Forestry

Forestry, together with agriculture, livestock and fisheries, contribute over 65% of GDP and employ more than 80% of the workforce in Tanzania.⁶⁵⁷ Forests occupy 55% of Tanzania’s 48 million hectares, providing for more than 90% of energy consumption.⁶⁵⁸

The major challenge that continues to face forestry management in Tanzania is the cutting down of trees, which has been excessive over the past ten years. Unregulated cutting down of trees is mostly motivated by burning the tree logs to obtain charcoal for energy consumption.

Forests in Tanzania are managed by the Tanzania Forest Services Agency (TFS), which is under the Ministry of Tourism and Natural Resources. Current statistics indicate that up to 372,000 hectares of forests is cut down annually, according to the Minister of State in the Vice President’s Office (Environment), Dr. Binilith Mahenge during the 13th meeting of the UN REDD+ forest management programme that took place in Arusha, Tanzania in November, 2014. Dr. Mahenge also revealed that 92% of trees cut are used for charcoal production, half of which is consumed in Arusha, Mwanza and Dar es Salaam.

656 Constitution of the United Republic of Tanzania, 1977, Article 9(i).

657 United Republic of Tanzania, *Fifth National Report on the Implementation of the Convention on Biological Diversity*, March, 2014, p. iii, available at <https://www.cbd.int/doc/world/tz/tz-nr-05-en.pdf>, accessed 12th February, 2015.

658 Ibid.

In an effort to save forests, the government has come up with different initiatives, including planting trees campaign under TFS. In 2014, the Government banned cutting down of trees, even where the tree has been planted within the compound of an individual.

LHRC recommends the development and promotion of different alternatives to the use of charcoal energy in order to save forests. The discovery of gas in Mtwara should be used to introduce gas as an alternative energy source, especially in rural areas where cutting down of trees is rampant.

7.1.3 Wildlife: Elephant Killing for Ivory

Tanzania is blessed with a variety of wildlife, scattered in its many national parks and game reserves. The wildlife has a significant contribution to the country's economy through tourism, which earns Tanzania USD 1.7 billion annually.⁶⁵⁹ However, one of the major challenges that have been affecting the tourism industry is poaching, especially poaching of elephants in order to obtain their tusks and sell them in the black market of ivory. Because of elephant killing, the number of elephants in Tanzania dropped from 350,000 in 1961 to 110,000 in 2012.⁶⁶⁰ Currently, the country is losing nearly, 11,000 elephants a year to poaching, leaving elephant population at around 60,000.⁶⁶¹

The major black market for ivory is China and Vietnam, and Chinese nationals have mostly been implicated in illegal ivory trade.⁶⁶² Several Chinese nationals were arrested in the year 2013 for illegal possession of ivory. In November 2013, for instance, two Chinese nationals were caught in possession of 706 elephant tusks in Dar es Salaam Region.

659 LHRC (2014), *Operesheni Tokomeza Ujangili Report*, p. 2.

660 Ibid, p. 3.

661 AllAfrica.com, *Tanzania to Launch New Anti-Poaching Operation*, available at <http://allafrica.com/stories/201404080264.html> accessed 12th February, 2015.

662 LHRC (2014), *Operesheni Tokomeza Ujangili Report*, p. 2.



Picture 51: Chinese Nationals Caught in Possession of 706 Elephant Tusks in Dar es Salaam, October, 2013

In the year 2014, it was reported by the Environmental Investigation Agency (EIA) that some Chinese officials and businessmen smuggled ivory out of the country during the state visit of President Xi Jinping.⁶⁶³ It was reported that Chinese officials engaged corrupt Tanzanian officials, who helped them escape with huge amounts of ivory, some of which were put in diplomatic bags. The Chinese Government, however, through its Ministry of Foreign Affairs, strongly rejected these claims and claimed that the Chinese Government remains committed in combating ivory smuggling.

Over the years, the Government, through the Ministry responsible for natural resources, has made efforts to fight poaching in Tanzania. In line with these efforts nationwide anti-poaching operations have been conducted, including Operation *Uhai* in 1989 and recently, Operation *Tokomeza* in 2013. Operation *Tokomeza* resulted in the arrest and prosecution of many poaching suspects. However, the operation was tainted with disregard for and violations of Human Rights, with officers involved in the operation engaged in torture, rape and corruption. Reports of violations of Human Rights during the operation prompted an investigation by the Parliamentary Select Committee for Lands, Natural Resources and Environment, whose report confirmed the violations of Human Rights, including severe torture, which caused deaths of some suspected poachers.⁶⁶⁴ The report also indicated the involvement of some MPs and senior

⁶⁶³ Report: *Chinese smuggled ivory out of Tanzania during state visit*, available at <http://america.aljazeera.com/articles/2014/11/6/china-tanzania-ivory.html#>, accessed 12th February, 2015.

⁶⁶⁴ See Report by the Parliamentary Select Committee for Lands, Natural Resources and Environment on *Tokomeza* Operation.-

government officials in the illegal ivory trade, forming a powerful poaching network, a network which the Committee accused of sabotaging Operation *Tokomeza*.⁶⁶⁵

Despite Operation *Tokomeza*, 26 elephants were killed in Manyoni District in Singida region in 2014.⁶⁶⁶ Six persons, suspected of being involved in the killing, were arrested at Kiyombo Village in Manyoni in connection with a consignment of 55 elephant tusks.⁶⁶⁷ Following this incident, the Minister of Tourism and Natural Resources, Lazaro Nyalandu, revealed that the Government is planning to launch a second national-anti poaching operation (Operation *Tokomeza II*) to capture poachers and their allies and bring them to justice.⁶⁶⁸

LHRC calls upon the Government to observe human rights during the second Operation *Tokomeza* in order to avoid brutality and abuse of rights as was the case during the first operation. Anti-poaching strategies should be put in place to ensure that anti-poaching officers are well-trained, and poaching suspects are carefully identified and approached to avoid targeting and hurting innocent civilians.

7.1.4 Fisheries: The Case of Illegal Fishing in Lake Victoria and the Indian Ocean

Fishing activities supports more than 4 million people in Tanzania, who are directly or indirectly engaged in fisheries activities, including actual fishing, processing and trading.⁶⁶⁹ The fisheries sector is also important for the economy, contributing about 1.4% to the GDP and accounting for 10% of national exports.⁶⁷⁰ Fishing activities are mainly conducted in the Indian Ocean, Lake Victoria, Lake Tanganyika and Lake Nyasa, which are the major water bodies in the country.

Lake Victoria boasts the status of the largest tropical lake, with a total area of 68,800 km² of which 51% lies in Tanzania, 43% in Uganda, and 6% in Kenya.⁶⁷¹ It has a

665 Ibid.

666 AllAfrica.com, *Tanzania to Launch New Anti-Poaching Operation*, available at <http://allafrica.com/stories/201404080264.html>, accessed 12th February, 2015

667 Ibid.

668 Ibid.

669 The United Republic of Tanzania, The Ministry Of Livestock and Fisheries Development, *An Overview of the Fisheries Sub Sector: Achievements, Challenges and Priorities for Financial Year 2014/15*, A Paper Presented By Mr. Hosea Gonza Mbilinyi Director For Fisheries At The 2014 Natural Resources Sector Review Meeting On 16th October, 2014 At The National College Of Tourism, Bustani Campus-Dar Es Salaam, available at www.tzdpd.or.tz, accessed 12th February, 2014.

670 Ibid.

671 The United Republic of Tanzania, *National Audit Office Performance Audit of the Management of Fisheries Activities in the Lake Victoria*, Report of the Controller and Auditor General of the United Republic of Tanzania, January 2013, p. 1 available at http://nao.go.tz/?wpfb_

shoreline of nearly 3,450 km, of which 33% is in Tanzania, 51% Uganda and 16% in Kenya.⁶⁷² The lake is thus shared by the three countries, with each managing its part. Management on the part of Tanzania is vested in various key players, led by the Ministry of Livestock and Fisheries Development (MLFD). Others include the Ministry of Water (MoW), Prime Minister's Office – Regional Administration and Local Government (PRMO-RALG) and Local Government Authorities.⁶⁷³ The Director of Fisheries Development (DFD) within MLFD is mandated to supervise and coordinate the fisheries management activities, including monitoring, control and surveillance.⁶⁷⁴

Fishing in Lake Victoria is vital economic activity for the people of the lake region and for the Government in terms of revenue collection. Because of the overdependence on fishing as a major source of food and income, there has been a challenge of overexploitation of fish stocks in the Lake, with the Nile perch stock declining beyond the minimum stock that is required to sustain regeneration.⁶⁷⁵ The major concern, however, has been incidents of fishing illegally by using dynamite, which has been responsible for killing of large quantities of fish. Dynamite fishing has been said to cause serious damage to ecosystem and kill large quantities of fish. According to members of the Beach Management Units (BMWs) in Dar es Salaam, out of 100 fish killed through dynamite fishing, only 20 are collected.⁶⁷⁶

Many incidents of illegal fishing, mostly dynamite fishing, were reported in the year 2014. The European Union, through its programme called *SmartFish*, in collaboration with MLFD, confiscated 300 Kgs of explosives, impounded fishing vessels and prosecuted five cases of illegal fishing in the Indian Ocean between from mid-2012 to mid-2014.⁶⁷⁷ The duo conducted five operations within the Indian Ocean, aimed at curbing dynamite fishing in the coastal regions.⁶⁷⁸

In the year 2013/2014, patrols conducted in Lake Victoria, Lake Tanganyika, Lake Nyasa and the Indian Ocean led to the apprehension of more than 30,000 illegal fishing gear, including 98 dynamites.⁶⁷⁹ 851 suspects were arrested during this period

dl=97, accessed 12th February, 2015.

672 Ibid.

673 Ibid.

674 Ibid, p. 8.

675 Ibid, p. x.

676 *Tanzania: Dynamite Fishing Poses Threat to Aquatic Species*, available at http://www.stopillegal-fishing.com/news_article.php?ID=1189, accessed 12th February, 2015.

677 *Tanzania: EU Funded Project Seizes 300kgs of Dynamite*, available at http://www.stopillegal-fishing.com/news_article.php?ID=1146, accessed 12th February, 2015.

678 Ibid.

679 The United Republic of Tanzania, The Ministry Of Livestock and Fisheries Development, *An*

and 61 cases were instituted in courts.⁶⁸⁰ In Geita Region, a total of 105 fishermen were convicted by courts for engaging in illegal fishing following patrols conducted by local fisheries authorities between 2005 and March, 2014 on the waters of Lake Victoria.

In July 2014, the Regional Commissioner of Mwanza, Mr. Evarist Ndikilo, spearheaded the destruction of illegal fishing gear which had been apprehended by fishery officers.⁶⁸¹ The illegal fishing gear that were destroyed include 3,153 monofilament nets, 435 beach seine nets, 539 gillnet, and 227,670 meters of beache seine rope.⁶⁸²

The CAG Report on the management of fisheries activities in Lake Victoria, released in January, 2013, revealed a number of factors affecting management of fishing activities in Lake Victoria. The report revealed that 50% of fishers and vessels were operating without being registered and that the Nile perch stock in the lake is below the recommended amount,⁶⁸³ meaning there is shortage of fish. Moreover, the CAG noted that monitoring and inspection of fishing activities in Lake Victoria is inadequate, with the Beach Management Units (BMUs) having little support from Local Government Authorities (LGAs) and the MLFD, thus reduced capacity to combat illegal fishing.⁶⁸⁴ Additionally, it was stated in the report that action taken against illegal, unreported and unregulated fishing is not adequate to act as a deterrent, whereby most cases are not taken to court due to lack of knowledge on how to file cases. It further stated that cases are costly and take long time to conclude, as investigations and prosecution of such cases take long time.⁶⁸⁵

LHRC calls upon the Government to increase funding for the Directorate of Fisheries Development within MLFD in order for them to be in a better position to enable BMUs tackle the problem of illegal fishing through constant surveillance. All fisheries and vessels operating in Lake Victoria should be registered.

Overview of the Fisheries Sub Sector: Achievements, Challenges and Priorities for Financial Year 2014/15, A Paper Presented By Mr. Hosea Gonza Mbilinyi Director For Fisheries At The 2014 Natural Resources Sector Review Meeting On 16th October, 2014 At The National College Of Tourism, Bustani Campus-Dar Es Salaam, p. 8, available at www.tzdp.org.tz, accessed 12th February, 2014.

680 Ibid.

681 *Mwanza RC decries illegal fishing in Lake Victoria*, available at http://www.stopillegalfishing.com/news_article.php?ID=1147, accessed 12th February, 2015.

682 Ibid.

683 The United Republic of Tanzania, *National Audit Office Performance Audit of the Management of Fisheries Activities in the Lake Victoria*, Report of the Controller and Auditor General of the United Republic of Tanzania, January 2013, available at http://nao.go.tz/?wpfb_dl=97, accessed 12th February, 2015.

684 Ibid.

685 Ibid.

7.2 The Right to Clean Environment: The Case of Land Pollution

There is the National Environmental Policy of 1997, which defines environment to include: air, land and water; plant and animal life including human life; the social, economic, recreational, cultural and aesthetic conditions and factors that influence the lives of human beings and their communities.⁶⁸⁶ It also includes buildings, structures, machines or other devices made by man; any solids, liquids, gases, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man.⁶⁸⁷ The Policy provides for monitoring and regular review of policies, plans and programmes related to environmental protection and management.⁶⁸⁸

The right to clean environment is encompassed in the African Charter on Human and Peoples' Rights (ACHPR), which provides that all people have a right to a general satisfactory environment that is favourable to their development.⁶⁸⁹ This right is also enshrined in the Rio Declaration on Environment and Development of 1992.⁶⁹⁰ The Declaration imposes a duty upon States Parties to achieve poverty eradication and sustainable development through environmental protection.⁶⁹¹ These documents indicate a direct link between a clean environment and development, in that environmental protection is vital for development.

In Tanzania, the right to clean environment is not covered in the 1977 Constitution of the United Republic of Tanzania. However, the constitution-making process in the country, which started in 2011 with the enactment of the Constitutional Review Act, has witnessed calls by activists of environmental protection and Human Rights stakeholders to include the right to clean environment in the new Constitution. This right is now contained in the Proposed Constitution,⁶⁹² which is subject to referendum. The wording of the relevant provision in the Proposed Constitution is the same as that in the Environmental Management Act, 2004, which provides for the right to clean, safe and healthy environment.⁶⁹³ The right corresponds to a duty to protect the environment.⁶⁹⁴

686 United Republic of Tanzania, Vice-President's Office, National Environmental Policy 1997, p. 1.

687 Ibid.

688 Ibid, p. 7.

689 African Charter on Human and Peoples' Rights (ACHPR), 1981, Article 24.

690 See Rio Declaration on Environment and Development (UN Doc. A/CONF.151126 (Vol. 1), Report of the UNCED, Rio de Janeiro, 3-14 June 1992, Principles 3 & 4.

691 Ibid, Principle 5.

692 See The Proposed Constitution of the United Republic of Tanzania 2014, Article 50 (1) [*Kila mtu anayeishi katika Jamhuri ya Muungano ana haki ya kuishi katika mazingira safi, salama na ya kiafya*].

693 Environmental Management Act, 2004, s. 4(1).

694 Ibid, S. 6.

The *Environmental Management Act, 2004* establishes various bodies to regulate and manage environment, including the National Environment Management Council (NEMC),⁶⁹⁵ which is mandated to ‘undertake enforcement, compliance, review and monitoring of environmental impact assessment and in that regard, shall facilitate public participation in environmental decision making, exercise general supervision and coordination over all matters relating to the environment..’⁶⁹⁶ There is also the National Environmental Advisory Committee, whose job is to advise the Minister responsible or any Ministry on any matter referred to it;⁶⁹⁷ office of Director of Environment; and Regional Secretariats, responsible for environmental management at regional level.⁶⁹⁸

Tanzania is faced with a number of environmental problems, including illegal land pollution. Tanzanians, especially those in most parts of Dar es Salaam, continue to live in an environment that is not clean. There is still a serious problem of waste dumping sites and waste disposal. The problem is compounded by two major problems; overpopulation and unplanned townships.⁶⁹⁹ The region has been experiencing rapid population growth, which in turn has led to increased trash; and unplanned townships leads to difficulties in collecting the trash. According to statistics, about half of trash that is generated in the city is not collected, instead ends up in gutters, bushes, along the roads and in people’s yards.⁷⁰⁰ The presence of uncollected trash on the streets is dangerous for people’s health and denies them their right to a clean environment. Because of the problem of trash collection and disposal, Dar es Salaam has been cited as one of the dirtiest cities in Africa.

The Government needs to take serious measures to tackle the problem of waste and trash collection and disposal. The city of Dar es Salaam keeps growing in terms of population, which means generation of more trash. Dumping of trash on the streets puts everyone at a risk of being exposed to diseases, especially diarrhea

7.3 Consumer Rights in 2014

7.3.1 Overview

Consumer rights are rights of a consumer, defined under the Fair Competition Act, 2003 as any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale.⁷⁰¹ It does not include, however, a person who purchases

695 Ibid, S. 16(1).

696 Ibid, S. 17 (1).

697 Ibid, S. 12.

698 Ibid, s. 34.

699 Dispatches International, *A Long Way to Clean Dar es Salaam*, available at <http://www.dispatchesinternational.org/?p=26>

700 Ibid.

701 Fair Competition Act, 2003, S. 2.

any goods or services for the purpose of using them in the production or manufacture of any goods or articles for sale.⁷⁰² The Act is the major consumer protection law in Tanzania and establishes the Fair Competition Commission,⁷⁰³ the Fair Competition Tribunal⁷⁰⁴ and the National Consumer Advocacy Council.⁷⁰⁵ The consumer protection law in Tanzania was inspired by and follows the UNCTAD⁷⁰⁶ Model law principles.

The major function of the Commission is to administer the Fair Competition Act and promoting policies for enhancing competition and consumer welfare.⁷⁰⁷ It also carries out inquiries and research into matters relating to competition and consumer protection.⁷⁰⁸ The Fair Competition Tribunal hears and determines appeals from the Fair Competition Commission, issues warrants and carries out functions conferred on it under other written laws such as EWURA Act, 2001 and SUMATRA Act, 2001.⁷⁰⁹ Among other things, the National Consumer Advocacy Council represents interests of the consumers, receives and disseminates information and views on matters of interest to consumers, and establishes regional and sector consumer committees.⁷¹⁰

As far as consumer protection is concerned, the Fair Competition Act provides for various rights of consumers, including the right to choice under section 9(2) (b) and (c); the right to be heard under section 93 (10) (a) and (b); the right to redress under Parts V, VI and VII; the right to be informed under section 93; and the right to safety under Parts VIII and IX.⁷¹¹ The main object of the Act is to enhance the welfare of Tanzanians as whole by promoting and protecting effective competition in markets, aiming at increasing economic efficiency and lowering prices of goods and services for consumers, among other things.⁷¹²

Other laws that provide for consumer rights and protection include the Standards Act, the Merchandise Marks Act, 1963 and the Tanzania Food, Drugs and Cosmetics Act, 2003. The Tanzania Food, Drugs and Cosmetics Act, 2003 establishes the Tanzania

702 Ibid.

703 Ibid, S. 62(1).

704 Ibid, S. 83(1).

705 Ibid, S. 92(1).

706 UNCTAD stands for United Nations Conference and Trade and Development.

707 Fair Competition Act, 2003, S. 65(1).

708 Ibid, s. 75(2) (e) & S. 68.

709 Ibid, s. 85(1).

710 Ibid, s. 93(1).

711 Ad Hoc Expert Meeting on Consumer Protection: The interface between competition and consumer policies, *Session 3: Emerging Issues in Consumer Protection: Complementarities and areas of tension*, Geneva, 12 to 13 July 2012, Presentation by Martha Kisyombe, Tanzania, available at unctad.org/meetings/en/Presentation/ciclp2012_EMCP_S3_Kisyombe_Discussion_en.pdf accessed 29th January, 2015.

712 Ibid.

Food and Drugs Authority (TFDA).

7.3.2 Counterfeit Products Seized and Destroyed in 2014

Counterfeit products are a serious problem in Tanzania. Such products affect the country's economy and its people in various ways. They also occasion loss to dealers of genuine products as they are usually sold at a cheaper price because in most cases its dealers evade tax. According to the Consumer Protection Department within the Fair Competition Commission (FCC), electronic, electrical and medicines are the most counterfeited items in the market in Tanzania.⁷¹³ Dealing in counterfeit goods is a criminal offence in Tanzania and any person convicted of the offence is liable to imprisonment for 4 up to 15 years and/or a fine of 10 to 50 million.⁷¹⁴ Counterfeit products are also seized by the relevant authorities, usually FCC and TFDA, at the cost of the owner of such products.⁷¹⁵

Tanzania, being a third world country, has become a dumping place for counterfeit and substandard products. The majority of people in Tanzania is not aware of counterfeit and substandard products and hence cannot, distinguish between genuine and counterfeit products.⁷¹⁶ Tanzania loses an average of Tshs. 900 billion per year to counterfeit and substandard products.⁷¹⁷ Factors curtailing the efforts to fight against counterfeit products include lack of good governance, insufficient funds and corruption.

The war against counterfeit products continued in 2014, whereby TFDA seized and destroyed 1.23 tonnes of counterfeit products valued at Tshs. 4.9 million in January, 2014, in Arusha.⁷¹⁸ The counterfeit products included food, worth Tshs. 2.3 million; drugs, worth Tshs. 760,000; and cosmetics, worth Tshs. 1.89 million; and were seized following a special operation conducted by TFDA's Northern Zone office to search for counterfeit products in stores selling food, cosmetics and medicine.⁷¹⁹ Reasons for seizing the products included some products not meeting the legally acceptable standards and being sold beyond expiry date.

In another incident, the TFDA closed 39 food outlets and seized 8,207 foodstuffs in Dar es Salaam Region following a random inspection of 107 shops and supermarkets

713 Ibid, p. 13.

714 Ibid.

715 Ibid.

716 Deogratus Mutalemwa (2010), *Importation of counterfeit products: What should be done?*, The Economic and Social Research Foundation, TAKNET Policy Brief Series No.014.

717 Ibid.

718 *The Citizen Newspaper, TFDA destroys counterfeit items*, 7th January 2014, available at <http://www.thecitizen.co.tz/News/national/TFDA-destroys-counterfeit-items/-/1840392/2136658/-/bm8wrw/-/index.html>

719 Ibid.

carried out in March, 2014.⁷²⁰ The 39 food outlets (supermarkets) were reported to have been operating illegally.

The products that were seized include infant formulas, cooking salt (without iodine) and energy drinks that had not been approved by TFDA, worth a total of Tshs. 27.2 million.⁷²¹ Some of the foodstuffs were marked only in Chinese language, instead of also Swahili and English as required by the Food Labeling Regulations, 2006 while 21 shops sold had foodstuffs which had expired.⁷²²

In the period between January 2007 and June, 2014, FCC seized counterfeit goods worth Tshs. 4.2 billion.⁷²³ As of August, 2014, it had seized such goods worth Tshs. 300 million, Tshs. 100 million more than the value of the goods seized in 2013.⁷²⁴ The seized goods included mobile phones, milk, cosmetics, gas cylinders, fertilizers and cigarettes.

In September, 2014, FCC conducted a search and seizure operation in six shops at Kariakoo, which led to seizure of counterfeit mobile phones worth Tshs. 72.25 billion.⁷²⁵ During the operation, FCC seized 289 *Samsung* and *Blackberry* counterfeit mobile phones, which were sold at the price of genuine products in genuine packages.⁷²⁶ Parties in whose shops the counterfeits were seized are Hamadi Bakari Hamadi, who was caught with 27 counterfeit mobile phones; Hamadi Juma Musa, with 62 counterfeit mobile phones; Selemani Juma Selemani, 35 counterfeit mobile phones; Fatuma Gharib Mohammed, with 72 counterfeit mobile phones; Jaradi Zahor Mohammed, with 47 counterfeit mobile phones; and Bakari J. Khatib, with 46 counterfeit mobile phones. FCC took legal action against these offenders, including payment of statutory fines and cost of destruction of the counterfeit mobile phones which were seized.⁷²⁷

LHRC commends efforts by TFDA and FCC in the year 2014 in conducting operations to search, seize and destroy counterfeit products. There is, however, more that needs to be done, especially in terms of public education on counterfeit products.**7.4**

720 Gadosia Lamtey, *TFDA closes 39 food outlets in Dar*, *The Guardian* Newspaper, 4th April, 2014, available at http://www.ippmedia.com/frontend/index.php/=INSuRT3/is/tabin/75d/ee-fault.INSuRT3/javascript/page_home.js?l=66541 accessed 29th January, 2015.

721 Ibid.

722 Ibid.

723 *The Guardian* Newspaper, FCC impounds counterfeits worth 4.2 bn/- in eight years, 7th August, 2014, available at <http://www.ippmedia.com/frontend/?l=70779> accessed 30th January, 2015.

724 Ibid.

725 FCC Press Release at http://www.competition.or.tz/fcc_files/public/Press-Raid-Samsung-Eng-FINAL-12092014.pdf, accessed 10th February, 2015.

726 Ibid.

727 Ibid.

Human Rights and Business

7.4.1 Corporate Social Responsibility

7.4.1.1 Overview

Corporate Social Responsibility (CSR) refers to a moral responsibility of a corporate body for the impact of its activities on the environment, consumers, employees, communities and all other members in the public sphere.⁷²⁸ CSR being a moral responsibility means that corporate bodies are not legally bound to conduct CSR. They have discretion to either conduct it or not as there is not law or policy to enforce it. CSR in Tanzania has traditionally being more about philanthropy (charity) as opposed to sustainable business performance in the contemporary global business.⁷²⁹

CSR, as a concept, is still relatively new in Tanzania. Many companies do not perceive CSR as a core part of their business.⁷³⁰ Nevertheless, once strategically and systematically integrated into their business, it helps companies to attract investors, improve their relations with stakeholders as well as protect their reputations.⁷³¹

7.4.1.2 Current Situation of CSR

In the year 2014, companies continued to implement their CSR policies by engaging in various charitable activities. LHRC's annual Human Rights and Business Report revealed that some companies made a bit of contribution to local communities, other than employment opportunities. 98% of the companies that were surveyed had engaged in CSR activities in the year 2014 by providing support in different sectors as indicated in the table below.

Table 40: Surveyed Companies and their CSR' Contributions

S/No.	Type of Support	Companies and Regions
1	Environmental Management	Cocacola/Bonite (Arusha), Pepsi (Mwanza)
2	Public Facilities (roads, bus stand, e.t.c)	Mtibwa Sugar (Morogoro), Cocacola (Mwanza), Mwatex (Mwanza)
3	Agricultural Inputs	TPF (Arusha)

728 LHRC (2013), *Human Rights and Business in Tanzania Report*, Legal and Human Rights Centre, p. 107

729 Karin Mader (2012), *Corporate Social Responsibility in Tanzania: An Overview*, p. 1, available at <https://csroverviewtanzania.files.wordpress.com/2012/08/csr-overview-tanzania3.pdf>, accessed 5th February, 2015.

730 German Cooperation, *Corporate Social Responsibility practices in Tanzania: Insights from an in-depth study*, GIZ Country Office Tanzania, available at http://www.ccpafrica.org/dnn7/Portals/0/Downloads/Tanzania%20CSR%20Report%20final%20d_30-07-13b.pdf, accessed 2nd February, 2015.

731 Ibid; Karin Mader (2012), *Corporate Social Responsibility in Tanzania: An Overview*, p. 4.

S/No.	Type of Support	Companies and Regions
4	Water	TANICA (Kagera), Kilifrola (Arusha), TBL (Mwanza), DCMC (Dodoma)
5	Education	Vicfish (Mwanza), ICA Investment (Kagera), Mtibwa Sugar (Morogoro), TANICA (Kagera), TANECU (Mtwara), ASAS (Iringa), Tanga Cement (Tanga)
6	Food and Health	Tanga Fresh (Tanga), Mamujee (Tanga), Neilkant (Tanga)
7	Children, Women and Elderly	Kilifrola (Arusha), Dangote (Mtwara), Mamujee (Tanga)
8	Sports and Entertainment	Vodacom (National), TBL (National), Pepsi (Mwanza), Coca-cola (National), Airtel (National), NMB (National), Serengeti Breweries (National)
9	Routine contributions	Kagera Tea (Kagera)

Source: LHRC, Human Rights and Business Report 2014

Despite the seemingly positive trend of companies ‘giving back’ to the community through CSR, a number of challenges associated with implementation of SCR activities. These challenges include:⁷³²

- ♦ **Lack of trust:** Private sector and public sector do not trust each other and businesses do not want to share information of their activities in a bid to protect image.
- ♦ **Misconception and Misuse of CSR:** Some businesses consider CSR to be an additional financial and administrative burden rather than a moral obligation, using it to gain tax reliefs and favours from the Government.
- ♦ **Use of CSR as a Tool for Business Competition:** Local and multinational companies tend to use CSR as a weapon to give them an advantage in business competition.
- ♦ **Lack of Reliable Information about Communities’ needs:** Some companies fail to set informed priorities on their CSR activities because of lack of reliable data on the needs of a particular society.
- ♦ **Misuse of CSR for Corrupt Gains:** Some businesses/companies conduct CSR activities in exchange of business favours from the political elites.

732 German Cooperation, *Corporate Social Responsibility practices in Tanzania: Insights from an in-depth study*, GIZ Country Office Tanzania, pp. 23-25, available at http://www.ccpafrica.org/dnn7/Portals/0/Downloads/Tanzania%20CSR%20Report%20final%20d_30-07-13b.pdf, accessed 2nd February, 2015.

- ♦ **Lack of Awareness by the Communities:** Communities do not possess sufficient awareness of CSR, which would enable them to engage companies.
- ♦ **Mismanagement of Funds:** Some CSR implementing partners (NGOs) have been accused of mismanaging funds allocated for CSR activities and abusing office.

7.4.2 Development of NAPs on Business and Human Rights

National Action Plans (NAPs) refer to policy documents in which a State articulates priorities and actions that it will adopt to support the implementation of international, regional, or national obligations and commitments with regard to a given policy area or topic.⁷³³

The United Nations (UN) has been calling upon states to develop NAPs on business and Human Rights. To facilitate this process, when the UN Human Rights Council endorsed the UNGPs it also established the Working Group on Business and Human Rights (UNWG), whose mandate is to facilitate global dissemination and implementation of UNGPs.⁷³⁴ The UNWG has put in place a repository of all published NAPs on business and Human Rights; and hosted an open consultation on NAPs in February, 2014 and an expert workshop to discuss the strategic elements of NAPs in May, 2014.⁷³⁵

A number of states have taken steps to develop NAPs on business and Human Rights, which vary in scope, content and focus.⁷³⁶ Most of them emphasize on promoting respect for Human Rights by companies when operating abroad.⁷³⁷ Here in Tanzania, we do not yet have NAP, but efforts are underway to prepare it.

NAPs come with several benefits, including helping to mobilize resources beyond government towards the achievement of policy aims; supporting cross-State and within-State policy transfer through identification of best practices and lessons learned; providing a constructive opportunity for robust collaboration, dialogue, and trust-building among stakeholders; and allowing governments to articulate to stakeholders a coherent policy position over complex and broad-ranging topics.⁷³⁸ Other benefits

733 The Danish Institute for Human Rights & International Corporate Accountability Roundtable (2014), *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks*, p. 8

734 Ibid, p. 10

735 Ibid

736 Ibid, p. 11

737 Ibid

738 The Danish Institute for Human Rights & International Corporate Accountability Roundtable (2014), *National Action Plans on Business and Human Rights: A Toolkit for the Development,*

are: helping to avoid duplication or inconsistencies between government departments, hence contributing to efficient use of resources; and helping to coordinate efforts toward a given policy objective across the whole of government, by identifying and involving all relevant actors in policy development.⁷³⁹ It is thus important for Tanzania to have its own NAP as soon as possible in order to cope with other states in observing human rights in business undertakings.

7.4.3 UN Guiding Principles on Business and Human Rights

In June 2011, UN Special Representative on Business and Human Rights, John Ruggie, proposed the UN Guiding Principles on Business and Human Rights (UNGPs).⁷⁴⁰ The UN Human Rights Council endorsed the Principles in the same month,⁷⁴¹ through its Resolution 17/4 of 16th June 2011.⁷⁴² The Guiding Principles are divided into three parts, with each part containing two types of principles, foundational principles and operational principles. They apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.⁷⁴³

The first part contains foundational and operational principles on state's duty to protect Human Rights. The second part contains foundational and operational principles on the corporate responsibility to respect Human Rights. The third part contains foundational and operational principles on access to remedy.

Principle 1 of the UNGPs provides that states must protect against Human Rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. Steps that must be taken by the state include preventing, investigating, punishing and redressing such abuse through effective policies, legislation, regulations and adjudication. Principle 2 requires states to clearly set out the expectation that all business enterprises within their territory and/or jurisdiction respect Human Rights throughout their operations.

Principles under corporate responsibility to respect Human Rights include those calling for business enterprises to respect Human Rights, requiring adverse Human

Implementation, and Review of State Commitments to Business and Human Rights Frameworks, p. 14

739 Ibid

740 Business and Human Rights Resource Centre, *UN Guiding Principles*, at <http://business-humanrights.org/en/un-guiding-principles>.

741 Ibid.

742 Office of the UN High Commissioner on Human Rights (2011), *Guiding Principles on Business and Human Rights*, p. iv, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

743 Ibid, p. 1.

Rights impacts to be addressed;⁷⁴⁴ responsibility of business enterprises to respect Human Rights applying to all enterprises;⁷⁴⁵ and remediation of adverse impacts through legitimate processes.⁷⁴⁶

UNGPs also cover judicial and non-judicial grievance mechanisms.⁷⁴⁷ These mechanism, both state-based and non-state based constitute a system for remedy of business-related Human Rights abuse.⁷⁴⁸ To make it possible for grievances to be addressed early and remediated directly, business enterprises are required to establish or participate in effective operational-level grievance mechanisms for individuals and communities adversely impacted.⁷⁴⁹

744 UNGP 11.

745 UNGP 14.

746 UNGP 22.

747 The term “grievance mechanism” is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related Human Rights abuse can be raised and remedy can be sought.

748 UNGPs 27 & 28.

749 UNGP 29.

Chapter Eight

Corruption and Abuse of Power

8.0 Overview

Corruption is a very serious problem in Tanzania and it has been cited as one of the factors eroding competition in business and development.⁷⁵⁰ Government officials and political leaders continue to be involved and implicated in grand corruption scandals, while petty corruption is apparent and common in provision of social services, with public procurement and taxation as one of the areas that are prone to corruption, as indicated in the recent CAG reports.⁷⁵¹ Grand corruption usually takes place in high-levels of the political system and comes in different forms, including bribery, embezzlement, extortion, favouritism and fraud.

In 1996, the Government formed a commission known as the Presidential Commission against Corruption, led by Rtd. Judge Joseph Warioba. The Commission was tasked with assessing the state of corruption in the country and come up with some recommendations. The Recommendations by this Commission led to the adoption of the National Anti-Corruption Strategy and Action Plan (NACSAP) in 1999 and the Prevention and Combating of Corruption Bureau (PCCB) in 2007, established under the Prevention and Combating of Corruption Act, No. 11 of 2007. The PCCB is the major anti-corruption machinery in the country whose mandate is to prevent corruption, provide education on corruption and prosecute corrupt individuals among others.

Eighteen years since the anti-corruption commission was formed and presented its findings, the situation of corruption in Tanzania has worsened, particularly in the last 10 years whereby the country has witnessed some high-profile grand corruption scandals. These scandals coupled with rampant petty corruption in accessing public services, have seen loss of public confidence in PCCB and other anti-corruption bodies.

8.1 Legal and Institutional Framework on Corruption

8.1.1 Legal Framework

At the international and regional level, legal framework includes the following treaties which Tanzania is a Party:

750 UNDP (2013), *UNDP Tanzania Success Stories: Fighting Corruption*, available at http://www.tz.undp.org/content/dam/tanzania/UNDP_TZ_%20Success%20Stories%20-%20Fighting%20Corruption.pdf, accessed 22nd January, 2015

751 See The United Republic of Tanzania, National Audit Office, Annual General Report Of The Controller And Auditor General *On the Audit of Public Authorities and Other Bodies for the financial year 2012/2013*

- ❖ United Nations Convention Against Corruption (UNCAC)⁷⁵²
- ❖ AU Convention on Preventing and Combating Corruption⁷⁵³
- ❖ SADC Protocol against Corruption⁷⁵⁴
- ❖ EAC Protocol on Preventing and Combating Corruption⁷⁵⁵

At the national level, there are several anti-corruption laws, including:

- ❖ Prevention and Combating of Corruption Act [Act No. 11 of 2007]⁷⁵⁶
- ❖ Public Finance Act, 2001
- ❖ Public Procurement Act, 2004
- ❖ Anti-money Laundering Act, 2006
- ❖ Criminal Procedure Act, 1985 [Cap 20]
- ❖ Political Parties Act, Act No. 5 of 1992
- ❖ Election Expenses Act, 2010
- ❖ Economic and Organized Crime Control Act, 1984

8.1.2 Institutional Framework

Major institutions established to prevent and fight against corruption and abuse of power are:

- ❖ Prevention and Combating of Corruption Bureau;⁷⁵⁷
- ❖ Office of the Director of Public Prosecutions (DPP);⁷⁵⁸
- ❖ Commission for Human Rights and Good Governance (CHRAGG);⁷⁵⁹

752 First global anti-corruption legally binding instrument created in 2003. Provides for several anti-corruption measures and protection of whistleblowers. Tanzania ratified it in 2005.

753 This convention was ratified by Tanzania in 2005. It imposes a duty upon States Parties to take legislative and other measures to combat corruption.

754 Anti-corruption instrument of the Southern African Development Community.

755 Anti-corruption instrument for members of the East African Community that provides for corruption preventive measures.

756 Major anti-corruption legislation in Tanzania.

757 Is the major anti-corruption machinery in Tanzania, established by the Prevention and Combating of Corruption Act, No. 11 of 2007. Its mandate is to prevent corruption, educate the society and enforce the laws against corruption in Tanzania Mainland. It investigates and prosecutes corruption cases.

758 Established under S. 89 (1) of the Criminal Procedure Act, Cap 20. It is headed by the Director of Public Prosecutions and prosecution of corruption cases depends on consent of this office.

759 Established under Article 129 of the Constitution of the United Republic of Tanzania 1977. Among its functions are inquiring into the conduct of any person or institution in relation to the ordinary performance of duties or functions or abuse of office; and conducting inquiry into matters relating to infringement of human rights and violations of principles of good gover-

- ❖ National Audit Office (NAO);⁷⁶⁰
- ❖ Ethics Secretariat;⁷⁶¹ and
- ❖ Public Procurement Regulatory Authority.⁷⁶²

8.2 Tanzania in Corruption Perception Indexes

According to the 2014 Transparency International’s Corruption Perceptions Index, Tanzania ranks 119 out of 174 countries in the corruption perception index tying with Sierra Leone where both scored 31 out of 100 points.⁷⁶³ Our neighbours such as Kenya ranked at 145 with 25 points; Uganda ranked at 142 with 26 points; Rwanda ranked 55 with 49 points; and Burundi ranked 159 with 20 points. Rwanda was thus the least corrupt country in East Africa, while Burundi is the most corrupt. Tanzania is relatively less corrupt than Kenya, Uganda and Burundi. The overall ranking however suggests that corruption has increased in East Africa and as the table below indicates, Tanzania’s score has been on the decline, indicating the seriousness of the problem in the country.

Table 41: Tanzania’s Ranking In Corruption Perceptions Index By Transparency International

<i>Year</i>	<i>Rank</i>	<i>No. of Countries Surveyed</i>	<i>Score</i>
2012	102	174	35
2013	111	177	33
2014	119	174	31

The East African Bribery Index of 2014⁷⁶⁴ also ranks Burundi with the highest likelihood of bribery in East Africa with the score of 19.4%.⁷⁶⁵ Tanzania is close second with 19%, while Uganda is third at 17.9%.⁷⁶⁶ Kenya and Rwanda stands at

nance.

760 Established under Article 143(1) of the Constitution of the United Republic of Tanzania 1977. The Office is headed by the Controller and Auditor General (CAG), whose reports have been revealing financial mismanagements and embezzlement of public funds.

761 Established under Article 132(1) of the Constitution of the United Republic of Tanzania 1977. Mandated to implement the Public Leadership Code of Ethics that was enacted in 1995.

762 Established by the Public Procurement Act of 2004 and empowered to launch investigations to expose corrupt or fraudulent practices in public procurement.

763 Transparency International, *Corruption Perceptions Index 2014*, available at <http://www.transparency.org/cpi2014>, accessed 30th January, 2015.

764 The survey was conducted in all East African Countries between May and September 2014. In Tanzania, the survey was conducted by ForDIA, while in the other four countries it was conducted by Transparency International Chapters in those countries. The data collection through face to face interviews involved a total of 10,597 respondents in East Africa, with 2,488 of them from Tanzania.

765 Transparency International & ForDIA, *East African Bribery Index 2014*, p. x.

766 Ibid.

12.3% and 2.9% respectively.⁷⁶⁷

The 2014 East African Bribery Index also revealed the following in terms of the level of corruption, reasons for engaging in corruption, and corruption reporting

Level of corruption

The majority of respondents in East Africa described the level of corruption as high and they were of the opinion that corruption has increased.⁷⁶⁸ The majority of respondents in Tanzania (67%) were also of the opinion that the level of corruption is high, with half of them further suggesting that corruption has increased.⁷⁶⁹

Reasons for engaging in corruption

The need to expedite delivery and provision of social services was cited as the major reason for payment of bribe in Tanzania, Burundi and Rwanda.⁷⁷⁰ This reason was cited by 38% of the respondents in Tanzania while 36% stated that they paid bribe because it was the only way to get access to different services.⁷⁷¹

Corruption reporting

The Bribery Index Report reveals that many people in East Africa do not report bribery incidents. 90% of the respondents in did not report to the relevant authorities when they encountered incidents of bribery.⁷⁷² Nine out of ten respondents in Tanzania also claimed not to have reported bribery incidents to authorities.⁷⁷³ The major reason for not reporting is the feeling that no action will be taken against the perpetrators. 60% of the respondents felt that efforts made by the Government to combat corruption were insufficient.⁷⁷⁴

Corrupt Institutions

The Police Force in Tanzania continues to be named as the most corrupt institution in the country in 2014. It scored 82.5% which is an increase of 9.6% from the year 2013.⁷⁷⁵ The judiciary is ranked second at 41.7%, with Tax authorities and Land sector third and fourth consecutively.⁷⁷⁶ The study by Afrobarometer between August and September, 2014 features PCCB officials amongst corrupt persons, whereby 29% of

767 Ibid.
 768 Ibid, p. xi.
 769 Ibid, pp. 43 & 44.
 770 Ibid, xi.
 771 Ibid, p. 41.
 772 Ibid, xi.
 773 Ibid, p. 42.
 774 Ibid, p. 45.
 775 Ibid, p. 38.
 776 Ibid.

the respondents said the officials are also corrupt.⁷⁷⁷

8.3 Civil Societies and the Fight against Corruption: Reports by TWaweza, REPOA and LHRC

8.3.1 Overview

Over the years, civil societies in Tanzania have played their role to advocate and promote the rule of law and good governance. Indeed, corruption has been one of the major threats to rule of law and good governance in Tanzania and has a direct impact on economic, social, civil and political rights.

REPOA's survey, conducted in late August and September, 2014, involved a sample size of 2,386 adult citizens, while TWaweza's covered 1,425 respondents. LHRC's 2014 study was conducted in six regions, namely Mbeya, Morogoro, Dodoma, Mwanza, Arusha and Tabora. It involved 600 respondents. LHRC study findings based on the perception of corruption and people's experiences with corruption.

8.3.2 Level of Corruption in the Country

The level of corruption in Tanzania according to the recent survey by REPOA revealed that majority of respondents (67%) perceived corruption to have increased in 2014 in comparison with 2013.⁷⁷⁸ Another study by TWaweza revealed that more than three quarters of Tanzanians (78%) perceived corruption to be getting worse.⁷⁷⁹

8.3.3 Corrupt Institutions

REPOA report revealed that the institutions which have been cited as the most corrupt include the Police Force, judiciary and tax authorities. Policemen, judges, magistrates and tax officials are believed to be corrupt. The TWaweza Report also reveals that, the police are the most corrupt followed by the political parties and tax authorities.⁷⁸⁰

8.3.4 How People Perceive Corruption

LHRC's study on corruption covered how people perceive corruption in the country. The respondents were given the options "bad and cannot be justified", "Bad" but sometimes "necessary", "Can be useful as things are done more quickly", "It is harmless", "Has become part of life". The majority of these respondents, 56.9%, was

777 The Citizen, *PCCB now features on corruption list*, 7th February, 2015, available at <http://www.thecitizen.co.tz/News/national/Anti-graft-watchdog-on-list-of-shame--says-study/-/1840392/2615764/-/hsxyd5z/-/index.html>, accessed 29th December, 2014.

778 REPOA (2014), *after more than a decade of fighting corruption, how much progress? : Findings from the Afro Barometer Round 6 Survey in Tanzania*.

779 TWaweza (2014), *Have more laws, agencies and commitments against corruption made a difference?: People's perceptions of corruption in Tanzania*, Brief No. 14, p. 5.

780 Ibid, p. 5.

of the view that corruption is bad and cannot be justified.⁷⁸¹ 15.8% said that though bad, corruption is sometimes necessary, while 14.8% were of the view that it has become part of life. 12.2% stated that corruption can be useful as things are done more quickly and remaining 0.3% said it is harmless.⁷⁸²

8.3.5 Peoples' Engagement in Corruption

In the REPOA's survey, 82% of respondents admitted to have paid bribe⁷⁸³ compared to 41.4% in the LHRC's study⁷⁸⁴ and 43% in the TWaweza's survey.⁷⁸⁵ TWaweza reveals that 60% of Tanzanians in the Mainland have been asked for bribe by police men/women and 43% of them have paid such bribe.⁷⁸⁶ Majority of the respondents (64.5%) who admitted to have been engaged in corruption during the LHRC survey reported to have been asked for bribe in order to obtain services.⁷⁸⁷

8.3.6 Reporting of Corrupt Incidents

Corruption reporting has been identified as an issue. In most instances, people do not report incidents of corrupt. According to REPOA, 82% of respondents who paid bribe did not report the incidents to the authorities, compared to 93% in TWaweza's survey findings.

LHRC's study reveals that 71.5% of the respondents witnessed corrupt transactions.⁷⁸⁸ However, the vast majority of them did not report such incidences for several reasons, including belief that nothing good will come out of reporting to relevant authorities. Other reasons include difficulty in putting together evidence; speeding up the provision services; lack of corruption education; not knowing where to report; and fear.

781 LHRC (2014), *Survey Report on Corruption Awareness, Whistleblower Protection and People's Willingness to Fight Corruption in Tanzania: A Case Study of Six Regions in Tanzania Mainland*.

782 Ibid.

783 REPOA Corruption Report (2014).

784 LHRC Corruption Report (2014).

785 TWaweza Corruption Report (2014), p.5.

786 Ibid.

787 LHRC Corruption Report (2014).

788 Ibid.

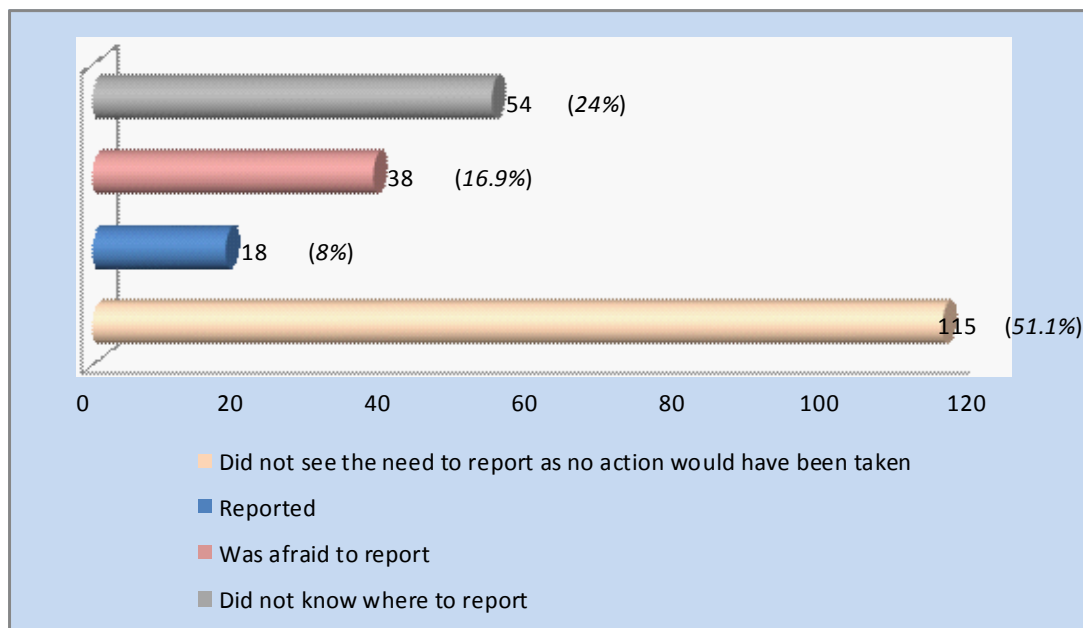


Figure 9: Percentage Distribution of Reasons for Not Reporting Corruption

8.3.7 Perception of PCCB as the Major Anti-Corruption Machinery

Recent studies on corruption conducted by LHRC, TWaweza and REPOA indicate little faith by the public in the PCCB as the major anti-corruption machinery in the country. In the LHRC study, 47.8% of respondents suggested that they are satisfied by efforts made by the PCCB in combating corruption. 44.3% indicated that they were satisfied with the way the Bureau has been handling corruption cases, and 8% said they are not sure. Nevertheless, the fact that few people are willing to report corruption indicates lack of faith on their part in the PCCB, as most of them feel nothing will be done against the corrupt individuals.

It is LHRC's findings that the majority of Tanzanians are pessimistic about the future of corruption in Tanzania. They however cited the media as an effective tool in revealing corrupt practices in the country. There is thus a need for the civil society, LHRC inclusive to increase efforts to advocate for the freedom of the press. The Police Force and the Judiciary continue to be at the centre of corruption in Tanzania. LHRC urges the Government to make the necessary reforms in these institutions in order to improve anti-corruption efforts. Corrupt officials in the political system must also be brought to justice and not just being forced or encouraged to resign. LHRC also urges the Government to increase resources for PCCB to enable it to effectively combat corruption.

8.4 Grand Corruption Scandals: The Case of Escrow Account

8.4.1 Overview: Grand Corruption Scandals before Escrow Account

Over a decade, Tanzania has witnessed a number of grand corruption scandals that have shaken the country. These scandals include the radar bought from UK's BAE Systems, the EPA scandal, the David Jairo scandal, and the Richmond saga.

The BAE Systems scandal was about a contract between Tanzania and British Aerospace Systems, a UK based company that sells military equipment. The URT Government paid BAE Systems USD 40 million for the radar⁷⁸⁹ which was termed as overpriced, considering that the radar was not new. Investigations into the purchase of the radar were opened in UK by the Serious Fraud Office which resulted into a fine for the BAE Systems by the UK Government for paying a bribe of 12 million pounds to win the radar contract.⁷⁹⁰

The EPA scandal involved fraudulent payments by the Bank of Tanzania's External Payment Arrears account (EPA) in 2005. The payments, totaling more than USD100 million were made to companies that did not officially exist.⁷⁹¹ At least 13 people were taken to court in connection with this scandal.⁷⁹²

The Richmond saga involved the former Prime Minister, Edward Lowassa who was forced to resign in 2008. The scandal involved large payments made to Richmond Development Company in 2006 as an emergency strategy to resolve the energy crisis that had haunted the country.⁷⁹³ Richmond was awarded the tender to supply generators and provide 100 megawatts for Tshs. 172 billion but the generators did not arrive on time and work properly.⁷⁹⁴ The matter stirred a hot debate in the Parliament, which formed a select committee led by Dr. Harrison Mwakyembe (MP) to investigate the saga.⁷⁹⁵ The Select Committee's report indicated that Richmond did not deserve the tender as it lacked the expertise and finances; and there were no records of its registration in the United States of America or Tanzania. The Committee additionally stated that the bidding process was tainted with corruption and gross irregularities.⁷⁹⁶

789 Koechilin, Lucy (2013), *Corruption as an Empty Signifier: Politics and Political Order in Africa*, p. 206.

790 TWAWEZA (2014), *Have more laws, agencies and commitments against corruption made a difference?: People's perceptions of corruption in Tanzania*, Brief No. 14, p. 7.

791 Koechilin, Lucy (2013), *Corruption as an Empty Signifier: Politics and Political Order in Africa*, p. 206.

792 Ibid .

793 Tanzanian Affairs (2008), *Report on Richmond Scandal*, Issue 90, Politics, available at <http://www.tzaffairs.org/2008/05/report-on-richmond-scandal/#>, accessed 23rd January, 2015.

794 Ibid.

795 Ibid.

796 Ibid.

Another scandal involved David Jairo the then Permanent Secretary of the Ministry of Energy and Minerals. He was accused of engaging in corruption after he reportedly bribed Members of Parliament to persuade them to pass the budget of the Ministry of Energy and Minerals.⁷⁹⁷

These corruption scandals and incidences of abuse of power have resulted into donors threatening to suspend aid for Tanzania.⁷⁹⁸ For instance, they suspended USD500 million in aid in 2014 after it was revealed by the Parliamentary Public Accounts Committee that several high-ranking government officials colluded with corrupt businessmen to transfer USD122 million from the Central Bank to the their private accounts overseas.⁷⁹⁹ These funds were taken in the name of ‘energy contracts’⁸⁰⁰ and the donors await the report of the Auditor and Controller General and action by the Government over the issue before they release the funds.⁸⁰¹

8.4.2 The Escrow Account Saga

8.4.2.1 Money and Parties Involved in the Saga

According to the report of the Parliamentary Account Committee (PAC), led by Mr. Zitto Kabwe (MP), the total amount of money which was in the Escrow Account was Tshs. 203, 102, 540, 890/-.⁸⁰² This amount was given to Pan African Power Solutions (PAP), the company which claimed ownership of the funds in the Escrow Account.⁸⁰³ According to TANESCO, the Parties to Escrow Account were the Government of Tanzania, IPTL and the Bank of Tanzania (an Escrow Agent) which was the neutral party.⁸⁰⁴

The parties involved in the Escrow Account saga also known as the “Tegeta Escrow saga” include the Independent Power Tanzania Ltd (IPTL); Tanzania Electric Supply Company (TANESCO); PAP Company; Mr. James Rugemalira who was Executive

797 TWaweza Corruption Report (2014), p. 7.

798 The Guardian, *UK and International donors suspend Tanzania aid after corruption claims*, 15 October 2014, available at http://www.theguardian.com/global-development/2014/oct/13/uk-and-international-donors-suspend-tanzania-aid-after-corruption-claims?CMP=share_btn_fb

799 Ibid.

800 Ibid.

801 Ibid.

802 Parliamentary Account Committee, *Report of the Committee on the Findings of the Comptroller and Auditor General on the Tegeta Escrow Account opened at the Bank of Tanzania*, Parliament of Tanzania November 2014, p. 16.

803 Ibid.

804 TANESCO, *Status of the matters involving TANESCO and IPTL in the aftermath of the decision of the International Centre for Settlement of Investment Disputes (ICSID) in arbitral case No. ARB/10/20 between Standard Chartered Bank - Hong Kong and TANESCO*, BOARD PAPER No. 4533, March 2014, p. 2, available at <http://www.orcis.com/escrow/TANESCO-Board-Paper.pdf>

Director of VIP Engineering and Marketing Company Ltd which was the minority shareholder of IPTL with 30% shares; the Ministry of Energy and Minerals; the Ministry of Finance; Stanbic Bank; Mkombozi Bank; Bank of Tanzania (BoT); and the Prime Minister. Other parties are government officials, public servants, religious leaders and a judge, who are said to have received money from Mr. James Regumalira which was illegally withdrawn from the Escrow Account.

The government officials who received the money are:⁸⁰⁵

- Mr. Andrew Chenge (MP- Bariadi West), who received Tshs. 1.6 billion;
- Prof. Anna Tibaijuka (MP - Muleba South and former Minister of Lands, Housing and Human Settlements Development), who also received Tshs. 1.6 billion;
- Mr. William Ngeleja (MP – Sengerema and former Minister of Energy and Minerals, who received Tshs. 40.4 million;
- Mr. Daniel N. Yona (also former Minister Energy and Minerals), who also received Tshs. 40.4 million;
- Mr. Paul Kimiti (former MP – Sumbawanga), who also received Tshs. 40.4 million; and
- Dr. Enos S. Bukuku (former member of TANESCO Board), who received Tshs. 161.7 million.

Public servants who received the money from Mr. Rugemalira have been identified as:⁸⁰⁶

- Mr. Phillip Saliboko, who was at RITA and obtained Tshs. 40.4 million;
- Mr. Emmanuel Daniel Ole Naiko, former Executive Director of Tanzania Investment Centre (TIC), who also received Tshs. 40.4 million; and
- Ms. Lucy L. Appollo, an officer from Tanzania Revenue Authority (TRA).

The judges who received the money are Judge Prof. Eudes Ruhangisa from the East African Court of Justice, who received Tshs. 404.25 and Judge J.A.K Mujulizi, who received Tshs. 40.4 million.⁸⁰⁷ The religious leaders implicated in the scandal are Bishop Mehodius Kilaini, who received Tshs. 80.9 million; Bishop Eusebius Nzigirwa, who received Tshs. 40.4 million; and Reverend Alphonse Twimann Ye Simon, who also obtained Tshs. 40.4 million.⁸⁰⁸

805 PAC Report, p. 25.

806 Ibid.

807 Ibid.

808 Ibid.

8.4.2.2 The Background of Escrow Account: IPTL Dispute with TANESCO

Tanzania Electrical Supply Company [TANESCO] entered into an agreement [known as the Power Purchase Agreement (PPA)], with IPTL in 1995,⁸⁰⁹ to address the problem of power shortages in Tanzania in 1994. The agreement involved a 20-year deal to produce 100 megawatts of electricity. This agreement was supported by Implementation Agreement (IA) between the Government and IPTL, which gave IPTL mandate to claim against the Government where TANESCO defaults in its contractual obligations.⁸¹⁰ The two parties agreed that IPTL would design, construct, own, operate and maintain a 100 megawatt slow-speed diesel power plant in Tegeta, Dar es Salaam, costing USD 163.5 million.⁸¹¹ In April 1998, TANESCO issued a notice of default to IPTL on the grounds that IPTL decided to substitute medium-speed diesel engines for the slow-speed engines agreed in the PPA.⁸¹² Before the default had been resolved, however, TANESCO tried, unsuccessfully, to negotiate a lower tariff with IPTL; and during all this time the cost of the project remained the same despite IPTL seemingly making substantial savings through the substitution.

On 25th November, 1998, TANESCO referred its dispute with IPTL to the International Centre for Settlement of Investment Disputes (ICSID)⁸¹³ in line with Article 18 (3) of the PPA, which provided that any dispute arising under the PPA is to be settled by arbitration at the ICSID.⁸¹⁴ Two claims were presented by TANESCO before ICSID, namely:

- ♦ That medium speed diesel engines had been substituted for the required slow speed diesels without obtaining the prior written consent of TANESCO, thus entitling TANESCO to terminate the PPA; alternatively

809 TANESCO, *Status of the matters involving TANESCO and IPTL in the aftermath of the decision of the International Centre for Settlement of Investment Disputes (ICSID) in arbitral case No. ARB/10/20 between Standard Chartered Bank - Hong Kong and TANESCO*, BOARD PAPER No. 4533, March 2014, available at <http://www.orcis.com/escrow/TANESCO-Board-Paper.pdf>

810 Ibid.

811 *The Citizen Newspaper, Facts on IPTL deal ahead of the tabling of escrow scam report*, November 24 2014, available at <http://www.thecitizen.co.tz/News/national/Facts-on-IPTL-deal-ahead-of-the-tabling-of-escrow-scam-report/-/1840392/2532948/-/3etjpb/-/index.html>, accessed 26th February, 2015.

812 Transparency International, *Default of IPTL deal victory for the Tanzanian people*, 11 June 1998, available at http://www.transparency.org/news/pressrelease/default_of_iptl_deal_victory_for_the_tanzanian_people, accessed 26th February, 2015.

813 *Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited*, ICSID Case No. ARB/98/8, available at <http://opil.ouplaw.com/view/10.1093/law/iic/239-2001.case.1/IIC239%282001%29D.pdf>, accessed 26th February, 2015.

814 Ibid.

- ♦ That, pursuant to Addendum No. 1 the Capacity Purchase Price was to be “cost based”, but IPTL was refusing to share relevant information with TANESCO and the cost seemed excessive, so that in the event that the PPA could not be terminated the tariff should be adjusted.

Meanwhile, IPTL took TANESCO to the High Court in Dar es Salaam on 30th November, 1998, five days after their dispute was sent to ICSID for arbitration, seeking a declaration that commercial operations of the IPTL’s Tegeta plant should be deemed as having commenced on 15th September, 1998 and that TANESCO pays IPTL “capacity payment” worth USD 3.6 million a month beginning on that date.⁸¹⁵ TANESCO unsuccessfully petitioned for stay of proceedings after IPTL submitted a notice of objection on a preliminary point of law and the High Court ruling in favour of IPTL, granting the relief of capacity payments due.⁸¹⁶ TANESCO was granted leave to appeal and sought stay of execution pending appeal. IPTL, on the other hand, immediately filed for an order of execution but later agreed to not to execute the order for a limited period of time.⁸¹⁷

At ICSID, IPTL agreed to cease proceedings at the High Court as requested by TANESCO but filed with the Tribunal same requests for the provisional measures on commercial operations of the Tegeta plant, order permitting operations to commence and capacity payments of USD 3.6 million totaling USD 32.6 million since 15th September, 1998.⁸¹⁸ IPTL later withdrew its request for a lump sum payment, but the demand for monthly payment remained.

ICSID ruled that PPA between TANESCO and IPTL remains a valid and effective contract between them since TANESCO was aware of the switch from slow to medium speed diesel;⁸¹⁹ and ordered for the adjustment of reference tariff by reference to changes that had taken place before commercial operations could take place and it was upon the Tribunal to decide whether the adjustments are appropriate.⁸²⁰ TANESCO, according to the Tribunal, was thus not entitled to serve notice of default and give notice of termination. The award by the Tribunal incorporated a financial model of

815 Ibid, p. 8, para 21.

816 Ibid, p. 8, paras 23 & 24.

817 Ibid, p. 9, paras 24 & 25.

818 Ibid, p. 9, para 27 & 28.

819 *The Citizen Newspaper, Facts on IPTL deal ahead of the tabling of escrow scam report*, November 24 2014, available at <http://www.thecitizen.co.tz/News/national/Facts-on-IPTL-deal-ahead-of-the-tabling-of-escrow-scam-report/-/1840392/2532948/-/3etjpb/-/index.html>, accessed 26th February, 2015.

820 *Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited*, ICSID Case No. ARB/98/8, paras 34 & 52, available at <http://opil.ouplaw.com/view/10.1093/law:iic/239-2001.case.1/IIC239%282001%29D.pdf>, accessed 26th February, 2015.

calculating tariff, with the Debt/Equity ratio of 70/30, that both parties accepted⁸²¹ and the amount of capacity charges payable to IPTL was reduced to USD 2.6 million from USD 3.6 million per month.⁸²²

After the award by ICSID, TANESCO continued to honour its obligations under PPA and made the necessary payments until 2004, when the TANESCO Board received a hint from a VIP shareholder that IPTL might be overcharging TANESCO. The Board immediately engaged a local law firm, Mkono and Company Advocates to look into the matter and advise accordingly.⁸²³ The law firm concluded that the Equity on the IPTL's investment was only Tshs. 50,000, which was the paid up share capital at BRELA, and not USD 38.16 million.⁸²⁴ Following the advice from Mkono and Company Advocates, TANESCO started disputing the charges and issued a notice to IPTL stating that it would only continue paying the undisputed sums of the invoices.⁸²⁵ It was because of this new dispute that Escrow Account was opened at the Bank of Tanzania in 2006, to deposit disputed funds as the parties sought arbitration, yet again, at ICSID.

During all this time there was a dispute between the owners (shareholders) of IPTL, VIP and Mechmar. The dispute started in 2002 when VIP under Mr. James Rugemalira filed for the winding up of IPTL at the High Court of Tanzania. As a result, the High Court of Tanzania placed all IPTL property under RITA, pending the determination of the capacity charges dispute.⁸²⁶

In 2009, Standard Chartered Bank Hong Kong (SCB HK) filed a petition at the High Court of Tanzania for administration of IPTL, claiming to be IPTL creditors, in an effort to prevent the winding up process. Nevertheless, the High Court (Hon. Kaijage J.) issued the winding up order in July, 2011 with the administration petition filed by SCB HK still pending.⁸²⁷ SCB HK took the matter to ICSID, but the matter was

821 TANESCO, *Status of the matters involving TANESCO and IPTL in the aftermath of the decision of the International Centre for Settlement of Investment Disputes (ICSID) in arbitral case No. ARB/10/20 between Standard Chartered Bank - Hong Kong and TANESCO*, BOARD PAPER No. 4533, March 2014, available at <http://www.orcis.com/escrow/TANESCO-Board-Paper.pdf>

822 PAC Report, p. 6.

823 Ibid, p. 8.

824 Ibid.

825 Ibid; TANESCO, *Status of the matters involving TANESCO and IPTL in the aftermath of the decision of the International Centre for Settlement of Investment Disputes (ICSID) in arbitral case No. ARB/10/20 between Standard Chartered Bank - Hong Kong and TANESCO*, BOARD PAPER No. 4533, March 2014, available at <http://www.orcis.com/escrow/TANESCO-Board-Paper.pdf>

826 PAC Report, p. 11.

827 TANESCO BOARD PAPER No. 4533, March 2014, p. 2.

dismissed; and SCB HK instead turned to the Chief Justice of Tanzania to complain against the winding up order. As a result, the Court of Appeal opened the revision proceedings *sua moto* in 2012,⁸²⁸ with TANESCO being made party to the matter for the first time.⁸²⁹

In September 2012, Mechmar claimed to have sold its 7 shares to a company registered in British Virgin Islands called Piper Link which was represented by Mr. Harbinder Sing Sethi, for USD 6 million.⁸³⁰ In the same year, Mr. Sethi, who introduced himself as the Executive Director of PAP, claimed to have bought 70% of IPTL shares from Piper Link. He nevertheless failed to take over IPTL due to the winding up petition by VIP which owned the remaining 30% of the shares.

However, the alleged sale of the 7 shares by Mechmar to Piper Link was revoked by the High Court of British Virgin Islands following a petition filed by Martha Renju on behalf of SCB HK.⁸³¹ The Court ordered Piper Link to surrender the certificate of shares allegedly bought from Mechmar. In its final judgement dated 11th April, 2014, the High Court of Virgin Islands granted the certificate of shares to SCB HK.⁸³²

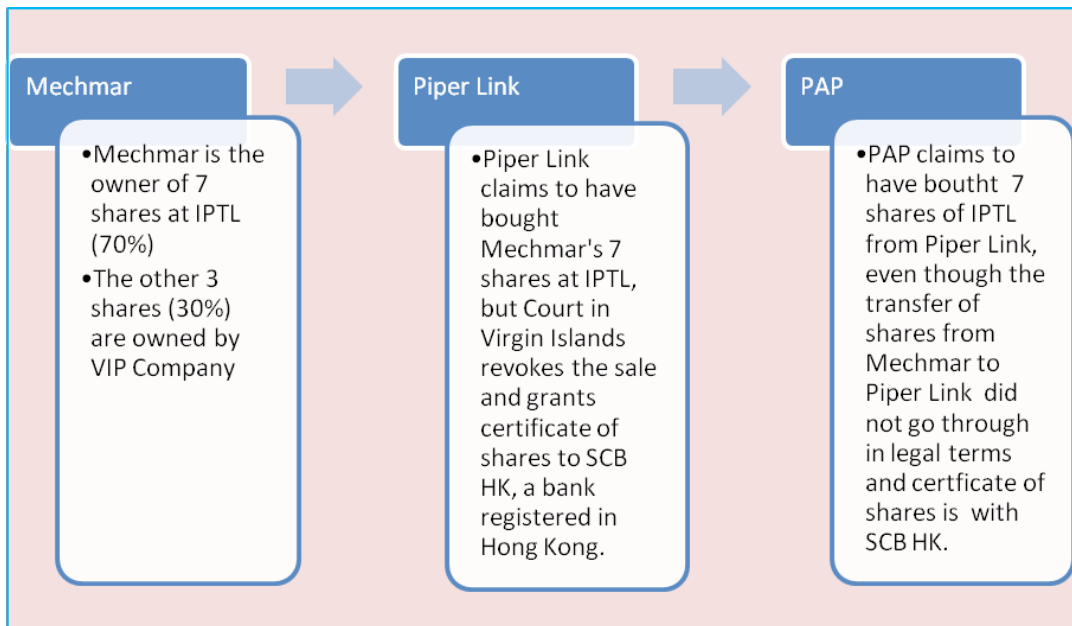


Figure 10: Transfer of Mechmar Shares at IPTL

828 Civil Revision No. 1 of 2012.

829 TANESCO BOARD PAPER No. 4533, March 2014, p. 2.

830 PAC Report, p. 14.

831 PAC Report, p. 13.

832 Ibid.

In September 2013, Mr. Rugemalira, VIP's Executive Director, decided to sell his 3 shares at IPTL to PAP at the cost of USD 75 million.⁸³³ The deal was on condition that the winding up petition is withdrawn. Indeed, VIP successfully moved the High Court presided by Judge Utamwa to withdraw the winding up petition and terminate the provisional liquidator (RITA) and order for handing over of IPTL plant to PAP.⁸³⁴ Judge Utamwa order rendered the administration petition by SCB HK redundant leading to its withdrawal of the petition after failing to secure revision order from the Court of Appeal. Following the Utamwa's order, PAP laid its claim on the money in the Escrow Account and IPTL approached TANESCO for the release of the funds which were released following the instructions of the Government and IPTL in October 2013.⁸³⁵ The funds were transferred to PAP's accounts at Stanbic's Bank in November and December 2013 with the blessings of Attorney General's Chamber and the Ministry of Energy and Minerals.

After the funds were released from the Escrow Account to PAP, Mr. James Rugemalira, who was VIP's Executive Director, received USD 75 million as payment for selling his 3 shares in IPTL to PAP. Upon receiving this amount, Mr. Rugemalira 'generously' gave part of the money to the government officials, public servants, religious leaders and judges mentioned above.

In its award dated 12th February 2014 with regards to the dispute between SCB HK and TANESCO over, among other things, the capacity charges, ICSID ruled that TANESCO was indeed overcharged by IPTL.⁸³⁶ The arbitrator then ordered the two parties, TANESCO and IPTL to sit down and re-calculate the tariff and then report back to the Tribunal within 90 days.⁸³⁷

The Tegeta Escrow account was thus created at the Bank of Tanzania (BoT) following a dispute between TANESCO and IPTL. The dispute was over the overcharged capacity charges, and as the case was determined, TANESCO was ordered to deposit all the payments into the newly established account.

8.4.2.3 Exposure of the scandal and Call for action

The Tegeta Escrow Account scandal was brought to the attention of the National Assembly and the public at large by the Kigoma South Member of Parliament (NCCR-Mageuzi), Mr. David Kafulila, who revealed that he had evidence of fraudulent payments made to individuals out of the Tegeta Escrow Account at BoT following the

833 PAC Report, pp. 15 & 23.

834 TANESCO BOARD PAPER No. 4533, March 2014, p. 3.

835 Ibid.

836 Ibid, p. 4.

837 Ibid.

withdrawal of USD 122 million, equivalent to Tshs. 207 billion, from the Account. Following this revelation, the Parliament through its Public Accounts Committee directed the Controller and Auditor General (CAG) to conduct a special audit on the withdrawal of the Tshs. 203, 102, 540, 890/- from Escrow Account at BoT. PCCB was directed by the Committee to conduct a forensic audit of the transaction.

The Escrow Account attracted public attention across the country as the public called for investigation into the matter and action to be taken against those who would be found guilty or complicit.



Picture 52: The Tegeta Escrow Account saga captured the public's attention

8.4.2.4 To Whom Does the Money Belong, the Public or Individuals? : Findings in the Report by the PAC

During parliamentary debates on the issue of Escrow Account, senior government officials insisted that the money in the account public (does not belong to the Government), including the former Minister of Energy and Minerals, Prof. Sospeter Muhongo; Deputy Minister of Energy and Minerals, Mr. Stephen Masele; the Attorney General, Judge Frederick Werema; and Prime Minister, Mezenzo Pinda.⁸³⁸ However, according to the PAC, interview sessions with the Deputy Controller and Auditor General, Tanzania Revenue Authority (TRA) Commissioner General and PCCB Director General, revealed that part of the money in the Account belongs to the

838 PAC Report, pp. 10 & 11.

public (public money).⁸³⁹ This was contrary to a claim made by the former Minister of Energy and Minerals, Prof. Sospeter Muhongo, and former Attorney General Judge Fredrick Werema that the money belonged to IPTL.

Other key findings made by the PAC on the Escrow Account saga are:

- An agreement to open Tegeta Escrow Account was signed by two parties, the Ministry of Energy and Minerals on behalf of TANESCO and IPTL. BoT was designated an agent of the account.⁸⁴⁰
- PAP was not the owner of IPTL. The sale of shares from Mechmar to Piper Link was revoked by the High Court of British Virgin Islands upon petition by one Martha Renju, who was representing SCB HK. During interviews with the CAG, it was confirmed that the certificate of shares for the 7 shares at IPTL which belonged to Mechmar was with SCB HK.⁸⁴¹

Transfer of shares was said to be complete when the seller gives the buy the certificate of such shares. This means that PAP did not obtain the 7 shares, originally belonging to Mechmar and was thus not entitled to payments out of the Escrow Account.

Indeed, even the TANESCO Board expressed concern over PAP's ownership of PAP in the wake of the Utumwa Order, which blessed the payment of the money in the Escrow Account to IPTL/PAP. In its board paper no. 4533 of March, 2014, the Board branded the order 'controversial' and stated that "while it is clear factually that PAP both the 30% stake of VIP in IPTL it is not clear and disputable whether PAP or any other party in fact has acquired the 70% stake of Mechmar in IPTL."⁸⁴²

- Even assuming that the sale of the 7 shares of Mechmar to Piper Link and later to PAP was legal, there is an issue of tax evasion.

According to TRA evaluation since Mechmar sold its shares to Piper Link at the cost of USD 6 million it was supposed to pay Capital Gains Tax of Tshs. 1, 919,988,800 and not Tshs. 596,500 that was supposed to be paid. Mechmar was also supposed to pay stamp duty worth Tshs. 96 million, not Tshs. 60 thousand that it paid. This means the total amount of taxes lost was Tshs. 2,015,988,800.⁸⁴³

TRA evaluations further revealed that since shares from Piper Link to PAP were sold at USD 20 million and not USD 300,000 as indicated in documents

839 Ibid.

840 Ibid, p. 9.

841 Ibid, p. 13.

842 TANESCO BOARD PAPER No. 4533, March 2014, p. 4.

843 PAC Report, p. 15.

presented to TRA, the Capital Gains Tax that should have been paid is Tshs. 6,399,977,600 and not 47,940,000. For stamp duty, the amount that should have been paid is Tshs. 320,000,000 and not Tshs. 4,800,000. The total amount of taxes lost thus stands at Tshs. 6,667,188,800.⁸⁴⁴

- TRA was shocked to hear that there were two sale agreements each revealing a different price intended at avoiding tax and that VIP sold its 3 shares at IPTL to PAP for USD 75 million while it bought 7 shares from Piper Links for USD 300,000.⁸⁴⁵
- BoT advised the Government to satisfy itself over the sale of Mechar's shares to Piper Link and then to PAP and the registration of such shares at BRELA before releasing the money to the Escrow Account.⁸⁴⁶ The documents that were presented to the BoT Governor were the Deed of Assignment of Shares and the Sale Agreement between PAP and Piper Link and not the Share Certificates.⁸⁴⁷
- PAP did not possess Tax Clearance Certificate contrary to the Finance Act No. 8 of 2012, which requires a company to obtain the certificate from TRA before BRELA can register the shares. Therefore, when the Ministry of Energy and Minerals entered into an agreement with PAP to release Escrow Account funds PAP was not legally the owner of IPTL.⁸⁴⁸

Attorney General's directions to the BoT Governor that there was no tax money in the Tegeta Escrow Account caused the Governor to endorse the release of the money before tax deductions were made.⁸⁴⁹ The directions of the Attorney General occasioned the Government the loss of VAT worth sh. 23,154,003,077.⁸⁵⁰

- The Ministry of Energy and Minerals failed to protect the rights of TANESCO and perform due diligence as to the transfer of shares from Mechmar to Piper Link and then to PAP before the release of Escrow funds.⁸⁵¹
- The Government misinterpreted the order by Hon. Judge J.H.K Utamwa of the High Court of Tanzania dated 5th September, 2013, granting all five prayers requested by VIP.⁸⁵² The Utamwa order did not warrant the release of funds in the Escrow Account to PAP.⁸⁵³

844 Ibid.
 845 Ibid, p. 15.
 846 Ibid, p. 18.
 847 Ibid.
 848 Ibid, p. 20.
 849 Ibid, p. 27.
 850 Ibid.
 851 Ibid, p. 31.
 852 Ibid, p. 35.
 853 Ibid, p. 36.

- The IPTL/TANESCO agreement was tainted with allegations of corruption since it was entered into. The agreement has been breached on two occasions with impunity.⁸⁵⁴
- Mr. Harbinder Singh Sethi, fraudulently obtain the funds in the Escrow Account and presented forged documents on the ownership of 70% of Mechmar at IPTL to Piper Link and later to PAP.⁸⁵⁵ Mr. Sethi was complicit in money laundering, the money he used to buy 30% IPTL shares from VIP.⁸⁵⁶

8.4.2.5 The Aftermath of the Saga: Resignations and Court Action

Following the analysis of the CAG Report on after presenting its findings the PAC made the following recommendations:⁸⁵⁷

- Since the CAG revealed that Mr. Harbinder Singh Sethi does not possess the share certificate for shares transferred from Mechmar at IPTL, the Government should seek revision of Judge Utamwa's order and return IPTL to its *status quo*.
- In accordance with the law and the PSA with IPTL the Government should retake the Tegeta plant and hand it over to TANESCO.
- PCCB and DCI should immediately apprehend Mr. Harbinder Singh Sethi and take him before the court of law for his committing the offences of money laundering, fraud and tax evasion. He should also be ordered to return all the money he fraudulently obtained.
- Relevant investigative authorities should ensure the money taken out of the Escrow Account is returned to BoT.
- Since some of the recipients of the money from Mr. Rugemalira are public leaders, investigative authorities should determine whether they complied with the Public Leadership Code of Ethics No. 13 of 1995, which requires them to declare gifts or benefits that they receive. Those found to have breached the provisions of the Code should be stripped of their leadership posts and prosecuted in line with Article 132(1) – (6) of the Constitution of the United Republic of Tanzania, 1977.
- Bank accounts involved in the illegal transactions from the Escrow Account should be frozen and account holders should be made to return the money in accordance with the Anti-money Laundering Act and their properties confiscated. Political figures should be held accountable and the Government should terminate employment of the public servants involved.

854 Ibid, p. 37.

855 Ibid.

856 Ibid, p. 38.

857 See the PAC Report, pp. 38-44.

- The Escrow Account saga was a money laundering issue, as stated by the PCCB Director General during an interview with the PAC. Relevant authorities including BoT, should declare Stanbic Bank and Mkombozi Commercial Bank institutions of money laundering concern.
- The Government should review all power purchase agreements entered into by TANESCO.
- The Government should immediately dissolve the TANESCO Board of Directors and PCCB should open investigations and prosecute all board members involved in passing resolutions in favour of the release of Escrow Account funds for abuse of public office.
- The appointment of the Permanent Secretary of the Ministry of Energy and Minerals should be revoked and PCCB should prosecute him immediately for occasioning the Government loss of revenue, abuse of office and participating in money laundering.
- Deputy Minister for Energy and Minerals should be held accountable for and his appointment revoked for lying to the Parliament and the public about the Tegeta Escrow Account.
- Appointment of the Minister for Energy and Minerals should be revoked for his role in misleading the Parliament on the funds in the Escrow Account, claiming that no the money in the account belongs to IPTL.
- Given the fact that embezzlement and corrupt practices have been common, the Government consider establishing a special unit to tackle grand corruption that is independent and has full powers to prosecute as well as a special court for grand corruption to hear cases filed by the unit.
- Since the Prime Minister had all the information regarding the process and transactions involving the Escrow Account and did not take action, he should hold himself accountable for not performing his constitutional duty.

Following the above-stated recommendations by the PAC and increased pressure for accountability from the National Assembly, the Civil Society and the public at large, some public servants involved in one way or the other in the Escrow Account scandal were charged with corruption-related offences. These include Leonard Mutagibwa, the Tax Exemptions Manager at TRA; Julius Rutta, the Finance Director at BoT; and Stephen Urassa, the Senior Legal Officer at TANESCO.⁸⁵⁸ They were charged with corruptly receiving a total of Tshs. 2.42 billion from the Tegeta Escrow Account.⁸⁵⁹ Others who have been sent before the Kisutu Resident Magistrate Court over the same

858 The Guardian Newspaper, Escrow lands three more in court, 17th January 2015, available at <http://www.ippmedia.com/frontend/?l=76406>, accessed 20th January, 2015.

859 Ibid.

charge are Rugonzibwa Mujunanoma, the Director of Legal Services in the Ministry of Lands, Housing and Human Settlements Development; and Mr. Theopil Bwakea, the Principal Engineer of the Rural Energy Agency (REA).⁸⁶⁰

Some high-profile government officials were either forced to resign or sacked, following their rejection of widespread calls to resign on ethical grounds. Judge Fredrick Werema, who was the Attorney General, was the first to resign on 26th December, 2014, claiming that he had to resign because his advice on Escrow Account had been “misunderstood” and thus “polluting the air”.⁸⁶¹

Prof. Anna Tibaijuka, who was the Minister for Lands, Housing and Human Settlements and one of the receivers of funds obtained from Escrow Account, was sacked by the President, Hon. Jakaya Kikwete, during his televised address to the nation on 22nd December, 2014.⁸⁶² This happened after Prof. Tibaijuka had publicly vowed not to quit her position and claiming that the President would be disappointed if she resigned.⁸⁶³

Prof. Sospeter Muhongo, who was the Minister of Energy and Minerals, called the press on 25th January, 2015 to announce his resignation, finally bowing to an increasing pressure from Members of Parliament and CSOs for him to do so. The calls for his resignation were due to his role in the mishandling of the money in the Escrow Account and facilitating the payments of the money to PAP.

8.4.2.6 Statements by LHRC and other CSOs

Following the release of the CAG and PAC reports on the Escrow Account saga, the LHRC and other CSOs issued statements condemning the fraud associated with the handling of the money in the Account and distribution of such money to public servants, political leaders and religious leaders. In its statement issued 2nd December, 2014, LHRC condemned the mishandling of the Escrow Account and the subsequent embezzlement of the funds in the account.⁸⁶⁴

860 Ibid.

861 *DailyNews* Newspaper, *Werema resigns over Escrow saga*, 17 December 2014, available at <http://dailynews.co.tz/index.php/local-news/39443-werema-resigns-over-escrow-account-saga>, accessed 20th January, 2015; *BBC News*, *Tanzania AG Frederick Werema quits amid corruption row*, 17 December 2014, available at <http://www.bbc.com/news/world-africa-30513108>, accessed 20th January, 2015.

862 Frank Kimboy, *The Citizen* Newspaper, *Escrow questions remain as Tibaijuka dropped as minister*, December 23 2014, available at <http://www.thecitizen.co.tz/News/national/Escrow-questions-remain-as-Tibaijuka-dropped-as-minister/-/1840392/2566296/-/k60imf/-/index.html>, accessed 20th January, 2015.

863 Ibid.

864 LHRC, *Taarifa kwa Vyombo vya Habari: Tathmini ya Mwenendo wa Bunge la Jamhuri ya Muungano wa Tanzania katika Kushughulikia Sakata la Ubaridhifu wa Fedha katika Akaunti ya Tegeta Escrow*, 2 Disemba, 2014.

The LHRC congratulated the PAC for putting the public interest first in its evaluation of the CAG Report over the Escrow Account saga and subsequent resolutions. It also congratulated Hon. David Kafulila (MP), for his role in exposing the Tegeta Escrow Account scandal, as well as all the MPs and government leaders who contributed in fighting for the public interest during the debates over the money in the Christopher Escrow Account in and outside the Parliament, including PAC members led by Hon. Zitto Kabwe (MP); Hon. Deo Filikunjombe (MP); Hon. Luhaga Mpina (MP); Hon. Khamis Kigwangala (MP); Hon. Alphaxad Lugola (MP); Hon. Tundu Lissu (MP); Hon. Ole Sendeka (MP); Hon. Mwigulu Nchemba; Hon. Prof. Mark Mwandosya; and Hon. Esther Bulaya (MP). Furthermore, LHRC commended the Speaker of the Parliament, Hon. Anna Makinda for warning MPs who have been receiving money (bribes) from some groups to influence certain decisions or resolutions made by the Parliament in favour of such groups. Anti-corruption authorities should open investigations on the matter.

About the statement issued by the Prime Minister, Hon. Mizengo Pinda, that the CAG Report had not indicated to who the money belongs between the public and IPTL, the Centre stated that the Prime Minister's statement was misleading as the PAC Report clearly indicated that there was public money in the Escrow Account. It further urged the Parliament should perform its duties vis-à-vis the Government in line with Article 63(2) of the Constitution of the United Republic of Tanzania.

Additionally, the LHRC called for investigations and accountability for all those involved in the Escrow Account saga. The Escrow Account saga came as a leadership, ethics, national values and principles of good governance issue. Such issues were included in the Second Draft Constitution but were not incorporated in the Proposed Constitution which was made by the Constituent Assembly, composed of some of those implicated in the ESCROW account. National values and principles of good governance excluded in the Proposed Constitution include patriotism, integrity, national unity, transparency, accountability and gifts in public service.

Seven other CSOs issued a joint statement illustrating their observations, recommendations and concerns over the Escrow Account saga. These CSOs are Policy Forum, Tanzania Coalition on Debt and Development, ACTIVISTA, Tanzania Youth Vision Association, SIKIKA, Action Aid Tanzania, HakiElimu and Youth Partnership Countrywide.⁸⁶⁵ Among the observations made by the CSOs, after reviewing reports by the CAG and PAC as well as numerous other documents, are:⁸⁶⁶

865 SCO Statement: Power sector fraud tests the Tanzanian government's integrity and accountability, available at <http://www.policyforum-tz.org/power-sector-fraud-tests-tanzanian-government%E2%80%99s-integrity-and-accountability>, accessed 20th January, 2015.

866 Ibid.

- PAP's acquisition of Mechmar's 7 shares at IPTL was fraudulent;
- Transfer of funds in the Escrow Account to PAP was illegal and involved collusions of senior government officials, TANESCO Board of Directors, BRELA and private banks;
- PAP and VIP sabotaged the process of arbitration over payment of capacity charges through ICSID that was initiated by TANESCO in 2008, leaving the issue of cost unresolved;
- Argument that the funds in Escrow Account were not public money was put forward by apologists of IPTL, PAP and VIP with the aim of confusing informed discussion of the basic issues at stake;
- BoT failed to exercise due diligence before releasing Escrow Account funds; and
- Stanbic Bank stands accused of complicity in the payment of large amounts of money to PAP/IPTL beneficiaries on a single day and without notifying the Financial Intelligence Unit (FIU) such transactions which involved a bank irregularity.

The CSOs commended the CAG and PAC for the investigations and reports related to the Escrow Account saga but expressed concern over the ease with which the funds in Escrow Account were transferred to PAP accounts and then to individual bank accounts in contravention of banking and financial laws. They also expressed concern over the way BRELA failed to exercise due diligence on the 'transfer' of shares from Mechmar's to Piper Link and Piper Link to PAP; lack of transparency in contracts in the energy sector; and the culture of impunity, whereby most of the government officials/public figures and public servants are not held accountable for their abuse of power and theft of public money and continue to do so with impunity. Additionally, the CSOs made the following recommendations:

- The Government to call to account for abuse of power and theft of public funds to those implicated in pillaging of Escrow Account funds;
- Government to demand immediate and transparent repayment of the funds obtained fraudulently by PAP plus interest; and
- Government to implement recommendations made by PAC.

8.4.3 Conclusion

The Escrow Account is yet another setback in the fight against corruption in Tanzania. People's faith in the Government and their political leaders continues to decline; and until the Government decides to take serious measures against the "big fish" involved

in grand corruption scandals and make sure they are brought to justice, corruption will continue to thrive and hinder economic development. Merely resigning and being “asked” to return the money stolen from the public or obtained corruptly will not help to curb grand corruption. It is about time that senior Government officials and political leaders are held accountable for their actions.

8.5 Misuse of Public Funds and Abuse of Office at Tanzania Ports Authority (TPA)

In the year 2014, apart from ordering investigations into the Escrow Account scandal, PAC ordered the CAG to look into allegations of misuse of public funds at the Tanzania Ports Authority (TPA). The CAG was tasked with conducting a special investigation into the controversial expenditure of Tshs. 26 billion by TPA.⁸⁶⁷ This expenditure includes Tshs. 9.6 billion used for a single staff meeting, Tshs. 6.4 billion used for advertisement and Tshs. 10 billion used for trips as contained in CAG Report for the year 2012/2013.⁸⁶⁸ Following this report, the PAC shocked with the expenditure met with the TPA management to share the CAG’s Report and issued an order for the TPA Director and his deputy to appear before the National Assembly on 15th November, 2014 to clarify the controversial expenditure.⁸⁶⁹

According to the CAG, TPA incurred an expenditure of more than Tshs. 3.2 billion from July 2012 to March, 2013 in respect of meetings of Central Joint Industrial Council (CJIC), Joint Industrial Council (JIC), Workers Council, COTWU/DOWUTA and Master Workers’ Council (MWC).⁸⁷⁰ The payment sheets and other documents for sitting allowances of those meetings were paid to members twice or thrice a day without a clear justification with a day being divided into two or three sessions that count as sittings when it comes to payment of allowances. Hence illegal payments of allowances were made⁸⁷¹ and the members were paid depending on the number of sessions they attended.⁸⁷²

The CAG further noted that during the year 2012/2013, the CJIC held three meetings,

867 Beatrice Moses, *PAC yaikalia kooni Mamlaka ya Bandari*, *Mwananchi* Newspaper, 1st November, 2014, available at <http://www.mwananchi.co.tz/habari/Kitaifa/PAC-yaikalia-kooni-Mamlaka-ya-Bandari/-/1597296/2507228/-/91y6rqz/-/index.html>, accessed 16th January, 2015.

868 Ibid; NelsoKessy, *parastatal thefts shock MPs*, *The Guardian* Newspaper, 31st January 2015, available at <http://www.ippmedia.com/frontend/?l=76883>, accessed 2nd February, 2015.

869 Beatrice Moses, *PAC yaikalia kooni Mamlaka ya Bandari*, *Mwananchi* Newspaper, 1st November, 2014.

870 United Republic of Tanzania, National Audit Office, *Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and Other Bodies for the financial year 2012/2013*, p. 83.

871 Ibid.

872 Ibid.

one special and two ordinary. The expenditure incurred was indicated to be Tshs. 2,121,760,144 for a period of nine months from July, 2012 to March, 2013 instead of two months, September and November,⁸⁷³ indicating that not all the money was spent on meetings but rather some of it was coded to make it look like they were used for the meeting expenses.⁸⁷⁴

Additionally, it was revealed by the PAC that since 2011, TPA had been paying its employees a travel allowance of Tshs. 500,000 without the approval of the Registrar of the Treasury.⁸⁷⁵ The Registrar of Treasury directed that the travel allowance of Tshs. 500,000 for local trips would be paid to senior officers and directors, from 2nd January, 2015 having been raised from Tshs. 270,000.⁸⁷⁶ As for the other cadres, the amount was raised from Tshs. 94,000 to Tshs. 125,000.⁸⁷⁷ The PAC ordered the recovery of the money in allowances paid prior to 2nd January, 2015.⁸⁷⁸

In January, 2013, the former Director General of TPA, Mr. Ephraim Mgawe, was suspended by the then Minister of Transport, Mr. Harrison Mwakyembe for abuse of office.⁸⁷⁹ Mr. Mgawe and his former deputy one Hamad Koshuma, were charged with abuse of office at the Kisutu Resident's Magistrates Court for irregularly awarding a multi-billion shillings tender to a Chinese company called China Communication Construction Company Limited for construction of two berths at the Dar es Salaam port.⁸⁸⁰

The LHRC commends the Office of the CAG (NAO) and PAC for their roles in exposing misappropriation of public funds and calling for those responsible to be held accountable respectively. It recommends that the Government pays closer attention to the undertakings at TPA and take action against those who misuse public funds and abuse their authorities.

873 Ibid.

874 Ibid, p. 84.

875 The Citizen, *TPA in trouble over staff allowance*, January 16 2015, available at <http://www.thecitizen.co.tz/News/national/TPA-in-trouble-over-staff-allowance/-/1840392/2591084/-/fr5e02/-/index.html>, accessed 26th January, 2015; Amby Lusekelo, *People's Messiah for accountability*, DailyNews Online, 18 January 2015, available at <http://www.touch.dailynews.co.tz/index.php/columnists/columnists/amby-lusekelo/40495-people-s-messiah-for-accountability>, accessed 20th January, 2015.

876 Ibid.

877 Ibid.

878 Ibid.

879 The Citizen, *Ex-TPA bosses charged with abuse of office*, July 15 2014, available at <http://www.thecitizen.co.tz/News/national/Ex-TPA-bosses-charged-with--abuse-of-office/-/1840392/2384048/-/kphy3gz/-/index.html>

880 Ibid.

8.6 Pending Corruption Cases: Daniel Yona, Basil Mramba and the EPA Scandal

Two former cabinet ministers, Mr. Basil Mramba and Mr. Daniel Yona and two other senior government officials were charged at the Kisutu Resident Magistrate's Court in January, 2009 for abuse of office that cost the Tanzanian Government a loss of Tshs. 11.7 billion.⁸⁸¹ They were accused of giving preferential treatment by granting full tax exemption to gold assaying firm from the United Kingdom called M/S Alex Stewart Government Business Corporation offences they committed between August 2002 and June 2004.⁸⁸² M/S Alex Stewart Government Business Corporation received USD 50 million in gold audit fees from June 2003, when it was awarded the contract, to August 2007, when it completed its assignment.⁸⁸³

The charges against Mramba and Yona came after three years of investigations by PCCB and the Police; but the case has been postponed on many occasions from 2009 to 2014. In April, 2014, the Kisutu Resident Magistrate's Court adjourned the hearing of the two former cabinet ministers and ordered a case for hearing on 23rd May, 2014 as the Court made arrangements for setting another date for the trial.⁸⁸⁴ The case was again mentioned at Kisutu Resident Magistrate's Court in Dar es Salaam in July, 2014 and the trial was set to resume on 9th September, 2014.⁸⁸⁵ Five years on, the case is yet to be concluded.

In November, 2014, two businessmen charged in connection with the EPA scandal were acquitted at the Kisutu Resident Magistrate's Court with the Court ruling that they had no role in the theft of the money in the EPA Account in the Bank of Tanzania.⁸⁸⁶ The Court ruled that the prosecution failed to prove beyond reasonable doubt the charges against the two businessmen Mr. Jonathan Munisi and Japhet Lema, who were charged with conspiracy to commit an offence, forging a deed of assignment, uttering false documents and obtaining money by false pretenses from BoT. The Office of the Director of Public Prosecutions appealed against the decision of the Court to acquit the businessmen soon after the judgement.

881 DailyNews, *Court shelves Mramba-Yona-Mgonja case again*, 24th April, 2014, available at <http://archive.dailynews.co.tz/index.php/local-news/30678-court-shelves-mramba-yona-mgonja-case-again>, accessed 16th January, 2015.

882 Ibid.

883 Ibid.

884 Ibid.

885 DailyNews, *Mramba, Yona case resumes September 9*, 18 July 2014, available at <http://www.dailynews.co.tz/index.php/local-news/33864-mramba-yona-case-resumes-september-9>, accessed 20th January, 2015.

886 Faustine Kapama, DPP contests EPA suspects' acquittal, DailyNews, 3rd December, 2014, available at <http://www.dailynews.co.tz/index.php/local-news/38939-dpp-contests-epa-suspects-acquittal>, accessed 20th January, 2015.

In the wake of the exposure of the EPA scandal, the Government came under intense scrutiny from the media, CSOs and the public at large for quietly recovering of the funds in the EPA Account that were misappropriated without releasing the names of those responsible and taking them to court. Eventually, more than 20 people, including the two businessmen acquitted in November, 2014, were taken to Kisumu Resident Magistrate's Court, charged for their role in the fraudulent payment of Tshs. 133 billion to 22 companies in the financial year 2005/2006.

In November, 2008, four BoT officials were arraigned before the Kisumu Resident Magistrate's Court, charged with occasioning loss of about Tshs. 2.5 billion to the Government. Two other suspects, Manase and Eddah Makale, who are husband and wife, were convicted of siphoning off Tshs. 1.1 billion from EPA account in September, 2013.⁸⁸⁷ The husband was sentenced to five years in prison, while the wife was sentenced to a year and a half.⁸⁸⁸

Two brothers, Johnson and Mwesiga Lukaza, were set free by the Kisumu Resident Magistrate's Court in December, 2014. The two were accused of taking more than Tshs. 6 billion from EPA account and forging documents in connection with the account in 2008. The DPP has appealed against the court's decision to acquit the two brothers.⁸⁸⁹

8.7 Corruption during Elections: The 2014 Local Government Elections

The use of bribes, kickbacks and fraud to win votes during elections has become a common phenomenon in Tanzania. Such incidences have been widely reported during elections, both general and local government. LHRC and Tanzania Civil Society Consortium for Election Observation (TACCEO) monitored the 2014 Local Government Elections across Tanzania.

During the monitoring process, LHRC/TACCEO received reports of corrupt practices at different polling stations. For instance in Chato and Itilima Districts in Simiyu Region It was reported that some voters were given packets of salt, match boxes and money by CCM and UDP candidates.⁸⁹⁰ In Muheza District at Kigongamawe Village, the villagers were promised sets of jerseys and footballs if they voted for CCM candidates.

887 Tausi Ally, *Husband and wife jailed in EPA case for 6 years*, The Citizen, 28th September, 2013.

888 Ibid.

889 Faustine Kapama, DPP appeals against Lukaza brothers' EPA case acquittal, available at <http://www.dailynews.co.tz/index.php/local-news/40173-dpp-appeals-against-lukaza-brothers-epa-case-acquittal>, accessed 29th January, 2015.

890 LHRC/TACCEO (2014), Local Government Election Monitoring Report, pp. 42& 43.

In Kilwa District, Lindi Region, at the Kinyonga Primary School and Matandu Darajani polling stations, observers reported that some voters were offered some money to vote for CCM candidate.⁸⁹¹ Similar incidents involving political parties were reported from some polling stations in Serengeti District and various polling stations in Dar es Salaam Region.⁸⁹² Door-to-door campaigns were also conducted before the election, whereby candidates and their delegations moved from house to house to ask for votes, sometimes giving bribes and ‘gifts’ in the process.⁸⁹³

8.8 Abuse of Office: Ekelege’s Conviction

Mr. Charles Ekelege, the former Executive Director of Tanzania Bureau of Standards (TBS), was convicted of abuse of power and sentenced to a three-year term in jail in August, 2014.⁸⁹⁴ The former TBS Executive Director was sent to court by PCCB in 2013 and charged, among other things, with abuse of office, in contravention of s. 31 of the Prevention and Combating Act (PCCA) No. 11 of 2007, and occasioning the loss of USD 42, 543 (Tshs. 68,068,800/-) to TBS, contrary to s. 10(1) of the Penal Code and s. 57(1) and s. 60(2) of the Economic and Organised Crimes Control Act (Cap 200).⁸⁹⁵ The loss was a result of Mr. Ekelege removing a 50% of the administration fee from Jaffar Mohamed Ali and Quality Motors Company without the approval of the TBS Board.



Picture 53: Mr. Ekelege at Kisutu Resident Magistrate’s Court on the Day He Was Convicted

891 Ibid, pp. 66 & 67.

892 Ibid.

893 Ibid, p. 34.

894 DailyNews, *EX-TBS CEO jailed three years for abuse of power*, 28th August, 2014, available at <http://www.dailynews.co.tz/index.php/local-news/35424-ex-tbs-ceo-jailed-three-years-for-abuseofpower>, accessed 20th January, 2015.

895 PCCB Website, *Mkurugenzi Mkuu wa TBS apandidwa kizimbani kwa kesi ya rushwa*, <http://www.pccb.go.tz/index.php/investigation/sport-news/prosecution-news/549-mkurugenzi-mkuu-wa-tbs-charles-ekelege-apandishwa-kizimbani>, accessed 25th January, 2015.

The conviction came following a testimony by the former Finance Manager at TBS, Mr. John Masikitiko, who testified in court that Mr. Ekelege authorized the waiver without consulting the TBS Executive Council contrary to laid down procedure which required him to do so.⁸⁹⁶ Apart from the jail sentence, Mr. Ekelege was ordered to pay Tshs. 68 million TBS lost upon finishing his jail term.⁸⁹⁷ He will however serve only one year in jail as the sentences (3) run concurrently.⁸⁹⁸

LHRC commends the efforts by PCCB to make sure that Mr. Ekelege is held accountable and brought to justice for his role in corrupt practices that led to the loss of Tshs. 68 million, which is taxpayers' money. Mr. Ekelege's conviction sends a right signal to other directors of government agencies that they will be held accountable and prosecuted for abuse of office and other corruption-related offences.

8.9 Oil and Gas Contracts: Fraudulent Natural Gas Contract with Statoil

Contracts in the energy and mineral sector have been at the centre of most scandals related to corruption and abuse of office, including Richmond and Escrow Account sagas. The natural gas contract entered between Tanzania Petroleum Development Corporation (TPDC) and a Norwegian company, Statoil, entered into in April, 2007.⁸⁹⁹ Two senior officials at TPDC, Mr. James Andilile (Chairperson) and Mr. Michael Mwanda (Acting Director General) were arrested after failing to produce the Production Sharing Agreement (PSA) with Statoil to the PAC.⁹⁰⁰

The PSA was leaked in May, 2014, and an analysis by a blogger name Ben Tylor revealed that if the contract is fully implemented, Tanzania sets to lose up to USD 1 billion (Tshs. 1.68 trillion) annually,⁹⁰¹ which is equivalent to 9% of the total budget for the financial year 2014/15. This is because the Government failed to settle for the model rate of 50-50 percent of profits after costs and instead settled for a model rate of 30-70 percent, with the Government receiving 30% and Statoil 70%.

896 Rosina John, Acting TBS chief testifies against Ekelege, 6th February, 2014, available at <http://www.thecitizen.co.tz/News/national/Acting-TBS-chief-testifies-against-Ekelege/-/1840392/2194602/-/2v8f86/-/index.html>, accessed 25th January, 2015.

897 DailyNews, *EX-TBS CEO jailed three years for abuse of power*, 28th August, 2014.

898 Ibid.

899 Pratap Chatterjee, *Tanzania's Fraudulent Natural Gas Contract with Statoil, BG Group and ExxonMobil*. Officials Arrested, 11th November, 2014, available at <http://www.globalresearch.ca/tanzanian-officials-arrested-for-failure-to-publish-details-of-natural-gas-contract-with-statoil-bg-group-and-exxonmobil/5413414>, accessed 20th January, 2015.

900 Ibid.

901 *Ibid*; Zitto Kabwe, Tanzania to lose up to \$1b under StatOil PSA: Open these Oil and Gas Contracts, at <https://zittokabwe.wordpress.com/2014/07/04/tanzania-to-lose-up-to-1b-under-statoil-psa-open-these-oil-and-gas-contracts/>, accessed, 20th January, 2015.

The Civil society was outraged by the news of the fraudulent contract and called for those involved in negotiating the contract to be held accountable. The former TPDC Managing Director stated that the Government stands to earn more money from the deal with State oil and that it would not incur the loss mentioned above.⁹⁰² The PAC Chairman, on the other hand, insisted that the Government would not earn much after a comprehensive analysis of the PSA and called for openness in contracts in the energy sector in order to ensure that Tanzania benefits from natural resources.⁹⁰³

LHRC urges the Government to take caution when negotiating contracts, especially contracts in the energy sector, most of which have been tainted with various forms of corruption. This will help the country to save billions of money which can be used to boost our national budget, which has been heavily dependent on donors.

8.10 Revealed: Huge Sums of Money Stashed in in Swiss Banks

Over the years, there has been a tendency of political figures, senior government officials and high-profile businessmen in Africa, Tanzania inclusive, of stashing huge sums of money in foreign banks, especially in Switzerland. A big chunk of the money in those foreign bank accounts are believed to be fraudulently or corruptly obtained.

On 8th November, 2012, Mr. Zitto Kabwe, who is the Kigoma North MP and Chairperson of the PAC, moved the Parliament to form a parliamentary probe committee to investigate influential Tanzanians who has unlawfully stashed money and properties in Swiss banks and other foreign countries. Following Mr. Kabwe's motion, a special probe team was formed to look into the allegations of the millions of money believed to be hidden by Tanzanians in Swiss banks. The team members included Dr. Edward Hoseah, the PCCB Director General; Mr. Rashid Othman, Director of Intelligence; Prof. Berno Ndulu, the BoT Governor; and Mr. Mustapha Ismail, who is in charge of BoT's legal affairs.⁹⁰⁴ The committee was chaired by the former Attorney General, Judge Fredrick Werema.

In February, 2015, data leaked from HSBC Bank in Switzerland and verified by the International Consortium of Investigative Journalists (ICIJ), 99 Tanzanians wired USD 144 million, equivalent to Tshs. 205 billion, to the Bank in between 2006 and 2007.⁹⁰⁵ Commenting on the leaked data, the PAC Chairperson remarked that the exposure of

902 Katare Mbashiru, TPDC challenged to clarify StatOil deal, 19th July, 2014, at <http://www.the-citizen.co.tz/News/national/TPDC-challenged-to-clarify-StatOil-deal/-/1840392/2389750/-/item/1/-/efcy87z/-/index.html>, accessed 20th January, 2015.

903 Ibid.

904 Mkinga Mkinga, *Revealed: Tanzanians' Sh205bn in Swiss banks*, The Citizen Newspaper, 10th February 2015.

905 Ibid.

the data was fundamental in tackling tax avoidance and corruption and will help the probe team led by the Attorney General in its investigations in the money hidden by Tanzanians in foreign banks.⁹⁰⁶ Soon after the leaking of the data from HSBC Bank, the Chairperson of the probe team, Attorney General George Masaju, announced that the final report is ready and will be tabled in Parliament for debate by MPs soon.⁹⁰⁷

LHRC recommends the relevant authorities, including PCCB and FIU, to launch investigations into the accounts opened by Tanzanians in foreign countries to determine whether or not the money was obtained fraudulently and thereafter take the necessary actions.

8.11 Concluding Remarks

The Tegeta Escrow Account saga is yet another high-profile case of corruption and the Government must start taking serious measures against senior government officials who engage in corrupt practices. The country has lost so much money to grand corruption, money that could be used to improve public services, particularly the health services and education. In six major corruption-related scandals, the country has lost more than Tshs 512.6 billion, as the table below indicates.

Table 42: Corruption-related Scandals in Tanzania

<i>Corruption Scandal</i>	<i>Amount Lost</i>
Radar	Tshs. 70 billion
EPA	Tshs. 133 billion
Richmond	Tshs. 172.9 billion
Alex Stewart (Assayers)	Tshs. 11.7 billion
BoT Twin Towers	Tshs. 116 billion
VIP Lounge at JNIA	Tshs. 9 billion
TOTAL	Tshs. 512.6

It is apparent that corruption is rampant in Tanzania and a big threat to development. It is upon the Parliament to exercise its powers under Article 63(2) of the Constitution of the United Republic of Tanzania, which is to oversee and advise the Government and all its organs in discharging their respective responsibilities. To strengthen its resolve to

906 Ibid.

907 The Citizen, *Full dossier on Swiss billions ready for MPs*, 12th February 2015, <http://www.thecitizen.co.tz/oped/Full-dossier-on-Swiss-billions-ready-for-MPs/-/1840568/2621214/-/2byc4hz/-/index.html>, accessed 20th January, 2015.

fight corruption, the Government must take stern measures against its corrupt officials, including taking them to court. Government leaders and senior public servants engage in corrupt practices because they know that the worst that could happen to them is to be asked to resign and/or 'return' the public funds. The Parliament, through the PAC, should continue to ensure that there is accountability by government officials, political figures and public servants who are reported to have engaged in corruption and work closely with the offices of the CAG and PCCB to make sure that there is proper use of public funds.

Chapter Nine

National Human Rights Protection Mechanisms

9.0 Introduction

States have the obligation to ensure that there is promotion and protection of human rights principles within the domestic settings in accordance with international human rights instruments. This obligation has led to the establishment of the so called National Human Rights Protection System (NHRPS). NHRPS can be defined as:

“The sum of a national laws, policies and institutions that promote and protect human rights. It is the overall human rights infrastructure; and every country has a distinct NHRPS embedded in a broader cultural, political and historical context. Yet certain universal elements can be defined in all NHRPS.”⁹⁰⁸

As an overall human rights human rights infrastructure, NHRPS consists of all checks and balances needed to ensure that state institutions are accountable and fulfil their duty to respect, protect and uphold human rights. As a first step, international human rights human rights need to be fully incorporated and reflected in national laws and policies.⁹⁰⁹ Secondly, existing or newly created state and non-state institutions should have the means, capacity and backing to implement and /or oversee these laws and policies.⁹¹⁰ In their totality, institutions and legislation to which they are embedded in constitute the NHRPS.

In the above context, the Tanzania NHRPS has the following structure:

Table 43: Tanzania NHRPS structure

1. Institutions	<ul style="list-style-type: none"> – National human rights institution, such as the Commission of Human Rights and Good Governance (CHRAGG) – Legal institutions, such as the Judiciary and the Law Reform Commission – Law enforcement organs such as the Police force, the Prison Services and the Prevention and Combating of Corruption Bureau (PCCB)
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908 EU (2009) Strengthening National Human Rights Human Rights Protection System: A Manual for Embassies of EU Member States.

909 *Ibid.*

910 *Ibid.*

2. Policies and Laws	<ul style="list-style-type: none"> – Overall integration of international human rights Human Rights standards – National Action Plan on Human Rights – National human rights education policy – Overall integration of human rights in other policies
3. Civil Society Organisations	<ul style="list-style-type: none"> – Human rights defenders/Human rights NGOs

Member States under the UN Charter committed themselves to promote and protect human rights at national level and to adhere to international human rights instruments. Human Rights are central to the legitimacy of the State order; thus should be nurtured locally by branches of Government, national human rights Human Rights institutions and civil societies.⁹¹¹ This chapter examines institutions in the country with the role and mandate to promote and protect human rights.

9.1 The Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance (CHRAGG) is an autonomous commission established under the Constitution of the United Republic of Tanzania.⁹¹² CHRAGG became operational on 1st July, 2001 with the enactment of the *Commission for Human Rights and Good Governance Act No. 7 of 2001* as amended by *Act No. 16 of 2001* and *Government Notice No. 311* of 8th June, 2001.

Establishment of CHRAGG is in adherence to a number of international instruments. These include the *African Charter on Human and People's Rights, 1981 (ACPHR)*. The ACPHR requires member States to adopt legislative and other measures to ensure that the rights, duties and freedoms protected by the ACPHR are realized and upheld. Framework of CHRAGG, as a national human rights institution, is provided in both the *Vienna Declaration and Program of Action of 1993*; and the *Paris Principles Relating to the Status of National Institutions of 1993 (the Paris Principles)*. National human rights institutions implement their statutory functions as set by standards provided by these instruments.

This sub-chapter examines the conduct of CHRAGG in adherence to the above mentioned international instruments, and most importantly the *Paris Principles*.

911 UN Plan of Action: Strengthening Human Rights Related United Nations Action at National level: National Human Rights Promotion and Protection Systems.

912 Article 129(1) as amended by Act No. 3 of 2000.

9.1.1 CHRAGG Mandate

CHRAGG's mandate is derived from the *Constitution of the United Republic of Tanzania, 1977* (the Constitution). The Constitution and the *Commission of Human Rights and Good Governance Act*, No. 7 of 2001, clearly defines the functions of the Commission.⁹¹³ Its general mandate is thus to promote, protect and safeguard human rights and good governance within the country.

9.1.2 Independence of CHRAGG

The independence of CHRAGG has always been questionable. This is a result of a number of reasons. Among them is the mode by which the commissioners of CHRAGG are selected. The law provides that the President shall appoint the commissioners after consultation with the Nomination Committee.⁹¹⁴ The question over independence of CHRAGG is derived from the fact that members of the Nomination Committee are themselves either appointee of the President or are political leaders in their respective parties. Bearing in mind the experience of Tanzanian politics, one can notice that both the Speaker of the National Assembly and the Speaker of the House of Representatives are members affiliated to the ruling party to which the President is the Chairperson.

The independence of the Commission is further restricted by statutory provisions. The Constitution gives too much power to the President to give directions to CHRAGG. This can be seen at Article 130(3) of the Constitution, which gives power to the President to give directives to CHRAGG on any matter that the President thinks is in public interest. The Constitution, however, has not defined what public interest is. It leaves room for the President to influence the conduct of the Commission in dealing with human rights violations. Experience has shown that governments, especially in Africa, are the number one violators of human rights. Thus the President, being the head of State and Government, is likely to limit conduct of the Commission when there is violation by its officials.

The Constitution further limits the power of the Commission by giving the President power to direct the Commission not to investigate a person suspected of abuse and/or misuse of office in violation of human rights and principles of good governance.⁹¹⁵ There are many violations of human rights, abuse and misuse of the authority or office that have been done by public/government officials. CHRAGG has conducted none or very few investigations on these abuses and violations. The Police Force is among the institutions that have been accused of violations of human rights. The Police Force, for example, has a tendency of using excessive force to curb demonstrations and political rallies; and in the process, innocent citizens are mercilessly beaten and sometimes die as a result of such actions by the police. For instance, CHADEMA's

913 Article 130 and Section 6(1) respectively.

914 Article 129(3) of the *Constitution of the United Republic of Tanzania, 1977*.

915 Article 130(4).

women wing members were beaten and arrested by the police on October 5th, 2014 after they demonstrated all the way to the State House, calling for the President not to receive the controversial Proposed Constitution. Another incident involved the beating of journalists who were covering a story involving by Police summons for Chairman of CHADEMA, Mr. Freeman Mbowe, in September, 2014. The conduct of the police force is seldom investigated by CHRAGG.

9.1.3 Budgeting

The Commission's main source of funding is provided under Section 29 of the *Commission for Human Rights and Good Governance, 2001*.⁹¹⁶ The provision provides that:

“The funds of the Commission shall consist of moneys;

(a) Appropriated by Parliament for the purposes of the Commission;

(b) Accruing to the Commission from any other source; and

(c) Which are donations or grants from sources within or outside the United Republic.

The law states that CHRAGG is an independent government institution under the Ministry of Legal and Constitutional Affairs. It thus has its source of funding from the funds allocated for the Ministry. Budgetary constraint has been a big challenge, limiting the Commission in protecting and promoting human rights in the country. The budget allocation for the Commission for the financial year 2014-2015 was 7,339,564,000/= Tshs.⁹¹⁷ The actual budgetary needs of the Commission were not stipulated. However, the Parliamentary Committee on Constitutional and Legal Affairs expressed its concern that the budget allocated for the Commission was inadequate.⁹¹⁸ Nevertheless, the funds allocated are never disbursed on time.

Budgetary constraint is more likely to undermine the independence of the Commission. The Paris Principles require a National Human Rights Institution to have constitutionally and legally vested operational and independent budget, through a separate state budget allocation. LHRC recommends that the Commission's budget to come directly from the Treasury. This will ensure timely allocation of funds and thus enable the Commission to implement its activities. LHRC opines also that the Commission be separated from the Ministry of Constitutional and Legal Affairs

916 Act No. 7 of 2001.

917 Ministry of Constitutional and Legal Affairs 2014-2015 Budget Speech.

918 Report of the Parliamentary Committee of Constitutional and Legal Affairs on the Performance of the Ministry of Constitutional and Legal Affairs for the Financial Year 2013/2014, and Opinion of the Committee on Budget Allocation for the Financial Year 2014/2015.

and become an autonomous institution. This will ensure the independence of the Commission.

9.1.4 Capacity to Investigate

The Commission has limited powers over investigation. For instance, section 6 of the *Tanzania Human Rights and Good Governance Act, 2001* prohibits the Commission from investigating the President over alleged human rights violations.⁹¹⁹ There is no legal framework to ensure that the Commission's findings and recommendations of an investigation can be enforced in a court of law. CHRAGG has in many occasions argued for its findings and recommendations to be enforced.⁹²⁰ LHRC recommends amendment of the law to ensure CHRAGG recommendations have legal enforcement. For investigations of massive human rights violations, there should be a mechanism to ensure that they are presented and dully discussed before the Parliament.

The power to conduct investigations is also restrained by financial constraints and political terrain in which the Commission operates. The Commission has been selective when it comes to investigating human rights violations as well as allegations against government officials and institutions like the police and the prison services. For example, the Commission did not investigate the torture of Dr. Ulimboka or the banning of *Mwanahalisi* Newspaper.

The Commission has further failed to investigate the torture of Absalom Kibanda which occurred in 2012. Moreover the Commission failed to investigate and comment on allegations of human rights violations during *Operesheni Tokomeza Ujangili* (anti-poaching operation). On 10th October, 2014, CHRAGG Director for Human Rights was quoted saying that the Commission had failed to investigate atrocities of *Operesheni Tokomeza* because of financial constraints.

9.1.5 Country's Reports

CHRAGG has the duty of submitting human rights reports to the government as stipulated in the Paris Principles. The Paris Principles state that a National Human Rights Institution should have the authority to:

919 Section 6.

920 Asia Rweyemamu, "Good Governance Commission wants autonomy, access to Courts, Parliament." The Guardian on Sunday 30th June, 2013.

“submit to the Government, parliament or any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports and any matters concerning the promotion and protection of human rights...”

These reports concern some of the investigations of human rights violations that CHRAGG has conducted and also on the situation of human rights in the country.

CHRAGG has been submitting reports on investigations it has conducted to the Government, though implementation of such reports is a problem. Following the brutal killing of a journalist, Daudi Mwangosi, in 2012, CHRAGG conducted an investigation and found that the police were responsible for the death of the victim. However, the Government did not work upon the findings and recommendations of the Commission; and the Police Commander who was in charge when the victim was killed has never been held responsible.

CHRAGG has the responsibility to monitor and report on human rights situation in the country. However, the last time such report by CHRAGG was seen is in 2009. Financial constraints could be termed as one of the reasons for failure to produce a report on a yearly basis. As an institution mandated to protect and promote human rights and good governance, failure to assess the human rights and the good governance situation means that its general mandate is in jeopardy. LHRC argues the Government to ensure that CHRAGG is allocated with enough fund to fulfil its mandate effectively.

9.1.6 Implementation of National Plan of Action

In 2013, the Ministry of Constitutional and Legal Affairs launched the National Human Rights Action Plan (NHRAP) for the period of 2013-2017. Recommendations for the country to create a national human rights action plan began since 1990s. Specifically, the Vienna Declaration and Programme of Action of 1993, urged States Parties to consider development of a national action plan to promote and protect human rights. The aim of the national action plan is to strengthen the respect, protection, promotion and fulfilment of human rights as provided in the constitutions and laws of the States Parties, and to guarantee human rights according to international agreements entered into by States Parties.

NHRAP identifies several human rights as priorities for improving coordination and protection in Tanzania. The NHRAP identifies these rights under thematic headings of civil and political rights; economic, social and cultural rights. NHRAP also identifies

the protection of groups with special needs, including women, children, persons with disabilities, the elderly, persons living with HIV/AIDS, refugees and asylum seekers, as well as stateless persons. Generally, the NHRAP seeks to promote Human Rights-Based Approach (HRBA) for development and poverty reduction.

The NHRAP as well establishes system of implementation, monitoring and evaluation. The system ensures that NHRAP is implemented and other obligations are met, such as reporting to Human Rights Treaty Bodies, the Universal Periodic Review and other international/regional bodies. The coordination of the implementation plan is vested with the Commission for Human Rights and Good Governance (CHRAGG). The NHRAP thus empowers CHRAGG to establish a monitoring and evaluation committee to assist its implementation.

LHRC is thus concerned about the capacity of CHRAGG to coordinate the implementation of the NHRAP given the present challenges it is facing. CHRAGG should be empowered to establish offices all over the country to enable it to reach as many Tanzanians as possible, instead of the four offices it has managed to establish in Dar es Salaam, Zanzibar, Lindi and Mwanza. Also, it should be independent from the Ministry of Legal and Constitution Affairs. If these and other factors are enforced, CHRAGG will be able to undertake its constitutional mandate and thus implement the NHRAP effectively.

9.2 The Police Force

The Tanzania Police Force (TPF) is established under section 3 of the *Police Force and Auxiliary Services Act*.⁹²¹ Section 5 of the Act provides for general duties of the TPF, which are:

“preservation of the peace, the maintenance of law and order, the prevention and detection of crime, the apprehension and guardian of offenders and the protection of property, and for performance of all such duties and shall be entitled to carry arms.”

The TPF also has powers to arrest, search and interrogate the suspect under the *Criminal Procedure Act, 1985*.⁹²² The conduct and welfare of police officers is provided for under the *Police General Orders (PGOs)* as well as under the *Police Force Services Regulations, 1995*.

The TPF has in many instances been perceived to be oppressive and brutal. This is because it has, in many instances, failed to act in accordance with the law and human rights principles. The TPF has general mandate of dealing with suspects of

921 CAP 322 of the Tanzanian laws.

922 Sections 11-33; 38-45; 48-51; 52-58 respectively.

criminal acts. Experience has shown that suspects of criminal acts have been treated as condemned criminals, thus leading to their ill treatment.

The law provides for powers and limitations of police officers when dealing with suspects. It prohibits brutal treatment of suspects and insists on adherence of human rights principles. It also requires police officers to use *reasonable* force, necessary for the apprehension of suspects and fulfilment of their duties.⁹²³

TPF is an important institution in protection and promotion of human rights. Its general mandate, when undertaken effectively, allows the society to be without fear of violence and oppression. Human rights can only be protected when the rule of law flourishes.

9.2.1 Condition of the Tanzania Police Force

The TPF is faced with many challenges which in turn affect its performance. Poor performance of the TPF means that they have a bad reputation in the eyes of the public. This sub-chapter examines the challenges faced by TPF and how they affect its performance.

TPF is faced with the challenge of shortage of funds, which makes it difficult for it to employ enough manpower to be deployed all over the country to protect citizens and their properties. Shortage of funds also means that the TPF fails to establish sufficient number of police posts, especially in remote areas of the country. As a result, the force fails to respond well when needed in remote areas to prevent and fight crime. There are times that the TPF relies on donations from ordinary citizens to build police posts. This undermines its performance and leave loopholes for corrupt practices.

Shortage of funds leads to shortage of equipment such as motor vehicles and motorcycles that are used to patrol the streets to prevent crime and preserve peace. It is not strange for a citizen to call the police station for assistance and told that the police post/station does not have any means to take them to the area where they have been called for intervention. Citizens in many instances have been asked to contribute to provide transport for police officers to areas where their intervention is needed. Sometimes the police station/post may have a car but do not have funds to purchase fuel. Again, the TPF has in many instances relied on donation from citizens and “well wishers”, leaving the TPF personel vulnerable to corrupt acts.

Another challenge faced by TPF is lack of autonomy in performing its duties. The TPF has always been subjected to political and administrative pressures from either Government officials or politicians. The Inspector General of Police (IGP)

923 Sections 12 and 21 of the Criminal Procedure Act, 1985.

is the highest rank of the TPF.⁹²⁴ In operating the control of the TPF, the IGP has the command, superintendence and direction of TPF.⁹²⁵ However, the selection of IGP is full of political influence. The IGP is a presidential appointee. The President may choose whoever he wishes, by the powers given to him under Article 36 of the *Constitution of the United Republic of Tanzania, 1977*. Police officers also receive directives from Ministers, Regional Commissioners and District Commissioners. This undermines the TPF to work in a professional manner.



Picture 54: A dilapidated Muhange police post in Kakonko district, Kigoma

9.2.2 Efficiency

The challenges narrated above have had adverse effect on the efficiency of the TPF in combating and preventing crimes in the country. There are a number of major crimes whose perpetrators have never been brought to justice. A vivid example is the two bombing attacks that took place in Arusha in 2013. Some suspects of those attacks were arrested and charged, whereas others were released for lack of evidence linking them directly to the attacks.⁹²⁶ In October 2014, the Police Force announced that it had managed to kill the main suspect of the Arusha bombings.⁹²⁷

The world now is faced with many challenges, one of them being terrorism. The TPF is expected to have modern training to address these challenges. Thus its capacity

924 Section 4 of the Police Force and Auxiliary Services Act.

925 Section 7 *Ibid*.

926 Hazra Quire and Yasinta Amos, "4 foreign Arusha bombing suspects freed", the Daily News, 14th May, 2013.

927 Peter Saramba, "*Mtuhumiwa wa matukio ya ugaidi auawa Arusha*", Mwananchi newspaper 21st October, 2014.

should be enhanced to equip its officers with expertise on modern techniques of investigation.

In 2013, the TPF introduced new divisions within the force dealing with investigation of crimes. These divisions are the Criminal Intelligence and the Forensic Science Investigation.⁹²⁸ These divisions are expected to improve the efficiency of the police force in investigating criminal activities. The Minister of Home Affairs, in his 2014/2015 budget speech, said that the introduction of these divisions have improved significantly the performance of TPF, which can be reflected in a number of successful cases in courts of law. He stated that the number of successful cases rose from 11.6% in 2012 to 12.4% in 2013.⁹²⁹ The Minister further stated that the introduction of these new divisions have improved the set up of TPF, as they have helped separate activities in investigation and intelligence, which in turn has made investigation and intelligence gathering to be conducted in a much more organized and professional manner. These improvements are a welcome development, enabling TPF to become more efficient in performing its duties. However, LHRC believes that more can be done. The TPF, for example, should be given the independence to perform its duties in a much more professional way, without Government or political interference.

9.2.3 Living Conditions

For a long time, members of TPF have been experiencing shortage of houses. The houses available are in a very bad condition. In some cases, up to two or three families of police officers are forced by circumstances to live in a single house of two to three bedrooms, which designed for one family.

Police officers are supposed to live in houses designed for them near police stations. This has however not been the case as shortage of police houses has forced some of them to live in residential areas. Police officers are among the lowly-paid public servants thus cannot afford to rent a decent house in residential areas. In most cases these residences are very far away from police stations, which sometimes makes it difficult for them to properly undertake their responsibilities as required by law.

The police force has recently entered into partnership with the public and private sectors to improve living facilities. As a result, a project involving the construction of 350 houses was completed in Kinondoni Regional Police Zone.⁹³⁰ Also, a project of 330 houses for police officers is expected to be done in Kunduchi, Dar es Salaam.⁹³¹ However, most of these projects seem to be taking place in Dar es Salaam. LHRC opines that efforts are made to ensure that these types of project take place in other

928 2014/2015 Budget speech of the Minister of Home Affairs.

929 *Ibid.*

930 *Ibid.*

931 *Ibid.*

parts of the country as well. The need for housing for police men and women is enormous in all these places.

Partnership with public and private sector in order to improve the living conditions of police men and women is a very positive move. However, more needs to be done to ensure that these men in uniforms have better living conditions. This should go hand in hand with improvement of salaries for police officers to enable them to live a decent life with their families. Only then will one expect them to perform their duties in an efficient and professional manner. These improvements will as well attract more and more educated youth to join the police force and thereby equip the force with professional, educated and dedicated police officers. LHRC calls upon the Government to ensure that sufficient funds are allocated to allow the TPF to make these improvements which will in turn help to improve its performance.

9.3 Tanzania Prisons Services

Tanzania Prison Services (TPS) is a department in the Ministry of Home Affairs. The TPS is regulated by the *Prisons Act of 1967* and is mandated with rehabilitation of condemned offenders. It is a very important institution in making sure that the condemned offenders are treated humanely and in accordance with principles of human rights. To that end, TPS is required to abide by principles set in several international instruments and national laws. Among the international instruments are the *Model Treaty on the Transfer and Supervision of Offenders Conditionally Sentenced or Released*, the *United Nations Standard Minimum Rules for Non-Custodial measures (the Tokyo Rules)*, the *Basic Treatment of Offenders of 1990*, and the *Convention Against Torture, Cruel, Inhumane or Degrading Treatment or Punishment of 1984 (CAT)*.

9.3.1 Prison Overcrowding

One of the greatest challenges faced by prisons in Tanzania is prison overcrowding. Most of the prisons were built during colonial period. Many years have passed now and the prisons have remained the same. This is in spite of the population increase and crime.

Prison overcrowding is a serious problem as it affects the ability of prison officers to deal with prisoners properly. It is also a problem in terms of security as prisons contain different types of offenders, some of whom are very dangerous and violent, posing a security threat to prison officers and other prisoners.

According to TPS, Tanzanian prisons have the capacity to accommodate 29,552 inmates.⁹³² Yet at the moment there are 32,315 inmates in Tanzanian prisons.⁹³³ Among the reasons for overcrowding in prisons is the accommodation of remand and pre-trial prisoners as well as condemned prisoners. There is also delay of cases in courts of law. Thus prisons remain congested despite the fact that some of the remandees and pre-trial prisoners could have been released through bail.

Another reason for prison overcrowding is shortage of dormitories and poor infrastructures. TPS reveals that there are a total of 126 prisons in Tanzania Mainland at the moment.⁹³⁴ Out of the 126 prisons, 12 are Central prisons, 67 are District prisons, and 47 are Open Farm Prisons.⁹³⁵ The problem of prison overcrowding goes hand in hand with the problem of facilities for the inmates. There is great shortage of facilities such as blankets and mattresses, as well as uniforms for inmates.

Overcrowding is also caused by dilapidated situation of prison houses and dormitories. Most of the prisons in Tanzania were built during the colonial era; designed to accommodate only a small number of prisoners. Prisons have not been expanded to cope with the changing circumstances and they do not get repaired regularly.

This has resulted into dilapidation of most prisons and thus not fit to accommodate human beings. In 2014, CHRAGG conducted a survey in several prisons in the country⁹³⁶ and found that 12 prisons in the country are not fit to accommodate human beings.⁹³⁷ These prisons are the ones in Rombo, Nzega, Geita, Ngudu, Kasungamile, Ukerewe, Mugumu, Musoms, Bunda, Ushora, Mang'ola and Bariadi.⁹³⁸ However, the report revealed by CHRAGG also revealed that some prisons in the country were in very good condition.⁹³⁹ These prisons are the ones in Igunga, Kahama, Arusha, Karanga, Handeni, Singida, Kiomboi, Shinyanga, Uyui and Butimba.

9.3.2 Measures to Curb Prison Overcrowding

The problem of prison overcrowding could be solved by employing alternative sentences to jail sentences. The better method is the use of non-custodial measures/sentencing. Non-custodial sentencing is a decision made by a competent authority to

932 Letter from the Tanzania Prison Services with reference number Kumb.Na.298/Vol.11/94 Of 28th January, 2015.

933 *Ibid.*

934 *Ibid.*

935 *Ibid.*

936 *Mwandishi Wetu*, "Magereza 12 hayafai kwa matumizi ya binadamu", Mwananchi newspaper, 1st June, 2014.

937 *Ibid.*

938 *Ibid.*

939 *Ibid.*

subject a person sentenced for an offence to certain conditions and obligations that do not include imprisonment.⁹⁴⁰ Non-custodial measures/sentences include alternative incarceration, community service, house arrest, suspended sentence and probation.

In Tanzania, the most used non-custodial measures/sentences include presidential pardon, probation, community service and parole. In commemoration of the union between Tanganyika and Zanzibar on 26th April 2014, the President of the United Republic of Tanzania, Hon. Jakaya Kikwete, pardoned 3,967 prisoners, in accordance with Article 45 of the *Constitution of the United Republic of Tanzania, 1977*.⁹⁴¹ The President also pardoned other 4,969 prisoners on 9th December, 2014 during the commemoration of independence of Tanzania.⁹⁴² The prisoners who benefited from the presidential pardon include those suffering from HIV/AIDS, cancer and tuberculosis. Others include the elderly of over 70 years, and pregnant and nursing mothers. The pardon, however, did not benefit inmates serving jail time for such crimes as rape, sodomy, defilement, poaching and corruption.

The Tanzania Prison Services (TPS) reported that since the enactment of the Parole Boards Act in 1994, a total of 4,052 prisoners have benefited from parole.⁹⁴³ TPS believes that parole is one of the best alternative systems/sentences to be employed to curb prison overcrowding. This is because out of the total number of prisoners who benefited from the parole arrangement, only 52 of them violated their parole and were sent back to prison. This shows just how effective parole arrangement is.

Among the less used non-custodial measures/sentencing is community service. It is reported that since 2002, only 1,204 prisoners benefited from Community Service Orders, compared to 48,629 prisoners who benefited in neighbouring Kenya.⁹⁴⁴ The number of inmates subjected to community service is very small. Tanzanian prisons contain mostly inmates convicted of offenses of lesser jail time. The Inmate Rehabilitation and Welfare Services (IRWS) estimate that about 60%-70% of prisoners in Tanzania could be released from prisons through community service.⁹⁴⁵

The following are some of the laws regulating non-custodial measures/sentencing in Tanzania:

- *The Constitution of the United Republic of Tanzania, 1977*;

940 Tokyo Rules. Rule 2.1.

941 Raymond Kaminyoge, “*JK awanyima msamaha wafungwa wa ujangili*”. Mwananchi newspaper 28th April, 2014.

942 Reporter, “President Pardons 5,000 prisoners”, Daily News 10th December, 2014.

943 TPS official website, www.magereza.go.tz/index.php/vitengo/legal-prisons-affairs/parole-services, accessed in December, 2014.

944 www.allafrica.com/stories/201501120090.html, accessed on December 2014.

945 *Ibid.*

- the *Presidential Affairs Act, CAP 9 [R.E 2002]*;
- The *Probation of Offender's Act, Cap. 247 [R.E 2002]*;
- The *Community Services Act, Cap.291*;
- The *Parole Boards Act, Cap. 400*;
- The *Prisons Act, Cap. 58*;
- The *Extradition act, No. 15 of 1965 [R.E 2002]*;
- The *Law of the Child Act No. 21 of, 2009*;
- The *Immigration Act No. 7 of 1995 [R.E 2002]*;
- The *Transfer of Prisoner's Act, No. 10 of 2004*;
- The *Criminal Procedure Act, [R.E 2002]* ;
- The *Deportation Act, Cap 380 [R.E 2002]*;
- The *Penal code, Cap 16*;
- The *Resettlement of Offenders Act No. 8 of 1969 [R.E 2002]*.

Apart from the problem of overcrowding prisoners are also faced with the problem of inadequate food portion. It was reported that the food budget allocation for the year 2013/2014 for prisoners amounted to 8,240,219,000/= Tshs.⁹⁴⁶ The budget allocation amounted to approximately 500 Tshs of daily meal per prisoner, whereas the agreed amount was at 3,000 Tshs.⁹⁴⁷ LHRC sees this as a total violation of the right of prisoners to food and good health. LHRC thus urges the Government to make sure that it increases meal budget allocation for prisoners.

Prison overcrowding has become one of the biggest challenges facing the administration of criminal justice system. As one can witness from above, non-custodial measures/sentences could help significantly in minimising the problem. Stakeholders should work together to ensure that alternative measures are employed. These include the Police Force, the Judiciary, and the Prison Service, without forgetting the Local Government authorities. LHRC recommends that the Government should provide education to the public at large to make them understand the benefits of employing alternative measures/sentencing in dealing with prisoners.

946 Bunge la Jamuhuri ya Muungano wa Tanzania 2014: Taarifa ya Kamati ya Kudumu ya Bunge ya Ulinzi na Usalama Kuhusu Utekelezaji wa Majukumu ya Wizara ya Mambo ya Ndani, kwa mwaka 2012/2013; Pamoja na maoni ya Kamati Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka 2013/2014, page 18.

947 *Ibid.*

Chapter Ten

Tanzania's Compliance with International Human Rights

10.0 Introduction

This chapter highlights the country's compliance with international human rights instruments. The country is a State Party to a number of international human rights binding and non-binding legal instruments. The State has signed, ratified or domesticated the various human rights conventions, which create an obligation to States Parties to report to treaty monitoring bodies. The Constitution requires ratification of international treaties/conventions before they become part of the law and used in court in Tanzania. It stipulates that; *"For purpose of discharging its functions the National Assembly may.....Deliberate upon and ratifies all treaties and agreements to which the United Republic is a party and the provisions which require ratification"*.⁹⁴⁸

However, the judiciary uses international treaties as persuasive authorities. For instance, in the case of *Leonard Jonathan versus Republic*,⁹⁴⁹ Munuo J, in delivering the judgment, made reference to a number of international legal instruments to establish why a girl or woman should exercise her freedom of choice when it comes to marriage. Referring to Article 23 of the *International Covenant on Civil and Political Rights, 1966* (on right to family), Munuo J stated: *"In view of the above provision of domestic and international law, the appellant seriously offended the complaints fundamental right to choose her spouse and marry on her own volition. These circumstances reinforce her complaint of rape which I have already observed, was proved beyond all reasonable doubt for the never consented to the appellant carnally knowing her or marrying her under the obnoxious customary practice of grabbing women, locking them up and sexually assaulting them in the name of Chagga customary marriage."*

10.1 International and National Application of Human Rights Treaties and Agreement

The general application of international treaties in State Parties differs from one state to another, depending on constitutional arrangements. Tanzania follows a dualist system, whereas an application of international treaties is separate from the municipal or national system. The monist theory stipulates that rules of international law constitute an integral part of the municipal law and produce direct legal effect without any further law being needed to be enacted. The 1997 Constitution of Tanzania provides for the dualist theory. The Second Draft Constitution of the United Republic

948 Article 63(3) (e).

949 Criminal Appeal No 53 of 2001, In the High Court of Tanzania at Moshi (Unreported).

of Tanzania that was released in December, 2013, provides for the monist theory.⁹⁵⁰ This theory, however, was removed by the Constituent Assembly and thus does not feature in the Proposed Constitution of United Republic of Tanzania of October, 2014, which means that international treaties and conventions will not automatically form part of the law in Tanzania and used in courts of law should the Proposed Constitution win the YES vote.

LHRC is of the view that the position of transforming the State to follow a monist system as the case was in the Second Draft Constitution would be more ideal than the current situation in Tanzania. There are increased incidences of torture as discussed in Chapter Two of this report, a situation which calls for the need to ratify Convention against Torture (CAT). However, the state has shown no signs or intention of ratify the Convention so far. Transforming the country's legal system to adhere to monist theory will serve a purpose in terms of promotion and protection of human rights in the country.

10.2 Ratification Status of International Human Rights Treaties and Agreements

Under public international law, treaties in particular, the following terms are key: ratification; state party; signature; and accession.⁹⁵¹ Ratification, for the purpose of this sub-chapter, is an act a State signifying an agreement to be legally bound by the terms of a particular treaty.⁹⁵² To ratify a treaty, the state first signs it and then fulfils

950 Article 53(3) [*"Haki na uhuru ambao umeainishwa katika mikataba ya kikanda na ya kimataifa kuhusu haki za binadamu ambazo Jamhuri ya Muungano imeridhia, isipokuwa masharti ambayo Jamhuri ya Muungano imeeleza wazi kutojifunga nayo zitakuwa sehemu ya Haki za Binadamu zilizoainishwa katika sura hii"*].

951 **Accede/Accession:** 'Accession' is an act by which a State signifies its agreement to be legally bound by the terms of a particular treaty. It has the same legal effect as ratification, but is not preceded by an act of signature. The formal procedure for accession varies according to the national legislative requirements of the State. To accede to a human rights treaty, the appropriate national organ of a State – Parliament, Senate, the Crown, Head of State or Government, or a combination of these – follows its domestic approval procedures and makes a formal decision to be a party to the treaty. Then, the instrument of accession, a formal sealed letter referring to the decision and signed by the State's responsible authority, is prepared and deposited with the United Nations Secretary-General in New York. **Signature:** 'Signature' of a treaty is an act by which a State provides a preliminary endorsement of the instrument. Signing does not create a binding legal obligation but does demonstrate the State's intent to examine the treaty domestically and consider ratifying it. While signing does not commit a State to ratification, it does oblige the State to refrain from acts that would defeat or undermine the treaty's objective and purpose. **State party:** A 'State party' to a treaty is a country that has ratified or acceded to that particular treaty, and is therefore legally bound by the provisions in the instrument.

952 UNICEF, Introduction to the Convention on the Rights of the Child "Definition of key terms" page 1.

its own national legislative requirements.⁹⁵³ The country has, since it got independent, ratified some of the most important international human rights treaties and agreements as summarized in the table below:

Table 44: International Human Rights Treaties and Agreements Ratified

No	Convention/Declaration/Treaty	Date of Ratification
	African Charter on Human and Peoples' Rights of 1981;	1984
	African Charter on the Rights and Welfare of the Child of 1990;	2003
	Beijing Declaration and Platform for Action of 1995;	1995
1.	Convention on the Elimination of all Forms of Discrimination Against Women of 1979;	1985
	Convention on the Elimination of All Forms of Racial Discrimination of 1965;	1972
2.	Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005;	2005
	Convention on the Rights of the Child of 1989;	1993
	Covenant on Civil and Political Rights of 1966;	1977
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2000. (Maputo Protocol)	2007
	United Nations Declaration on the Rights of Indigenous Peoples of 2007;	2007
	Universal Declaration of Human Rights of 1948;	1948
	International Covenant on Economic, Social and Cultural Rights of 1966;	1976

In its reports, the LHRC has made an emphasis and continues to advocate for the ratification of the following important international human rights treaties and agreements:

953 *Ibid.*

Table 45: International Human Rights Treaties and Agreements that are yet to be Ratified

1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984;
2. Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972;
3. Convention for the Safeguarding of the Intangible Cultural Heritage of 2003;
4. Convention on Biological Diversity of 1992;
5. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990; and
6. ILO 169 Convention on Indigenous and Tribal Peoples of 1989;
7. United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities of 1993;
8. Universal Declaration on Cultural Diversity of 2001;
9. <i>The Optional Protocol to the International Covenant on Civil and Political Rights, 1966</i> which allows individuals to submit complaints directly to the UN Human Rights Committee
10. <i>The Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989</i> which calls for the abolition of the death penalty.

10.3 International Obligation to Report on Treaty Monitoring Bodies (TMB)

Treaty monitoring bodies (TMBs) are committees of independent experts that monitor implementation of core international human rights treaties.⁹⁵⁴ They are established under different provisions of international legal instruments as follows:

(a) *The Human Rights Committee (CCPR) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its Optional Protocols;*

- States Parties to the Covenant, Tanzania inclusive, are obliged to submit reports to the Committee under Article 40 of the ICCPR.⁹⁵⁵

954 <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx> as visited on 14th November, 2014.

955 Article 40(1) & (2) reads: 1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:(a) Within one year of the entry into force of the present Covenant for the States Parties concerned; (b) Thereafter whenever the Committee so requests. 2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

- The last report was submitted on 8th October, 2007.⁹⁵⁶ Another periodic report was supposed to be submitted by 1st August, 2013.⁹⁵⁷
- (b) *The Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966)*
- Tanzania last submitted its periodic report to the Committee on 25th August, 2009.⁹⁵⁸ The first report was submitted on 10th September, 1979.⁹⁵⁹
- (c) *The Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)*
- (d) *The Committee on the Elimination of Discrimination Against Women (CEDAW) monitors implementation of the Convention on the Elimination of all Forms of Discrimination against Women (1979) and its Optional Protocol (1999);*
- The last report was submitted on 10th November, 2014.⁹⁶⁰ This was the combined fourth, fifth and sixth periodic reports submitted to the Committee.⁹⁶¹ The first report was submitted on 9th March, 1988.⁹⁶²
- (e) *The Committee against Torture (CAT) monitors implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (1984)*
- (f) *Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000);*
- The last report was submitted by Tanzania on 13th January, 2012.⁹⁶³
- (g) *Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)*

956 See Office of the UN High Commissioner for Human Rights website at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx, accessed 13th November, 2014

957 *Ibid.*

958 *Ibid.*

959 *Ibid.*

960 See Office of the UN High Commissioner for Human Rights website at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx, accessed 13th November, 2014

961 Committee on the Elimination of Discrimination against Women, *Draft concluding observations of the Committee on the Elimination of Discrimination against Women: United Republic of Tanzania*, Forty-first session, 30 June-18 July 2008, available at Office of the UN High Commissioner for Human Rights website at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx, accessed 13th November, 2014.

962 See Office of the UN High Commissioner for Human Rights website at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx, accessed 13th November, 2014.

963 *Ibid.*

- (h) *Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006)*
- (i) *Committee on Enforced Disappearances (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006)*
- (j) *The Sub-committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) established pursuant to the Optional Protocol of the Convention against Torture (OPCAT) (2002) visit places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment*
- (k) *The African Commission on Human and Peoples' Rights*
 - *Monitors legislative or other measures taken with a view of giving effect to the rights and freedoms recognized and guaranteed by the African Charter on Human and Peoples' Rights (ACHPR).*

10.4 Status of Implementation of UPR Recommendations

The Universal Periodic Review (UPR) was initiated in 2008 under the United Nations whereby the human rights situation of all member states is reviewed after every four and half years. The United Republic of Tanzania was for the first time reviewed in 2011 and given time to implement several recommendations provided during the review.⁹⁶⁴ Implementation of these recommendations depends on the Government's will and commitment. It is not mandatory for the state to implement all the recommendations provided as sovereignty of each State is highly respected. Recommendations for Tanzania were in the following main areas:

964 LHRC& ZLSC, Tanzania Human Rights Report, 2013 page 213.

Table 46: Tanzania's Recommendations to the UPR

Thematic Area	Recommendation Paragraph	Proposed Recommendation	Implementation 2014
Ratification and Domestication of Human Rights Instrument	85.1 (a)-(b) to 86.12	It was proposed for the URT to ratify HR legal instruments such; CAT, Convention of the Protection of All Migrant Workers and Members of their families, Agreement on the Privileges and Immunities of International Criminal Court, also incorporation into domestic laws some provisions from Rome Statute and Peoples' participation in Constitutional Review Process	Not yet
Constitutional Review	85.3, 86.15 and 86.44	Legal reforms to combat HR violations such as Female Genital Mutilation and Corporal Punishment	Ongoing activity however people's participation is still debatable.
Promoting and Enhancing General Human Rights Matters	85.5, 85.7 and 85.11	Strengthening capacity and independence of the National Human Rights Institution (Commission of Human Rights and Good Governance)	Not yet
Strengthen National Human Rights Mechanisms	85.10 and 85.9	Preparing and implementing Human Rights Education Plan of Action	<ul style="list-style-type: none"> • New Commissioners appointed in 2014 • Under budgeting
Human Rights Education	85.19, 85.20, 85.21 and 85.41	Completion of National Human Rights Action Plan	Initiatives to prepare action plan are underway under the Ministry of Education and Vocational Training
National Human Rights Action Plan	85.12, 85.188, 85.15, 85.14 and 85.16	Implement a national action plan to combat corruption	Completed now in place
Corruption	85.18		Partly implemented, problems with grand corruption and procurement in public bodies still a main challenge. Such instance is the Escrow Account saga in 2014

Thematic Area	Recommendation Paragraph	Proposed Recommendation	Implementation 2014
Women Rights	85.23, 85.32, 85.26, 85.48, 85.15, 85.51, 85.22, 85.24,	To put in place Strategy and Legislative reforms to eliminate practices that discriminate women, reduction of GBV, FGM, and women Empowerment	<ul style="list-style-type: none"> Partly implemented, as on GBV the URT still implements the National Plan of Action 2001-2015 Enhanced access to loan facilities to women
Persons with Albinism	85.33 and 85.40	National Campaign to educate citizens	Not yet implemented but individuals and CSO are conducting campaigns such as “Imetosha campaign”
Persons with Disabilities	85.36, 85.90 and 85.93	Improved access to social services	Not yet; as there is little implementation of the <i>Law of Persons with Disabilities, 2010</i>
Human Trafficking	85.63	National Anti-Trafficking Programme	Not yet
Accountability of Law Enforcement officers	85.43, 85.67, 85.44	<ul style="list-style-type: none"> Taking measures against law enforcers, encouraging observance of HR by law enforcers Establishment of independent body to investigate complaints against law enforcers Ensure all security forces are subject to strict control of civilian officials 	Not yet law enforcers still violate HR for instance <i>Operation Tokomeza Ujangili, existence of reported incidences of torture and extra-judicial killings</i>

Source: Extract from the Human Rights Council Resolution 5/1*

LHRC has cited the above thematic areas just to remind the government that there is still an obligation to fulfill. The list of thematic areas from the matrix above is not exhaustive by itself as there were other recommendations on the rights of prisoners, access to justice, freedom of expression, right to education, right to health, rights of children, collective rights and corporate social responsibility, all of which need to be implemented.

10.5 Status of Implementation of APRM Recommendations

The African Peer Review (APRM) Mechanism was concluded and launched in 2003 under the auspices of African Union (AU). The States Parties agreed to terms and signed a Memorandum of Understanding to make APRM a self monitoring tool on implementation of New Partnership for Africa's Development (NEPAD). The APRM MoU aimed at fostering African states self monitoring in governance and good practice by considering the four main thematic areas of democracy and political governance; economic governance and Management; corporate governance; and socio-economic governance.

A team of experts reviewed the URT in 2012 and came up with several recommendations to improve governance and good practice. The following were some of the key recommendations that the country should work on to rectify the current practice:⁹⁶⁵

- (a) There is need to address challenges facing the Union between Zanzibar and Tanzania Mainland. The team revealed that there are a number of challenges that are dealt with politically without due diligence them. LHRC urges the Government to positively use the constitutional review platform to rectify and address all union challenges that might negatively affect the only surviving union in Africa.
- (b) There is a need to re-examine the Mining Act, 2010 so as to re-assure stakeholders and the public that the mining sector can transform the country's economy and improve livelihoods of its citizens.
- (c) On natural resources, the following were recommended:

965 <http://www.panapress.com/APRM-report-highlights-challenges-facing-Tanzania-s-50-year-Union--12-860124-20-lang2-index.html> accessed on 23rd December, 2014.

- should be re-examined.
- The Government to re-examine tax evasion and national revenue losses in order to strengthen the country's economy.
- Investment contracts in natural resources should be made public to enhance accountability and rectify bad contracts that do not benefit the country
- the team also observed that there is low level of accountability and transparency in natural resources governance in the country
- There is less concern in environmental conservation as the team observed that there is environmental irresponsibility in areas of natural resources. For instance there are no vivid steps taken by the government against the Acacia Gold Mining on the pollution of river Tigite in North Mara.
- There is low integration between natural resources and other economic sectors. For instance mining companies do not depend on agricultural produce instead there is importation of foods and beverages from abroad. Therefore local producers do not benefit from the mining investment.
- Low impact from the labour market: Tanzanians employed in natural resources governance are mainly casual labourers and not experts. On the other hand, the rate of unemployment is still very high despite the country's endowment with abundant natural resources.
- Tax advantages that companies, especially foreign direct investments, enjoy Lastly, there are violations of human rights around areas with natural resources.

(d) Also the APRM team of experts observed that the country still faces challenges of human rights violations.⁹⁶⁶ There is a need to strengthen institutional setup and capacity to reduce human rights violations. LHRC equivocally concurs with this observation as the Tanzania Human Rights Report produced every year, illustrates that the number of human rights violations and incidences are on the increase. Mob violence, extra-judicial killings, limitation on freedom of expression, information, media, assembly, association as discussed in previous chapters are on the rise.

LHRC urges the government to implement all of the recommendations on APRM to enhance governance and good practice not only in the Eastern Africa region but also the rest of the continent. The APRM process is an important tool for self monitoring and evaluation that no African state ought to ignore.

966 Ibid.

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PART TWO
ZANZIBAR HUMAN RIGHTS REPORT

ZANZIBAR HUMAN RIGHTS REPORT OF 2014



Editorial Board

Prof. Chris Maina Peter
Ms. Salma Haji Saadat
Mrs. Josefrieda Pereira
Ms. Harusi Miraji Mpatani

Writers

Dr. Moh'd Makame
Mzee Mustafa
Zanzibar Legal Services Centre

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Abbreviations

AAPAM	African Association of Public Administration and Management
AC	Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights (ACHPR)
ADB	Africa Development Bank
ADR	Alternative Dispute Resolution
AG	Attorney General
AIR	All India Law Report
ASP	Afro Shirazy Party
BADEA	Arab Bank for Economic Development in Africa
CAG	Controller and Auditor General
CCM	<i>Chama Cha Mapinduzi</i>
CHRAGG	Commission for Human Rights and Good Governance
CJ	Chief Justice
CUF	Civic United Front
DNA	Deoxyribo Nucleic Acid
DPP	Director of Public Prosecutions
FAWE	Forum for African Women Educationalists
GBV	Gender Based Violence
GDP	Gross Domestic Product
GNU	Government of National Unity
GSO	Government Security Office
HC	High Court
HCD	High Court Digest
HCZ	High Court of Zanzibar
ICCPR	International Covenant on Civil and Political Rights

ICE	Institute of Continuing Education
ICSEC	International Covenant on Social Economic and Cultural Rights
IFMS	Integrated Financial Management System
JSC	Judicial Service Commission
JUMIKI	<i>Jumuiya ya Uamsho na Mihadhara ya Kiislamu</i>
LRC	Law Review Commission
LRCZ	Law Review Commission of Zanzibar
LRT	Law Report of Tanzania
MCT	Media Council of Tanzania
MKUZA	<i>Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar</i>
MV	Marine Vessel
NGO	Non Governmental Organization
NIDA	National Identity Card Authority
OAU	Organization of African Union
OUT	Open University of Tanzania
SACCOS	Saving and Credits Cooperatives Societies
SC	Supreme Court
SMOLE	Sustainable Management of Land and Environment
SMZ	<i>Serikali ya Mapinduzi Zanzibar</i>
STZ	<i>Sauti Ya Tanzania Zanzibar</i>
TAMWA	Tanzania Media Women Association
TANU	Tanganyika African National Union
TLR	Tanzania Law Report
TMA	Tanzania Meteorology Agency
TPDF	Tanzania People Defence Force
UDHR	Universal Declaration of Human Rights

UN	United Nations
ZABEIPO	Zanzibar Strategy for Growth and Reduction of Poverty Zanzibar Education Implementation Project
ZACECA	Zanzibar Anti-Corruption and Economic Crimes Act
ZACPO	Zanzibar Clove Producers Organization
ZAFELA	Zanzibar Female Lawyers Association
ZAN-ID	Zanzibar Identity Card
ZAPDD	Zanzibar Association of People with Development Disabilities
ZATU	Zanzibar Association of Teachers Union
ZAWA	Zanzibar Water Authority
ZBC	Zanzibar Broadcasting Corporation
ZEC	Zanzibar Electoral Commission
ZIFF	Zanzibar International Film Festival
ZLR	Zanzibar Law Report
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre
ZSSF	Zanzibar Social Security Fund

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8. *R v. Sussex Justices ex parte McCarthy* [1924] 1KB 256 at 259.
9. *Raymond v. Honey* [1982] 1 All ER 756.

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7. Second Optional Protocol to the International Covenant on Civil and Political Rights, 1987.
8. Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989.
9. Universal Declaration of Human Rights 1948.
10. UN Declaration on the Elimination of Violence against Women (CEDAW), proclaimed by the UN General Assembly in its resolution 48/104 of 20th December, 1993.

Chapter One

General Overview of Zanzibar

1.0 Introduction

The year 2014 is a very important year for Zanzibar to assess its development in various sectors including the status of constitutionalism and human rights. It is a year that counts a half century of the Revolution of Zanzibar of 1964. To sustain 50 years of its political determination had not been easy and Zanzibar has passed through different challenges. A lot of development has been noted in social, political, legal and economic aspects.⁹⁶⁷ These developments have had notable influences on the formation of the current state of constitutional and democratic systems in Zanzibar. The transitions can be traced from imposed structures and formulations left by the colonials followed by unofficial indigenous arrangements, which are believed to be customarily based, and largely Islamic influenced. There is a need also to mention that the interactions of indigenous African development parallel with imported notions from other parts of Africa and the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia which has greatly contributed to a number of features and characters of Zanzibar democratization.⁹⁶⁸ The attainment of the independence has drawn another line on the state of constitutionalism in Zanzibar. This seemed to be a beginning of the democratic government on one hand but to other it was the beginning of tyranny. The reason why Zanzibar is struggling for constitutional improvements and democracy would have been supplemented by this cause.

The name Zanzibar is not an unfamiliar name wherever you go in this world. Its geographical location, historical indication, political formation and the cultural identification provide a good combination in making this place popular to many. Zanzibar lies off the eastern coast of Africa and is situated about 30 kilometres from the Mainland of East Africa, in the Indian Ocean. It is a low-lying island of coral formation, with an area of about 2,654 square kilometres of which Unguja occupies 1,666 square kilometres and the remaining 988 square kilometres is for Pemba Island.⁹⁶⁹ It is a cosmopolitan island with its people originating from different parts of the world including Persia or the Arabian Peninsula, Asia, Mainland Africa and even as far as China.

967 There is abundant literature on history of Zanzibar but the principal works consulted in the preparation of this section is Michael F. Lofchie, (1965), *Zanzibar Background To Revolution*, Princeton, New Jersey: Princeton University Press, and Esmond B. Martin, (1978), *Zanzibar Traditions and Revolution*, London: Hamish Hamilton.

968 M. Reda Bhacker, (2003), *Trade and Empire in Muscat and Zanzibar: Roots of British Domination*, New Fetter Lane, London: Routledge, First published in 1994, this edition by Taylor & Francis e-Library, pp. 5 – 6.

969 Office of Chief Government Statistician, Zanzibar Statistical Abstract, 2012, p. 1.

The name Zanzibar depicts its historic origin. This name is believed to have been derived from Arabic word ‘Zanjibar’ or from Persian ‘Zangibar’ which means ‘coast of the blacks.’ The capital of Zanzibar, which is located in the island of Unguja is known as Stone Town. This is a historic centre and one of the World Heritage sites. It can lay claim to being the only functioning ancient town in east Africa.

1.1 History

History suggests that, Zanzibar has been home to humans since the beginning of the later Stone Age. It is believed that the Greco-Roman text, the Periplus of the Erythraean Sea, written between the 1st and 3rd centuries BC, mentioned the island of Menuthias which is probably Unguja.⁹⁷⁰ The first settlements of Zanzibar are believed to have been firstly established by immigrants from numerous sections of the African Mainland.⁹⁷¹ The autonomous African communities have existed in Zanzibar in ancient times. Nevertheless the geographical and strategic location of Zanzibar attracted visits by many foreign nations, some of whom established their political bases in Zanzibar. Henceforth, the historical print of Zanzibar draws mainly from African settlers, Persians traders and invasion by foreign nations. Persians and Arabs are said to be the first foreigners who settled in Zanzibar prior to the coming of Sultan of Oman. There are of course significant interactions from other countries. These interactions are thought to have been derived from the responses of indigenous African development parallel with imported notions from other parts of Africa, the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia.⁹⁷²

During the 16th century, the first foreign visitors arriving from the south to Zanzibar were the Portuguese. The Portuguese were the first European power to gain control of Zanzibar from 1503 to 1698.⁹⁷³ They established friendly relations with the ruler

970 Zanzibar, the Island Metropolis of Eastern Africa, Francis Barrow Pearce, OMG, E P Dutton and Company, New York City, 1920.

971 There is abundant literature on history of Zanzibar but the principal works consulted in the preparation of this section is Michael F. Lofchie, *Zanzibar Background To Revolution*, Princeton, New Jersey: Princeton University Press, 1965, Esmond B. Martin, *Zanzibar Traditions and Revolution*, London: Hamish Hamilton, 1978 and *History of the World, History of Zanzibar*, <<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad52>> (accessed 4th November, 2014).

972 M. Reda Bhacker, *Trade and Empire in Muscat and Zanzibar: Roots of British Domination*, New Fetter Lane, London: Routledge, First published in 1994, this edition by Taylor & Francis e-Library, 2003, at pp. 5 – 6.

973 It is also believed that Tumbatu was the first capital of Zanzibar to be followed by Unguja Ukuu. But Unguja Ukuu was the seat of the King of Zanzibar to which the second Portuguese ship came in 1503. According to Portuguese chroniclers the inhabitants of Zanzibar were “Moors.” The ship was commanded by Lourenco Ravasco. The present capital of Mjini developed only towards the end of the Portuguese occupation, and especially after their eviction by the Omanis. Hitherto it had been no more than a fishing village. According to the information the first man to settle in Tumbatu was a prince of Shiraz who came from Bushire. His name

and introduced Christianity in the Isles.⁹⁷⁴ But in the late 17th century the Christian presence came to an end, after a forceful campaign down the coast by the Muslims of Oman. The Portuguese colonial powers were defeated by the Omani Arabs.⁹⁷⁵

Whilst Persians, principally Shirazi began to land in Zanzibar from about the 10th century, their impact remained only on social aspects. Indeed, the Persian social impact was so great that the evidence can be seen even today. For instance, the vast majority of Zanzibar's indigenous African population call themselves "Shirazi" as the social identity of Persians. In contrast, a long political relation was established by Arabs from Oman. In the 1690 Saif bin Sultan, the Imam of Oman, pressed down on the East African coast. Though Saif faced a major obstacle at Fort Jesus which housed the garrison of a Portuguese settlement at Mombasa, after a two-year siege, it fell to him in 1698. Zanzibar then became an increasingly important part of the Omani empire especially because of its status 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.⁹⁷⁶ After his succession from al-Mazrui, Seyyid Said ibn Sultan (al-Busaid) began to reassert his authority in East Africa. In 1822 he took Pemba and captured Mombasa in 1827. Apart from the strong opposition of the local Arab clan families of Zanzibar, Seyyid Said in 1830 exercised

is given as Yusuf bin Sultan bin Ibrahim el Alawi. On his way out from Persia he first of all stayed at Merka in Somalia for some times. See Farouk Abdullah Al Barwani, Zanzinet Forum: Where People Meet, *People and Culture*, <<http://www.zanzinet.org/zanzibar/people/people.html>> (accessed on 2nd November, 2014). See also Lofchie Ibid, at 27.

974 Christianity believed to reach Zanzibar in 1499 the Portuguese soon established a Catholic Mission and trading station in Zanzibar Town. After the Portuguese retreat only a few Goan Christians remained in Zanzibar. It is believed that they had no church but maintained their community through private devotions. Later in the 1800's the incursion of Westerners began to include the occasional passing missionary and clergy from ships in the harbour. During that time the Catholics continued to enjoy good relations with their Zanzibar neighbours, gaining permission to build the stately Cathedral of Saint Joseph in 1894. The cornerstone for this Cathedral was laid on July 10, 1896. The first mass was celebrated in the new Cathedral by Bishop Allgeyer, A Short Illustrated History of Early Churches in Zanzibar: Christmas night in 1898. Available at <http://www.zanzibarhistory.org/zanzibar_christians.htm> (accessed 17th October, 2015). Until now Christians are very few in Zanzibar *Asteria Moris Ambrosse v. Dennis Francis Ngowi* (2009) Matrimonial Case No. 15 High Court, Vuga, (unreported)" \s "Asteria Moris Ambrosse v. Dennis Francis Ngowi (2009) Matrimonial Case No. 15 High Court, Vuga, (unreported)." \c 1

975 By the early eighteenth century the Omani Yorubi dynasty had, with the encouragement of East Africa's Shirazi and Swahili coastal rulers displaced the Portuguese. According to Middleton J. and Campbell J., *Zanzibar, Its Society and its Politics*, Oxford University Press, 1965, pp 3 – 4, the local rulers sought help from Sultan Seyyid Said bin Sultan who managed to chase away Portuguese from Zanzibar.

976 Nicholls C.S., *The Swahili Coast Politics, Diplomacy and Trade on the East African Littoral, 1798 – 1856*, London: Allen & Unwin, 1971, p. 217.

nominal sovereignty over a number of towns. By 1832, Seyyid Said decided to shift his capital to Zanzibar.⁹⁷⁷ From this time on Zanzibar and Oman were both under the rule of Seyyid Said, but the link with Oman was broken after his death in 1856. Zanzibar remained an independent Arab state for sixty years until Great Britain, extending its own empire in East Africa, made Zanzibar its Protectorate.

British showed interest in having a link with Zanzibar especially in trade and officially signed extraterritorial jurisdiction treaties namely the Treaty of 1822, 1839 and 1886 under which, the Sultan agreed to the appointment of a British Agent in Zanzibar and to allow him to exercise certain rights of jurisdiction over English subjects engaged in the trade, and in ships flying the Sultan's flag outside Sultan's dominion. The British were increasingly involved in this prosperous offshore Island. After the abrupt redistribution of the Sultan's inland territories, the British remained the only colonial power with a well-established political presence in Zanzibar itself. This was brought about by the Helgoland–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 Helgoland, which its new navy needed to control the new Kiel Canal and the approaches to Germany's North Sea ports. In exchange, Germany gave up its rights in the Zanzibar region in Africa, allowing Zanzibar to provide a key link in the British control of East Africa.⁹⁷⁸ With the approval of the Sultan, the island and its narrow coastal regions were declared a British protectorate in 1890. However their rule came to an end soon after the Island's independence in 1963.

On 10th December, 1963, Zanzibar gained full independence and became a member of the British Commonwealth. A coalition of Arab parties formed the first government, with the Sultan as Head of the State. Its Independent's Constitution followed the Westminster model of government. However in January 1964, a month after independence from Britain, the then government was overthrown by a revolution. The Sultan was deposed and a People Republic of Zanzibar proclaimed.⁹⁷⁹ Abeid Amani Karume emerged as president of Zanzibar after the revolution. Political parties were abolished and the State made several changes, some of which are said to be positive and others negative. Radical changes were made in the political, economic and social spheres. His first step within the first year of the Revolution was to declare the liberty of the people. Land and other properties were confiscated, mortgages were

977 In 1745 the Busaidi dynasty replaced the Yorubi as the effective rulers of Oman. The sultan overthrew the Mazrui and decided to defeat and capture Mazrui held Mombasa and then relocated his court to Zanzibar. See Middleton and Campbell, *supra* note 9 on p. 42, at pp. 3 – 4.

978 James Stuart Olson; Robert Shadle (1991). *Historical Dictionary of European Imperialism*. Greenwood. pp. 279–80.

979 Esmond B. Martin, *Zanzibar Traditions and Revolution*, London: Hamish Hamilton, 1978, p. 57.

cancelled, rickshaws publicly burned, all clubs and schools based on religion, race or wealth were taken over by government.⁹⁸⁰

The first law was Legislative Power Law which was passed by the Revolutionary Council in 1964 to act as the constitution. Other prominent legislations that had similar effect as that of the constitution were ‘Constitutional Government and the Rule of Law Decree’⁹⁸¹ and, ‘Equality, Reconciliation and Unity of Zanzibar People Decree’.⁹⁸² In this arrangement, the legislative and judicial powers were entrusted to the Revolutionary Council where the president was the Chairman.⁹⁸³ In 1969, the Revolutionary Council restructured the court system which was based on British judicial principles.⁹⁸⁴ Interestingly, on 1st January 1970, the Revolutionary Council abolished the legal system which had been based on British judicial principles to form its own kind of legal system⁹⁸⁵ Zanzibar was governed by these Decrees until sometime in 1979 when the first post-revolution constitution was introduced. Among the notable development made by this constitution was to separate the legislative powers from executive. The House of Representative was for the first time established to pass all laws to be applied in Zanzibar. This constitution brought remarkable development towards the strengthening the democracy and rule of law. The Zanzibar government introduced a new constitution, entitled *Katiba ya Zanzibar* which was enacted by House of Representatives in 1984. With the introduction of the constitution, the legal sector experienced number of reforms.

Zanzibar united with Tanganyika into one sovereign State in 1964. The United Republic of Tanzania was created with Mwalimu Julius Nyerere as president, and Abeid Amani Karume as first vice president.⁹⁸⁶ A special session of the Tanganyika National Assembly approved the Articles of the Union on 25th April 1964 with no substantive discussion with the Revolutionary Government to ratify the Article.⁹⁸⁷ The United Republic of Tanganyika and Zanzibar which was officially proclaimed on 26th April 1964 was renamed the United Republic of Tanzania on October 28, 1964.⁹⁸⁸

Two governments were formed. Mwalimu Julius Kambarage Nyerere became the first

980 Martin, supra p. 70.

981 Decree No. 5 of 1964.

982 Decree No. 6 of 1964.

983 The laws in force prior to the revolution were maintained through the Existing Laws Decree No.1 of 1964.

984 Presidential Decree No. 11 of 1969.

985 See Martin p. 64.

986 Ibid, Kituo cha Katiba 2003.

987 Ali Ubwa Mussa, *The Union between Tanganyika and Zanzibar, Legality of Additional Matters outside the Article of Union*, 2005, http://www.zanzinet.org/files/legality_union.pdf (accessed 21st October, 2014).

988 United Republic Declaration of Name, Act No. 61 of 1964.

President of the United Republic of Tanzania while Sheikh Abeid Amani Karume became the Vice President of the country in addition to his position as the President of Zanzibar and the Chairman of the Zanzibar Revolutionary Council. However, the articles of Union which is the grand law to the union do not explain the nature of union but provide for the existence of two governments.⁹⁸⁹ The government of Tanganyika ceased to exist after the union where matters pertaining to Tanzania Mainland were to be conducted by the Union government while the Revolutionary Government of Zanzibar remained intact. The Union Government has exclusive jurisdiction on the Mainland as well as dealing with certain specified 'union matters' for both the Mainland and Zanzibar. The Zanzibar government has jurisdiction over all matters which are non-union in nature.

There has been a claim, however, that over the years, there is a tendency of increasing the union matters at the rate at which Tanganyika has been seen to be swallowing Zanzibar. Originally, the Articles of the union devised an arrangement where in two governments, two legislatures and two judiciaries were created. The government of Zanzibar was made responsible for all non-union matters while the Tanzanian government was made responsible for union matters all over United Republic of Tanzania and all non-union matters for Tanzania Mainland. In effect however, the Tanzania government has double roles, taking charge of government of Tanzania Mainland and at the same time it is the Tanzania Government responsible for all union matters.⁹⁹⁰ The Articles of the Union contained only eleven Union matters which are:

- a) The Constitution and Government of the United Republic;
- b) External Affairs;
- c) Defence;
- d) Police;
- e) Emergency Powers;
- f) Citizenship;
- g) Immigration;
- h) External Trade and Borrowing;
- i) The Public Service of the United Republic;
- j) Income Tax, Corporation Tax, Customs and Excise Duties, and
- k) Harbours, Civil Aviation, Posts and Telegraph.⁹⁹¹

989 *Zanzibar and the Union Question*, Chris Maina Peter & Haroub Othman; Zanzibar Legal Services Centre Publication Series Book No. 4

990 Chris Maina and Haroub op. cit p. 130.

991 Article 4 of the Articles of the Union of 1964.

However, the list has swollen as the Article 4(3) of the Constitution of United Republic of Tanzania stipulates 22 Union matters, which are contained in the First Schedule to the Constitution. Those added matters to the original are:

- (i) All matters concerning coinage, currency for the purposes of legal tender (including notes), banks (including savings banks) and all banking business; foreign exchange and exchange control.
- (ii) Industrial licensing and statistics.
- (iii) Higher Education.
- (iv) Mineral oil resources, including crude oil and natural gas.
- (v) The National Examinations Council of Tanzania and all matters connected with the functions of that Council.
- (vi) Civil aviation.
- (vii) Research.
- (viii) Meteorology.
- (ix) Statistics.
- (x) The Court of Appeal of the United Republic.
- (xi) Registration of political parties and other matters related to political parties.⁹⁹²

The fact that union matters have increased from the original eleven items contained in the Articles of the Union to the present 22 items is a source of controversy in both its legality and constitutionality of the increase in the list and its political legitimacy both in substance and content. It formed the view that the manner of expanding the list of the union matters was illegal and unconstitutional.

Since this union was formed, Zanzibar has her own Executive headed by the President of Zanzibar who is also the Chairman of the Revolutionary Council and who may not serve more than two consecutive terms of five years each. Based on the 2010 constitutional development, there are two Vice Presidents;⁹⁹³ the First Vice President, the Second Vice President, the Ministers and other members as the President deems fit.⁹⁹⁴ Zanzibar still has its own legislative body, the House of Representatives which consist of two parts, the President of Zanzibar on one part and the House of Representatives on the other.⁹⁹⁵ It also has an independent High Court of Zanzibar

992 First Schedule of the Constitution of the United Republic of Tanzania, 1977.

993 Section 39 of the Constitution of Zanzibar of 1984.

994 Ibid, Section 43 (1).

995 Ibid, section 63 (1).

led by the Chief Justice and other Judges of which not less than two are referred to as High Court Judges.⁹⁹⁶

1.2 Geography

Zanzibar is located in the Indian Ocean in the East Africa time zone. It is comprised of two main islands and several smaller adjacent islets with total area of 2645 kilometres. The main island, Unguja, is also commonly referred to as Zanzibar. Unguja is 35 km off the Mainland coast while Pemba is about 56 km from the Mainland.⁹⁹⁷ The island's leading port and largest town is Zanzibar Town. Located on the western coast, it has a fine sheltered harbour with docking facilities for both passengers and cargo ships.

The Climate in Zanzibar is warm and humid (equatorial). The main rainy season, popularly known as *Masika*, is during the months of March to May and then from October to November known as *Vuli*. The cold season which is termed as *Kipupwe* is during the months of June to August, while the hot season, locally known as *Kaskazi*, is experienced from December to February.

1.3 People

Despite the divergence of the views regarding the historical account of the origin of the people of Zanzibar, yet there is a common agreement among the writers that the first dominant inhabitants of Zanzibar were Swahili. Later, in 7th century, the Swahili people began trading with the Arabs and Persians. The merchandize included gold, rhino-horn, leopard skins and slaves, making Zanzibar a very powerful and important commercial centre. Trade continued to flourish for various centuries, and thus generated variety of contacts with people of diverse origins.⁹⁹⁸ Intermarriage was a common tendency and these people became accustomed to it and gradually came to adopt Arab customs and traditions.⁹⁹⁹

996 Ibid, Section 93 (2).

997 Ibid.

998 For ages, Zanzibar has attracted the interest of many peoples. These include Assyrians, Egyptians, Phoenicians, and in more recent centuries Portuguese, Dutch and English have all landed on its coasts for trade, adventure and exploration. It is the meet, blend and interaction of all these and other cultures that the history of Zanzibar has been shaped. It is said that among the first visitors to arrive were the Shirazis of Persia, to whom the oldest building of Zanzibar, the Kizimkazi mosque (AD 1107), is owed. Using the seasonal monsoons, Arab and Persian trading ships sailed to its islands carrying various goods, such as beads and cloth, as well as Chinese porcelain, and returned with tortoiseshell, ebony and ivory, and spices. Other Asian people from India, Indonesia and Malaysia had also venture their trade dealings with the people of Zanzibar by accessing the opportunity of the sea navigation to find their way to Zanzibar.

999 This mixing had eventually developed a language (which contained many Arabic words) and culture, known as Swahili.

It is estimated that in the late 11th or 12th Century, a significant number of traders began to settle in Zanzibar and intermarried with the indigenous Africans. Eventually, a hereditary ruler (known as the *Mwinyi Mkuu* or *Jumbe*), emerged from among the Hadimu, and a similar ruler, called the *Sheha*, was set up among the Tumbatu. With the coming of British in Zanzibar, the inhabitants were mainly grouped into Europeans, Arabs and African where the natives were sub-grouped into Wahadimu, Watumbatu and Wapemba. As Chul wrote “the inhabitants of Zanzibar are mainly three sub-Swahili groups: Wahadimu, Watumbatu, and other Swahili immigrants from Mainland (including the Shirazi). The Swahili groups formed about eighty per cent of the whole population. About ten per cent were Arabs, nine per cent are Indo-Pakistanis, and the rest were Somalis, Comorians and Goans.”¹⁰⁰⁰

The population census carried out on August 2012 indicates that Zanzibar has a population of about 1,303,569 people. Compared to that of 2002, which was 984,624 the population of Zanzibar indicates the growth rate increased from 3.0 per cent in 1988 to 3.1 per cent during the 2002 and then decline to 2.8 per cent in 2012. The population density of Zanzibar has increased from 400-person/sq. km in 2002 to 530 person/sq. km in 2012. The 2012 census figures confirm the predominance of large households, especially in three Regions. The average household size in Zanzibar is 5.1. However the results gave an even sex distribution of the total population, whereby the sex ratio of Zanzibar was 94, meaning in every 100 females there were 94 males.¹⁰⁰¹ This population is distributed in five regions, the Urban Region dominates the overall population with the highest growth rates of 4.2 per cent¹⁰⁰² and a population of 593,678 while the region with the least population is South Region (Kusini Unguja) with a population of 115,588. The report further indicates that the proportion of females has marginally increased compared to males.¹⁰⁰³ The majority of Zanzibaris are Muslims who are estimated to be 95% of the population. The predominant Muslim sect is Sunni. There are also small minority groups of Hindu believers and a number of Christian denominations.

The average household size in Zanzibar has declined from 5.3 to 5.1 in 2002 and 2012 censuses respectively. As shown in table 1, the average household size varies among districts. Five districts in Zanzibar recorded above the Tanzania national average of 4.8 persons per household. Sex ratios also varied among districts in Zanzibar from 91 males per 100 females in West to 102 in Central, with the average sex ratio of 94.

1000 Kim, C. Chul. (1995). Missiological Understanding of the Swahili Muslim in Zanzibar. (M.A Thesis, Fuller theological Seminary, 1995) p. 28.

1001 Zanzibar Statistical Abstract, 2012 p. 11.

1002 <http://www.nbs.go.tz/sensa/pdf>

1003 Household Budget Survey 2009/2010 – final report May 2012 – Office of Chief Government Statistician.

Table 47: Zanzibar Districts Population Profile

Districts	Total	Male	Female	Average house size	Sex ratio
Micheweni	103,816	50,874	52,942	5.3	96
Wete	107,916	52,348	55,568	5.3	94
Chakechake	97,249	46,411	50,838	5.5	91
Mkoani	97,867	47,460	50,407	5.4	94
Kaskazini A	105,780	51,566	54,214	4.8	95
Kaskazini B	81,675	40,548	41,127	4.7	99
Kati	76,346	38,538	37,808	4.5	102
Kusini	39,242	19,342	19,900	4.2	97
Magharibi	370,645	176,979	193,666	5.2	91
Mjini	223,033	106,611	116,422	5.3	92
Zanzibar	1,303,569	630,677	672,892	5.1	94

Source: 2012 Population and Housing Census [Volume 1 -2013]

The country's national language is Kiswahili. However the official language is both Kiswahili and English. The language of the court and all official documents and public recording is either Kiswahili or English.

1.4 The Economy

Zanzibar's economy is based mostly on agriculture and tourism. In agriculture, the main crops grown for export include coconuts, cloves, chillies, copra and seaweed. Zanzibar also uses its richness of sea for fishing which is also important to the local economy. The types of economic activities can be classified into four major sectors which are: agriculture sector, production and construction sector, distribution sector, and services sector. These sectors depend on the climate and a large proportion of Gross Domestic Product (GDP), employment and livelihoods are associated with climate sensitive activities. Higher temperatures, unpredictable rainfall patterns and high tide levels can lead to droughts and floods and is likely to affect the Isles' economy and the State GDP.¹⁰⁰⁴

Historically, cloves had for a long time been the economic backbone of the island's economy. It was introduced in Zanzibar by the Omani Arabs in the first half of the 19th century and has been a major foreign exchange earner in Zanzibar for over a hundred years. At that time, the hard labour was not considered to be a violation of the human rights. However, the legal system began to change with the advent of colonialism, British law was predicated on private ownership as opposed to communal system. The process of privatization was believed to be not only progressive but absolutely necessary

1004 Sustainable Management of Land and Environments (SMOLE) in its final Mid Term Review (MTR) report of September, 2012 highlights the problems facing coastal areas from climatic change.

in order to ensure that slaves continue to work and contribute to cloves economy.¹⁰⁰⁵ This continued until slavery was totally abolished. Even after the revolution of 1964, cloves remained the main source of the national income in Zanzibar. Zanzibar took a notable decision to adopt the foreign policy which supported the underdeveloped third world as oppose to capitalism, colonialism, exploitation and neo-colonialism. The economy of Zanzibar however, collapsed in 1970 with the drop of clove export.¹⁰⁰⁶ The efforts to boost the economy of Zanzibar were made again in late 1970s but was enforced materially the Revolutionary Government of Zanzibar in the mid-1980s and deepened during the decade of 1995 – 2005 which generated some positive results at the Macro-level.

Several reasons lead to legal and economic reforms in Zanzibar, but the failure of the mission of the Government to adequately provide for basic social services was another driving reason for the legal sector reform.¹⁰⁰⁷ It was inevitable to have these reforms as was a belief of thinkers that economic development is the result of all forces and energies in a country which collectively raise its per capita output.¹⁰⁰⁸ Since law is a process of balancing conflict interest and securing satisfaction of the maximum of wants with minimum of friction,¹⁰⁰⁹ it creates an inseparable connection with the economic development. Consequently, there are several established rules for guiding economic relationships in many fields such as contract, sales, agency, companies and labour. The legal-economic reforms aimed at boosting the economy of Zanzibar. The government had to do all it could to meet the conditions of securing aid from IMF and WB. These included the Structural Adjustment Program (SAP) and Economic Recovery Programs (ERP) which underlined a market based economy. These programmes encouraged privatization in the economy.¹⁰¹⁰

Eventually, the core roles of government were to focus on ensuring law and order, formulation of enabling public policies for the private sector and other actors to flourish

1005 The signing of Abolition Decree in 1897 by Sultan did not guarantee the freedom of slaves. Slaves were not summarily freed but had to apply for it in court in which they had to prove that they had homes and means of subsistence. In case they had to remain in their master's land they were subjected to payment of rents.

1006 Martin, *supra* note at pp. 60 – 67.

1007 Moshi et al (ed.), *Zanzibar: The Challenges of Globalization and Poverty Reduction, Economic Policy Workshops*, Ministry of Finance and Economic Affairs and President's Economic Policy Advisory Unit, 2004.

1008 J.D. Nyhart, (1964), *The Role of Law In Economic Development, Massachusetts Institute Of Technology 50 Memorial Drive*, Cambridge 39, pp. 53 – 64.

1009 D. Pond, *Interpretation of Legal History*, 156 quoted in G. W. Paton, *A Test of Jurisprudence*, 4th edition, Oxford University Press, 2007, p. 22.

1010 Hartmann, J. (1994): *The State of Tanzania: Yesterday, Today and Tomorrow* In: Himmelstrand et al (Eds.): *African Perspectives on Development – Controversies, Dilemmas and Openings*, James Curry London, p. 218 – 233.

in economic development and service delivery, promote democratic governance, mobilization of resources for provision of public services and deliver effective and efficient public services. Positive measures taken by the government to promote private sector development include: formulation of the investment policy, programme to promote business entrepreneurship, creation of investment promotion institutions, as well as the establishment and operationalisation of the Zanzibar Business Council (ZBC).

Cloves still contribute largely to the economy of Zanzibar. The government has taken several efforts to improve the production of the cloves. In 2012, the government distributed, free of charge, clove seedlings in a bid to boost the clove cultivation.¹⁰¹¹ Efforts were also taken to raise the price of cloves from TZS 5,000 in 2010 to the current price of TZS 14,000/= for II grade and 14,500/- for grade III.¹⁰¹² The Zanzibar government is still not ready to privatize the clove industry in the isles. Apart from the widespread demands mostly coming from farmers and businessmen who want the Zanzibar government to liberalize the cloves, the government maintain the law prohibiting anyone from transporting cloves without government permission. According to the Agricultural Transformation for Sustainable Development 2010 – 2020 policy, cloves have been a major foreign exchange earner in Zanzibar for the last 150 years. However there have been significant steady decline over the last decade from an annual average of about 16,000 tons in 1970's to a current average of between 1,500 to 3,500 tons. The decline in production is attributed to climate changes, insecurity of the three acre land tenure system, diseases, poor management and limited replacement and ageing of cloves trees..

In an effort to rehabilitate the clove industry, Zanzibar commissioned a study in 2004 to revive the existing structure of the Zanzibar clove industry and proposed strategies for revamping it. In 2003, the islands' retired president Mr. Amani Abeid Karume had vowed to liberalize the clove industry however nothing has been done so far. On the other hand, the Zanzibar Minister for Commerce Industry and Marketing Mr. Nassor Ahmad Mazrui was quoted saying, the Zanzibar government cannot let the farming of cloves go into private hands because the commodity is the symbol of Zanzibar.¹⁰¹³

Zanzibar has moved from cloves dependency to tourism during the mid of 80s following the introduction of tourism industry in the islands. The tourism sector in Zanzibar hds started a long time ago but it was not regarded as a key factor to the

1011 Legal and Human Rights Centre and Zanzibar Legal Services Centre Tanzania Human Rights Report, 2012 P. 293.

1012 *The Guardian Newspaper*, "Zanzibar Government raises price of cloves again" by Mwinyi Sadala 9th August, 2011.

1013 *The East African Business Week*, "Zanzibar says no to clove liberalization," Monday 3rd February, 2014.

economy of Zanzibar. It was not until mid-eighth when tourism got impetus. The main changes of tourism sector in Zanzibar was facilitated by the enactment of Promotion of Tourism Act No. 9 of 1991. This Act was made to promote and strengthen tourism and to provide for the procedures for better carrying out business in tourism and matters connected with tourism. Eight years later, the Act was repealed by the Promotion of Tourism Act No. 9 of 1996 which, among other thing, it established the Commission for Tourism as independent body. Subsequently, this Act was repealed by the Zanzibar Tourism Act No. 6 of 2009 and Zanzibar Tourism Act (Amendment) No. 7 of 2012.

Since this development, the tourism sector has improved. It has become a growing economic activity in Zanzibar and it is one of the key sectors of the country's economy. It contributes about 7.3 per cent of GDP. It is estimated that more than 100,000 tourists from different countries visit Zanzibar annually.¹⁰¹⁴ For the creation of employment opportunities, it is estimated that tourism sector accounts for about 8,000 direct jobs and another 38,000 indirect jobs. However, despite of this achievement it is important to mention here that the 2009 Zanzibar Human Development Report showed that tourism has not generated as much employment as would be required and there is a feeling among the local communities that it is people from outside Zanzibar that are benefiting from the employment opportunities generated in the tourism industry, leaving the local community to bear the full brunt of the environmental and cultural costs of tourism.¹⁰¹⁵ In addition to those directly employed there are also remarkable number who are self-employed in supplying goods or services to hotels, restaurants, etc., or who otherwise benefit from the spending of persons who are directly or indirectly employed in tourism. Zanzibar Vision 2020 envisages that as much as 50% of all jobs in the modern sector could be provided in tourism and the free zones by 2020.¹⁰¹⁶ Statistically, until 2012 the total of 135 hotels and guest houses were registered with the total room capacity of 2,193 bed spaces.¹⁰¹⁷

The outbreak of Ebola in 2014 has rung an alarm bell to the tourism sector in Zanzibar. Since Africa's tourism industry felt the effects of concerns about Ebola, it was difficult to defeat fear with logic. Though there is no accurate record of the effect of Ebola in Zanzibar tourism sector, it was noted that potential visitors appeared increasingly hesitant about travelling to the Africa. Many tourists were often putting trips on hold, and not confirming them, because of worries over Ebola. Even if most of the tourists were well aware of the distances between the West Africa countries such as Guinea, Liberia and Sierra Leone, which reported Ebola cases, more popular tourist destinations, including Zanzibar, exercised caution when booking a holiday.

1014 For the year 2012, Airport received about 124,062 visitors representing an increase of 2 per cent compared to 2011. Statistical Report, Socio-economic survey 2013. March 2013, at p. 23.

1015 The Zanzibar Strategy For Growth And Reduction of Poverty: 2010-2015 (ZSGRP II).

1016 Ibid.

1017 Statistical Report, Socio-economic survey 2013. March 2013, at p. 37.

In rescuing the situation, the government of Zanzibar had to take several steps to assure that no case of transmission of virus was reported in Zanzibar. This included the installation of thermal scanner to detect the viruses at sea and air ports.



Picture 55: The Head of the Zanzibar Epidemiology and Diseases Surveillance Unit (ZEDS Unit), Dr. Salma Masauni Yussuf, displays the ‘thermal scanner’ against Ebola.



Picture 56: The demonstration of the scanning exercise for all passengers coming to Zanzibar through airport and sea port.

Another economic activity which helps to raise livelihood of people is seaweed farming. People who live in coastal areas in Zanzibar have in recent years engaged in seaweed production. It is also a substantial source of foreign currency after tourism and cloves and helps to reduce the degradation of the marine environment. Seaweed farming in Zanzibar has been reported to empower women from their long time dependency on their husbands in controlling the family's socio-economic needs. However, the impact of climatic changes has had adverse effects on seaweed production.

The 2010 MKUZA strategy was intended to fulfill the ambition of Zanzibar over the 2020 Vision on eradicating poverty for sustainable development of the people of islands with the raising of the GDP as the major target. Reports indicate the deterioration of income for the past four years due to the low growth rate of the industrial and services sector.¹⁰¹⁸

Zanzibar has experienced unsustainable GDP growth over the last few years. This has been attributed by among others, by global financial crises, climate changes and their impacts on growth of sector, particularly tourism and agriculture. Other local factors that still hamper achievement of high level economic performance includes; inadequate control of inflation, weak macroeconomic planning, slow pace of reform process and inadequate implementation and monitoring capacities by MDAs. These factors are aggravated by unfavourable business environment, weak private sector and inadequate linkages in the economy, particularly low value addition.

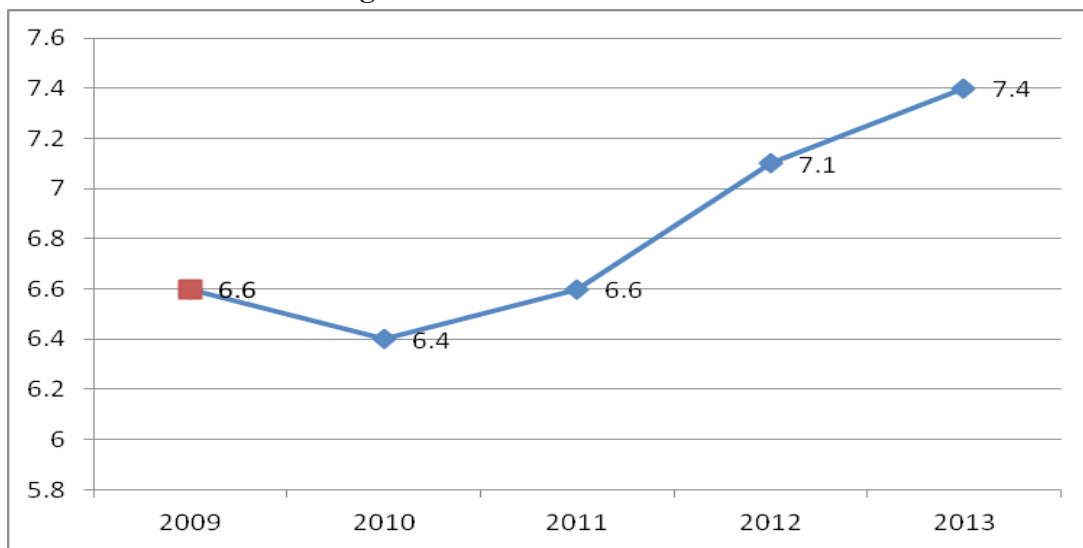
It is observed that the Government of Zanzibar has undertaken various policies and structural reforms with the objective of achieving stable macro-economic conditions and sustainable economic environment that can generate a higher economic growth rate, lower inflation rate, stabilize currency and lower the cost of provision of services. In this regard, the revisited Zanzibar Development Vision 2020 (ZDV) has been prepared to achieve objectives of the original version of the ZDV 2020 with participatory framework, to fulfil the remaining gaps and to tackle new challenges faced by Zanzibar. The vision aspires to improve the standard of living of the people of Zanzibar. The government has also committed itself to the pursuance and the attainment of the Millennium Development Goals by the year 2015.

Over the last five years, the Zanzibar economy has grown at an average of 6.8%. In 2013, the economy grew by 7.4% compared to 7.1 in 2012 and 6.6 % in 2011. The increase in growth was attributed to the service sector, which includes tourism sector. The service sector contributes to the GDP an average of 44%, while that of the

1018 Legal and Human Rights Centre & Zanzibar Legal Services Centre, Tanzania Human Rights Report 2012, P. 294.

agricultural sector ranges between 30 to 33%. The growth of manufacturing sector almost remains constant in its contribution to GDP range between 12 to 14%.

Figure 11: GDP Growth rate %



Source: Mapitio ya Hali ya Uchumi Zanzibar, 2013

The GDP per capita has increased by 4.3% from USD 656 in 2012 to USD 667 in 2013. This reflects an average of USD 1.8 per capita per day. It is still considered among low income countries. For healthy life, a person may require above USD 3.0 for his daily consumption.

Since 2004, the annual inflation rate rose considerably from 8.1% to 20.6% in 2008 and then declined to 9.4% in 2012 and 5.0% in 2013. Overall inflation rate is driven by changes in food, energy and transport prices. Food inflation is attributed by imports of basic staple food and their prices fluctuate due rise of price of foreign exchange. However, fish which is one of the major component of consumption basket of the people of Zanzibar has become expensive due to development of tourism sector and thus influenced reduction of nutrients among poor population.

1.5 Political System

Some renowned scholars have been very prompt to trace the roots of organised governance in Africa and it may be observed that Zanzibar was the one amongst a few African countries that has had embarked very early organised governance including political decentralization.¹⁰¹⁹ In this note, Zanzibar politics goes a long way

1019 For other African experience see Ghana in Callistus Mahama, *Local Government and Traditional Authorities in Ghana: Towards a More Productive Relationship*, Commonwealth Jour-

back, starting from what is called a period of confusion. It was officially declared a British protectorate in 1890. The sultan was retained for ceremonial purpose but most major decisions were made by British Resident. During this time, the formation of different associations was established based on ethnic groups which later were changed into political parties. The ethnic based associations categorised people as Shirazis, Arabs, Indians and other African tribes and created ethnic tensions that have plagued Zanzibar.¹⁰²⁰ Zanzibar witnessed the formation of political parties fighting for independence from British which included the Zanzibar Nationalist Party (ZNP), Afro Shirazi Party (ASP) and the Zanzibar and Pemba Peoples Party (ZPPP) – these were all the products of ethnic associations.¹⁰²¹

The ethnic based political parties were the core of dirty politics in the islands and led to many conflicts which continued even after independence, the revolution and the union. Zanzibar attained its independence on 10th December, 1963 with the first government formed by the coalition of ZNP and ZPPP. However, independence only survived for one month and was followed by a bloody revolution led by John Okello on 12th January, 1964. Zanzibar united with Tanganyika soon after the revolution to form United Republic of Tanzania in 26th April, 1964.¹⁰²²

The Afro Shirazi Party (ASP) merged with the Tanganyika African National Union (TANU) to form Chama Cha Mapinduzi (CCM) which remained the only political party until the multiparty system was re-introduced in Zanzibar in 1992.¹⁰²³ The first multi-party general elections which was held in 1995 were marked with irregularities where ruling party (CCM) was accused of having rigged the election for its own benefit. Since then, the problems of political unfairness were reported election after election with one followed by the destruction of property and loss of life.

Political rights in Zanzibar has been a result of the long struggle since the time of native arrangement, where the administration was under the realm of local rulers, to the colonial Zanzibar, where the foreign powers interfered with the existing regimes to operate in a dual system, to the time of the self-determination where struggle for better and satisfactory provision of the welfare of the people intensified. People have lived

nal of Local Governance, Issue No. 4, November 2009, pp. 7 – 25. See also Samoa experience in M. Meleisea, *The Making of Modern Samoa: Traditional authority and Colonial Administration in the history of Western Samoa*, Institute of Pacific Studies, University of the South Pacific, Suva, Fiji, 1987. All not all of the features mentioned in this work reflect the real feature of Zanzibar governance.

1020 <http://www.zanzinet.org/zanzibar/history/> (accessed 9th March, 2014).

1021 Ibid, Zanzinet.

1022 Esmond B. Martin, *Zanzibar Traditions and Revolution*, London: Hamish Hamilton, 1978 and *History of the World, History of Zanzibar*, p. 57.

1023 Legal and Human Rights Centre & Zanzibar Legal Services Centre, *Tanzania Human Rights Reports 2012*.

in Zanzibar for over 20,000 years. Zanzibar had its own political identification but the history proper starts when the islands became a base for traders voyaging between the African Great Lakes, the Arabian Peninsula, and the Indian subcontinent. Unguja, particularly offered a protected and defensible harbour, so although the archipelago had few products of value, Omanis and Yemenis settled in what became Zanzibar City (Stone Town) as a convenient point from which to trade with towns on the Swahili Coast. They established garrisons on the islands and built the first mosques in the African Great Lakes.¹⁰²⁴

During the Age of exploitation, the Portuguese Empire was the first European power to gain control of Zanzibar, and kept it for nearly 200 years. In 1698, Zanzibar fell under the control of the Sultanate of Oman, which developed an economy of trade and cash crops, with a ruling Arab elite and a Bantu general population. Plantations were developed to grow spices but the slave trade took the considerable contribution of the economic gain, which gave Zanzibar an important place in the Arab slave trade, the Indian Ocean equivalent of the better-known Triangular Trade. The Omani Sultan of Zanzibar controlled a substantial portion of the African Great Lakes coast, known as Zanj, as well as extensive inland trading routes.

However, sometime later, Zanzibar came into the hands of the British Empire. Part of the political impetus for this was the movement for the abolition of the slave trade. In 1890, Zanzibar became a British protectorate. The death of one sultan and the succession of another of whom the British did not approve later led to the Anglo-Zanzibar War, also known as the shortest war in history. The islands gained independence from Britain in December 1963 as a constitutional monarchy. A month later, a bloody Zanzibar Revolution, in which several thousand Arabs and Indians were killed and thousands more expelled and expropriated, led to the establishment of the Peoples' Republic of Zanzibar and Pemba. In April of that year, the republic merged with the Mainland Tanganyika, or more accurately, was subsumed into Tanzania, of which Zanzibar remains a semi-autonomous region. Since then, Zanzibar is still in its struggle to retain its autonomy and to have full determination of their political powers. In 2010, an agreement intended to solve the problem was reached after the discussions between the Zanzibar President Amani Abeid Karume of the ruling party (CCM) and Seif Sharif Hamad, the Secretary General of the opposition party (CUF) to have power sharing. The Constitution of Zanzibar was amended after the referendum held in July 2010.¹⁰²⁵

The tenth constitutional amendment has introduced a power sharing government between the party that emerges the winner and the opposition parties during every

1024 http://en.wikipedia.org/wiki/History_of_Zanzibar (accessed 8th November, 2014).

1025 Ibid, Human Rights Report 2012.

election. Power-sharing has become a common strategy to resolve political conflicts in Africa. However, it has rarely survived for very long, and much of the scholarship on power-sharing remains largely negative. Yet Zanzibar's power-sharing approach, points to a more positive democratic possibility. It explores the background to this development, note some of the issues behind the move to power-sharing, and look briefly at its implementation following the 2010 elections. The tenth amendment has introduced two positions which are the first Vice President and the Second Vice President. The President comes from the party that wins the election while the First Vice President is appointed by the President in consultation with the party that holds second position during election.¹⁰²⁶ The second vice President who is nominated from the party from which the President is elected is also the head of government in the House of Representatives. The cabinet is composed of members from parties which have representation in the House of Representatives depending on the number of seats each party holds from constituencies.¹⁰²⁷

Even with the existence of union, Zanzibar remains to be a semi-autonomous part of Tanzania. It has its own government, known as the Revolutionary Government of Zanzibar. It is made up of the Revolutionary Council and House of Representatives. Zanzibar has a Government of National Unity (GNU), and Dr. Ali Mohamed Shein is the current President of Zanzibar and Chairman of the Revolutionary Council since 1st November 2010. Through an agreement, the GNU was instituted when the Referendum Act No. 6, 2010 was passed by the House of Representatives, giving an opportunity to Zanzibaris to first decide on the GNU. A 66.4 per cent of voters accepted the GNU. Subsequently, the tenth amendment of the Constitution of Zanzibar of 1984, which among other things, included the formation of the GNU was passed. The formation of a government of national unity between Zanzibar's two leading parties succeeded in minimizing electoral tension in 2010. In the Zanzibar context, a GNU is defined as a government which incorporates representatives of political parties winning a seat or seats in the Zanzibar House of Representatives. A GNU is a power sharing system of political parties winning seats in the legislature. A political party which does not win a seat in the legislature cannot enjoy a share of the cake. In the spirit of good governance, and in recognition of the existence of other political parties and appreciation of the country politics, the president can invoke his constitutional powers to nominate representatives of these parties to join the House of Representatives. The constitution gives the president the power to nominate ten members who qualify to be members of the House to the House.

Currently, there is three tier system of administration functional in Zanzibar, which is supervised by the government at the centre. This includes regional, districts municipal

1026 Constitution of Zanzibar, 1984 Section 39 (3).

1027 Ibid, Section 39.

and town councils. As can be briefly stated, Zanzibar is divided into five regions, three in Unguja and two in Pemba. Each region has a Regional Commissioner appointed by the President.¹⁰²⁸ Each Region is divided into two Districts that form a total of ten Districts; six Districts in Unguja and four in Pemba.¹⁰²⁹ Also there are two (2) sub-districts, one in Unguja (Tumbatu) and one in Pemba (Kojani). The head of each District administration is a District Commissioner appointed by the President.¹⁰³⁰ The Districts are subdivided into 50 constituencies, 32 in Unguja and 18 in Pemba. Below the Districts, there are in total 141 Wards. Furthermore, Wards are sub-divided into Shehia according to the geographic conditions and population density of the area. Under the central government governance structure, the Shehia is the lowest level headed by a Sheha who is appointed by the Regional Commissioner upon receiving advice from District Commissioner. To date there are 332 Shehias that have been established under Act number 1 of 1998.¹⁰³¹

1.6 Judiciary

The Judiciary system of Zanzibar comprises of the High Court and Subordinate Courts which include Kadhis Court. The High Court is the top most court in the hierarchy and it is established under Article 93(1) of the constitution of Zanzibar of 1984 as amended. Subordinate Court are established by the Kadhis court Act No. 3 of 1985 and Magistrate court Act No. 6 of 1985. The Kadhis court Act No.3 of 1985, comprises of the District Kadhis which are the courts of first instance and the Appellate Kadhis court which is an appellate court. The Magistrate Court Act established Primary Magistrate court, District Magistrate court and Regional court while Children Act No. 6 of 2011 establish Children court which is presided by the Regional Magistrate. In addition, there is also the Industrial Court is the Division of the High Court. It is established under section 80(1) of the Labour Relations Act No. 1 of 2005. Industrial Court has jurisdiction to hear and to determine labour disputes as reinforced to act establishing it.

1028 The Functions of Regional Commissioner includes;(a) monitoring, supervising, and assisting in the execution of the functions of the government in his region; (b) assuring that the policies, plans and directives of the government are observed; (c) maintaining law and order in the region in collaboration with law enforcement agencies; and (d) assuring that resources, both material and manpower are used for development in the economy to enhance welfare. Regional Commissioner is also the one who appoints Sheha after the consultation with the District Commissioner.

1029 According to section 7 of The Regional Administration Authority Act No.1 of 1998, The staffing and functions of the districts are similar to that of the regions thus every District Commissioner within his District exercises duties and functions exercised by the Regional Commissioner as specified in paragraphs (a) (b) (c) and (d) of section 5 of this Act.

1030 There is also a District Administrative Officer in charge of the District administration. In addition, every District has a planning officer, a community development officer, as well as officers from sectorial ministries assigned to the District.

1031 Zanzibar Local Government Policy, 2014, p. 4.

The role of the Judiciary is the interpretation of laws, adjudication of cases and administration and dispensation of justice in accordance with the country's laws. The Judiciary is the only organ vested with authority to decide in civil as well as criminal cases. Despite being part of the United Republic of Tanzania, Zanzibar enjoys full court autonomy from Primary courts to the High Court because constitutionally they are not a union a matter.¹⁰³² It also has a separate and distinct legal system from Tanzania Mainland and constitutionally while they only share the Court of Appeal of Tanzania.

With the introduction of Kadhis court, Zanzibar has a dual court system. Historically, Zanzibar was under the dual legal system at the time of British protectorate. Firstly, the King of Britain had authority to legislate for British subjects, by Order in Council. At this same time, he had authority to impose any Act of Parliament, declared by Imperial Enactment (Application) Decree 1939 to be applicable to subjects of Sultan. These laws were more or less Common law and Equity.¹⁰³³ Thus, by the Zanzibar Order in Council 1897, His Majesty's criminal and civil jurisdiction was introduced.¹⁰³⁴ Secondly, the Sultan retained legislative powers over his own subjects which are exercised by Decrees passed by Legislative Council. Alongside, Islamic law was applied under his courts (Kadhis' Court – an exclusively Muslim Court), though with a number of limitations.¹⁰³⁵ Apart from Zanzibar Decree and Imperial legislation, the *corpus juris* in the British Court consisted of Common Law and doctrines of equity (Zanzibar Order in Council, Article 14) whereas the Sultan's Courts the remainder of *corpus juris* consisted of *Sharī'ah* as understood in Zanzibar.¹⁰³⁶ The dual system was maintained until 1963 when it was terminated by the 1963 constitution and the court decree of the same year. In the change that followed throughout the legal history of Zanzibar the Kadhis court system was maintained.

The Court hierarchy in Zanzibar has a High Court, Kadhis Courts and the Magistrates

1032 Section 114 of the Constitution of United Republic of Tanzania, 1977.

1033 For more elaboration on the complexity of dual application of law in Zanzibar during this period see Sidney Abrahams, "The Conflict of Laws in Zanzibar" 3rd Series, 23 *Journal of Comparative Legislation and International Law* 4, (1941), pp. 169 – 215.

1034 Among the law introduced by this order are India Lunacy Act; so much of the India Post Office Acts relates to offence against the Post Office; the India Divorce Act except so much as relate to Divorce and nullity of marriage; Bombay Civil Court Act; the Indian Evidence Act; The Indian Contract Act; The India Limitation Act 603, Penal Decree, Criminal Procedure Decree, Evidence Decree and others.

1035 The 1917 Evidence Decree, as adopted from the Indian Evidence Act, replaced the Sharī'ah Law of Evidence in favour of English Law of Evidence. As noted above, Imperial Orders in Council and Acts of Parliament applicable to Zanzibar formed part of the laws administered in all courts.

1036 J. E. R. Stephens, "The Laws of Zanzibar" Vol. 13, No. 3 *Journal of the Society of Comparative Legislation New Series*, (1913), pp. 603 – 611.

Courts. In other words, in accordance with the Constitution of Zanzibar of 1984, matters of Islamic law which are dealt in Kadhi's Courts are final and conclusive to the High Court of Zanzibar. In addition, all matters in Chapter Three of the Constitution of Zanzibar of 1984 ends at the High Court of Zanzibar.

The hierarchy of common law courts is the Court of Appeal of Tanzania,¹⁰³⁷ followed by the High Court of Zanzibar, the Regional Magistrate Courts, the District Magistrate Courts¹⁰³⁸ and Primary Magistrate Courts.¹⁰³⁹ The hierarchy of Kadhis Courts includes District Kadhis Court which is the lowest court, the Appellate Kadhis Court, and the High Court of Zanzibar where a Judge sits with a panel of *Ulamaa*.¹⁰⁴⁰

The Zanzibar judiciary is headed by the Chief Justice appointed by the President of Zanzibar¹⁰⁴¹. High Court Judges are appointed by the President upon recommendation by Judicial Services Commission (JSC)¹⁰⁴² while the Subordinate Courts are presided over by Magistrates who are appointed by the JSC.¹⁰⁴³ Quasi-judicial organs deals with specific legal matters exist in the form of tribunals.

1.7 Historical Background of Human Rights in Zanzibar

The history of human rights in Zanzibar can be traced back to 1963 when Zanzibar got its independence. The independence followed the adoption of the first Constitution of Zanzibar; The Constitution of the State of Zanzibar of 1963 included among other things, the Bill of Rights as provided by international human rights instruments.¹⁰⁴⁴

However, that Constitution survived only for one month following the January 12th Revolution of 1964 which overthrew the government of 1963. Immediately after the Revolution the constitution was abrogated and Zanzibar began to be ruled under Presidential Decrees.¹⁰⁴⁵ This meant the end of the Bill of Rights as enshrined under 1963 Constitution. The most prominent of these decrees was Decree No. 5 of 1964 entitled Constitutional Government and the Rule of Law¹⁰⁴⁶ entitled Equality, Reconciliation and Unity of Zanzibar People.¹⁰⁴⁷ The Constitutional Government

1037 Section 117 of the Constitution of the United Republic of Tanzania of 1977.

1038 Magistrates' Court Act No. 6 of 1985.

1039 Section 93 of the Constitution of Zanzibar, 1984; see also High Court Act No, 1985.

1040 These are Islamic scholars well-versed in Islamic matters.

1041 Section 94 of the Constitution of Zanzibar, 1984.

1042 Ibid, Section 94 (1).

1043 Section 10 (1), Magistrate Courts Act, 1985, (Act No. 6, 1985).

1044 Zanzibar unlike Tanganyika has opted to have a Bill of Rights enshrined in her Constitution while receiving independent instruments from the British.

1045 Presidential Decree No 1 of 1964.

1046 (No. 6 of 1964).

1047 Peter, Chris Maina, *The Protectors: Human Rights Commission and Accountability in East*

and Rule of Law Decree vested legislative power in the Revolutionary Council. The concept of separation of powers was abolished and, in its place, the Revolutionary Council, which had legislative and executive powers, was introduced.

The main reason for the banning of human rights in Zanzibar soon after the revolution of 1964 stems from the fact that human rights provisions had been incorporated in the 1963 Constitution to safeguard the interests of colonialists who among them had interest of staying further in Zanzibar.

In the period from period 1964 – 1979 the Revolutionary Council acted as the legislative, main decision and policy making body and heralded 15 years of autocratic leadership with neither a written Constitution nor elections. Following the merger of Afro Shirazi Party with the Tanganyika African National Union on 5th February 1977 to give rise to a new party, CCM was a sole political party in Tanzania and declared to be supreme over all institutions of state.¹⁰⁴⁸ It was in the same year of 1977 that the permanent Constitution of United Republic of Tanzania was adopted to replace the Interim constitution of 1965.

The first post revolution Constitution of Zanzibar was adopted in 1979 which laid the foundations for the establishment of Legislative body, Executive and the Judiciary. It was modeled after the Constitution of United Republic of Tanzania providing the same format and organization for government, dividing into executive, legislative and judicial branches and also endorsed all provisions in the Constitution of United Republic of Tanzania relating to Zanzibar, with only modest modifications where appropriate. The 1979 Constitution of Zanzibar was then repealed¹⁰⁴⁹ and replaced by new Constitution adopted under one party system entitled the *Constitution of Zanzibar, 1984*.¹⁰⁵⁰ The Constitution of Zanzibar of 1984 came into operation on the 12th January, 1985.¹⁰⁵¹ The difference between the 1979 and that of 1984 is that, the 1984 constitution had incorporated a bill of rights.¹⁰⁵²

The history of Human Rights in Zanzibar indicates its long process, that the practical operation of Bill of Rights has been problematic for some time. . This has been caused by many reasons among them being the availability of national instruments to monitor and supervise violation of human rights on the Islands as the Tanzania Commission for

Africa (2008), P. 193.

1048 Oda van Cranenburgh (1995), P. 536.

1049 Section 134A of the Constitution of Zanzibar, 1984.

1050 Ibid, Section 135 (1).

1051 Ibid, Section 135 (2).

1052 Legal and Human Rights Centre & Zanzibar Legal Services Centre; *Tanzania Human Rights Report 2009*, p. 218.

Human Rights (CHRAGG) started its operation in Zanzibar only on 30th April 2007¹⁰⁵³ There was also no reporting organization, since no organization could report on the violation in Zanzibar for long period of time hence the first report on human Rights situation in Zanzibar was reported by Zanzibar Legal Services Centre in 2006.¹⁰⁵⁴

1.8 Conclusion

Zanzibar for long time was reported to have a high degree of human rights violations. People in various capacity are reported to have contributed to the violation of human rights from time to time. The government, particularly special departments, was accused of curtaining human rights not only to the ordinary people but also among their own. This is mostly intensified during political rallies. However, the introduction of the Government of National Unity (GNU) has to a large extent helped reduce human rights violations. On the other hand the NGOs have contributed greatly in revealing incidents of human rights violations and taking the front line in looking for solutions. They closely monitor states' compliance with human rights standards. These groups also publicize rights violations and coordinate world public opinion against offending states. In many cases they induce governments to modify their policies to meet rights standards. In turn, unlike in the past, the record of human rights has improved in Zanzibar apparently due to increased people's awareness.

1053 Legal and Human Rights Centre & Zanzibar Legal Services Centre; Tanzania Human Rights Report, 2007, p. 182.

1054 Ibid p. 142.

Chapter Two

Civil Rights and Liberties

2.0 Introduction

Civil rights and liberties are the actual determinant of human personality, humanity and respect without which anyone in this universe shall have the guts to raise and claim that he is a human being. The claim that, being an actual person, every individual needs to be regarded as in the same condition as the other. The importance of this had been recognized even before the formal protection of the human rights to all. Even at the time of gross violations of the rights of particular groups, these rights were to some extent enjoyed. It is well known that women and minors were the most vulnerable groups in violation of their rights, but they were plainly and deceptively protected. They were not deprived of some of their civil rights at least, even if they did not have political capacities. On the other hand, unlike ordinary citizens, slaves had no such rights as members of the society, as they were completely owned by their masters. Even the laws for their personal safety were rather enacted in the interests of their masters, to protect their property.¹⁰⁵⁵ But that remains as a history. States now are trusted to be the guardian of the protection of civil rights.

Civil rights and liberties are now considered as such type of rights which include freedom from slavery and forced labour, freedom from torture and death, the rights to liberty and security, freedom of conscience, religious expression, press and assembly. Other civil right includes the right to own property, right to defend oneself, privacy and bodily integrity.¹⁰⁵⁶ Looking at the sensitivity of this category of rights, the States parties to the present covenant on civil and political rights, considered that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. They also recognizes that these rights derive from the inherent dignity of the human person, and in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights. This is a reason behind the obligation of states under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

With that regard, as to the current time, every citizen needs to be guarded in the

1055 John Norton Pomeroy, *An Introduction To The Constitutional Law*, Boston And New York: the Kimberside Press, 1886, pp. 126 – 128.

1056 http://en.wikipedia.org/wiki/civil_liberties

enjoyment of his civil rights of life, liberty, limb, and property and other, against the unequal and oppressive legislation of the states. The state can only prevent the civil rights when there is justifiable cause to do so. The rule under consideration, taken in connection with another principle, the principle of justice effectually prevents the national courts from maintaining the rights of citizens against the encroachments of the states, so far as those rights are affected by positive restrictions. A concern is also given to the individuals who are kept behind the bar with regards to their civil rights. In some jurisdictions, for instance in England, it was held as late as 1982, by Lord Wilberforce that under the English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which were not taken away expressly or by necessary implication by the fact of his imprisonment.¹⁰⁵⁷ The civil rights support the life and humanity; therefore it cannot be curtailed without justifiable reason.

In that regard, civil rights can be regarded as rights which are guaranteed to protect individual's rights against violation by states' government or individuals. Its importance has been connected with the role they play. Civil rights play major role to ensure that, all citizens are equally protected by law and enjoy all rights and freedoms without discrimination of any type. To standardize the provision of the protection of these right, different global and regional human rights instruments such as the Universal Declaration of Human Rights (UDHR) of 1948, the International Convention on Civil and Political Rights (ICCPR) of 1966, the African Charter on Human and Peoples Rights (ACHPR) of 1981 and the International Convention of the Rights and Dignity of Persons with Disability (ICRPD) of 2006 and many other, had been created. The states are also taking individual and collective measures to ensure that the rights are not violated.

2.1 Right to Life

It can be observed that the basis of all human rights and fundamental freedom are the right to life because it is mother of all other rights including right to work, freedom of expression, freedom of media, right to privacy and personal security, right to freedom of movement and right to freedom of religion. In other words the rest of the fundamental rights and freedom are subordinate to the right to life. The right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.¹⁰⁵⁸ Every human being has the inherent right to life and this right must be protected by law.

The right to life is the cornerstone of all rights with the other rights trailing after it and without the right to life all the other rights are insignificant. Different international

1057 *Raymond v. Honey* (1982) 1 All ER 756; there is a similar decision in the South African case of *Minister of Justice v. Hofmeyr* (1993) 3 SA 131 (AD).

1058 Legal Human Rights Centre & Zanzibar Legal Services Centre, 2013, *Tanzania Human Rights Report 2013*, Tanzania, p.15.

human rights instruments have provided the protection of the right to life. Starting with the Universal Declaration of Human Rights of 1948 article 3 provides:

Everyone has the rights to life, liberty and security of person.

The rights to life is also proclaimed by the International Covenant on Civil and Political Rights 1966, under article 6 (1) when it says:

Every human being has the right to life, the rights shall be protected by law and no one shall be arbitrarily deprived of his life.

This right is the inherent right. It exists by the existence of the human being. The ICCPR recognized the nature of this right and used the word ‘inherent’ denoting that, the rights is not conferred by the covenant but the covenant recognizes its existence.¹⁰⁵⁹ People have the right to enjoy this right not because it is the establishment of international human rights instruments but because it is the inherent right. Therefore, it is fundamental to all human beings.

The right to life is also protected by regional international Human Rights instruments like the European Convention for the Protection of Human Rights and Fundamental Freedom 1950, the American Convention on Human Rights (ACHR) 1969 and the African Charter on Human and Peoples Rights (ACHPR) 1981.

Tanzania being signatory to both ACHPR and ICCPR has incorporated the right to life in the 1977 Constitution article 14 which provides that, “*everyone has the right to life and equal protection of his or her life.*” Zanzibar as part of Tanzania has captured the same right in her Constitution of 1984.¹⁰⁶⁰

At the national level the right to life is protected by the Constitution of the United Republic of Tanzania, 1977¹⁰⁶¹ which says that; “Every person has the right to live and to the protection of his life by the society in accordance with the law.” In Zanzibar, the right to life is safeguarded by the Constitution of Zanzibar of 1984 in the section that says that “*every person has the right to the preservation of his life.*”¹⁰⁶² In addition to that, the Constitution gives further protection as stated by section 13(2), the Constitution states that every person has the right to live and to the protection of his life by the society in accordance with the law.¹⁰⁶³ This is considered as fundamental right.

1059 Legal and Human Rights Centre & Zanzibar Legal Services Centre, *Tanzania Human Rights Report, 2010*, p. 301.

1060 Article 3 of Constitution of Zanzibar, 1984.

1061 Article 14 of the Constitution of the United Republic of Tanzania of 1977.

1062 Section 13 (1) of the Constitution of Zanzibar, 1984.

1063 Ibid, Section 13 (2).

The former prominent Justice Lugakingira in the case of *Rev. Mtikila v. Attorney General*¹⁰⁶⁴ made it clear that:-

Fundamental rights are not gifts from states. They inhere in a person by reason of his birth and are therefore prior to the state and the law. Modern Constitutions like our own have enacted fundamental rights. This does not mean that the right is hereby created; rather it is evidenced of their recognition and the intention that they should be enforceable in a court of law.

However, this right is not as sacrosanct and inviolable as it sounds. The main principle in human rights law is that no-one shall be arbitrarily deprived of life meaning that states can take human life provided laws and procedures are followed.¹⁰⁶⁵ There are a number of situations where a state may deprive persons of their lives without breaching international human rights law. In some cases, these exceptions are based on the premise that violence used in self-defence is justified. Examples include: imposition of death penalty as a result of a judicial process and does not contravene certain minimum safeguards imposed by human rights law.

Zanzibar has still number of laws which provides for the death punishment. For example, the Zanzibar Criminal Procedure Act authorizes the death punishment despite campaigns for the abolition of the death penalty.¹⁰⁶⁶ Though for a long time the death punishment has not been executed, there number of people who are on the death list awaiting for the endorsement of the president. Procedurally, death penalty is pronounced by a judge but it cannot be implemented until it has been signed by the president. The Zanzibar Criminal Procedure Act, 2004, has established that requirement in section 310 (1).

2.1.1 Road Accidents

Road accidents are one of the areas that have claimed the lives of many people in Zanzibar every year. A total of 845 roads accidents were reported in the year 2014 which is an increase of 29.2% from last year. It has also been reported that number of deaths caused by road accidents has increased from 29 last year (2013) to 88 this

1064 (1995) TLR 31.

1065 Michael Mwehigama, Human Rights Education Associates, http://www.hrea.org/index.php?base_id=159, visited on 4th May, 2014.

1066 Section 7 and Section 304 of the Criminal Procedure Act, 2004 (Act No. 7 of 2004) give the power to the High Court of Zanzibar to pass any sentence or make any other order authorized by law. First Schedule Part VII of the Criminal Procedure Act No. 7 of 2004 lists down a number of offences for which the death punishment may be passed, for example, entering Zanzibar with intent to organize a counter-revolution and instigating foreign invasion. In addition, Section 197 of the Zanzibar Penal Act No. 6 of 2004 says that any person convicted of murder shall be sentenced to death

year (2014). The table below gives a picture of road accidents including the number of deaths and injuries from January 2012 to December, 2014.

Table 48: Statistics of road accidents in Zanzibar from 2012 to December 14, 2013

S/N	YEAR	Number of Accidents	Deaths	Injuries
1	2012	486	39	344
2	2013	534	29	503
3	2014	845	88	547
Total		1865	156	1394

Source: No. 1 and 2 Human Right Report 2013. No.3 The Zanzibar Traffic Office, Malindi.

The Zanzibar Road Transport Act¹⁰⁶⁷ has been specifically enacted to provide for the regulation of Traffic on roads and of motor vehicles and for other matters related thereto. However, it seems that there is problem in the enforcement of the law as several other factors have been attributed to the increase of road accident in the isles.

Observations in 2014 indicate that road accident have been on the increase because of the poor road condition, improper, reckless driving, improper inspection of vehicles, a mix of vehicles between motorcars, motor cycles, bicycles and together with pedestrians and the poor designs of some roads.¹⁰⁶⁸ The increase of the fashioned stylish motorcycle (Vespa) driven by a number of youth commonly known as T one (*Tako moja*, which means one buttock) as a riding sitting style has been reported by many people to be the cause of many accidents. The use of Vespa is very common in Zanzibar because of its affordability and adoptability of the geographical and cultural circumstances of Zanzibar. But in recent it has been marked to be the most dangerous vehicle on the road based on the style which the youth use to ride them. In addition it has also been observed that the increased involvements in corruption by traffic officers and the drivers has led to grievous neglects of the proper inspection of the road worthiness of the vehicle which in turn causes a number of accidents.

2.1.2 The Aftermath of the MV Spice Islander Case

Protection of the right to life has taken another look with regard to the case of MV Spice Islanders I. It can be remembered that in connection to the sinking of a passenger ferry, Spice Islander I, carrying not less than 2470 passengers travelling from Zanzibar to Pemba on 9th September, 2011, more than 1,000 passengers were lost and others lost their lives.. Following this tragedy, there were the public cries that the ones who caused the loss of the peoples should be prosecuted. The cries were heard and in 2012 a criminal case was filed against the ones who were suspected to have caused

1067 The Road Transport Act, 2003 (Act No. 7 of 2003).

1068 Zanzibar Traffic Office. The traffic officer who gave this information opted for anonymity.

the death of the passengers.¹⁰⁶⁹ The prosecutions preferred two hundred and twenty nine (229) counts against twelve people namely; Said Abdallah Kinganyiti, Abdalla Mohamed Ali, Yusuf Suleiman Issa, Haji Vuai Usi, Abdalla Mohammed Abdalla, Juma Seif Juma, Hassan Mussa Mwinyi, Shaibu Said Mohammed, Salim Said Mohammed, Makame Hasnuu Makame and Jaku Hashim Ayoub who were charged with the offence of manslaughter contrary to section 195 and 198 of Penal Act, No. 6 of 2014.

This case, however, was dismissed before it was heard on the argument that there was not sufficient ground for proceeding against the accused persons before the hearing of the case as to the demand of section 227.¹⁰⁷⁰ The Chief Justice (C.J), Honourable Omar Othman Makungu, relied his argument on the requirement of the law that “on the first day set for hearing of the case, the prosecution will provide a complete file of the record of evidence which it intends to rely to the accused person or to each of the accused persons or their advocates as the case may be.”¹⁰⁷¹ It was submitted by the C.J that since the hearing of the case set to be on 24th March, 2014, the court cannot accept any adjournment asked by the prosecutions. Before it was dismissed, the prosecution objected about the hearing date so as to amend the documents and include the statement of one key witness for the case. This was not accepted by the court and instead it insisted on hearing the case on the set date, namely, 24th March, 2014. Despite the fact that the prosecutions filed an appeal against the order of the court to hear the case before they were allowed to furnish the demand of section 225(1), the court went on calling for hearing and ignored the plea that the Court of Appeal must hear the prosecutions’ application before it proceed with the primary matter. According to the C.J., the prosecutions was tactfully delaying the hearing and depriving the accused of their constitutional right. The case was dismissed.

This decision appeared to be controversial and raised some concerns to the public and even to a number of lawyers in Zanzibar.¹⁰⁷² Some family members of those who lost their lives in the Spice Islander I disaster, cried foul and blamed the court for what they regarded as a painful decision.¹⁰⁷³ The families of victims expressed concerns about

1069 *DPP v. Kinganyiti & Others* [2012] No. 10 HCZ unreported.

1070 Section 227 of the Criminal Procedure Act No. 7 of 2004 provides, “If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he or she shall discharge the accused and record his or her reasons for so doing.”

1071 Section 225(1) of Act No. 7, 2004.

1072 Mwinyi Sadallah, “Wanasheria wapinga kufutwa kesi Z’bar,” Mwananchi, Monday 7th July 2014, <http://www.mwananchi.co.tz/habari/Kitaiifa/Wanasheria-wapinga-kufutwa-kesi-Z-bar/-/1597296/2374704/-/11yvllmsz/-/index.html>, (Accessed on 11th October, 2014).

1073 *The Citizens*, “Ferry Disaster Case Verdict Calls For Judicial System Shake-Up,” Sunday, 13th July 2014, <http://www.thecitizen.co.tz/oped/Ferry-disaster-case-verdict-calls-for-judicial-system-shake-up/-/1840568/2382304/-/ehv40x/-/index.html> (Accessed on 11th October, 2014).

the High Court of Zanzibar's decision to dismiss the case even before it was given a fair hearing to reach a verdict.¹⁰⁷⁴ The ZLSC formed an opinion that this decision was that the court did not apply its mind in upholding judicial activism in assisting reaching to justice. Though it was true the DPP requested more time to correct some complexities, it was not reasonable to dismiss the case and let hundreds of victims disparate. The circumstance of the case was very tense and complicated, prosecutions needed to clear their doubt before the hearing.

2.1.3 Murder

Murder, some may suggest, is to be defined as the intentional and un-coerced killing of the innocent; and it is true by definition that murder is wrong. It is an offence as given by the Penal Act No.6 of 2004. Murder is the unlawful killing, with malice aforethought, of another human. Generally this premeditated state of mind distinguishes murder from other forms of unlawful homicide. Zanzibar considers murder a most serious crime worthy of the harshest of punishment, under the justification that the commission of murder is highly detrimental to good order within society. A person convicted of murder is typically given death penalty. Despite of all of these prohibition, there still some cases reported in this year which involved an act of killing another human being.

The case of two Zanzibar, namely Abdulrahman Than Matar (39), and Mohamed Than Matar, (37), residents of Shangani and Kilimani in Zanzibar respectively, were suspected of killing François Cherer Robert Daniel and Brigitte Mery, of the French nationalities, at the end of last year and burying their bodies in a water well at Matemwe, Minazi Mirefu, in North Unguja Region was revealed in this year. Their case was brought to the court by the public prosecutor, Mr. Mohamed Said, before the deputy registrar of the High Court, Mr. Ali Ameir, at Vuga at 19th February, 2014. It was alleged that the accused killed François and Brigitte on 8th December last year, between 5.00 pm and 7.00 pm at Matemwe.¹⁰⁷⁵

Had it not been for the smell, flies and the open gate, it would have been impossible even to guess what had happened in there, it is a quiet street and people here mind their own business.

Said Mr. Silima.

1074 Mwinyi Sadallah, Correspondent, Zanzibaris Cry Foul Over Boat Case, The Citizen, Friday, 4th July, 2014, <http://www.thecitizen.co.tz/News/Zanzibaris-cry-foul-over-boat-case-/1840392/2371588/-/13k52tcz/-/index.html>, (Accessed on 11th October, 2014).

1075 Mwinyi Sadallah, The Citizen Correspondent, 2 arraigned in Zanzibar on French couple murder case, National, Thursday, 20th February, 2014. <http://www.thecitizen.co.tz/News/national/Two-arraigned-in-Zanzibar-/1840392/2214328/-/cmvksb/-/index.html> (accessed 28th December, 2014).



Picture 57: A police officer at the spot where the bodies were retrieved from.

The incident was associated with the grabbing of the property (house). The puzzle remains why the couple were killed, amid undertones of greed to reportedly grab from the French nationals who, according to sources in France, had flown in with just a fat cheque worth hundreds of millions of Tanzanian shillings after disposing of all their possessions. On arriving in Matemwe, the couple bought a house from one of the suspects, a one storey bungalow located in an area resided by the well-to-do. It was barely 200 metres off the main road and about 30 metres to the sea. According to police sources, the house originally belonged to an Italian woman married to one of the suspects. The Italian woman built the house after separating from her husband, on a plot they jointly owned but which they split up when they separated.¹⁰⁷⁶

1076 *The Citizen*, The lonely French couple who were killed for their Zanzibar dream, Monday, 17th February, 2014, Africa View, <http://www.africareview.com/News/The-lonely-French-couple-who-died-for-their-Zanzibar-dream/-/979180/2209544/-/dsi0ht/-/index.html> (accessed on 10th September, 2014).



Picture 58: The one-storey beach building in Matemwe village in the north-east coast of Zanzibar where the two French nationals were killed and their bodies dumped into a well. Photo by Athumani Mtulya.

2.1.4 Suicide

Suicide (Latin *suicidium*, from *sui caedere*, “to kill oneself”) is the act of intentionally causing one’s own death. In most cases suicide is reported to have often carried out as a result of despair, the cause of which is frequently attributed to a mental disorder such as depression, bipolar disorder, schizophrenia, borderline personality disorder,¹⁰⁷⁷ alcoholism, or drug abuse.¹⁰⁷⁸ Stress factors such as poverty or troubles with interpersonal relationships often play a role. Killing by oneself (suicide) however is not an offence but attempted suicide is a criminal offence.

A suicide case has been reported by Haji Nassor from Pemba that one person named Geogre Chalres Madondo (40) of Mkoroshoni Chakechake Pemba, who was believed to have killed himself by using tape pants, was found dead under a tree. Before committing suicide, Madondo claimed to have a misunderstanding with his wife, Paulina Cosmass Delefa (34), inflicting her with grievous injuries by hitting her with machetes with intention of killing her. The reporter explained that Madondo lost his hand bag which had eight hundred thousand shillings (Tshs. 800,000) and that was the reason for wanting to commit suicide. Speaking at the ward Chakechake hospital where the wife was being attended to after being injured by her husband, Delefa said the day before his death, he went for a drink but took longer time than usual to return. She decided to look for him and took him back to home. When they arrived home, he was persistently saying that he would commit suicide and asked her to give sachets

1077 Paris, J. (June 2002). “Chronic suicidality among patients with borderline personality disorder”. *Psychiatric Services* (Washington, D.C.) 53 (6): pp. 738 – 42.

1078 Hawton K, van Heeringen K (April 2009). “Suicide”. *Lancet* 373 (9672): 1372 – 81.

of alcohol (*kiroba*) which were under the bed. When Dafela bent down to get the drink she was suddenly attacked with a machete. As she ran away George went to commit suicide. The Police commander of the Southern Region of Pemba, Yussuf Ali, confirmed the report of that incident but said no person had been connected with the case.

2.2 Death Penalty

The Death penalty means taking away the life of a convicted person in the course of the execution of the order by the court. It is also referred as a capital punishment that denotes a legal process whereby a person is put to death by the state as punishment for a crime. The judicial decree which orders someone to be punished to death is known as a death sentence while the actual process of killing the person is referred as an execution, and the crimes resulting into death penalty are known as capital crimes.¹⁰⁷⁹ Capital punishment has been practiced by many societies in the past, and they are still, about 58 nations actively practicing it. About 97 countries have abolished it, and the rest have not applied it for ten years or allow it only in exceptional circumstances such as war crimes.¹⁰⁸⁰ The methods used for executing death penalties vary from state to state, but the most common methods are; hanging by the neck, using gas chamber, use of lethal injection, using electric chair and stoning to death.¹⁰⁸¹

Death penalty is now in the mind of many human rights activist who consider it as inhuman and goes against the standards of the human right to life. In that regard, there has been a worldwide campaign to call for the abolition of the death penalty. International instruments have introduced various prohibitions as the way of combating capital punishment. Article 3 of the Universal Declaration of Human Rights provides that; everyone has the right to life, liberty and security of person.¹⁰⁸² Another international instrument that prohibits the death penalty is the International Covenant on Civil and Political Rights of 1966, which also condemns the penalty as it provides under Article 6 (2)¹⁰⁸³ that; "...for the countries which have not abolished death penalty, 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..."

The second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) 1989 requires all states parties to abolish death penalty in their

1079 Capital crime, one for the punishment of which death is inflicted, <http://legal-dictionary.thefreedictionary.com>.

1080 Ibid.

1081 Legal and Human Rights Centre and Zanzibar Legal Services Centre, *Tanzania Human Rights Report 2012*.

1082 <http://www.un.org/en/documents/udhr/index.shtml>, visited on September 15th 2014.

1083 The International Covenant on Civil and Political Rights of 1966.

jurisdiction.¹⁰⁸⁴ The execution of the death penalty is also condemned by UN Resolution No. 50/1984. The resolution urges states not to execute the death penalty to groups of people below the age of 18, pregnant women or insane people and the punishment only be carried out after legal process with all possible safeguard of fair trial including legal assistance.¹⁰⁸⁵

The efforts on campaigning for the abolition of the death penalty has been remarkable in number of the jurisdictions. International and regional organization fighting for human rights throughout the globe are working closer to ensure that the right to life is protected. The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state party to the American Convention on Human Rights can become a party to the Protocol. Similarly, the Canadian Charter of Rights and Freedom 1982 provides in article 17 that: “Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The phrase “principles of fundamental justice” is lacking in specificity and is imprecise.

The Council of Europe played a leading role in the battle for abolition, believing that the death penalty has no place in democratic societies. So far, all countries in Europe have abolished the death penalty or instituted a moratorium on execution. This can be reflected in Protocol No. 6 to the European Convention on Human Rights. It follows an initiative from the Parliamentary Assembly to abolish the death penalty in peacetime and was adopted in April 1983. In 2002, another important step was taken with the adoption of Protocol No. 13 on the abolition of capital punishment in all circumstances, even for acts committed in time of war. The Council has made abolition of the death penalty a prerequisite for membership. As a result, no execution has taken place on the territory of the organization’s member states since 1997.

With regard to Africa, the African Charter in article 4 recognizes that no person may be arbitrarily deprived of his life. Many countries, including Tanzania, 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. Though we are celebrating 51 years of the existence of the United Republic of Tanzania, after the independence from foreign rulers, we still

1084 Optional Protocol of ICCPR, Article 1 of 1989.

1085 <http://www.unodc.org/pdf/compendium/compen> “Safeguards Guaranteeing Protection of Rights of Those Facing Death Penalty 2006.

cannot find any official reason why Tanzania did not ratify the protocol in spite of its ratification of the African Charter. On several occasions, Amnesty International argues that death penalty in Tanzania constitutes a violation of fundamental human rights, that is, the right to life and the right not to be subjected to cruel, inhuman and degrading treatment. Much as it is legal to execute a person under sentence of death, in some jurisdiction it has been established that it is clearly a breach of the right to life to execute a convict before his appeal is determined.¹⁰⁸⁶

It can be observed from above that international instruments call for the total abolition of the penalty but allow states parties to retain it and practice in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. This could be one among the factors that has made Tanzania, reference is made to Zanzibar, not to take a call of abolition of the death penalty very seriously.. Therefore, despite various campaigns against death penalty, Zanzibar still implements death sentence. Death penalty is provided under Zanzibar laws. For instance, part VI of the Penal Act¹⁰⁸⁷ provides for various penalties which courts in Zanzibar can inflict which including death penalty. Types of offences for which death penalty may be inflicted are; entering Zanzibar with intent to organize a counter revolution,¹⁰⁸⁸ treason,¹⁰⁸⁹ instigating invasion,¹⁰⁹⁰ murder and child destruction.¹⁰⁹¹

In Zanzibar death penalty is executed in through hanging to death.¹⁰⁹² Limitation however is imposed, without prejudice to any law, only pregnant women and children below the age of 18 are exempted from the death penalty.¹⁰⁹³ In addition, the execution of the death penalty cannot be implemented without the approval of the President.¹⁰⁹⁴ Generally the execution of death penalty has been problematic in Zanzibar and has been for a long time condemned by general public. The arguments are made that the Constitution of Zanzibar of 1984 the section says that “*every person has the right to the preservation of his life.*”¹⁰⁹⁵ The provision is short, apt and clear. That no one should be deprived of life. But section 13(2), the same Constitution states that *every person has the right to live and to the protection of his life by the society in accordance with the law.*¹⁰⁹⁶ This provision provides an exception on such grounds as are established by law and are consistent with the principles of fundamental justice. Thus, if death

1086 *Nosiru Bello v. Attorney-General Oyo State* (1985) 5 NWLR (Pt 45) 825.

1087 Penal Act No. 6 of 2006.

1088 Section 29 of the Penal Act, 2004.

1089 Section 28, of the Penal Act, 2004.

1090 *Ibid*, Section 30.

1091 *Ibid*, Section 217 (1).

1092 Section 305 (1) of Zanzibar Criminal Procedures Act, 2004.

1093 *Ibid* Section 305 (2).

1094 *Ibid*, Section 310.

1095 Section 13 (1) of the Constitution of Zanzibar, 1984.

1096 *Ibid*, Section 13 (2).

penalty is imposed by a constitution under certain circumstances as derogation from the right to life, it will not be correct to say that it violates the right to life.

Efforts to campaign the abolition of the death penalty is still going on in Zanzibar. This year, 2014, the Death Penalty Day which is marked worldwide on 10th October every year,¹⁰⁹⁷ was commemorated at Zanzibar University. Zanzibar Legal Services Centre in collaboration with Zanzibar University Students Organization (ZANUSO) joined other national and international campaigners against the death penalty. The Guest of Honour was Hon. Omar Othman Makungu, the Chief Justice of Zanzibar. The Centre marks Death Penalty Day every year on 10th October, inviting people to provide their views concerning death penalty. The stance taken by Centre is to abolish death penalty because it is against the right to life and it contributes in infringing human rights. Many expressed their concern as to link the death penalty as the ultimate cruel, inhuman and degrading punishment that violates the right to life. It was also added that the death penalty is irrevocable and can be inflicted on the innocent.



Picture 59: The Guest of Honour, the Zanzibar Chief Justice and other officers after the workshop at Zanzibar University 10th October, 2014.

1097 The first World Day against the Death Penalty took place in 2003. This event was launched by the World Coalition against the Death Penalty, which gathers international non-governmental organizations (NGOs), bar associations, unions and local governments from all over the world.



Picture 60: Coverage of the Death Penalty debate in the local media.

Commenting the status of death punishment in Zanzibar, the Chief Justice of Zanzibar Hon. Omar Othman Makungu, who was the Guest of Honour said in 2014 a total of six death sentences were pronounced but no execution was made. This is because both Presidents of Zanzibar and of the United Republic of Tanzania had been reluctant to authorize death sentences passed by various Judges preventing the execution of the convicted. He also added that Zanzibar Courts opted to continue imposing the death penalty for the offences resulting into such punishment because that punishment still exists in the laws of Zanzibar. He finally advised the Zanzibar Law Review Commission to re-examine the death penalty and its execution. The public is divided in two distinct views on abolition of the death penalty. They are those who accept the idea yet they are not ready to abolish it. This includes different religious groups.

2.3 Extra Judicial Killings

An extrajudicial killing is the killing of person by government authorities without sanction of any judicial proceeding or legal process. This is normally characterized by excessive use of force by security forces at roadblocks, during patrols, at police stations, in the course of putting down protests, disturbances and pro-democracy rallies, when combating crimes and when dealing with detained persons. The killings are by their

nature unlawful since they bypass the due process of the legal jurisdiction in which they occur. They often target leading political, trade union, dissident, religious and social figures, activists how sometimes include journalists and may be carried out by the state authorities like the armed force or police.

There have been accusations on the killings of innocent people by different government forces particularly Special Departments of Government of Zanzibar in the past but in the 2013 the county did not record any killing of extra judicial nature. The history has been repeated in the year 2014. As this report was prepared, there has been a report of the case of extra judicial killing in Pemba. It was reported that on 19th March, 2014 at around 9:00pm an adult male named Omar Baraka Omari (55), a resident of Bahanasa village, Piki at Wete District in Northern Region, Pemba was shot dead by a police officer who was on patrol.¹⁰⁹⁸ It was alleged that the diseased, was stopped by police but refused to comply with that order and exchanged abusive words with police. One police officer who carried a gun pulled a trigger and shot him in the abdomen which caused a loss of blood. The postmodern report from hospital confirmed that same. However, the assistant Doctor in charge of the hospital, Dr. Seif Maalim, was reported by the media assaying that the deceased was shot around shoulder and lost a large amount of blood which led to his death.

2.4 Freedom from Torture

Closely related to the right to life, is the right to dignity of human person. It is one among very important rights in support of human life. This has been a case because life is worth nothing to a victim of torture, inhuman or degrading treatment. Section 13(3) of the Constitution Zanzibar provides for the right to dignity of human person. The constitution provides that “it is prohibited for a person to be tortured, inhumanly punished or to be given punishment which are degrading and humiliating.”¹⁰⁹⁹ There are various types of torture which can include forced or compulsory labour. Limitation however can be made to labour that is required in consequence of the sentence or order of a court; any labour required of members of the armed forces in pursuance of their duties as such; in the case of persons who have conscientious objections to service in the armed forces of the federation, any labour required instead of such service and any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community. The service that forms part of normal communal or other civic obligations for the well-being of the community; such compulsory national service in the armed forces as may be prescribed by the law or such compulsory national service which forms part of

1098 Report of the killing of a citizen at Bahanasa village, Shehia of Piki, Wete District, Northern Region Pemba, 19th March, 2014 prepared by Haji Nassor Mohamed, Reporter Zanzibar Leo, compiled by ZLSC.

1099 13 (3) of the Constitution of Zanzibar.

the education and training of citizens as may be prescribed by law, also is not forced labour.

Torture is therefore referred to any act of deliberately inflicting severe physical pain to a person who is physically restrained or otherwise under the torturer's control or custody, unable to defend him/her against what is being done to him/her.¹¹⁰⁰ Reasons for torture can include punishment, revenge, and deterrence, seeking for evidence during interrogation or coercion of the victim or a third party. Forms of torture can vary greatly in duration from only a few minutes to several days or even longer.¹¹⁰¹ The word "torture" etymologically means to put a person to some form of pain which could be extreme. It also means to put a person to some form of anguish or excessive pain. This can be in form of physical brutalization of the human person; and it could also be mental torture in the sense of mental agony or mental worry. This covers a situation where the person's mental orientation is very much disturbed that he cannot think and rationally do things, as the rational human being that he is.¹¹⁰²

According to Jim Murdoch,¹¹⁰³ the distinction between "torture," "inhuman" and "degrading treatment or punishment" reflects deference in the intensity of suffering and assessment of state purpose as determined by contemporary standards. The distinction would then appear to be a function of the quantum of pain or suffering inflicted on a person. The word "dignity," as used in the constitution, conveys the meaning or connotation of being degraded at least in ones exalted estimation of his social status or societal standing. In respect of the word "inhuman", it is anything opposite to human. An inhuman treatment is anything barbarous, uncouth and cruel treatment; a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty." Whereas, "degrading treatment" is that which has the element of lowering the social status, character, value or position of a person.

Torture is prohibited under the International Law and the domestic laws of many countries including Zanzibar. It is regarded to be among the violation of human rights and is declared to be unacceptable by Article 5 of UDHR¹¹⁰⁴, "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*" In article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹¹⁰⁵ "torture" is defined as:

1100 <http://en.wikipedia.org/wiki/Torture> visited on November, 2014.

1101 Ibid.

1102 (1991) 6 N.W.L.R. (Pt 200) 778.

1103 Murdoch J, "Liberty and Security of a Person in a State under the Rule of Law" being the text of a paper delivered at the British—Nigeria Law Week held on 23-27 April, 2001 Abuja, Nigeria.

1104 <http://www.un.org/en/documents/udhr/index.shtml>.

1105 One thing to note however that, Tanzania is has not ratified Convention against Torture, 1984

... any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

However, despite this there have been allegations of torture in Zanzibar especially at the police stations and some of the Special Departments of the Revolutionary Government of Zanzibar. Torture has been a form of conducting investigations where suspected criminals are tortured to give information as a way of collecting evidence to support criminal cases.

At the same time, it has been common knowledge that some children are also subjected to torture by their parents, relatives, school teachers and members of the society. A vivid example of this kind of torture is substantiated by incident which occurred in October, 2014 to one child aged 12, a resident of Kiboje, Zanzibar, (name withheld). It was reported that on 3rd October, 2014 a Good Samaritan found a child (name withheld) stranded at a bus stop and immediately took the child to Kisimamajongoo Police Post (the nearest post). During the investigation of the case, which involved an officer from the social welfare, it was revealed that that the child was HIV positive and his parents died of HIV AIDS. After the death of his parents, his uncle chased him out of the house since then he had been living with her sister until the sister chased him out on 1st October, 2014. The Zanzibar Social Welfare declined sheltering the child stating that the child is not eligible for admission into the shelter in question. Efforts were made to look for the relatives of the child who would be able to provide him with basic needs including shelter. n. Four of the relatives were visited. These included Mr. Mmanga (Uncle), Bi. Saada (Aunt), Bi. Faida (Aunt) and Bi. Fadhila (Stepsister). Regardless the fact that the child was not willing to go to any of those aforementioned relatives and the fact that none of the relative had a home suitable for sheltering the child, he was persuaded to go to his step sister promising that she would be supported in taking care of the child.

Several meetings with the Department of Social Welfare (Women and Children) and other partners (ZAPHA+, Mnazi Mmoja HIV AIDS Unit, ACTION AID and UNICEF) in relation to the case and of course trying to put in a scheme in place for all related

though both Constitutions condemn all kinds of torture.

cases, the ZLSC left with nothing but some empty promises that senior government officials are working on it. Meanwhile the child is working in the Kizimbani Spice farms, making souvenirs for the tourists visiting the farms. ZLSC is in the process of communicating with the Social Welfare Department of Tanzania Mainland and ask if they would be willing to help admitting the child in one of their establishments.

Apart from this, torture at school is still a matter of concern. There a number of cases, which are marked to be violations of the human rights, where pupils at schools are tortured by their teachers and fellow pupils. Caning has been very common and in some schools, the case is more serious. As witnessed by one of the ZLSC programme officers, at Mtopepo Primary schools pupils are caned by teachers in number of cases. Surprisingly in that school some pupils one pupil who was identified to be a student leader is allowed to punish his fellow pupils by caning them. When he was interviewed, he confidently confirmed that he is a leader and has a right to punish his colleagues. An almost similar situation was witnessed at Kinuni Primary where the use of the cane has been rampant. Caning at schools has been banned by the law except when it is authorised in writing by the head teacher. This law however, seems to be neglected and its compliance is not complied to.

2.4.1 Bomb Explosions in Town Areas

It can be recalled that the previous years human rights reports, were marked by many acid attacks targeting both local and foreign citizens. The reasons behind those attacks were not known but people suffered severe pain and loss of their organs. There were no proofs as to who is behind the attacks or who is the target is and for what reasons. The only speculation was that those attacks were politically or religious inclined. This year another form of the attacks was reported and this has advanced to explosions.

The safety of Zanzibar was in three bomb blasts was reported to happen within the center of Zanzibar town. One explosion took place at Mercury restaurant where several persons including foreigners who were having lunch inside were injured. The second one happened at the Anglican Cathedral at Mkunazini.¹¹⁰⁶ A police spokesman claimed it to be a homemade bomb and no one was hurt.

The third explosion occurred near Sunni Mosque at Darajani which left one Muslim cleric dead and seven others injured. Unknown assailants hurled a grenade into the busy business area, killing Muhamed Khatib Mkobalaguha and badly injuring seven worshippers who were leaving a mosque after prayers. The blast triggered panic and fear among residents, who have had to live with attacks targeting both Christian and Islamic leaders and prayer houses in recent times. It was reported by police that, the

1106 *The Telegraph Newspaper*, 25th February, 2014, Zanzibar bombings raise questions over safety, Reported by Oliver Smith.

bomb were handmade and exploded from a passing car as worshippers emerged from a mosque on Friday night. Police spokesman Mr. Mhina further maintained that, the attackers targeted the worshippers. There have been a number of attacks in the last few years some directed to Christian leaders while several churches have been set on fire. Tension has been growing for years. There have been speculations that some of the incidents are religiously connected because 98 per cent of the Zanzibar population is Muslims but no evidence have been proved to associate the attacks with religion.



Picture 61: A victim of Friday night's Zanzibar bomb blast, Sheikh Ahmed Haidar Jabir, nurses his wounds at Al Rahma Hospital in the Isles. Photo by Mwinyi Sadallah.

Zanzibar's minister of State and Second Vice President Mohamed Aboud Mohamed condemned the bombing which, he said, was bound to hurt tourism in the Isles. According to the minister, a special operation by security forces has been launched. On other hand the Deputy Director of Criminal Investigations Yusuph Ilembo condemned the attack and said the police and other security agents had launched an intensive manhunt for the assailants. ZLSC perceives that the incident had damaged the image of Zanzibar and recommends the proper security actions should be taken to detect these kinds of incidents.



Picture 62: Police cordon off the crime scene at Darajani area in Zanzibar municipality yesterday. Police said one person was killed and several others wounded after an unknown person threw the bomb around midnight

2.4.2 Torture of Detainee under Police Custody

Torture of detainees under police custody has been heading the violation of human rights in number of the reports, the most reported being police brutality. This is one among the kinds of tortures inflicted on civilians. The incidents normally occur when suspects are in the custody of police or in prison. In ordinary course of the business, incidents of torture are not reported because victims are reluctant to speak out when they are in custody or during arrest by police or after release. Police normally use excessive force while arresting or during interrogation of accused.

At international level, Article 5 of the UDHR and article 7 of the ICCPR condemns the act of torture, inhuman or degrading treatment of human beings. Tanzania has ratified the convention and state agents are required to respect UN ambition to respect people's rights. Based on this, there are several domestically enacted to protect the suspect rights in Zanzibar. The first and the most important is a Constitution of Zanzibar (1984), Criminal Procedure Act No 7 of 2004. Under the Act, the procedures of handling suspect before arrest during arrest and after arrest are clearly explained. Also Police Force and Auxiliary Service Act (1958) R: E 2002. Cape 322, explains the police powers and its limitations over the suspects and arrestees.¹¹⁰⁷

1107 Police Force And Auxiliary Service Act 1958 Cap 322 Section 27.

Apart from having the constitution and all those laws, it can be observed that Zanzibar still experiences large number of the tortures and violations of suspects' rights when they are under police custody. Police officers arbitrary enter the suspect's house, beat innocent persons, arbitrary arrest and detain them. In addition, torturing of the suspect is mostly practiced. All these violations are claimed to have been made by the police officers in collaboration with auxiliary police such as KVZ, JKU, KMKM. Most of the violations are claimed to have been caused by exercise the police powers without regard to the legal ground for arrest, not respecting procedures, using of unreasonable force during arrest. The Criminal Procedure Act of Zanzibar gives full explanation on how people should be arrested¹¹⁰⁸ and if interrogation is necessary how it should be conducted. However, those procedures are not properly followed by police officers where they usually end up in beating and torturing people which sometimes results in causing bodily harm.

Almost in all human right reports, there are reports of beating and torturing of accused persons by police. These reports are recorded from Pemba Island as well as Unguja. Despite reporting, the incidents of arresting and torturing people, we still experience the same in the year 2014. The most remarkable is the case of 19 accused persons who were reported to be arrested in Zanzibar and surrendered to Police in Dar es Salaam Tanzania Mainland alleged to abetting criminals to commit terrorist acts in Tanzania. These are Farid Haad Ahmed, Nassor Abdallah, Hassan Suleiman, Anthar Ahmed, Mohd Yussuf, Abdallah Hassan, Hussein Ally, Said Salum, Salum Amour, Alawi Amour, Rashid Nyange and nine others were arrested in Zanzibar and presented before Kisutu Resident Magistrate Court in Dar es Salaam charged with conspiracy and recruiting persons to take part in terrorism contrary to section 21 (b) of the prevention of terrorism Act, 2002. It was alleged that, the accused committed the offences on different dates from January 2013 and June 2014.¹¹⁰⁹ These accused claimed to have been tortured and humiliated by police while they are in custody.

1108 Section 13 (1), Criminal Procedure Act, 2004.

1109 Terror suspects wants case heard in Zanzibar, The Guardian Newspaper 8th August 2014, by Karama Kenyunko.



Picture 63: Among the suspect of terrorist conspiracy pictured under police custody in July, 2014

2.5 Equality before the Law-Equal Access to Justice for All

Equal access to justice is the base for the equality before the law. But this right cannot be enjoyed if there is no guarantee of equal access to justice. The term access to justice can be described as an active participation coupled with effective utilization of affordable and available resources in the course of approaching and obtaining justice for all.¹¹¹⁰ The administration and dispensation of justice is supposed to be made without fear, ill will, or affection towards certain people in the society. Therefore, right to access to justice forms an inseparable aspect of fundamental rights and freedom that play an important role in nourishing justice and preventing oppression to the people. The right to equality of access to justice has been a result of the equality before the law. This is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law. This principle is therefore enshrined in the Universal Declaration of Human Rights to the effect that:

All people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”¹¹¹¹

1110 Peter, Chris Maina & Othman, Haroub, 2003, *Perspective on Legal Aid and Access to Justice in Zanzibar*, Zanzibar Legal Services Centre Series 10th Anniversary Publication, Zanzibar, Zanzibar Legal Services Centre, p. 81.

1111 Article 7 of the UDHR.

At the domestic level, the Constitution of Zanzibar of 1984 guarantees the equality before the law under section 12. This section provides that “*All people are born free and equal before the law*”.

Access to justice enables individuals to make use the laws in protection of their rights. However, this can only be enjoyed if there is an established sound institution and legal framework that would guarantee all people access to the law and a judicial which is free. Zanzibar like some other countries faces some problems in access to justice which in one way or another hinders people’s enjoyment of their rights.

On the other hand, it is well established in Zanzibar that the right to legal representation before the court of law is provided by two hands namely; Constitutional right and Statutory right. The trial becomes nullified in the circumstance where the constitutional and statutory rights of the appellant were denied legal representation. There is still a problem of the legal representation as a move to get people closer to access to justice. The government offers legal representation support to the accused of the serious crimes only but does not do the same to the less serious offences or even to people who found who need to be helped.

People with mental illness and psychiatric disabilities face similar issues of lack of legal representation within the criminal justice system as people with intellectual disabilities, whether suspects or victims. In view of the same, most people would appreciate if the people with disability are, to a much higher degree, given the right to access justice and legal representation like other groups, victims of crime. That is often because they are in situations that are dangerous and violent. In addition, the law still imposes fees for indigent civil litigants even if they are poor unless special procedure to file a case on the basis on the incapacities is applied. There is also another challenge of sign language at the court and other offices dealing with administration of justice. It is therefore submitted that lack of legal representations and legal aid contribute to the denial of the right to justice.

2.5.1 Proximity, Availability and Infrastructure of Courts

The structure of the court system in Zanzibar is largely influenced by the history of the Zanzibar people. There had been a transformation of the court system from a time to time based on the interest of the people and the political powers interacted by outsiders’ influences. As a result, Zanzibar court system comprises two different legal systems in one operation. This is therefore referred as a dual court system, namely, the Common Law Court System which is governed by secular laws on one side and the Kadhis Court system being governed by Islamic laws on another side.

The Courts falling under the Common Law system include Court of Appeal of

Tanzania,¹¹¹² for all matters which are not restricted by the Constitution of Zanzibar, as this is a Union matter. The Constitution of Zanzibar of 1984 has limited the powers and functions of the Court of Appeal of Tanzania. Particularly, it cannot entertain cases originating from Kadhi's Court and matters mentioned in the Constitution of Zanzibar or other laws enacted by the House of Representatives.¹¹¹³ The powers and functions of the Court of Appeal of Tanzania are to hear and determine appeals brought before it arising from the judgments of the High Court or Magistrate Courts.¹¹¹⁴ Below the Court of Appeal of Tanzania is High Court of Zanzibar,¹¹¹⁵ the Regional Magistrate Courts,¹¹¹⁶ the District Magistrate Courts and Primary Courts.¹¹¹⁷ Children Court as established by Act No. 6 of 2011 to be presided over by a Regional Magistrate, as chairperson, to entertain matters relating to child affairs.¹¹¹⁸ Though the Act creates the Children's court in every region, at the moment there is only one Children's court located in the Urban West Region which receives child disputes from all regions.

Regional Magistrate Courts are courts subordinate to the High Court of Zanzibar. They are located in every five administrative regions in Zanzibar – two in Pemba and three in Unguja island. Despite the establishment of these courts in every district, it is alleged that people still travel long distances searching for a court building, whether Regional, District or Primary sometimes with their own expenses. The situation is worse when it comes to the Land Tribunal, Industrial Court and Children Court as these courts are located in Zanzibar town and people must travel long distances to get to the court buildings, spending a lot of money in search of Court services.

The second arm of the Zanzibar court system is compliance of the Islamic Law. It starts from Primary and District Kadhis Court in every Administrative District of Zanzibar. Zanzibar has ten Districts six in Unguja and four in Pemba, where the number of Kadhis Courts is the same as the number of districts. Power has been vested in the Chief Kadhi to establish Primary Magistrate and District Magistrate in Zanzibar.¹¹¹⁹

Despite the improvements observed in the recent years the judicial sector is facing a number of challenges. The legal sector in Zanzibar faces numerous shortcomings.

1112 Article 117 (1) of the Constitution of the United Republic of Tanzania of 1977 says that there shall be a Court of Appeal of the United Republic of Tanzania.

1113 Legal and Human Rights Centre & Zanzibar Legal Services Centre, Tanzania Human rights Reports 2012, p. 319.

1114 Article 117 (3) Constitution of the United Republic of Tanzania, op. cit.

1115 High Court Act, 1985 (Act No. 2, 1985).

1116 Magistrate Courts Act, 1985 (Act No. 6, 1985).

1117 Ibid.

1118 Section 18 of the Children's Act.

1119 Legal and Human Rights Centre & Zanzibar Legal Services Centre, Tanzania Human rights Reports 2012, p. 319.

The challenges include inadequate institutions and operational capacity, low public awareness on basic justice process and rights, poor infrastructure, delays in delivery of justice, and poor legal practice and procedure. Studies reveal that the majority of people are ignorant of laws and legal procedure which pose a major obstacle to the access to justice.¹¹²⁰

2.5.1.1 Training of Paralegals

In the recent years, there has been an increase of legal knowledge in Zanzibar at various level. The introduction of private institutions providing legal education, legal aid and legal assistance has made great contribution to this development. The increasing number of law graduates from Zanzibar University, which is the first private University in Zanzibar has been a source of contribution. Number of graduates of Bachelor degree of law and Shariah and master degree in law are now filling the gap of scarcity of legal personnel in government and private institution. The Open University of Tanzania (OUT) which offers Certificate in Law, Diploma in Law and Post graduate diploma also contribute to the increasing number of lawyers. Other institutions that provide legal education include the Institute of Continuing Education affiliated with Zanzibar University which offers a Diploma Course in Criminal Justice. The office of DPP offers legal education at the level of Diploma and Certificates. However studying a degree in law n Zanzibar is now being discouraged. Students wishing to study law are not assured loans from Loan Board.

Zanzibar Legal Services Centre like other non-governmental organization in Southern Africa has introduced a special programme of paralegals in Zanzibar. These are ordinary people who do not have legal knowledge, appointed and trained to assist people in the provision of legal aid and to ensure that community enjoys access to justice and that their rights are respected.¹¹²¹ ZLSC had introduced paralegal training back from 2007, where people from each constituency in Zanzibar are appointed, trained so as they can serve for two years within their constituencies. The paralegals are trained in basic legal subjects for two years. ZLSC currently has 70 paralegals, 41 in Unguja and 29 in Pemba Island constituencies and from the Special Departments of Zanzibar. In some constituencies 2 paralegals have been deployed depending on their geographic location and size. Paralegals successfully manage to cover the areas from which they were selected despite some challenges. Paralegals work to educate members of their community on their basic rights, provide basic legal services, assist ZLSC in lobbying for law reforms, and assist in collecting data for the annual human rights report. For the year 2014, 59 paralegals graduated and were awarded their certificate after completion of two years course of their studies.

1120 Baseline Survey for Monitoring of the Paralegal Project, Zanzibar Legal Services Centre, 2011.

1121 Ibid, Baseline Survey, p. 1.

Paralegals play a major role in assisting large sectors of the population by providing legal first aid despite the challenges they are facing. Challenges facing paralegals include among others, the size of the constituency, isolation, animosity, a large number of cases, cultural factors, political ideology, financial resources and communication facilities. Acceptability of paralegals by all the community they serve is also mentioned to be another challenge paralegals are facing. Some of the community members are reluctant to accord them with cooperation. This is also the case with some government institutions.



Picture 64: Hon. Mohamed Chande Otheman, the Chief Justice of the United Republic of Tanzania, the Guest of Honour during the 2nd Paralegals graduation ceremony held at EACROTANAL in a group picture with Zanzibar Legal Services Centre Staff and other participants.



Picture 65: Paralegals doing Group Work together during their training. The Zanzibar Year Book of Law

In an effort to spread legal aid and education to many people, ZLSC has successfully launched the *Zanzibar Yearbook of Law (ZYBL)* on 28th December, 2013. The book was launched as part of the commemoration of the life of the founder, the first Chairman and member of the Board of Trustee of the ZLSC, the late Professor Haroub Miraji Othman. In this year the third volume of the year book of law was issued. The issuance of the *Zanzibar Yearbook of Law* has been an addition to the publications by the Centre since its establishment. The book covers academic publications from all around the world where issues of different dimension in law from domestic to international law are discussed.

2.5.2 Legal Aid

Legal aid is the provision of assistance to people who are unable to afford legal representation and access to court system. Legal aid is regarded as central in providing access to justice by insuring equality before the law, right to counsel and right to fair trial. There are a number of delivery modes for legal aid, including daily lawyers, community legal clinics and payment of lawyers to deal with cases for individuals who are entitled to legal aid.¹¹²²

1122 http://en.wikipedia.org/wiki/legal_aid

Legal aid has a close relationship with the welfare state, and the provision of legal aid by a state is influenced by attitudes towards welfare. Since legal aid guarantees equal access to justice for all some nations developed special schemes for the provision of the legal aid. The European Union Convention on Human Rights regarding criminal law cases guarantees the assistance of legal aid including the interpreter if a suspect cannot understand the language used in court.¹¹²³ Legal aid has become necessary in Zanzibar to help people get access to justice but the government has not given due attention to the provision of legal aid to the needy. Instead, there are a few non-governmental organizations (NGOs) who have taken the lead in the provision of legal aid to save the situation.

Zanzibar Legal Services Centre (ZLSC) apart from conducting seminars to different peoples and institutions, dissemination of knowledge through radio and television, researching, writing and publication of annual human rights report on Zanzibar, providing library services on legal and political science issues, also assists poor people who cannot afford legal services. In assisting the provision of legal aid, for this year ZLSC received about 632 cases where 411 were from Unguja and 221 cases were from Pemba as indicate in the table below.

Table 49: Types and Quantity of Cases Handled by the ZLSC

SN	Issue	Unguja				Pemba			
		F	M	Child	Total	F	M	Child	Total
1	Land	22	53	0	75	18	84	0	102
2	Legal opinion	44	67	22	133	12	27	0	39
3	Criminal	12	26	0	38	2	3	0	5
4	Human rights violations	0	0	0	0	0	1	0	1
5	Civil	15	18	0		11	9	15	35
6	Employment	6	34	1	41	1	25	0	26
7	Marriage, custody and inheritance	27	4	0	51	0	2	0	2
8	Child abuse and GBV	13	0	47	60	17	0	0	17
	TOTAL	139	202	70	411	49	157	15	221

Source: ZLSC 2014

2.5.3 Legal Representation

It is always clear from the examination of the procedural challenges in the enforcement of human rights, especially in adversarial system, that the challenges are technical in nature. To that extent, it requires a legal practitioner to be articulate and file an action

¹¹²³ Article 6 (3) of the European Convention on Human Rights.

pursuant to the rules to enforce human rights in Zanzibar Courts. The inability of a victim of human rights violations to have legal representation will negatively impact on the right to enforce human rights. Where, therefore, a victim of human rights violations does not have the capacity to brief a lawyer to prosecute his cause in court, he/she is likely to be without a remedy. The right to legal representation is therefore a crucial factor in the enforcement of human rights.

Legal representation is very important in the administration of justice both criminal and civil. However in practice, the representation is given much emphasis on criminal cases. But even in the representation of accused before the court has been problematic in many countries. There are some decisions of cases where the judge had acquitted or ruled otherwise because of the failure of the accused to be represented. It was argued that, under the nature of the fair trial indigent defendant (defendant who cannot afford legal representation) should be provided with legal aid by the state.¹¹²⁴

In Zanzibar the right to legal representation is provided in the Constitution.¹¹²⁵ The right to fair hearing includes the right to every person who is charged with a criminal offence to defend himself in person or by legal practitioners of his choice. Every litigant has the right to file proceedings to enforce his/her legal rights in a court of law. There are still inadequate formal procedures established for legal representation. The shortage of practicing lawyers and poverty are among the contributing factors.

In addition to that there is still unbalanced distributions of advocates between Unguja, and Pemba and even in Unguja where majority of the advocates are located, some regions do not have a single advocate. Experience also shows that a number of the enrolled advocates are said to be a brief case advocates who do not have permanent offices, let alone those who enrol just to add qualifications to their curriculum vitae (CV).

2.5.4 Delay of Cases

Speed hearing of the case is one among the constitutional guarantees in Zanzibar. Section 12(6) of the Constitution which provides that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time. The accused is entitled to speedy hearing of the criminal cases and delivering of judgment.¹¹²⁶ Regarding Zanzibar's unedifying record of long pre-trial detentions and inordinate delays in trials, this provision has generated a great deal of controversy in criminal trials. The said subsection which provides for the right to be tried in court with speed does not define the time "speed"

1124 Dietrich v. The Queen (1992) High Court of Australia.

1125 Section 12 of the Constitution of Zanzibar, 1984.

1126 Section 12(6)(e) of the Constitution of Zanzibar.

within the context of the provision. It is then left to the Zanzibar courts to interpret the phrase. The delay of cases has been a big problem in Zanzibar. Cases take long periods before they are disposed of. There are several reasons associated with the matter. Reports suggest that, insufficient budgets for the judiciary, failure of the witnesses to adduce the evidence and the profile of the investigation mechanism.¹¹²⁷

In the case of *DPP v. Kinganyiti & Others* [2012] No. 10 HCZ unreported, commonly known as spice Islander's case, the details of which were explained above, can be one among the good examples of delays complained by the court. Honourable Chief Justice of Zanzibar, Omar Othman Makungu, dismissed this case under section 227¹¹²⁸ on the argument that there was no sufficient ground for proceeding against the accused persons before the hearing of the case and that the prosecutions was tactfully delaying the hearing and depriving the accused of their constitutional right. There have been a number of cases which have been delayed in the process of the proceedings. The court, on the other hand has been claimed to have contributed to the delays of many cases. This has been a situation not only in criminal cases but even civil cases which are also delayed. In the same view, the Land Tribunal has been in complains of delaying cases for a long time now. The case of *Mwenyekiti Madrasatu Swalihyna v. Ghari Said Mohamed*¹¹²⁹ was filed in 2006 but was decided in 2014. The plaintiff in this case waited for about eight years for his matter to be determined but even when it was decided, the judgment was against his favour and he therefore filed an appeal before the High Court.

2.5.5 Independence and Impartiality of Judiciary

The of independence and impartiality of the judiciary has its origins from the doctrine of separation of powers, which basically states that the three arms of the government, that is the Executive, Legislature and the Judiciary must be independent of each other and separate from one another. The doctrine was most famously expounded by a French Jurist, Montesquieu whose idea was aimed at dividing the functions of state and giving powers to the judiciary to exercise their duties without any interference. It is therefore well established that a modern concept of the independence of judiciary cannot be confined to the individual judge and to his substantive and personal independence, but must include collective independence of judiciary as a whole¹¹³⁰. The independence

1127 Meagre budget delays case hearing, Tanzania Daily News, Wednesday 2nd January 2013. . In a report provided by the Registrar of Zanzibar High Court, Mr. George Kazi.

1128 Section 227 of the Criminal Procedure Act No. 7 of 2004 provides, "If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he or she shall discharge the accused and record his or her reasons for so doing."

1129 No. 70 of 2006 decided by Land Tribunal of Zanzibar, unreported.

1130 Ibid, Wikipedia.

of the judiciary should not be mistaken as the freedom of the judges and magistrates to do as they please but to adhere to accepted legal values, substantive and procedural rules of law applicable in the country.¹¹³¹ The concept requires that the judiciary be kept away from other branches of the government, it want courts not to be subject to improper influence from the other branches of states or private or partisan interest.

Independence of judiciary is internationally protected. Article 1 of the Basic Principles on the Independence of Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crimes and the Treatment of Offenders 1985, provides that,

The independence of judiciary shall be guaranteed by the state and enshrined in the constitution or law of the countries”. It is the duty of all governments and other institutions to respect and observe the independence of judiciary.¹¹³²

This implies that the judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law. The principle of the independence of the judiciary requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected and it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

At the local level, independence of judiciary forms part of the Constitution of Zanzibar. The constitution declares explicitly that Zanzibar shall follow the system of separation of power between three authorities and no authority shall interfere with another’s authority except in the manner provided by the constitution.¹¹³³ The constitution also guarantees security of tenure for the judges of High Court.¹¹³⁴

Impartiality is one of the most fundamental requirements in the determination of cases in courts. It is a tool towards the dispensing justice. Every judge should be free and cautious on the proceeding of the case. Considering four things, said Socrates, that

1131 Chris Maina Peter, “Independence of Judiciary in Tanzania: Many Rivers to Cross,” 2012, p. 1, Extracted from <http://kituochakatiba.org>

1132 <http://www.ohchr.org/EN/ProfessionInterest/Pages/InternationalLaw.aspx> visited on 15th October, 2013.

1133 Section 5 A (1) (3) of the Constitution of Zanzibar, 1984.

1134 Ibid, Section 95 (1).

belong to a Judge are to hear courteously, to answer wisely, to consider soberly, and to decide impartially. With this, justice will not only be done, but manifestly and undoubtedly be seen to be done. The famous dictum by Lord Hewart, C.J., in *R. v. Sussex Justices ex parte McCarthy*¹¹³⁵ succinctly expresses one of the key requirements for accountability of the Judiciary. The requirement that justice must not only be done, but must be seen to be done, encompasses the requirement for impartiality of judges and the need for trials to be held in open court.

Despite being ensured in the Constitution, independence of judiciary poses a great challenge as to whether it is a reality or a myth due to the prevailing circumstances in the judicial system in relation to their freedom in the exercise of dispensing of justice. The doctrine is impeded in various ways, among those impediments being the supremacy of government over the judiciary such as in the appointment of the Chief Justice and judges of the High Court by the president. Another challenge which undermines the doctrine of the independence of judiciary in practice is the use of ouster clauses in legislation. There is some legislation which excludes the courts from exercising the power of administration of justice by denying the court of law jurisdiction to determine disputes. For example, court of Zanzibar is restricted from having jurisdiction from inquiring into anything done by Zanzibar Electoral Commission in the performance of its functions in accordance with the provisions of this Constitution.¹¹³⁶ Some of these clauses may appear to violate the independence of judiciary.

2.6 The Right to Freedom of Thought, Conscience and Religion

The right to freedom of thought, conscience and religion is constitutionally protected as one of the basic human rights. Every person is entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. Freedom from worship and religion is a principle that supports the freedom of an individual or community in public or private to manifest religion or belief in teachings, practice, worship and advance. It also recognizes and includes the freedom to change religion or not to follow any religion.¹¹³⁷

At the domestic level the Constitution of the United Republic of Tanzania, 1977 article 19(1) and the Constitution of Zanzibar of 1984 under section 19(1) have recognized and ensured the protection of the freedom of worship. The Constitution of Zanzibar specifically says “Every person has the right to freedom of thought or conscience, belief or faith and choice in matters of religion, including the freedom to change his

1135 (1924) 1 KB 256, p. 259.

1136 Article 119 (13) of Constitution of Zanzibar 1984.

1137 Universal Declaration of Human Rights Article 18.

religion or faith.”¹¹³⁸

The Constitution of Zanzibar of 1984 goes further to declare that without prejudice to the relevant laws the profession of religion, worship and propagation of religion shall be free and a private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of the state authority. In this provision reference to the word “religion” meant to include religious denominations and cognate expressions.¹¹³⁹ The provision therefore implies that the government of Zanzibar shall not adopt any religion as State religion. This provision is plain and simple enough to admit no controversy. It guarantees religious neutrality on the part of the government. Literal interpretation of section 19 would mean that neither the legislative nor the executive power may in any way be used to aid, advance, foster, promote or sponsor a religion. However, the government is responsible for the registration of entities or organization some of which pertain to religious belief.¹¹⁴⁰

It can be observed that the government of Zanzibar supports and promotes the Islamic religion in various aspects. This however will still remain a point of concern though covered within an ambit of the historical existence and development of the people of Zanzibar. Historically, Zanzibar had its own kind of native administration with a kind of the legal system that was predominately Islamic following Shariah¹¹⁴¹ where the local rulers known as Mwinyi Mkuu appeared as the local kings and maintain the administration of the governing bodies by their own systems.¹¹⁴² Even after the introduction of the foreign rules, Islamic law was applied in Zanzibar especially in Kadhis’ Court, an exclusively Muslim Court, though with some limitations.¹¹⁴³ This has made the legal system of Zanzibar to be much influenced by unofficial indigenous arrangements, which are believed to be customarily based, and largely Islamic influenced, and the interactions of indigenous African development in parallel with imported notions from other parts of Africa and the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia.¹¹⁴⁴

1138 Section 19(1) of Constitution of Zanzibar, 1984.

1139 Section 19(2) and (3) of the Constitution of Zanzibar.

1140 Section 4 of the Mufti Act No. 9, 2001.

1141 Before the institutionalization of the British rule, there was in practice an intact and coherent system of *Shariah* law that held Zanzibar’s disparate groups and classes in peaceful coexistence.

1142 Moh’d Makame Haji, *Zanzibar Local Governments and Sheha: A Historical Retrospect*, (Zanzibar: University College Printing Press, 2014), pp. 28 – 36.

1143 The 1917 Evidence Decree, as adopted from the Indian Evidence Act, replaced the Sharī’ah Law of Evidence in favour of English Law of Evidence. As noted above, Imperial Orders in Council and Acts of Parliament applicable to Zanzibar formed part of the laws administered in all courts.

1144 M. Reda Bhacker, (2003), *Trade and Empire in Muscat and Zanzibar: Roots of British Domination*, New Fetter Lane, London: Routledge, First published in 1994, this edition by Taylor &

Muslims receive a lot of support from government. From the legal framework to institution Islamic law has is given official consideration. The Constitution of Zanzibar also vests in power to the House of Representatives to establish other Courts subordinate to the High Court and without prejudice to the provisions of this Constitution, those Courts so established are vested with power and jurisdiction as provided by law.¹¹⁴⁵ The current Kadhis' Courts in Zanzibar has been established in pursuance of this Article. Therefore, it is empowered to exercise jurisdiction in the determination of questions of Muslim personal status in a proceedings in which all the parties profess the Islamic religion.¹¹⁴⁶ Significantly, the law allowed to be applied in these Courts is *Sharī'ah*.

Furthermore, the Kadhis' Court Act creates a finality clause that all appeals emanating from Kadhis' Court be finally entertained by High Court of Zanzibar.¹¹⁴⁷ This is also provided by the Constitution provision which explicitly restricts the Court of Appeal of Tanzania from having the power of hearing appeal from the High Court of Zanzibar in cases relating to matters of Islamic law which emanate from Kadhis' Court.¹¹⁴⁸ Additionally, the establishment of the Office of Mufti of Zanzibar is another evident example of the recognition of the application of Islamic law.¹¹⁴⁹ As a guardian of the Muslims in Zanzibar, the Office of Mufti is given number of functions that are connected to the administration of Muslim matters in the scope of Islamic law with the opinion of '*ulamā*' (Muslim scholar). According to the Act, the Mufti's functions includes; to give "fatwa" on any issue raised to him relating to any Islamic question which needs to be decided; and keep record of all "fatwa" issued by his office; to settle any religious dispute arising among Muslims; and disputes arising between Muslims and other religions in consultation with other leaders of those other religions; to organize Islamic research activities in Zanzibar conducted by public or private organizations, or any individual and to issue permits thereof in accordance with the regulations made by the Minister; and coordinate and supervise the preparation of curriculum of education for '*ulamā*', lectures, workshop, seminar and other Islamic activities within the country.¹¹⁵⁰

Francis e-Library, at pp. 5 – 6.

1145 Article 100 of the Constitution of Zanzibar [R.E. 2006] as amended by section 32 of Act No. 2 of 2002.

1146 Section 6 (1) of Kadhis Court.

1147 Section 10 (3) Ibid.

1148 Article 99 (1) (b) of the Constitution of Zanzibar as amended (1) by Article 30 of Act No. 2 of 2002. To strengthen the intention of the legislators, subsection 1 (c) of the same section restricting Court of Appeal to entertain any other matters mentioned in this Constitution or by any other law enacted by the House of Representatives.

1149 This Office was established in 2001 by the Office of Mufti Act. See section 3(1) of the Office of Mufti Act, 2001 (Act 9 of 2001) [R.E. 2006].

1150 See section 9 (1) (a) – (h) of the Office of Mufti Act No 9 of 2009.

This however does not mean the freedom of worship in Zanzibar is not guaranteed. A situational analysis of the right of freedom of worship in Zanzibar shows the need for further improvement especially on educating people to respect this principle. There has been a sort of violation of this freedom. On a number of occasions, there have been reports on the occurrence of incidences that violate Human and Constitutional rights of worship in Zanzibar which are also against the Universal Declaration of Human Rights.

2.7 Freedom of Expression

Freedom of expression is the political right to communicate ones' opinions and ideas to anyone who is willing to receive them. It includes any act of seeking, receiving and imparting information or ideas regardless of the medium used¹¹⁵¹. The Universal Declaration of Human Rights has recognized freedom of expression as a human right in international human rights law in International Covenant on Civil and Political Rights (ICCPR) Article 19 which read as,

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...¹¹⁵²

Article 18 of the Constitution of United Republic of Tanzania, 1977 also talks on the right of expression as;

Every person has a freedom of opinion and expression of his ideas; has outright to seek, receive and or disseminate information regardless of national boundaries; has the freedom to communicate and a freedom with protection from interference from his communication ...”

In Zanzibar, despite of the introduction of the freedom of expression in section 18 (1) of the Constitution of Zanzibar, 1984, the apparent step forward has been undermined by the retention of hosts of claw back constitutional and legal provisions where the Constitution states, “*subject to any law for the time being in force*”¹¹⁵³

Also:

1151 http://en.wikipedia.org/wiki/Freedom_of_speech.

1152 Ibid, Freedom of expression Wikipedia.

1153 The phrase Subject to any law being in force means in effect that the Constitutional guarantee of the right to freedom of expression is trumped by laws which may violate that guarantee.

Every person shall have the enjoyment of his freedom of expression, freedom to hold opinion without interference with his correspondence; it further states that, every citizen shall be entitled to receive information at any time in respect of national and international events which are important to the lives and functions of the peoples and also on matters of public interest.¹¹⁵⁴

Many constitutions and international laws allow for some restrictions on freedom of expression but only where they meet strict conditions. These restrictions must be prescribed under the authority of law, must also serve either one of the limited list of legitimate objectives of sufficient importance to warrant overriding constitutionally protected rights. Restrictions must be accessible and foreseeable so that citizens know in advance what is prohibited and may regulate conduct accordingly. International Law, Article 19 of the ICCPR permits, restrictions on freedom of expression only as necessary to protect the rights and reputation of others, national security or public order, health or morals. The Constitution of Zanzibar of 1984 fails to satisfy the three restrictive measures provided under international law with regard to the right to freedom of expression so accordingly it should be amended or those claw back clauses¹¹⁵⁵ should be removed.

Freedom of expression has long been identified as important by judges, politicians and commentators on the constitution. Blackstone, for example, saw freedom of expression as essential to the nature of a free state. It is therefore the right of every individual in the society to be free to give and receive opinions. Though this right has been enjoyed by many, the incidents of expulsion of the former minister, Mansoor Yussuf Himidi, from both the Zanzibar cabinet and the party poses a question on the guarantee of this right. The ruling CCM's National Executive (NEC) expelled Mansoor from his party in August 2014 for talking a radical stance against the union structure. This move made him lose his House of Representative seat.

Historically, before he was stripped of his party membership, in the middle of 2011 when he was a Minister for Agriculture and Tourism, Mansoor expressively indicated his viewpoint over the government's structure by saying that the two-government arrangement in the Union between Zanzibar and Tanganyika "is out-dated."¹¹⁵⁶ Mansoor told the House of Representatives that an ideal arrangement was that of three governments – the union, Zanzibar and Tanganyika government. His opinion was

1154 Section 18 (1) of the Constitution of Zanzibar, 1984 as extracted from; <http://www.article19.org/data/files/pdfs/publication> .

1155 Zanzibar: Democracy on Shaky Foundations, April 2000, p. 23, as extracted from (<http://www.article19.org/data/files/pdfs/publications>)

1156 Zanzibar: Two Government Structure "Out-dated," July 15, 2011 <http://unpo.org/article/12908>, (accessed on 18th December, 2014).

overt as he advocated for the three government and cautioned against using forums for discussing the union to threaten people, especially Zanzibaris, giving their views freely on the best form of the union between the two countries. Mansoor continued with his struggle for the advocacy of three-tier government even when he was sidelined by the ruling party following accusations that he had taken a radical stand against the Union structure.

Because of his view, Mansoor was frequently attacked and condemned by the followers of his party in public and even in the House of Representative. In 2012, he was removed from cabinet. This again indicated another level of the step taken against him for this stand over the government. Even if it may sound to be positive for the government to treat him that way, based on the argument by Dicey that freedom of expression is not fundamental right but a residual liberty, it can only be abrogated by the sovereign legislature, subject only to the non-legal constraint of political opinion. Hence, freedom of expression is identified not as intrinsically valuable but, rather, as a means to a valuable end.

2.8 Conclusion

Generally civil rights and liberty are among fundamental principle of human rights because they touch most the important rights which human beings are entitled to. Understanding the importance of these rights, different instruments have been passed at international level and as to at domestic levels, number of legislations has been enacted with the same view of incorporating the standards established by international covenants. As has been noted most of these rights are incorporated in both constitutions; the Constitution of the United Republic of Tanzania and the Constitution of Zanzibar, and the enforcement of the same become effective. There are still however, some state interference or claw back clauses that hinders the full enjoyment of the rights and make those instruments that establish the rights meaningless.

For the year 2014, a number of the violations have been reported had been caused by failure of the government to provide better mechanisms of the protection of those rights or even resulted from the act of the government agents in discharging of their duties without forgetting, however, those cases where ordinary citizens were directly involved in violations of the human rights. Right to life particularly has been interfered by both government and the people. There has been an increase in road accidents that led to the death of many people as a result of the negligence of the drivers and poor infrastructures. The operating and institutional environment of road transport does not favour road safety or high quality public transport. The road network was not adequate especially in urban centres where the number of vehicles is increasing rapidly. The implementation of the law has not been satisfactory as was seen in the case of “T one” and other cases where possibility of corruption were identified. Extra

judicial killing and the suicide case have also been reported. In addition the state did not take any effort to abolish death penalty where, as was reported there are still number of convicted accused who were sentenced to death in the year 2014. On the other hand, there has been some development in some of the civil rights but the report shows number of serious violation in various categories.

Chapter Three

Political Rights

3.0 Introduction

It is well known that the subject of human rights is an equally wide and evolving one. The divisions of various categories of rights are made essential to make a clear examination of these rights. They are categorized as civil and political rights; and social, economic and cultural rights. The choice of this categorization is informed by the fact that the two groups of rights represent a broad division of human rights. Civil and political rights represent the first generation of rights and socio-economic and cultural rights represent the second generation of rights. Having seen the status of civil rights and liberties in the previous chapter, it becomes appropriate to divulge the status of the political rights in this report.

Out of all of the development regarding to the politics, Zanzibar decided to be a democratic country. As outlined by the Constitution of Zanzibar, starting with the preamble, the people of Zanzibar declare that they are conscious of the fact that revolutionary teaching and thoughts shall be protected, fostered and sustained through and by democratic principles; and whereas, those principles can only be realised in a democratic society in which the Executive is accountable to a House of Representative composed of elected members and representatives of the people and also a Judiciary which is independent and dispenses justice without fear or favour thereby ensuring that all human rights are preserved and protected and that the duties of every person are faithfully discharged. Therefore, even section 24(1) of the Constitution of Zanzibar accepts the interference of the human rights and freedoms of a person if that limitation is necessary and agreeable in the democratic system.

There is a recognized need for the principles of democracy and constitutionalism in fostering the enjoyment of the political rights in Zanzibar. This is what makes the government to be responsive to the people's needs at the same time people be obedient to their government. But the only way to bring this state of affairs is the structure which will set up a basic foundation for the protection of the interest of both sides. In the nature of this country, this structure can only be brought by constitution. There arises a perception of majority of Zanzibaris that the constitution would solve the state's complexities and this becomes a response to all calls for the changes. In the simplest sense, it means there should be virtuous constitutional principles to be applied in governing the state. Since the constitution is the mother of all laws, it suggests the observance of the express and implied contents of its principles. The constitutional structures are concerned with the competition between the collective goals of the community and ideas of individual equality and freedom. It is an amalgamation of the

state interest and public good on one hand and the provision of the individual wants on the other hand. In real sense, people should be involved in making of their laws for the governance of their affairs.¹¹⁵⁷

In a real sense, it is always true that when the state applies its the powers to maintain the public interests, individuals fight against the state to limit the state's powers over their interests. These interests are technically claimed under the whim of the fundamental rights. In balancing of these two rival interests, constitutionalism appears as the middle man to settle the situation. Borrowing the words of Rosenfeld, "in the broadest terms, modern constitutionalism requires imposing limits on the powers of government, adherence to the rule of law, and the protection of fundamental rights."¹¹⁵⁸ The law governing the constitution, therefore, are concerned with the struggle between rival contenders for power, the constantly changing relationships between the different governmental institutions and the limits imposed on the government. The role of the state in respect, for example, of providing public services or regulating the economy also becomes a subject of discussion. In this regard, the disputes do not always involve constitutional matters but they are also connected to the idea of democracy.¹¹⁵⁹

On the other hand, it can also be argued that democracy entails certain basic rights of the individual, broadly covered within the concept of the rule of law, for example, equality before the law and a right to a fair trial and predominance of legal spirit. Except in a situation of intense emergency or in situation of unsettling the order or other people's rights, no government is expected to interfere with these basic rights even for a good social purpose. With this regard, constitutionalism and democracy are both closely related and intrinsically opposed. Though this can differ from state to a state or a situation to situation, there are various common features in all democratic states that give rise to the values of constitutionalism. Zanzibar, being a state of its own background, it has both specific and general traits of constitutionalism in the promotion of the political rights.

3.1 Freedom of Association in Trade Union

Internationally speaking, the freedom of association and Protection of the Rights to Organise Convention was one of the first international conventions of the International Labour Organisation (ILO); it forms part of the ILO core labour standards and is to be found under Convention No. 87 of 1948. It provides a set of rules for freedom

1157 Karen Syma Czapanskiy and Rashida Manjoo, The Right of Public Participation in The Law-Making Process and The Role of Legislature in The Promotion of this Right, *Duke Journal Of Comparative & International Law* [Vol. 19:1].

1158 Rosenfeld M. *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives*, (Durham: N.C: Duke University Press, 1994), p. 3.

1159 John Alder, *General Principles of Constitutional and Administrative Law*, 4th Edition, (New York: Palgrave Macmillan, 2002).

of association and rights of organisation. Together with the Right to Organise and collective bargaining Convention, it forms the basis for the ability of employees the world over to organise themselves in trade unions and thus negotiate with employers as equals. However, year after year, the International Trade Union Confederation (ITUC) states in its annual survey of violations of trade union rights that these rights are not being observed in their entirety, unions are prevented from carrying out their work and unionists threatened or even killed in many countries on all continents of the world. The ITUC and other international organisations are committed to ensuring that freedom of association and trade union rights are respected throughout the world.

Trade union rights and freedom of association are the basis for decent work and social dialogue because they are the foundation on which decent work is built. They are also a fundamental right. In its Universal Declaration of human rights of 1948, the United Nations (UN) states, “Everyone has the right to freedom of peaceful assembly and association,” adding “No one may be compelled to belong to an association.” When applied to the world of work, this means that everyone has the right to found or join employee organisations and trade unions. Furthermore, no persons may be forced to join a trade union organised by the state, or one that is in collusion with their employers.

In Zanzibar, protection of trade unions against interference is also protected by the law.¹¹⁶⁰ The law provides that “Every employee shall have the right to: (a) take part in the formation of a trade union or federation of trade unions,”¹¹⁶¹ provided that union or organisation shall not join or form part of trade union movement and shall be independent from political affiliation with any political party.¹¹⁶² The law further provides for the protection of the employees’ and employers’ basic rights by emphasizing that any person who is eligible under the constitution of a trade union or organization has a right to be a member of that trade union or organization on the payment of the required dues and to remain a member as long as he or she complies with the constitution of the trade union or organization.¹¹⁶³ The law provides for the enjoyment of the right to form association in term of trade unions restricts the interference by making it clear that employer or employers’ organisation and/or any person acting on behalf of an employer or employers’ organisation, is not allowed to promote the establishment of an employees’ organisation under the domination of an employer or employers’

1160 The Labour Relations Act No. 1 of 2005 [R.E. 2006]. Trade Union has been defined to mean an association of employees, whether registered or not, having among its objects the representation and promotion of the interests of employees and the regulation of relations between employees and employers and includes a federation of trade unions unless it is clear from the context that only the first level association is meant, but does not include an association that is dominated by an employer and shall not include employers’ association.

1161 Section 4(1) of Act No. 1 2005.

1162 Section 8(2) *ibid.*

1163 Section 7 *ibid.*

organisation, or shall support an employees' trade union by financial or other means with the object of placing such trade union under the control of an employer or employers' organization.¹¹⁶⁴

Independent trade unions that are exclusively duty-bound to represent the interests of employees are the best safeguard against such issues as poor pay, bad working conditions and arbitrary dismissal. Trade unions have rights too, otherwise they would be unable to do this work. It can be submitted that freedom of association is of no great value if there are no strong and independent trade unions. The unions need rights that will, for instance, enable them to negotiate with employers and conclude collective bargaining agreements and other collective agreements, in the certainty that they are free from interference on the part of the state. Such negotiations and agreements enable the unions to achieve improvements in the situation of the employees, provided the agreements are honoured. Another basic in trade union work is the right of labour to negotiate as the equal of industry. In addition, the unions must be able to monitor the agreements that have been made and, if necessary, ensure that they are enforced either through strike action or in the law courts.

In 2000, the Trade Union Congress of Tanzania (TUCTA) was founded as a new umbrella organization for the unions of the country. The main difference between it and its predecessor is that the TUCTA covers only Mainland Tanzania, the Zanzibar Trade Union Congress being responsible for Zanzibar. It has about 15,000 members.¹¹⁶⁵ Zanzibar Trade Union Congress of Tanzania with Support from Friedrich- Ebert- Stiftung has finalized the process of Merger of three affiliate unions into one, Zanzibar Public Service Workers Union (ZAPSWU). ZAPSWU, an amalgam of Zanzibar Local Government Workers Union, Zanzibar Plantation and Agriculture Workers Union and Researchers, Academicians, and Allied Workers Union of Zanzibar, came into effect on July 1st 2013. This final stage of merger of the Public Sector Unions was preceded by two trainings on leadership and public speaking skills for women young trade unionists aspiring for leadership positions in their respective union. The objective of these trainings was to increase the number of women and young leaders in the leadership cadre of the trade union fraternity.¹¹⁶⁶

The existence of these unions is very important. Looking at that point, in commemoration of the May Day this year, ZLSC organized a seminar on freedom and the rights of trade unions on two different occasions. On 2nd May, 2014 the seminar was held in Unguja where 45 participants attended, among which 27 were female and 18 male.

1164 Section 8 *ibid*.

1165 http://en.wikipedia.org/wiki/Trade_unions_in_Tanzania (accessed on 9th December, 2014).

1166 <http://www.fes-tanzania.org/home/fes-tanzania/zanzibar-trade-union-congress-zatuc-merges-its-affiliate-to-seven.html> (accessed on 9th December, 2014).

The same seminar was held at Pemba where a total of 39 participants attended, among which 21 were males and 18 females.

3.3 Right to Participate in Governance

The right to participate in governance is the most important right entitled to all citizens since participation is essential to every political part of every political system. It entails that everyone has a right to take part in governing of their nation particularly through the election of representative to their government. This involves engagement by the public in conducting their public affairs, which can range from political, social, economic or cultural, through policy and decision making process as individual or through their representatives. Whilst governance can be described to mean that the act of governing¹¹⁶⁷ or how a nation is run, citizens should be able to participate in the development of the policy and decision making, election and other democratic processes the effect them and the future of their children. Participation is the core human right based approach development.¹¹⁶⁸

The right to participate in governance can also be referred as “public participation.” This is again a political principle or practice, which may be used interchangeably with the concept or practice of stakeholder engagement and/or popular participation. Generally public participation seeks and facilitates the involvement of those potentially affected by or interested in a decision. The principle of public participation holds that those who are affected by a decision have a right to be involved in the decision-making process. Public participation implies that the public’s contribution will influence the decision.

The right to take part in governance has been guaranteed to all people without discriminations in the Constitution of Zanzibar of 1984. Persons with disabilities are entitled to enjoy equal rights as other members of the community. The question of persons with disabilities and the right to take part in governance needs a special impetus to ensure that vulnerable groups are treated fairly in the society. In order to ensure the enjoyment of this right by people with disabilities, the Zanzibar government has taken many steps to make it successful.

The Zanzibar Disability policy was adopted in 2004, and in 2006 the Persons with Disabilities Right and Privileges Act No.9 was approved.¹¹⁶⁹ According to the Act, the Chief Minister’s Office was made responsible for disabilities issues since 2004, where

1167 Governance-Wikipedia

1168 *Human Right Bulletin*, No 58 English, Zimbabwe Human Rights NGO Forum, January, 2011, p. 1.

1169 Shia & Nilson, Disability Rights in Tanzania, revised in 2011 (extracted from, www.msc.st/docs/HRBA-Disability-Tanznia-revised-2011-07-30.doc)

it now falls under the First Vice President's office following the 2010 constitutional amendment and change of the form of government to the Government of National Unity, though mainstreaming of disability in policy and programs is practically delegated to the different ministries.

Meanwhile, the proposed constitution has acknowledged the rights of people with disabilities and also has provided five special seats for people with disabilities.¹¹⁷⁰ The new proposed bill provides special treatments to the people living with disabilities by providing them with special care and promotion. Article 4 (4) of the proposed Constitution provides for the creation of alternative means of communication which are conducive for people with disability. In addition, Article 52 of the proposed Constitution establishes six categories of rights particularly given to people living with disabilities. Moreover Article 124 (2) (b) proposed that 5 seats for people with disabilities, to become members of the parliament as appointed by the President.

The logic behind the right to participate is to involve the people in the governance processes. It is the people who should govern. Therefore, the constitution should guarantee a legislative system for democracy with the aim of allowing people to fully participate in the governance.¹¹⁷¹ It is fair to comment that the Zanzibar's constitutional democracy is representative and participatory in its nature. The representative aspect embraces multi-party democracy, achieved through regular elections based on a common voters' roll and proportional representation; the participatory aspect goes further than regular elections every five years in that it guarantees involvement of each citizen in public life in between elections. These two aspects should not be seen as conflicting with each other but as complementary. To this extent public participation is linked to the right to political participation. The right to political participation in terms of international law¹¹⁷² has expressly recognised the right to participate in public life. In other words, public participation in the legislative process is an integral part of any democracy.

1170 Section 124 (2) (b), of the proposed Constitution, 2014

1171 Linda Nyati, Public Participation: What has the Constitutional Court given the public? *Merafong Demarcation Forum and Others v President of Republic of South Africa and Others* [2008] ZACC 10.

1172 International Covenant on Civil and Political Rights under Article 25 reads as follows: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."

The right to take part in governance has been established in Article 21 of the UDHR expounded in sub article 1 where,

- 21 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;
- (2) Everyone has the right to equal access to public service in his country; and
- (3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which be held by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

At the same time, the International Covenant on Civil and Political Rights expounds in Article 25 that:

Every citizen shall have the right and opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions; to take part in the conduct of public affairs directly or through chosen representatives; to vote and to be elected at genuine periodic election which shall be by the Universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and to have access on general terms of equality to public service in his country.

Regionally, the right has been introduced in the African Charter on Human and Peoples Rights, 1981. The Charter gives rights to all citizens to participate freely in the governance of their country either directly or by freely choosing representatives according to the law of the country.¹¹⁷³

3.4 Right to Participate in Governance in Zanzibar

The right to participate in governance in Zanzibar is given a due attention and therefore constitutionally guaranteed. In the Constitution of Zanzibar the right to participate is fundamentally protected by section 7 that gives right to any Zanzibari, who has attained the age of eighteen years to have the right to vote in the election taking place in Zanzibar. The Constitution also specifies that the House of Representatives, which is elected by the people, must ensure government by the people under the Constitution by providing a legislation to regulate the election processes.

Moreover, the Constitution of Zanzibar, 1984 and the Constitution of the United Republic of Tanzania, 1977 confer a right to the people to take part in the country's

¹¹⁷³ Article 13 (1), African Charter on Human and Peoples' Rights, 1981.

elections. The elections for Zanzibar is organized by the Zanzibar Election Laws while the elections for the Union falls under the Union National Election Laws.¹¹⁷⁴ Article 21 of the Constitution of Zanzibar, 1984 provides for the right to take part in the conduct of the government for all Zanzibaris either directly or indirectly through representatives. The voting exercise is conducted after every five years unless for special circumstances as stipulated in the constitution and the election Act of 1984. Every Zanzibaris of the age of majority is entitled to take part in the Zanzibar president elections, members of the House of Representatives and councillors elections. The elections are exercised pursuant to several laws of the land.

Based on these constitutional principles, Zanzibar has been holding elections periodically after every five years. Eligible voters enrolled in the Permanent Voters Register (PVR) get the opportunity to exercise their constitutional right to elect leaders of their own choice though, in some cases there have been allegations of some problems in the enjoyment of the right to participate in the governance, something which is claimed to be against democratic principles, there marked number of the development in recent years.

The political, legal and organizational reforms that have taken place in Zanzibar since 2010 to 2014 are said to have improved ZEC's image as an impartial and professional body, a long history of contested election results and perennial allegations of Permanent Voters' Register (PVR) inaccuracies and "ghost voters." ZEC still continues building public trust, increasing transparency and gaining the confidence of all electoral stakeholders in the run-up to the 2015 election. In ensuring the exercise of the right to vote, ZEC undertook a very important step to update the PVR. Following an update of the PVR in 2013, the current number of registered voters is approximately 460,000.¹¹⁷⁵ From 27th December, 2014 ZEC had an exercise of releasing identity cards for the voters who were registered in PVR.

The right of the people to elect their government through periodic elections that are free and fair is recognized as the not merely most basic of democratic rights but the real manifestation of the principles of constitutionalism. The exercise of this right to elect a government requires recognition of political parties as instruments of representative and participatory democracy. The composition of the elected representatives should be in proportion to the votes cast. This right needs to be protected. The protection of this right requires the recognition of the right to vote and the need for an electoral system that is inclusive and produces a true representation of the will of all Zanzibaris. It becomes meaningful only when there is a guarantee that the elections will be free and fair and that the result is accepted by all, even by those who lose the election. It

1174 Elections Act, 1985 (Act No. 1 of 1985).

1175 Capacity Needs Assessment, Zanzibar Electoral Commission, July 2014, p. 8.

entails that voters must be able to choose between political parties that are capable of offering the people a choice of programmes. For the year 2014, ZEC conducted two by-election; one of Kiembesamaki constituent, Urban-West District which was held on 2nd February, 2014 and local authority election of Kiboje Ward, Central District that was held in 27th April 2014. These elections appeared to be conducted fairly and with the safeguarding of the public peace.

In exercising the powers vested upon it by the constitution, ZEC undertook a task of investigating and assessing the existing constituents from May to August 2014, with the aim of developing proper and relevant divisions of the boundaries and names of the constituents that will be proportionate with the number of the voters. This task was carried out in pursuance of the Article 120(3) which provides powers to ZEC to determine all the constituencies to have as far as possible an equal number of residents. The commission however has been given discretion to dispense with this condition to the extent deemed appropriate taking into consideration:

- a) The size of the population particularly ensuring appropriate representation in urban areas and towns in rural areas thinly populated;
- b) Population growth;
- c) The means of communication;
- d) Administrative demarcations and for the purposes of this article the number of inhabitants in any part of zanzibar shall be ascertained by the latest census report conducted in accordance with the law.

However, there were outcries from the opposition parties that ZEC intends to create other constituencies and limit the possible winning constituencies of the opposition. It was justified by the ZEC Director that ZEC does not have that said motive instead it exercise its jurisdiction as vested by the law. In addressing this issue the Director, Salum Kassim Ali, appeared in the media responding to these complaints that ZEC has power determine not only constituents but also the polling stations. This is made only when there is need to do so as to ease the process of the elections.¹¹⁷⁶ In this process the commission had collected opinions based on the schedule which was released to the

1176 6(1) of the Election Act No. 11 of 1984 provides “The Commission shall divide every constituency into polling districts and shall publish in the Gazette a notice specifying such polling districts. (2) Where the boundaries of constituencies are varied, or in any other circumstances in which the Commission thinks it appropriate so to do, the Commission may alter the number and area of polling districts within a constituency; and upon such alteration being made it shall publish in the Gazette a notice specifying the alteration. (3) Where as a consequence of the establishment or variation in the boundaries of a constituency, an area which hitherto constituted a polling district in one constituency lies wholly within another constituency, the Commission may declare that such area shall cease to be a polling district within one such constituency and shall constitute a polling district in the constituency in which the area lies.

public. This involved (i) all political parties, district councils, (ii) Municipal Council and Town Councils through their respective Districts, and (iii) non-governmental organizations. The commission has promised to release its decision and publish in the official gazette whether the constituents are changed or not later according to the provision of the laws.¹¹⁷⁷

The Zanzibar Electoral Commission (ZEC) has been established by Section 119 (1) of the Constitution of Zanzibar, 1984. ZEC activities are governed by the Act¹¹⁷⁸ which is the responsible for management and supervision of the elections of the President of Zanzibar, members of the House of Representatives and councillors.¹¹⁷⁹ The ZEC chairman is appointed by the President,¹¹⁸⁰ other members are also appointed by the President in consultation with the head of Government business in the House of Representatives and two members are appointed by the President on recommendation by the opposition leader in the House of Representatives or if there is no opposition leader in consultation with the political parties.¹¹⁸¹

3.4.1 Women Participation

Women are actively involved in the government and engaged in decision making of the important issue in the countries. There is no discrimination in term of gender. Women are given equal opportunities to participate in governance. In politics, women appear in the front line of their political parties in all of the parties' activities. They take a number of the parties' leadership at all levels. In governance participation, women contest various posts including membership in House of Representatives and Parliament. In the history of Tanzania, women have even participated in running for president. A good example is that of Anna Claudia Senkoro, a Tanzanian politician and member of the Progressive Party of Tanzania-Maendeleo (PPT-Maendeleo) who stood as the PPT-Maendeleo presidential candidate in the 14th December 2005 elections. Senkoro was placed eighth out of ten candidates, receiving 0.17 per cent of the vote (18741 votes) from that election. She was the only woman to run in the election and the first woman in Tanzanian history to run for presidency.¹¹⁸²

3.5 Freedom of Association and Assembly

Freedom of association and assembly is the one of the human rights protected by all states. It has been introduced by the Universal Declaration of Human Rights (1948). A resolution was passed by UN General Assembly article 20, 23, though in itself

1177 Jecha Salim Jecha, the Chairman of Zanzibar Electoral Commission, Mwongozo wa Uchunguzi wa Idadi, Majina na Mipaka ya Majimbo ya Uchaguzi ya Zanzibar, June 2014, at p 9.

1178 Elections Act, 1984 (Act No. 11 of 1984).

1179 Ibid Section 5 (a).

1180 Section 119 (1) (a) of the Constitution of Zanzibar, 1984.

1181 Section 118 (1)(c) of the Constitution of Zanzibar, 1984.

1182 http://en.wikipedia.org/wiki/Anna_Senkoro (accessed 17th October, 2014).

is not formally binding. However, the UDHR established important principles and values which were later elaborated in legally binding UN treaties. Articles 20 and 23 protect the right to freedom of assembly and association and the right to form and join trade unions.¹¹⁸³ Later, International Covenant on Civil and Political Rights (1966) elaborated the principles laid out in UDHR and is legally binding on all states who have signed and ratified its provisions. Article 21 asserts;

The right to peaceful assembly shall be recognized, no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society ...

While article 22 stipulates that, “Everyone shall have right to form and join trade unions for the protection of his interests.”¹¹⁸⁴

This can be categorized in two ways, freedom of association politically like joining a political party,¹¹⁸⁵ and conducting rallies, and freedom of association in trade union.¹¹⁸⁶ The status of freedom of association is another remarkable feature in the topic of human rights. This again marks another step of the development of Constitution of Zanzibarism. As in many democratic countries, in Zanzibar freedom of association and assembly has taken a shape similar to that introduced by the Universal Declaration of Human Rights (1948)¹¹⁸⁷ and the International Covenant on Civil and Political Rights of 1966. However, as in many constitutions in the world these rights are not without restrictions. The apparent provision has been undermined by the retention of hosts of claw back constitutional provisions where the Constitution states,

Nothing provided for by or carried out in accordance with any law of the land shall be construed as being in conflict with or in contravention of this Article to the extent that principal legislation provides.¹¹⁸⁸

1183 http://www.hrea.org/index.php?doc_id=406#instruments (last accessed on October, 2013).

1184 Ibid.

1185 Section 20(1) of the Constitution of Zanzibar, 1984 provides Every person is entitled to freedom, subject to one’s free choice to freely and peaceably assemble, associate and co-operate with other persons, and more specially to form or join associations or organisations formed for workers human rights organisations or other organisations for his benefit and which are established in accordance with the laws of the land.

1186 Section 6 (1)(a)(b) of the Labour Relation Act, 2005.

1187 The UDHR established important principles and values which were later elaborated in legally binding UN treaties. Articles 20 and 23 protect the right to freedom of assembly and association and the right to form and join trade unions.

1188 This phrase implies with the effect that the Constitutional guarantee of the protection of freedom of expression is trumped by laws which may violate that guarantee. Article 20(2) of the constitution allows enterfeerece of this right in (a) matters related to the interests of defence

But despite the explicit restrictions on the protection of freedom of assembly and association, Zanzibaris are free to engage themselves in politics and join or disjoin from any political party. The year 2014, we witnessed a good practical example of the enjoyment of the freedom of association and political tolerance in the case of Mansoor Yussuf Himid. In 2005 general elections, he was elected member of House of Representatives in Kiembesamaki constituency on CCM ticket. He was the Minister for Water, Infrastructure, Land and Environment where he started as deputy minister; a member of the Zanzibar Business Council; and member of the consultative and reconciliation committee between CCM and CUF that led to a Government of National Unity after 2010 general elections. Mansoor's standpoint of three-tier government drove him to denounce his party. His ideology in advocating for three governments was not wedged even on the tip of serious confrontation with his party. On 8th June, 2014, Mansoor announced that he was decamping to the opposition party-Civic United Front (CUF). He announced his move during a public rally to show early alignments ahead of general elections of 2015.¹¹⁸⁹ He contended that he has chosen CUF as his political home, saying the party stood and practiced what he now believed in. He was reported to have commented that his decision was made due to CUF's leaders, especially Secretary General Maalim Seif Sharif Hamad's good stand; they are willing to openly fight for the interests and nationality of Zanzibaris.¹¹⁹⁰ Mansoor is now full-fledged member of the CUF and is continuing with his political aspiration as he was doing when he was a member of CCM. This is a clear indication of the political maturity in Zanzibar that marks remarkable line in politics and democracy.

3.6 Unsettled Controversy over the Union

The union between the then Republic of Tanganyika and Peoples Republic of Zanzibar which was formed on 26th April, 1964 has been an issue in Zanzibar for a long period of time. There are those who support it as it is and there are some who support it with some recommendations that demanding a change in the form of the union, where some demand the total dissolution of the union.

Zanzibar being part of Tanzania has witnessed another remarkable and historic event in the process of the constitutional making in Tanzania. It officially embarked on the third stage of her constitution making, following the appointment of the members of the special Constituent Assembly.¹¹⁹¹ The Constituent Assembly which was called in

and security of the citizens, health aspects and those of society; (b) matters related to the preservation of rights and freedoms of other persons; (c) matters related to certain limitations for Government officials, military personnel or any other persons appointed on their free will.

1189 Mwinyi Sadallah, The Citizens, Isles' Mansoor decamps to CUF, Posted Monday, June 9 2014.

1190 Ibid.

1191 Based on the Constitutional Review Act Cap 83 of 2011 the first step was the constitution of the Commission, the second was the formation of the constitutional fora and submission of the

Dodoma on 18th February, 2014 to discuss and propose the Tanzania Constitution, apart from provoking questions about whether it was ‘representative’ both in terms of its composition as well as the views that are given a forum on the floor,¹¹⁹² raised concern to a number of people. Some formed an opinion that the whole process of appointing and formulating the Constituent Assembly defeated the inception of the Constitutional Review Act, Cap 83 to create a status of popular participation in the constitution making process at two levels, through direct participation such as through the public meetings designed to obtain views countrywide; and through representation in the Constitution or Katiba Councils, commonly known as ‘*Mabaraza ya Katiba*’ as well as the Constituent Assembly.¹¹⁹³

It had been also reported that President of the Zanzibar Law Society and member of the Constitution Review Commission, Awadh Ali Said argued that from the beginning, there was a deliberate endeavour by the ruling party to maintain steady control over the process and its outcome. Said had been reported to have asserted that, “from the outset, when drafting the law, the ruling party ensured that a majority of its party members dominate the organs that will oversee the constitution review process [including] the Constituent Assembly...” This complaint had even caused the Constituent Assembly to be hijacked by politicians.¹¹⁹⁴ Peter Mziray, Chairman of the Council of Political Parties is reported to have blamed Tanzania Kwanza and UKAWA for having caused the emergence of the disputes in the assembly as he said “activities and mobilizations of these groups have been fanning the hatred and hostility among the members of the CA and, therefore, weakens the spirit of the working together and reaching compromise in matters the members differ on.”¹¹⁹⁵ At the end of this confrontation, UKAWA walked out¹¹⁹⁶ leaving the members from the ruling party and 201 group to proceed the exercise up to the end.¹¹⁹⁷

bill to CA.

1192 Salma Maoulidi, Contesting representation in Tanzania’s Constitution-making process, Constitution Net, 27th March, 2014, <http://www.constitutionnet.org/news/contesting-representation-tanzanias-constitution-making-process> (accessed on 27th November, 2014).

1193 Ibid.

1194 The constituent assembly was experience with continuous contradiction between emerged two groups namely Tanzania Kwanza, which was largely made up of CCM members and the Coalition of Defenders of The People’s Constitution Commonly known as Umoja wa Katiba ya Wananchi (UKAWA) which was composed by the opposition parties that are represented in the parliament of the United Republic of Tanzania.

1195 Benard Lugongo, *Tanzania Kwanza and Ukawa are to be blamed*, The Citizen, Friday, 25th March, 2014.

1196 Lydia Shekighenga, Ukawa: We’re not going back to Dodoma, The Guardian,, IPP Media, 22nd April, 2014 <http://www.ippmedia.com/fronted/index.php?l=67160>, (accessed on 27th November, 2014).

1197 These are 201 members appointed under chapter 83 of the Constitutional Review Act representing the following interest groups: 20 from NGOs; 20 from Faith Based Organisations; 40 from registered political parties; 20 from higher learning institutions; 20 from groups with spe-

The Draft constitution was made and presented to the President of The United Republic of Tanzania for further action albeit the comments that the proceedings of the Constituent Assembly committed sacrilege against the description of Tanzania's constitution as being holy.¹¹⁹⁸ The claims of unfair opportunities given to the members of the assembly to address their opinions was a major cry of the people of Zanzibar. These views speak loud in relevance of the principles of constitutionalism. The constitutional making process appeals largely to be the public exercise. Opinions and potential positive contributions from people from different backgrounds, need to be respected, taken and regarded.

On that behalf, it is claimed that the process was supposed to be very loyal in seeking to advance the ends of society since it had been a tendency in the political history of many societies to replete with struggles for an optimal balance between the few on whom constitutions confer power and the vast majority for whose benefit it is supposed to be exercised.¹¹⁹⁹ Giving the general public to forward their input in constitutional making could be of worth to mention in the eyes of constitutionalism. Although the prevalent perception about the draft constitutions it was made by popular majorities, and that it was drawn up democratically, a closer examination can reveal it is not far from the reality that constitutions have almost always been drawn up by minority dominant groups.¹²⁰⁰

The draft constitution is counted a step forward in the making of the constitution in Tanzania. It is now awaiting for the referendum which is expected to take place anytime around 30th April 2015. However, while we are waiting for the referendum, one would have to take into account the observation on the status of the union. There are arguments that the status of the union between Tanganyika and Zanzibar had never been given a permanent solution since the outbreak of the complaints that it was not properly made. It was expectations of many people, particularly Zanzibaris, that the process of the constitutional making would have been a mechanism of providing

cial needs; 19 from Trade Union organisations; 10 from an association representing livestock keepers; 10 from fisheries association; 20 from agricultural associations; and 20 from any other group of persons having common interests.

1198 Novatus Rweyemamu, Is Tanzania's Proposed Constitution Sacrilege? IDEA, 27th October, 2014, <http://www.constitutionnet.org/news/tanzanias-proposed-constitution-sacrilege>, (accessed on 27th November, 2014). See also the decision of the high court which referred to Tanzania's constitution as being "a serious and solemn document" and as being of a "sacrosanct nature." *Elizabeth Stephen and another v. Attorney- General* [2006] TLR 404 at pp. 415 and 416.

1199 Okoth-Ogendo, HWO, "Constitutions without Constitutionalism: Reflections on an African Political Paradox" in Greenberg D, Katz SN, Oliviero MN and Wheatley SC (eds) *Constitutionalism and Democracy: Transitions in the Contemporary World* (1993), 66.

1200 Daudi R. Mukangara, Forms and Reforms of Constitution-Making With Reference to Tanzania, UTAFITI (New Series) Special Issue, Vol. 4, (1998-2001), pp. 131 – 150.

solution to the union issues. Many of them showed up to express their opinions before Constitutional Review Commission (CRC) commonly known as the Warioba Commission where the main topic which attracted national debate was on the number of the governments forming the union. This has made the commission to propose the first draft of the constitution which would cater to the cries of the public only to be changed by the Constituent Assembly.

It was pleaded during the opinion collection that if the union has to continue, it should be restructured. Many called for the establishment of three governments, instead of two: one each for Tanganyika and Zanzibar and one for federal Union. They have formed a belief that the Union as it exists today will continue to have problems, the solution proposed is to have an authority responsible for non-union matters in Tanganyika, another in Zanzibar and a third responsible only for union affairs. Plainly, it is argued that the present union government is nothing but Tanganyika government that enjoys the powers with respect to non-union matters throughout the union besides the non-union matters of Tanganyika. Zanzibaris therefore, feel the mechanism evolved is more or less a way to swallow Zanzibar because the latter has authority with regard to non-union matters to the government of Tanganyika whereas Tanganyika did not surrender anything and only has more powers.¹²⁰¹

The second draft of the Constitution released to the public on the 30th December 2014, by the Commission, contained 271 articles, and proposed a three-tiered government with separate administrations for the Mainland and Zanzibar and an umbrella unity government. The CRC Chairman Joseph Warioba contended that a major rethink of union issues was required for the present system to work effectively. As he said, “We need to have a three-tiered government system – Each side should have its own government that will handle its own affairs.” He also mentioned that more than 61 per cent of Tanzanians from the Mainland favored a three-tier union, 13 per cent wanted one government, and 24 per cent opted for the current two-tier system. After CRC listened to what people said, they have settled for three governments.¹²⁰² There was also a report by Warioba that in Zanzibar, 34 per cent of people said the current two-tier system should be retained, 0.1 per cent proposed a single government, and 60 per cent preferred a treaty-based union. However, despite all of these attempts, on 2nd October, 2014 the Assembly’s chairman, Samuel Sita announced the official approval of the proposed constitution by the Constituent Assembly¹²⁰³ without upholding the

1201 G. Thomas Burgess, Ali Sultan Issa and Seif Sharif Hamad, *Race, Revolution and the Struggle for Human Rights in Zanzibar: The Memoirs of Ali Sultan Issa and Seif Sharif Hamad*, (Ohio University Press, 2009), p.271.

1202 <http://www.africareview.com/News/Tanzania-draft-constitution-retains-three-tier-union/-/979180/2131370/-/13f83lqz/-/index.html> (Accessed on 12th December, 2014).

1203 Fumbuka Ng’wanakilala, “Tanzania Assembly Approves Draft Constitution, Opposition Cries Foul,” Reuters, Thursday 2nd October, 2014.

proposal of the commission to have a three-tier system.¹²⁰⁴ This resulted in the creation of another forum of discussion.¹²⁰⁵

The number of governments has been a long standing riddle since the day the union was formed. As it can be observed that even the form of government intended under the Articles of the union is claimed to be controversial.¹²⁰⁶ There are a number of arguments that the Articles of union did not intend to create a two government system of the union. The then President of Zanzibar, Aboud Jumbe has once analysed and

1204 Chapter six, article 60(1) of the Draft Constitution.

1205 It is reported that same like this act was once done by his immediate predecessor, Former President Benjamin Mkapa in 1998 when retired judge Robert Kisanga had suggested for a three-tier Government structure. Then Head of State was vehement and he even lost temper while discarding Judge Kisanga's Commission findings that his team had gone beyond the terms of reference. Earlier in 1992 former Chief Justice Francis Nyalali had suggested the same, the three-tier structure but the President Ali Hassan Mwinyi was diplomatic enough not to throw any insults to the now deceased Nyalali, although he equally chose to ignore this suggestion but allowed Tanzania to re-introduce multiparty politics in the same year. In 1984 the Zanzibar's President Aboud Jumbe who was as well the First Vice President of Tanzania was forced into a resignation after he had suggested for a three tier structure. He was working under the founding of Tanzania Julius Nyerere who was to voluntarily retire one year later. Elias Mhegera, Constitution making process in Tanzania: students in tertiary institutions shower praises to judge (rtd) Joseph Warioba, Sunday, April 20, 2014, <http://mhegeraelias.blogspot.com/2014/04/constitution-making-process-in-tanzania.html>, (Accessed on 12th December, 2014).

1206 Among the scholars who have been in the forefront to analyse the issue of the origin of union is Professor Issa G. Shivji, who has widely written about constitutionalism. Shivji's provides the first detailed analysis of the fundamental legal foundations of the Union between Tanganyika and Zanzibar which led to the birth of the United Republic of Tanzania in 1964. He constantly seeks guidance in the founding document, the Articles of Union, agreed between President Julius Nyerere of Tanganyika and President Abeid Karume of Zanzibar. In the course of his discourse he argues that the Articles of the Union has the scope of an International treaty at the international level and concentrates largely on its politico-legal aspects in terms of the principles of International Law and should be ratified by both Legislatures of Zanzibar and Tanganyika. Shivji indicated doubt however whether or not the Revolutionary Council of Zanzibar ratified the Articles of the Union and enacted a law to this effect as was done by the Parliament of erstwhile Tanganyika since there was no law (Act) passed by the Zanzibar Legislature to this effect. For further studies see Issa G Shivji, *Tanzania the Legal Foundations of the Union*, Dar es Salaam University Press, 2nd Edition, 1990. This was also reported to have been openly confirmed by Wolfgang Dourado, the then Attorney General and Minister for Justice of Zanzibar. See Chris Maina Peter and Haroub Othman, *Zanzibar and the Union Question*, Zanzibar Legal Services Centre Published Series, Book No. 4 pp. 75 – 76. Aboud Jumbe, former president of Zanzibar, argues that the structure of the Governments in the United Republic of Tanzania, as intended in the Articles of the Union is that Federal with three governments, the government for the United Republic of Tanzania, the government for Tanganyika and government of Zanzibar. See Aboud Jumbe, *The Partnership: Tanganyika –Zanzibar Union: 30 Turbulent Years*, Amana Publishers, 1995 at p.22.

confirmed three governments;¹²⁰⁷ one is for Zanzibar, and Tanganyika respectively and the other for the Union of two namely peoples Republic of Tanzania. Even the intentions of the union have still been questioned by many. Some contend that President Karume sought a unitary arrangement. Others assert that Karume wished to create a federal government instead of a Union. Yet, there are those who argue that Karume thought that the union was a first step towards the establishment of an East African Union but the most popular view has been that, the ultimate intention of both Presidents Karume and Nyerere was to have a unitary form of government which is per se contrary to the Articles of the Union.

In view of these arguments, the “two governments” system as it is pleaded was merely an experiment to allay the fears of Zanzibaris, and that the actual intention was the eventual creation of a unitary state. It is also said that the essence of having a list of union matters in the Constitution is to indicate the powers of the Zanzibar Government which were surrendered to the union government; and that in adding more matters to the union list from time to time, is but a gradual transfer more of the power of the Zanzibar Government to the union government.¹²⁰⁸

In contrast, according to those who favour the two-government structure (i.e. the current and proposed arrangement), are of the view that it would ensure the intact remainder of the Union. According to this view, forming three governments is a recipe for unnecessary trouble as such a structure would be considerably more expensive and duplicative of those structures that currently exist at the union level. It is worth to note that the official policy of CCM has been to maintain the two government structure. Still there are people who do not subscribe to any of the above mentioned views. For example Zanzibaris in this regard plead that the constitutional form should be that of a federal scheme where sovereignty is deemed to be divisible.¹²⁰⁹ Although the discussion will continue, the decision as to whether or not Tanzania adopts the revised constitution will be determined by a referendum expecting to take place in April 2015.

There is also a cry over the years that there is a tendency of increasing the union matters at the rate at which Tanganyika has been seen to be swallowing Zanzibar. Originally, the Articles of the union devised an arrangement where, in two governments, two legislatures and two judiciaries were created. The government of Zanzibar was made responsible for all non-union matters while the Tanzanian government was made responsible for union matters all over Tanzania and all non-union matters for Tanganyika. In effect however, the Tanzania government has double the roles, namely,

1207 See Chapter Two by Aboud Jumbe, *The Partnership: The Union of Tanganyika and Zanzibar-30 Turbulent Years*, (Dar es Salaam: Amana Publishers, 1997).

1208 Chris, Maina Peter and Haroub Othman, *Zanzibar and the Union Question*, Book No. 4. (Zanzibar Legal Services Centre Publication Series, 2006), p. 21.

1209 Ibid at 20.

to take in charge of Tanganyika Government and at the same time it is the Tanzania Government responsible for all union matters.¹²¹⁰

The Articles of the Union contained only eleven Union matters.¹²¹¹ The fact that union matters have increased from the original eleven items contained in the Articles of the Union to the present 22 items is a source of controversy in both its legality and constitutionality of the increase in the list and its political legitimacy both in substance and content. It formed the view that the manner of expanding the list of the union matters was illegal and unconstitutional.

Many arguments were raised in the ongoing process of the constitution-making with regards to the increased number of union matters. Among the majority opinions suggested that, there is need to reduce union matters and reinstate the original list as per the Articles of union. This was a very serious issue that even appeared to endanger the union. Finally, the Constituent Assembly had drafted a proposed constitution that reduced the union matters from 22 to 14. These are:

1. The Constitution and Government of the United Republic
2. Defence and security of the United Republic of Tanzania
3. Security of Civil Aviation
4. Citizenship and Immigration
5. Police force
6. Currency and Bank
7. Income Tax, Corporation Tax, Customs and Excise Duties
8. Foreign Affairs
9. Registration of political parties
10. The High Court and the Court of Appeal
11. Higher Education
12. The National Examinations Council of Tanzania and all matters connected with the functions of that Council
13. Meteorology
14. The Public Service of the United Republic

Though some changes are proposed to be made on the number of the union matters which are proposed to be reduced to fourteen, it is argued that in reality they are

1210 Chris Maina and Haroub op. cit p. 130.

1211 See chapter one at 1.1 above.

more than that. This is because some items grouped several matters together. It would therefore, be more accurate to say, as some argue, that these are serially fourteen “containers” that loaded number of individual matters each. However, in the process of the managing union issues, the draft constitution proposes special articles that will provide for the proper mechanism of the maintenance of the union issues. Article 122 of the draft constitution proposes for a special committee that will be referred as *Tume ya Mambo ya Muungano*” to deal with all union matters. However, apart from this proposal, the issue of the non-union matters regarding Tanganyika has not been given any treatment. The Union Government is still exercising jurisdiction over non-union matters of the Mainland.

3.7 Conclusion

Freedom of association in Tanzania is a mandatory requirement for any person wishing to take part in the governance and the Constitution of Zanzibar 1984 has guaranteed the right to take part and association. However, the rights have been curtailed by some laws so that their implementations create room to deny other people the chance to take part in governance.

Looking at the functions and importance of the right to participate and from an association, it can be submitted that a special program is needed to raise the awareness and knowledge of the rights of employers’ and workers’ organizations to freely organize and engage in voluntary collective bargaining and to enhance the capacity of governments, employers’ and workers’ organisations to implement and put into practice the standards and principles on freedom of association and collective bargaining.

Chapter Four

Social Rights

4.0 Introduction

Social rights are those that are necessary for full participation in the life of society. They include at least the right to education and the right to found and maintain a family but also many of the rights often regarded as ‘civil’ rights: for example, the rights to recreation, health care, privacy and freedom from discrimination.¹²¹² Social rights can be further defined as rights meeting basic needs that are essential for human welfare.¹²¹³ The definition serves to highlight the point that social rights are entitlements to the avoidance of severe deprivation not rights for the satisfaction of individual preference. They incorporate a safeguard against poverty not the provision of a life in luxury.¹²¹⁴ Social rights require social provisions where the government has a role to play to ensure that they are implemented.

Economic, social and cultural rights are part of the Universal Declaration of Human Rights, and are legally protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Tanzania is a party. This Covenant comes with some immediate State obligations. States party to the Covenant are obliged to provide core essentials of each standard, e.g., education, health, social protection and cultural life.

In Zanzibar, Economic, Social and Cultural rights were incorporated in the Constitution of Zanzibar, 1984. However, these rights have proved to be difficult to be enforced and remain a challenge to the government in Zanzibar.

The fundamental principle of social rights means every individual citizen is entitled to these rights which can be exercised only in relationship with other human beings as a member of a group and which can be made effective only if states act to safeguard the individual environment.¹²¹⁵ The chapter will assess the situation and legal framework of social rights in Zanzibar together with the level of implementation.

1212 <http://www.seedofchange.ceipes.org/index.php/what-are-social-rights> (accessed on 12th February 2014).

1213 See Virginia Mantouvalou (2010), *The Case for Social Rights in Debating Social Rights*, Georgetown University Law Centre, p. 3 at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1330> (accessed on 12th February, 2014).

1214 Ibid.

1215 See *Fundamental Social Rights in Europe*, Working Paper 9. http://www.europarl.europa.eu/workingpapers/soci/pdf/104_en.pdf (accessed on 12th February 2014).

4.1 Right to Education

Education in its general sense is a form of learning in which the knowledge, skills, values, beliefs and habits of a group of people are transferred from one generation to the next through storytelling, discussion, teaching, training, and or research.¹²¹⁶ The right to education requires that individuals are provided opportunities to have an education at all levels of the education systems, that is, from early childhood education, primary/basic education to tertiary education. The right to education is important to an individual as it enables fulfilment or enjoyment of other rights like freedom of expression, and the right to participate in public affairs. In practice, the right to education is an empowerment right. This is because having an education provides individuals with the means to live sustainable livelihoods.

Education as a right is guaranteed by a number of International instrument like Article 26 (1) of the Universal Declaration of Human Rights which insists on free education for all,¹²¹⁷ at least at the elementary and fundamental stages and shall be compulsory. It further expounds that education shall be directed to full development of human personality and to the strengthening of respect of human rights and fundamental freedom, (Article 26 (2)).¹²¹⁸ The International Covenant on Economic Social and Cultural Rights, 1966,¹²¹⁹ the Convention against Discrimination in Education, 1960, the African Charter on Human and Peoples Rights, 1982.¹²²⁰ All insist on and aim at protecting and promoting education for all people without discrimination.

The right to education in Zanzibar is not enforceable. Instead the Constitution provides it as a part of fundamental objectives and directive principles and policies, which one cannot enforce in the courts of law.¹²²¹ However, this right is provided by the Education Act, 1982¹²²² which provides that every Zanzibari has the right to education up to basic education.¹²²³ Section 19 of the Act provides for right to compulsory education, that is to say, every child between the ages of 7 and 13 years, must be enrolled for primary education.

4.2 Zanzibar Education Policy

The Zanzibar education system presently offers 10 years of compulsory education

1216 <http://en.wikipedia.org/wiki/Education> (accessed on 14th February 2014).

1217 The Universal Declaration of Human Rights 1948.

1218 Ibid.

1219 Section 13.

1220 Section 17.

1221 Section 10(f) of the Constitution of Zanzibar 1984.

1222 Act No. 6 of 1982 as amended by Act No. 4 of 1993.

1223 According to Section 20(2) of Act No. 6 of 1982 basic education means basic primary and junior secondary education which every child of any citizen in Zanzibar is entitled to be provided.

beginning from Standard One to Form Two.¹²²⁴ This will change from 2015 when the Education Policy of 2006 is set in motion and Zanzibar begins offering two years of nursery education, six years of primary education and four years of secondary schooling. Free education means free tuition pursuant to Chapter 9 of the Education Policy 2006.¹²²⁵ Thus parents make a nominal contribution from TZS 20,000 to TZS 30,000 per year¹²²⁶ to assist with essential materials and operational costs.

4.3 Challenges Facing Education Sector

There are a number of challenges facing the education sector in Zanzibar. Most of the challenges are linked to the narrow budget and poor administration and management within the ministry.¹²²⁷

4.3.1 Budgetary Allocation

The impact of education sector budget allocation has been a focal point in issues related to development in education. The problem was reported in the 2012 Human Rights Report though a slight development has been noticed. It is an indisputable fact that education development requires a good budget which should be obtained in time so that planned projects can be implemented. A total of TZS 103, 633,950,000 was requested for the financial year 2014/2015 year. The amount was to cover all departments within the Ministry of Education and Vocational Training. The amount seems to be lower than that of the previous year which was TZS 115,747,619,000. However the dependency of the budget on donor funds is another area which needs to be re-examined in budgetary planning. The contribution from donor funds is about TZS 24,132,450,000 almost eight times money contributed by the government which is TZS 3,300,000,000.

The Centre recommends that the government finds alternatives to the high dependence on donors. Donor funds generally go hand in hand with their interests and foreign policy and if these are severed or deteriorate then it will have serious repercussions.

4.3.2 Registration of Nursery Schools

Educating people is a long process which starts with the foundations. Nursery schools have been introduced in Zanzibar a long time ago. . The essence of kindergartens is to prepare children for enrolment in primary schools. Kindergarten education or nursery education is provided by both government and private initiatives but all are registered by the government.

1224 Compulsory basic education is provided free in public schools for ten years covering seven years of primary and three years of first cycle lower secondary education.

1225 See Chapter 3 and 4 of the Education Policy 2006.

1226 Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2013, p. 398.

1227 Human Rights Report 2013.

Up to 2014, there are about 279 nursery schools which have been registered in Zanzibar, among those schools 244 are under private ownership and 35 are owned by the government.¹²²⁸

The total number of pupils in nursery schools until 2014 was 46880. The number is bigger than 30912 pupils counted in 2013.¹²²⁹ Currently, the government and private sectors have engaged in the training of 250 nursery school teachers and constructing recreation centres for 30 nursery schools.¹²³⁰ However more needs to be done if the new Education Policy is to take off smoothly as the policy makes nursery education part of basic education for all children.

4.3.3 Registration of Primary and Secondary Schools

At primary school level, there were 359¹²³¹ schools in the year 2013/2014 registered to provide primary education. Among those, 270 are government school and 89 are privately owned with a total of 252,938 student enrolled. The data indicates that enrolment in primary education has improved to 102.5 per cent compared to 124.4 per cent reported in 2012/2013.¹²³²

Government primary schools have successfully enrolled all 35,535 pupils registered for primary school where among the enrolled students 17,365 are girls and 18,170 boys.¹²³³ Boys outnumber the girls in primary education while no pupil of school-going age has been left out.¹²³⁴

At the secondary education level a total of 256 schools provide education to students both in Unguja and Pemba in the year 2013/2014. Among them, 45 schools are privately owned and 211 owned by the government.¹²³⁵ The number of students from Form one to Form six were 81,757 where 37,152 students are boys and 44,605 are girls.¹²³⁶ The number of students at compulsory Basic Lower Secondary Schools, from Form One to Form Two is 52,183 which is equivalent to 71.1 per cent of students aged 14-15 and the number of students in Upper Secondary Schools from Form Three to

1228 The Budget Speech of Ministry of Education and Vocational Training for the Year 2014/2015. (Hotuba ya Bajeti ya Wizara wa Elimu na Mafunzo ya Amali wa Elimu Katika Baraza la Wawakilishi 2014/2015), p. 30.

1229 Ibid schedule number 2(b).

1230 The Budget Speech of Ministry of Education and Vocational Training for the Year 2014/2015, p. 31.

1231 The Budget Speech of Ministry of Education and Vocational Training for the Year 2014/2015.

1232 Ibid.

1233 Ibid, p. 31.

1234 Ibid, p. 3.

1235 Ibid, p. 39.

1236 Ibid.

Form Six and Technical schools is 29,696.¹²³⁷

Zanzibar has witnessed further improvement in the education sector through the construction of new schools in the year 2014 based on the Zanzibar Education Implementation Project (ZABEIPO). The project is financed through a loan from the World Bank where in the 2014, three schools were opened Urban West Region in Unguja Island and students were enrolled. The construction of new schools are in progress these school are; Paje Mtule, Tunguu Dimani, Kibuteni and Mkanyageni.¹²³⁸

4.3.4 Large Number of Pupils in Classes

The large number of students in classes in Zanzibar is a big problem also highlighted by the government,¹²³⁹ though the government has. on many occasions promised to solve the problem.¹²⁴⁰ An observation conducted by ZLSC indicates that a large number of schools in many regions of Zanzibar are overcrowded. It was found that the smallest number in a class is 70 to 90 students mostly at primary schools level. Having a large number of students has negative impacts on learning. It diminishes the capacity of understanding, cleanliness and impairs writing capability. A visit carried out by the ZLSC revealed that in some schools such as Mtopepo and Kinuni Primary School there some classes with over 100 pupils.

4.3.5 Shortage of Secondary School Science Teachers

The acute shortage of secondary school science teachers remains a problem in Zanzibar. Despite an increase in number of secondary schools, extreme insufficiency of science teachers is a headache to the Ministry. Responding to questions raised by members of the House of Representatives, the Deputy Minister for Education and Vocational Training Ms. Zahra Ali Hamadi said that they had requested the government to employ 800 new teachers, but only 500 were approved. She further maintained that Pemba Island has a shortage of 700 teachers.¹²⁴¹

To overcome the problem of science teachers the Revolutionary Government of Zanzibar through the Ministry of Education had requested the government of Nigeria to assist in the issue of science teachers.¹²⁴² The Nigerian government has responded positively to this issue, since these teachers have already arrived and have been located at Uzini Secondary School, Kiembe Samaki Secondary School, Donge Secondary School etc.

1237 Ibid.

1238 Ibid p. 4.

1239 The budget speech of Minister of Education and Vocational Training 2013/2014.

1240 Ibid, p., 38.

1241 Zanzibar has Shortage of Teachers, Daily Newspaper Online Tanzania, 21st April 2012, a story by Issa Yussuf.

1242 Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2013, p. 398.

Development in Zanzibar will not be reached without investing heavily in science and innovation. Reports indicate that in the 2012/ 2013 University graduations held in Zanzibar among 749 who graduated at State University of Zanzibar only 30 students graduated with a degree in Science and Education, and 11 with a degree in Computer Science.¹²⁴³ It was observed that many degree holders go to the neighbouring countries, mostly Tanzania Mainland in search for better salaries. The ZLSC recommends that salaries and other incentives for science teachers be improved in an attempt to stop them from moving abroad.

4.3.6 Cost Contribution in Education

In 1964 the Revolutionary Government of Zanzibar through its President the late Abeid Amani Karume announced free education to all Zanzibar. However, it has been difficult for the government to continue covering education expenses single-handedly without the support of parents. In this regard, parents are asked to make a nominal contribution to public schools which range from TZS 20,000 to TZS 30,000 per year.¹²⁴⁴ However, the government has directed that no student should be expelled for failure to pay the nominal contributions. This directive is still operational and there are no reports which show students expelled for non-payment of school contribution.

4.3.7 Early Pregnancies and Marriages

Many young female students in primary and secondary schools drop out of school each year because of early marriage and pregnancy.¹²⁴⁵ This is very serious and common problem in Zanzibar. The early child marriages deter the girl child from pursuing their education. In the year 2014, about 21 cases of early pregnancy had been reported together with 18 cases of early marriage.¹²⁴⁶ This in turn leads to school dropout, a factor that contributes to gender disparity in education. Other reason for drop outs include unfriendly learning environment, limited social services at school environment, limited trained/skilled teachers and limited classrooms to accommodate students.

1243 The Budget Speech of Ministry of Education and Vocational Training for the Year 2014/2015, p. 51.

1244 Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2013, p. 398.

1245 Speech of the Minister of Empowerment , Social Welfare, Youth and Women and Child Development on the Implementation Report on the Rights and Welfare of the Child by the year 2013/2014 (Hotuba ya Waziri wa Uwezeshaji, Ustawi wa Jamii, Vijana na Maendeleo ya Wanawake na Watoto kuhusu Taarifa ya Utekelezaji wa Haki na Ustawi wa Watoto kwa mwaka 2013/2014).

1246 Siajabu S. Pandu, Registrar of Education and Secretary of Education Council Zanzibar (Mo-EVT), Children Safety And Advocate For Child Protection.

4.3.8 Lack of Facilities in Schools

Though it has been highlighted above that there is some improvements made in construction of the new schools, the demand for school facilities is still high. Insufficient facilities in schools continue to affect the education system in Zanzibar. Lack of sufficient facilities include especially desks, classrooms, laboratories, lab equipment, latrines, waters services and other amenities. Observations find that students, mostly in rural areas use bushes as toilets while they fetch water from wells which are not safe at all. However, in year 2014 the government had constructed toilets, water tanks and hand washing centres for almost 13 schools in Zanzibar.¹²⁴⁷ This is a good move which need to be further strengthened.

4.4 Higher Learning

The provision of higher education is among the social rights that people within the country requires. In Tanzania, higher education is defined as that portion of tertiary education that leads to an advanced diploma or degree. There has been a significant expansion of higher education in Tanzania for the last two decades. In an attempt to address development challenges, Tanzania came up with its “Development Vision 2025” which among other things envisages “a well-educated and learning society.” Under the vision it is our determination to be a nation with high quality education at all levels; a nation that produces the quantity and quality of educated people sufficiently equipped with the requisite knowledge and skills to solve the society’s problems, to meet the challenges of development and to attain competitiveness at regional and global levels.

It is unfortunate that in the many Declarations and agreements made by the global and regional bodies such as the United Nations Millennium Declaration (2000) and its eight Millennium Development Goals and the New Partnership for African’s Development report (2005), higher education and its potential contribution to national development are not mentioned directly. On the other hand, the African action Plan (2005) and the Report of the Commission for Africa give specific mention to higher education. These declarations acknowledge the important role the higher education sector can play in enhancing socio-economic development in Africa.

Tanzania, Zanzibar being part of it, regulate higher education as a union matters. Hence, all higher learning institutions are controlled and regulated by one board. The Tanzania Commission for Universities (TCU) is the board which was established on 1st July 2005, under the Universities Act (Chapter 346 of the Laws of Tanzania) to succeed the former Higher Education Accreditation Council which had been in operation since 1995. It is a body corporate mandated to recognize, approve, register and accredit universities operating in Tanzania, including both local and foreign

¹²⁴⁷ Speech of the Minister of Education and Vocational Training, 2014/2015.

university level programs being offered by registered higher education institutions. TCU also coordinates the proper functioning of all university institutions in Tanzania so as to foster a harmonized higher education system in the country. In order to ensure that such a harmonious higher education system does not compromise institutional peculiarities and autonomy, each University has the legal right to operate under its own charter.

The provision of higher education is therefore taken with extra care as it is believed that it serves to transmit advanced knowledge from one generation to the next so that it can serve either as a basis of action, or a springboard to further research; to provide a centre for the attempt to advance the frontiers of knowledge through research, to serve the society through community service, and to provide through, its teaching for the high level manpower needs of the society, which in turn bring development to the communities.

Considering this important, the government of the United Republic of Tanzania provides funds to public universities and other higher learning institutions largely depending on Government subvention which in most cases is inadequate. Thus the financing and affordability of higher education is currently a top public debate agenda in Zanzibar. The funding to the University is not adequate and in some cases there are no funds at all. It is apparent that the cost cannot be borne by many parents because of poverty. The emergency of private universities has added another question. Even if parents have demonstrated willingness to pay for university education of their children, the government is still responsible to fund them. In Zanzibar, particularly, financing higher education has caused debate and complaints from the public on grounds that there is disproportional provision of fund between Mainland Tanzania and Zanzibar and thus only the children from the well to do families who can have access to university, and higher education thereby are given support leaving the best brains from poor families.

4.4.1 Shortage of Lecturers in Higher Learning Institutions

An Academic institution requires the full time qualified lectures, who can perform the three important functions of academic institutions namely; teaching, research and consultancy. ZLSC has been reporting the shortage of qualified lecturers in Higher Learning Institutions in the previous human rights report.

It is well known that, some of the public and private higher learning institutions depend on part time lecturers. This is very dangerous for the institution involved because of lack of commitment on the part of the part timers.

4.4.2 Insufficient Budget for Higher Education Fund

Though, the government has established a Higher Education Fund to sponsor students at Degree level, the budget given to the higher education fund is minimal enabling the fund to sponsor only few students out of many who apply for the loans. We therefore, recommend that the government increase its budget to the Board so they can sponsor many students. Again this is a time for the Fund to sponsor all students who qualify and apply for loans regardless of their specialisation. The practice now is to sponsor those students who take higher degrees in science fields, and this has made a number of students with sound academic qualifications fail to join universities for lack of financial support.

4.5 Right to Health

The right to health is recognized by Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966. It is also contained in the African Charter on Human and Peoples' Rights, 1981 and the African Charter on the Rights and Welfare of the Child, 1990. The right to health in Zanzibar is not enforceable, instead the Constitution provides it as a part of fundamental objectives and directive principles and policies, which one cannot enforce in the courts of law.¹²⁴⁸ The health system in Zanzibar is comprised of three main sectors; public owned, private for profit and faith based facilities.¹²⁴⁹ Health services like education had been provided freely to all people by the government since 1964 as the fruits of Revolution. However following global changes and the need for improvement of the services, the government of Zanzibar introduced a cost-sharing program in 2003 onwards which required people to pay a substantial fee for the services.¹²⁵⁰ However the cost-sharing program has not brought significant changes as anticipated but has increased the burden to people particularly the poor who cannot afford to pay the fees due to their low income.¹²⁵¹

In the year 2014, there has been an increase of alternative treatments which are faith based in many places in Zanzibar. This includes place like Miembeni, Mbuyu Mnene, Mbuzini and others. Many people are found in these places looking for medical attention by paying the cost of the services they receive. This kind of treatment, however, is not formally regulated and therefore increases the gray area that has not been identified in terms of regulation, legality, taxation and others. Since health care is a matter of human rights, the government is advised to carry out a proper follow up of these treatments and ensure that they are controlled and monitored. In doing this it shall reduce cases of malpractices done by people who traditionally use their

1248 Section 10(f) of the Constitution of Zanzibar 1984.

1249 Government of Zanzibar, Ministry of Health, Zanzibar Health Sector Performance Report 2010/2011, October 2011.

1250 Human right report 2013 p. 373.

1251 Ibid.

superstitious power to induce harm to the people. The government can also benefit from tax collection if they are well organized.

4.5.1 Improvement of Health Services in Zanzibar

Enjoyment of the right to health requires that the government makes an effort to ensure that health service are functional and are available in sufficient quantity. That is, there should be, for instance, enough well motivated human resources, and that health care facilities, goods and services are accessible to everyone.

The Government has been putting efforts to improve health services through budgetary approach and improvement of health facilities plus working condition of medical practitioners. As for the budget for instance, there was an increased total medicines sector budget proposed for from TZS 3,028,372,981 in year 2012/2013 to TZS 5,718,583,149 in year 2013/2014. 25 % of these funds were from the Government while the rest were from the donors.¹²⁵² These improvements have increased the availability of medicines in different hospital and health centres.

Furthermore, the government has introduced a risk allowance for its medical staff. This allowance at least tops up their salaries which are not big enough to run their life.¹²⁵³ A total of 142 of health workers were trained at different level of health sectors, among them there were seven doctors.¹²⁵⁴ The government has employed about 840 health workers from different cadres; these include doctors, nurses, pharmacists, dentists and laboratory technicians.¹²⁵⁵

In the way towards improvement of health services, there has been the opening of different buildings providing health services. For example, the opening of Integrated Reproductive and Child Health (IRCH) building at Kidongo Chekundu,, the opening of Neurosurgical Services building at Mnazi Mmoja Hospital. In addition, there was the opening of mental and maternity wards at Wete Hospital.¹²⁵⁶

4.5.2 Medical Doctor Graduates in Zanzibar

It was considered to be another development in Isles when 38 medical doctors graduated in Zanzibar. This was the first ever graduation of medical doctors in Zanzibar at the College of Health and Allied Sciences. These graduates were eligible to receive undergraduate degrees in medical profession after seven years of study at the Zanzibar Medical School. This was made possible with the help of the Cuban

1252 Hutuba ya Waziri wa Afya, Kuhusu Makadirio na Matumizi ya Wizara ya Afya kwa Mwaka 2014/2015, p. 3.

1253 Ibid p. 4.

1254 Ibid.

1255 Ibid p. 5.

1256 Ibid p. 5.

Government who supported the establishment of the medical school in 2007 with Cuban doctors providing training for the programme. Originally, 40 students who completed secondary school (Form VI) were selected for the Cuba/Zanzibar medical programme designed to produce the much needed health professionals for the internal and external uses.

In officiating the graduation, President of Zanzibar and cha Chairman of the Revolutionary Council, Hon. Dr. Ali Mohamed Shein said that the government has been taking various measures to overcome challenges facing the health sector, mainly shortage of doctors. The target is to have the ratio of one-doctor to 6,000 people a target which has not been achieved. However, success has been recorded. For example the ratio in 1992 was 1:58,000 people, but this has dropped to 1:18,982 people.¹²⁵⁷ This was marked to be great achievement, apart from the on-going debate on public questioning of the quality of these doctors.



Picture 66: President of Zanzibar and Chairman of the Revolutionary Council Dr Ali Mohamed Shein welcomed at the graduation ceremony.

1257 Issa Yussuf, 38 medical doctors graduate in Zanzibar, Local News, Daily News, 30th September 2014, <http://dailynews.co.tz/archive/index.php/local-news/36563-38-medical-doctors-graduate-in-zanzibar>(accessed on 1st October, 2014).



Picture 67: President of Zanzibar and Chairman of the Revolutionary Council Dr Ali Mohamed Shein, when entering the grounds of the First Graduation ceremony of the Medical Doctors at the campus Chukwani Zanzibar.



Picture 68: The Former President of Zanzibar, Dr Amani Abeid Karume shakes hands with the graduands.

4.5.3 Challenges Facing Health Sector

The Health Sector is faced with a host of challenges. The challenges include an extreme shortage of medical doctors and equipment, and lack of funds for the implementation of the Ministry's programmes.¹²⁵⁸ Poor release of the budget from the central government contributes to the poor services in the sector.¹²⁵⁹ Another challenge is poor response from the public in the implementation some projects including immunization and family planning.

Insufficient ICU facilities still remain the main challenge in Zanzibar in 2014. Lack competent experts for many diseases means that patients are normally referred to hospitals outside the country which has been another challenge to health services. More than 120 patients were transferred out of the country for treatment in 2014.¹²⁶⁰

4.6 HIV/AIDS and Human Rights

After many year of denial, in 1986, the Isles of Zanzibar documented the index case of AIDS at Mnazi Mmoja Hospital. Henceforth, the country has continued to witness a growth in the cumulative number of HIV. Initial surveillance reports suggested the potential factors driving the epidemic in Zanzibar as being similar to those witnessed in countries/areas with generalised HIV epidemic.¹²⁶¹ The HIV epidemic has spread to all districts in Zanzibar but at unequal pace, levels and magnitude.

In response to the threat by HIV and AIDS the Revolutionary Government of Zanzibar has established the Zanzibar AIDS Commission (ZAC) whose main responsibility is to coordinate the national multi-sectoral response to this pandemic. Zanzibar AIDS Commission currently under the First Vice President Office was introduced under the Zanzibar Aids Commission Act, 2002. The government has so far implemented a number of strategic interventions within the framework of its national HIV/AIDS policy and national multi-sectoral strategic plan. The implemented interventions address all the key areas of a comprehensive response to HIV and AIDS i.e, prevention, care and treatment and, impact mitigation.¹²⁶²

The Commission coordinates its program under the guidance of Zanzibar Aids Policy. The policy serves as an important milestone in the fight against HIV/AIDS where it has incorporated most of the international policy and principles.¹²⁶³ The Policy lays down the administrative and legal framework for all programmes and interventions

1258 Ibid p. 70.

1259 Ibid.

1260 Ibid p. 22.

1261 HIV Status in Zanzibar <http://192.185.148.241/~zacor/index.php/about-zac/current-status/hiv-in-zanzibar.html> visited 13th February 2014.

1262 MKUZA II.

1263 Ibid.

which are to prevent new infections, and to treat, care and support all who are infected.

Extensively, HIV as a priority has been acknowledged as a national development issue and extended in the National Strategies for Economic Growth and Poverty Reduction (MKUZA). The earlier versions of the Zanzibar Poverty Reduction Plan (ZPRP) did not consider HIV/AIDS as a cross-cutting development agenda, but it has been decided now that the next generation of MKUZA will have HIV and AIDS adequately mainstreamed in all three clusters.¹²⁶⁴ The inclusion of HIV to the economic growth and poverty reduction plan was reached due to the recognition of the impact of HIV to the national economy and social development.

The status of HIV in Zanzibar is of the limit that gives alarm. The rate of infection is increasing from year to year and this affects even mothers and children. The records indicate that pre-existing sexually transmitted infections including HIV and other direct obstetric causes responsible for 8 per cent of maternal mortality. Report from the Registrar of Education and Secretary of Education Council Zanzibar, Mrs. Siajabu S. Pandu revealed that about 287 pupils in Zanzibar were found to be living with HIV in 2014. The details are provided below.

STUDENTS LIVING WITH HIV (INFECTED) 2014

DISTRICT	FEMALE	MALE	TOTAL
URBAN	41	35	76
WEST	45	44	89
NORTH - A	4	2	6
NORTH-B	4	4	8
CENTRAL	1	1	2
MICHEWENI	9	3	12
CHAKE	35	27	62
WETE	11	21	32
TOTAL	150	137	287

SOURCE: INCLUSIVE EDUCATION AND LIFE SKILL UNITY,
MINISTRY OF EDUCATION

Figure 12: Pupils Leaving with HIV

1264 Ibid, 2011 p. 358.

4.6.1 HIV/ AIDS Legal Framework

In December 2013 the House of Representative had passed the Zanzibar HIV and AIDS Prevention and Management Bill, which provides for 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. It was in this year, the bill was signed to become law. This law is known as the Zanzibar HIV and AIDS Prevention and Management Act No. 18, 2014. The Act provides for HIV and AIDS information, education and communication. It is also takes care of matters relating to HIV and ADIS prevention measures, practices and procedures, counselling and testing. It also protects the rights of a person living with or affected by HIV. It also protects vulnerable groups and key populations at higher risk along with other related matters.

The ZLSC still urges that there is the need to disseminate the knowledge of the law dealing with the rights of people living with HIV/AIDS in a bid to help them as well as control the further spreading the disease. People, knowingly or innocently violate the provision of the Zanzibar HIV and AIDS Prevention and Management Act without any action taken against them. There are still some policies and legal issues that limit effective implementation of the Act. Take one example of section 20 and section 21 of the Act, which prohibits compulsory testing except under: a court order, on donor of human organs and tissue, to sexual offenders, and for the pregnant women.¹²⁶⁵ This provision is not complied with effectively as in the case of marriage, where, for example, proposed marriage partners are requested to have a certificate confirming their HIV status (HIV test report) before their marriage. . It has been a practice in Zanzibar, a sheikh or priest cannot marry any person if he/she has not been tested for HIV. This implicitly makes test compulsory to the parties before marriage.

4.6.2 Institutional Framework

Although HIV/AIDS is treated as a cross cutting issue, the Ministry of Health has the greater responsibility of dealing with the disease. There is the Zanzibar AIDS Commission office under the office of the First Vice Presidents of Zanzibar established by AIDS Commission Act No. 3, 2002, whose main responsibility is to coordinate the national multi-sectoral response to this pandemic. Another organ in the Ministry of Health, the Zanzibar Aids Control Programme is responsible for dealing with HIV/AIDS. Besides, the Commission there are some non-governmental organizations dealing with HIV/AIDS in an attempt to contain the disease from further spreading into the society. In addition to the functions and powers of the Commission prescribed under Aids Commission Act No.3 of 2002 the Commission has also been given other functions as provided by Act No. 18, 2014. This includes taking appropriate measures to:

(a) inform and educate all population groups including persons with disabilities about HIV, including its modes of transmission and means of prevention and management;

¹²⁶⁵ Section 20 (2) (a) – (d). of Act No. 18, 2014.

(b) adopt and implement a national HIV prevention, treatment and management strategy; (c) promote and protect the rights of persons living with or affected by, HIV; (d) ensure, in relation to HIV and AIDS, equitable access to relevant information goods and services including essential medicines without discrimination; (e) ensure provision of HIV and AIDS prevention, treatment, care and support without discrimination; (f) promote awareness of the rights and duties imposed on persons under this Act; (g) ensure the involvement of persons living with HIV and AIDS related campaigns, programmes and decisions; (h) create an institutional framework for an integrated and multi-sectoral approach to the prevention and management of HIV and AIDS; (i) strengthen institutions working with persons living with or affected by HIV; (j) undertake, coordinate and regulate research on HIV matters including AIDS; (k) support mainstreaming of HIV and AIDS programmes in all Government sectors; (l) mobilize resources for HIV and AIDS programmes (m) develop policies and guidelines to ensure a supportive environment for the prevention, control and management of HIV and AIDS (n) protect the rights of all persons on matters related to HIV; and; (o) generally facilitate the implementation of this Act.¹²⁶⁶

The government has so far implemented a number of strategic interventions within the framework of its national HIV/AIDS policy and national multi-sectoral strategic plan; the implemented interventions address all the key areas of a comprehensive response to HIV and AIDS i.e. prevention, care and treatment and, impact mitigation.¹²⁶⁷

The RGoZ has also introduced Guidance and Counselling from primary grade 6 to lower secondary classes with the aim of nurturing the youth. The programme introduced training materials for students and promotion of MEES clubs in schools which deal with issues related to HIV/AIDS, environment and population. The programme has been introduced in teacher training colleges. Life skills education is also pursued via the provision of guidance and counselling services and the initiation of peer education programmes.¹²⁶⁸

4.6.3 HIV/AIDS Situation in Zanzibar

The efforts to control the spread of HIV/AIDS in Zanzibar are implemented using number of programmes. Currently the programmes include counselling and voluntary testing, adherence to treatment and home based testing. In year 2014, Zanzibar had maintained HIV/AIDS prevalence rate at 0.6 per cent.¹²⁶⁹

1266 Section 3 of the Act.

1267 The Zanzibar Strategy for Growth and Reduction of Poverty: 2010-2015 (ZSGRP II) MKUZA II, p. 51

1268 CEDAW Report.

1269 The Speech of the President of Zanzibar during *Idd el haji* <http://www.ikuluzanzibar.go.tz/publications/view/hotuba-ya-rais-wa-zanzibar-na-mblmmheal-haj-dk.-ali-mohamed-sheinkatika-bar> (accessed on 14, February 2015).

4.6.4 Violation of the Rights of People living with HIV/AIDS in Zanzibar

The Universal Declaration proclaims that ‘all human beings are born free and equal in dignity and rights.’ Therefore, human rights belong to all without discrimination, a principle that has been enshrined in all major human rights treaties.¹²⁷⁰ The Committee on Economic Social and Cultural Rights (ICESCR) of United Nations stress that, it is the vehicle for the protection of vulnerable groups within society. It requires states to extend special protective measures to them to ensure some degree of priority consideration.¹²⁷¹ Vulnerable groups can be defined as particular groups who for various reasons are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights.

Hence, the aim of human rights instruments is the protection of those vulnerable from violation of their fundamental rights.¹²⁷² The violation of the rights of people living with HIV/AIDS is still a problem in Zanzibar in some areas. The general population is reluctant to accept the reality that there is nothing wrong in mixing with HIV/AIDS people. Forms of violation vary from sector to sector and include denial of services, verbal harassment and abuse and violation of confidentiality.

4.6.5 The Increasing Stigmatization and Discrimination against People Living with HIV/AIDS

Currently, there is high level of stigma against HIV and AIDS in Zanzibar communities, leading to open discrimination and violation of human rights of both people living with HIV AIDS and people affected by AIDS. Lack of proper and timely information on legal and social rights of People Living with HIV Aids (PLHA) also contributes to high stigma and poor response to in terms of care and treatment for HIV and AIDS.¹²⁷³

There is no doubt that discrimination against people living with HIV/AIDS is the main problem in Zanzibar. The problem keeps growing because of lack of adequate health education and ethics. People living with HIV/AIDS are exposed to a painful experience of discrimination in the society. The stigmatization has caused a problem so that members of the public are not ready to come out for voluntary tests.

For decades, people living with HIV have been subjected to discrimination and

1270 Karen Stefiszyn, Mmatsie Mooki and Yohannes Tesfagabir (2009) Universal Declaration of Human Rights After 60 Years: Addressing The Reproductive Health Rights of Women Living With HIV in Southern Africa.

1271 Kumar Rajendran, The Human Rights Protection of Vulnerable Groups, http://www.academia.edu/1859074/The_Human_Rights_Protection_of_Vulnerable_Groups (accessed on 13th February, 2015).

1272 Ibid.

1273 MKUZA.

stigmatization based on an unfounded fear in Zanzibar.¹²⁷⁴ The case of one child aged 12, a resident of Kiboje, Zanzibar, whose name is withheld¹²⁷⁵ provides another proof of the stigmatization. The report with respect to this child indicated that, even the orphanages are not ready to receive a child living with HIV.

The situation has been so immensely tough that it has caused people living with HIV/AIDS to abscond from attending centres to pick up antiretroviral therapy (ARVs).¹²⁷⁶ Zanzibar Legal Services Centre acknowledges this problem and recommends for national advocacy campaigns to promote tolerance towards stigma.

4.6.6 Right to Privacy

A large number of people are afraid to go for voluntary HIV testing for lack of privacy. Some HIV/AIDS victims are reported to travel outside Zanzibar to get medical assistance. It is claimed that medical personnel in government and public hospital laboratories do not adhere to the professional code of conduct especially on confidentiality of medical information.¹²⁷⁷ It is alleged that the medical personnel leak the information to the public on persons found HIV positive. However, in some cases there are justifications for leaking the information to the public since some of the HIV/AIDS persons are reported to spread the diseases to their sexual partners.

4.6.7 Lack of Essential Medicine and Drugs

Government hospitals and clinics used to offer essential medicines and drugs to people living with HIV/AIDS especially to those women who used to attend clinics before and after giving birth. However, a shortage of the essential medicine and drugs persists. Addressing a meeting evaluating the performance of the Government of National Unity (GNU), the First Vice President proclaimed that, “*people living with HIV/AIDS had been living under difficult circumstances due to lack of medicines and essential drugs*”¹²⁷⁸ The government budget allocation is too narrow and cannot meet the demand while delays in the allocation of budget also contributes to the inefficiency of health services in the Island.¹²⁷⁹

1274 *Zanzibar Leo*, issue 3885, Tuesday, 25th September, 2013, p. 6.

1275 See chapter two 2.4 of this report.

1276 Zanzibar Legal Services Centre, *Tanzania Human Rights Report 2013*, p. 402.

1277 *Human Right Report 2013*.

1278 <http://www.ibn-tv.com/2011/12/maalim-seif-says-zanzibars-hiv-aids-prevalence-rising> visited 13th February 2015.

1279 Speech of the Minister of Health Hon Juma Duni Haji on Estimates of Revenue and Expenditure of the Ministry of Health for the year 2014-2015 in the House of Representatives Zanzibar (Hotuba ya Waziri wa Afya Mhe Juma Duni Haji Kuhusu Makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Afya kwa Mwaka 2014-2015 Katika Baraza la Wawakilishi Zanzibar), p. 70.

4.6.7 HIV/AIDs and Narcotic Drugs Related Challenges

Narcotic drugs have been pandemic in Zanzibar for a long time. The island of Zanzibar has been used by drug traffickers as a centre for transferring drugs all around the world. Several efforts have been taken to combat narcotic drugs but the situation remains unchanged. Internationally, narcotic drugs have been condemned by different conventions including the Single Convention Narcotic Drugs, 1961, adopted by United Nations Conference at New York, the Convention on Psychotropic Substances, 1971, adopted by United Nations Conference in Vienna, and the United Nations Convention against Illicit Traffic in Narcotic Drugs, 1988.

Drug abuse and addiction have been linked with HIV/AIDS since the beginning of the epidemic. Although injection drug use is well known in this regard, the role that non-injection drug abuse plays in the spread of HIV is less recognized. This is partly due to the addictive and intoxicating effects of many drugs, which can alter judgment and inhibition and lead people to engage in impulsive and unsafe behaviours. People typically associate drug abuse and HIV/AIDS with injection drug use and needle sharing. When injection drug users share “equipment” such as needles, syringes, and other drug injection paraphernalia, HIV can be transmitted between users. Other infections-such as hepatitis C-can also be spread this way. Hepatitis C can cause liver disease and permanent liver damage. . Drug abuse by any route (not just injection) can put a person at risk from getting HIV. Drug and alcohol intoxication affect judgment and can lead to unsafe sexual practices, which put people at risk of getting HIV or transmitting it to someone else.

At the domestic level, the Drugs and Prevention of Illicit Trafficking in Drugs Act, 1995 has been passed to deal with imposition and transferring of narcotic drugs. Manufacturing of narcotics which is prohibited under such law includes all kinds of cocaine derivatives, medicinal cannabis, opium, derivatives, and poppy straw concentrate.¹²⁸⁰

Efforts have been taken in the way forward to combat narcotic drugs in Zanzibar. Among them is the establishment of Sober Houses to provide medical treatment and counselling to persons addicted with drugs.¹²⁸¹ More than 23 people were arrested in connection with illicit drugs and 21 cases were in court.¹²⁸²

The office of the First Vice President has been in the front line in combating narcotic drugs. Some initiatives taken in 2014 include supporting six sober houses and nine

1280 Section 2 (a) and (b), Drugs and Prevention of Illicit Drugs Act, 1995.

1281 *Human Right Report 2013*.

1282 Speech On The Estimates Of Revenue And Expenditure Of The Office Of First Vice President For Fiscal Year 2014/2015 (Hotuba Ya Makadirio Ya Mapato Na Matumizi Ya Ofisi Ya Makamu Wa Kwanza Wa Rais Kwa Mwaka Wa Fedha 2014/2015), p. 17.

schools. A total of 814 students and 36 teachers were beneficiaries of the programs.¹²⁸³

4.7 Right to Clean Water

In its General Comment No. 15 2002 the United Nations Committee on Economic, Social and Cultural Rights declares water straight away as being “indispensable for leading a life in human dignity”. As such it “is a prerequisite for the realisation of other human rights.”¹²⁸⁴

The General Committee came in support of the Resolution 64/292 passed by the United Nations General Assembly on July 2010 where it explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights. The resolution calls upon states and international organizations to provide financial resources to help capacity-building and technology transfer to help countries to provide safe, clean, accessible and affordable drinking water and sanitation for all.¹²⁸⁵ Several other international human rights conventions, state on the right to safe and clean drinking water for the people.

In Zanzibar, the provision of clean and safe water falls under the government Executive Agency, the Zanzibar Water Authority (ZAWA).¹²⁸⁶ 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.¹²⁸⁷

4.7.1 Current Situation in the Enjoyment of Right to Water

Reports from the water authority suggests that water production has dropped dramatically, for example statistics indicated that the required amount of water is 214 Million litres of water, but the production was only 163 million litres (about 76 per cent).¹²⁸⁸ Climate changes, decrease of underground water, the rise in sea water and ignorance to conservation of the environment have been the main cause of the

1283 Ibid.

1284 General Comment No.15, The right to water. United Nations Committee on Economic, Social and Cultural Rights November 2002.

1285 Resolution A/RES/64/292, United Nations General Assembly July 2010.

1286 ZAWA was established under Act No. 4 of 2006, is a semi –autonomous entity with the overall management of water supply services and Water Resources management in Zanzibar <http://www.zawa.go.tz> visited 13th February 2015.

1287 Ibid.

1288 The speech of Zanzibar President to commemorate 51th Anniversary of Zanzibar Revolution of 1964 <http://www.ikuluzanzibar.go.tz/publications/view/hutuba-ya-rais-wa-zanzibar-na-mblm-dk.ali-shein-katika-sherehe-za-maadhimis> (accessed on 14th February, 2015).

problem.¹²⁸⁹

Presenting his budget to the House of Representatives, the Minister responsible for water had claimed that in the financial year 2013 - 2014 the Ministry had implemented five projects which included projects for the supplying of water both to Zanzibar Town and in the rural areas.¹²⁹⁰ However the projects were not fully implemented in 15 villages.¹²⁹¹ Residents of these areas still have to walk long distances in search of water. Meanwhile a project for drilling 35 deep wells in the urban areas was carried out. This project is sponsored by the Ruler of Ras al Khaiman.¹²⁹² Laying of pipes for supplying fresh water in town and the construction of a water reservoir is underway.¹²⁹³

In an effort of looking for clean water, which was primarily supposed to be provided by government, individual persons construct their own wells and extract water for their domestic use.. However, they are charged by ZAWA a monthly subscription and on default of the payment, they are restricted from using their wells. One of the well owners, who did not want to reveal his name, was recorded to have said “the government is taking money for the services that it did not render to us.” This implies the dissatisfaction of the people on the provision of the clean water.

4.7.2 Poor and Old Water Infrastructure System

The government has been working closely with several development partners including China, Japan, The African Development Bank (ADB), Arab Bank for Economic Development in Africa (BADEA), UN-Habitat, and some private local institutions to make sure that safe water is available to the people by constructing bore holes and water wells.¹²⁹⁴ A feasibility study on social and economy of the water network has also been carried out¹²⁹⁵. One of the contributing factors to poor water supply in

1289 Tanzania Daily News, 7th June 2013, Conserving Water Sources Remedy for Water Shortage in Zanzibar.

1290 Speech of the Minister of Land 2014-2015, p. 37.

1291 Those villages includes, Mtende, Tumbatu, Muyuni, Kinduni, Cheju, Kibuteni, Makunduchi, Kidoti, Mfenesini, Bumbwini, Chaani, Bandamaji Matuleni, Muambe, Shumba viamboni, Wingwi Mtemani, Wingi Mjananza na Mtambwe Kaskazini, Speech of the Minister of Land 2013, p. 39.

1292 Speech by the Minister of Lands Lodging Water and Energy, Hoh. Ramadhan Abdalla Shaaban , About Estimates of Revenue and Expenditure for the fiscal year 2014/2015 in the House of Representatives (Hotuba ya Waziri wa Ardhi Makaazi Maji na Nishati, Mheshimiwa Ramadhan Abdalla Shaaban, Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa fedha 2014/2015 Katika Baraza la Wawakilishi), p. 37.

1293 Ibid.

1294 How Zanzibar is overcoming water scarcity <http://www.dailynews.co.tz/index.php/features/40890-how-zanzibar-is-overcoming-water-scarcity> (accessed on 14th February, 2015).

1295 Speech by the Minister of Lands Lodging Water and Energy, Hon. Ramadhan Abdalla Shaaban , About Estimates of Revenue and Expenditure for the fiscal year 2014/2015 in the House of Representatives (Hotuba ya Waziri wa Ardhi Makaazi Maji na Nishati, Mheshimiwa Ra-

Zanzibar Town is the old water supplying system laid several years ago. However there have been improvements in rural areas. Water storage tanks to store water for human consumption have been constructed in some areas of Unguja Island.

The government has promised to make sure that more than 85 per cent of the Zanzibaris access safe water by end of 2015.¹²⁹⁶ But it seems that efforts of government to improve the services is not enough. It is our hope that, this promise will be fulfilled for the benefits of Zanzibaris.

4.7.3 Improper Control of Water

Water control is still a big problem in Zanzibar. The Authority has claimed that it has lost thousands of litres of water through leaking old pipes, unattended water or broken taps, unattended water tanks, and storage of more water, than actually needed need.¹²⁹⁷

In addition to that, there are cases of illegal water connections in rural and urban areas. It appears that ZAWA has insufficient water inspectors to check illegal water connections. To make matter worse, ZAWA had failed in supervision of sources of water encouraging people to invade those areas. Reports suggest that many water reserves have been invaded by people who have constructed residential houses without notifying the water authority.¹²⁹⁸

4.7.4 Challenges Facing Water Supply

Water supply in Zanzibar faces many challenges. Among those are people are invading and building in areas close to water reservoirs, old water infrastructures that lead to shortage of water in some areas; failure of people to pay their bills, and poor management within ZAWA authority. There is a need for ZAWA to take experience of other water authority inside Tanzania. Construction of houses and other buildings at water source points is another challenge faced by ZAWA. This year we have witnessed clashes between people at Mwanyanya whose houses were demolished because they built them at water points. Similar cases have also been reported from Pemba.

4.8 Chaotic Transport System

The transport system in Zanzibar has been claimed to be chaotic and leads to denial of access to public services. The major complaints of the peoples are focused on the shifting of bus stops from Darajani to Donge and later on Kisiwandui. The claims also

madhan Abdalla Shaaban, Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa fedha 2013/2014 Katika Baraza la Wawakilishi), p. 37.

1296 How Zanzibar is overcoming water scarcity <http://www.dailynews.co.tz/index.php/features/40890-how-zanzibar-is-overcoming-water-scarcity> (accessed on 14th February, 2015).

1297 Ibid.

1298 Ibid.

include the bus stop recently created at wireless and Kikwajuni – beside old House of Representatives. Many people blame the Municipal Council’s decision to move these stations and argue that it was not properly made and did not consider human right impact assessment before it was made. The new allocated bus stops make people, some of whom are disabled, to move long distances with their baggage looking for services.

4.9 Conclusion

Although often neglected by legal and policy analysis of the aspect of social rights, an increasingly central dimension of provision and management is dramatic changes to a very broad range of social rights and entitlements. These include rights relating to work as well as rights relating to a wide range of welfare entitlements such as rights to housing, health, food and social assistance. Human Rights regard man as a person, to whom civic and political freedoms as well as economic, social and cultural rights indubitably belong. It added that “the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent and that when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man. For all these reasons, the General Assembly decided to include economic, social and cultural rights in the covenant on human rights as well as an explicit recognition of the equality of men and women in related rights. Protection of these rights is very important.

Chapter Five

Economic and Cultural Rights

5.0 Introduction

Economic and Cultural Rights are classified as the second generation of human rights. It comprises economic rights, such as the right to education, the right to health and right to work. These rights are social, cultural and economic in content and orientation. The first and second generations of rights are focused on individuals. Globally, two separate covenants that followed the Declaration gave impetus to the declaration of human rights. They are the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. According to Mary Robinson, the former UN High Commissioner for Human Rights:

These Treaties and the UN Declaration, known collectively as the International Bill of Rights, are the cornerstone of the remarkable body of international and regional instruments, well over seventy in number, which form the basis of international human rights law, and regulate the fundamental rights and freedoms of all individuals.¹²⁹⁹

In spite of the categorization of human rights into civil and political rights, and social, economic and cultural rights, there is no water-tight division between them. They complement each other in the sense that the enjoyment of political rights cannot be isolated from that of socio-economic rights. They are interconnected and interdependent and they cannot be graduated in order of importance. The right to life means nothing in the absence of the right to food. A person who has nothing to eat or who is faced with acute starvation can hardly enjoy the right to life.

In 1993, the World Conference on Human Rights declared and affirmed that "... all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."¹³⁰⁰ The Covenant recognises:

The ideal of free human beings enjoying civil and political freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as

1299 Robinson M "Protecting Human Rights: the Role and Responsibilities of the Independent Bar" being a keynote address delivered at the inaugural World Conference of Barristers and Advocates, Edinburgh 28th June, 2002.

1300 The Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna 14-25 June 1993, UN Doc. A/ Conf. 157/23, of 12 July 1993, para 5. See also para 1.

his economic, social and cultural rights.¹³⁰¹

Looking at the New Delhi Statement on the justifiability of economic, social and cultural rights in South Asia, it recognized that human rights are indivisible and interdependent and that the rights entrenched in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, where relevant, the Directive/Fundamental Principles of State Policy contained in some national constitutions represent statements of clear legal obligation for the States concerned. It further proclaims that the principles anticipated in those documents give direction to the States concerned in addition to giving content and meaning to fundamental rights enshrined in those constitutions.¹³⁰²

In *New Patriotic Party v. Inspector-General of Police Accra*,¹³⁰³ it was stated by the Supreme Court of Ghana that:

All human rights and fundamental freedom are indivisible and interdependent: equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. In the last resort, they are all-exercisable within a societal context and impose obligations on the state and its agencies as well as on the individual not to derogate from these rights and freedom.

On the other hand, the Harare Declaration on Human Rights notes that “*there is a close inter-linkage between civil and political rights and economic and social rights; neither category of human rights can be fully realized without the enjoyment of the other.*”¹³⁰⁴ The Supreme Court of India said that both are complementary, “neither part being superior to the other.”¹³⁰⁵

Some writers have also recognized the interconnectivity, interdependence and indivisibility of human rights. Keller argued that civil and political rights and economic, social and cultural rights “are inextricably intertwined.”¹³⁰⁶ Amartya Sen,

1301 See its Preamble. ICESCR has an almost identical paragraph in its preamble too.

1302 Statement of Conclusions, Workshop organised by the UN Office of the High Commissioner for Human Rights on the Justiciability of Economic, Social and Cultural Rights in South Asia New Delhi 17-18 November 2001, para 10.

1303 (2000) 2 HRLRA 1 at 79, para A-B. The Supreme Court thereby adopted the Statement by the Committee of Experts in the Report on the Proposals for a Draft Constitution of Ghana at p. 62 para 128.

1304 Harare Declaration on Human Rights, being the Concluding Statement of the Judicial Colloquium on the domestic application of international human rights norms held in Harare, Zimbabwe, 19-22 April, 1989.

1305 *State of Kerala v N.M. Thomas* 1976 2 SCC 310 at 367.

1306 Keller L. M ‘The Indivisibility of Economic and Political Rights’ (July 2001) (Vol 1:3) Human Rights and Human Welfare Vol 1:3–July 2001, 2001, 13; see also Kothazi, J. “Social

for example, emphasizes the “extensive interconnections between freedoms and the understanding and fulfilment of economic needs.”¹³⁰⁷ Directive Principles of State Policy have direct relationship with economic, social and cultural rights specified in the ICESCR.¹³⁰⁸ They also enjoy interconnectivity and interdependence with political rights.

The African Charter on Human and Peoples’ Rights, 1991 in its preamble, *inter alia* states:

... that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

Notwithstanding that various international instruments, declarations and statements have not only recognized but proclaimed that civil and political rights and economic, social and cultural rights are interconnected, interdependent, interrelated and indivisible, they still accord primacy to political rights over economic rights.

Article 2 (1) of ICESCR enjoins each state party “to take steps... to the maximum of its available resources, with a view of achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”¹³⁰⁹ Alston and Quinn noted that the provisions should not be seen “as an escape hatch for states whose performance failed to match their abilities or as a lessening of state obligations. It (should be) viewed and defended simply as a necessary accommodation to the vagaries of economic circumstances.”¹³¹⁰

Economic and cultural rights includes right to property, education, water services, health services, right to work and other right that enable a human being to enjoy and control his/her life. In practice, States use the provision as “escape hatch” to create a dichotomy between political and economic rights; subordinating the latter to the former and escaping from their obligations under the Covenant. The Covenant qualified their obligations and they are taking advantage of same. Arambulo rightly states that “...
 Rights and the Indian Constitution” 2004(2) Law, Social Justice & Global Development Journal (LGD) http://www.go.warwick.ac.uk/elj/lgd/2004_2/kothari [visited on 13 February 2006].

1307 Sen, A., Development as Freedom (1999), p. 147.

1308 See Final Report of the Committee on Review of Indian Constitution. Chapter 3.

1309 Alston P & Quinn G “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights” (1987)(9) Human Rights Quarterly 156-229.

1310 Ibid.

despite its prominence in many human rights documents as a permanent fixture in preambular paragraphs, the general understanding of the notion of indivisibility has remained superficial and vague, and in practice, the divisions between human rights continue to be sustained in the UN organs, including the treaty bodies themselves.¹³¹¹ Even in Zanzibar, economic and cultural rights are not given due attention compared with civil and political rights. Though there is some degree of protection of cultural rights, civil and political rights are at the peak of the state priorities. Not enough concern has been given to promote economic and cultural rights as are given to the civil and political rights.

5.1 Right to Property

The right to property, also known as the right to protection of property, is a human right and is understood to establish an entitlement to private property.¹³¹² The right to property is not absolute and states have discretion to limit the rights. Internationally, the rights have been enshrined in Article 17 of the Universal Declaration of Human Rights. However it is not recognized in the International Covenant on Economic Social and Cultural Rights, 1966.¹³¹³ Admittedly, the right to protection of property is enshrined in the regional human rights instruments of Europe, Africa and the Americas.¹³¹⁴

Domestically, the right to property is provided in the Constitution of Zanzibar of 1984 section 17 which maintains the protection against the deprivation of property except

1311 Arambulo, K., "Giving meaning to Economic, Social and Cultural rights: A Continuing Struggle" Vol. 3, Human Rights and Human Welfare, 2003, p. 117. Sandra Liebenberg similarly argues that the normative separation of the two groups of rights has been reinforced by the provision of different enforcement mechanisms. Consequently, an independent, expert body was created under ICCPR called the Human Rights Committee, and which has the mandate to supervise States parties obligations under the covenant. This is further to a periodic reporting procedure, an optional protocol was adopted to the ICCPR which allowed the Human Rights Commission to consider communications of individuals claiming to be victims of the rights violations contained in the Covenant. According to her, this supervision of States parties obligations under the ICESCR was left to a working Group appointed by the UN Economic and Social Council. The result of this institutional differentiation, the two groups of rights, Civil and Political rights continue to benefit from the experience and evolving jurisprudence generated by an adjudicative procedure, when the supervision system for socio-economic rights was weak and ineffective: Liebenberg S "Judicial and Civil Society" initiatives in the Development of Economic and Social Rights in the Commonwealth http://www.communitylawcentre.org.za/ser/docs_2002/CHR_Millennium_Report.doc [accessed on 13 February 2006 but currently the web is not accessible].

1312 http://en.wikipedia.org/wiki/Right_to_property visited on December 3rd, 2013.

1313 Doebber Curtis (2006). Introduction to International Human Rights Law, CD Publishing, pp. 141-142.

1314 See Articles of the covenants see also Alfredsson, Gundmur, (1999). The Universal Declaration of Human Rights: a common standard of achievement, p. 364.

upon the compliance of the prescribed conditions. The Section provides that:

No person shall be deprived of his property interest or right interest or right in that property except and upon compliance with the following conclusions;

- (a) that the acquisition and occupancy of the property is of utmost importance for defence and security of the people health requirement, town planning and any other development in the public interest;
- (b) that the need to acquire the property in question is absolutely important to the extent that it legalizes its acquisition even if it be to the detriment of its owner;
- (c) That there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.

The enjoyment of these rights has been problematic despite being instituted in the constitution. Some people have been deprived of their property through different ways and left without knowing what to do. Destruction of properties is another issue which alarms the minds of many in the islands. There are accusations against the government and even ordinary people on the destruction of property. There has been threat at Tunguu area where inhabitants were forced to demolish their own houses and foundations and vacate the areas on the allegation that they settled in unauthorized areas. Demolition of residential houses and destruction of property in generally a violation of rights and is against the rights to own property which is internationally recognized under Universal Declaration of Human Rights, 1945 and the Constitution of Zanzibar, 1984. Another incident at Buyu close to Airport also reflects the similar problem. ZLSC strongly supports the right to property advocates for fair compensation where the property of persons affected.

5.1.1 Right to Acquire and own Immovable Property

The “property rights” too often take precedence over “human rights,” with the result that people are treated unequally and have unequal opportunities. Inequality exists in any society. But the purported conflict between property rights and human rights is a mirage. Property rights are human rights. The definition, allocation, and protection of property rights comprise one of the most complex and difficult sets of issues that any society has to resolve, but one that must be resolved in some fashion. For the most part, social critics of property rights do not want to abolish those rights. Rather, they want to transfer them from private ownership to government ownership. Some transfers to public ownership (or control, which is similar) make an economy more

effective.¹³¹⁵

It is contended that a property right is the exclusive authority to determine how a resource is used, whether that resource is owned by government or by individuals. Society approves the uses selected by the holder of the property right with governmental administered force and with social ostracism. If the resource is owned by the government, the agent who determines its use has to operate under a set of rules determined, by the House of Representatives or by executive agencies charged with that role.

Private property rights have two other attributes in addition to determining the use of a resource. One is the exclusive right to the services of the resource. Thus, for example, the owner of an apartment with complete property rights to the apartment has the right to determine whether to rent it out and, if so, which tenant to rent to; to live in it himself; or to use it in any other lawful way. That is the right to determine the use. If the owner rents out the apartment, he also has the right to all the rental income from the property, that is, the right to the services of the resources in term of the rent.¹³¹⁶ Section 17 of the Constitution of Zanzibar guarantees the right of every citizen of Zanzibar to acquire and own property. It says no person shall be deprived of his property interest or right in that property except and upon compliance with some conditions.

Moreover, section 15 of the Constitution of Zanzibar also protects the private ownership of the property:

15(1) Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communication.

(2) For the purpose of preserving the person's right in accordance with this Article, the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article.

This implies that the constitution guarantees the private property right that includes the right to delegate, rent, or sell any portion of the rights by exchange or gift at whatever price the owner determines (provided someone is willing to pay that price). However at the same time, this right has not been made absolute. There are some

1315 Alchian, Armen, "Some Economics of Property Rights," *Il Politico* 30 (1965): 816-829.

1316 *Ibid.*

circumstances where the enjoyment of this right is limited. The state shall still have power to interfere with the property of another on the following conditions:¹³¹⁷

- (a). that the acquisition and occupancy of the property is of utmost importance for defence and security of the people health requirement, town planning and any other development in the public interest;
- (b). that the need to acquire the property in question is absolutely important to the extent that it legalises its acquisition even if it be to the detriment of its owner;
- (c). that there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.

The right to acquire and own property at this point is diminished. Thus, the three basic elements of private property are (1) exclusivity of rights to choose the use of a resource, (2) exclusivity of rights to the services of a resource, and (3) rights to exchange the resource at mutually agreeable terms, are not absolutely provided.

There are also some other properties which are specifically owned by the government though the government may give right to occupy and use to individual person or institution. For the year 2013/2014 for example, it has been reported that a total of 70 lease deeds were signed and given to various investors. 34 leases for hotels, 2 leases for petrol stations 1 for a zoo, 21 for telecommunication towers, 21 for residential, 1 lease for sea farming, 1 for livestock, 1 lease for golf, 1 for industry and 1 for school construction.¹³¹⁸

5.1.2 Limitation to the Right of Property

Zanzibar is yet to have fully developed jurisprudence on socio-economic and cultural rights. Its development is still at a rudimentary or perhaps primary stage. To underscore that fact, the only economic right guaranteed under fundamental rights provision of the 1984 Constitution, is in section 17 and that is, Protection from deprivation of property. The African Charter, which has been domesticated in Zanzibar, through Tanzania, has some elaborate provisions on some socio-economic or collective rights. The critical issue is whether the inadequate constitutional provisions on socio-economic rights could be redressed through the enforcement of the provisions of the African Charter.

Generally property rights include both ownership rights and control rights. Ownership and control can be two different matters. It is possible to own but not able to control and to be able to control but not to own. Zanzibar put all land under the state by Decree No. 13/ 1965. From that time all land was declared public property and the

1317 Section 17 of the Constitution of Zanzibar.

1318 Speech of the Minister of Land 2014/2015, p. 10.

government took responsibility to redistribute land among the landless in the rural area.

The land Tenure Act, 1992 provides rights to occupancy of land only to Zanzibaris over the age of eighteen years. This means non Zanzibaris have no rights to own land in Zanzibar.¹³¹⁹ However, non-Zanzibari can be given right to occupy and use the land on a given terms. The Act prohibits the transfer of land to non-Zanzibari and once proved somebody has transferred his rights the Minister responsible for land shall terminate the transfer.

Nonetheless there are allegations of land changing hands and passing to non Zanzibaris. Land disputes have been common where it is argued that local administrators like Shehas, and Counsellors are believed to be involved. Unauthorized confiscation of land has been common where local administrators like Shehas and officers of local government use their positions to sell the land.

5.2 Right to Work

The right to work is among the important aspects of the economic rights. In Zanzibar, the right to work is provided under Article 21 (3) and (4) of Constitution of Zanzibar of 1984 which states that all people have the right to work and are entitled to equal rights and privileges, and hold any position in employment under jurisdiction of Zanzibar. The constitution further assures that the right should be enjoyed without discrimination of any kind, where remuneration should be granted according to one's work and all persons working in accordance with competence.

Adhering to the Constitution, Zanzibar passed different laws and policies.¹³²⁰ The most prominent legislation is the enactment of Employment Act, 2005¹³²¹ which includes fundamental rights and protection to workers. The protection includes the prohibition of forced labour, prohibition on employment of children,¹³²² prohibition of worst form of child's labour, prohibition on discrimination.¹³²³ In the course of reducing of child labour in Zanzibar a total of 631 children who were rescued from hard and child

1319 Land tenure Act No. 12, 1992. However, The Minister may lease any public land which does not comprise a right of occupancy to any person, Zanzibari or non Zanzibari. See section 46 of the Act.

1320 Those laws and policies include Employment Act No. 11 of 2005, the Occupation Safety and Health Act, 2005, the Workers compensation Act, 1986, Labour Relations Act, 2005, and Social Security Fund Act, 2005. The Policies are, the Zanzibar Youth Employment Action Plan, 2007 and the Protection of the Childs Workers Policy and Regulation.

1321 The Zanzibar Employment Act, 2005.

1322 Section 8 of the Employment Act, 2005.

1323 Ibid, Section 10.

labour and taken to school.¹³²⁴ The government also transferred civil servants records and Pay Roll system to Data Centre.¹³²⁵

5.2.1 Salaries and Incentives Packages

A salary is a form of periodic payment from an employer to an employee, which may be specified in an employment contract. It is contrasted with piece wages, where each job, hour or other unit is paid separately, rather than on a periodic basis. From the point of view of running a business, salary can also be viewed as the cost of acquiring and retaining human resources for running operations, and is then termed personnel expense or salary expense. In accounting, salaries are recorded in payroll accounts. It is a fixed amount of money or compensation paid to an employee by an employer in return for work performed. Salary is commonly paid in fixed intervals, for example, monthly payments of one-twelfth of the annual salary.

Salary is typically determined by comparing market pay rates for people performing similar work in similar industries in the same region. Salary is also determined by levelling the pay rates and salary ranges established by an individual employer. Salary is also affected by the number of people available to perform the specific job in the employer's employment locale. Article 71 ICESCR requires states to provide favourable condition at work, fair wages, and equal remuneration for work with equal value without discrimination of any kind.

Salaries have been extremely low in Zanzibar for a long period. Salaries paid to public and private employees were so poor that it could not be guaranteed to half a month. This is evidenced by the fact that a large number of qualified and competent workers leave Zanzibar each year in search of greener pastures. For example, the Minister of Health Mr. Juma Duni Haji had explained that about 32 employees from different sectors in the Ministry leave to look for better paid jobs outside the country despite the government spending large sums of money to pay for their education.¹³²⁶

However for the last four years following the introduction of GNU, workers' salaries have been increased. In the year 2013/2014 the government of Zanzibar undertook salary restructuring for all civil servants. For instance, senior servants who have served for more than fifteen years and whose salary was 150,000 TZS had their

1324 Speech of the Minister of State in the Office Of President Labour and Civil Servants, Hon. Haroun Ali Suleiman on the estimates of revenue and expenditure for the financial year 2014/2015 in the House of Representatives - Zanzibar, May, 2014 (Hotuba Ya Waziri Wa Nchi Ofisi Ya Rais Kazi Na Utumishi Wa Umma, Mwal. Haroun Ali Suleiman Kuhusu Makadirio Ya Mapato Na Matumizi Kwa Mwaka Wa Fedha 2014/2015. Katika Baraza La Wawakilishi – Zanzibar, Mei, 2014).

1325 Ibid.

1326 2013-2014 Budget Speech of the Ministry of Health, p. 82.

salaries increased to 225,000 TZS. However, even after the increase, the minimum wage has still been a problem in Zanzibar. The frequent increase of the prices of basic commodities that are caused, sometimes, by the fluctuation of the currency has made the life of the ordinary people become difficult. It is almost impracticable/impossible for a servant who receives a minimum salary to make ends meet with only that salary without some additional help.

5.2.2 Shortage of Employment Opportunities

The problem of unemployment is still not settled. There are still allegations that a large number of University leavers and institutions of higher learning fail to get employment opportunities. Some University graduates move outside Zanzibar in search of employment. It appears that public and private sectors cannot absorb the increased number of job seekers. Favouritism seems the order of the day in getting employment especially in public sector. It is believed that interviews are a mere formality but not a determining factor in getting a job. Further the introduction of General Security Office (GSO) was intended to scrutinize the suitability of people who sought for employment in public services. However, there is allegation that this office is used for political purposes.

A report released suggests the unemployment among youth in Zanzibar to be at 34 per cent in 2013 with a much higher real rate estimating youth unemployment and joblessness as high as 8per cent. Young women are vulnerable to employment.¹³²⁷ The reason for their vulnerability is lack of education and skills, cultural attitudes and practices, discriminations and limited job opportunities. Although the tourism industry is said to contribute about 27 per cent of the revenue, local Zanzibaris are said to be side-lined from employment. Responding to the un-employment problem, members of the House of Representatives urged the Minister responsible for Livestock, Tourisms, Economic Empowerment and Information to investigate and find the ratio of Zanzibaris employed in the tourism sector compared to non-Zanzibaris and foreigners.

We have evidence that, more than one-thousand foreigners including Kenyans have dominated jobs in most tourist hotels; some are staying illegally and holding Tanzanian passports.¹³²⁸

ZLSC survey indicates large numbers of young people who are without jobs, spend most of their time at “*vijiwe*”. The situation is frightening and it sometimes encourages youth to engage in criminal acts and use of narcotic drugs. It is time for government to take responsibility to rescue the young generation from collapsing by introducing

1327 Ibid, Tanzania and Zanzibar Labour Market Profile, p. 12.

1328 Mr. Makame Mshimba Mbarouk, (CCM-Kitope), <http://dirayetu.blogspot.com/2013/09/good-bye-zanzibar-ni-njema-atakae-aje.html> visited on 10th December 2013.

centres where young people can employ themselves. Zanzibar is surrounded by the sea but the fishing industry has not been found by government as a sector that can create jobs.

While urging the government to take adequate measures in serving its responsibility by creating job opportunities, it is also urged that youth from Zanzibar should change their job attitudes by considering the informal sector. However, many people especially youth, who are employable at age t do not endeavour into private and entrepreneurial projects to which they can create their own job. Zanzibar has a lot of opportunities for jobs but this has not been well exploited. The majority of youth would like to be employed by the government or at least have white collar jobs. It is very rare for Zanzibari youth save only those who live in rural areas, to engage themselves in farming or fishing. Those who have attempted to engage in business do not complain much apart for the challenges they face in the course of their businesses.

5.2.3 Poor System of Social Protection

Zanzibar Social Security Fund (ZSSF) is the only insurance scheme in Zanzibar. The fund provides old age pension, life insurance, and gratuity, invalid and maternity benefits. The contributory system is 10 per cent of salary paid by employer and 5 per cent deduction from the employee.¹³²⁹ Zanzibar pensions are said to be considerably lower than that of Mainland Tanzania. Old age pension and gratuity are paid as a monthly and a lump sum.¹³³⁰ There are two types of pension, one provided by Ministry of Finance and the other from ZSSF. It was observed that most of the retired officers are exposed to a painful experience in retirement life. ZSSF is so far doing well on pension payments and there are not too many complaints from the beneficiaries. However, the ZSSF does not cover members of the Zanzibar Special Departments (Isles Security Forces) where their retirement is handled by different laws. Contribution from non-formal employed is also covered by ZSSF.

5.2.4 The Handling of Labour Disputes

The Employment Act, 2005¹³³¹ provides for existence of dialogue between employer and employees. As per the Employment Act, 2005 and Labour Relations Act 2005,¹³³² the structure of the handling of labour disputes is established through having an the Industrial Court, the Labour Commission with offices almost in every District of Zanzibar.¹³³³

1329 Section 17 (1) of the ZSSF, 2005.

1330 Tanzania and Zanzibar labour market profile, p. 18.

1331 Act No 11 of 2005.

1332 Act No 1 of 2005.

1333 The Labour Relation Act No. 1 of 2005.

All labour disputes whether existing or apprehended shall at first instance be filed before the dispute handling unit.¹³³⁴ The Unit shall deal with the filing of dispute, notification of parties, summons, fixing of proceedings and other matter necessary for handling of such dispute in a manner provided by regulation. The mediator is required to resolve the dispute through mediation inside 30 days unless the parties agree to a longer period. If mediation fails, either party may further refer the arbitrator or labour complaint to the High Court, Labour Division commonly known as the Industrial Court. Both the arbitrator and the Industrial Court are required to take evidence, hear both parties' legal submissions before rendering a decision on the merits of the case.

During the year 2013/2014, the Dispute Handling Unit entertained a total of 104 disputes from June – July out of which 62 disputes were resolved, 22 disputes are in the process of resolution and the rest still continue. Only 3 disputes have been forwarded to the Industrial Court.¹³³⁵

The Zanzibar Industrial Court is the division of the High Court of Zanzibar established to settle formal labour disputes.¹³³⁶ The Court is presided over by judge and assessors from employer's organization and trade unions. Reports provided by stake holders indicate that, the tribunal is functioning but is slow due to lack of resources. Apart from that there was period a time of about eight months when there was no chairman for the tribunal until the appointment of Judge Mkusa Sepetu as the Chairman.

5.2.5 Re-Employment of the Retired Officers

The tendency of the government of re-employing retired servants not because of their expertise has been complained about by many people, particularly youth who are seeking employment. The re-employment of retired government officers on senior positions and other offices as *prima facie* a violation of law and a practice to be condemned. This is because; the re-employment is tantamount to blocking promotions of otherwise deserving officers and is not conducive to good governance. One of the youths has been heard saying that the practice of re-inducting retired officers should be discouraged.

On the other hand, some civil servants seem reluctant to retire. There are reports of civil servants being employed by the government after reaching the retirement age. The main argument seeking for contracts after retirement age is the need have more time to prepare themselves for after retirement life. The consequence of this trend is to deny the youth of employment opportunities and retirees block fresh ideas and innovation in government. What is worse is that, the central government keeps on

1334 Section 73(1) *ibid*.

1335 Source from Modest D. Hassan, the officer in charge, Dispute Handling Unit, Zanzibar.

1336 Labour Relations Act No. 1, 2005.

entertaining this problem.

5.3 Cultural Rights

Internationally Cultural rights as human rights is advocated by the Declaration on the Principles of International Culture Cooperation; the Declaration on the Rights Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Rights to Development; the International Convention on the Protection of the Rights of Migrant Workers; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal People.

Cultural rights are derived from the entire concept of culture which refers to the cumulative deposit of knowledge, experience, beliefs, values, attitudes, meanings, religion, notion, roles, spatial relations, concept of universe and others¹³³⁷ acquired by a group of people in the course of generations through individuals and groups striving. For that, culture encompasses art, literature, lifestyle, and ways of living together, value systems, traditions and beliefs.¹³³⁸

Other instruments include Universal Declaration of Human Rights; the International Covenant on Economic Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child and the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities.

Zanzibar has an agitating culture and tradition. This tradition is evident in celebrations and numerous annual festivals along with all other social activities. The different festivities in Zanzibar are a result of cultural diversity. This festivals range from Islamic festivals of Idd el Fitir, Idd el Hajj, Mauled, Christian celebrations of Christmas and Easter to the Persian New Year (Mwaka Kogwa) and the Hindu Diwali. The diverse culture is also evident in the beautiful and colorful women dresses, kangas henna painting. Men also have their own traditional wear such as *Kanzu* and *Kikoi*. Having this in mind, the Constitution of Zanzibar has included cultural right to be guaranteed. The Constitution of Zanzibar under section 10 (f) include the protection, preservation and the promotion of the Zanzibar culture as the responsibility of the government of Zanzibar. However some aspects of culture have been included.¹³³⁹ The diversity of the people in Zanzibar hugely enriches concentration of number of cultural identities. The long time integration of its people with outside world resulted in the emergence

1337 The Journal of Psychology, 135, found at <http://www.tamu.edu/faculty/choudhury/culture.html>

1338 Joanne Bauer (2004) "Why Culture Rights Now"? Human Rights Initiative Program (1994-2005). A paper by Elsa Stamatopoulou.

1339 Freedom of Religious beliefs, Section 19(1) Constitution of Zanzibar, 1984.

of people of mixed races with varieties of cultural heritages. Despite all of these integrations the predominate population of inhabitants of Zanzibar are (Wa)Swahili, a word that appeals loudly to the world of civilization. Administratively cultural issues are administered by the Ministry of Information Cultures, Tourism and Sports, where for a long time the Ministry has been responsible for the cultural development.

The reason for protection of cultural rights is to guarantee that people and communities have an access to culture and can participate in the culture of their own. Cultural rights are human rights that aim at assuring the enjoyment of unique culture and its components in conditions of equality, human dignity and non-discrimination. For a country like Zanzibar with diversity of communities, protection of cultural rights is necessary to ensure enjoyment of cultures and stability of its people.

5.3.1 Dress (Kanga)

People of Zanzibar are identified by many features amongst them is their style of dress. Kanga is the most powerful garment which represents both cultural and antiquity of Zanzibar. This is rectangular designed piece of cloth made of cotton and wide enough to cover a person from neck to knee or from breast to toe. History reveals that Kanga is a modernised *Leso* (handkerchief), which was basically two pieces of cloth, one worn around the head and the other around the lower body introduced by the Portuguese to Zanzibar in 1498. As the trade in spices and slaves increased, slaves brought to the island from the continent were made to wear white cloth, known locally as *Merikani*, named after its origin – America. Several years before the abolition of slavery on the island (1897), women began to locally dye their *Merikanis* black or dark blue, thus producing what today is referred to as *Kaniki* cloth. Eventually, local producers perfected this technique and named the cloth *Kanga ze mera*. The kanga became an item of fashion that attracted Indian traders who later on produced on a large scale in Mumbai, India, the Far East and Europe and imported it to Zanzibar. Since then, the use of kanga has been inherited from generation to generation.

The Kanga has become a part of the creolized heritage of the Zanzibari. It is culturally and politically embedded and informed by a wide range of interdependent signs, symbols and practices. It offers an alternative epistemological foundation, a form of political, visual and demonstrative communication that reveals aspects of the inner psyche, community practice and broader political change. *Kangas* are mostly used by women and used as a platform for expressing their feelings. It allows women to release their “*dukuduku*” (let off steam) which is considered to be a more civilized way. It is observed that communication through kanga was meant to avoid of physical contact with addressee and upholding of *heshima* (respect) of the wearer. More than this, the kanga is a potent symbol of Swahili culture as it is a product of many cultural interactions formed at cultural crossroads in the region. The extent to which Zanzibaris

perceive *Kangas* is not just as something to wear but an institution socially created to maintain the socio-political life of Swahili people.



Picture 69: Pupils of Philter Federal Nursery School performing on of the traditional ngoma in famous kanga style “Kisutu” in celebration of 5th year of their school 6th January, 2014. Picture by Hassan Issa – The Office of the Second Vice President of Zanzibar

5.3.2 Festivals

The protection of culture and traditions in Zanzibar is also witnessed from number of festivities which take place every year from time to time. Tradition, culture, music sports, dress, food and sports are just a few of the subjects covered by Zanzibar’s wide selection of festivals and events. For the year 2014 the following festivals took place.

5.3.2.1 The Zanzibar Festival of the Dhow Countries – 14th – 22nd June, 2014

This is East Africa’s largest cultural event which takes place in Zanzibar in magnificent, historical venues along the waterfront of Stone Town. The festival celebrates the unique cultural heritage of the “dhow” countries. It includes the African continent and the Indian Ocean region and their global Diaspora. It always brings new talents together from all over the world for a Zanzibar *Tamasha*. Each year some of the most captivating and cutting-edge cinema from Africa and beyond is screened in venues across the island from world-premiers to local shoots. The theme of this year

was ‘Season of Visions.’ Nearly 40 Filmmakers from over 12 countries attended this year.¹³⁴⁰ In 2014 ZIFF opened with the Mandela film, *Long Walk to Freedom*, and in 2015 it is expected to be open with another international film that focuses on an icon of civil and human rights, Dr Martin Luther King Jr. This is considered to be an inspirational way to open ZIFF 2015 and to highlight our focus on hope and social change. ZIFF also puts on the islands live music, dance, and performance across several venues. ZIFF as a truly local festival includes exhibitions, workshops, and panorama that bring people to a forum of discussion on various issues.

ZANZIBAR INTERNATIONAL FILM FESTIVAL

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Picture 70: Advertisement of the Zanzibar International Culture Festival – ZFF held in July every year.

The Zanzibar Cultural Festival is commonly known as *Tamasha la Utamaduni la Mzanzibari*. This festival takes place towards the end of July each year, shortly after the international Festival of the Dhow Countries. The festival features traditional and contemporary dance, music, arts and crafts. Many of the dances have their roots in ancient tribal rituals connected with the many stages of a human life, or with royal ceremonies. It includes “Taarab” music, traditional dances, arts and crafts in various venues around Zanzibar Town, as well as incorporating street carnivals, fairs, canoe races and the bull fight from Pemba, drawing participants from as far as Mozambique, Kenya, Comoro, Germany, China, India etc.

1340 <http://www.ziff.or.tz/what-is-ziff/> (accessed on 12th November, 2014).

5.3.2.2 Mwakakogwa Festival - 22nd - 27th July, 2014

Mwaka Kogwa is a traditional festival to celebrate the local New Year. It is mainly practiced in the Southern Unguja, particularly in Makunduchi. Originating from Persia and brought here by early Immigrants, Mwakakogwa is marked by sacrifices, dances, and the actual field fighting. In addition to tourists from abroad, it draws participants from the whole of East Africa. There are many different rituals involved in seeing out the old year, and welcoming the new one. The *Mwaka Kogwa* usually lasts about four days. However, it is the first day which is the most interesting and exciting. In the centre of the town is Kae Kuu, a large, open space and it is here that the action starts at about 11.00am and usually lasts about four days.

The core of the festival is the traditional burning of a hut, said to signify the passing of the old year and the start of the new. This ritual is thought to ensure the safety of the village in case of fire during the year and to purge evil from the people and the land. After the fire and fighting, there's song, dance, drumming and feasting.



Picture 71: Buring of the hut at Kae Kuu.

There are many different rituals involved in seeing out the old year, and welcoming the new.¹³⁴¹ In fighting, brothers from the southern part of Makunduchi take on brothers

1341 <https://www.hotelplanner.com/Event-Hotels/11646-For-Mwaka-Kogwa-Festival-Makunduchi-July-22-2014-in-Zanzibar-Tanzania#dir-bar> (accessed on 13th December, 2014).

from the northern part in a ritual physical combat. In the pre-Zanzibar revolution era, sticks and cudgels were used as fighting weapons but have now been replaced by banana stems (locally known as “makoa”). The fight is governed by a number of loose conventions or rules which are normally observed by the participants without the need for a referee. When one combatant feels that he has had enough beating, he simply raises both of his hands and surrenders, or changes his weapon for a better one and continues fighting.¹³⁴²



Picture 72: Fighting at the site

5.3.2.3 Sauti Za Busara - 12th – 16th February, 2014

This is another cultural festival annually organized in Zanzibar to look out for opportunities to promote music with cultural identity, from East Africa and beyond. Sauti za Busara is proud of its roots in Zanzibar and the strong identity the festival has with the islands.

Sauti za Busara promotes respect for cultural diversity. Forty groups are showcased, typically including around twenty from Zanzibar and Tanzania, with others from across the African Continent and diaspora. Young, local and emerging talents are showcased alongside established acts. The festival showcases acoustic and electric music 100 per cent live. The festival focus is on promoting music with cultural identity. Apart from

1342 <http://www.mzuri-kaja.or.tz/mwaka.html> (accessed on 13th December, 2014).

that, throughout the year Sauti za Busara organizes concerts, training workshops, professional meetings and tours. It is one among the events that preserves the culture and traditions of Zanzibari.



Picture 73: Carnival of Sauti za Busara for the opening of the Music Festival, 2014

5.4 Preservation of Cultural Heritage

It is well known that throughout the world people live with their cultures. These are all current and historic events that happened in the state. To ensure that the records of today are preserved for future generations various steps are taken by the governments, including the establishment of the National Archives, which are given power to provide for the preservation of public records and for other matters connected therewith and incidental thereto. In case of Zanzibar this function is statutorily given by the National Archives Act, No. 7, 1988. Through National Archives, people can then use the records to study and understand the life, ideas and thoughts of their original creators, linking the past, present and future. Archives ensure that historically significant records are systematically described and, wherever possible, available for a variety of research uses, including teaching purposes, building plans, publications, television and radio programs, plays, and legal proceedings. It serves as society's collective memory. They provide evidence of the past and promote accountability and transparency of past actions. In that regard, the archive is a public cultural property as it is there to serve the whole nation.

The Zanzibar National Archives contain some important materials. This includes many books and manuscripts in Arabic dating from the 17th century, when the Omani sultans took control of Zanzibar; consular and protectorate records from the British colonial times; papers and documents relating to the various European expeditions that started from Zanzibar in the second half of the 19th century; including a lot of contemporary material such as stamps, newspapers, maps and photographs.

This year, there has been a report of stolen documents from National Archives which include Arabic manuscripts, Arabic Correspondences, Land-office Housing documents, Arabic scripts from Sultan's palace and general deeds, Arabic Manuscripts on Diseases, treatments, local medicine and witchcraft and several others. The loss of the document was first reported to the House of Representatives by Hon. Ussi Jecha, Chairman of the Constitutional Committee, on 28th January, 2014 when presenting the summary report of his committee on Ministry of State, President's Office Labour and the Public Service. The Committee of the House of Representatives to investigate the loss of documents and records of the Zanzibar National Archives Native was constituted to deal with the matter.¹³⁴³ The report of the investigating committee confirmed that there was a loss of the documents and some of them were stolen. The committee revealed that some of the staff of the Archives department were involved in stealing and some of them were from outside the archives department.

1343 The Report of the Select Committee of the House of Representatives to investigate the loss of documents and records of the Zanzibar National Archives Native, p. 1.

The interest of the human right in this issue is connected to the rights of people to understand their history and the role of particular organizations, individuals and movements in shaping their past. Knowledge of the past creates a better future and help to foster and promote a sense of community and identity. This loss has caused the violation of this right. ZLSC therefore urges for proper action to be taken against those who were involved and in the creation of a better environment for the preservation of the records.

5.5 Conclusion

It can be observed from above that In Zanzibar, socio-economic rights jurisprudence is still at a rudimentary stage of development in the country. Civil and political rights enjoy better protection than socio-economic rights. Generally economic and cultural rights are hardly implemented. The right to work despite being introduced in the constitution is not an enforceable right where individuals cannot complain if he/she misses a job. Many workers particularly those employed under private sector claim illegal dismissal from their jobs, and when they send their claims to the Ministry of Labour some dishonest staff collaborate with the employers to subjugate employee's rights. Lack of enforcement of the labour laws is an additional problem and many employees lack knowledge of laws that fuel to their infringement. There is the need to ensure legal mechanisms are put in place to enable the people to enjoy these rights. ZLSC calls for the tripartite discussion between employers, employee's organizations and government to discuss the best application of the rights. Hence effort is needed to iron out discriminations of any kinds at work place and through employment.

The history and culture of Zanzibari people is unique. It comprise of a mixture of mixtures, no group of people can claim to be more indigenous or having more rights than others. It has been there for a number of centuries. There need to assure that its preservation is of significant importance. As it has been indicated t there are some people who by the act of their hands try to distort this heritage. The government is therefore urged to take proper care in protection of the historical identities.

Chapter Six**The Rights of Vulnerable Groups****6.0 Introduction**

Vulnerability is the degree to which a population, individual or organization is unable to anticipate, cope with, resist and recover from the impacts of disasters, environmental health in emergencies and disasters: a practical guide.¹³⁴⁴ A ‘vulnerable group’ signifies a group of people who are in a weak position and can be easily hurt either physically or emotionally.¹³⁴⁵ Children, pregnant women, elderly people, malnourished people, and people who are ill or immune-compromised, are particularly vulnerable when a disaster strikes, and take a relatively high share of the disease burden associated with emergencies. Poverty – and its common consequences such as malnutrition, homelessness, poor housing and destitution – is a major contributor to vulnerability. In Zanzibar, vulnerable groups include people with disabilities, women, children and the elderly. These groups are frequently the victims of human rights violations.

In the language of human rights, vulnerable groups are certain groups of population who often encounter discriminatory treatment or need some attention for protection from the state to avoid exploitation or from a harmful environment.¹³⁴⁶ Understanding their position, international law and human rights extend their consideration for the promotion and protection of their rights by adopting a number of declarations and convention to uplift the rights of such people.¹³⁴⁷ Those international instruments include ,the Convention on the Elimination of all Form of Discrimination Against Women, 1979, Convention on the Rights of the Child, 1989, United Nations Convention of the Refugees, 1951, International Convention on the Protection of the Rights of all Migrant Workers, 1990 – 2003, United Nations Declaration on the Rights of Disabled Persons, 1978, Declaration of October 1 to be celebrated as the international aged peoples day,¹³⁴⁸ African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2000 and Maputo Protocol, 2003.¹³⁴⁹

Zanzibar Poverty Reduction Strategy MKUZA II (2010 – 2015) includes as one goal “improve safety net and social protection for poor and vulnerable groups.”

1344 WHO, 2002.

1345 The Oxford Dictionary.

1346 As defined by European Foundation for the Improvement of Living Working Condition, 2013, page on http://unipune.ac.in/pdf-files/Book_11_find_17-9-12.pdf visited on 11th December 2013.

1347 Human Right Report 2013.

1348 Ibid, p. 18.

1349 Adopted by the Assembly of the African Union in Maputo on 11th July 2003.

6.1 Women and Girls

In Zanzibar women are given special consideration with regard to the protection of their rights. Based on the cultural and belief of the people, men are considered to be the guardians of the women and therefore are given much more privileges than women. Though the law does not lay down any demarcation in terms of sex when it comes to human rights, in practice, women have been subjected to a sort of disadvantageous status than their male counterpart. In view of this, a number of programmes of empowering women have been undertaking to empower women to have equal opportunities as with men.

6.1.1 Legal Framework for Women Protection in Zanzibar

The 1984 Constitution of Zanzibar guarantees equal rights of all the people without regard to their different social, economic and cultural backgrounds. In addition to the Constitution of Zanzibar of 1984, a number of legislations both criminal and civil had given protection to women. Examples of the legislation included the Penal Act, 2004,¹³⁵⁰ the Criminal Procedure Act, 2004,¹³⁵¹ the Employment Act No. 11, 2005 and the Spinster and Single Parents Children Protection, 2005.¹³⁵² All of these give protection to women in their respective jurisdictions.¹³⁵³

In particular, section 10 (2) (a) of the Employment Act, 2005 obliges public employers to promote equal opportunity in workplace and eliminate discrimination in employment policy or practice. The Zanzibar Employment Policy, on its part, requires that specific measures will be taken to increase level of education and skill of women in order to equally compete with their male counterparts in the labour market.

6.1.2 Institutional Framework in Protecting Women

The formation of the Ministry of Social Welfare, Children and Women Development as a focal point on women affairs and protection has facilitated the development of women's rights and children in Zanzibar, Apart from the Ministry responsible for Women's Affairs, there are a number of non-governmental organizations that also deal with women protection in Zanzibar. These organization include Women and Gender Police Desk, JUAMAKA of North Unguja, JUAPAKU of Pemba ZLSC, ZAFELA and TAMWA.

6.1.3 Gender Based Violence

Gender Based Violence (GBV) can be defined as any harmful act that is perpetrated against a person's will and that is based on socially ascribed differences between

1350 Act No 6 of 2004 Section 125, 128,130,161, of the Penal Act 2004.

1351 Act No 7 of 2004.

1352 Act No 4 of 2005.

1353 Human Right Report 2013.

males and females.¹³⁵⁴ GBV in Zanzibar is more pronounced among women than among men.¹³⁵⁵

The Constitution of Zanzibar, 1984 has not expressly provided for the rights of women and children. However women and GBV issues had been addressed by different policies, directives and several laws including the Penal Act, 2004, Children Act 2011, Spinsters and Single Parent's Children Protection Act, 2005, Employment Act, 2005, and Kadhi's Court Act, 1985. The current existing policies are, Women Protection and Development Policy, 2001, and the Child Survival, Protection and Development, 2001. The Zanzibar Vision 2020 has as one of its directives stated clearly the need to integrate the disadvantageous groups of the society through the eradication of abject poverty with the women empowerment being the main goals.¹³⁵⁶ Although there is no national gender policy,¹³⁵⁷ the policy of the Protection and Development of Women in Zanzibar, 2002 is used to protect women's rights. The Ministry of Empowerment Youth Development Women and Children has been entrusted with the responsibility of promoting gender and women development issues.¹³⁵⁸

6.1.3.1 Current Situation on GBV in Zanzibar

In addressing the people during the Ceremony to mark *Idd el haji*, the President of Zanzibar said that GBV remains a problem in Zanzibar since there are a number of GBV cases in Zanzibar. He gave a total of 2559 reported cases from July 2013 to June 2014 and among these cases only 104 were taken to the court and 11 of them were already decided.¹³⁵⁹

On 6th December, 2014 the President of Zanzibar and Chairman of the Revolutionary Council Dr. Ali Mohamed Shein launched a campaign against violence, intolerance and sexual abuse in Zanzibar, at Salama Hall, Bwawani Hotel Zanzibar called 'Zero Tolerance on Violence against Women and Children Zanzibar, Tanzania'. About 2000 people in Zanzibar showed their support for the Zero Tolerance Campaign to End Violence against Women and Children launched during the 16 Days of Activism against Gender Based Violence. The UN Resident Coordinator Mr. Alvaro Rodriguez,

1354 As defined by, Global Protection Cluster, at <http://www.globalprotectioncluster.org/en/areas-of-responsibility/gender-based-violence.html> visited on 17th December 2013.

1355 The Zanzibar Strategy For Growth And Reduction Of Poverty: 2010-2015 (ZSGRP II), p. 70.

1356 Human Right Report 2013.

1357 The United Republic of Tanzanian, Multi-sectoral Country Gender Profile, 2005, <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-operations/ADB-BD-IF-2005-EN-TANZANIA-MULTISECTORAL-COUNTRY-GENDER-PROFILE> VISITED ON 18THE December 2013, p. 10.

1358 Ibid.

1359 The Speech of the President of Zanzibar during Idd el haji <http://www.ikuluzanzibar.go.tz/publications/view/hotuba-ya-rais-wa-zanzibar-na-mblmmheal-haj-dk.-ali-mohamed-sheinka-tika-bar> (accessed on 3rd September, 2014). Provide detail of Baraza and delete source.

present at the launch, congratulated the Revolutionary Government of Zanzibar on the launch, specifically the Ministry of Empowerment, Social Welfare, Women, Youth and Children who are leading the Campaign and action plan that will run for two years, in partnership with the UN (UN Women, UNICEF, UNFPA,) and other stakeholders.



Picture 74: President of Zanzibar Dr. Ali Mohamed Sheid with the UN Resident Coordinator Mr. Alvaro Rodriguez at Salama Hall for a launch.



Picture 75: President Dr. Ali Mohamed Shein receives greetings from people from different parts of Zanzibar.



Picture 7 6: The President also visited One UN stall at the launch that was decorated orange to support the UN Secretary General's UNiTE Campaign to End Violence against Women and Girls.

6.1.3.2 Prosecution of Sexual Violence Cases

Despite the existence of many laws against GBV, its execution has been a major challenge. It has been claimed that a number of cases are reported to the Police but the majority of them are dropped for lack of evidence to win a conviction in a court of law. Studies conducted since 2010 show that many cases reported to police and then brought to court are subsequently removed due to incomplete evidence or procedure.¹³⁶⁰ There are problems which hinder the efforts of fighting gender based violence in Zanzibar these can be proved into different areas. First, there are loopholes in the laws which protect violence. For instance, all laws that protect violence failed to provide the standard to prove a number of offences essentially making it difficult to charge anyone with the crime.¹³⁶¹

Secondly, the investigation process in sexual violence cases is far from the satisfactory. Criminal law requires attorneys to prove beyond reasonable doubt for conviction. For

1360 Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2013.

1361 Zanzibar GBV advocacy: Important Lessons for Future Legal Reform Strategies, Salma Maoulidi, 2009.

that there must be solid evidence to prove a case. State attorneys with the Office of the Director of Public Prosecutions blame the police for failure to collect strong evidence and as a result they stand in an awkward position to win a conviction especially when the accused are represented by competent lawyers.

Thirdly, most people are not cooperative when it comes to prosecution of sexual cases. This is because sometimes culprits and victims are people who are so close to such an extent that the love and affection they have makes it impossible to incriminate them. Lastly, there is a shortage of qualified medical doctors to handle sexual harassment issues and this is still a big challenge for Zanzibar.

ZLSC recommends that there is a need for the government to solve these problems which make it difficult to handle cases of GBV and that members of the public change their attitudes in carrying out their civil duties in giving evidence in cases related to GBV. Currently, the government has taken steps to establish one stop centres in many parts of Zanzibar, but these centres face many challenges. There aren't enough of doctors and counsellors who can take care of sexual cases. Also, the court's readiness and competence in dealing with the children cases is not satisfactory.

6.1.4 Domestic Violence

Domestic violence refers to physical, sexual, psychological and economic abuse that takes place in the context of an intimate relationship, including marriage. Domestic violence is the one of the most common forms of gender based violence and often characterized by long term patterns of abusive behaviours and control.

Domestic violence has many negative consequences to both the victims and the community in general. It has been a world problem that transcends cultural boundary and more. It is a tool used to violate and diminish women rights in the society. In Zanzibar, domestic violence has been increasing day after day, even though there are no proper records kept by the relevant institutions. ZLSC recommends the enactment of the domestic violence law which can be equipped to curb the current and future problem.

6.1.4.1 Legal Framework in Combating Domestic Violence in Zanzibar

Domestic violence cases in Zanzibar are regulated by various laws including Penal Act No. 6 2004, Employment Act No. 11, 2005, and Kadhi's Court Act No. 3, 1985. However there is no specific legislation regarding domestic violence besides those laws. Other acts condemned by the Penal Law, include all acts tantamount to murder, manslaughter and infanticide and actions like, causing grievous harm, assaulting a person, kidnapping, and wrongful confinement.

6.1.4.2 Prosecution of Domestic Violence Cases

The enforcement of Domestic Violence Cases falls under the normal criminal cases and procedures. The laws applicable are the Penal Act No 6 of 2004, the Criminal Procedure Act No 7 of 2004 and the Evidence Law. The prosecution has to provide enough evidence before the court to win a conviction otherwise the case is dismissed. There is no special court dealing with the Domestic Violence Cases and these are generally not given priority. Cases of such nature are subject to the normal court procedure.¹³⁶²

6.1.5 Women Economic Empowerment and Employment

Employment opportunity is a big problem in Zanzibar. Many people particularly youth who have graduated are still unemployed. According to the law, employment should be provided without discrimination. However females have been marginalized. It has been reported that currently women employees constitute only 36.4% of the total employees in the formal sector.¹³⁶³

Many women, mostly in the rural areas are engaged in the informal sector conducting petty business with very low capital and return. Others engage in vegetable farming, pottery, and handcrafts. In an effort to empower women economically, the Ministry responsible for Women has undertaken measures to improve women's economic empowerment through cooperatives. This has involved undertaking reforms in the cooperative sector in order to give top priority to women in cooperatives. Zanzibar has strengthened the policy and legal framework, with the formulation of the Cooperative Development Policy. The policy puts in place strategies to empower women to take management roles into their cooperatives. Specific efforts to enhance women's access to finance through Savings and Credit Cooperatives (SACCOS) have also been put in place whereby a good number of women have joined SACCOS. For example, since July 2014 about 197 SACCOS (which have a total number of 13,387 members, with 9,138 female members totalling 68.26%) issued a total of TZS 3.9 billion in loans to their members, where the majority of beneficiaries are women.¹³⁶⁴

Despite of those initiatives to empower women economically, there is a lack of tackling business opportunities in Zanzibar in various sectors. It is a time now for the government to have a proper vision for investment opportunities in Zanzibar especially those which will benefit women and youth.

1362 Ibid.

1363 Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2011, p. 333.

1364 Tanzania's 7th And 8th Consolidated Reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2008-2014.

6.1.6 Women and Health

Health is not an enforceable right that is provided in the Constitution of Zanzibar, 1984. It falls under Fundamental Objectives and Directive Principles of the Revolutionary Government of Zanzibar.

Section 10 (f) of the Constitution of Zanzibar of 1984 says that:

The Revolutionary Government shall ensure among other the access to adequate health care.

The government has established the Ministry of Health which is responsible to take care of the health of the people including women. A special unit has been established in the Ministry of Health to pay special attention to women's health issues. In the way towards improving health services, there was an opening of Integrated Reproductive and Child Health (IRCH) building at Kidongo Chekundu.

Generally, the medical services are offered free of charge or at nominal fees. The fees which are charged are a contribution to the services but do not reflect the actual costs of the medical services. However people are not happy with the medical services offered in Zanzibar and alternatively, those who can afford, travel outside Zanzibar for further medical attention. There are no specialists for the area of cancer and other serious diseases. Awareness of the people in fighting diseases is also low. More sensitization is needed to awaken people deal with health issues.

6.1.7 Women and Education

As it is the case of health, education is also not enforceable right under the Constitution of Zanzibar of 1984. It is part of the Fundamental Objectives and Directive Principles of the Revolutionary Government of Zanzibar. Opportunity to education is given to women and now in number of the Universities numbers of women are higher than men. For instance the number of female students of Zanzibar University is 53 per cent as compared to 47 per cent of male. This indication shows that women are now taking the issue of education with paramount consideration.

In order to address historical imbalance there have been attempts to give priority to women in education and particularly the girl child. In the pursuit of this, the Forum for African Women Educationalists (FAWE) has been in the forefront. It is understood that women are given priority in education especially for those who pursue higher education and those seeking loans to pay for higher education. There is different treatment in the issuance of loans to students pursuing higher education. Women with the right qualifications are given priority.¹³⁶⁵

¹³⁶⁵ Reported from Zanzibar Loan Board Officer, 2013.

6.1.8 Women Participation in Decision Making

The right to take part in decision making is a constitutional right. The Constitution of Zanzibar, 1984 provides this right regardless of gender. Section 21 (1) provides:

Every Zanzibari shall have the right to take part in the conduct of the government of the country, either directly or indirectly through freely chosen representatives.

Reports indicate that, women participation in the decision making process still remains low. The main reason being attributed to the low participation of women is lack of education, cultural and historical factors including the religious beliefs and lack of exposure.

Participation of women is obtained through election after contesting in the general election and nominations to either Union or House of Representatives. Nominations to Special Seats are supposed to cover historical marginalization of women.¹³⁶⁶ After being appointed by the President or having been elected or nominated for special seats for women in Parliament or the House of Representatives. The Constitution of Zanzibar provides:¹³⁶⁷

There shall be members of the House of Representatives, women with a forty per cent (40 %) of all the members elected in constituencies that are Zanzibaris and who will be nominated by political parties represented in the House of Representatives in accordance with the provisions of sub-section (2) of this section.

However despite the many chances established for women participation, their number is still not satisfactory.

Currently there is one Regional Commissioner and two women holding the post of District Commissioner in Zanzibar out of ten existing Districts. Both Districts and Regional Commissioners are constitutionally presidential appointees.¹³⁶⁸

At the Ministerial levels, the study reveals that, until December 2014, there were only 4 female Ministers out of nineteen Ministries and 4 Deputy Ministers from eight. The imbalance also exists for the remaining posts like, Principal Secretary, and Directors in the Ministries. There are fifty elected members of the House of Representatives of whom 47 are males and three are females while the total number in the House is 82, out of whom only 26 are female.

1366 This is positive position given the fact that women find it very difficult culturally to compete with men in general election.

1367 Section 67 of the Constitution of Zanzibar, 1984.

1368 Section 61(2) of the Constitution of Zanzibar, 1984.

With regard to the political representation in the political parties, the study shows that both leading political parties CUF and CCM, which are popular political parties in Zanzibar are not led by women.

It is recommended that women participation in the governance should be increased to give them chance to participate in the decision making process. Political parties also must elect women to hold high positions including appointing them to contest for elections in different constituencies in the next general election of 2015. The proposed Constitution, though it says that it shall provide 50/50 opportunities of the members of the parliament, in a real sense it does not provide so. It is therefore urged that women should actively engaged themselves contesting than waiting for appointments.

6.2 Children's Rights

Children's rights have been on the international agenda shortly after the First World War.¹³⁶⁹ Thus, declarations on the rights of the child have been adopted by both the League of Nations (1924)¹³⁷⁰ and the United Nations (UN) (1959).¹³⁷¹ Efforts to offer better protection and recognition to children's rights resulted in the adoption of the Convention on the Rights of the Child (CRC) by the UN General Assembly in Resolution 44/25 of 20th November, 1989. The CRC remained open for signatures and ratification as from 26th January, 1990 and entered into force on 2nd September, 1990.

In Africa, the African Charter on the Rights and Welfare of the Child, 1990 ('ACRWC') was adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU on 11th July, 1990 and entered into force on 29th November, 1999.

The ACRWC was born out of the feeling by African member states to the UN that the drafting of the CRC missed important socio-cultural and economic realities of the African experience.¹³⁷²

The ACRWC therefore, recognizes all the rights guaranteed in the CRC, but specifically applies them to the African culture. For example, Article 21 of the ACRWC addresses harmful traditional practices common in many African countries that can violate the rights of children such as early marriage, female genital mutilation (FGM), and 'discrimination against female children'. It is for this reason that the ACRWC has

1369 L.C. Reif, *Good Governance and International Human Rights System* (2004) 290.

1370 Geneva Declaration of the Rights of the Child, League of Nations O.J Spec.Supp.23 (1924).

1371 Declaration of the Rights of the Child, GA Res.1386 U.N. GAOR, 14th Session Supp. No. 16.

1372 A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African. Committee of Experts: Raising the gauntlet' (2002) 10 *The International Journal of Children's Rights* 179.

been described as a classic instrument in the African context.¹³⁷³

Tanzania has ratified both the CRC and ACRWC without reservations.¹³⁷⁴ In relation to international law, domestically, the Constitution of the United Republic of Tanzania, 1977, and the Constitution of Zanzibar, 1984 provides general protection of Children rights. Again, Tanzania has made significant progress in the harmonisation of children's laws. This is evident by the enactment of the Law of the Child Act of 2009 applicable in Tanzania Mainland and the Children's Act of 2011, applicable in Zanzibar. These two statutes bring Tanzania close to fully domesticating its obligations under international law that are relevant for children's rights.

6.2.1 Right to Life

The Children Right includes everything and all that makes life enjoyable, meaningful and pleasant.¹³⁷⁵ In the context of Zanzibar, the right to life is also interpreted for the sake of protection of the child, right from conception to birth. This is evident by protection of the child from abortion, child destruction, infanticide, murder and provision of social and economic necessities to the children which include education and health.

The government through the Ministry of Health takes a number of measures for child life protection including giving periodic immunization against diseases such as measles, polio, tetanus, tuberculosis and now pre and post HIV checking to ensure the life of the child.¹³⁷⁶

6.2.2 Institutional Framework

The Revolutionary Government of Zanzibar has formed a Child Protection Unit at the Ministry of Empowerment, Social Welfare, Youth, Women and Children. The Ministry is the focal point for all matters relating to children at national and international levels. Other organs which deal with children's welfare are Social Welfare Department, Save the Children and Actions Aids. The judiciary has also been improved and equipped with modern facilities. This is known as a special Children Court at Vuga High Court. This is a big development for juvenile justices as it protects a child from rough justice. However, there is a need to have more juvenile court rooms for all five regions of Zanzibar. Apart from the Government there are different NGOs and various projects aimed at promoting the rights of the child. These include the child's criminal justice

1373 P.M. Nyaundi, 'Circumcision and the Rights of the Kenyan Boy Child' (2005) 5 *African Human Rights Law Journal*, 171-172.

1374 Tanzania ratified the CRC in 1991 and the ACRWC on 16th March, 2003.

1375 SAQLAIN, G., Masoudi, Muhammed Hamida and Sabur Katija, *Legal Landscape of Zanzibar and the Child: Contradictions and Commitments*, unpublished, p. 17.

1376 Budget Speech by the Ministry of Health 2014/2015, p. 56.

project under the Zanzibar legal sector reform.¹³⁷⁷

6.2.3 Institution Dealing with the Children Welfare

There are several institutions dealing with the provision of protection of children welfare in Zanzibar. These are classified from government and non-government institutions. The main focus of these institutions is to look for children who are facing problems and assisting. These are:

6.2.3.1 SOS

SOS Village was opened first in Zanzibar in 1991, with the mission of alleviating hardship in the local community by providing a number of services.¹³⁷⁸ It began work in Zanzibar in 1995, assisting vulnerable children and their families. Today, the family-strengthening programme is an important focus and works to alleviate hardship by providing social services to families in order to keep them together. . The SOS Family Strengthening Programme is currently making a difference in the lives of up to 600 children and 150 adult carers. The centre provides food packages to families who are struggling, particularly households affected by HIV/AIDS, or those headed by orphaned children caring for their younger siblings.

SOS families offer safe and stable homes to over 100 children in Zanzibar who are no longer able to live with their parents. The children grow up being cared for by an SOS Mother, along with their SOS brothers and sisters. Children attend the SOS Nursery along with children from families living in the local area, allowing them to form friendships with local children. The SOS Primary and Secondary Schools provide further education to approximately nearly 900 students. When older children are choose to move out of the family home, they are supported by the SOS Youth Programme in semi-independent, shared accommodation. Qualified counsellors provide guidance as they complete their education or vocational training and make the transition to young adulthood.¹³⁷⁹

SOS Children's Villages Zanzibar are able to implement programmes which impact in a positive way on the children who are orphans and those living in most vulnerable families. Such programmes include; (1) Family Based Care, which takes care of children who are orphans and those abandoned by their parents, (2) Family Strengthening programme which empower the poor and destitute families, and communities to respond to the needs of children who are at the risk of losing parental care, (3) Advocacy projects which contribute to raising awareness about the rights of children in alternative care, and (4) Promoting children protection.

1377 Ibid, p. 407.

1378 SOS Website information's.

1379 <http://www.soschildrensvillages.org.uk/sponsor-a-child/africa/tanzania/zanzibar> (accessed 4th November, 2014).



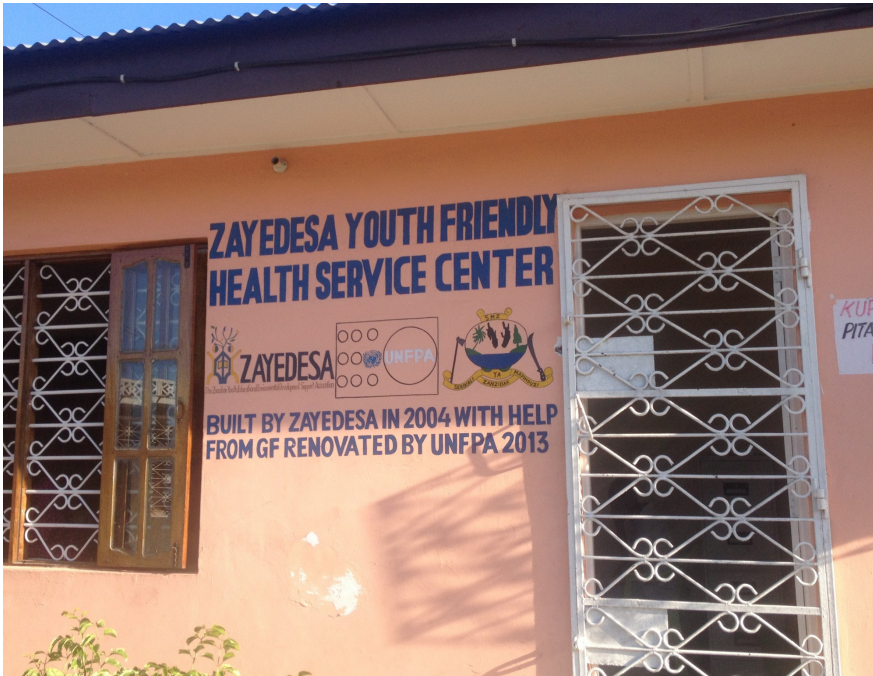
Picture 77: Children play at SOS Village, Zanzibar



Picture 78: Schooling at SOS

6.2.3.2 Children Homes

After the revolution of 1964, the government of Zanzibar established the first orphanage for abandoned children in the Stone Town at Forodhani. Due to large number of orphans a two-storey building was constructed by The Zanzibar Youth Education Environment Development Support Association (ZAYEDESAs) at Mazizini with help of various stakeholders.



Picture 79: The office of the Zanzibar Youth Education Environment Development Support Association (ZAYEDESA) at Mazizini

There are other orphanages including Integral Assistance to Vulnerable Children (IAVC), Zanzibar Orphan Support Project (ZASO), Zanzibar Children's Fund at Chake Chake Pemba and SOS Village.¹³⁸⁰

The objectives of many orphanages are to see the Zanzibar community free from poverty and disease, provide educational development, child care and social welfare to orphans and disabled persons.

However, it is our observation that, the government is supporting only 38 children in Mazizini Orphanage by providing them with food, health facility, cloths and education.¹³⁸¹ The question which may arise here is who will take care of the rest if the government supports only a minimum number of these children. The selection criteria on the basis of age and limitation of the children living with HIV are still challenge.

6.2.3.3 Children and Religious Institution (Madrassa)

An Islamic school *Madrassa* is an institution which usually offers different courses of study of Islam. These include; citation and memorization of the Qur'an Arabic,

¹³⁸⁰ *Human Rights Report 2013.*

¹³⁸¹ Hutuba ya Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2014/2015 - Wizara ya Uwezeshaji, Ustawi wa Jamii, Vijana, Wanawake na Watoto.

Qur'anic interpretation, Islamic law, recorded sayings and deeds of Prophet Muhammad (PBUH), logic and Muslim history.¹³⁸²

Madrasa existed in Zanzibar long before the advent of the colonialists. Throughout history, Islamic religion was taught at the local village by elderly persons and sheikhs who were the main organizers of the studies. Children attend these schools so as to understand the teaching of the Qur'an. Pupils normally commence studies as young as 4 to 5 years, where they learn Arabic words and phrases of the Qur'an.

Despite being an important institution for development of children, some of the teachers in the *Madrasa* are not given adequate recognition and are not provided with adequate opportunities in the training and teaching profession despite the fact that, in the recent years, some *Madrasa* have been registered under the Ministry of Education. Therefore, we recommend that the government establish a quality control system to determine the suitability of person working with *Madrasa* their qualification, remuneration and other related matters. There is no well-organized regulatory board for the control of *Madrasa* and their business hence this allows for a lot of abusive actions in *Madrasa* which might have been facilitated for this reason.

On the other hand, despite of being an important institution, some teachers misbehave and do not conduct themselves well when in dealing with the children by carrying out acts which are against human rights. Therefore there is a need for the government to be closer to this very important institution to avoid malpractices. Some of the *Madrasa* have been turned to business entities which produces *qaswidah (nashid)* in albums and a sold for benefits. Some of the children are involved in the production through audio and video records.

6.2.4 Right to Grow and Develop

As explained earlier, the right to life includes the right to grow and develop. In the growth process of the child, the government has spoken against any form of cruelty to the child including psychological torture. The basic purpose of the right to grow and develop is shown seriousness in the growth of intellectual capacity of the child.

However, the problem of school drop outs and early marriages frustrates the principle to grow and develop. Previous data indicated that about 21 school girls were made pregnant in the year 2014 and about 19 were married at early ages. However, the report by Zanzibar Imams Association (JUMIZA) study on child abuse has revealed that there were about 136 girls in schools who were found to be pregnant. In addition, based on the records of One Stop Centre at Mnazi Mmoja Zanzibar, there were records

1382 ADEA (2012) Triennale on Education and Training in Africa Qur'anic Schooling and Education for Sustainable Development in Africa: the case of Kenya.

of 186 pregnancies from January to November, 2014. There are reports that some parents especially in rural areas agree to put their children in family way before they finish school. School children are also impregnated thus affecting their studies. Some of the students who have conceived go back to schools some do not. It should be understood that the right to grow and develop is fundamental for the child life in the future.

6.2.4.1 Right to Education for the Child

Education is a fundamental human right. It is also an enabling right that permits the exercise of other fundamental rights. Thus the right to education functions as a multiplier as it enhances the fulfilment of all other rights and freedoms when it is guaranteed.¹³⁸³ The right to education for the child is highly considered a basic human right and the foundation for society. It is a fundamental human right for all,¹³⁸⁴ men, women and children including children with disabilities. The right to education is universal,¹³⁸⁵ and importantly, education is also treated as a basic need.¹³⁸⁶

The Convention on the Rights of the Child, 1989 makes an important rallying point for governments with regard to education policies and interventions. Article 28 of the CRC provides for education as a basic right, and for free and compulsory primary education as a matter of urgent priority. It encourages the development of different forms of secondary education, including general and vocational education, stating that they should be available and accessible to all children (Article 28(1)(b)).

The right to education for the child is stipulated under the Fundamental Objectives and Directive Principles and Policies of the Revolutionary Government of Zanzibar. Unfortunately, this is not an enforceable right. It depends upon the government's financial capacity to implement it or not or as an organizational priority. Some human rights activists view this as a camouflage that the government does not to set aside enough funds for health, education and other social economic.

The Zanzibar Education Act No 6, 1982 provides for the right to education for the child. Under this legislation, universal primary and middle secondary school is a

1383 Sloth-Nielsen, J. and Mezmur, B.D. (2007), 'Free Education is a Right for Me: A Report on Free and Compulsory Primary Education' (Save the Children, Southern Sudan Office).

1384 Article 26 of the UDHR (1948) recognizes education along with other necessities such as food, shelter and water as a fundamental human right. The CRC affirms the right of all children to free, relevant and quality education. In addition to that, at the World Education Forum in Dakar (2000) participants from 164 countries pledged to provide education for all by 2015.

1385 Asquith, S., & Hill, M., 'Justice for Children', Boston/London, 1994, p. 87.

1386 Freeman, M., 'Children Rights. A Comparative Perspective', University College, London 1996, p. 33.

compulsory.¹³⁸⁷ All parents are required to send their children to schools. Failure to do so amounts to an offence punishable under section 34 of the Act which says:

Any person who contravenes any of the provisions of section 20 and 22 of this Act shall be guilty of an offence and shall, on conviction be liable to the following punishments:-

- (a) for the first offence to a fine of not less than hundred and fifty shillings but not exceeding three hundred shillings;
- (b) for the second offence to a fine of not less than three hundred shillings but not exceeding five hundred and fifty shillings and;
- (c) for the third and any subsequent offence to a fine of not less than five hundred and fifty shillings but not exceeding one thousand shillings or be sent to an *educational centre for a period of not more than six months or to both such fine and imprisonment.*”

However, to advance to the higher education stage is not compulsory. It depends upon the learning capacity of the child. Some parents send their children to private schools with the hope that they get quality education. It seems that children in public schools are of low income earners.

There is also an Inclusive Education Project in existence. The project is facilitated by the Norwegian Association for People with Development Disabilities and Operation Day Work. The project is an attempt to acknowledge the fact that all children can learn, respect differences in children age, gender, ethnicity, language and disability. The number of school enrolment keeps growing annually, forcing the government to build more classrooms to meet the demand.

6.2.4.2 Right to Play

The right to play for the children is part of human rights. It is also covered in the Constitution of Zanzibar of 1984. It falls under the Fundamental Objectives and Directive Principles and Policies of the Revolutionary Government of Zanzibar. There are officially few places for children to play in Unguja and Pemba.

Zanzibar used to have a Child Amusement Park at Kariakoo in Unguja and Tibirinzi in Pemba. The Kariakoo Park was re-opened in this year after a major reconstruction which was done by Zanzibar Social Security Fund (ZSSF). The opening of Kariakoo will give an opportunity to children to have a play area. However, the amount which one has to pay to access the area is too high compare to the life standard of many

1387 Compulsory attendance of pupils at schools. Section 20 of Education Act, 1982.

Zanzibari depriving many children the opportunity to make use of this facility., Currently each person who enter in has to pay TZS 1,000 again if you want to access any one of the amusement facilities, you will pay TZS 1,000 for each.



Picture 80: The above three pictures show the new look of Kariakoo Children Amusements



Picture 81: Apart from that there are two privately managed alternative Children Amusements in Zanzibar town at Jamhuri Garden adjacent to the famously known Wireless area and at Forodhani. The Jamhuri Garden Park was not constructed as a recreation centre in firs



Picture 82: Night view at Forodhani Park, children enjoy variety of sea food.



Picture 83: Siku Kuu celebration at Forodhani Park

Another interesting place for children in Zanzibar is Zanzibar Park. This is a private owned park with a decent small zoo and play park in Mwera, close to Zanzibar Town, that appeals to young kids and where they can see species endemic to the Zanzibar archipelago such as the Ader's Duiker and the Pemban Flying Fox. Horse and camel rides are also available.



Picture 84: Pupils from British school enjoying at Zanzibar Park

However, apart from the official reserved parks, many open spaces have been invaded and grabbed by private developers for construction purposes and other have been allocated for public purposes like car parks or temporary bus terminals. There are complaints the construction of the monument at Michenzani has taken a space used by children to play. This denies children a place to play and thus forcing children to play in unsafe spaces like dumps or streets thus endangering the lives of children who play in those areas.¹³⁸⁸

6.2.4.3 Violence against Children

Violence against children has been a problem for a long time. There are different forms of violence to children including sexual violence and physical violence from close family members and the society at large. There has been attempt to check the violence against children through the Ministry responsible for Children. There are also reported cases of violence among children themselves. It was alleged in the course of the year one female child died after being beaten by her colleague.

A number of nongovernmental organizations at national and international levels have offered assistance to check the vice. A serious awareness campaign is conducted to change the mind-set of the people to value the rights of children and to avoid violence to children.

6.2.4.4 Current Situation on Child Abuse

The situation on child abuse in Zanzibar is far from encouraging. A number of reports presented in different seminars and workshops indicate that children are subjected to different forms of abuse starting from sexual abuse to emotional abuse.

According to JUMAZA report 2014, child abuse in Zanzibar has increased. In some cases, family members and school teachers are responsible for child abuse. Some cases of children abuse are reported to police stations for legal action and some of the abuses are settled at family levels and thus forces victims to silence. The results of the study show that there were 132 cases of rape, 136 cases of pregnancy, 59 cases of gays, 26 cases of lesbianism. This report rang an alarm note that more efforts are needed to control child abuse. Child abuse should be treated as a cross cutting issue instead of leaving it with the Ministry responsible for Children. It is disheartening to note that children suffering from HIV/AIDS are subjected to stigmatization.

6.2.5 Child Labour

The Zanzibar Employment Policy of 2009 emphasizes on elimination of worst forms of child labour and clearly states that legislative measures is a means of addressing the

1388 Kibanda Maiti, Uwanja wa Farasi and Jangombe.

child labour problem.¹³⁸⁹ Child labour in Zanzibar is governed by the Employment Act of 2005 and the Children’s Act of 2011. However compliance and enforcement of both legislations seems to be challenged as the number of working children are increasing in Zanzibar.¹³⁹⁰ Likewise, while on one hand the Children’s Act of 2011 prohibits employment of children below the age of 15 years, the Employment Act does not set a minimum age for employment yet; it prohibits the employment of children of all ages except for domestic work. Given the conflicting provisions between the two Acts, it is questionable whether the Acts facilitate effective enforcement. It is therefore pertinent to explore the effectiveness of the laws particularly in tackling the problem of child labour.

The child labour in Zanzibar is found in a number of sectors, including fishing, prostitution, seaweed farming, considered the most hazardous sectors, as well as agriculture (clove plantations) and tourism.¹³⁹¹

The 2006 Integrated Labour Force Survey (ILFS) reveals that most children work because of household poverty. Other reasons are broken families, irresponsible parenting, and a lack of alternatives for children who complete formal secondary education.

This problem is very common in Pemba areas such as Micheweni, Mwambe, and Wambaa where children are seen working in stone quarries, breaking stones into pebbles and blocks fabrication. In Unguja, in areas such as Charawe, Kijini, Matemwe areas children are engaged in fishing, looking for firewood and livestock keeping.¹³⁹²

6.2.6 Maintenance of Children

The right to maintenance of children is one of the basic requirements of a family. Tanzania ratified the UN Convention on the Rights of the Child, 1989 in 1991. It further domesticated it through the law of the Child Act, 2009. Zanzibar followed suit with Children Act, 2011 which among other things accommodates the best interest and rights of a child. The law has included the duty to maintain a child by persons

1389 Revolutionary Government of Zanzibar, National Guidelines for the Protection and Welfare of Children in Zanzibar, Ministry of Social Welfare, Youth, Women and Children Development, 2011.

1390 Revolutionary Government of Zanzibar, Child Survival, Protection and Development Policy, Ministry of Youths, Labour, Women and Children Development, 2001. Apart from the Child Labour Survey of 2006, the Tanzania Health and Demographic Survey of 2010, other evidence shows an increasing problem of child employment in Zanzibar, leading to high dropout rates as well as absenteeism.

1391 International Labour Organization (ILO) (2001). *Rapid Assessment: Child Labour in Zanzibar*, Dar es Salaam.

1392 Human Rights Report 2013.

responsible according to the law entitled to so¹³⁹³ where maintenance order can be applied before the court.¹³⁹⁴

In practice, other several laws are used to guide interest of children. Kadhis Courts are often the first reference point for matters like inheritance, maintenance and custody of children.¹³⁹⁵ Further Spinster and Single Parent Children Act, 2005¹³⁹⁶ is applied respectively.

In Islam, it is up to the father to maintain the family. A wife can assist but this is not compulsory. There is a serious problem of maintenance of a child nowadays especially with the break-up of marriages and cases of single parents. The cases are reported to the Kadhi's court and the Ministry responsible for Children to find a solution to fathers who do not want to perform their duty of providing support for their children. It is understood that in some cases, the Kadhi's Court in several occasions ordered deduction of the fathers' salary for maintenance purposes.

Some children are forced to work to raise money to meet basic family needs. This is one of the contributing factors to school drop outs.

6.3 Rights of the Elderly

Most developed world countries have accepted the chronological age of 65 years as a definition of 'elderly' or older person, but like many westernized concepts, this does not adapt well to the situation in Africa. While this definition is somewhat arbitrary, it is many times associated with the age at which one can begin to receive pension benefits. At the moment, there is no United Nations standard numerical criterion, but the UN agreed cut-off is 60+ years to refer to the older population. Although there are commonly used definitions of old age, there is no general agreement on the age at which a person becomes old. The common use of a calendar age to mark the threshold of old age assumes equivalence with biological age, yet at the same time, it is generally accepted that these two are not necessarily synonymous.

As far back as 1875, in Britain, the Friendly Societies Act, enacted the definition of old age as, "any age after 50", yet pension schemes mostly used age 60 or 65 years for eligibility (Roebuck, 1979). The UN has not adopted a standard criterion, but generally use 60+ years to refer to the older population.

The more traditional African definitions of an elder or 'elderly' person correlate with

1393 Section 63 of the Children Act No. 6 of 2011.

1394 Section 64 (1), the Children Act No. 6 of 2011.

1395 Ibid, Law Reform Process.

1396 Section 8, the Spinster and Single Parent Children Act No. 2005.

the chronological ages of 50 to 65 years, depending on the setting, the region and the country. Adding to the difficulty of establishing a definition, actual birth dates are quite often unknown because many individuals in Africa do not have an official record of their birth date. In addition, chronological or 'official' definitions of ageing can differ widely from traditional or community definitions of when a person is older. We will follow the lead of the developed worlds, for better or worse, and use the pensionable age limit often used by governments to set a standard for the definition.¹³⁹⁷

Article 22 of UDHR provided that "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of the personality."

In that respect of the UDHR, the Constitution of Zanzibar under section 10 (g) provides:

10. For the purposes of promoting unity and development of the people and social welfare in the country it shall be the responsibility of the Revolutionary Government of Zanzibar to ensure:

(g) That every person who is able to work has the opportunity to work, and work means any legitimate activity by which a person earns a living, disadvantaged groups such as the elderly, the sick, children and disabled are assisted.

In support of that provision, Isles government has set aside special homes for the elderly in Unguja and Pemba. There are 163 elders who live under the government support at Sebleni and Welezo for Unguja, Limbani and Makundeni for Pemba. The government pays monthly stipends to the elders (senior citizens).¹³⁹⁸ The government provides TZS 5,000 through Sheha of Shehia where the elders lives. This amount of money, however, is not enough to cover the cost of living or the actual demand of elders.

Some good Samaritan and NGOs along with government offices out efforts in comforting elder, especially those living under government support, from time to time. This includes the time of month of Ramadhan and during the periods of celebrations.

1397 <http://www.who.int/healthinfo/survey/ageingdefnolder/en/> (accessed 10th November, 2014).

1398 The budget speech of 2014/2015 of Minister of Social Welfare, Children and Women Development.



Picture 85: Elders at Sebleni during the visit of Tanzania People Defence Force (TPDF) and the Regional Commission Urban Region Hon. Abdallah Mwinyi.



Picture 86: Acting Commander of Nyuki Brigade, Kanal Shaban Ilangu Lissu, gives the Regional Commission Urban West Region Ho.n Abdallah Mwinyi, support of food and cleaning equipments issued by the TPDF for the elders living in Sebleni homes in celebrating 50 year

6.4 Rights of Persons with Disabilities

There are a number of international and regional instruments taking care of the rights of people with disabilities. Disability may be physical, deaf, albinism, blind and intelligent disabilities.¹³⁹⁹ A disability may be present from birth or occur during a person's life time.¹⁴⁰⁰

There are more than 16,533 people with different disabilities throughout Zanzibar. 10,088 of the people with disability live in Unguja (5,089 women and 4,999 men) and 6,445 live in Pemba (2,878 women and 3,567 men).¹⁴⁰¹

6.4.1 Legal Framework

The Zanzibar Policy of People with Disabilities is in place with the main objectives of promoting people with disabilities. In addition, the House of Representatives passed Disabilities (Rights and Privileges) Act No 9, 2006 with the purpose of promotion of rights of people with disabilities in Zanzibar. Under the Act, it is stressed that public buildings and services should be accessible to all including persons with disabilities. However, the situation is different. A large number of public buildings are not accessible to people with disabilities.

Other laws that defined rights of people with disabilities in Zanzibar are, Labour Relations Act, 2005,¹⁴⁰² Zanzibar Education Policy, 2007, focusing in on improving access to education for children's with disabilities together with the Zanzibar Strategy for Growth and Reduction of Poverty, 2006 – 2020.

6.4.2 Institutional Framework

The Office of First Vice President of Zanzibar is responsible of dealing with matters relating to people with disabilities. There are also a number of non-governmental organizations dealing with the promotion of interests of people with disabilities of different types.

There are more than ten non-governmental organizations dealing with people of different disabilities. Among them there is the Zanzibar Association of the Blind (ZANAB), Zanzibar Association for People with Developmental Disabilities (ZAPDD), the Organization of People with Disabilities in Zanzibar (UWZ), Zanzibar Centre for Disability and Inclusive Development (ZACEDID) and others. All these institutions are guided by the international instruments and the Act of People with

1399 Disability-Wikipedia.

1400 Ibid.

1401 Department of Disabilities Affairs, the First Vice President's Office, August 2014.

1402 The Act Bars Discrimination based on Disability in the context of trade Union.

Disabilities in Zanzibar.¹⁴⁰³

6.4.3 Poverty among People with Disabilities

It is estimated that the number of people with disabilities in Zanzibar is more than 15,000 people out of the total Zanzibar's population of about 1.3 million. Most of the families with people with disabilities live below the poverty line and hardly meet the basic needs of life. This is because they cannot work at the same rate as able person do. Also number of facilities is not friendly to them, therefore it becomes difficult to for them to meet basic public services.

6.4.4 Abuse against People with Disabilities

Unofficial statistics indicate that people with disabilities are subjected to sexual abuse and some of them are impregnated. Officers from People with Disability said there were many cases of girls with developmental disability subjected to sexual violence though no specific data has been recorded. Worse still, the officials said, no legal action had been taken against the culprits. There is a problem of some families with people of disabilities trying to hide them.

6.5 Conclusion

The aim of human rights instruments at this angle is the protection of those vulnerable to violations of their fundamental human rights. There are particular groups who, for various reasons, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights. Often human rights instruments set out additional guarantees for persons belonging to these groups; the Committee on Economic, Social and Cultural Rights, for example, has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints.

The protection of vulnerable group in Zanzibar is not satisfactory, despite all the efforts that are taken to ensure their welfare. Reports suggest that, there is a positive story of development of people with disabilities compared to the past years. Among them is the introduction of specific department dealing with the rights of people with disability. However, there is a lot that needs to be done to promote the rights of people with disabilities. It is up to the government to allocate enough funds to support activities and projects of people with disabilities. Aggressive awareness campaign needs to be carried out to help the promotion of the interest of people with disabilities. Women, children and elders also need special attention.

¹⁴⁰³ The Persons with Disabilities (Rights and Privileges) Act No. 9, 2006.

Chapter Seven

Collective Rights

7.0 Introduction

Collective rights which are sometimes called solidarity rights or group rights are what they are referred to the third generation of human rights.¹⁴⁰⁴ These are right which the individuals enjoys as part of group or the community. They include this class of rights are environmental rights, the right to peace and security, right to development, right to separate identity and the right to self-determination. The African Charter on Human and Peoples Rights, 1981 made significant contribution to the development of these “solidarity rights” by making provisions for them.¹⁴⁰⁵ Apart from the classification of the rights as civil and political rights, economic, social and cultural rights, there are rights that are classified not necessarily as individual but group rights. They include children’s rights, refugee rights, women’s rights, minority rights, the rights of indigenous peoples, among others. These group rights, it must be pointed out, do not detract from the basic concept of human rights and they are not additional or superior to those belonging to the rest of the society. The group rights are the expression of basic rights, tailor-made to adequately protect the group concerned. There is also a further classification of human rights into substantive human rights and procedural human rights. The former are protected by the substantive law while the later are the procedural provisions for the enforcement of the substantive rights.

There has been a debate going on between the collective rights and individual rights. Some people use to say that there is no line of distinction between the two. However, collective rights protect a group of people while individual rights protect the individual. The international and regional human rights instruments explain about the collective rights. The Revolutionary Government of Zanzibar has been trying to meet the needs of collective or group rights.

7.1 Right to Development

There is a symbiotic relationship between the right to self-determination, the right to development or right to natural wealth or resources. Under articles 1(1) respectively of ICCPR and ICESCR,¹⁴⁰⁶ the right to self-determination encompasses the right of the people not only to freely determine their political status but to freely pursue their

1404 The first generation of rights involve civil and political rights the second generation involves socio-economic and cultural rights.

1405 Robinson, M., “Protecting Human Rights: the Role and Responsibilities of the Independent Bar,” being a keynote address delivered at the inaugural World Conference of Barristers and Advocates, Edinburgh 28th June, 2002.

1406 The provisions are set similar.

economic, social and cultural development. A similar provision is contained in article 20(1) of the African Charter.¹⁴⁰⁷ Further to the foregoing provisions, the General Assembly of the United Nations on 4 December 1986 adopted the Declaration on the right to development.¹⁴⁰⁸

The Declaration in its preamble states, *inter alia*:

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development.

Recalling also the right of peoples to exercise, subject to the relevant provisions of both international Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources.

Article (1)(1) of the Declaration provides as follows:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 2(1) of the Declaration provides that “The human person is the central subject of development and should be the active participant and beneficiary of the right to development”. From the above provisions, it is clear that right to development is embedded in the right of the people and their entitlement to participate, contribute and enjoy economic, social, cultural and political development. Again, the full realization of the right to self-determination is dependent on the human right to development wherein the human person remains the fulcrum, the subject and the beneficiary of the development.

The right to development was first recognized in 1981 in Article 22 of the African Charter on Human and People’s Rights as a definitive individual and collective right.¹⁴⁰⁹

Article 22 (1) provides that:

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

1407 The provision is similar to article 1(1) of ICCPR and ICESCR.

1408 UNGA Resolution 41/128 of December 1986.

1409 Collective Right, Wikipedia.

The right to development was subsequently proclaimed by the United Nations in 1986 in the Declaration on the Right to Development which was adopted by the United Nations General Assembly resolution 41/128.¹⁴¹⁰ The right to development is a group right of peoples as opposed to an individual right and was reaffirmed by the 1993 Vienna Declaration Program of Action.¹⁴¹¹

7.1.1 Right to Development in Zanzibar

Like most economic rights other than the right to property, the right to development is hardly asserted in Zanzibar. Legally, the right to Development in Zanzibar is not covered under the Constitution but has been included in the fundamental objectives and directive principles and policies of the Revolutionary Government of Zanzibar.¹⁴¹² The right to Development as part of the collective right is made part of the annual Zanzibar Government Plan which is tabled in the House of Representatives for deliberation and approval. Through the representative democracy of their respective legislators in the House of Representatives, the people of Zanzibar are given a chance to discuss what is in the government Annual Plan including all projects such as the Zanzibar Strategy for Growth and Reduction of Poverty commonly known “MKUZA II”.

According to the information taken from MKUZA II, (a successor to the Zanzibar Strategy for Growth and Reduction of Poverty 2007-2010.)¹⁴¹³ Zanzibar’s GDP at market price stands at TZS 878,403 Million and the per capita income is estimated to be USD 557 as of 2009. The annual GDP growth rate in 2009 was 6.7 per cent. Compared to developed countries, it is clear that Zanzibar is poor and has a relatively very small economy. The Household Budget Survey data of 2004/05 shows that 49 per cent of the population in Zanzibar had income that is below the basic needs poverty line. The preliminary analysis of the 2009/2010 Household Budget Survey data shows that the situation has only marginally improved, with the more significant achievement being registered in other areas of wellbeing such as education and health. As would be expected, the low per capita GDP is also broadly associated with low relative achievement in other dimensions of human welfare such as life expectancy, education and health. Global ranking of countries in terms of Human Development Index shows a correlation between a country’s per capita income and the value of Human Development Index, with high income countries registering better human development than low income countries. Although this correlation is not perfect, it is clear that income is an important determinant of human development, and thus economic growth must be an important instrument of fostering sustainable human

1410 Ibid.

1411 Ibid.

1412 See Zanzibar. (2005). *Sera ya maendeleo ya vijana*. Zanzibar: Serikali ya Mapinduzi ya Zanzibar, Wizara ya Vijana, Ajira, Maendeleo ya Wanawake na Watoto.

1413 Zanzibar Strategy For Growth And Reduction Of Poverty (ZSGRP II) 2010-2015 MKUZA II, October 2010.

development. It is for this reason that the Revolutionary Government of Zanzibar has adopted the second Zanzibar Strategy for Growth and Reduction of Poverty (ZSGRP II). This strategy addresses issues of growth and human development.

However, MKUZA Plan comes under criticism from many Zanzibaris who do not know even what MKUZA mean. Domestic production of food is still very much dependent on weather conditions and is limited by geographical factors. There are also a number of constraints in the agricultural sector, such as shortage of inputs, lack of effective extension services and so on that can be addressed by policy to boost production. Thus there is an opportunity for the policy to contribute to an increase in food production and thus reduce inflationary pressure in Zanzibar.

Other development projects are covered at the Ministerial levels. Each Minister is given time to explain the development plan of a ministry under his/her portfolio and the representatives get the opportunity to question the viability of a development project. Some projects are revisited as a result of the technical and political input of the representatives. In some cases, the representatives question even the list of priority of the projects. There is an argument that the Annual Government Development Plan is influenced by the Party Election Manifesto of the ruling CCM. The basic question is whether the development projects are tailored for all the people regardless of their political party affiliations or not. After all, there is a point that all Election Manifestos of all registered political parties propagate common issues.

7.2 Rights to the Environment and Sustainable Development

Environment is the sum total of what is around something or someone. It includes living things and natural forces. The environment of living things provides conditions for development and growth, as well as of danger and damage. Living things do not simply exist in their environment. They constantly interact with it. Organisms change in response to conditions in their environment. The environment consists of the interactions among plants, animals, soil, water, temperature, light, and other living and non-living things.¹⁴¹⁴

The idea of 'Environmental Human Rights' is not a new one. Many international agreements since the 1972 UN Stockholm Conference have talked about it. Some states have constitutions or legislation intended to ensure this right. The Rio Summit sought to resolve them through Agenda 21 and the UNCED Conventions. However, attempts to implement these agreements have largely failed to influence national policies and activities that lead to unsustainable growth. Laws and strategies intended to support the 'mainstreaming' of sustainable development have had little impact in most countries, while perverse resource use is still widespread and often unchecked.

1414 <http://simple.wikipedia.org/wiki/Environment> (accessed on 17th November, 2014).

These failures have led to calls for a new approach. Further pressure for change comes from the impacts of economic and social globalisation. Non-mandatory treaties such as the Rio agreements are an inadequate basis for effective control of these processes.

1415

Environmental human rights encompass three main areas: Firstly, the right to a clean and safe environment: This is a substantive, basic right but is hard to define.¹⁴¹⁶ Many support the idea that safe water and food security are basic human rights. Secondly, the right to act to protect the environment: This is inherent in the UN Declaration and associated Conventions, through the right to organise and to free assembly, but is under threat in many nations. Thirdly, the right to information, to access to justice, and to participate in environmental decision-making: These enable citizens to play an active part in creating a healthy environment, and are linked to several UN Conventions and Declarations.¹⁴¹⁷

7.2.1 Right to Clean Environment in Zanzibar

The protection of human rights and environment are treated seriously. The Revolutionary Government of Zanzibar had taken measures to conserve the environment to enable the people to live comfortably. Unlike in the past, the Zanzibar Stone Town is kept clean. Land Development Projects are carried out in line with the environment. For example, there are projects of National Spatial Development Strategy and Sustainable Urban Development and Management. Special areas outside the Zanzibar Municipality that have been set aside for dump (refuse) purposes. Under the supervision of the Zanzibar Municipal Council, garbage is collected from different points in town and taken to these special areas for disposal.

The Constitution of Zanzibar of 1984 has not included a direct or specific provision for the environment. However, Section 10 (6) of the Constitution provides some indications on the environment from the Government. The Section says that the government shall direct its policy toward ensuring that every person has access to adequate health care, equal opportunity to adequate education for all and that Zanzibar culture is protected, enhanced and promoted.

The Ministry responsible for environment is taking measures to create awareness and educating communities on the importance of environmental conservation. In order to reduce pressure on the unplanned use of natural resources the government is

1415 The UNCHR 'Draft Principles for a Declaration on Human Rights and Environment' from 1994 suggest how these might be defined.

1416 Ibid.

1417 Maria Adebawale *at al*, Environment and Human Rights: A New Approach to Sustainable Development, World Summit on Sustainable Development Opinion, International Institute for Environment and Development (IIED), May 2001.

introducing and promoting alternative income generation activities such as ecotourism, beekeeping and crafting. Coastal communities are educated on conservation of marine resources and associated environment, while the fishermen are provided with fishing gears and fishing skills.

The law governs the environmental issues including the Zanzibar Environmental Management for Sustainable Development Act, 1996 reflect the principle of state sovereignty of environmental recourses. The Act protects the Island's environmental resources against Bio-piracy. Section 33(1) of the Act provides:

The institution responsible for the environment through the Director shall prepare a local environmental action plan when environmental problems which require special localized planning are identified, especially those which threaten likely harm to:-

- (a) Zanzibar's biological diversity; or
 - (b) an ecosystem such as a coastal area or water catchment.
- (2) Any person has the right to petition the Director, identifying a problem which requires the preparation of a local environmental action plan.
- (3) A local environmental action plan shall be approved by the Minister.

The Act provides the right to clean and healthy environment and a duty to maintain it. As given under Section 6(1) Every person has a right to a clean and healthy environment. (2) Every person has a duty to maintain and .enhance that environment.

It also provides right to legal proceedings to any stake holder.

Section 109(1) Any person, whether or not assisted by an advocate or wakil, shall have the right to petition the appropriate enforcing institution or any court of law, subject to that court's rules, to enforce any provision of this Act.

- (2) Any person who institutes a proceeding under this section and who prevails in court shall have the right to recover the costs of the legal proceeding from the other party.
- (3) At the request of the prevailing party, the court acting upon a proceeding instituted under this section shall include in the judgment any costs of the prevailing party.
- (4) For the avoidance of doubt, "person" specifically includes any

individual or group of individuals whether formally registered for environmental purposes or not and any community which has prepared a community environmental management plan under section 35 of this Act.

The environment is where people live. Many people consider the “environment” to be primarily concerned with natural things such as plants and animals, forests and coral reefs. The environment is certainly made up of such things, but it also includes a much wider spectrum of life and society. It is a broad term which describes the space around us in natural, social, economic as well as technological ways. Education, urbanization, waste, population, housing and energy are all part of our environment. The laws therefore are there to protect life of people through protection of the environment. To maintain and improve our environment, it is necessary to keep track of its health and progress. Information based on continuous monitoring provides the basis for decision-making.

Apart from all of the efforts taken, the state of environment in Zanzibar is still not satisfactory. Planning, cleanliness, and control of the waste material are still a burden for the government to handle. Individual, who are number one perpetrators of the environmental destruction, contribute immensely to the violations of environmental rights.



Picture 87: An informal parking lot at Taveta below the High Voltage Power Lines from Kidatu.

The right to a clean environment is of concern to the Revolutionary Government of Zanzibar. It has taken various initiatives to improve and provide a clean environment in Zanzibar. For instance, The Department of Environment (DoE), Zanzibar is the institution responsible for overseeing the integrity of Zanzibar's environment for sustainable development. This Department was established in 1989 and is in charge of Environmental affairs in Zanzibar. At that time, the department was under the Commission for Land and Environment (COLE) of the Ministry of Water, Energy, Land and Environment. However from 2006, the Department has been under the Ministry of Agriculture, Livestock and Environment (MALE). Since 2010 the DoE is moved to office of the First President of Zanzibar. The process is now underway to develop DoE to be full Authority. The functions of the department are:¹⁴¹⁸

- i. To maintain a well-organised environmental bank;
- ii. To provide environmental input into the planning process, based on the national environmental policy;
- iii. To monitor the state of the environment and organize research;
- iv. To tackle immediate environmental problems and stimulate others to action for environmental protection;
- v. To promote Environmental impact assessment (EIA);
- vi. To promote awareness and provide training on environmental issues.

Among the key duties of this Department is to collect information on the environment, to disseminate environmental information to the public, to help in the implementation of development projects, to raise awareness on the importance of environment, to draw a climatic change strategy and take appropriate actions to conserve the environment.¹⁴¹⁹ The Department is carrying out an Environmental Impact Assessment on various development projects. However, there are claims that some of the reports of the EIA are not implemented. The Department of Environment is now preparing a petroleum policy aimed at providing guideline of the management of the petroleum in Zanzibar.

7.2.2 Duty to Protect Natural Resources

Zanzibar is a nation richly endowed with remarkable cultural and natural heritage. It has been a centre of trade, agriculture and cultural exchange for thousands of years. As a small group of islands with limited space, Zanzibar faces many environmental

1418 Ministry of Agriculture and Natural Recourses Zanzibar. <http://www.kilimoznz.or.tz/archives/18-environment.html> (accessed 9th October, 2014).

1419 Speech by Minister of State the Office of the First Vice President, Hon. Fatma Abdulhabib Ferej on Estimates of Revenue and Expenditure for Fiscal Year 2012/2013iIn the House of Representatives in Zanzibar Ministry of Health (Hotuba ya Waziri wa Nchi Ofisi ya Makamu wa Kwanza wa Rais, Mheshimiwa Fatma Abdulhabib Ferej, Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2012/2013 Katika Baraza la Wawakilishi Zanzibar), p. 16.

and social challenges. Fortunately, a good deal of progress has been made to wisely manage its natural resources, and people are taking action to ensure that Zanzibar's valuable natural, cultural and economic assets remain intact and are used in a sustainable manner for the benefit of all people.¹⁴²⁰

Numerous policies and plans have been developed to propel Zanzibar on a path towards poverty reduction, sustainable development and a healthy environment. They include Zanzibar's Vision 2020, the Zanzibar Biodiversity Strategy and the Zanzibar Poverty Reduction Plan (ZPRP). Vision 2020 which serve as a foundation for development with links to all sectors of society, environment and economy. The ZPRP (progress reports can be viewed at www.zprp.org) is a plan of action for implementing various socio-economic improvements, and the Biodiversity Strategy outlines the way forward for managing conservation and utilization of natural resources.

Pressures on Zanzibar environment continue and in some cases are expanding. The environment is being more heavily utilized than ever before and parts are rapidly degraded. Zanzibar is at a critical stage in terms of deciding the directions it will take into the future. Will it become a sustainable group of islands with a healthy population and vibrant natural, cultural, and economic or not? The survival of the people of Zanzibar largely depends on natural resources taking into consideration that Zanzibar is not an industrial country. Natural resources available in Zanzibar include sea, rivers, land and wind. There is a story going around about oil exploration in Zanzibar following rumours on the possibility of oil in Zanzibar waters. There is need to carefully examine the environmental of this before any measures are taken.

The Revolutionary Government of Zanzibar is trying to take several steps to ensure that the national resources are protected. For instance, the remaining high forests of Zanzibar, such as Jozani and Ngezi, are under good formal protection. These forests have increasing tourism value and sustainable management plans are in place. However, Zanzibar's increasing population is placing pressure on other forest resources for building supplies and fuelwood. In fighting against this problem, about 1,242 (Unguja 492 and Pemba 750) families were given domestic gas for free of charge. This gas is distributed in cylinders between 6 and 15 kilo. The purpose of this provision is to reduce the degradation of forestry in a country.¹⁴²¹ Though less than 50% of the government goal of providing gas to 4,000 family (Unguja 2000)

1420 State of the environment report for Zanzibar, 2004/2005.

1421 Speech of the Minister of Agriculture and Natural Resources , Hon. Suleiman Othman Nyanga (MHR), on Estimates of Revenue and Expenditure of the Ministry of Agriculture Natural Resources for the Year 2014/2015. (Hotuba ya Waziri wa Kilimo na Mali Asili, Mh. Suleiman Othman Nyanga (MBM), Kuhusu Makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Kilimo Mali Asili Makwa 2014/2015).

and Pemba 2000), was implemented, it showed the commitment and good will in protecting the natural resources.

Quarries which are emerging anywhere and everywhere deface parts of the countryside. Coral rag forests are heavily utilised for fuel and cleared for cultivation and mangroves are cut for building poles. Flagship species such as the Pemba Flying Fox and the Ader's Duiker continue to be under threat, but there are increasing efforts to protect them. In many places communities and local government have been mobilized to plant trees, manage forests and protect the endemic species of Zanzibar. Monitoring of resource utilization and environmental damage due to salt farming continues to be a challenge for Zanzibar.

The oil exploration is a sensitive issue and has brought a lot of complaints between Zanzibar and the Union government. The main problem is the best equitable formula to be used between the two parts. There was time the Zanzibar authorities through the House of Representatives wanted to exclude from the union list, the issue of oil exploration. The plan failed and it was explained that the National Assembly is the only place to decide about exclusion of oil exploration from the union list. This issue is still debatable as the government of Zanzibar continues to a policy which will later introduce the gas and oil legislations. This is claimed to be in conformity with the protection of natural resources as a constitutional duty imposed by Section 23 (2) of the Constitution of Zanzibar of 1984 which says that;

Every person has the duty to protect the natural resources of Zanzibar, the property of the state Authority, all property collectively owned by the people and also to protect another person's property.

7.2.3 Community Participation in Protection of Environment

In order to ensure benefits to poor from the natural resources, they should be meaningfully made to participate in the governance of natural resources. Zanzibar has undergone some type of decentralisation reform in the management of natural resources. Interest particularly developed in agriculture, water management, and forestry, centring on promoting the participation and enhancement of the power and decision-making role of local communities. Community approach is further developed in reserved areas and protected area management, with many believing the combined effects of ecological insularisation and chronic conflict with local peoples jeopardizes the long-term sustainability of protected areas.

In an attempt to promote sustainable utilization of natural resources the government is encouraging and facilitating community participation in natural resource management. Communities have been empowered to set up their natural resources management committees.

The Ministry responsible for environment is taking measures to create awareness and educating communities on the importance of environmental conservation. In order to reduce pressure on the unplanned use of natural resources the government is introducing and promoting alternative income generation activities such as ecotourism, beekeeping and crafting. Coastal communities are educated on conservation of marine resources and associated environment, while the fishermen are provided with fishing gears and fishing skills.

7.2.4 Waste Disposal and Sanitation

Zanzibar's rudimentary waste management and sanitation facilities are nowhere near keeping pace with the increase in the Zanzibar. The population is growing enormously. The town is expanding and villages are springing up within very small spaces. There are about 1.3 million people in Zanzibar. There is also a high immigrant population from the Mainland apart from tens of thousands of tourists attracted to visit stunning beaches every year. In Zanzibar only a minority of residents, those living in the historical centre - Stone Town - are connected to the sewerage network, which consists of a mere 25km of pipes, according to the Zanzibar Municipal Council (ZMC).

Considerable amounts of sewage, including from septic tanks where only minimal treatment takes place, are discharged directly into the sea: The Island has no sewage treatment plant. What can only be found are septic tanks and soak pits. Within the periphery of the suburbs, there are places with no soak pits or septic tanks; while some people do not even have toilets. Primary liquid waste treatment is only done at the septic tank where there is only about 30 percent reduction of the biological oxygen demand - a measure of water quality before being discharged into the ocean along any of the 27 sea outfalls. The government is unable to keep the place clean. At least in 2006, the government directive requires hotels to treat their own sewage, but this rule is widely flouted.

Sludge from septic pits and latrines also seeps into the sea from the mangrove stands where it is dumped. Contamination has already been noted in some areas such as Maruhubi, north of Zanzibar City.¹⁴²² Maruhubi is used by private sludge emptiers and is prone to flooding during high tides. Mangroves growing there help absorb some of the organic waste. Some scientists say it is not safe to swim close to the beach because of a rise in pathogens. More than 12,000 cubic metres of liquid waste is discharged into the sea daily. There is an indication of sea water pollution with e-coli forms detected along the coast.

1422 According to a government report prepared for the WIO-LaB project, coordinated by the UN Environment Programme and the Global Environment Facility.

The Municipal Council collects garbage and manages sewerage system in the Zanzibar Municipality. The capacity for performing this task efficiently is low. Untreated wastes from the town are pumped into the sea for disposal, a factor which contributes to sea pollution.

7.2.5 Solid Waste Disposal Management

The management of solid waste disposal is a chronic problem. The institution responsible for solid waste disposal management lacks the capacity to perform the work as per the people's expectations. The institution is also underfunded and lacks modern equipment. It has been reported about the poor capacity of The Zanzibar Municipal Council to collect tonnes of solid waste and clean the town.¹⁴²³ Report suggests that the Municipal through manual effort just manage to collect a small per cent of solid waste and leaving a large amount uncollected and spread all around the town.

Solid waste management is inadequate. Of about more than 200 tons generated daily, only 45 per cent is moved to dumping sites, with the remainder left in open spaces. About 0.5kg of solid waste is generated per capita per day - 80 per cent of it organic - according to estimates. In addition, at the dumpsite there is no controlled tipping; people just dump; the waste just stays there and decomposes. Complaints have been raised over rodent infestation, bad smells and smoke from the site about 12km from Zanzibar Town. Garbage collection capacity in the municipality is low with only few trucks.

There is lack of public awareness in managing cleanliness of the surroundings. The main responsibility of waste disposal and sanitation falls under the Zanzibar Municipal Council. Some people argued that it is time for the Municipal Council to privatize the cleaning department and allow private people and companies to provide such services. There was time when the Zanzibar government wanted to privatize the solid waste disposal. So far there has been no clear information on the development of the privatization plans. The dumping sites keep changing and in some cases the solid waste is dumped in agricultural fields as manure.

The disposal of the used materials from abroad has also become another problem in Zanzibar. There has been a tendency for some year now, of importing second hand goods, commonly known as used material (Mitumba), from Europe and other areas. These materials are brought in large volumes. Some of them are sold and used domestically. However, a large number of these materials become waste and dumped

1423 Legal and Human Rights Centre and Zanzibar Legal Services Centre, *Tanzania Human Rights Report, 2012*.

everywhere. The materials include electronic devices, such as broken television sets, radio, refrigerators, textile materials, spare parts including used tyres and many others.

7.2.6 Deforestation

The Department of Forest within the Ministry of Agriculture and Natural Resources is, among other things, responsible to check on wanton destruction of natural resources and cutting down of trees for charcoal and construction poles. Cutting down of trees is allowed. However, one needs to get a permit from the Forest Department. There are forest guards who have been deployed to every district and whose responsibility is to check unaccepted forest activities. A number of cases were brought before the court and the culprits were fined.

Based on the importance and usefulness of the forest in the country, the government is advised to pay some concern on afforestation and reforestation. This is the establishment of a forest or stand of trees in an area where there was no forest and the reestablishment of forest cover, either naturally (by natural seeding, coppice, or root suckers) or artificially (by direct seeding or planting). The government and non-governmental organizations should directly engage in programs of afforestation to create forests, increase carbon capture and sequestration, and help to anthropogenically improve biodiversity.

7.2.7 Right to Peace and Security

The right to peace and security is covered in international and regional instruments. The adoption of the Charter of the United Nations in San Francisco on 26 June, 1945 laid the foundation for a new international legal order. The Charter left no one in doubt regarding its intention when it inter alia clearly reaffirmed in its preamble, the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. The purposes of the United Nations as set out in the Charter include as follows:

To maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.¹⁴²⁴

International law became a vehicle in the realization of the objectives of the Charter. In other words, international law laid the foundation for the internationalization of

1424 Article 1 of the Charter of the United Nations. Several provisions of the Charter made specific references to human rights. They include articles 55(c), 62(2) and 76(C).

human rights and international human rights regime. Indeed, the development of international human rights was strengthened following the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR) on 10 December 1948. As a result of sustained pressure from the international community, the safeguard and enforcement of human rights became a major objective of international law.¹⁴²⁵ It also stated the determination of the peoples of the United Nations “to employ international machinery for the promotion of the economic and social advancement of all peoples.” It is up to government to provide for the right to peace and security to its people as a prerequisite for the nation’s economic, political, social and cultural interests.

Section 9 (2) (b) of the Constitution of Zanzibar of 1984 says that Security for people and their welfare shall be the primary objective of the Government.

Unlike in the past, the peace and security has improved significantly although there were sporadic cases of violence and skirmishes catapulted politically or religiously. The introduction of the Government of National Unity is said to have helped to develop stability and peace in Zanzibar. The government was established following the tenth constitutional amendment in 2010 in which the winning party held monopoly of the government. For the first time in history, Zanzibar, since the introduction of the multiparty system, Zanzibar experiences a peaceful atmosphere. Strengthening of community policing (*Polisi Jamii*) has also contributed the control and reduction of criminal acts in some of the streets as in the Stone Town.. *Polisi Jamii*.

7.3 Conclusion

It has been reported on positive achievements in collective rights in Zanzibar in the recent years. However much has to be done to make these more fruitful and enjoyable to the people. The government is advised to make changes in laws and policies particularly in the rights to development, work, fair remuneration and environment so as to ensure its protection and enjoyment. In spite of the country’s various efforts in promotion of collective rights, none could be said to have satisfied the demand. Following the examination of the functionality of the mechanism for the protection of human rights, it becomes obvious that the system was fundamentally defective and could hardly lead to the difficulties. Also noticeable is the fact that civil and political rights enjoy better protection than socio-economic and cultural rights. This ought not to be so as human rights are interdependent, interconnected and indivisible. Again, the country’s jurisprudence on collective rights is far from being developed.

1425 Dugard J International law: A South African Perspective (2000), Chapter 13.

Despite the achievements, there are still numerous challenges to be addressed, these include: further promotion of transparency and a sense of accountability that has to be inculcated; need for removing the apparent conflict of interest between personal priorities *vis a vis* those of the society, as currently shown by some members of House of Representative when exercising their powers is very much needed; and further involvement of local communities in the House of Representative, particularly on gender issues should be ensured.

Chapter Eight

SMZ Special Departments and Human Rights

8.0 Introduction

The Constitution of Zanzibar under section 121 provides for the establishment of special departments whose functions are specified by their specific laws. The Special Departments established under that article are; Jeshi la Kujenga Uchumi – JKU (Economic Building Brigade)¹⁴²⁶, Kikosi Maalum cha Kuzuia Magendo – KMKM (Special Force for Prevention of Smuggling)¹⁴²⁷ and Chuo cha Mafunzo (Educational Centre for Offenders).¹⁴²⁸ The President of Zanzibar is empowered under section 121 (3) of the Constitution of Zanzibar to establish any other departments to be known as special department. Invoking that provision, the President of Zanzibar has established other special departments apart from those established under the Constitution. These departments are Kikosi Cha Zima Moto na Uokozi - KZU (Fire Brigade and Rescue)¹⁴²⁹ and Kikosi cha Valantia – KVZ (Volunteers)¹⁴³⁰. Generally, apart from their specific functions as provided by their respective laws, these Special Departments in collaboration with police and defence forces are required to maintain peace and security in the Isles.

8.1 SMZ Special Departments and Human Rights

There have been complaints levelled against the Special Departments in relation to the Human Rights. For years the Departments were accused of being directly involved in violation of human rights. Also, on several occasions, the departments had been reported of being used in politics.¹⁴³¹

8.2 KMKM (Special Force for Prevention of Smuggling)

The KMKM has been established with the purposes to check smuggling activities particularly clove smuggling, in the Zanzibar waters. The marine force had managed to intercept 6 incidents of smuggling activities for 2013/2014.¹⁴³²

1426 Regulated under Act No. 6 of 2003.

1427 Regulated under Act No. 1 of 2003.

1428 Act No. 1 of 1980. The ZLSC has been assisting the Department to revise this law so that it suits the requirements of the human rights protection.

1429 Established under Act No 7 of 1999.

1430 Kikosi Cha Valantia Act No. 5 of 2005.

1431 *Human Rights Reports 2010* and *Human Rights Reports 2012*.

1432 Speech of the Minister of State in the President's Office Regional Administration and Special Department Of SMZ on Estimates Of Revenue And Expenditure For The Financial Year 2014/2015 (Hotuba Ya Waziri Wa Nchi, Ofisi Ya Rais Tawala Za Mikoa Na Idara Maalum Za SMZ Kuhusu Makadirio Ya Mapato Na Matumizi Kwa Mwaka Wa Fedha 2014/2015), p. 45.

8.3 Offenders Educational Centres (Prison Centres)

The Educational Centres has been established by Act No 1, 1980¹⁴³³ with the main purposes of reforming inmates. Though no serious violation of human rights were reported in 2014, the situation is not very satisfactory. Reports suggest that there were a large number of detainees in Zanzibar central prison overburdening the centre's budget. Some remandees had bailable cases but were denied intentionally to punish them.

In year 2014 the Prison Headquarter provided TV sets and decoder to the centres to enable inmates to have access to news and other TV programmes. Other improvements made on the part of the juvenile offender has been witnessed. ZLSC has conducted human rights training and on the laws related to their affairs.

ZLSC from time to time provides special training to the officers of Education Centre on issues related to protection on human rights. In this year training took place on 26th to 27th August, 2014 at ZLSC conference hall.



Picture 88: The officers from Education Centre at the human rights training organized by ZLSC.

1433 Act No 1 of 1980.

8.4 The Jeshi la Kujenga Uchumi (JKU) (Economic Building Brigade)

Jeshi la Kujenga Uchumi (JKU) was established for the first time in 1977 with its history going back when it was a Youth Camp. This was followed by the passing of a Decree No 5 in 1979, which made it mandatory for all secondary school leavers and higher education graduates to service in the JKU for one year.

Currently, JKU has been established by Act¹⁴³⁴ with the purpose of training young men and women in economic, agriculture, small scale industries, fisheries and vocational training. In the early years of its introduction JKU was fully engaged in economic activities.

8.5 Kikosi cha Zimamoto na Uokozi - KZU - (Fire and Rescue Services)

The KZU has been established by Act¹⁴³⁵ for the purposes of fire fighting activities and rescue services. Like other brigades, the fire Brigade faces a scarcity in its budget that deteriorates its operation. Kikosi cha Zimamoto actively engaged in rescuing operations in various disasters that occurred in 2014.



1434 Act No. 6 of 2003.

1435 Act No. 7 of 1999.



Picture 89: Kikosi Cha Zimamoto were in pursuit of removing the rubble to see if anyone was under the rubble following the collapse of a three-storey building at Jaws Conner, in the Stone Town on 19th November, 2014.

It was reported in the reports of the last two years that the operational capacity of the brigade is weak especially in rescues and hazard control. ZLSC still recommends that the major changes be carried out to help KZU and other departments of government to perform their duties successfully and without violating human rights.

8.6 Conclusion

The establishment of Zanzibar Special Departments, which although have been a point of discussion in their constitutional existence, have helped a lot in the fields they have been established. They play crucial roles in giving support to the people and the government. The five departments of government were established according to the law that introduced their functions and limitations. Their main functions are to work on behalf of the government according to their designated names or titles and not as armed forces.

The legality of the Departments vis-à-vis the Union, remains a question that needs more explanation as it is reported many times that, the establishment of the Departments are against the Constitution of the United Republic of Tanzania, 1977. The new proposed Constitution of the Union is also failed to address the issue of these departments.

Chapter Nine**Corruption, Abuse of Power and Human Rights****9.0 Introduction**

Corruption is a global phenomenon which every society faces though its degree of severity varies from country to country. Understanding corruption by itself is a complex undertaking. However, it is agreed that corruption is inimical to public administration, undermines democracy, degrades the moral fabrics of the society and violates human rights. The pain of corruption touches all the human family but it disproportionately affects the vulnerable sections of the society. It reinforces discrimination, exclusion and arbitrariness. Corruption is a universal problem undermining universal value-human rights.

Corruption has no doubt posed a serious challenge to many countries, particularly in Africa. It is argued that state institutions are directly linked to corrupt practices which affect Good Governance. These malpractices have come to the notice of the central government who has started taking measures to fight the problem.

9.1 Meaning of Corruption

Although there is no universal definition of corruption, it is generally defined as abuse of public office for private gain. Corruption can be defined as a misuse of entrusted power for private gain.¹⁴³⁶ It happens when co-operations, organizations, companies or individual profit inappropriately from their position in their operations and thereby cause damage or loss. This includes giving and receiving bribes, extortion, favouritism and nepotism, embezzlement, fraud, conflict of interest and illegal monetary contributions.¹⁴³⁷ The meaning of corruption differs from place to place, country to country and even culture to culture hence corruption takes different forms.

Corruption may have different types, including secret inducement for advice; deceiving principal; failure to disclose conflict of interests; improper benefits to trustees for appointment; bid rigging misappropriation of property and revenue; misappropriation of assets; tax evasion; smuggling, hoarding, anti-trust and syndication, wrongful use of official information, money laundering, drug trafficking, counterfeiting goods and currency, schemes intended to unlawfully manipulate exchange rate, abuse of office, transfer of proceeds of corruption, corruption in election; bribery of foreign official;

1436 As defined by Danish International Development Agency, at <http://www.cisu.dk/Default.aspx?0=23469>

1437 Swedish International Development Agency, at <http://www.cisu.dk/Default.aspx?023469> visited on 3rd January 2014.

sexual favours and abetment.¹⁴³⁸

9.2 International Instruments in Combating Corruption

The United Nations has taken efforts to combat corruption. In its resolution 55/61 of 4th December, 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized (Resolution 55/25) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime.¹⁴³⁹

The Convention approved by the *Ad hoc* Committee was adopted by the General Assembly by resolution 58/4 of 31st October 2003.¹⁴⁴⁰ The General Assembly, in its Resolution 57/169 of 18th December, 2002, accepted the offer of the Government of Mexico to host a high level signing conference in Merida for the purpose of signing the United Nations Convention against Corruption.¹⁴⁴¹ In accordance with Article 68 (1) of Resolution 58/4, the United Nations Convention against corruption entered into force on 14th December, 2005.¹⁴⁴²

In Africa, several anti-corruption initiatives have seen the light on the African continent, but their effectiveness is yet to be proven. The African Union Convention on Preventing and Combating Corruption (AU Convention) was adopted in Maputo, Mozambique on 11th July, 2003 and entered into force around three years later.¹⁴⁴³ As of 1st July, 2012, 45 States have signed the Convention and 31 have ratified it.

The Southern African Development Community Protocol against Corruption (SADC Protocol) was enacted on 14th August, 2001 and entered into force four years later. The Protocol aims to align member States' definitions of corruption, in order to facilitate cross-border cooperation. It covers a wide range of corrupt practices, both in the private and public sector, and provides a broad list of preventive measures, which State Parties "undertake" to adopt.

9.3 Corruption and Human Rights

Corruption is a critical factor that contributes to the violation of rights by facilitating, serving or creating an environment in which the violation takes place.¹⁴⁴⁴ The nexus between corruption and human rights has lately elicited serious research

1438 ZLSC, Tanzania Human Rights Report, 2012.

1439 International Instruments on Corruption – Google Search.

1440 Ibid.

1441 Ibid.

1442 Ibid.

1443 The AU Convention entered into force on August 5, 2006.

1444 Kannokkan Anukansai, "Corruption: The Catalyst for Violation of Human Rights".

and examination. The thrust of such initiatives is that corruption deprives the state of capacity to meet its obligations to respect, protect and fulfil the human rights of its citizenry. Indeed corruption causes massive violation of human rights.¹⁴⁴⁵ In addition, there is a likelihood of human rights abuses in a country with higher levels of corruption. The rankings in the annual corruption index by Transparency international have shown that countries where respect for human rights is high are unlikely to experience high prevalence of corruption.

Violation of human rights owing to corruption may occur in a number of ways. These include:

9.3.1 Socio-economic and Cultural Rights

Member states of the International Convention on Economic, Social and Cultural Rights are obligated, subject to their capacity to incrementally achieve the full realization of among others, the rights to education, health and work. Corruption impairs the realization of these rights in several ways. Fundamental rights are violated when people are constrained to pay bribes to get their children admitted to schools, to access medical services or to gain employment. Grand corruption on the other hand diverts resources which would otherwise have been used towards the realization of these rights.

Besides creating income inequalities, the diversion of resources occasions massive human deprivations. Indeed poverty can be eradicated from the face of the continent if corruption in the management of public resources is eliminated.¹⁴⁴⁶ Corruption also results in sub-standard and overpriced goods and services. Projects characterised by corruption not only provide opportunities for unjust enrichment, but are also wasteful. In addition, negotiations giving rise to such projects are invariably undertaken behind closed doors. This denies people who are likely to be affected by such projects the opportunity to give their views on the projects. The projects may at times lead to displacement of people from their traditional habitats, thereby violating their rights to self-determination and a means of subsistence.

Diversion of public resources runs counter to provision of services through pro-poor expenditure in critical sectors such as health, education and welfare services. A reduction in expenditure on health and education will inevitably lead to a decline in the quality of healthcare and attainment of education, thereby violating people's rights. Poverty alleviation is dependent on economic growth. Uncertainties in the economic environment as a result of corruption discourage investment, thereby stifling

1445 Nihal Jawawickrama, "Corruption – A Violation of Human Rights?"

1446 Barney Pityana, in a speech made during the Eighth Assembly of the World Council of Churches.

economic growth which in turn inhibits poverty alleviation. Although corruption affects everyone, its effects are particularly harmful to the poor as the bribes they pay constitute a big portion of their income. In addition, they are more dependent on public goods and services,¹⁴⁴⁷ the provision of which is characterised by rampant corruption. This exacerbates poverty and widens inequality. Corruption, no doubt denies people the fundamental rights guaranteed under the international human rights instruments, among them the United Declaration of Human Rights (UDHR), 1948; the International Covenant on Civil and Political Rights (ICCPR), 1966; the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966; and the African Charter on Human and Peoples' Rights (ACHPR), 1981.

9.3.2 Discrimination

Every person has the right to be treated equally by public servants in the discharge of their official duties or exercise of official authority. This right is guaranteed at the international sphere by treaties and conventions such as the UDHR which recognises that all human beings are born free and are equal in terms of dignity and rights. The rights provided in the Declaration must be enjoyed by everyone irrespective of their race, gender, religion, social status etc.

The ICPR in article 26 guarantees equality and equal protection by the law. At the national level domestic law, in most cases the constitutions provide for equality. Corruption however negates these rights. When a person gives a bribe to a public servant and the bribe is accepted, such person acquires a privileged status *vis a vis* other persons similarly placed, but have not offered bribes.¹⁴⁴⁸ Such person will receive preferential treatment which has no reasonable or objective justification. Such treatment is plainly discriminative and does not serve any legitimate purpose. The judiciary being the nerve centre of the justice system and the custodian of justice, which includes protection of human rights, must be beyond reproach. When corruption pervades the courts, it tilts the scales of justice and denies people the right to legal redress when their rights are violated. This makes a mockery of the right to equal protection before the law and the right to a legal remedy. A corrupt judiciary does not inspire public confidence and trust and can lead to a breakdown of law and order.¹⁴⁴⁹

9.3.3 Corruption in Politics

Political corruption provides opportunities for violation of human rights. When the outcome of elections is determined by vote buying, the electorate are then deprived of the right to political participation and their rights to vote by universal and equal suffrage is compromised. Corruption in politics results in weak leadership, sycophancy,

1447 Kannokkan Anukansai, "Corruption: The Catalyst for Violation of Human Rights."

1448 Transparency International Report (2007).

1449 Ibid.

patronage and undermines democratic ideals. Irregular political appointments and plunder of public resources to finance elections are some of the manifestations of corruption in politics. Low political participation creates conditions for impunity and corruption. The effective exercise of political rights on the other hand counterbalances the use of state power and abuse, including corruption.

9.4 Laws Combating Corruption in Zanzibar

The legislation that combats corruption is The Zanzibar Anti-Corruption and Economic Crimes Act, 2012.¹⁴⁵⁰ Prior to this, the Constitution of Zanzibar, 1984, had introduced offences related to corruption and abuse of office against any person holding public office.¹⁴⁵¹

According to the Zanzibar Anti-Corruption and Economic Crimes (ZACECA), the functions of the Anti-Corruption Institutions include investigation of the complaints concerned corruption practices breach of ethics or economic crimes against any public or private body.

In addition, ZACECA advises any public or private entity on corruption occurrence issues and assists any law enforcement agency of the government in the investigation of the corruption or economic crime offences, examines the practices and procedures of public or private bodies in order to facilitate discovery of corruption practices and secure mechanisms of reversing the situation and educate the public on the dangers of corruption and economic crimes.

9.5 Financial Measures

It has been reported in the past on the loss of public funds through various channels. Unscrupulous officials in the government have been introducing many channels that will enable them to collect money fraudulently from the government. In order to overcome the issue, several steps were taken by government. The steps include the introduction of Centralized Payment System¹⁴⁵² which was advanced to Integrated Financial Management System (IFMS).

The new system was a step towards fighting ghost workers and control government expenditure. Reports from the central government indicate that there is positive outcome in the use of the new system where government expenditure is strictly controlled.

1450 Act No. 1, 2012.

1451 Section 10 (b) of the 1984 Constitution of Zanzibar.

1452 Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2011, p. 389.

9.6 Institutional Framework

Zanzibar is part of the implementation of the United Nations Convention against Corruption of 2003¹⁴⁵³, the African Union Convention on Preventing and Combating Corruption of 2003,¹⁴⁵⁴ the SADC Protocol against Corruption of 2001 and many other similar treaties to which Tanzania is a signatory.¹⁴⁵⁵

The institutional framework of dealing with corruption comprises of at least 18 pieces of legislation¹⁴⁵⁶ passed over the years and covering such matters as criminal fraud, money laundering, public procurement, public financial control and audit, smuggling of goods, the trafficking in narcotics and recruitment and deployment of public service employees.¹⁴⁵⁷

The core anti-corruption institutions are ZACECA, the Auditor General (CAG), the Office of DPP, the Ministry of Justice and Constitutional Affairs, the Judiciary, the Police, the KMKM and mechanisms under the Money Laundering Act., The President of Zanzibar has appointed the Director General of Zanzibar Anti-Corruption Authority. However, it took some time to have an office and operative staff.

The main problem of ZACECA is that it has no prosecutorial powers and the right to authorize prosecution is vested in the Office of the DPP. At the same time, the Commission is government funded so the budget for implementation of activities has been problematic.

9.7 Current Situation on Corruption in Zanzibar

Corruption cases are rarely reported in Zanzibar. Several reasons have been attributed for the abject corrupt problems. Among them are poor social services, absence of an anti-corruption body for a long time and lack of leadership ethics. Observations found that many people must offer something for services with courts and Police departments in the driving seat.

Other driving factors on corruption in Zanzibar, according to the Draft Report and the Baseline Assessment of Anti-Corruption Activities in Zanzibar include social cohesion, low salaries and poor conditions of work, complex government procedures breeding delays and a temptation to jump the queue.¹⁴⁵⁸

1453 Draft Report, the Baseline Assessment of Anti-Corruption Activities in Zanzibar, p. 7

1454 Ibid.

1455 Ibid.

1456 Ibid.

1457 Ibid.

1458 Legal and Human Rights Centre and Zanzibar Legal Services Centre, *Tanzania Human Rights Report, 2012*, p. 427.

Others are Court complications and formalities, lack of demonstrative leadership from government and willingness and ability to fight corruption, excessive business regulations, low levels of public knowledge, insufficient legal framework, laxity in implementation of financial controls and non-aggressive complaints.

Responding to the problem, the Zanzibar Director of Anti-Corruption and Economic Crimes argued that Zanzibar is not immune to corruption and that many public officers have been engaging in corruption.

9.7.1 Corruption in Dealing with Administration of Justice

It is a fact that Judiciary in Zanzibar is not free from corruption.¹⁴⁵⁹ Corruption in court may be perceived or actual: a delayed ruling, or hearing a case in closed chambers, for example, may or may not be an indicator of corruption. A lost or misplaced file may generate the perception. A dismissed application may be because of unmet requirements, rules broken, or procedures not followed, but may be perceived as a disguise of corruption.

9.7.2 Abuse of Public Funds

This is a chronic problem in the Civil Service. Officers involved in financial control seem reluctant to adhere to financial regulations and procedures.

In a report released in 2014 covering the year 2012/2013, the Auditor General revealed financial irregularities in all ministries. The irregularities included abuse of petty cash, unauthorized or wasteful expenditures, overpayments, and revenue that had not been properly accounted for. Government controls over public funds and property were often inadequate. Some contracts were sole-sourced, in violation of tender procedures.¹⁴⁶⁰ This indicates that many government entities involve in malpractices.

The biggest weakness at the Office of the Controller and Auditor General (CAG) is that it is not independent. The CAG is accountable to the president and his annual report is tabled to the House of Representatives through the Ministry acting for the President. However, the CAG does not have powers to enforce its recommendations.

9.7.3 Abuse of Power

Abuse of power, in the form of “malfeasance in office” or “official misconduct,” is the commission of an unlawful act, done in an official capacity, which affects the performance of official duties. Malfeasance in office is often grounds for a for cause removal of an elected official by statute or recall election. Abuse of power can also

1459 Human Right Report 2013.

1460 Ripoti ya Ukaguzi wa Hesabu kwa Mawizara, Mashirika na Taasisi za Serikali ya Mapinduzi ya Zanzibar Kwa Mwaka wa Fedha 2012/2013.

mean a person using the power they have for their own personal gain.¹⁴⁶¹ It can be described to mean the act of using one's position of power in an abusive way. This takes many forms such as taking advantage of someone, gaining access to information that should not be accessible to the public or just manipulating someone with the ability of punishing them if they do not comply.

There have been reports in the case of abuse of power by government officials in 2014. Surveys indicate that three reports were presented in the House of Representatives that allege abuse of power, embezzlement of public funds, and the illegal sale of land and government buildings levied against some of the Isles officials. Research conducted and presented in the House of Representatives recommended legal action and dismissal of some of the people mentioned in the report but to date nothing has been done.

A number of government officials have been linked to the abuse of power including in the police force and land officers. Police officers are alleged to have been leading in the abuse of power for the interests of the executive. Some government officials holding key posts use foul language to their subordinates and other people who are in need of their services. In addition to that, the director of the Zanzibar Broadcasting Corporation (ZBC) on 17th December, 2014, appeared before Vuga Regional Court accused of abuse of office and tax evasion. Mr. Hassan Mitawi was charged under the Zanzibar anti-corruption and economic crimes laws, prohibiting civil servants from engaging in illegal businesses.¹⁴⁶²

9.8 Conclusion

As it is well established, every organ in the state is the creation of the law and empowered by the law to work within the boundary of its limit without violating the same. Any improper usage or treatment of an entity, often to unfairly or improperly gain benefit amounts to abuse. Abuse can come in many forms, such as: physical or verbal maltreatment, injury, assault, violation, rape, unjust practices; crimes, or other types of aggression.

We still experience abuse of authority, in the form of political corruption, where there are usages of legislated or otherwise authorised powers by government officials for illegitimate private gain. Misuse of government power for other purposes, such as repression of political opponents and general police brutality, is also another form of corruption outlined above. In some cases, these illegal acts are committed by private

1461 http://en.wikipedia.org/wiki/Abuse_of_power (accessed on 23rd September, 2014).

1462 Isles broadcasting firm boss in tax evasion rap available <http://www.touch.dailynews.co.tz/index.php/local-news/39490-isles-broadcasting-firm-boss-in-tax-evasion-rape> (accessed on 14th December, 2014).

persons or corporations. ZLSC is of the opinion that corruption is a habit and hence everyone who is in the position is susceptible to it. But prevention and eradication of corruption is an absolute requirement for better social and public life. This corruption takes an interesting turn in such a way that everyone becomes corrupt in some other sort if situation permits.

ZLSC recommends the following as steps to be taken to eradicate or reduce the corruption in Zanzibar. The government should make sure that people are employed or privately engage themselves in business. Effective action should be taken to servants involved in corruption. Government should keep transactions online and provide receipts for every purchase. It should also fix Close Circuit Camera in most government offices. The work process in government institutions should be sped up. The court should also speed up the judgments and increase the judicial officers.

Chapter Ten

Domestic Initiative in Human Rights Protection

10.0 Introduction

Pursuant to the International and Regional instruments of human rights, Tanzania has adopted measures to show respect and protection of human rights. In this context, there were measures taken by Tanzania as a whole (Zanzibar included) and there were measures that were taken by Zanzibar as semi-autonomous state and not as part of the United Republic of Tanzania. This Chapter focuses on Zanzibar's efforts to respect, protect and promote human rights.

10.1 Incorporation of Bill of Rights in the Constitution of Zanzibar, 1984

In the first place, Zanzibar had its first Constitution of 1963 that came in force on December 10, 1963. This supreme law was short-lived and survived hardly a month before the January 12th Revolution of 1964 when it was abolished. It had incorporated a Bill of Rights.

Zanzibar existed without a Constitution for 15 years and there was nothing about the Bill of Rights. Zanzibar was ruled by the Presidential Decrees through the Revolutionary Council. The first-post revolution constitution of 1979 contained no Bill of Rights.

The Constitution of Zanzibar of 1984 incorporated a Bill of Rights. The Constitution devotes Chapter Three as Protection of Fundamental Rights and Individual Freedoms. All fundamental rights are covered in this Chapter.

Sadly, Chapter Three of the Constitution of Zanzibar of 1984 had a shaky experience. The Tenth Amendment of the Constitution of Zanzibar of 1984 that was carried out in 2010 had two main issues that directly touched the interest of Bill of Rights. Firstly, Section 24 (3) had been amended and that the Court of Appeal of Tanzania has no appellate jurisdiction in relation to the Bill of Rights. The High Court of Zanzibar is final and conclusive.

The research team is not sure whether or not the Court of Appeal of Tanzania or the Union government was consulted before the amendment and whether there was such a law binding Zanzibar to consult the Union authorities in the amendment of the Constitution of Zanzibar.

Prior to the amendment, the Section 24 (3) read that:

The application against the decision of the High Court in the suit instituted against the provisions of this Chapter of the Constitution shall be heard by the High Court before three judges without including the judge who has decided the question on the first occasion. Those three judges shall be appointed by the Chief Justice.

After the amendment, the Section 24 (3) reads that:

Appeal against the decision of the High Court in the suit instituted against the provisions of this Chapter of the Constitution shall be heard by the High Court before three judges without including the judge who has decided the question in the first occasion. Those three judges shall be appointed by the Chief Justice and their decision shall be final and conclusive and shall not be appealable to the Court of Appeal of Tanzania. (This is not an official translation).¹⁴⁶³

Secondly, the Tenth Constitutional Amendment had entrenched a new Section 80A which among other things said that the House of Representatives shall have no power to amend, inter alia; all provisions of Chapter Three (Bill of Rights) unless those amendment(s) are first accepted by the people through a referendum.

10.2 The Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (CHRAGG) is an independent government department, established as the national focal point institution for the promotion and protection of human rights and duties as well as good governance in Tanzania.¹⁴⁶⁴ CHRAGG was established under Article 129(1) of the Constitution of the United Republic of Tanzania, 1977 as amended by Act No. 3 of 2000.

The Commission became operational on the 1st July 2001¹⁴⁶⁵ after the coming into force of the Commission the Human Rights and Good Governance Act No. 7 of 2001 as amended by Act No 16 of 2001 and Government Notice No. 311 of 8th June, 2001. The Commission was officially inaugurated in March 2002 following the appointment of Commissioners by the President of the United Republic of Tanzania.¹⁴⁶⁶

1463 For avoidance of doubt, the Swahili version, which is the controlling version -- Section 24 (3) reads that: *Rufaa dhidi ya uamuzi wa Mahkama Kuu katika shauri lililofunguliwa dhidi ya masharti ya Sura hii ya Katiba yatasikilizwa na Mahkama Kuu mbele ya Majaji watatu bila ya kumjumisha Jaji aliyeamua shauri hilo mara ya kwanza. Majaji hao watatu watateuliwa na Jaji Mkuu na uamuzi wao utakuwa ni wa mwisho na hautokatiwa rufaa kwenye Mahkama ya Rufaa ya Tanzania.*

1464 <http://chragg.go.tz/>

1465 Ibid.

1466 Ibid.

In order to be closer to the people, CHRAGG has opened offices in Tanzania Mainland and Zanzibar as well. The Zanzibar Office is led by a Commissioner and started its operation on 30th April, 2007 and covers Pemba as well.

CHRAGG plays the dual role of an ombudsman and a human rights commission.¹⁴⁶⁷ Although this legislation authorized it to operate in Tanzania Mainland and Zanzibar, Zanzibar authorities prevented it from doing so until a parliamentary amendment was enacted.¹⁴⁶⁸ In May 2006, Union government authorities and Zanzibar officials agreed that the quasi-governmental CHRAGG would be permitted to operate in Zanzibar.¹⁴⁶⁹ It is understood that human rights falls under the list of the union matters.

10.2.1 Independence of the Commission

The independence of the CHRAGG remains questionable. The public perception is that the commission operated independently without government interference.¹⁴⁷⁰ However, several members of the public argue that the commission has weaknesses, including the violation of the Paris principles on the independence of national human rights institutions. Firstly, the CHRAGG is barred from investigating the President. Secondly, the President can direct the commission to discontinue an investigation, although he must provide a reason, “if he considers that there is a real and substantial risk that the investigation would prejudice matters of national defence or security”. However, the President has so far, not interfered with the work of the commission.

Thirdly, the commission has not yet developed its capacity to serve the whole country.¹⁴⁷¹ There is a need to ensure closer coordination between the commission’s operations and other related organs, such as the Good Governance Coordination Unit in the President’s office, the Prevention of Corruption Bureau, the police, and civil society (Bureau of Democracy, Human Rights and Labour 2007).

Generally, the agency did not respond to citizen complaints within a reasonable period of time, but the response period depended on the importance of the case and the status of the complaint.¹⁴⁷² The law does not spell out whether reports of the agency should be accessible but in practice they are reasonably accessible.¹⁴⁷³ The reports have to be tabled before the National Assembly before the public can access them.¹⁴⁷⁴

1467 EISA Tanzania Commission.

1468 Ibid.

1469 Ibid.

1470 Ibid.

1471 Ibid.

1472 Ibid.

1473 Ibid.

1474 Ibid.

10.2.2 Performance of the Commission

The part of the performance of the Commission concentrates on Zanzibar Office only. The Commission's performance in Tanzania Mainland has been covered in the Tanzania Mainland report. Hence there is no reason of duplication of the report.

The performance of the Commission on Zanzibar lack satisfaction. There have been several issues reported to be behind incompetency on the Commission in Zanzibar. The budget allocated to the Zanzibar Office is extremely insufficient to perform the activities¹⁴⁷⁵. Further a shortage of manpower adds to the problem of the CHRAGG Zanzibar office. It was reported that small number of the staff are forced to research and document, run the Human rights Department, manage the Good Governance Department, offer legal services and to raise public awareness.¹⁴⁷⁶

For the year 2013, the Office had received 15 complaints from the people ranging from land disputes, police abuse and violation of political and civil rights. Some of the land disputes involved the government and its officials.

The Commission has drawn a list of recommendations for improvement of human rights in Zanzibar. The recommendations increased since land disputes are a result of non-adherence to the laid down procedure by some land officers, lack of transparency. Some government officials are ignorant of the laws and procedure, so the Revolutionary Government of Zanzibar should take appropriate actions to iron out corrupt practices in the Isles Judiciary, delay of cases and issuance of receipts to all those who had paid fines.

In addition to the Commission has recommended that the government through the Ministry of Health popularize the Health Policy, the Education Policy and that stakeholders should cooperate with the Commission.

10.3 Law Review Commission of Zanzibar

The Law Review Commission of Zanzibar (LRCZ) was established as the result of the Msekwa Commission which recommended among other things the establishment of a permanent law review commission to conduct a wide range review of the legal system and recommend changes in the administration of justice.¹⁴⁷⁷

1475 CHRAGG officers in Zanzibar Office said in an interview with the research team.

1476 Legal and Human Rights Centre Zanzibar Legal Services Centre, *Tanzania Human Rights Report, 2012*.

1477 Zero Draft Report, Capacity and Needs Assessment of Legal Sector Actors in Zanzibar funded by the United Nations Development Programme, Tanzania, p. 36.

Taking advantage of the Msekwa Commission's recommendations, the government enacted the LRCZ of Zanzibar Act No. 16, 1986. For a long time, the LRCZ was neglected and was underfunded with inadequate staff.

In the recent past, the government has reactivated the LRCZ. It is the first time since the commission's establishment that it has five part time commissioners to work closely with the chairman and the secretary. The LRCZ is now performing though at a slow pace. It is faced with a number of challenges.¹⁴⁷⁸ They include underfunding, lack of a permanent office, insufficient working facilities, lack of transport and the organizational structure is not fully developed.¹⁴⁷⁹

To date, the Law Review Commission has completed reviewing some out-dated laws in Zanzibar. Until 2013 four different laws has been reviewed including the Law of Evidence No. 5 of 1917, Law of Liquor No. 149, of 1922, Law of animal No. 11 1999, and Law of the law review No. 16 1986. All reviewed laws have been on the desks of Principal Secretaries or Ministers waiting for approval.

Meanwhile, 16 have been enacted by the House of Representatives of Zanzibar in 2013¹⁴⁸⁰. Enactment of laws in Zanzibar has been vested to the House of Representative¹⁴⁸¹, the Constitution read as:-

Nguvu za kutunga Sheria kwa mambo yote yasiyokuwa ya Muungano katika Zanzibar yatakuwa mikononi mwa Baraza la Wawakilishi.

[Powers to enact laws for non-union matters in Zanzibar shall be in the hands of the House of Representatives]

Among the enacted laws are; the laws to establish Zanzibar Ports Authority No. 3, 2013, law to Review Marine Transportation law No2, 2013, the law to Establish Zanzibar Broadcasting Corporation No. 4, 2013, the to Establish Office of the Attorney General No. 6, 2013, the law to Establish Youth Council No. 15, 2013, the Law to Establish Business Tribunal No. 9, 2013 and others.

10.4 The Office of the Director of Public Prosecution

The report of the Reforms of Legal Sector prepared by Judge Mark Bomani and the 8th Constitutional Amendment resulted in the formation of the Office of Director of Public Prosecutions (DPP) in Zanzibar. The DPP has the constitutional powers and will hold

¹⁴⁷⁸ Ibid., 38.

¹⁴⁷⁹ Ibid.

¹⁴⁸⁰ *Shahidi*, Jarida la Ofisi ya Mkurugenzi wa Mashtaka, Toleo No. 011, October December 2013, p. 4.

¹⁴⁸¹ Section 78 (1) Constitution of Zanzibar, 1984.

the office for a term of five years. The DPP has the power to decide on prosecution matters and shall not be interfered with by any person or organ. The DPP has taken over all criminal cases in the High Court, Regional and some District Courts. There still remain eight districts in Unguja and Pemba where the DPP has yet to take over the prosecution services. It is understood that in the absence of the DPP, police take charge of prosecution services.

The DPP office is faced with several challenges. The office is underfunded and cannot meet the financial demands of criminal justice system. The budget allocation is extremely insufficient to meet the demands.

Lack of staff to handle criminal cases is another problem for the DPP Office. Numerous requests have been made to the Central Establishment to allow the DPP to recruit more personnel. The government seems reluctant to heed to the DPP demands thus affecting the prosecution services.

The general awareness of the public on the criminal justice system is low. Production of evidence has been paralyzed. The environment for evidence production is hostile. Witnesses are treated like accused persons and there is no witness protection.

10.5 Zanzibar Human Rights Guidelines (Muongozo wa Haki za Binadamu Zanzibar)

The Ministry of Justice and Constitutional Affairs had distributed Human Rights Guidelines in an effort to raise the public awareness on human rights issues. Informed report indicates that there has been a follow up of the Guidelines to get feedback from the people. There is a need for monitoring to see the level of understanding of the people and practice of human rights. It is almost four years since the distribution of the Guidelines but there has been no updating of information contained therein taking into account that the UN issues resolutions.

10.6 Civil societies and Promotion and Protection of Human Rights

The term “nongovernmental organization,” or “NGO,” was first formalized within the United Nations system in 1945 with its inclusion in Article 71 of the United Nations Charter. Article 71 provides the Economic and Social Council (ECOSOC) of the United Nations with the power to “make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.” The relationship between ECOSOC and NGOs was further formalized in ECOSOC Resolution 1296 and ECOSOC Resolution 1996, which outline criteria for NGO consultative status with ECOSOC. Adapted from William Korey, NGOs and the Universal Declaration of Human Rights 2 (1998); Arrangements and Practices for the Interaction of Non-Governmental Organizations in All Activities of the United

Nations System.¹⁴⁸²

While NGOs were instrumental in achieving the inclusion of human rights standards in the United Nations Charter in 1945, they were few in number and influence at that time. Only forty-one NGOs held consultative status with ECOSOC in 1948 and fewer yet focused exclusively on human rights issues. Since the 1960s, however, the number of NGOs and their influence both nationally and internationally has grown exponentially. Approximately 500 NGOs held consultative status with ECOSOC in 1968; this number had increased to over 1000 by 1992. Adapted from William Korey, NGOs and the Universal Declaration of Human Rights 2 (1998). As the World Bank has noted, total development aid disbursed by international NGOs increased ten-fold between 1970 and 1985. The World Bank estimates that the number of national NGOs in developing countries is between 6,000 and 30,000.¹⁴⁸³

In Zanzibar, NGOs were legally allowed to operate in 1995. The authorized body dealing with the registration of Societies include NGOs is the Office of Registrar General and in exercising this power the Society Act No. 6 of 1995 used as principal law governing the registration process. This Act under article 10 and 11 (1), (2), (3) explain how registration is mad, section 10 of this Act provided about on what time can the Society make an application “*every society shall, in the prescribed manner and within twenty eight days after the formation thereof, make application to the registrar for registration under this Act.*” This resulted in the emergence of many NGOs in Zanzibar including the Human Rights NGOs.

The Human rights NGOs in Zanzibar have grown in influence, both nationally and internationally. They work to advance international human rights around the world principally by setting standards, documenting violations and lobbying for effective enforcement. Many organizations around the world dedicate their efforts to protecting human rights and ending human rights abuses. Major human rights organizations maintain extensive websites documenting violations and calling for remedial action, both at a governmental and grass-roots level. Public support and condemnation of abuses is important to their success, as human rights organizations are most effective when their calls for reform are backed by strong public advocacy.

NGOs have become the champions of human rights mostly of ordinary citizens, not government officials. In particular, they play a primary role in focusing the international community and the local governments on human rights issues. They monitor the actions of governments and pressure them to act according to human

1482 Report of the Secretary-General, A/53/170 (10 July 1998).

1483 http://www.stopvaw.org/ngos_and_the_human_rights_movement (accessed 27th December, 2017).

rights principles. ZLSC have shown a good example in this. It produces annual report of the human rights in Zanzibar which becomes a mirror of the reflection of many human rights issues in the isles. Other NGOs which play active roles in fighting for human rights in Zanzibar include ZLS, ZAFELA, UWZ, ANGOZA etc. There are also international organisations such as Save the Children, UNICEF, Action Aid, Search for Common Grounds which working hand to hand with local NGOs in fighting for human rights.

10.7 Conclusion

The road to Domestic Initiative in Human Rights Protection is still bumpy. There are administrative and technical hitches frustrating the initiative in human rights protection. In fact, the human rights protection initiatives need the government commitment and political will. What the government promises does not correspond to the reality. A lot of sweet promises are made. Implementation leaves much to be desired.

There is a need of having Human Rights Impact Assessment as a process for systematically identifying, predicting and responding to the potential human rights impacts of a business operation, capital project, government policy, or trade agreement. The government should design mechanism to complement a company or government's other impact assessment and due diligence processes and to be framed by appropriate international human rights principles and conventions. It should also be rooted in the realities of the particular project by incorporating the context within which it will operate from the outset, and by engaging directly with those peoples whose rights may be at risk.

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