

Tanzania Human Rights Report 2015

Tanzania Mainland

Legal and Human Rights Centre (LHRC)



Publishers

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Dr. Helen Kijo-Bisimba

LHRC Executive Director

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List of Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ACSEE	Advanced Certificate of Secondary Education Examination
BRN	Big Results Now
CAG	Controller and Auditor General
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEmONC	Comprehensive Emergency Obstetric and Newborn Care
CHRAGG	Commission of Human Rights and Good Governance
CRC	Convention on the Rights of the Child
CSEE	Certificate of Secondary Education Examination
ESDP	Educational Sector Development Programme
HESLB	Higher Learning Students' Loans Board
ICCPR	International Covenant in Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MDGs	Millennium Development Goals
MMR	Maternal Mortality Ratio
MNH	Muhimbili National Hospital
MoHSW	Ministry of Health and Social Welfare
NAO	National Audit Office
NBS	National Bureau of Statistics
NECTA	National Examination Council of Tanzania
PCCB	Prevention and Combating of Corruption Bureau
PEDP	Primary Education Development Programme
PSLE	Primary School Leaving Examination
SDGs	Sustainable Development Goals
SEDP	Secondary Education Development Programme
TFDA	Tanzania Foods and Drugs Authority
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
UN	United Nations
UNDP	United Nations Development Programme

List of Legislations, Regulations and Policies

1. *Anti-money Laundering Act, 2006.*
2. *Basic Rights and Duties Act, R.E 2002.*
3. *Constitution of the Revolutionary Government of Zanzibar 1984.*
4. *Constitution of the United Republic of Tanzania 1977.*
5. *Constitution of the United Republic of Tanzania, 1977.*
6. *Court (Land Disputes Settlements) Act, 2002.*
7. *Criminal Procedure Act, 1985.*
8. *Economic and Organized Crime Control Act, 1984.*
9. *Higher Education Students' Loans Board Act 2004.*
10. *Labour Institutions Act, 2004.*
11. *Law of the Child Act No. 21 of 2009.*
12. *Law of the Marriage Act, 1971.*
13. *Local Government (District Authorities) Act, Cap. 287, R.E. 2002.*
14. *Local Government (Elections) Act, Cap.292 R.E. 2002.*
15. *Local Government (Urban Authorities) Act, Cap.288 R.E. 2002.*
16. *Local Government Laws (Miscellaneous Amendments) Act, 1999, Act No. 6 of 1999.*
17. *Local Government Laws (Miscellaneous Amendments) Act, 2006, Act No. 13 of 2006.*
18. *Penal Code, CAP 16.*
19. *Police Force and Auxiliary Services Act, Cap 322 [R.E. 2002].*
20. *Political Parties Act, 1992; Election Expenses Act, 2010.*
21. *Prevention and Combating of Corruption Act, 200.7*
22. *Public Finance Act, 2001.*
23. *Public Health Act of 2009.*
24. *Public Leadership Code of Ethics Act, 1995.*
25. *Public Procurement Act, 2004.*

26. *Regional Administration Act, Cap.97, [R.E. 2002].*
27. *Sexual Offences Special Provisions Act, 1998.*
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29. *Tax Revenue Appeals Act, Cap 408, [R.E 2006].*
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33. *United Republic of Tanzania, National Age Policy 2003.*

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1. African Charter on Human and Peoples' Rights of 1981.
2. African Charter on the Rights and Welfare of the Child of 1990.
3. African Protocol on the Rights and Welfare of Women of 2003.
4. AU Convention on Preventing and Combating Corruption, 2003.
5. Convention on the Elimination of All forms of Discrimination Against Women of 1979.
6. Convention on the Rights of the Child of 1989.
7. International Covenant on Civil and Political Rights of 1966.
8. International Covenant on Economic, Social and Cultural Rights of 1966.
9. SADC Protocol Against Corruption, 2000.
10. EAC Protocol on Preventing and Combating Corruption, 2012.
11. United Nations Convention Against Corruption, 2003.
12. United Nations Convention on the Rights of the Child of 1989.
13. Universal Declaration of Human Rights of 1948.

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1. *Amy P Kibatala vs AG and Another*, High Court of Tanzania Constitutional Matter No. 37 of 2015 (Unreported).
2. *Attorney General v. Susan Kigula & 417 Others* (Constitutional Appeal No. 03 of 2006) [2009] UGSC 6 (21 January 2009).
3. *Godfrey Ngotho Mutiso v. Republic* [2010] eKLR.
4. High Court of Tanzania (Dodoma), Criminal Case No. 44 of 1991 Reported in 1994 2 LRC 335.
5. High Court of Tanzania at Dar es Salaam (Main Registry); Miscellaneous Civil Cause No. 29 of 2015 (unreported).
6. *Mabwegere Village Council versus Hamis (Shabani) Msambaa & 32 Others Land* Application No. 23 of 2006, at Dar es Salaam Registry.
7. *Tigo Stephens v. Uganda* (Criminal Appeal No. 08 of 2009) [2011] UGSC 7 (10 May 2011).

Preface

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

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

Prof. Geoffrey Mmari

**Chairperson
LHRC Board**

Executive Summary

The Legal and Human Rights Centre (LHRC) has been preparing the Tanzania Human Rights Report since the year 2002. Following the same line LHRC prepared the The Tanzania Human Rights Report for the year 2015. The Report documents the situation of human rights in Tanzania and provides recommendations for policy, legal and practical reforms.

This report is divided into ten chapters, providing the trend human rights violations at different levels and status of compliance with international human rights standards. The Report touches on all categories of human rights, namely: civil rights, political rights, economic rights, cultural rights, social rights and collective rights; and shows the impact of human rights violations on different groups in the society, particularly women, children, persons with disability, and the elderly.

Chapter One of the Report provides background information on Tanzania. Chapter Two is on civil rights and liberties, looking at the trend of incidents of death penalty, mob violence, extra-judicial killing, witchcraft-related attacks and killings, and PWA attacks and killings, which affect the right to life. It also looks at issues relating to access to justice.

Chapter Three of the Report covers political rights, looking at the extent to which the right to freedom of assembly, right to freedom of association and right to take part in governance were enjoyed. Chapter Four is on social rights, focusing on the right to health, right to education and right to clean water.

Chapter Five is on economic rights, looking at the economic situation in Tanzania in 2015 and the right to own property, while Chapter Six is on the rights of vulnerable groups, looking at incidents of gender-based violence, female genital mutilation, violence against children, child marriage, stigma and discrimination against PWDs, and violations of the rights of the elderly. Chapter Seven covers collective rights, looking at the problem of poaching, consumer protection and counterfeit products, and the right to development.

Chapter Eight of the Report is on corruption and abuse of power. Given the magnitude of the problem of corruption at different levels of the society, issues of corruption and abuse of power are covered in the chapter of their own. Major issues relating to corruption in 2015 which feature in the Report are the Stanbic Bank Bribery Scandal, corruption at the port and tax authorities, imprisonment of former cabinet ministers, and a follow-up on the Tegeta Escrow Account corruption saga of 2014. Chapter Nine looks at the human rights protection mechanisms at the national level; and Chapter

Ten assesses how Tanzania has complied with its obligations under international human rights law.

Generally, LHRC observed and found the following with respect to human rights situation in Tanzania Mainland for the year 2015:

- (a) Death penalty continues to be applied by courts in Tanzania, although no executions were carried out as the case has been for past two decades. In 2015, a total of 472 accused persons were sentenced to death, 62 more than 2014. Death penalty sentences continue to violate right to life. Public opinion on death penalty, however, continues to be divided; and the wave of attacks and killings of PWAs has compromised the case for abolition of death penalty;
- (b) Mob violence killings increased in 2015, whereby 997 incidents occurred compared to 785 in 2014. These killings indicate the public's low belief in the justice system;
- (c) Information from the Tanzania Police Force revealed no incidents of extrajudicial killings in 2015, an indication that the situation has improved as far as the situation of extrajudicial killings is concerned. However, LHRC has established several allegations of extrajudicial killings in Simiyu, Dar es Salaam and Njombe Regions;
- (d) Road accidents continued to claim lives of Tanzanians in 2015, whereby 3,468 deaths resulted from 8,337 accidents. However, there is a slight decrease of accidents and deaths at 6,023 and 292 respectively in 2015. *Bodabodas* (commercial motorcycles) continue to cause accidents and deaths, with the numbers standing at 2,626 and 934 respectively;
- (e) LHRC is deeply concerned with killing and attacks related to witchcraft allegations and those against PWAs. For the year 2015, LHRC established that a total of 425 people were killed for allegedly practicing witchcraft, a significant decrease compared to the numbers in previous years. There were also reports of PWA attacks and killings, including Yohana Bahati, a 1-year old child who was killed and her limbs mutilated to be used for witchcraft purposes;
- (f) Despite the efforts by the Government to increase the number of judicial personnel, there is still shortage of judges and magistrates, something that continues to affect delivery of justice. The Government continued to renovate court buildings and construct new ones in some parts of the country;

- (g) Freedom of assembly and freedom of association continued to be restricted in 2015. Several incidents relating to restrictions on these important political rights occurred, most notably excessive use of force by the Police Force against Civic United Front (CUF) supporters in Dar es Salaam and the arrest of members of a coalition of election observers (TACCEO), including LHRC staff members during the general elections in October 2015;
- (h) Tanzanians exercised their right to vote during the 2015 presidential and parliamentary elections, which witnessed a bigger voter turnout than that of 2010 as well as increased competition from the opposition parties, some of which joined and decided to have a single candidate (UKAWA). There was a fierce presidential contest between CCM's John Magufuli and CHADEMA's (UKAWA) Edward Lowassa. The elections were generally free and peaceful, but allegations of election rigging and loopholes in the election laws dented the fairness part;
- (i) In primary and secondary education, although there are positive trends in terms of enrollment, the issue of quality of education continues to be affected by factors such as shortage of development expenditures, shortage of qualified teachers, lack of motivation for teachers and difficult learning and teaching environment. Higher education is also suffering from shortage of qualified lectures and funds (loans) to support many students.
- (j) In the health sector, accessing quality health services continued to be a challenge for the majority Tanzanians due to shortage of essential medicines and medical supplies, shortage of health workers, and budgetary constraints;
- (k) Efforts have been made by the Government to increase the population with access to water services, reaching 20.9 million in April 2015, from 15.2 million in 2013;
- (l) On the right to own property, LHRC's Legal Aid Clinic received many clients with land disputes and observed land conflicts in Kilosa and Ngorongoro areas;
- (m) Incidences of gender-based (GBV) violence and child abuse are still high. In 2015, the Police Force recorded 17,059 GBV cases, 5,802 of which were rape cases. 2,873 cases of child abuse were reported in 2015;
- (n) On the right to development, despite impressive achievement to increase GDP, little has been achieved in achieving poverty reduction, hence low human development;
- (o) Corruption and abuse of power have a negative impact on enjoyment of human rights, particularly social and economic rights. In the year 2015 Tanzania

was hit with yet another grand corruption scandal, the Stanbic Bank Bribery Scandal, implicating senior government officials. The year 2015 also witnessed jail sentences for two former cabinet ministers, who had been charged with abuse of position. In connection with the 2014 Escrow Account scandal, senior government officials were called before the Ethics Tribunal and several public servants were charged by PCCB and taken to court.

LHRC call upon responsible state organs and other stakeholders to work on the recommendations proposed in different parts of this report in a bid to improve the situation of human rights in Tanzania. Both state and non-state actors should be actively engaged in disseminating findings of 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 Introduction¹

The United Republic of Tanzania attained its independence in 1961 from Britain as protectorate state. In 2015 the United Republic of Tanzania (Tanzania Mainland in particular) celebrated its 54th independence anniversary and marked the end of 4th regime of self-governance. Since its independence, Tanzania has been governed by five presidents, the first being the late Julius Kambarage Nyerere (1962-1985), followed by Ali Hassan Mwinyi (1985-1995), Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and currently Dr. John Pombe Magufuli (2015-2020).

The United Republic of Tanzania is a sovereign union government formed in 1964 following the union of Tanganyika and Zanzibar. In that regard there are two governments, legislatures and judiciary systems. The United Republic of Tanzania has mandate on union matters in Zanzibar whereas the Peoples Republic of Zanzibar is sovereign on non-union matters in part of Zanzibar.²

1.1 Geography

Tanzania is found in Eastern part of Africa lying between longitude 29^o and 41^o East, and Latitude 1^o and 12^o South.³ In terms of topography, the country is endowed with good geographical scenery, which includes mountain ranges and valleys. The highest free standing mountain in the world (known as the roof of Africa), Mountain Kilimanjaro, is found in Tanzania, attracting tourists from different countries across the world who visit every year. It has mountain 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 in Njombe Region, which has 350 different flora species.⁴ The Kitulo Garden is famously known as *Garden of God* and others have dubbed

1 Information contained in this chapter is similar to previous human rights reports prepared by LHRC except some few updates on governance, economic situation and population.

2 Second Schedule to the Constitution of United Republic of Tanzania, 1977.

3 LHRC & ZLSC, Tanzania Human Rights Report 2012, p. 1.

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

it “Serengeti of Flowers”. It occupies an area of 2,600 meters between the peaks of Kipengere, Poroto and Mt. Livingstone.⁵ The Great Rift Valley cuts across the country from the western and central parts of the country running through to Mozambique. The Great Rift Valley provides ground for pastoralist activities and agriculture due to its fertile soil that supports growth of different crops. 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 in 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, where there are four major ports, namely: Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbeganani area). These ports have the potential to boost the country’s economic growth as landlocked countries bordering Tanzania depend on them for exportation and importation of goods.⁶

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 below 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:⁷

- (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).

5 Ibid.

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

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

The bi-modal areas include the following:

- (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.⁸ 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 neighboring countries as the internal market cannot absorb all available food crops.

The country's climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley, in the highland plains and along the coast of the Indian Ocean.⁹ 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.¹⁰ 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.¹¹

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, KilwaKisiwani, Tumbatu, Chumbe, Fundo and Vundwe. In fresh water bodies there are island like Ukerewe and Gombe, found in Lakes Victoria and Tanganyika respectively.

8 Ibid.

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

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

11 www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts, accessed on 1st December, 2015.

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 indicates that the number of non-citizens living and working in Tanzania is 662,287. The number has grown as a result of an increase of foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) has reached 421,456.

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

1.3 Economic situation

In 2015, the Government planned to spend Tanzanian Shillings 22.495 trillion. The recurrent budget is 15.576 trillion and 5,919 development budget. The main source of the 2015/16 budget is domestic revenue collection, which is 13,476 billion and general budget support is only 660 billion. The budgets allocated to the key sectors are as indicated in the table below.

Table 1: Budgets of Key Sectors 2015

<u>Sector</u>	<u>Amount in billion</u>	<u>Percentage</u>
Education	3,870.2	24
Infrastructure	2,428.8	15.1
Health	1,821.1	11.3
Agriculture	1,004.4	6.2
Energy and Minerals	916.7	5.7
Water	573.5	3.6

Currently, the country's economic growth rate is mainly driven by transport, communication, manufacturing, construction and agriculture sectors, which accounts for for 70% of our Gross Domestic Product (GDP).¹² Therefore such initiatives have reduced donor dependency from 42% in 2005 to 15% in 2015.¹³

The economic growth in Tanzania has been engineered by the number of economic initiatives put in place by the Government. For instance, the Big Results Now (BIG) model in development was adopted in 2013-2014 in order to further initiatives of the country in transition from lower income country to middle income.¹⁴ The Government also plays a vital role in implementing the *Annual Development Plan 2015/2016, the National Strategy for Growth and Poverty Reduction Phase II and the ruling party CCM election manifesto 2010-2015* and directives on economy which ended in October, 2015.¹⁵

The economic situation of the United Republic of Tanzania is further discussed in detail under Chapter Five of this report.

1.4 Historical Overview: Colonialism to Present

The history of present Tanzania can be traced back to the 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 known as Ruanda-Urundi.¹⁶ Zanzibar (Unguja and Pemba) was 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 Cushiest 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 began 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

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

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

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

15 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 153.

16 LHRC & ZLSC (2013), *Tanzania Human Rights Report 2012*, p. 6.

A.D. It was during this Century that the long distance trade between the coastal city states and the Arabs thrived.¹⁷

The scramble for and partition of Africa in 1884-85 saw Tanganyika become a 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 several parts of the country. 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 the 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 *MajiMaji* uprising from 1905 to 1907. The uprising involved the tribes in southern and Eastern parts of Tanganyika. A heavy fight was recorded at the present-day Mahenge, where Germany had a strong base of its administration. The *MajiMaji* resistance was inspired by one Kinjekitile Ngwale, a traditional and spiritual leader in Southern Tanzania whose medicine allegedly prevented the “white man’s bullets” from harming his followers.¹⁸

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 Tangayika, were taken by the British as the League of Nations mandated territory. After the Second World War in 1945, Tanganyika became a United Nations Trust Territory, subject, again, to British control. However, it began to demand 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

17 www.fjibure.com/tang.html

18 LHRC & ZLSC 2012 Report, p. 6.

rarely allowed the colonized people to enjoy any human rights.¹⁹

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.

The independent Tanzania is a socialist-multiparty democratic country. Since its independence has been ruled by five presidents all of them from *Chama Cha Mapinduzi (CCM)*. In 2015 the general election was held and His Excellency President Dr. John Pombe Magufuli of CCM became the fifth president of United Republic of Tanzania.

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.²⁰ 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, in 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.²¹

19 LHRC (2006), *Through a Crucible of Human Rights Struggles in Tanzania: A Decade of Legal and Human Rights*, pp. 5 & 6.

20 *Ibid.*

21 Pius Msekwa, *Uongozi na Utawala wa Mwalimu Julius Kambarage Nyerere: Miaka 25*

1.5.1 The Executive

The Executive arm of the state is made up of the President, who is the head of state and 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.

The composition of the current cabinet includes 18 ministries of which only 4 ministers are female while 14 are male. The number of deputy ministers are 16 of which has only 5 women and 11 are men.²²

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.²³ 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.²⁴ The President appoints his cabinet from National Assembly members.²⁵ The President also nominates 10 individuals from non-elected members to be part of the Parliament.²⁶

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

ya Utumishi wangu kwa Umma chini ya Uongozi wa Mwalimu Julius Kambarage Nyerere (Dar es Salaam: Nyambari Nyangwine Publishers, 2012), pp. 71 & 72.

22 Ministers: George Simbachawene, Angela Kairuki, January Makamba, Jenista Mhagama, Mwigulu Nchemba, Dr. Philip Mpango, Prof. Sospeter Muhongo, Dr. Harrison Mwakyembe, Dr. Augustino Mahiga, Dr. Hussein Mwinyi, Charles Kitwanga, William Lukuvi, Prof. Jumanne Maghembe, Charles Mwijage, Dr. Joyce Ndalichako, Umyy Mwalimu, Nape Nnauye, Eng. Gerson Lwenge. Deputy Ministers: Sulemani Jaffo, Luhanga Jerson Mpina, Dr. Possy Abdalah, Anthony Mavunde, William Ole Nasha, Edwin Amandusi Ngonyani, Dr. Ashatu Kijachi, Medalled Karemali, Dr. Susan Kolimba, Hamad Masauni, Angelina Mabula, Ramol Makani, Eng. Stella Manyanya, Dr. Hamisi Kigwangala, Anastasia Wambura and Isack Kamwela.

23 Tanzania follows the Anglo-Saxon system, allocating Parliamentary seats on the basis of "winner takes all". Only those who win in their respective constituencies take their seats in Parliament. There is no second vote for a particular political party and its selected candidates.

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

25 Article 55(4) provides that, "All ministers and Deputy Ministers shall be appointed from among the Members of Parliament."

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

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.²⁷

The Zanzibar House of Representatives has jurisdiction over all non-union matters, that is, matters that do not pertain to foreign affairs, citizenship, higher education, and other matters set out by the Constitution as under the power of the entire Union.²⁸ There are currently 70 members in the Zanzibar House of Representatives.²⁹ 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.³⁰ The United Republic of Tanzania is divided into 31 administrative regions including the recently designated Songwe region that of which was part of Mbeya. The regions are divided into districts, division, wards and villages.

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.³¹ Tanzania's legal system is based on English common

27 Constitution of the Revolutionary Government of Zanzibar 1984, Section 132 (1) and (2).

28 The House of Representatives is established under Section 63 and 64 of the Constitution of Zanzibar of 1984. It consists of: elected members from the Constituents; nominated members by the President of Zanzibar, female members (special seats 30% of all elected members) appointed by political parties and represented in the House of Representatives, Regional Commissioners; and the Attorney General of Zanzibar. The matters that are considered to be union matters are set out in the Constitution of the United Republic of Tanzania, 1977 at the 1st Schedule.

29 Stefan Reith, "Tanzania after the Parliamentary and Presidential Elections of 2010: Dawn of a Multi-party Democratic Era?" (2011) KAS International Reports 1/2011, p. 115, available at http://www.kas.de/wf/doc/kas_21554-1522-2-30.pdf?110112143740, accessed 20th December, 2015.

30 The local government laws include the *Local Government (District Authorities) Act*, Cap. 287, R.E. 2002; the *Local Government (Urban Authorities) Act*, Cap.288 R.E. 2002; the *Local Government (Elections) Act*, Cap.292 R.E. 2002; the *Regional Administration Act*, Cap.97, R.E. 2002. 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.

31 Article 107(A) of the Constitution of United Republic of Tanzania, 1977 provides that "The

law, whereby judicial functions are administered by various courts established in accordance with the law.³² 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.

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania.³³ Magistrates are appointed directly by the Commission.³⁴ 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.³⁵ 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*.³⁶ 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.³⁷ 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.³⁸

Zanzibar has its own judicial system consisting of (in descending order): the Court of Appeal of Tanzania; the High Court of Zanzibar; Regional and District Magistrate Courts; Primary Courts; *Kadhi* Appeal Courts; and *Kadhi* Courts. These courts have

Authority with final decision in the dispensation of justice in the United Republic shall be the Judiciary.”

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

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

34 Article 113(1) of the Constitution of Tanzania.

35 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].

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

37 Constitution of the United Republic of Tanzania of 1977, Article 126.

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

jurisdiction over cases arising in Zanzibar that involve non-union matters.³⁹ 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 avers that, in order for the Judiciary to protect and promote human rights, it must be independent. As the process of constitution-making is in progress, the idea of guaranteeing judicial independence should be paramount. The current setting jeopardizes 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”.⁴⁰

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

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

Chapter Two

Civil Rights and Liberties

2.0 Introduction

Civil rights and liberties are the basic rights that every individual should possess. The two terms are used interchangeably but they are synonymous.⁴¹ Civil rights and liberties are provided and protected by both international law and domestic laws. This chapter addresses these basic rights, and specifically the right to life, right to freedom of expression, and access to justice.

Civil right and liberties include the right to life; the right to equality before the law; the right of freedom of opinion and expression; the right to freedom from torture and liberties are protected by main international human rights instruments and the constitution of the country, specifically in the guarantee granted by the Bill of Rights. The guarantee provided by the Bill of Rights means that any infringement of the rights contained therein would lead to move the High Court of Tanzania to intervene, either on its own motion (*suo moto*) or by any other person aggrieved of the infringement.⁴²

This chapter examines in detail the situation of civil rights and liberties in the country in 2015. Among the observations made include the fact that the right to life is still in jeopardy in the country as people continue to be sentenced to death, despite the fact that the country is in a moratorium state. Also the right to life was violated through acts of mob violence, extra-judicial killings, killings related to witchcraft beliefs, including attacks and killings of people with albinism. Civil rights and liberties were also violated through enactment of laws which infringe the right to freedom of opinion and expression. The judiciary has also continued to face several challenges in dispensing justice thereby endangering access to justice.

41 See LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 12. "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"

42 The *Basic Rights and Duties Act*, [R.E. 2001] provides the procedure for legal remedy for an infringement of a right contained in the Bill of Right.

2.1 Right to Life -‘The Mother of All Human Rights’⁴³

The right to life is a fundamental right upon which other rights depend on. Tanzania has ratified international and regional treaties that safeguard and protect this right.⁴⁴ These instruments have established international and regional principles that every human being has (inherent right to life) and that no one shall be arbitrarily deprived of the right to life.

The right to life was incorporated in the Constitution of the United of Tanzania, 1977 for the first time in 1984 through the introduction of the Bill of Rights.⁴⁵ It is supposed to be absolute under international human rights standards, with the Government required to take measures to protect it. However, there are circumstances when the protection of the right to life is not absolute. These include for instance when the police use necessary force to stop unlawful violence, make a lawful arrest and stop riot or uprising. Even in these circumstances though, death should be avoided by all means, and the force used must be absolutely necessary and strictly proportionate.

“Every person has the right to live and to the protection of his life by the society in accordance with the law.”
(Article 14 *Constitution of the United Republic of Tanzania 1977*).

As noted in the Constitution, the right to life entails individual’s protection by society.⁴⁶ The society, including communities, the Government, and law enforcement officials – must uphold this right. However, incidents of mob violence, extrajudicial killings, witchcraft killings, killings of PWAs, and road accidents point to an overarching issue that the society is not upholding this right in all cases. The following sub-chapter will focus on trends and incidents related to the right to life in Tanzania, focusing on the death penalty and mob violence.

2.1.1 Death Penalty

As it has been elaborated above, right to life is not an absolute right in Tanzania. This is because the provision of the *Constitution of the United Republic of Tanzania, 1977* provides for the right to life and its protection “*in accordance with the law.*”⁴⁷

43 Helen Kijo-Bisimba & Chris Maina Peter, *Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries* (Dar es Salaam: Legal and Human Rights Centre, 2005).

44 These include the *Universal Declaration of Human Rights of 194 (Article 3)*; and the *International Covenant on Civil and Political Rights, 1966 (Article 6)*. Regional treaties include the *African Convention on Human and Peoples Rights of 1981*.

45 Article 14.

46 Ibid.

47 Ibid.

This exact provision of the Constitution gives justification for enactment of laws providing for death penalty in the country. Death penalty in Tanzania is provided for in case of conviction of two offences, murder and treason. These offences are provided under the *Penal Code* at sections 197 and 39 respectively.⁴⁸

Tanzania is regarded as an abolitionist state in practice. No execution has been recorded in the country since 1994. Tanzania is thus in the state of moratorium, despite the fact that nothing significant has been done to change the law and policy to ensure that the state of moratorium is made official.

The question around the death penalty has remained to be controversial in the country. There are pockets of the society who support it and others who do not support it. The last recorded public opinion on death penalty was recorded by the Constitutional Review Commission (CRC) during the collection of public opinion on Constitutional review process. The Commission recorded that out of 2,735 respondents, 44.2% were of the view that death penalty should be abolished, whereas 33.9% were of a negative view, that death penalty should not be abolished.⁴⁹ 8.1 % had the opinion that death penalty should remain as it is.⁵⁰

The provision of death penalty for conviction of murder is a mandatory sentence.⁵¹ Judges have no discretion as to the sentence depending on the status of the crime committed. This is the biggest challenge facing the Judges when adjudicating murder cases, as they are left with no alternative but to impose death penalty in spite of the manner to which the crime was committed.

The position is somehow different for the offence of treason. Leonard P. Shaidi has noted that since independence, no person has been sentenced to death penalty under the provision of treason;⁵² that, there have been only two major treason trials since independence in which more than 10 people were convicted of treason.⁵³ He further notice that the provision for treason which provides that “.....commits an offence for treason and shall be liable on conviction to suffer death,” has been interpreted by courts not to be mandatory, but merely setting the upper limit.⁵⁴

48 CAP. 16 of the Laws of Tanzania.

49 Jamhuri ya Muunganowa Tanzania, *Takwimu za Ukusanyaji wa Maoni ya wananchi Kuhu-su Mabadiliko ya Katiba ya Jamuhuri ya Muungano wa Tanzania*, Disemba 2013, p. 58.

50 Ibid.

51 See s. 197 of the Penal Code, CAP 16 [R.E. 2002].

52 See Leonard P. Shaidi, “The Death Penalty in Tanzania: Law and Practice”, available at http://www.biicl.org/files/2213_shaidi_death_penalty_tanzania.pdf, accessed 26th December, 2015.

53 See Leonard P. Shaidi, “Tanzania Penal system: Retribution or Correction of Offenders” (2009) *Eastern Africa Law Review*, Vol. 35-40.

54 Ibid.

The legal battle against death penalty in Tanzania began in early 1990s. In 1991, the Nyalali Commission recommended among other things that, the capital punishment be abolished for being a barbaric form of punishment and morally insupportable.⁵⁵ No serious follow up was made to those recommendations.

The Constitutionality of the death penalty was again questioned in *R v. Mbushuu @ Dominick Mnyaroje and Another*.⁵⁶ In this case Justice Mwalusanya (as he then was) held that the death penalty was inherent, cruel, inhuman and degrading and the mode or manner of execution of the punishment was inhuman, cruel and degrading. He further held that, the imposition of the death penalty is not saved by Article 30(2) of the Constitution as it was not a provision which was lawful and in the public interest, the later finding being based on the factors such as; (i) the possibility of erroneous convictions, including the fact that most poor defendants did not receive adequate legal representation; (ii) sentences of life imprisonment provide protection against violent crime no less effective than the death sentence; and (iii) the mode of execution, the inhuman condition on death row and delays in executing the sentence. Therefore, although he convicted the accused of murder, he imposed a sentence of life imprisonment to both.

The Court of Appeal however, agreed with the trial Judge, that the right to life under the Constitution is not absolute. The Court of Appeal further ruled that the death penalty is indeed inherently inhuman, cruel and degrading, so is its execution; thus offends the right to dignity as provided under the constitution. Nevertheless, the Court of Appeal held that the imposition of death penalty under the law was lawful and not arbitrary, hence constitutional. The Court of Appeal further ruled that the death sentence was served under Article 30(2) of the Constitution, and that it was for society and not for the courts to decide whether the death sentence was a necessary punishment.

Death penalty was again questioned in 2015 in a decision of the Court of Appeal where while deciding a criminal appeal, three justices (Engera Kileo, Bernard Luanda and Kipenka Musa) came into a conclusion that the appeal was devoid of merits.⁵⁷ The justices did not however come to a common conclusion on proper sentence to impose to the murder convict. While Justices Bernard Luanda and Kipenka Musa upheld the death sentence, Justice Engera Kileo gave a dissenting judgment and proposed a life sentence to meet the justice ends. Justice Kileo contended that death sentence was unconstitutional, as it is inherent an inhuman and degrading punishment and in its execution that defies Article 13(6) (c) and (d) of the *Constitution of the United Republic of Tanzania, 1977*. Justice Kileo further cited that death sentence is

55 United Republic of Tanzania (1992), *Report of the Presidential Commission on the Single or Multi-party System for Tanzania*, part III.

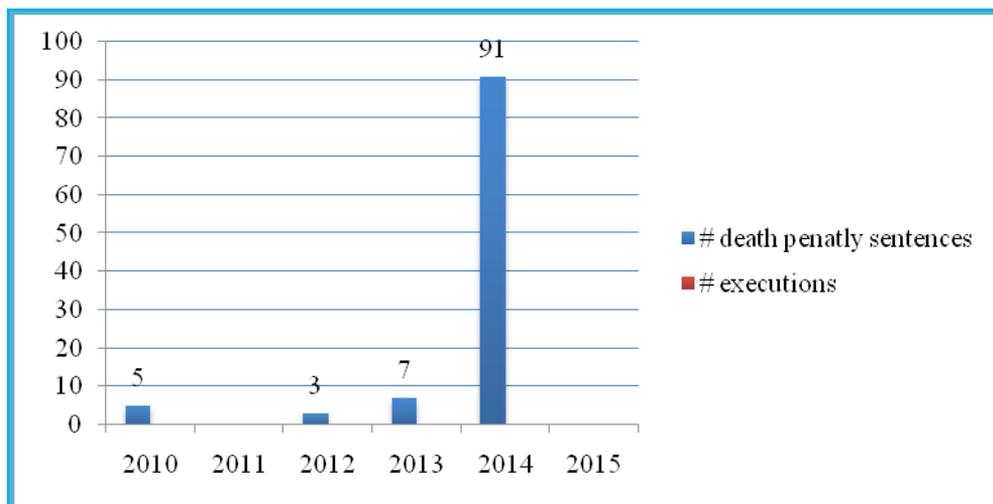
56 High Court of Tanzania (Dodoma), Criminal Case No. 44 of 1991 Reported in 1994 2 LRC 335.

57 *Chrizant John v. R*, Criminal Appeal No. 313 of 2015.

the gravest of the penalties in Tanzania. However, death sentence is the only sentence that has just one level of appeal, which is the Court of Appeal. A dissenting judgment was also given in another case on death penalty, where Justice Kileo cited the same reasons above for her contend to imposition of death penalty.⁵⁸

Since provision of death penalty for convicted murder offences is mandatory under the law, the courts in Tanzania continue to pass the sentence to a number of people annually. The number of sentences on the death penalty has risen over the past four years, indicating that 91 sentences were issued in 2014.

Figure 1: Number of Death Penalty Sentences and Executions: 2010 – 2014



Source: Amnesty International (2015)

The figure above reveals data of a significant increase in the number of sentences from 2013 to 2014. Amnesty International describes that the rise in the number of recorded death sentences is partly due to authorities providing more complete data.⁵⁹

Statistics of exoneration for death row inmates for 2015 could not be obtained. Amnesty International revealed that 59 people were exonerated in 2014.⁶⁰ However there were several actions involving pardon of sentences of prisoners granted by the President in 2015. These include the one on April 2015 where 4,129 were pardoned;⁶¹ in November 2015 where 4160 prisoners were pardoned;⁶² and in December 2015 where 2,336 prisoners were pardoned.⁶³ The pardon however did not extend to prisoners who

58 *Abi Adam @ Chakuu vs. Republic* Criminal Appeal No. 157 of 2009.

59 *Ibid*, p. 6

60 *Ibid*.

61 Budget Speech of the Minister of Home Affairs 2015/16

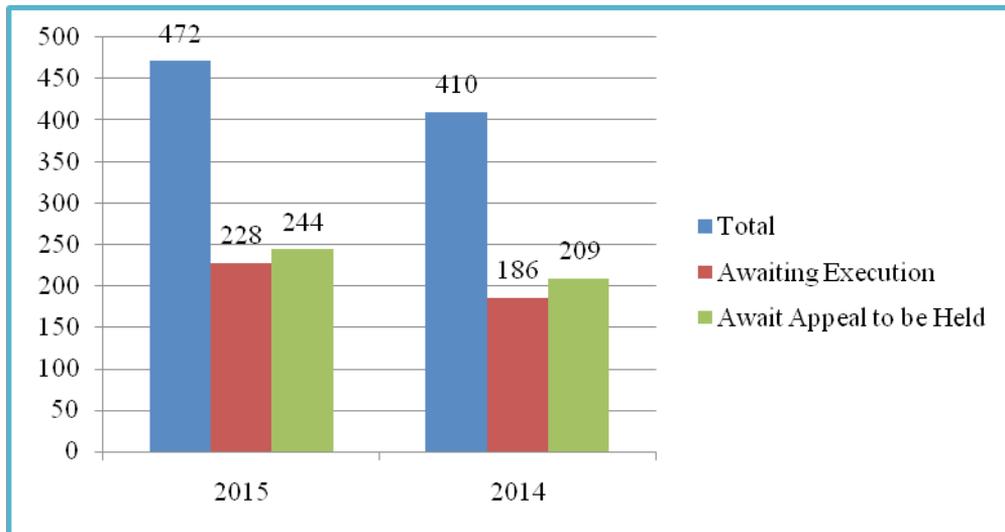
62 <http://startvtz.com/dk-kikwete-atoa-msamaha-kwa-wafungwa-4160/>

63 <http://www.eatv.tv/news/current-affairs/dkt-magufuli-asamehe-wafungwa-zaidi-ya-elfumbili>

were convicted to death nor did their sentences commuted to life imprisonment.

In 2015, there were a total of 472 people convicted to death penalty in Tanzanian Prisons, out of whom 452 are male and 20 are female.⁶⁴ Out of these convicts, 228 are awaiting the execution of their sentence after completion of legal requirements.⁶⁵ The remaining 244 prisoners are still waiting for their appeal to be heard and determined.⁶⁶ In 2014 there were 410 prisoners convicted to death penalty.⁶⁷

Figure 2: Number of death penalty convicts: 2014 - 2015



The right to life is fundamental, upon which all other rights depend. It has thus to be protected by all means. This is why several international legal instruments provide for the right to life and its protection by the law. The ICCPR, 1966 thus provide that the death penalty should only be imposed for the most serious crimes, in accordance with the law and pursuant to a final judgment rendered by a competent court. The ACHPR, 1981 follows the same spirit by providing that no one should arbitrarily be deprived of the right to life. However, some of these instruments are in the spirit of recognizing that there are countries which still provide capital punishment in their legal systems.

The *Second Optional Protocol to the International Convention on Civil and Political Rights, 1989* has gone a step further in protection of the right to life. It has called for total abolition of the death penalty to all states. Article 1 states that:

64 Data obtained by LHRC from Tanzania Prisons Service through correspondence with reference number Kumb.Na.298/VOL,11/121.

65 Ibid.

66 Ibid.

67 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 18.

- “1. No one within the jurisdiction of State party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

Tanzania, as part to ICCPR, 1966 is required to sign, ratify or accede the *Second Optional Protocol to the International Convention on Civil and Political Rights, 1989*, which has not been done.⁶⁸ Article 14 of the *Constitution of the United Republic of Tanzania* provides for right to life and its protection “in accordance with the law.” Thus, the *Penal Code* imposes the death penalty to offences of murder and treason.

Lessons from Other East African States

Tanzania has to make a step to ensure that it take significant measures to change the law and policy to reflect its status of moratorium towards the death penalty. Other EAC countries have done the same, such as Uganda. In a landmark decision in *Attorney General v. Susan Kigula and 417 Others*, it was held that the mandatory application of the death penalty was unconstitutional, and that serving at least three years on death row amounted to cruel and inhuman punishment.⁶⁹ Following the Kigula judgment, the Kenya High Court also found mandatory death sentence unconstitutional in 2010.⁷⁰

As a result of these two judgments, a number of death row prisoners had their sentences commuted to whole life imprisonment or to a long term sentence.⁷¹ In some cases, prisoners were immediately released after having found that they have spent more than 20 years on death row. Alternative sanction to life imprisonment without the possibility of parole has been employed in Kenya; whereas in Uganda the question of the alternative sanction is still undergoing legal uncertainty. While the Uganda Prisons Act defines “life” as 20 years imprisonment, the Supreme Court has differed by handing a judgment ruling that life imprisonment means the natural life of a prison.⁷² This could be the biggest challenge facing the movement of abolishing death penalty in Uganda. The number of sentences for life imprisonments and excessive long-term sentences were noticed to have increased significantly in both countries.⁷³

68 Article 67.

69 *Attorney General v. Susan Kigula & 417 Others* (Constitutional Appeal No. 03 of 2006) [2009] UGSC 6 (21 January 2009).

70 *Godfrey Ngotho Mutiso v. Republic* [2010] eKLR.

71 In 2009, President Mwai Kibaki of Kenya turned death sentences of more than 4,000 prisoners to life imprisonment.

72 *Tigo Stephens v. Uganda* (Criminal Appeal No. 08 of 2009) [2011] UGSC 7 (10 May 2011).

73 Penal Reform International (2012), *The abolition of the death penalty and its alternative sanction in East Africa: Kenya and Uganda*, available at <http://www.penalreform.org/wp-content/uploads/2013/05/East-Africa-research-report-on-death-penalty-and-life-imprison->

Conclusion

As noted above, there are over 400 people in Tanzanian prisons who have been sentenced to death. However, there has not been a state execution since 1994.⁷⁴ Nevertheless, the courts continue to issue death sentences. Executions require a warrant signed by the President. Tanzania thus is recognized as an abolitionist country in practice.⁷⁵

Despite the fact that the President has not signed a death warrant for over 20 years the government position on death penalty has not officially been made very clear. There is no official moratorium on execution of those convicted to death. However, Tanzania has not signed the Second Optional Protocol of the International Covenant on Civil and Political Rights. This is the instrument that aims at the abolition of death penalty worldwide. Tanzania has as well abstained from a number of other UN Resolution calling for member states to establish the state of moratorium on executions with a view to abolish the death penalty.⁷⁶ Tanzania has as well abstained from voting the Un Moratorium Resolution of 2012.

Efforts to abolish death penalty have been compromised by the ongoing wave of killings of people with Albinism. The ongoing killings have witnessed people especially those with albinism calling for the President of the United Republic of Tanzania to issue a warrant of execution to those convicted of the killings and sentenced to death.⁷⁷ LHRC is of the opinion that executing those found guilty of killings of PWA is not a solution to end the killings, but all stakeholders should join hands and find permanent and sustainable solution to the killings of PWA. Specifically, efforts should be made to address issues of ignorance, poverty and effects of witchcraft practices especially in the regions of the lake zone where most of the killings have been witnessed.

Members of Parliament have also called for the enactment of law which will impose death penalty by hanging and public death squad to convicted drug traffickers. The call was made at the Parliament of the United Republic of Tanzania during the discussion of the *Drug Control and Enforcement Bill, 2015*.

LHRC continue advocating for the abolition of death penalty because LHRC believes that death penalty is a violation of the right to life, the mother of all human rights; and

ment.pdf, accessed 2nd November 2015.

74 See LHRC & ZLSC previous Tanzania Human Rights Reports.

75 Amnesty International 2015.

76 Resolution 69/186 of the UN General Assembly of 4th March, 2015.

77 Among those quoted include the Tanzania Albino Society (TAS), which went further and gave the President a three-month ultimatum to issue death warrant, otherwise TAS would call for UN to intervene. Others quoted include Hon. Al Shaymaar Kwegyir (a special seat MP and PWA), Mr. Edwar Lowassa (former Prime Minister and CHADEMA Presidential Contender in 2015), Dr. Titus Kimani (Simiyu CCM Regional Chairman), Hon. David Lusinde (MP of Mbozi Constituency).

no one should have the power take the life of another person. Tanzania has already been considered as an abolitionist in practice.⁷⁸ The country should thus move a step further by ensuring that death penalty is abolished all together from Tanzanian legislation.

Recommendations

LHRC recommends to the government to do the following in stepping the way towards abolition of the death penalty:

1. Officially declare that Tanzania has established the state of moratorium on execution of death penalty in line with UN Resolutions;
2. Amend the country's legislation to end compulsory sentencing of death penalty for the crime of murder and treason;
3. Exonerate those convicted and sentenced to death penalty, especially the ones who have spent longer periods in prisons;
4. Sign and ratify the Second Optional Protocol to the International Convention on Civil and Political Rights.

LHRC recommends to other stakeholders:

1. Increase public sensitization of the importance of the right to life;
2. Educate the public to use the ongoing constitutional review process to end death penalty.

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. 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.

Since the year 2010 more than four thousand people have lost their lives due to mob violence.⁷⁹ The media regularly report on an act of mob violence taking place somewhere in the country.

Mob violence violates international, regional and domestic human rights laws. The *Constitution of the United Republic of Tanzania, 1977* underlines the principles that condemn acts of mob violence. These principles include the principle of equality

⁷⁸ Amnesty International, 2015.

⁷⁹ Information collected by LHRC through it annual human rights reports.

before the law, which elaborate that all persons are equal before the law and entitled to protection and equality without any discrimination.⁸⁰ The principle further elaborates that only the courts of law are vested with the power to determine the right of a citizen.⁸¹ It further elaborate that everyone has the right to a fair hearing, and that no one should be treated as guilty of an offence, unless proven so by a court of law.⁸² The Constitution further elaborates that no person shall be subjected to torture, inhuman or degrading punishment or treatment.⁸³ Again, the Constitution provides for the right to life of every person.⁸⁴

The above Constitutional principles are reflected in the Tanzanian laws as well, mainly the laws governing criminal matters. Criminal acts and offences are covered under the Penal Code of the country. The crimes under the Penal Code are dealt with in accordance to the provisions of the *Criminal Procedure Act*.⁸⁵ The CPA thus provides the procedure through which crimes will be investigated, tried in courts and all other related purposes.

The legal framework summarized above provides clear procedures and responsibilities for how the authorities should process suspected criminals. Although the legal basis is provided to ensure fair and thorough processing of suspected criminals, people resort to mob violence in order to deal with a suspect. The violence involved is very barbaric, employing such measures as severe beating, stoning, setting the suspect on fire and even stabbing. As a result many suspects are killed and many others left with severe injuries and even permanent disabilities.

Trend analysis

A review of the number of killings due to mob violence over the past 10 years reveals an upward trend between the years 2005 to 2013, with a decrease in 2014.⁸⁶

80 Article 13(1).

81 Article 13(3).

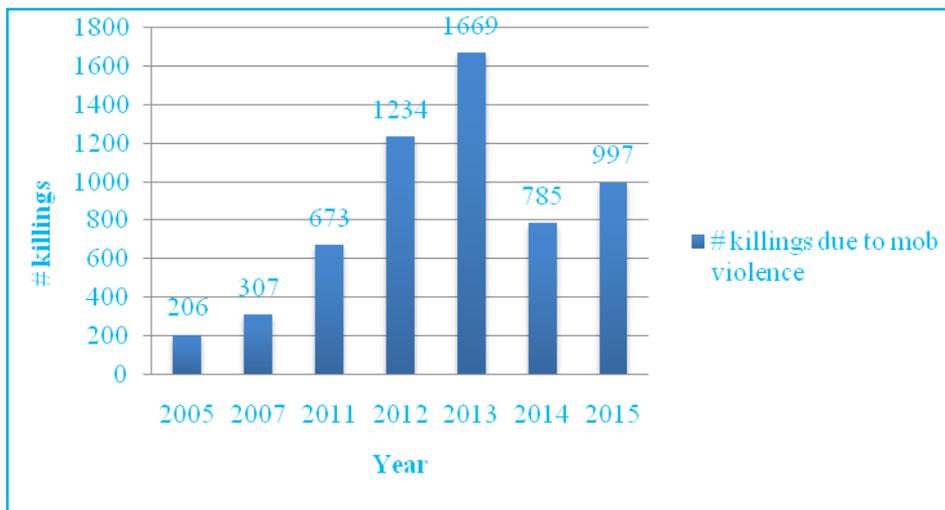
82 Article 13(6)(a)(b).

83 Article 13(6)(e).

84 Article 14.

85 CAP. 20 [R.E 2002] of the Laws of Tanzania.

86 Data is obtained from Police Force.

Figure 3: Killings attributed to mob violence

In 2014, LHRC could not obtain the total number of people killed due to mob violence for the specific year. However, the Police spokesperson was quoted saying that a total of 785 people were killed in 2014.⁸⁷ The Police spokesperson was also quoted saying that for the period between January and October 2015, a total of 829 people were killed, showing slight increase to the number of those killed in 2014.⁸⁸ Information obtained by LHRC reveals that there were 997 cases of mob violence collected for the whole year of 2015.⁸⁹

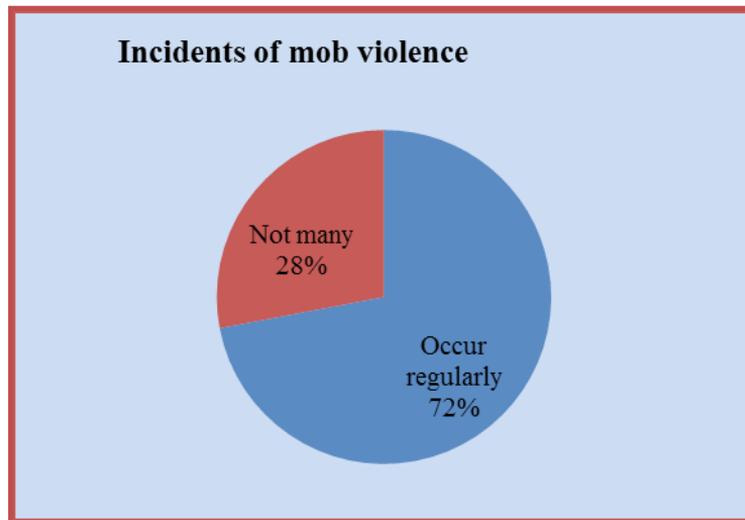
LHRC has a reason to believe that there are a number of other killings that took place which were not reported to the police, especially in rural areas where police services are even scarce to reach. The survey conducted by LHRC in 2015 revealed that majority of the respondents mentioned mob violence among the most serious violations of human rights occurring in their societies as the figure below indicates.⁹⁰

87 <http://www.habarileo.co.tz/index.php/habari-za-kitaifa/3835-rekodi-sheria-mkononi-uza-wadiwe> accessed on January, 2016.

88 Ibid.

89 Correspondence with the Police Force (Ref No. CID/HQ/C.10/8/AVOL.I/116).

90 LHRC (2015), *Human Rights Opinion Survey Report*.

Figure 4: Occurrence of incidents of mob violence in Tanzania

Source: LHRC Opinion Survey 2015

While the number of killings related to mob violence has increased over the past 10 years, it is also interesting to review whether the number of convictions and/or sentences of perpetrators of mob violence have also risen.⁹¹ In 2015, *Afro-barometer* published a policy paper on reporting crime in Tanzania and found that the majority of Tanzanians who are victims of crime do not make reports to the authorities. This was attributed to a number of factors, notably to ‘inaccessibility of police stations, unresponsiveness of the police, and police corruption’.⁹² However, the survey did not look into whether citizens are therefore resorting to mob violence to address issues. Nevertheless, this points to related and important evidence that victims of crime are not reporting these crimes to the police.

Findings from a study conducted in 2005-2006, deaths related to mob violence in Dar es Salaam concluded that deaths were perpetuated largely by male community members ‘protecting their neighborhoods against social deviants’.⁹³ While this data is over 10 years old, it provides some insights into the perpetrators of mob violence in Dar es Salaam. It also points to an important question as to why perpetrators are resorting to mob justice instead of engaging law enforcement.

91 LHRC could not obtain the statistics on the people prosecuted for involvement in mob violence.

92 Rose Aiko, “Effect of policy integrity, government performance in fighting crime and accessibility of police stations on reporting of crime in Tanzania” (2015) *Afro-barometer Policy Paper No. 20*, May 2015.

93 Anne H. Outwater, Edward Mgaya & Jacquelyn C. Campbell, “Community violence in Dar es Salaam, Tanzania: A mixed methods study” (2013) 25 *African Safety Promotion Journal* Vol. 11, No. 1.

Mob violence is attributed to lack of confidence in the justice system of the country. The Judiciary, the Police Force and the Prevention and Combating of Corruption Bureau (PCCB) have been perceived high in corruption. In the 2015 Human Rights Opinion Survey, 46 percent of the respondents revealed that they have once been asked to give bribe in order to be obtain services in a public institution. Corruption is associated with delays in investigations and prosecution of cases.

Mob violence is one of the leading violations of the right to life that is observed in the country. During LHRC human rights opinion survey, many respondents mentioned mob violence as the leading cause of violation to right to life in the country.⁹⁴



Picture 1: A victim of mob violence, torched after being badly beaten

Table 2: Incidents of mob violence reported in the media and from LHRC Human Rights Monitoring 2015

Incident	Description /Victims	Source (Newspaper)	Date
Mob violence	An angry mob killed a man alleged to killing a police officer, Joseph Swai, who intervened as he was beating his child.	<i>Mwananchi</i>	6 th February, 2015
Mob violence	Three people in Shinyanga were brutally murdered by an angry mob in Bugogo Village, Mwamala Ward, and Shinyanga Region. The victims are Christina Samweli~ (18), Shinja Bundala (80) – a witchdoctor, and another unknown person.	<i>Nipashe</i>	11 th February, 2015
Mob violence	Men suspected to be a thief was set on fire/burned to death by an angry mob. Incident occurred in Tabata Kisukulu, Dar es Salaam.	LHRC Human Rights Monitoring Unit	Unspecified
Mob violence	Peter Chacha (31) from Sabasaba in Tarime District was killed by an angry mob for allegedly stealing two cows.	<i>Mwananchi</i>	15 th February, 2015
Mob violence	YonaMwamwile (38), who killed his son, Johnson Mwamwere (5), was killed by an angry mob. Incident occurred in Nsalaga, Mbeya Region.	<i>Mwananchi</i>	18 th March, 2015

2.1.3 Extra-Judicial Killings

Black's Law Dictionary defines the word extrajudicial as “*outside court; outside the functioning of the court system.*”⁹⁵ Extrajudicial killings can thus be described as the killings of a person outside the sanction of any judicial proceeding or legal process. Extrajudicial killings are performed by government authorities through their law enforcement bodies such as the police, the army, state paramilitary units etc. Extrajudicial killing is unethical as it bypass the due process of the legal jurisdiction of the country in which they occur.

95 Bryan A. Garner (ed.), *Black's Law Dictionary*, 9th edn (St Paul, MN: Thompson Reuters, 2009).

It has been very difficult to obtain the statistics on the number of people victimized by extrajudicial killings in Tanzania, since the police force either does not have the same or it is reluctant to release the same. Official information from the Police Force obtained by LHRC reveal that in 2015 there were no act of extra-judicial killing in the country.⁹⁶ In 2014 the official information from the same revealed only one incident of extra-judicial killing.⁹⁷ This could mean that the situation has improved as far as the conduct of the law enforcement organs of the country, to which LHRC commends. However, an independent survey is important to be conducted to ascertain if the same is true because there are still several accusations made of extra-judicial conduct of our forces. The media has also been vocal in voicing these allegations through their findings.

LHRC has been documenting alleged killings of people done by the country's law enforcement forces. In early 2015 LHRC established several allegations of law enforcement involvement in killings of civilians as follows:

- i. Yusuph Twalib, allegedly killed by police at Tegeta, Dar es Salaam;
- ii. Two relatives Gimehu Girahasi and Gitahenga Girahisi in Meatu allegedly killed by security officers of Mwiba Holding Ltd while grazing inside the preserved area;
- iii. Alleged killing of a pregnant woman in Iringa by the police while conducting an operation against illegal local brew; and
- iv. An incident involving one Basil Njole, allegedly shot dead by police in Njombe when found drinking local brew beyond the prescribed hours.

In December 2015, six people were charged at Kisutu Resident Magistrate for their involvement in the killing of two businessmen, Yasin Rashid and Samson Msigale in Dar es Salaam.⁹⁸ Among the six people charged, three were police officers while the remaining three were Park Rangers from the TANAPA Anti-Poaching Unit.

Park Rangers have been involving in allegations of torturing and killings of people living around the national parks and other game protected sanctuaries in the country. The communities living around these parks and game protected areas have constantly come into conflicts with the authorities over their alleged involvement in poaching activities. These conflicts have in several times led to clashes with fatal results. These conflicts led to the then CCM Presidential Candidate Dr. John Pombe Magufuli to warn Park and Game Rangers to end torture and killings of pastoralists. Dr. Magufuli

96 Correspondence with the Police Force with Ref No. CID/HQ/C.10/8/AVOL.I/116.

97 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*.

98 KulwaMzee, "Polisisitawatuhumiwamaauajiwafikishwamahakamani", *Mtanzania* (29th December 2015).

made this call while on Presidential Campaigns in Simiyu Region, a region not strange to allegations of torture and killings of citizens by the park and game rangers.

2.1.4 Road Accidents

“*Road accidents kill over 900*”, reads a heading in a local newspaper.⁹⁹ Quoting the Commander of the Police Force Traffic Unit Mohamed Mpinga, the newspaper was referring to a number of people who had lost their lives in road accidents over a mere period of four months, between December 2014 to April 2015.

Human Rights Issues with Road Accidents

The number of people losing lives and those injured due to road accidents has been increasing significantly. This poses a threat to social health of the country. Road Traffic Injuries are mentioned as the major cause for mobility and mortality.¹⁰⁰ Road accidents as well are known for causing economic burden, as it is estimated that road accidents cost the country between 1-2% of Gross National Product (GNP) per annum.¹⁰¹

The socioeconomic gradient of deaths and injuries caused by road traffic accidents can thus not be ignored. This is because it has been found that people with lower income and education are the ones that are much affected by road accidents. People of higher education and income level are less exposed to Road Traffic Injuries and Deaths (RTID) compared to people of lower social status, living in slums and overcrowded neighborhoods.¹⁰²

Trend on Statistics of Road Accidents in the Past Years

The 1977-2014 police reports on road accidents demonstrate a substantial increase in the trend of the number of accidents associated with fatalities and injuries in Tanzania. The reports show that the total number of accidents over this period of time being 512,765 accidents, resulting in 70,975 deaths and 463,705 injuries.

The reports indicate human error as the major cause of road accident; whether drivers’

99 Alex Malanga, “Road accidents kill 900”, The Citizen (15 April, 2015).

100 K Zimmerma et al., “Road Traffic incidence and Crash Characteristics in Dar es Salaam: A Population Based Study”, available at http://www.amend.org/docs/Amend_TZ_2012_Data_Factsheet.pdf, accessed 19th November 2015.

101 The Controller and Auditor General of the United Republic of Tanzania (2012), *Performance Audit Report on the Management of Traffic Inspections and Speed Limit in Tanzania*, United Republic of Tanzania, p. 17.

102 Public Health Ethics, 2010, Volume 3, No. 2, 115-127, available at <http://phe.oxfordjournals.org/>, accessed 20th December 2015.

or pedestrian fault. Drivers' carelessness is sighted to cause 56% of road accidents.¹⁰³ In Dodoma region, human error was sighted as the cause for 78% of the road accidents happening in the region.¹⁰⁴ The head of the Dodoma Regional Police Force Traffic Unit Superintendent of Police Peter Sima was quoted saying that among the human error included drivers' negligence, cyclists, cart pushers, pastoralists grazing their livestock as well as the pedestrians.¹⁰⁵ Other causes of road accidents in Tanzania include reckless driving especially high speed, driving under influence and poor road infrastructure, such as dilapidated roads with no road signs, worn out bridges and narrow roads.



Picture 2: A bus involved in a road accident in Iringa, claiming lives of more than 20 people

The Police Force Traffic Unit Report indicates that in 2015 there were 8,337 accidents nationwide.¹⁰⁶ These accidents resulted to 3,468 deaths and 9,383 injuries.¹⁰⁷ The report show a slight decrease in the number of accidents, deaths and injuries resulted in the same period in 2014. The Police report shows that in 2014 there were 14,360 accidents, which resulted to 3,760 deaths and 14,530 injuries, compared to the year

103 President Jakaya Kikwete's Press Statement released on 4th August 2015 during the inauguration of the Road Safety Week 2015, Tangamano, Tanga.

104 Sifa Lubasi, "Uzembe chanzo kikuu cha ajali barabarani", *Habari Leo* 29 June, 2015.

105 Ibid.

106 Letter to LHRC from the Tanzania Police Force (reference number Kumb:C10/8/A/VOL. XI/115 of 11 January, 2016).

107 Ibid.

2014 this is a decrease by 6,023 accidents, 292 deaths and 5,147 injuries.¹⁰⁸

Ilala Police Region led in number of accidents recorded nationwide, with a total of 1,431 accidents, followed by Temeke and Kinondoni (with 1,420 and 723 accidents respectively). In general Dar es Salaam Special Police Zone led in number of accidents recorded nationwide with a total of 3,574 accidents recorded. Dar es Salaam Zone was followed by the regions of Pwani, Mbeya and Ruvuma, with over 400 accidents recorded. The regions of Tarime/Rorya, Arusha and Rukwa recorded the least number of accidents, with 56, 53 and 53 accidents respectively.

However, in spite of Dar es Salaam leading in the number of accidents recorded in 2015, a largest number of deaths caused by road accidents were recorded in Mbeya region where 334 deaths were recorded with a total number of 434 accidents. Mbeya was followed by Morogoro (321 deaths with 379 accidents); Pwani (217 deaths with 468 accidents); and Iringa (213 deaths with 135 accidents). More on the number of accidents reported by the Police Force Traffic Unit in 2015 is shown on the table below.

Table 3: Reported Road Accidents per Region 2015

	REGION	NO OF ACCIDENTS	DEATHS	INJURIES
1	ILALA	1,431	109	1,536
2	TEMEKE	1,420	96	1,334
3	KINONDONI	723	117	439
4	PWANI	468	217	732
5	MBEYA	434	334	481
6	RUVUMA	405	138	503
7	MOROGORO	379	321	635
8	DODOMA	310	144	280
9	MANYARA	305	116	450
10	TABORA	290	162	406
11	LINDI	258	102	292
12	MWANZA	206	171	215
13	KILIMANJARO	200	72	239
14	SINGIDA	191	185	259
15	SHINYANGA	175	126	176

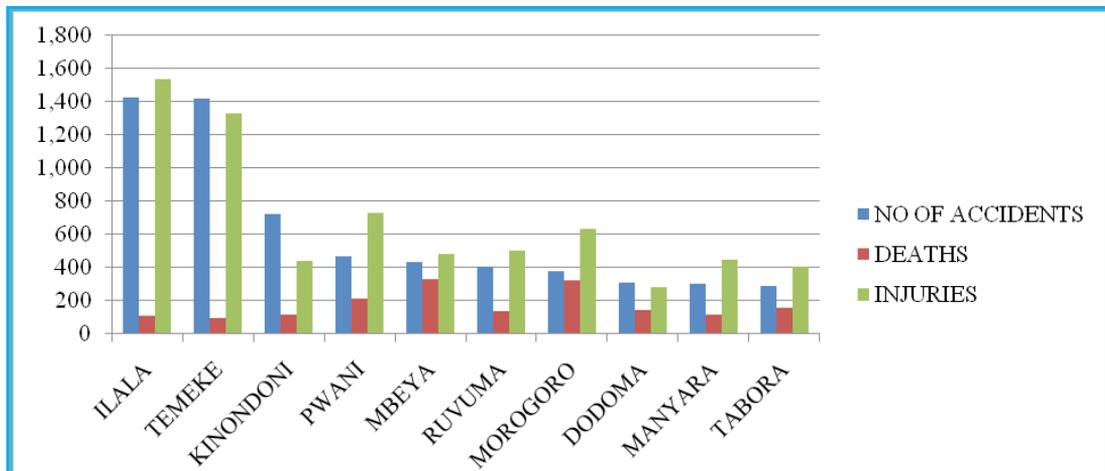
108

Ibid.

	REGION	NO OF ACCIDENTS	DEATHS	INJURIES
16	IRINGA	135	213	177
17	TANGA	117	133	191
18	KATAVI	112	49	122
19	KAGERA	104	86	99
20	NJOMBE	102	103	73
21	GEITA	98	88	195
22	MARA	92	77	93
23	KIGOMA	82	79	133
24	SIMUYU	76	54	141
25	MTWARA	62	58	62
26	TARIME/RORYA	56	45	30
27	ARUSHA	53	26	60
28	RUKWA	53	47	30
	TOTAL	8,337	3468	9,383

Source: Tanzania Police Force

Figure 5: Trend of Road Accidents, Deaths and Injuries in Selected Regions 2015



As it can be observed from above, there was a slight decrease in number of accidents as well as fatalities and injuries in 2015 compared to the year 2014. The Police Report did not reveal the reasons behind this decrease. However, several reasons can be attributed to the decrease.

Among them include raising awareness among road users and frequent police checkups. The Police Force Traffic Unit has been collaborating with other stakeholders in raising awareness to the public over the safe road use. A good example is the collaboration established between an established online network called the Road Safety Ambassadors (RSA) and the Tanzania Police Force Traffic Unit. RSA is a network of inspired citizens, collaborating with the Police Force Traffic Unit on reporting road safety incidents including revealing bad conduct of drivers and other road users while on roads. It is a network that was established in order to raise awareness to the public on safe road use. The network is made up of members called ambassadors who use social media platforms to report on issues of road use. RSA network has members from all walks of the society, including ordinary citizens, members of the Police Force and other influential individuals. RSA is under the guardianship of the Commander of the Police Force Traffic Unit Mohamed Mpinga. RSA network has expanded to include the traffic commanders of all regions of the country and almost every district. The Police Force Traffic Unit has established its own social media platform which is connected with RSA platform; thus all issues reported via RSA platform are as well seen by the Police Force Traffic Unit platform. This makes it easy to make a follow up on any issue reported.

The Police Force Traffic Unit has as well established several check points along the highways and regional as well as district road networks. These check points have helped very much to monitor violation of the traffic laws such as over speeding, driving under the influence and other violations.

The Police Force Traffic Unit has as well introduced new methods of monitoring traffic in the country. A good example is the introduction of an electronic system of paying fine. This system uses mobile phone network to make payment of traffic fines thereby reducing corrupt conduct and bribery. However this initiative is employed at its pilot stage in Dar es Salaam only.

The police Force Traffic Unit has as well introduced a point system whereby once a violation of traffic rules is done the same is charged in the driving license of the respective driver. Once certain points have been reached the driver is suspended from driving for a specific period of time plus other fines and criminal liability where applicable.

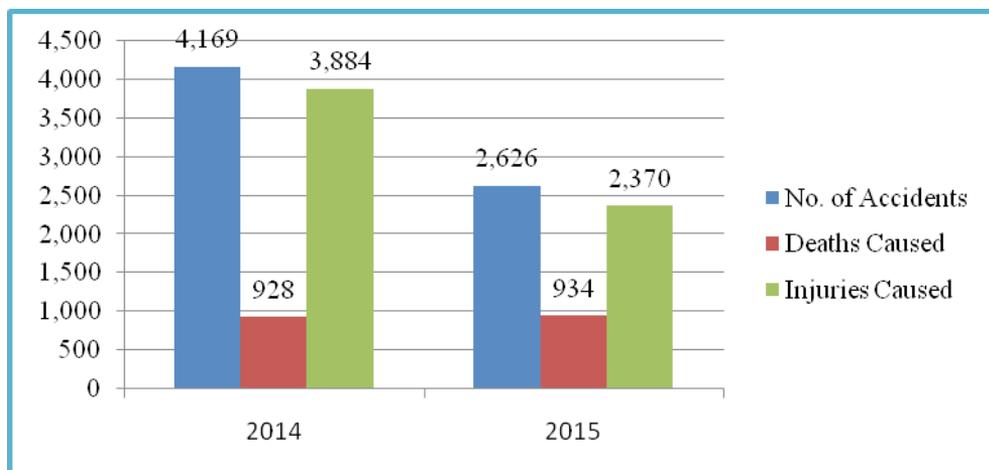
Accidents Caused by *bodaboda*

Accidents caused by commercial *bodaboda* (motorcycles) have become one of the greatest concerns in road safety. *Bodaboda* were seen as solution to unemployment especially to youths. It was seen as well as a solution for transportation especially in remote areas with lack public transport network. *Bodaboda* have well prospered in

urban areas in big cities where congestion in roads is a great problem. However, since their introduction, *bodaboda* have become a menace to road safety. *Bodaboda* riders use the roads in disregard of other road users and traffic laws and regulations causing fatal accidents, claiming lives of thousands of Tanzanians and leaving many with permanent injuries and disabilities.

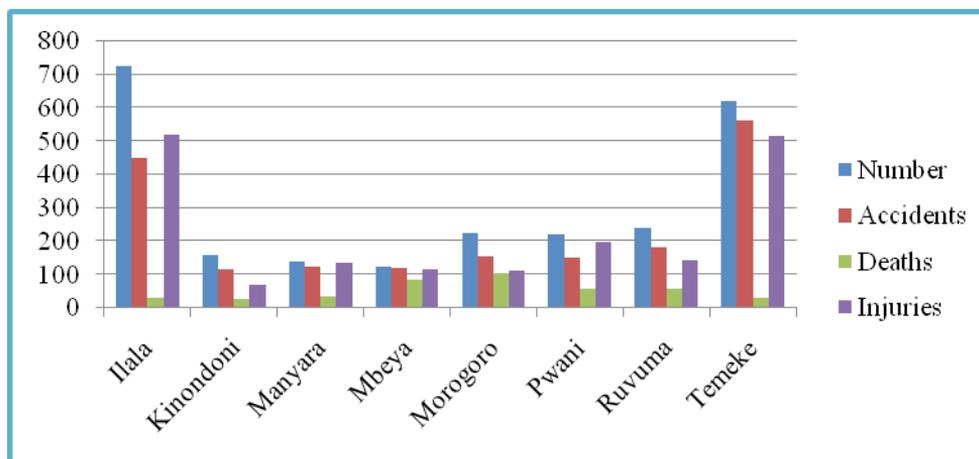
In the year 2015, accidents caused by *bodaboda* were 2,626 accidents, causing 934 deaths and 2,370 injuries.¹⁰⁹ The statistics show a slight decrease in number of accidents caused by *bodaboda* compared to the year 2014 whereby 4,169 accidents were recorded. However, despite the decrease in number of accidents recorded, number of deaths caused has shown a slight increase, as in 2014 there were recorded 928 deaths, an increase of 6 deaths in the year 2015. In 2014 there were 3,884 injuries caused by *bodaboda*.

Figure 6: Number of Accidents caused by *Bodaboda* 2015



Urban areas have proved to be leading in number of accidents and deaths as well as injuries caused. Dar es Salaam region is leading in that aspect where in 2015 there were 1,512 accidents recorded in the region. Ilala and Temeke were the leading districts in number of accident as 1,132 deaths were recorded. Other regions high in *bodaboda* accidents were Ruvuma, Morogoro, Pwani and Manyara.

109 Letter to LHRC from the Tanzania Police Force (reference number Kumb:C10/8/A/VOL. XI/115 of 11 January, 2016).

Figure 7: Number of Accidents caused by *Bodaboda* by Region in 2015

As can be seen on the table above, Ilala and Temeke lead by far in the number of accidents compared to other regions. However, Morogoro, Mbeya and Pwani have a significantly higher number of deaths despite the fact that they had relatively lower number of accidents in comparison to Ilala and Temeke.

The Public Relations officer of the Muhimbili Orthopedic Institute said that 53% of the patients admitted in the institute's wards are victims of road accidents caused by *bodaboda*.¹¹⁰ He further said that the Institute receives a minimum of 20 to 26 patients per day, victims of *bodaboda* accidents.¹¹¹ Most of these patients have amputated limbs, legs and head traumas as a result of the accidents sustained.

Conclusion/Recommendations

Despite the various measures taken by the Police Force Traffic Unit, road accidents are still a big problem in our society. Thousands of Tanzanians are still losing their lives and others sustaining injuries, leading to permanent injuries and disabilities. Thus LHRC recommends the following:

1. Public transport system still faces a great challenge. There is a need to improve the public transport system to enable more Tanzanians to utilize it and thus have better service that can guarantee their safety;
2. Mechanism should be established to ensure that victims of road accidents obtain compensation;¹¹²

110 Raymond Kaminyonge, "Majeruhi wa bodaboda wajaza wodi Muhimbili", *Mwananchi* (27 August, 2015).

111 Ibid.

112 <http://www.mwananchi.co.tz/Makala/Ongezeko-la-ajali-za-barabarani--madhara-yake-kiu->

3. *Bodabodas* still pose a great challenge to social and public health as well as wellbeing. Youths take refuge in riding commercial *bodabodaas* as a means of sustaining their lives. The youth should be economically empowered to have other means of sustaining their lives. At the same time, the government should work on finding sustainable solution to transportation challenges that will get rid of *bodabodaas* as a means of substituting public transport;
4. Our infrastructure is still poor. Dilapidated roads and bridges; narrow roads etc,. The government should ensure that more investment is dedicated in improving the traffic infrastructure of the country;
5. Lack of railway network increases pressure on road use. Majority of cargo exported to neighboring countries and going to hinterland Tanzania is carried through the poor road network of the country. As a result these roads are worn out posing threat to other road users. Reliable railway network should be established around the country to substitute the use roads as a sole means of cargo transport;
6. Statistics show that most of road accidents are caused by human error. The system of issuing of driving permits should thus be re-examined to ensure that only drivers with proper qualifications are issued driving permits.
7. There is a need to include issues of road safety to the curriculum of our schools. This will enable our children to be aware of issues of road safety at the earliest age and thus build a culture of aware citizens as far as road safety is concerned.

2.1.5 Killings and Attacks Related to Witchcraft Belief and Practices

At the beginning of 2015, the media reported that the Tanzanian Government had banned witchdoctors and pledged to set up a task force to arrest and convict witchdoctors and fortune tellers who mislead people by telling them and making them believe that they will be rich by possessing charms.¹¹³ This was reportedly an attempt by the Government to address the issue of witchcraft, which is cited as a cause of attacks and killings of people with albinism as well as other vulnerable group such as the elderly. The following sub-chapter examines the status of killings and attacks related to witchcraft beliefs and practices in 2015 to assess whether these and other government efforts have led to the strengthening of the right to life.

113 chumi-/-/1597592/2362474/-/5i1dftz/-/index.html
<http://news.yahoo.com/tanzania-bans-witchdoctors-stem-grisly-albino-murders-094203203.html>

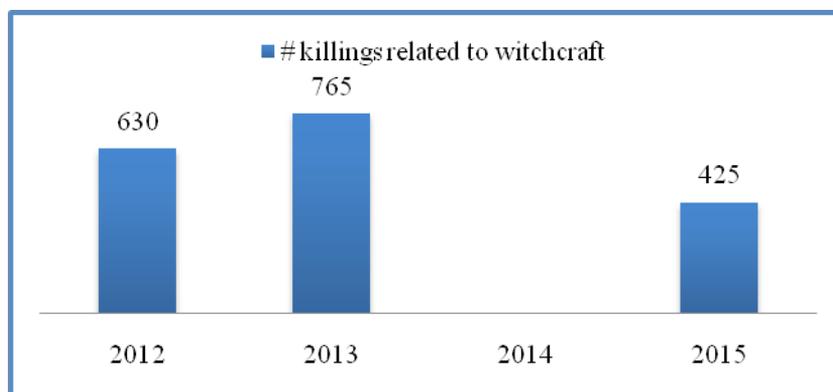
Legal framework

Witchcraft and its practices are banned by the *Witchcraft Act [R.E 2002]*. The relevance of this piece of legislation is contentious.¹¹⁴ The Nyalali Commission recommended repealing the law while the Law Reform Commission has recommended keeping it to curb ‘terror, threat and hatred within the society’.¹¹⁵ Despite the arguments in support and against the law, no revisions were made in 2015, and the Act is still operative. As noted in previous reports, LHRC is of the opinion that the law is outdated and has failed to address the problems posed by witchcraft belief and practices.¹¹⁶

Trend analysis

Data on the number of killings due to witchcraft beliefs were very high in 2012 and 2013. In 2014 LHRC did not obtain official data of the number of people killed for the whole year although information showed that 320 people were killed for the period of six months in 2014. In 2015 LHRC established that a total of 425 people lost their lives for allegations of involving in witchcraft killings.¹¹⁷ This shows a significant decrease in the number of people killed as compared to the previous years. However, killings due to witchcraft allegations and practices still pose a big problem in Tanzania which needs to be addressed by national strategy involving all stakeholders.

Figure 8: Number of Witchcraft-Related Killings: 2012-2015



Lake and central zone regions have been involved in incidents of killings due to witchcraft beliefs. In 2015, more than 300 people were reported killed in Tabora due

114 LHRC & ZLSC (2014), *Tanzania Human Rights Report 2013*.

115 See LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 38

116 LHRC & ZLSC (2014), *Tanzania Human Rights Report 2013*, pp 34-37

117 Correspondence with the Police Force (Ref No. CID/HQ/C.10/8/AVOL.I/116).

to witchcraft beliefs.¹¹⁸In Kaliua District alone there were 84 killings reported.¹¹⁹ Speaking before local leaders, the Commissioner of Criminal Investigation for Tabora region cited belief in witchcraft was the main cause for the killings in Tabora Region.

Issues and Incidents

Belief in Witchcraft

Witchcraft is used to rationalise why bad things happen to certain people justify as to why bad things befall certain people. This belief can lead to accusations against certain individuals suspecting them of involvement in witchcraft practices that have caused the occurrence of bad omens.

Statistics on the number of people killed due to witchcraft beliefs show that witchcraft is still relevant in Tanzania and plays a major role in people's life. In 2010 a research was conducted by Pew Forum which found that 93% of Tanzanians believe in the existence of witchcraft; whereby 60% believe in sacrifice to spirits or ancestors for protection from bad omen; 40% admitted to have visited a *mganga* (witchdoctor and/or fortune teller) at a certain period of time.¹²⁰ This is despite the fact that majority of Tanzanians are committed religious followers of either Islam or Christianity. While this analysis and data is outdated, it can well illustrate the perceptions of witchcraft across the country.

Belief in witchcraft is perceived to still be eminent in Tanzania in 2015. LHRC has been collecting information on incidents of attacks and/or killings due to witchcraft beliefs, which indicates that the belief in witchcraft continues to be an issue. The LHRC 2015 Human Rights Opinion Survey indicated that killings due to witchcraft beliefs are still high in the lake regions of Mwanza and Geita.

118 Lucas Raphael, "300 wauawa kwa ushirikina," *Habari Leo*, 8th March 2016.

119 Ibid.

120 See Pew Forum on Religion and Public Life/Islam and Christianity in Sub-Saharan Africa (2010) at <http://www.pewforum.org/2010/04/15/executive-summary-islam-and-christianity-in-sub-saharan-africa/> Accessed on 27th January, 2016.

Table 4: Incidents of Witchcraft-Related Killings in 2015

Incident	Description/ Victims	Source (Newspaper)	Date
Witchcraft-related killing	Martha Augusti (an old woman) was killed by unknown mob for allegedly engaging in witchcraft. Incident occurred in Mbahe Village, Marangu Ward in Moshi District.	<i>Mtanzania</i>	10 th February, 2015
Witchcraft-related killing	Martha Mwanzirwa (51) from Nyasato Village in Geita Region was mutilated to death by unknown mob on allegations of witchcraft.	<i>Mwananchi</i>	1 st March, 2015
Witchcraft-related killing	Five people in Parknyigoti Village, Ikoma Ward in Serengeti District, Mara Region were killed for allegedly engaging in witchcraft and others were injured by some fellow villagers. The victims were accused of preventing rain.	<i>Mwananchi</i> <i>Nipashe</i>	4 th March, 2015
Witchcraft-related killing	Three people were killed in Msinyeti and Ihunda Villages, Kongwa District in Dodoma Region over witchcraft allegations. They were also accused of preventing rain. The victims are Saidia Chakutwangwa (80) – a witchdoctor, Peter Kaluli (85) and Kaila Kaluli (80).	<i>Nipashe</i>	4 th March, 2015
Witchcraft/Violence	Unknown mob chopped off the private parts of Moses Kileo (53) in Siha District, Kilimanjaro Region.	<i>Nipashe</i>	12 th April, 2015

Source: LHRC Media Survey 2015

Incidents of killings due to witchcraft beliefs are still reported and pose threat to the enjoyment of the right to life. Most of the incidents are reported from the lake region, with killings of older women and people with albinism. The Government has so far failed to formulate a strategy on how to address witchcraft phenomenon and its consequences. This could be one reason for the continuing of incidents of witchcraft as there is no alternative means in place in dealing with the problem.

Witchcraft is closely associated with poverty and ignorance. This does not mean that the economically well-off Tanzanians and educated do not believe in witchcraft, they

do. However, they are less victimised by the outcomes of the belief, such as killings related to witchcraft as a result of someone being accused of practicing witchcraft. Education and sensitisation of the society is the key.



Picture 3: Hilda Johnfan Pili (79) and her stepson Maurus Zenda (46), Victims of witchcraft-related attacks in Peramiho.

Conclusion and Recommendations

As elaborated above, year after year innocent people have continued losing life due to persecution of allegedly involvement in witchcraft practices. LHRC recommends the following:

- i. More efforts are needed to address the threat posed by killings due to witchcraft beliefs and practices. These efforts should involve a comprehensive public education on the fallacies of witchcraft. People should understand that economic success will only come with hard work and not through charm and fairy telling;
- ii. Health services should be improved to ensure that people especially in rural areas have easy access to better health services to which they can rely on. This will diminish the practice of witchdoctors;
- iii. Mechanism should be developed to ensure that genuine traditional healers are identified and regulated in their conduct. Fair-telling and charm should be discouraged as they have been among the major reasons fuelling beliefs and practices of witchcraft;
- iv. The existence of the *Witchcraft Act* should be revisited to ensure whether the same still has the potential of addressing the fallacies of beliefs and practices of witchcraft;

- v. Perpetrators of killings due to witchcraft beliefs and practices should be dully prosecuted.

2.1.6 Brutal Attacks and Killings of PWA

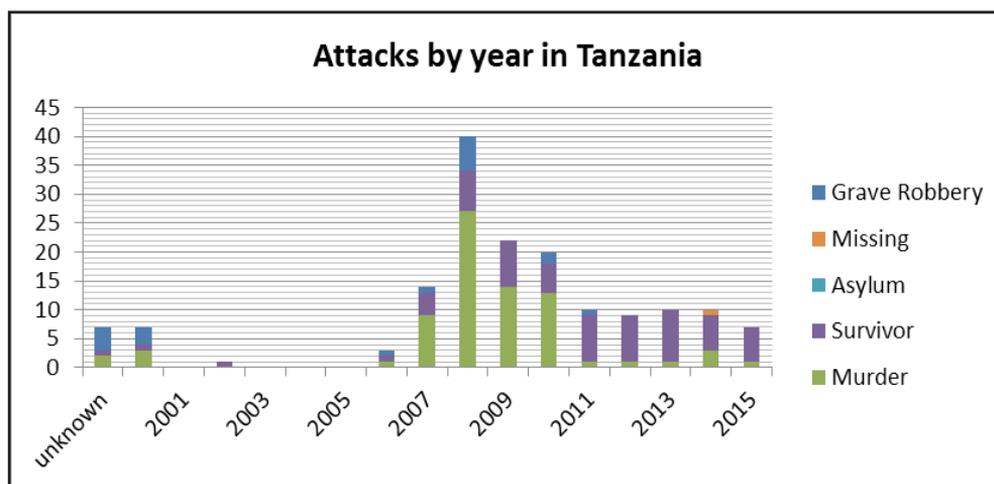
Introduction

People with albinism (PWA) are being attacked and killed in Tanzania. Motivations behind these attacks are mainly cited to be due to witchcraft beliefs and practices. Calls to action for law enforcement to protect people with Albinism (PWA) and prosecute attacks and killings are becoming more prominent in Tanzania. PWAs continue living in state of fear and intimidation of their lives as the attacks and killings continued in 2015.

Trend analysis

Attacks, killings and intimidation of PWS have been recorded since 2001 when the incidents became imminent.¹²¹ The data so collected is presented in the graph below:

Figure 9: Trend of Witchcraft-Related Attacks and Killings of PWAs 2000-2015



This graph indicates that the total number of incidents was at its highest in 2008. Since 2008, there has been a downward trend although reported attacks continued. In 2014 trend of attacks began rising again. This was both reported in LHRC & ZLSC, 2014 Tanzania Human Rights Report and by UTSS in 2014. The data from 2015 indicates

121 Under the Same Sun (UTSS) has been collecting data on killings and attacks of people with albinism.

that the number of murders and other incidents have declined. The trend is positive although there are still attacks reported in some parts of the country.

Issues and incidents

Continued attacks and Killings

Although there is a positive trend related to a reduction of incidents involving the attack and/or killing of PWA, incidents are still happening. In 2015 at least 6 incidents involving attacks of PWA were reported. The incidents involved killing of one Yohana Bahati (1-year old) whose body was found with both limbs mutilated.¹²² The remaining 5 incidents involved attacks and amputation of body parts, mostly arms. Victims of these three incidents are Margareth Khamis (6), Limi Luchoma (30), Ester Togolai Maganda (70), Baraka Cosmas (6) and Said Mohamed (35).¹²³ Details of these attacks are narrated in the table below.



Picture 4: The body of the late Yohana Bahati (1), found amputated after it was exhumed.

122 Correspondence with the Police Force (Ref No.CID/HQ/C.10/8/AVOL.I/116) and UTSS 2015.

123 UTSS 2015 and Media Survey.



Picture 5: The mother of the late Yohana Bahati left with serious injuries while protecting her child from PWA attack

Table 5: PWA Attacks and Killing Incidents in 2015

S/N	DATE	PLACE	VICTIM	INCIDENT
1.	17 th February, 2015	Shilabela Mapinduzi, Chato District in Geita Region	Yohana Bahati (1year old)	The child was abducted from her mother on 15 th February, 2015. Two days later the mutilated body of the child was discovered by the police with both legs and arms chopped off. Esther, the mother of the child was left badly injured by attackers while she was fending off the attackers. Several suspects (including the father of the child who ran away during the assault) were arrested.
2.	6 th June, 2015	Kona Nne Village in Nzega District, Tabora Region	Margareth Khamis (6 years old)	The girl was abducted and went missing. An alarm was raised by villagers, which triggered search for the child. A man was arrested as he was looking for buyers for the child. The girl was rescued and re-united with her family. The family has four PWA members, three siblings and the mother.

S/N	DATE	PLACE	VICTIM	INCIDENT
3.	14 th May, 2015	Kibunde Village, Mlele District, Katavi Region	L i m i L u c h o m a (30 years old)	The woman lost her right arm following a machete attack. Several suspects were arrested after a secret ballot was held in the village. Among the suspects including witchdoctors their other family members.
4.	7 th March, 2015	Kipeta village, S u m b a w a n g a rural.	B a r a k a C o s m a s Rusambo (6 years old)	The child lost his right arm due to attack. The mother of the child, Prisca Shaban, sustained injuries from the machete attack as she was fending off the attackers. The older sibling of 8 years old had to be moved to a safer place. 17 suspects were arrested.
5.	21 st October, 2015	Mkuranga, Pwani region	M o h a m e d Said (35)	<p>Was attacked at night around 2300hrs in his home in Mkuranga town, about 42km from Dar es Salaam City Centre. He sustained head and right ear injuries. He narrates his story to UTSS as follows;</p> <p>“Three men wearing balaclava broke into my home and attacked me with machete. I put a fight but I was overpowered. They tied a piece of cloth around my neck and put another one into my mouth to stop me from raising alarm. They ran away with a piece of flesh from my head,” Said told Under The Same First Response team from his sick bed in a male ward of the Mkuranga District Hospital (Thursday October 22, 2015).</p> <p>He further explained that the attackers were led by a third man (referred to by the attackers as “Boss”) was giving instructions from outside and did not enter the room.</p> <p>Mkuranga police (in the Pwani Region) told the UTSS team that investigation was under way.</p>

S/N	DATE	PLACE	VICTIM	INCIDENT
6.	8 th December, 2015	Bongoi Village, Mlalo Lushoto	E s t e r T o g o l a i M a g a n d a (70)	<p>The woman was attacked by five men who chopped off her left thumb. As she was preparing her dinner, she heard people calling her by her name. She is a widow, living alone.</p> <p>The attackers stormed her house and pinned her to the ground as one of them was chopping off her thumb. They covered her eyes (to prevent her from seeing them) and mouth (to prevent her from raising alarm).</p> <p>Two men were arrested and admitted their involvement in the attack. Three men were still at large.</p> <p>The woman had to go and live with her daughter's family for her safety. She has three other sibling who are also PWA.</p>



Picture 6: Mohamed Said, a PWA, left with head injuries caused by attack by armed men for his body parts

Witchcraft Belief

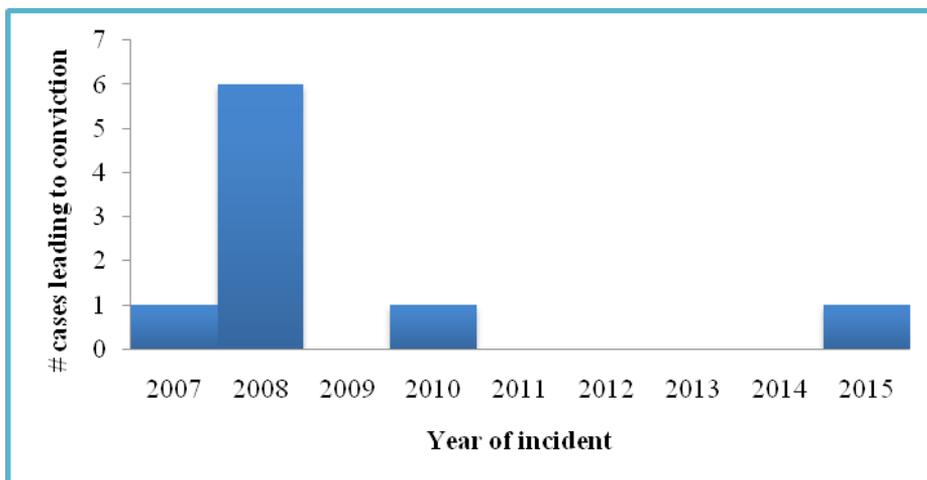
Belief in witchcraft is cited as a motivation for perpetrators attacking or killing PWAs. According to a paper published in 2015, ‘beliefs related to PWA killings, attacks and discriminations are reinforced by witchcraft beliefs which regard PWA as abnormal beings.’¹²⁴ It is a wider belief that PWAs possess a super natural power, that their body parts could be used to eradicate bad luck, poverty and bring about wealth and political strength as well as general protection.

Perceived Impunity of Perpetrators

There have been very few arrests and prosecution of perpetrators of violation of PWA rights by the law enforcement agencies. Data from UTSS on the number of convictions in Tanzania for attacks against PWA reveals that very few perpetrators are convicted. The figure below indicates the data that has been collected by UTSS over the past 8 years on convictions in Tanzania.

The graph below indicates the trend of conviction of perpetrators of PWA attacks and killings. The year may represent the year of the attack, not necessarily the year of the conviction.

Figure 10: Trend of conviction of perpetrators of PWA attacks and killings: 2007-2015



124 Methusela Mishael Masanja, “Albino’s Plight: Will Legal Methods be Powerful Enough to Eradicate Albino’s Scourge” (2015), 231 International Journal of Education and Research, Vol. 3, No 5, at 244.

Out of a total of 160 incidents recorded, with a total of 76 murders, only 9 cases led to a conviction of perpetrators, with 6 convictions to death sentences and 3 to jail sentences.¹²⁵ In 2015, UTSS reported that only one case led to a conviction, where four people were convicted and sentenced to death for the brutal killing of a PWA Zawadi Magindu in 2008.¹²⁶ Among the convicted attackers is the husband of the victim, an allegedly witchdoctor and a body parts dealer.¹²⁷

Action by authorities

Despite reports of the killings to date, there is no official known comprehensive government strategy in place for the protection of and promotion of the rights of PWAs. In January 2015, the Government banned practice by witchdoctors as a measure to curb killings of PWA.¹²⁸ LHRC has been calling for ineffectiveness of the *Witchcraft Act* in curbing witchcraft related crimes.¹²⁹ According to the witchcraft act, practicing witchcraft is a criminal offence. The question is now raised as to why the law has not been used to prosecute those practicing witchcraft.

The Government announced that it is cooperating with Tanzania Albinism Society to form a task force for conducting special operations against the kidnap, abduction and murder of PWA in areas prevalent with attacks.¹³⁰ The Minister for Home Affairs was quoted saying that the task force will embark in investigating factors affecting atrocities against PWA.¹³¹ The minister also said the task force would review court rulings involving cases of attacks of PWA.

A question could be raised here on the legality of the task force to question the decisions of the court. The Constitution of the United Republic of Tanzania gives the Judiciary the authority to have the final decision in dispensation of justice.¹³² The Constitution further provides the Judiciary with independence in exercising its powers, that all courts shall observe only the constitution and the law.¹³³ The best way for the task force would be to seek legal remedy through legal channels. LHRC could not establish the status of the task force as to its activities and impact in combating attacks against PWA.

125 Data obtained from UTSS.

126 Jackline Masinde, "Four albino killers get death sentences", *The Citizen* (6th March 2015).

127 Ibid.

128 <http://www.theeastafrican.co.ke/news/albino--tanzania--jakaya-kikwete--witchdoctors--traditional-herb/-/2558/2588978/-/yhq12d/-/index.html>

129 Refer to previous Tanzania Human Rights Reports.

130 James Kandoya, "Government forms task force to battle albinism", *The Guardian* (14th January, 2015).

131 Ibid.

132 Article 107A (1).

133 Article 107B.

In March 2015, several witchdoctors were arrested.¹³⁴ The Police Force spokeswoman was quoted saying that the witchdoctors were arrested for “*kujihusisha na ramli chonganishi*” literally translated as “for being involved in misleading fortune telling”.

Conclusion and Recommendations

Statistics show that number of incidents against attacks of PWAs has gone down compared to previous years. However looking at the year 2015, incidents of the attacks are still subjecting PWA to live in fear and intimidation. The good trend that has been shown should not make the stakeholders relax rather should make them work even harder to ensure that negative beliefs against PWA is eliminated from the society and thus provide PWA a security and prosperity to their lives.

In order to further protect the right to life of PWAs, LHRC recommends the following actions:

1. The Government should collaborate with other stakeholders to develop a national strategy that will address measures for protection and promotion of PWA rights.

A strategy should include a plan to care for victims of attacks, both physically and psychologically. Physical impairment leaves the victims with difficulties in participating in social and economic activities. Providing support to victims of the attacks will enable them live a productive life and be part of the society. The Government should collaborate with other stakeholders to ensure that professional assistance is provided to the victims. LHRC commends the efforts done by UTSS in collaboration with other stakeholders in ensuring that amputated PWAs are provided with prosthetic missing body parts.

2. Awareness needs to be raised within the society PWA;

The society should be educated to understand that albinism is a genetic condition and not a curse. Awareness raising at the school level is particularly important and is also an opportunity to instil the importance of safeguarding PWA at an early age. Education on PWA and other people with disabilities should be included in school curriculum to nurture the society at the early age. Each of the stakeholders, the government, the private entities, the whole community has a particular important role to play in raising awareness. Let each one be the guardian of another.

134 <http://taarifa.co.tz/2015/03/mauaji-ya-albino-waganga-225-wakamatwa-97-wafikishwa-mahakamani/>



Picture 7: Pendo Noni and Baraka Rusambo waiting to be fitted with prophetic limbs at a children hospital in Philadelphia, USA¹³⁵

3. Safe spaces for PWA need to be provided and supported;

A number of PWA children have been sent to special schools and camps for people with disabilities, where it is believed to be safe. However, the conditions at most of the centres and schools are in a very deteriorating condition. These centres and schools are reliant on donations, which is not sustainable. Moreover, children are kept away from their families and denied parental and family care, as in many instances children are abandoned by family members for a long period of time, either because their family members cannot afford to visit them or because of other reasons. It was reported that at Buhangija centre in Shinyanga there are PWA who have become adults but do not have anywhere to go.¹³⁶

Local government authorities should ensure that these schools and camps are considered in the LGA's budgetary plans and strategies. Community services departments of local authorities should be well equipped to enable them serve better these children. However, local government authorities should be assisted

135 Picture retrieved at <http://www.people.com/>

136 This centre was originally designed to host people with disabilities. However, following the surge in PWA attacks, most PWAs seek refuge at this centre. It is reported by <http://sem-tawashehe.blogspot.com/2015/07/january-ahuzunishwa-maisha-ya-albinism.html> that the centre hosts more than 300 children, some of whom are PWAs. However, the government is currently allocating budget for only 50 children.

by all other stakeholders. The central government should make sure that the required budget to the local authority is disbursed in time and adequately. Other stakeholders should support the local government authorities with both material and psychological expertise.

4. The Police force and prosecution should ensure that cases involving attacks on PWA are investigated and brought before the Court of Law.

Attacks on PWAs including intimidation of any sort, shaving of their hair and rape should also be treated by the police as attacks on PWA, as these actions are also fuelled by witchcraft belief in magical power possessed by PWA.

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

2.2.1 Introduction

The *Black's Law Dictionary* defines equality before the law as the status or condition of being treated fairly according to regularly established norms of justice.¹³⁷ The doctrine of equality before the law entails that all persons, regardless of wealth, social status, or the political power wielded by them, are to be treated the same before the law.

The Universal Declaration of Human Rights states that all people are equal before the law and are entitled to equal protection before the law, without any discrimination.¹³⁸ Similar position is reflected in several other international human rights instruments such as the ICCPR.¹³⁹

2.2.2 Judicial Infrastructure: Human Resources and Facilities

In dispensing justice it is important that the Courts is equipped with adequate infrastructure, such as court buildings, adequate and qualified personnel with better remuneration and living condition.

In 2015, the Judiciary accounted a total of 16 Justices of Appeal, 83 Judges of the High Court, 44 Registrars and Assistant Registrars, 769 Resident Magistrates, 62 legal assistants to Judges, 4 district Magistrates and 462 Magistrates of the Primary Court.

137 *Supra.*

138 Article 7.

139 Article 14.

Table 6: Number of Judicial Personnel in Tanzania

Justices of Appeal	Judges of the High Court	Registrars & Assistant Registrars	Resident Magistrates	Assistants to Judges	District Magistrates	Magistrates of the Primary Court
16	83	44	769	62	4	462

On his farewell speech to the Parliament of the United Republic of Tanzania, President Jakaya Mrisho Kikwete enlightened the efforts done by his government during the ten years of its tenure as far as increasing the number of judges is concerned. President Kikwete stated that during the ten years he had been in power the Government ensured that it increased the number of judges within the Judiciary. The number of Judges rose from 8 Justices of Appeal in 2005 to 16 Justices of Appeal in 2015.¹⁴⁰ While in 2005 there were 37 Judges of the High Court, the number increased to 81 in the year 2015.¹⁴¹ The President also pointed out the fact that gender balance was considered in appointment of Judges. Those, among the Justices of Appeal, 8 Justices are female while 32 of the Judges of the High Court are female Judges. On the number of magistrates, the President stated that the court has managed to employ 1266 Resident Magistrates, among whom 534 are females.

In 2014 it was observed that for the High Court to perform properly it requires 120 judges.¹⁴² The current numbers show that the High Court has 83 Judges, making a deficit of 37 Judges.

Caseload in Courts

The number of cases that a Judge or a Magistrate is able to determine has a direct effect to expedition of justice. The principle that *Justice delayed is justice denied* can only be realized when Judges and Magistrates are able to determine cases before them within a reasonable time.

The number of Judges and Magistrates in the country has a direct impact on provision of justice in the country. The smaller the number would mean that fewer cases will be dealt with hence justice delayed, which in the long run would mean justice denied. It was revealed that each Judge is expected to decide 220 cases per year, whereas a Resident Magistrate is expected to decide 250 cases, while a Magistrate of the Primary Court is expected to decide 260 cases.¹⁴³ Since July 2014 to March 2015 a total of

140 See President Kikwete's farewell speech, *supra*.

141 Ibid.

142 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 55

143 President Kikwete's farewell speech, *supra*.

177,586 cases were filed before courts in the country.¹⁴⁴ It was reported that a total of 179,962 cases were heard and determined, which suggests that all the pending cases for that specific time and the pending cases for the previous period were concluded.

Condition of Court Buildings

The Judiciary has been facing a problem with dilapidated court buildings.¹⁴⁵ The reason for having dilapidated court buildings has been sighted as lack of financial allocation to enable renovations and construction of new buildings where there are none.¹⁴⁶

It was reported that in the year 2015, there were several constructions completed for new court buildings and other renovations for others.¹⁴⁷ Among the completed buildings were the High Court, Labour Unit building; the High Court buildings in Shinyanga and Kagera; 2 District courts buildings (no specification to place was given); and 12 primary court buildings. There were also ongoing projects for construction of other court buildings around the country, including construction of High Court buildings in remaining 9 regions of the country; construction of 9 District Magistrate Court buildings and 25 primary court buildings.

2.2.3 Powers of DPP to Deny Bail is Challenged in Court¹⁴⁸

In 2015 the powers of the Director of Public Prosecution (DPP) were challenged in the Court of law. These powers are the discretionary powers vested with the DPP by Section 148 (4) of the *Criminal Procedure Act* (CPA) to deny bail to the accused person.¹⁴⁹ The CPA provision states that;

“Notwithstanding anything in this section contained, no police officer or court shall, after a person is arrested and while he is awaiting trial or appeal, admit that person to bail if the Director of Public Prosecutions, certifies in writing that it is likely that the safety or interests of the Republic would thereby be prejudiced; and a certificate issued by the Director of Public Prosecutions under this section shall take effect from the date it is filed in court or notified to the officer in charge of a police station and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraws it.”

144 Ibid.

145 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, pp. 55-56.

146 Ibid.

147 President Kikwete’s farewell speech, *supra*.

148 In the High Court of Tanzania at Dar es Salaam (Main Registry), Miscellaneous Civil Cause No. 29 of 2015 (unreported).

149 Cap. 20 of the Laws of Tanzania.

The case was petitioned by one, Jeremiah Mtobesya (Advocate) in the High Court of Tanzania at Dar es Salaam Main Registry. The petitioner argued that the above provision gives discretionary powers to the DPP to deny bail to the accused persons by just filing a certificate without substantiating the basis of his decision to deny them bail. That, this is tantamount to taking away the accused person's right to defend himself in relation to the objection by the DPP against bail application and in effect the accused person is virtually condemned unheard at that level, thereby violating Article 13 (6) (a) of the *Constitution of the United Republic of Tanzania, 1977* (URT Constitution). The petitioner further argued that the right of the accused person to defend himself is the constitutional right provided under Article 13 (6) (a) of the URT Constitution.

"...arrests, imprisonments, confinements, detention and deportation, are forms of interferences with personal freedom.

....this right cannot be arbitrarily taken away unless due process is followed, including fair hearing."

The petitioner also argued that section 148 (4) of the CPA denies the suspect under the police custody as well as the accused person pending trial, the right to challenge the DPP's decision restricting their liberty, thus violating article 13 (6) (a) of the URT Constitution.

The petitioner thus prayed for the court to declare unconstitutional the provisions of Section 148 (4) of the CPA as they violate the URT Constitution, particularly Article 13 (6) (a).

The Court decided that:

- i. Indeed the mentioned provision of the CPA violates the Constitution. The Court thus declared unconstitutional the mentioned provision for offending the provisions of Article 13 (6) (a) of the *Constitution of the United Republic of Tanzania, 1977*;
- ii. The Court further ordered that a suspect under police custody or an accused person should be given the right to defend themselves before their right to liberty is curtailed by the DPP's objection to grant them bail.

In reaching its decision, the court noted that:

- i. Personal freedom is the right to every citizen as prescribed in the URT Constitution. That, arrests, imprisonments, confinements, detention and deportation, are forms of interferences with personal freedom. That, this right cannot be arbitrarily taken away unless due process is followed, including fair hearing;

- ii. Provisions of section 148 (4) of the CPA denies the accused of the right to be heard. This is because the provision does not leave room for the accused or remanded person to be heard before the court or the police officer can decide whether to admit such person to bail or otherwise. As a matter of fact neither the police officer under whose custody the suspect is nor the court under which the accused is arraigned can consider bail application if the DPP files a certificate to the effect that the safety or interest of the Republic would be prejudiced by the suspect's admission to bail;
- iii. The provision as mentioned above possesses potential ground for arbitrary detention by the DPP. This is because it denies the accused the right to be heard and treat him as a convict, thereby infringing his right to liberty and comes into conflict with the presumption of innocence, as guaranteed by the URT Constitution.¹⁵⁰ The provision further takes away the court's power to consider bail application and grant or refuse it after hearing and weighing the argument by both sides;
- iv. The DPP is as well a party (complainant/prosecutor) in a criminal case before the court, creating unfair ground for the other party (the accused). This creates a possibility of abuse or arbitrary exercise of power in a country cherishing the rule of law;
- v. Lastly, the court noted that the contested provision of CPA seeks to limit the rights of an individual on grounds of public interests. However, the provision does not provide safeguards against arbitrary decision and does not provide effective control against abuse by those in authority, when using the law.

LHRC welcomes this important decision of the Court in this crucial matter. It should be noted that the contended provision of the law has been arbitrarily used in the past by the DPP to deny bail to the accused, especially when a matter had a political nature and of interest to the authorities. Worse enough, the law did not require the DPP to provide any reason to deny the accused bail, as a mere certificate from the DPP was enough to bind the court's arms. LHRC believes that it was high time that this provision is challenged so that the rule of law could prevail, by providing the accused the right to fair hearing before his freedom could be denied. The court should be the last organ under which such denial of bail should be decided.

2.2.4 Legal Aid Provision

Legal aid is essential to access justice as well as equality before the law. Legal aid ensures that people who cannot access legal representation have an equal avenue in

150 Article 13 (6) (b).

the court process. This is especially true to people living in marginalized and rural areas, where there is no access to qualified lawyers.

Legal aid is still a challenge in the country as the country does not have an effective mechanism to ensure its provision. As a result provision of legal aid has mainly been overtaken by non-state actors, especially Non-Governmental Organisations. The Tanganyika Law Society is the only statutory body offering legal aid in Tanzania. The Law School of the University of Dar es Salaam also provides legal aid.

In Tanzania the right to legal aid is provided in the Constitution of the United Republic of Tanzania as well as under the Legal Aid (Criminal Proceeding) Act.¹⁵¹ Provision of legal aid is in discretion of the certifying authorities.¹⁵² However, the practice in Tanzania is that legal aid is provided only for “serious” criminal offences namely murder and treason.

Initiatives have been taken to ensure that legislation is enacted to guarantee legal aid provision. This initiative has been overtaken by the government in collaboration with non-state actors. However, the Bill has yet to be tabled before the Parliament for necessary procedure for enactment of the law. LHRC calls upon the process to be expedited in order to provide the country with the much needed legislation which would benefit millions of Tanzanians to access justice.

2.2.5 Other Issues Observed in 2015¹⁵³

- i) Court fees are still high for most of the ordinary Tanzanians to afford. In 2015 the Ministry of Lands, Housing and Human Development announced the reduction of fees for filling land matters in land tribunals and courts.¹⁵⁴ However, the fees are still high for an ordinary citizen to afford, especially for land related matters;

151 Article 13(6) (a) and section 3 respectively.

152 Section 3 states that, “Where in any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the 3 preparation and conduct of his defence or appeal, as the case may be.”

153 These issues were observed during LHRC’s provision of mobile legal aid conducted in 2015, especially in Mtwara and Ruvuma Regions.

154 The United Republic of Tanzania, Ministry of Lands, Housing and Human Settlements, *Rules and Regulations for Amendment of Land Rent Rates, Fees and Charges from 1st July, 2015*.

- ii) There has been a rapid emergence of financial institutions offering financial assistance through loans with low interest rates. These institutions have not been providing education to the beneficiaries on financial sustainability where they can be able to repay their loan debts. As a result many of the beneficiaries fail to repay their loans and see their properties being seized to repay their debts. Most of the victims have been women, striving for entrepreneurship. This has been a cause for bankruptcy, frustration and hatred. There is a need to ensure that these institutions are regulated through legislative means and practice to ensure that they do not take advantage of the vulnerable and innocent Tanzanians;
- iii) The Court has introduced the new system of payment of court fees through the court's bank account. The newly introduced system has proved to be problematic especially in urgent matters, such as injunctions, thus endangering access to justice. This is because there are no nearby bank branches for one to easily deposit the required court fees;
- iv) The administration hierarchy of the ward tribunal and the other land courts frustrates the flow of order. The Ward tribunal officers have been very reluctant in obeying orders from the District Land and Housing Tribunals. It is believed that this reluctance is because hierarchically the Ward Tribunals belong to a different ministry all together. The Ward Tribunals are under the Ministry for Local Government whereas District Land and Housing Tribunals are under the Ministry of Lands, Housing and Human Settlement Development. The High Court on the other hand is under the Ministry of Legal and Constitutional Affairs.

The above confusion has been the cause for delay of records from the District and Housing Tribunals to the High Court, Land Division. That, the Judges of the High Court cannot administratively discipline the District and Housing Tribunals because the two belong to two different ministries hierarchically.

There is a need to harmonize the administrative hierarchy of land tribunals, to ensure that there is smooth dispense of justice within land tribunals and the High Court.



Picture 8: An order to produce records issued by the High Court of Tanzania

- v) Members of Village and Ward Tribunals lack basic skills in dealing with land matters. There is a great need to build their capacity especially in writing skills, ethics and land laws in general. This is especially true bearing in mind that there is a greater increase in number of land disputes in need of legal intervention, especially in rural areas;
- vi) Rulings and decisions of the District Land and Housing Tribunals have been facing several hindrances in enforcement. This is because the tribunals lack criminal jurisdiction in land matters. As a result defaulters find avenue to violate execution orders by the tribunals. There is a need to amend the law in order to provide criminal jurisdiction to the tribunals, to enable them held accountable all defaulters and thereby assure justice;

- vii) The labour market is filled with part time employees, famously known as *vibarua*. These *vibaruas* usually have no job security as they lack contracts, and are employed for shorter period of time thus they are likely to lose their job and any benefit that they may be entitled;

The *Employment and Labour Relations Act, 2004* does not provide for an employee employed for less than 6 months. As a result these workers are faced with discrimination and exploitation as they are likely to lose any benefit that they may be entitled following their engagement with the employer.

- viii) Delay of copies of judgment, decree and proceedings. This is a long term problem within the judicial system. It has led to unnecessary delay of determining cases.

2.3 Freedom of Opinion and Expression

Freedom of opinion and expression are closely linked to development accountability and participatory development. It is as well important in exposing violations of human rights and challenging these violations. Guarantee to freedom of opinion and expression is particularly important for the media and civil society organizations.

Freedom of opinion and expression is a human right, protected under main international human rights instruments, such as the *International Covenant on Civil and Political Rights, 1966*; the *African Charter on People's and Human Rights, 1981*; the *Universal Declaration of Human Rights, 1948*.

Freedom of opinion and expression is as well constitutionally protected in Tanzania. This protection is provided in Article 18 of the *Constitution of the United Republic of Tanzania, 1977*. However, despite the international and constitutional protection, freedom of opinion and expression is limited in Tanzania. Freedom of opinion and expression is limited through different laws of the country. These include the *Newspaper Act, 1976*; the *National Security Act, 1970*; the *Civil Services Act, 1989*; the *Public Leadership Code of Ethics, 1995*; and the *Tanzania Communication Regulatory Authority Act, 2003*.¹⁵⁵ These laws are what have come to be termed the draconian laws as they restrict freedom of opinion and expression in the country.

The year 2015 was earmarked by the enactment of the Cybercrime act. The act was meant to criminalize offences related to computer systems and Information Communication Technologies; and provides for investigation, collection, and use of electronic evidence.

155 Refer to LHRC & ZLSC 2014: Tanzania Human Rights Report, (2013) Page 64 for a detailed narration of these laws.

However, the release of the Cybercrime Act was met with wide criticism from the public to its overt disregard for press freedom and freedom of expression, the excessive powers granted to police, and the limited protections afforded to ordinary citizens.

This sub-chapter will thus examine the situation of freedom of opinion and expression in Tanzania in the year 2015.

2.3.1 Right to Information

The *Declaration of Principles on Freedom of Expression in Africa* insist that everyone has the right to access information, subject only to clearly defined rules established by law.¹⁵⁶ The right to information is as well guaranteed by the Constitution of the United Republic of Tanzania. Article 18 of the Constitution of the United Republic of Tanzania states that:¹⁵⁷

*“Every person-
Has the right to seek, receive and, or disseminate information regardless of national boundaries;*

Has the right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.”

Despite the constitutional guarantee, there is currently no law in Tanzania safeguarding the constitutional guarantee of right to information. However, advancement in the adoption of Information and Communication technology (ICT) has enabled a wider availability of information in the country to public domain.

There are still however several setbacks to ensure enjoyment of the right to information as guaranteed by the Constitution. These include the provisions under several laws and regulations which have been used to restrict access to information.

Efforts to enact access to information law have been stalling since 2006. Absence of this law makes it difficult to access information from public entities. The Constitutional Review process which began in 2011 was seen as a good opportunity to rectify the shortcomings of the law as far as freedom of right to freedom of information is concerned. The Draft Constitution had elaborative provisions on freedom of expression, freedom of information and media freedom.¹⁵⁸ The Constitutional Assembly however changed the contents of these provisions which totally distorted the original meaning of these

156 Part Four of the Declaration.

157 Article 18 (b) and (d).

158 Articles 30 and 31.

provisions as were proposed in the Draft Constitution.¹⁵⁹ The constitutional review process has currently stalled awaiting Referendum for the Proposed Constitution.

The Use of Existing Laws

Freedom of expression, right to information and freedom of the media is undermined by the existence of other laws such as The Newspapers Act, 1976, The National Security Act, 1970, The Public Service Act, 2002 and The Public Leadership Code of Ethics Act, 1995. The Newspaper Act in particular has been used against independent media and journalists.

Efforts by the Government to Make Information More Public

The government has nevertheless made various efforts to make more public sector information available and to allow citizens to file queries, opinions, and complaints and provide feedback to public bodies. Notable efforts include the Open Government Data Portal, Tanzania Government Data Portal, the Central Government portal, e-Government portal, the publication of reports of the National Audit Office and the Extractive Industry Transparency Initiative (TEITI).¹⁶⁰

The Collaboration on International ICT Policy in East and Southern Africa (CIPESA) produced a report on access to information in Tanzanian laws, policies and practices in which the report noted that the information provided through the aforementioned efforts is not regularly updated, is often in non-reusable formats and may not necessarily meet the needs of the public in terms of language or nature of information released.¹⁶¹

Civil society organizations have pioneered efforts to influence enactment of the Freedom of Information law. Through the Coalition on the Right to Information (CORI) members of the civil society organizations have been working campaigning to raise awareness to influence the government to enact the law. The coalition consists of 11 member organizations.

Enactment of the Cybercrime Act

The year 2015 saw the enactment of the Cybercrime Act.¹⁶² The Act was passed by the Parliament of the United Republic of Tanzania on 1st May, 2015. The enactment of this law attracted a lot of criticism from stakeholders such as opposition political

159 Articles 39 and 40 of the Proposed Constitution of 2014.

160 www.opengov.go.tz, www.egov.go.tz, www.tanzania.go.tz, www.wananchi.go.tz, www.nao.go.tz and www.teiti.or.tz consecutively.

161 <http://www.cipesa.org/2015/03/access-to-information-in-tanzania-laws-policies-and-practice/> accessed on 13th January, 2016.

162 Act No. 14 of 2015.

parties, citizens as well as national and international human rights groups. The criticism concerns the fact that the law has serious implications for constitutional and international human rights, particularly freedom of expression and information online and the right to privacy.¹⁶³ The law also contains controversial provisions relating to criminalization of sharing of information, extensive police powers of speech and seizure, surveillance without judicial authorization as well numerous vaguely defined offences. The law came into force on 1st September, 2015.

Some of the problematic provisions of the Act that affect freedom of expression and privacy include Sections 7, 8, 14, 16, 31, 32, 34, 35, 37, 41 and 45.

The Collaboration on International ICT Policy in East and Southern Africa (CIPESA) conducted an analysis of the act in 2015.¹⁶⁴ CIPESA's analysis revealed that this law could be used to restrict access to information. The report produced the following analysis:

- i. Section 7 (2) criminalises citizens who receive unauthorized computer data. There should be consideration of content received with intent and without;
- ii. Section 8 and 16 provide vague descriptions of phrases including “unauthorized data” and “false information.” In Section 8, one can be charged with data espionage for obtaining “computer data protected against unauthorized access without permission.” The parameters that define unauthorized data need to be indicated as this could have an impact upon investigative journalists and confidentiality of their sources;
- iii. In Section 16, on the Publication of false information, the terms “deceptive, misleading and inaccurate information” are subjective and open to abuse by implementers of the law. A clear definition of what constitutes these terms needs to be stipulated in the act. Moreover, there should be consideration of the intent of those who publish such information, failing which the law would ultimately stifle freedom of expression, including of creative expression;
- iv. Also the lack of definition for ‘unauthorised data’ in Section 7 (2b) and “unsolicited messages” in Section 30 makes the act open to misinterpretation and abuse by state authorities;
- v. On the issue of pornography, the Act should not proscribe the offence of pornography in general, particularly where not shared in public and where all parties that access it are adults. As is currently framed, Section 14 can

163 <https://africlaw.com/2015/05/25/of-tanzanias-cybercrimes-law-and-the-threat-to-freedom-of-expression-and-information/> accessed on 12th December, 2015.

164 <http://www.cipesa.org/2015/04/tanzania-cyber-crime-act-should-safeguard-citizens-rights-on-the-internet/> accessed on 12th December 2015.

- be used to abuse individuals' right to privacy. Besides, a clear definition of pornography which is "lascivious" or "obscene" should be added to the Act;
- vi. Sections 31, 32, 33, 34 and 35 of the act provide excessive powers to the police for search and seizure of computer systems; and disclosure of data. These sections should provide clear guidelines, safeguards and oversight, including the requirement for a warrant issued by a competent court of law before any search and seize or disclosure of data is to be undertaken;
 - vii. For section 31, owners of the property or other independent parties should also be witness to such activity by the police for the safety of the equipment and data seized to be guaranteed;
 - viii. According to Section 32 (1), "where disclosure of data is required for purposes of criminal investigation or the prosecution of an offence, a police officer in charge of a police station or a law enforcement officer of a similar rank may issue an order to any person in possession of such data compelling him to disclose such data." This section needs to be adjusted to include police officers first obtaining a court order before compelling any person to disclose data;
 - ix. On the disclosure of data in Clause 32 (3) b, there should be a clear indication as to the kind and extent of information a service provider can provide. Service providers should be required to report subscriber information requests in the public domain on a regular basis.

Further, there needs to indicate means of storage, retention period and methods of disposal for data collected or recorded through technical means as provided under Section 35 (b);

- x. In regard to Section 37 (9), where service providers are required to support the installation of forensic tools, for purposes of transparency they should be compelled to provide reports of such requests made to them;
- xi. Section 41 provides for that a hosting provider is not liable for information stored at the request of a user of the service, however following orders from any "competent authority" or court, the provider has to take down offending information. The Act should name the authority or authorities who can issue an order to a hosting provider. The Act should also indicate what the course of action in the event that a hosting provider does not comply with the order or where the owner of the information wants to contest the take-down order issued by the competent authority;
- xii. In regard to "Take down notifications" as provided in Section 45, service providers should notify the persons upon whom a complaint has been lodged, including the reason for the take down;

- xiii. Also a section compelling service providers to periodically release takedown requests and actions taken to the public should be included.

There is no indication on the rights the users have of their data nor how it is protected once in the hands of the state, thus further putting citizens' data at risk especially in the absence of a data privacy and protection law.

Enactment of the Statistics Act, 2015

In 2015 the Parliament of the United Republic of Tanzania passed the Statistics Act.¹⁶⁵ The law came operational on 2nd November, 2015 with the Government Notice No. 491 of 30th October 2015. The law was meant to regulate and modernize the country's statistics system.

However, the law came under criticism for being un-democratic and violating freedom of the media and right to information. The law was condemned by the United Nations and the European Union mission in Tanzania for jeopardizing freedom of opinion and expression as well as freedom of the media.¹⁶⁶ Media and human rights stakeholders cited that they were not involved in the initial process of making the law.¹⁶⁷ That, when the bill was presented to the Parliament they did not even know the contents of the law. To that effect they had to send a team of members of the Coalition on the Right to Information to Dodoma firstly to obtain the bill and understand the content and secondly to pursue the government not to present the bill before the parliament in order to conduct further consultation with the stakeholders and general public at large.

The Act introduced some radical changes to the law on generating and communicating statistics.¹⁶⁸ It has great implications for anyone working with statistics such as research institutions, the media and civil society organizations.

The law criminalizes publishing of false statistics, or statistics "that may result in the distortion of facts" with a penalty of a minimum fine of 10m/- Tshs and/or a minimum of three years jail term in prison. The law as well makes it an offence for anyone to publish what is termed as "unofficial statistics," statistics which have not been "approved" by the National Bureau of Statistics (NBS).

Twaweza conducted an analysis of the law and found that the law raises a lot of

165 Act No. 9 of 2015.

166 Prosper Makene, "Cybercrime and Statistics bills bad for Tanzania," *The Guardian*, 5th May, 2015.

167 AisiaRweyemamu, "Statistics bill infringes on freedom of media," *The Guardian* 27th March, 2015.

168 <http://www.twaweza.org/go/stats-act-analysis> accessed on 12th January, 2016.

concerns, among them the following;¹⁶⁹

- i. It introduces uncertainty in terms of who is allowed to generate statistics and what authorisation is required;
- ii. The rules around the dissemination of survey micro-data are unnecessarily restrictive. Further, they appear to be inconsistent with principles of open government and open data;
- iii. The law includes obstacles to whistleblowing without any public interest protections;
- iv. The law introduces severe restrictions on the publication or communication of any contentious statistical information. It makes it illegal;
 - a) to publish or communicate “false” statistical information, and
 - b) to publish or communicate statistical information that “may result in the distortion of facts”.

This ignores the fact that disputes around statistics are an essential part of academic and policy debates, and appears to require those producing or publishing statistics to get prior approval from NBS. Further, there are no protections in these cases for acting in good faith.

The law has serious implication on freedom of opinion and expression as well as freedom of the media. This is because the media is will be confined in not publishing and disseminating any news, information and statistics that have been criminalized by the law.¹⁷⁰ According to the law, any media and journalist that shall publish statistics that are not approved by the National Bureau of Statistics (NBS) will be liable for two years imprisonment or a fine of 10m/-.

Banning of *The East African* newspaper

On 21st January 2015 the government announces that it was suspending the publishing and circulation of *The East African* newspaper. According to a letter sent to *The EastAfrican* bureau chief in Tanzania, the decision was ostensibly taken because the paper “has been circulating in the country without being properly registered, contrary to section 6 of the Newspaper Act number 3 of 1976.”¹⁷¹

According to the paper, before the letter was issued the bureau chief editor was summoned and interrogated by the Director of Information Services. According to the paper the government expressed discontent with the reporting and analysis done

169 Ibid.,

170 Section 37.

171 A Special Correspondent, “Tanzania bans the EastAfrican over coverage of government, registration. The EastAfrican 26th January, 2015.

by the newspaper. Specifically, the government accused the newspaper of having a negative agenda against Tanzania. The newspaper had published an opinion criticising the government's stance on FDL rebels in the Democratic Republic of Congo. The paper had also published a cartoon which according to the Director of Information Services demonstrated bad taste and disrespect to the office of the President. Thus, the newspaper was banned from circulation in Tanzania until legal issues are settled.

Recommendations and Conclusion

Freedom of opinion and expression is paramount to a democratic society. It ensures that the government is held accountable by the public and thereby enhances sustainable development. It is important to enact laws to regulate the public conduct such as statistics and cybercrimes, especially in a fast developing world where ICT guarantees availability of information. However such laws should adhere to principles of national and international human rights. LHRC thus recommends the following:

1. The use of a combinations of ICT means, such as radio (national and community based radios), print media, bulk SMS and automated calls in addition to public notice boards and community meetings to advance access to information in the country. Tanzania has a potential high density of people connected to mobile phone communication with access to internet which widens the use capability of ICT opportunities. Thus transparency is paramount, which will also ensure good governance;
2. In order to improve freedom of expression, media freedom and access to information the enactment of the Access to information legislation is unavoidable. This should go hand in hand with amending and/or repealing repressive and outdated laws such as the Cybercrime Act of 2015, the Statistics Act, 2015, the Newspapers Act of 1976, the Public Leadership Code of Ethics (Declaration of Interests, Assets and Liabilities) Regulations, and the National Security Act of 1970.
3. There is also the need to safeguard the rights and privacy of internet. The Cybercrime Act of 2015 should thus be amended to ensure all the provisions which put into jeopardy the right to privacy for internet users are amended. This should go hand in hand with the adoption of a data protection and privacy law.
4. Further, all government Ministries, Departments and Agencies should make use of available ICT platforms including portals and social media to release more information into the public domain while awareness on use of ICT among citizens to access or seek public information should be promoted by all stakeholders.

Chapter Three

Political Rights

3.0 Introduction

Political Rights are the rights exercised in the formation and administration of a government.¹⁷² These rights are given to citizens under the Constitution of a country and are supported by International and Regional treaties. Political rights give citizens the power to participate directly or indirectly in government. For instance the African Charter on Human and People's Rights in its preamble emphasizes how one cannot separate between political rights and other spheres of influence in development. Political rights are rights that politically impact on social-economic development in a given society. The African Charter on Human and People's Rights states that:

*“Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural right in their conception as well as universality and the satisfaction of economic and cultural rights is a guarantee for the enjoyment of civil and political rights”*¹⁷³

Direct participation in politics involves the right to vote and to be voted, the right to participate in democratic processes, freedom of association to form and join political parties of your choice, and right to demand accountability from the state. Indirect participation by non-state actors in political spheres includes freedom of assembly and demonstration, and the right to form and join civil societies and trade unions. This chapter will examine the situation of these political rights in Tanzania for the year 2015. The aspects of freedom of assembly, freedom of association and right to take part in governance in the general election will be looked into closely.

3.1 Freedom of Assembly

Freedom of Assembly is provided in all key human rights instruments that Tanzania has ratified and the Constitution of the United Republic of Tanzania, 1977. They all provide that individuals have a right to assembly. Freedom of Assembly is defined in the *Constitution of the United Republic of Tanzania (1977)* – see box. Freedom of Assembly is also protected under International and regional treaties as a fundamental

172 Definitions.uslegal.com/p/political rights as visited on 12th December, 2015.

173 See OAU Document CM – 1149 (XXXVI)2, Addis Ababa, Ethiopia.

right that needs to be protected.¹⁷⁴

Since 2010 concerns have been raised by civil society that this freedom is being limited and interfered arbitrarily without clear reasoning. In 2015, there continue to be suspicions about the objectivity and neutrality of the authorities (i.e. the police and their superiors).

'Every person has freedom, to freely and peacefully assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his/her beliefs or interests or any other interests.'
(Article 20 (1) Tanzania Constitution).

While LHRC reported on improvements in its human rights report in 2014 there are still incidents where the restriction of assembly is applied without clear reasoning and denials being provided informally and without much clarity. This sub-chapter discusses issues in 2015, reviews trends over the past, reflects on regional dynamics, and also provides clear recommendations for the year 2016.

The Police Force and Auxiliary Service Act 2002 ("Police Act") outlines procedures the police must follow in the policing of public assemblies and processions. The terms "assembly" and "procession" are not defined in the *Police Act*. The Act does state that an assembly of three or more people, who do not obey orders to disperse when requested, would be classified as an "unlawful assembly". This renders the right to assemble at the discretion of the police officers in charge of the area, which is reliant upon their knowledge and understanding of the law, as well as their potential political bias. As such, it is viewed as a 'favour' to let people assemble rather than a political and civil 'right'.

LHRC opines that the police force should not allow itself abused by political influences. It is an independent body operating under the ambit of the Police Force and Auxiliary Services Act as well other orders like the Police Governing Orders (PGOs). The fact that, the command responsibility in a way affects conduct of police force in the country whereby the District Commissioner is a chair of security committee n respective districts but should not undermine the legally provided obligations. In any multiparty democratic state the functions of Police Force should be balanced one whereby all parties enjoy equal treatment and space. Therefore controversial decisions that might cause public debate on the independence of the police force to be critically observed before its issuance.

As Tanzania further develops into a multi-party system where diverse political ideas need to be discussed and debated, it is important that individuals' right to assemble

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Such treaties include ICCPR 1966, UDHR 1948 and ACHPR 1982.

is promoted and protected by the authorities rather than thwarted. There is also a duty and responsibility to those who assemble or organize assemblies to promote and protect the rights of others and do so observing the laws of the land.

3.1.1 Incidences that limited freedom of Assembly in 2015

(a) Arbitrary Limitations to Assembly: While each individual has the freedom to assemble, authorities have the power to use their discretion to limit this freedom under specific conditions. While authorities have the power to limit this freedom, government and police are often seen to be arbitrarily limiting the exercise of this freedom in Tanzania. During 2015 civil society and the media reported cases of assemblies being restricted without adequate reasoning, leading to suspicions around the motivations for such denials.

A significant incident transpired in Mwanza in November 2015 whereby the police force denied the organization of a funeral event for the death of Alphonse Mawazo. He was brutally murdered by unknown people on allegations around political influence.¹⁷⁵ The family and CHADEMA planned for the funeral event to be held at *Furahisha* grounds to allow his supporters and family to attend. The Regional Police Commander (RPC) however denied organizers to hold the burial ceremony for Mwanza due to a cholera outbreak.¹⁷⁶

In reaction, a petition was filed to the High Court, which ruled in favor of the organizers and provided an interpretation of the law specifically on the right to be heard.¹⁷⁷ This decision in the case of *Charles Lukigo versus Regional Police Commander Mwanza and the Attorney General*¹⁷⁸, declared the police force is restricted to issue arbitrary orders without observance of rules of natural justice. His Lordship Mlacha J rules that; “*The first respondent is restrained permanently from making orders without observing principles of natural justice*”¹⁷⁹ The ruling gives interpretation on enjoyment of freedom of assembly as a matter of right as so provided under the Constitution of United Republic of Tanzania, 1977.¹⁸⁰

175 Salum Maige, “Kigogo wa CHADEMA auwa kinyama Geita” *Mwananchi* (15th November 2015).

176 *Mwananchi* “Polisi: Marufuku kukusanyika kuaga mwili wa Mawazo” (21st November, 2015).

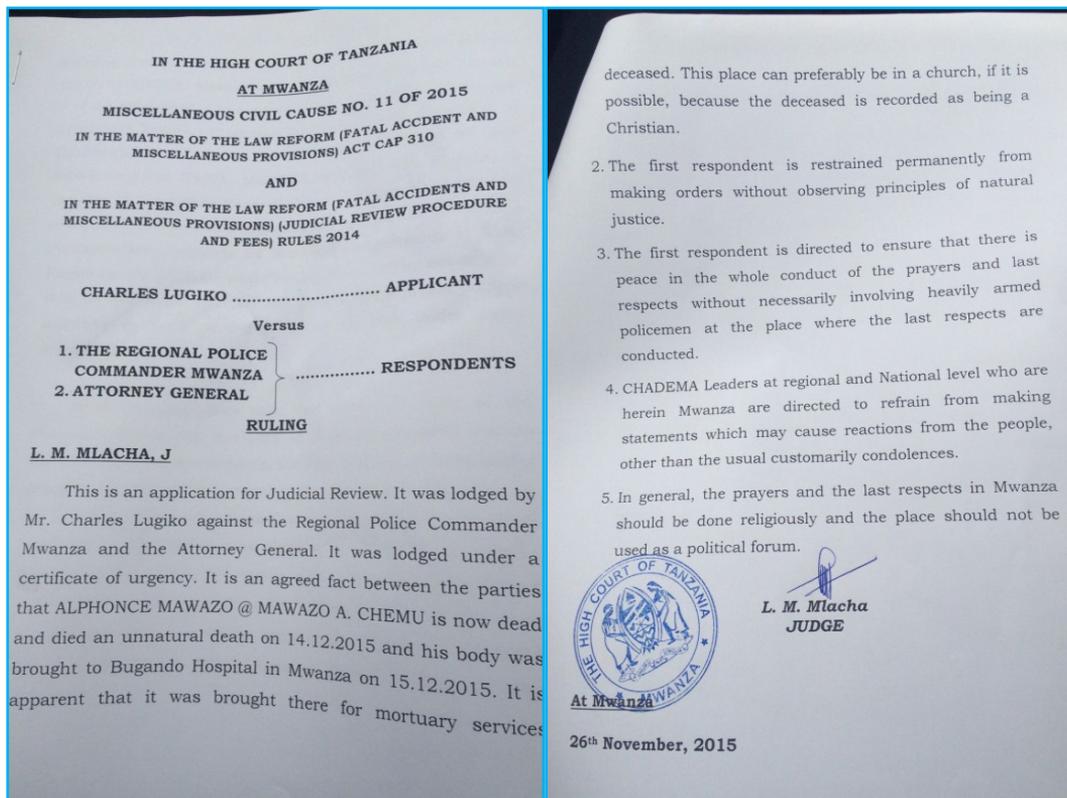
177 Miscellaneous Civil Cause No. 11 of 2015, in the High Court of Tanzania at Mwanza (unreported).

178 Ibid.

179 Ibid, p. 15.

180 Article 20(1).

Picture 9: A Section of the Judgement of the Case on Issuance of Arbitrary Orders



LHRC considers that this decision is a milestone case that sets a standard for the respect and protection of freedom of assembly in the country. It is now required for the police force to provide sound reasons as to why citizens should not assemble for any lawful objective as well as to be accorded right to be heard as so provided under Article 13 of the Constitution of United Republic of Tanzania, 1977.

(b) Unaccountable Denial of Assembly: As highlighted above, the law allows for the limitation of assemblies under certain conditions. While maintaining public order and security concerns are cited by the police as a reason for denying assembly, specific reasons are not always provided. Often confidential ‘*intelligence sources*’ is cited. Furthermore, denial of assembly is provided informally rather than in officially written notices. Police are denying the right to assembly, and are not being held accountable if these denials are arbitrary. This leads to mistrust of the police, particularly when there are incidents of the police banning opposition parties from assembling. This can lead to interpretations that decision to deny the right to assembly is being influenced by political motivations.

For example, in the months preceding the 2015 general election, the Police Force banned the demonstration of political party supporters throughout the country citing the need to uphold public order.¹⁸¹ Such a ban violates the Constitutional right on freedom of Assembly as provided under Article 20(2) of the Constitution of United Republic of Tanzania.

The Secretary General of the Civic United Front (CUF) objected the ban as was quoted that; “*tamko la jeshi la polisi linakiuka Katiba ya Jamhuri ya Muungano wa Tanzania, Ibara ya 20 kifungu cha 1 ambacho kimebainisha wazi kuwa maandamano ya wananchi au vyama vya Siasa ni haki yakikatiba. Mkuu wa Jeshi la Polisi hawezi kuzuia maandamano ya vyama vya upinzani, jeshi hilo linapaswa kujiandaa kwa kusimamia usalama na siyo kuzuia Maandamano au mikusanyiko ya vyama vya siasa.*”¹⁸²

[“The Police order contravenes the Constitution of the United Republic of Tanzania Article 20 (1) which has stated clearly that people’s demonstration or political parties demonstration is a constitutional right. The Inspector General of Police has no mandate to stop opposition parties’ demonstrations, the Police force is supposed to organize and maintain security order and not restricting demonstration or political parties gathering”]

A further example comes from the Prime Minister of United Republic of Tanzania, Hon. Kassim Majaliwa who was quoted in the media banning all political rallies and assemblies after 2015 general election. It is indeed contrary to the objectives of political parties which have mandate under *the Political Parties Act, 1992* that allows political parties to conduct meetings.

(c) Arbitrary Use of Force: The law stipulates that the state has obligations to support Freedom of Assembly. This means that Tanzanian authorities must facilitate the exercise of the freedom. These obligations cover the facilitation of peaceful assemblies and a duty to take reasonable and appropriate measures to enable lawful demonstration to proceed peacefully. There is however incidents reported across Tanzania in 2015 where use of force has been excessive at demonstrations and the police have not fulfilled these obligations.

An example of arbitrary use of force, as well as unaccountable denial of assembly, was in January 2015, when Prof. Ibrahim Haruna Lipumba, who was Chairperson of Civic United Front (CUF) and 32 others were beaten and detained during a demonstration. The demonstration was in remembrance of the killings that took place in Pemba

181 Mwananchi, “Polisi wapiga marufuku maandamano” (13th August, 2015).

182 CUF, Press Release, 16th August, 2015.

after the general election in 2000.¹⁸³ The Police Force obstructed the procession/demonstration although notice of the demonstration was given to the police force as required under the law. There were also allegations that the detained demonstrators were beaten. In a news report, it was cited that the professor was issued information on the denial of the demonstration the night before the date of demonstration. The Professor continued his involvement as the demonstration was already underway. Furthermore, the law dictates that the denial needs to be provided 48 hours before the scheduled demonstration.

Picture 10: Former CUF Chairperson, Lipumba, (left) under police arrest; and police firing teargas to disperse CUF supporters (right)

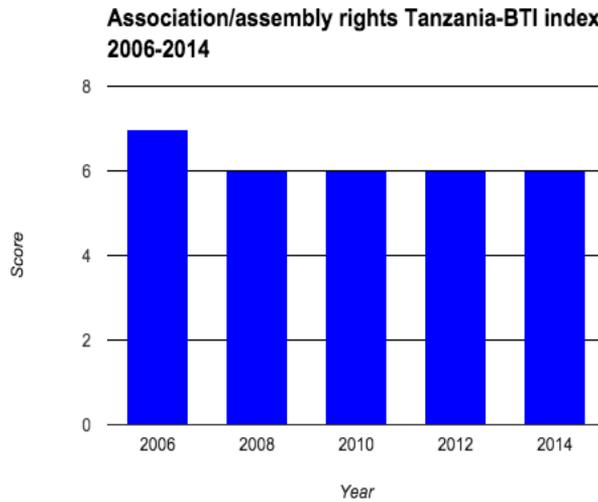


3.1.2 Trend Analysis on Freedom of Assembly

How do these restrictions on freedom of assembly in 2015 compare with previous years? There is little official data available in Tanzania on the right to assembly, which makes it difficult to have a nuanced understanding of how the protection of this right has changed over time. However, international indices provide an indication of where Tanzania sits compared to other countries, in terms of freedom of assembly.

183 Somoe Ng'itu, "Wafuasi Kibao CUF mbaroni, ni katika kukumbuka wenzao waliouwa Zanzibar 2001" Nipashe (28th January, 2015).

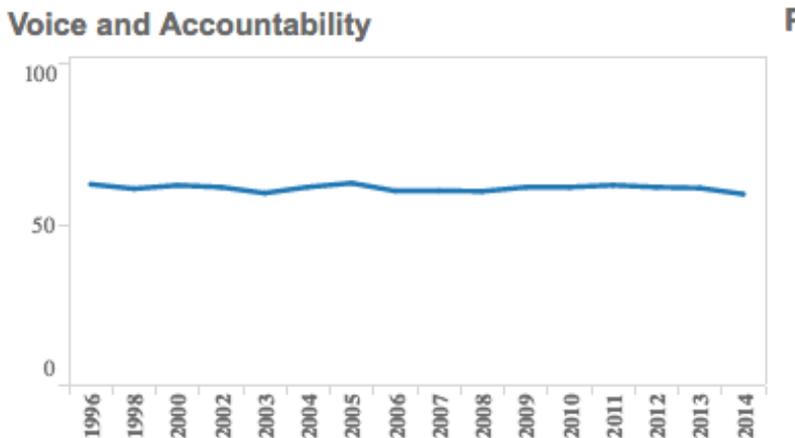
Figure 11: BTI index on Rights to Association/Assembly in Tanzania 2006-2014



The Bertelsmann Stiftung’s Transformation Index (BTI) index provides a useful source of analysis for comparing freedom of assembly in Tanzania compared to other developing or transitional countries. Since 2006, Tanzania has scored a level of 6 on a scale of 1 to 10 (higher the stronger the freedom) and this score has been constant for eight years, which illustrates that there have been no major changes to this right over the past eight years.

The World Bank governance indicators support the scoring from the BTI index which emphasizes that Tanzania scores about 60% on a scale of 0 to 100% in terms of voice and accountability. Likewise, this indicator demonstrates there has been little shift over the past 8 years.

Figure 12: Voice and accountability trend 1996-2014



Therefore LHRC recommends the following:

- 1. Enhance the Quality and Availability of Data:** Data should be collected and recorded on the number of assemblies authorized, denied and cancelled. Ideally this data should be managed by the police and made available to the public.
- 2. Police Discretion to Limit Assemblies should be used Objectively:** When the police consider prohibiting assemblies they should ensure that they are acting objectively. If an assembly is denied or cancelled the police should provide a clear justification and written notification. The ruling on the case of *Charles Lukigo v Regional Police Commander Mwanza and the Attorney General* should be used in support of any future attempts to arbitrarily limit assemblies.
- 3. Police Force should Remain Impartial and avoid any Accusations of Political Influence:** The Police should recognize they are an independent body operating under the Police Force and Auxiliary Services Act as well as other orders like the Police Governing Orders. They should recognize freedom of assembly is a right given to all citizens under the Constitution.

3.2 Freedom of Association

Freedom of association is a right to join or leave groups of persons own choosing and for the group to take collective action to undertake the interests of members. It is both a collective and individual right. The freedom of association can be enjoyed by political parties, civil societies and non-governmental organizations, clubs, religious groups or and trade union. For instance when saying that freedom of association is both a collective and individual right it can be well illustrated with the action taken by the former general secretary of CHADEMA Dr. Wilbroad Slaa for having exercised his freedom of association to abandon his party as an exercise of individual right. Other politicians switched political parties, joining other parties. In the table below are some of those prominent politicians who changed or defected to other parties.¹⁸⁴ Therefore in explaining about freedom of association the terms joining or leaving the “association” are very fundamental.

184 TACCEO&LHRC Report, *supra* at 88.

Table 7: Politicians who Defect to Other Parties

<u>Name of Politician</u>	<u>From</u>	<u>To</u>
Edward Ngoyai Lowasa	CCM	CHADEMA
Juma Duni Haji	CUF	CHADEMA
Kingunge Ngombale Mwiru	CCM	Supported UKAWA
James Lembeli	CCM	CHADEMA
Ester Bulaya	CCM	CHADEMA

However, in some of the associations there is legal obligation for one to join so as to be able to enjoy collective rights. For instance in any trade union in order for the an individual to enjoy collective responsibility to bargain with an employer, one must be a member of that trade union and under *the Employment and Labour Relations Act, 2004* joining trade union is must.¹⁸⁵ In a second scenario where one wishes to engage in active politics of the country he or she must be nominated by sponsoring party so as to vie in any political posts.¹⁸⁶

3.2.1 Situation of Right to enjoy freedom of association as political parties

Multiparty democracy in Tanzania was introduced in 1992. Political parties are necessary for furtherance of democracy and good governance in contemporary world. Even during the struggle for independence in the African continent political parties were a unifying factor which brought together on the table citizens and the rulers. The late Mwl. Julius Kambarage Nyerere strongly believed in diplomatic confrontation in order to bring desired changes. He was once quoted emphasizing the importance of political parties and the strength of negotiations during the struggle of independence as he said that; *“It is necessary to remember that those who are fighting now for the liberation of their country are doing so not because they prefer the bullets, but because they were denied the ballot. They are still being denied a meaningful ballot, but the changes which [are in] place have been achieved because thousands of young men are willing to die-and have died-in order that others may live in freedom”*¹⁸⁷ *“I am saying that the people are sole justification for any political party. Their service is the sole purpose, it should be....”*¹⁸⁸

The political parties in the Tanzania are mandated under the Constitution of United Republic of Tanzania, 1977.¹⁸⁹ Currently, there 23 registered political parties in the

185 s. 46 provides for the requirements to register a trade union.

186 Constitution of United Republic of Tanzania 1977, Articles 37, 47 & 67.

187 Nyerere on Freedom and Liberation, *supra* at 112.

188 Ibid.

189 Article 3(1) *“The United Republic is a democratic and socialist state which adheres to multi-party democracy”*.

United Republic of Tanzania.¹⁹⁰ Political parties in 2015 participated in the general election either as a single party for instance CCM and others formed an informal coalition, for instance four political parties formed a coalition known as “*Umoja wa Katiba ya Wananchi (UKAWA)*.”¹⁹¹

LHRC urges the political parties to campaign for Constitutional and Legal reforms that would allow the formation of coalitions. The experience on the 2015 general election indicates that coalitions can have the ability to strengthen political competition. Also political parties participating in elections as coalitions add value to the type of candidates who will vie for different posts by getting competent candidates. In addition forming a coalition is cost effective as parties will mobilize resource together henceforth lead to a potential reduction in election expenses.

3.2.2 Freedom of Association as Civil Societies

In the United Republic of Tanzania, Civil Societies are regulated by *the Non-Governmental Act, 2002*.¹⁹² Other non-governmental organisations (NGOs) have been registered under the *Companies Act, 2002*¹⁹³ as Companies limited by guarantee with no share capital. Other Organisations like Faith-Based Organisations and Associations, Clubs and alike are registered under *the Societies Act*¹⁹⁴ and *the Cooperative Societies Act, 2013*.¹⁹⁵ NGOs have played a greater role in community

190 “Political Parties” is a union matter therefore registration and conducts of political parties are regulated by the *Political Parties Act, 1992*. The registered political parties include *Chama cha Mapinduzi (CCM)*, registered in July 1992; *Chama cha Demokrasia na Maendeleo (CHADEMA)*, registered in January, 1993; *Civic United Front (CUF)*, registered in January, 1993; *Union Multiparty Democracy (UMD)*, registered in January, 1993; *National Convention for Construction and Reform (NCCR-Mageuzi)*, registered in January, 1993; *National League for Democracy (NLD)*, registered in January, 1993; *United Peoples Democratic Party (UPDP)*, registered in February, 1993; *National Reconstruction Alliance (NRA)*, registered in February, 1993; *Tanzania Democratic Alliance (TADEA)*, registered in February, 1993; and *Tanzania Labour Party (TLP)*, registered in November, 1993. *United Democratic Party (UDP)*, registered in 1994; *Demokrasia Makini (MAKINI)*, registered in November, 2001; *Forum for Restoration of Democracy (FORD)*, registered in January, 2002; *Alliance for Change and Transparency (ACT-Wazalendo)*, registered in 2014; *Alternative Democracy Party (ADP)*; *Alliance for Tanzanian Farmers Party (AFP)*; *Chama cha Kijamii (CCK)*; *Alliance for Democratic Change (ADC)*; *Chama cha Haki na Ustawi (CHAUSTA)*, registered in November, 2001; *Democratic Party (DP)*, registered in June 2002; *Progressive Party of Tanzania (PPT-Maendeleo)*, registered in March 2003; *Jahazi Asilia*, registered in November 2004; and *Sauti ya Umma (SAU)*, registered in February 2005.

191 The members of UKAWA are CHADEMA, CUF, NCCR-Mageuzi and NLD.

192 Act No. 24 of 2002.

193 Cap 212 [R.E 2002].

194 Cap 337 [R.E 2002].

195 Act No. 6 of 2013.

empowerment programmes, service delivery, legal aid, enhancing accountability and good governance, election observation and advocacy.¹⁹⁶

Civil society organisations (CSOs) in the United Republic of Tanzania are faced with a number of challenges. Such challenges include: financial constraints, criticism on their role by duty bearer; being associated with political parties; unfavorable legal regime for the CSO to perform their duties for instance with the *Cyber Crime Act, 2015*, *the Statistics Act, 2015* which limit freedom of expression and publication of research works respectively.¹⁹⁷

3.2.2.1 Arrest of TACCEO Election Observers

CSOs are normally accredited to participate in the country's election. CSOs tend to participate in elections as domestic observers or can be accredited to provide civic education with respect to general elections or local government elections. In the 2015 general election a number of CSOs were accredited to monitor the election including 17 CSOs that formed the Tanzania Civil Society Consortium for Election Observation (TACCEO).¹⁹⁸

In the aftermath of the voting during the general elections, the observation centre at Kawe Beach area was invaded by the police, arresting 36 election monitors. The ICT equipment was shut down and computers taken to the Central Police for further investigation. The 36 CSO staff members and volunteers were charged with an offence of 'collecting and publishing false information contrary to section 16 of the Cyber

196 Kepa, Reflections on the state of civil society in Tanzania, at https://www.kepa.fi/tiedostot/cs_tanzania_2013.pdf (*The types of services provided are extremely diverse, including: • Legal aid and counselling services • Water, agricultural and environmental consultancy • Capacity building and training for NGOs and community-based organisations • Credit and skills building for small business enterprises • Provision of school fees and construction of educational infrastructure • Health services, including home-based care and rehabilitation • HIV/AIDS prevention education and information • Support for the disabled, widows, street children and/or orphans • Income generation projects • communal groups for self-help purposes*).

197 s. 22 of the Act requires consent of the Chief Government Statistician before publication of any research work.

198 Members of TACCEO include the Legal and Human Rights Centre (LHRC); Tanzania Gender Networking Programme (TGNP Mtandao); Women Legal Aid Centre (WLAC); Southern Africa Human Rights Non-Governmental Organization (SAHRiNGON); Tanzania Media Women Association (TAMWA); Concern for Development Initiatives in Africa (FoRDIA); Lawyers Environmental Action Team (LEAT); Policy Forum; Tanzania Network for Legal Aid Providers (TANLAP); Mwanza Policy Initiative (MPI); ACCORD; Tanzania Human Rights Foundation (TAHURIFO); Tanzania Leadership Forum (TLF); Youth Partnership Countrywide (YPC); HAKIMADINI; Zanzibar Legal Aid Service Centre (ZLSC); and Women in Law and Development in Africa (WiLDAF).

Crime Act, 2015¹⁹⁹. The basis for the charge was considered wholly unfounded on the ground that TACCEO was conducting parallel voting tabulation (PVT). TACCEO had been legally accredited by the state to act as domestic observers of the election – which is the position that LHRC as a key member of TACCEO maintains.

Picture 11: LHRC staff members in shock following police invasion of their Kawe Office (left) before being taken to Central Police Station (right)



3.2.2.2 Arrest and Torture of BVR Observers in Njombe District - Makambako

The BVR observers at Makambako – Njombe Region were invaded while at their guest house on the night of 7th March, 2015.²⁰⁰ They were harassed and beaten and some of their working tools were taken to police without justifiable cause. The Police Force had no sufficient explanation that could justify an arbitrary torture and uncivilized act to harass the BVR observers.

199 The provision provides that “Any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing such information or data is false, deceptive, misleading or inaccurate and with intent to deceive, threaten, abuse, insult or otherwise deceive or mislead the public or counselling commission of an offence commits an offence, and shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both.”

200 LHRC (2015) BVR Observation Report – Makambako.

Picture 12: One of the torture victims (left), arrested and torture at Neto Guest House (right)



Recommendations

LHRC calls upon the government and law enforcement agencies especially the police to respect the legal frameworks in existence that recognizes the role and duties of CSOs in democratic processes. The general election 2015 informs the public and human rights defenders that they are not safe. The scenario where police force is involved in limiting freedom of association as civil societies affects democratic political process in the country. Therefore LHRC urges the government to ensure there is fair ground for political participation to all election actors/stakeholders including domestic observers.

3.3 Right to take part in Governance

3.3.1 Introduction

The right to take part in the democratic process is provided for and guaranteed in a number of international binding and non-binding treaties. For instance the Universal Declaration of Human Rights of 1948 provides for the right to participate in governance; the International Covenant on Civil and Political Rights of 1966, a binding treaty enhances the UDHR by promoting political rights; the African Charter on Human and People's Rights of 1984, accords right to participate in democratic governance in all independent African countries; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, prohibits discrimination of any kind for women to participate in democratic processes; the Convention on the Rights of Persons with Disabilities' (CRPD) of 2006 safeguards rights of persons with disabilities to participate in political life; and the African Charter on Democracy, Elections and Governance of 2007, promotes conduct of free and fair election in

Africa.²⁰¹

In Tanzania the legal framework that governs democratic processes and guarantees citizens the right to take part in governance are rooted in the *Constitution of United Republic of Tanzania, 1977* which provide that every Tanzanian who has attained the age of 18 years is entitled to vote in any public election.²⁰² The Constitution provides a strong legal basis for citizens to exercise their Right to Vote. Other legislation includes *National Election Act*,²⁰³ *Local Government Authority (Elections) Act*,²⁰⁴ *the Election Expenses Act, 2010*.²⁰⁵ *The Political Parties Act*,²⁰⁶ *The 2015 the National Election (Presidential and Parliamentary Elections) Regulations, 2015* and *The National Election (Councilors Elections) Regulations, 2015* played a vital role to provide procedural aspect of conducting the election.

3.3.2 Trend Analysis: Right to Vote

The Constitution of United Republic of Tanzania, 1977 guarantee universal suffrage to all citizens above 18 years. It provides that; *“Every citizen of the United Republic who has attained the age of eighteen years is entitled to vote in any public election held in Tanzania. This right shall be exercised in accordance with the provisions of sub-article (2) and of the other provisions of this Constitution and the law for the time being in force in Tanzania in relation to public elections.”*²⁰⁷

In the 2015 general election the trend shows that the number of voters increased compared to 2010 general election where there was an all-time low turnout (see figure 13). The voter turnout has increased due to a number of factors of which LHRC consider that might have been influential:

- (a) Increased number of voters registration through Biometric Voters whereby 23,161,440 (96.85%) out of 23,913,184 of the expected voters were registered.²⁰⁸
- (b) Increased morale for citizens’ participation in democratic process. For instance citizens had their voters identity card named as *“vichinjio”* in a sense that they are going to vote for right candidate and corrupt one are going to be voted out.
- (c) The formation of an informal coalition *“Umoja wa Katiba ya Wananchi”* (UKAWA) whereby four strong opposition parties had one presidential

201 TACCEO&LHRC Report, *supra* at 23.

202 Articles 5 and 21 respectively.

203 Cap. 343 [R.E 2010].

204 Cap. 292. [R.E 2015].

205 Act No. 6 of 2010.

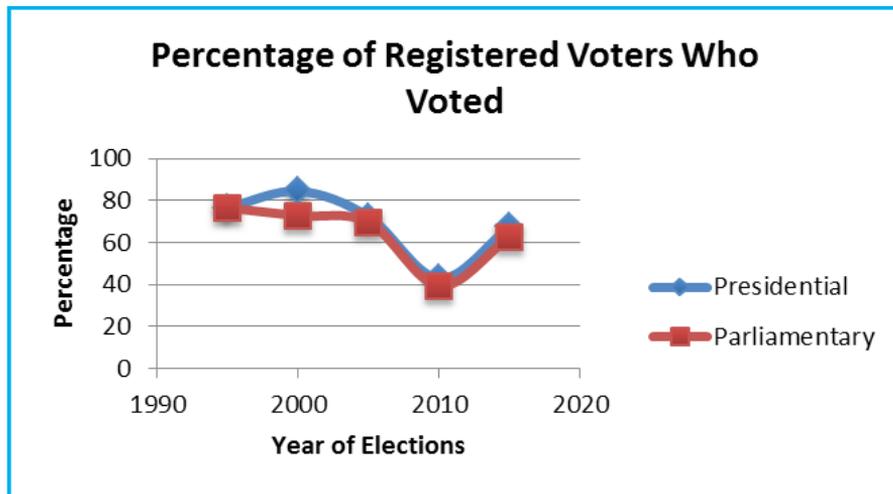
206 Cap. 258 [R.E 2002].

207 Article 5(1).

208 TEMCO (2015), *General Election 2015 Preliminary Report*, p. 8.

- candidate Hon. Edward Lowasa and in some constituencies and wards the four political parties had one candidate
- (d) Deflection of leaders from the ruling party CCM to opposition also added a value to voters’ turnout in 2015 election. For instance the influence of former Prime Minister Hon. Fredrick Sumaye and political veteran for CCM Hon. Kingunge Ngombale Mwiru cannot be underestimated. They played a greater role in campaigns for UKAWA.

Figure 13: Percentage of registered voters who voted



Source: International Institute for Democracy and Electoral Assistance (IDEA)

Freedom House’s Freedom in the World Index also offers additional insights into the Right to Vote. This indicator has however remained strikingly stable over the last five years suggesting that little progress has been made in improving access to voting and electoral transparency.

Table 8: Freedom House’s Tanzania Elections Scores 2006-2015

Year	Electoral Process	Political Pluralism and Participation
2006	6	10
2010	6	9
2015	9	12

Information from the table above indicates that there have been no major changes pertaining election in Tanzania since 2011. This can be partially attributed to the

fact that there was no general election during this period although there were other elections (local, by-elections).

Table 9: Economist Intelligence Unit Democracy Index Tanzania 2011-2014

Year	Electoral process & pluralism	Political participation
2011	7.42	5.56
2012	7.42	6.11
2013	7.42	5.56
2014	7.42	5.56

The Economist Intelligence Democracy Index (EI) claims that no major progress was made toward democracy in Tanzania during the period of 2011 to 2014. The EI unit's Democracy Index (2011) ranked Tanzania at 7.42 out of 10 for Electoral Process and Pluralism, whilst scoring 5.56 for Political Participation. This is based on the ratings for 60 indicators grouped into five categories including: electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture. The overall index is based on a average of the five factors. By the EI's categories, a 7.4 places Tanzania as a 'flawed democracy', and 5.6 places the country among 'hybrid regimes'.

3.3.3 Major observations of 2015 general election: A perspective on the Right to Vote

In the 2015 general election LHRC participated as a key domestic observer together with the other 17 members of the Civil Society Consortium for Election Observation (TACCEO). The observation mission of the LHRC commenced its activities from the registration of voters during the Biometric Voters Registration through to the Election Campaign and the Vote itself on 25th October, 2015. LHRC was also involved in observing the by-elections in six constituencies and post-election analysis. A number of key issues around the Right to Vote have been made:

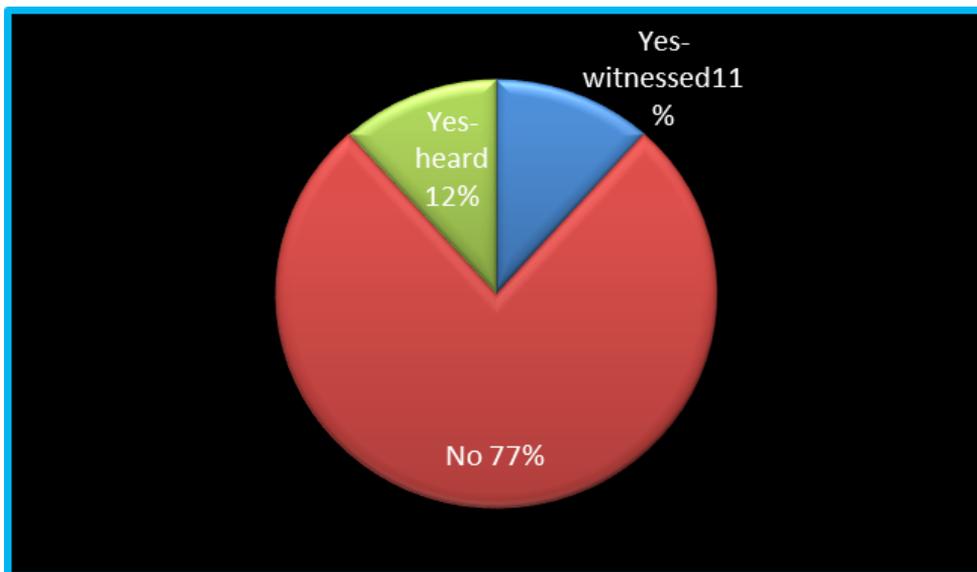
3.3.3.1 Limited Provision of Civic Education

Provision of civic voter's education is vested under the mandate of the National Electoral Commission (NEC). The *National Election Act*, section 4C stipulates the responsibility of providing voters education is that: "*The Commission shall be responsible for providing voters education throughout the country and shall coordinate and supervise persons who conduct such education*". Also rule 3 of the *National Election (Presidential and Parliamentary Elections) Regulations, 2015* provides for such responsibilities and procedures thereof. The Regulations further

requires any person(s) interested to provide civic or voter's education to seek approval by providing training materials for vetting.²⁰⁹ Whoever does not comply with required procedures is barred from providing such education.²¹⁰

According to the TACCEO report a number of citizens in the United Republic of Tanzania (URT) had no access to voter's education. This is attributed to limited understanding and knowledge of the voting process but also to perceptions among voters that their vote will not make any meaningful difference. For instance the chart below summarizes findings on the level of voter's education provided in the 2015 general election. That TACCEO observed that 66 percent of voters had no access to voter education nor did they witness provision of such education by NEC or any other stakeholders.

Figure 14: Percentage of responses on access to voter education by NEC



The level of civic education provision differed from one region to another. The reason behind this could be attributed to the regional distribution of stakeholders such as presence of active civil society and the media. According to the TACCEO report, it was observed that Iringa and Pemba's regions had a greater percentage of people who did not receive any form of civic or voters' education during the 2015.²¹¹ A similar trend for non-provision of civic education was observed in Biometric Voters Registration (BVR) and LHRC recommended for the authorities on importance of providing such education. Poor or non-provision of adequate civic education leads to voter apathy

209 Regulation 5.

210 Regulation 6.

211 TACCEO&LHRC, *supra* at 23.

in most cases and some citizens vote without proper information on powers of their votes on development. It is indeed in rural areas some citizens simply vote based on party affiliation or due to lack of confidence in democratic processes.

Lack of civic education can lead also to some unacceptable practices that degrade humanity and respect for women. For instance in one incidence Mr. Martine Mkude gambled and pledged his wife to another man as a bond in case the presidential candidate for CCM does not win.²¹²

Picture 13: A newspaper covering the story of a wife bet on the winner of presidential seat



212 Jackline Masinde, "Amweka mkewe bondi, Kisa ushindi wa urais" *Mwananchi* (19th October, 2015).

3.3.3.2 Lack of Equal Access to Vote

The Constitution of United Republic of Tanzania, 1977 stipulates that people have the right to vote.²¹³ But neither the Constitution nor the National Elections Act stipulate how such right can be exercised by prisoners, people who are hospitalised and those in the diaspora. It only recognizes persons who can present themselves before polling stations. The proposed Constitution under Article 7 also does not make reference as to the manner how such group of persons can have access right to vote. In 2015 such right continued to be denied as in the previous elections. In Kenya the High Court has ruled that “unlike the right of citizens in the diaspora, whose right to vote is to be realized progressively, the right for prisoners to vote is one that is immediate and the State and its agencies must comply with the obligations that require that this right be realized. Such obligation includes the duty to promote, protect and fulfill the right to vote.”²¹⁴

LHRC calls upon the government and the National Electoral Commission to initiate legal reforms that would guarantee these groups to participate in democratic processes of the country. It would be ideal to start with the persons present in the country especially prisoners and hospitalised persons.

3.3.3.3 Right to vote and participation in 2015 general to persons with disabilities

Persons with disabilities in the country do not have equal access to exercise their right to vote. The persons with disabilities are faced with the challenges during campaign and voting day. The following are some of the challenges but also positive trends that persons with disabilities experienced in 2015 general election;

- (a) The law is silent on assistance accorded to other types of disabilities. For instance the regulations make reference to blind persons only. Regulation provides that; “ *Without prejudice to the provisions of the Act, where a blind voter wants to vote at any election and upon satisfaction by the Presiding officer or polling assistant that the blind voter’s name appears in the register and that the voter has been assigned to vote at such polling station and if the voter requests insert a ballot paper into tackle ballot folder and deliver to such voter*” The *National Election Act* does lay down procedures to allow for voters who are incapacitated to call on the presiding officer or a companion to assist him or her to vote. This is contrary to the Law on Persons with Disabilities Act, 2010.²¹⁵

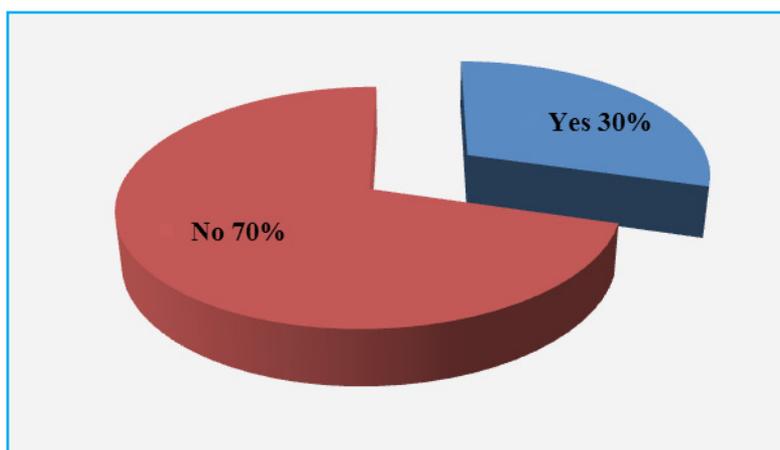
213 Article 5(1).

214 *Kituo cha Sheria Versus Independent Electoral and Boundaries Commission & another, Petition 574 of 2012 High Court at Nairobi, KLR [2013].*

215 Section 51.

- (b) Turnout of persons with disabilities in running for political posts was low²¹⁶ The UN women together with Civil Societies conducted a capacity building sessions to empower women, youth and persons with disabilities. However still very few aspirants from among the mentioned groups above were nominated by their political parties. For instance, the CUF only nominated a person with albinism to vie for Lindi Urban Constituent, Hon. Salum Barwany.²¹⁷
- (a) Ineffective communication to persons with disabilities was another factor that affected this group of persons during 2015 general election. There were no wide use of sign language and no single political party manifesto was printed in braille to allow visual impaired citizens to understand policies.
- (c) Campaign rallies were conducted in areas which were inaccessible. According to TACCEO report 70% of the venues were inaccessible. However there were some notable efforts by presidential candidates to recognize and promise improving livelihood of the persons with disabilities in the country. However it was only the CCM Manifesto which contained comprehensive approach on how to improve condition of persons with disabilities in the country.²¹⁸ ACT-Wazalendo Manifesto had no clause specific for persons with disabilities and CHADEMA manifesto contained only one clause that stipulated that; “*Kuwajengea mazingira mazuri na kuwapa kipaumbele Walemavu katika sekta zote*” [To promote good environment and priority for people with disability in all sectors.]

Figure 15: Percentage of accessibility of campaign venues for PWDs



216 The Population and Housing Census held in 2012 reveals that persons with disabilities compose 10% of the country's population.

217 TACCEO&LHRC Report, *supra* at 145.

218 Paragraph 166 “*Ilani ya Chama cha Mapinduzi 2015-2020*”.

LHRC urges the government to implement in its totality what is promised in the ruling party manifesto 2015-2020. The government commits to end killings of persons with albinism and increase persons with disabilities in governance. Therefore, it is important to monitor its implementation in the next five years so as to improve livelihood of the persons with disabilities in the country.

3.3.3.4 Human rights violation and irregularities in campaign

- (a) Use of government resources for campaigning** Election campaigning regulations specifies that no political party is allowed to use government resources for their campaigning. But there is evidence that CCM party used government resources for these purposes – for example the use of vehicles. The TACCEO observation report documented the following incidences;
- (i) The Iringa RC, Ms. Amina Maseza was on the team of CCM presidential candidate when he visited Iringa region. She actually stood and campaigned for him in September, 2015 while at the rally in Itunundu, Pawaga, Ismaini, Iringa region.
 - (ii) The Minister for Home Affairs, Mr. Mathias Chikawe, was seen campaigning for CCM presidential candidate at Nachingwea, while he was still in power as a Minister (who is in control of the police force).
 - (iii) The Wanging’ombe DC (Njombe) was almost in every CCM campaign meeting to support various candidates in the district.
 - (iv) The Kisarawe DC, Ms. Subira Mgao and the Ward Executive Officers (WEO) attended some of the meetings of the ruling party.
 - (v) On 4th October, 2015, Ms. Nuhu Ngonyani, the Village Executive Officer (VEO) for Libango village, Namtumbo, Ruvuma, asked the village chairperson to identify and record BVR’s numbers of the voters’ cards. The reasons of doing that were not known.
 - (vi) The Longido DC also used the government vehicle to campaign for CCM.
 - (vii) Ms. Salma Kikwete, the incumbent’s First Lady was seen in Miono, Chalinze campaigning for CCM (his son Ridhiwan Kikwete). She used a government car with registration number STL 2428.
 - (viii) On September 28 2015, Lindi DC used the government vehicle with registration number STL 3774 (pictured above) to Kitarangi ward (Newala) and campaigned for his friend Mr. Rashid Ngumbe, who was contesting for councillorship position.
 - (ix) The government vehicle with registration number STK 4702 was seen used during the ruling party’s campaigns in Muheza, Tanga.

Picture 14: Some of the Government vehicles used by CCM during its campaigns



- (b) Vote management irregularities:** While some observers considered the 2015 election to be free and legitimate there have been a whole series of irregularities reported on the management of the vote in the election. These included the supply of election materials, counting of votes and delays in declaring results. In 2015 LHRC/TACCEO’s field monitors observed in the more remote areas concerns about the number and location of polling stations, how they are resourced and whether people would find their names on the register at the polling station. Irregularities with the management of polling stations can prolong the voting process for voters and may also contribute to voters’ lack of trust in the system.
- (a) The use of vernacular language during campaign** was observed in a number of areas. The national language for Tanzania is Kiswahili and official language is both Kiswahili and English. The use of vernacular language in a mixed up society denies the right to understand policies to non-speakers of such language. For instance in Kilolo District one of the candidate from CHADEMA, Brian Kikoti had posters all over the Constituency with Kihehe motto “*Kilolo Munume Ndimuyenyu*”

Picture 15: CHADEMA candidate's poster with a vernacular language on it



KEY MESSAGES

Key Message: For citizens to exercise effectively their right to vote they require better civic and voter education, equal access to registration and voting, security at polling stations and impartiality of the election supervisory bodies.

- 1. Improving civic education:** Civic education has been identified as an important factor to further develop civic awareness and understanding amongst eligible voters. The following are key recommendations and messaging for stakeholders to encourage civic awareness and understanding:
 - ◆ NEC need to priorities more resources in providing civic and voter's education in the country. The focus of this education should be on raising awareness on citizens' right to vote, election process, understanding what happens on the day of the election and how to vote;
 - Donor support to the election is currently focused predominantly on election monitoring and strengthening of election management bodies, but there is also a need to increase opportunities for civic education before elections and afterwards.
- 2. Managing the Vote:** There is a need for distribution and allocation of sufficient polling stations and materials to cater for the number of registered voters by returning officers, e.g. providing for secret of ballot, sufficient quantity of ballot papers, boxes and availability of ink. Returning officers need to be held accountable for the mismanagement of polling stations and non-adherence to the polling

stations opening time. It is important that civil society organisations continue to be supported by donors and government to conduct election observation and monitoring of how the vote is managed for improvement of protection to the right to vote;

- 3. Ensuring Equal Access to Voting:** LHRC has recommended in the past that the National Elections Act should be amended to provide for special ballots to allow people who are unable to attend polling station to vote. While this was not planned for the 2015 vote, NEC has a duty to ensure that people with disabilities and other disadvantaged groups are specifically assisted to have access to vote. Positive developments have been happening in Zanzibar to support people with disabilities to access polling stations and to vote;
- 4. Preventing Electoral Violence:** People need to feel they can vote without intimidation or be subjected to violence on Election Day. Political parties and party followers, including youth brigades, must abide by their codes of conduct. Political parties must be held accountable by the Office of the Registrar of political parties and NEC if they do not adhere to the code. The police should enforce laws and ensure political parties work within the confines of the law;
- 5. Establishment of an independent Electoral Commission:** In principle NEC should be champions of the right to vote. They should be funded direct from the treasury and their commissioners, though appointed by president, should be vetted and approved by the Parliament.

Chapter Four

Social Rights

4.0 Introduction

Social rights are rights that form part of what is known as the second generation human rights, which also include economic and cultural rights. They were included in the Universal Declaration of Human Rights of 1948 and are codified in the International Covenant on Economic, Social and Cultural Rights of 1966 and other regional and international human rights instruments.²¹⁹ They include the right to education, right to health, right to social security, right to clean water and right to adequate standard of living.

These rights have traditionally been considered to be “non-justiciable rights” by many jurisdictions, Tanzania inclusive, meaning that they cannot be enforced in courts of law like civil and political rights. The International Covenant on Economic, Social and Cultural Rights (ICCPR) of 1966, which Tanzania has ratified, requires each State Party to take steps to **progressively** achieve the full realization of economic, social and cultural rights to the maximum of its **available resources**.²²⁰ This provision is sometimes exploited by governments, particularly in the third world, as an excuse for failure to adequately fulfill their duties relating to social, economic and cultural rights.

In Tanzania, only the right to education is enumerated in the Constitution of the United of Tanzania of 1977 (but not a justiciable right), although other laws touch on some rights, such as right to health and right to social security.²²¹ Inclusion of other basic social rights in the Constitution was called for during the constitutional review process that began in 2011. As outlined in the Tanzania Human Rights Report 2014, most of these rights were contained in the First and Second Draft Constitutions of the Constitutional Review Commission as well as the Proposed Constitution.

This chapter seeks to examine the progress made by the Government in realizing social rights for Tanzanians in 2015 in line with its obligation under the ICCPR. The

219 See for example UN Convention on the Rights of the Child of 1989; Convention on the Elimination of All forms of Discrimination Against Women of 1979; African Charter on Human and Peoples’ Rights of 1981; African Charter on the Rights and Welfare of the Child of 1990; and the African Protocol on the Rights and Welfare of Women of 2003

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

221 See for example the Social Security Act of 1997; the Public Health Act of 2009; and the Law of the Child Act of 2009.

chapter focuses on the right to education, right to health and right to clean water, looking at accessibility and quality of education, health services and clean water. It also looks at Tanzania's performance in MDGs as they are replaced by new goals in the year 2015.

4.1 Right to Education

4.1.1 Overview

The right to education is a fundamental human right, essential for a person's enjoyment of all other rights and for national development. Right to education enumerated in national,²²² regional²²³ and international²²⁴ human rights instruments. These international instruments impose corresponding duties upon states to ensure full realization of the right to education. The regional and international human rights in particular emphasize on accessibility, affordability and quality of education provided.

Since independence, different Tanzanian Governments – from the Nyerere Government to the Kikwete Government – have taken steps to ensure the realization of the right to education. The steps taken include:

- » Enactment of different legislations on education by the Parliament;
- » Introduction of the philosophy of Education for Self-Reliance in 1967;
- » Introduction of Universal Primary Education(UPE) in 1977;
- » Introduction of national examinations;
- » Establishment of different educational and examination bodies like the Institute of Adult Education (IAE) in 1975, and the National Examination Council of Tanzania (NECTA) in 1973;
- » Restructuring of the education system;
- » Establishment of the Inspectorate Division within the Ministry of Education;
- » Expansion of secondary education; and
- » Adoption of education policies in 1995 and 2014.

More importantly, in 1997 the Government introduced the Education Sector Development Programme (ESDP), aimed at improving education and achieving the

222 See the Constitution of the United Republic of Tanzania 1977, Article 11; the Law of the Child Act No. 21 of 2009, s. 9(1).

223 See the African Charter on Human and Peoples' Rights of 1981, Article 17(1); the African Charter on the Rights and Welfare of the Child of 1990, Article 11.

224 See the Universal Declaration of Human Rights of 1948, Article 26; the International Covenant on Economic, Social and Cultural Rights of 1966, Article 13(1); Convention on the Rights of the Child of 1989, Article 28(1); the Convention on the Elimination of All forms of Discrimination Against Women of 1979, Article 10.

MKUKUTA and Development Vision 2025 goals. Two key sub-programmes of ESDP were also introduced, THE Primary Education Development Programme (PEDP) and the Secondary Education Development Programme (SEDP), focusing on quality, access and equity in education, among others. The component of education was also included in the Big Results Now (BRN) initiative priority areas, a development model introduced in 2013 borrowed from Malaysia's Big Fast Results Initiative.

These initiatives taken by Tanzanian governments have helped to shape and improve our education system,²²⁵ contributing to ensure the right to education in Tanzania. However, there have been several challenges that have been hindering full realization of the right to education in Tanzania in terms of accessibility, affordability and quality. This part discusses to what extent such challenges have been addressed in 2015. We also look at the trend from 2006 to 2015 in enrollment, performance and quality in education.

4.1.2 Primary and Secondary Education: Enrollment, Performance and Quality

Positive Trends in Enrollment

In terms of enrollment, studies indicate a significant progress has been made to increase enrollment at all levels of education in Tanzania. Of particular note is the study conducted by *Hakielimu*, assessing education challenges and achievements during the Kikwete presidency.²²⁶ The report indicates an increase of primary and secondary schools, whereby primary schools increased from 14,257 in 2005 to 16,538 in 2015; and secondary schools increased from 531 in 2005 to 4,573 in 2015.²²⁷ An increase of primary and secondary schools led to an increase in enrollment, whereby 7,959,884 children were enrolled for primary education in 2006 while in 2015 the number stood at 8,202,892.²²⁸ For secondary education, 524,325 students were enrolled in 2005 while 1,804,506 were enrolled in 2015.²²⁹

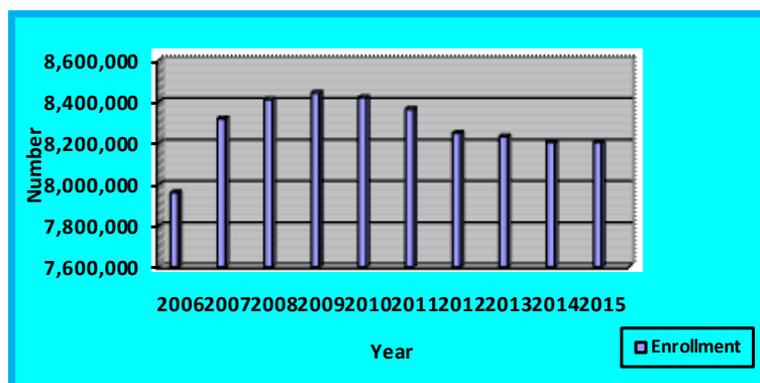
225 Currently the education system consists of 1 year of pre-primary education, 6 years of primary education, 4 years of ordinary level secondary education, 2 years of advanced level secondary education and 3 or more years of higher-education (1-6-4-2-3+).

226 HakiElimu, *Ten Years of Jakaya Kikwete Presidency: Promises, Achievement and Challenges in Education*, November 2015.

227 Ibid, p.11.

228 Ibid.

229 Ibid.

Figure 16: Enrollment Trend in Education from 2006 to 2015

Source: HakiElimu

The *HakiElimu* Report notes that educational institutions and enrollment increased by 42% and 26% respectively during Kikwete's reign (2006-2015).²³⁰ The figure above shows the trend of enrollment from 2006 to 2015, whereby on average about 8.3 million children were enrolled each year, which is the result of implementation of PEDP and SEDP. This is in line with Tanzania's the MDG education target.

Performance in National Examinations

Pass rate in national examinations is one of the indicators of quality education. While we have witnessed increased enrollment in primary and secondary education over the past decade, there has generally been deterioration in performance in national examinations, Primary School Leaving Examinations (PSLE) and Certificate of Secondary Education (CSEE). For instance, there was a drop in pass rates in CSEE from 89% in 2005 to 43% in 2012, whereas pass rates in PSLE dropped from 71% in 2006 to a record 31% in 2012.²³¹

Standard Seven

In 2015, the PSLE performance improved by 37.14% compared to the pass rate of 2012 and by 10.85% compared to 2014. Compared to 2014, the PLSE performance improved by 10.85%, with the pass rate of 67.84%.

230 Ibid.

231 HakiElimu Report, *supra*, p.14.

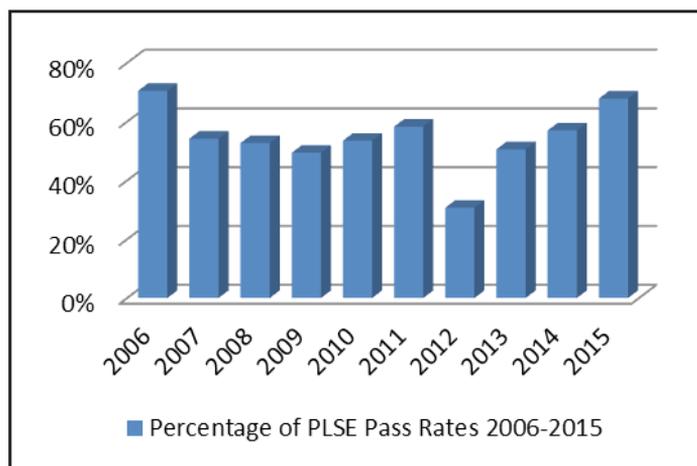
Table 10: PLSE results 2015

<i>Passed</i>	<i>Total</i>	<i>%</i>
Passed	518,034	67.84%
Failed	245,568	32.16%
Total	763,602	100%

Number of girls passed= 264,130 64.60% of registered girls

Number of boys passed=253,904 71.58 of registered boys

Figure 17: Percentage of PLSE pass rates 2006-2015



Source: BEST 2009, 2013 & 2014

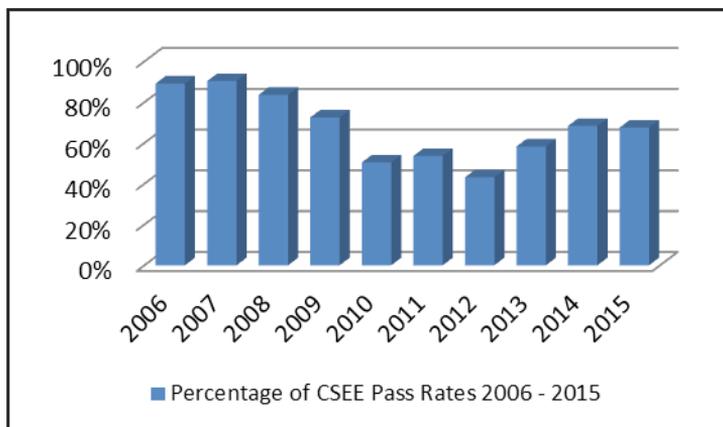
The figure above indicates an upward trend in pass rates after the record poor performance in 2012.

Form Four

Table 11: CSEE Results 2015

<i>Score</i>	<i>Total</i>	<i>%</i>
Division I	9,816	2.77
Division II	31,986	9.01
Division III	48,127	13.56
Division IV	151,067	42.57
Failed	113,489	32.09
Total	354,485	100

<i>Score</i>	<i>Boys</i>	<i>Girls</i>
Division I	5,973	3,843
Division II	19,791	12,195
Division III	27,749	20,378
Division IV	71,358	79,709
Failed	47,812	63,841

Figure 18: Percentage of CSEE pass rates 2006-2015

Source: BEST 2009, 2013 & 2014

As the figure above shows, pass rates suffered a major decline in 2012 but have improved ever since. In 2015, however, percentage of pass rates was 67.91%, a decrease of 1.85%, compared to pass rates of 2014. 32.09% of the CSEE candidates failed.

While this upward trend of pass rates since the dismal performance of 2012 may indicate an improved quality in education, it can be argued that the performance was also boosted by the lowering of pass grades, which came with the new grading system that was introduced in 2013. Instead of the system of Divisions I, II, III, IV and 0,²³² the grades were Distinction, Merit, Credit, Pass and Fail (GPA). The new grading system improved the performance in CSEE, with pass rates increasing from 43% in 2012 to 57% in 2013 to 70% in 2014.

Looking at the 2015 CSEE results, it can be seen that only 2.77% of the candidates obtained Division I and less than 10% obtained Division II. If you take the total of candidates who scored Divisions I – III, they are only 25.34%, **a quarter** of the candidates who sat for the exam. This clearly suggests poor learning outcomes, as **three quarters** of the candidates have either failed or obtained Division IV in their exam.

232 The old system used a 5 point grading scale whereby A=1, B=2, C=3, D=4 and F=5 points in CSEE. Division I= 7 -17 points, Division II=18-21 points, Division III=22-25points and Division IV= 26 – 34 points.
For ACSEE, there was a 6 point grading scale whereby A=1, B=2, C=3, D=4, E=5 and S=6. Division I= 3-9 points, Division II=10-12, Division III=13-15, and Division IV=16-18.

Table 12: Previous versus new grading system

Mark	Previous Grading System DIVISION	New Grading System GPA
A	81-100 = 1	75-100 = 1
B+		60-74 = 2
B	61-80 = 2	50-59 = 3
C	41-60 = 3	40-49 = 4
D	21-30 = 4	30-39 = 5
E		20-29 = 6
F	0-20 = 5	0-19 = 7

Source: LHRC (2014)

The majority of respondents who were engaged during LHRC's opinion survey in 2015 were not overall satisfied with the trend of performance

LHRC is of the view that lowering the marks to create an illusion of improved performance is not a solution to the education dilemma in Tanzania. Instead, efforts should be directed at addressing the real issues/challenges affecting quality of education in Tanzania as highlighted below.

Form Six

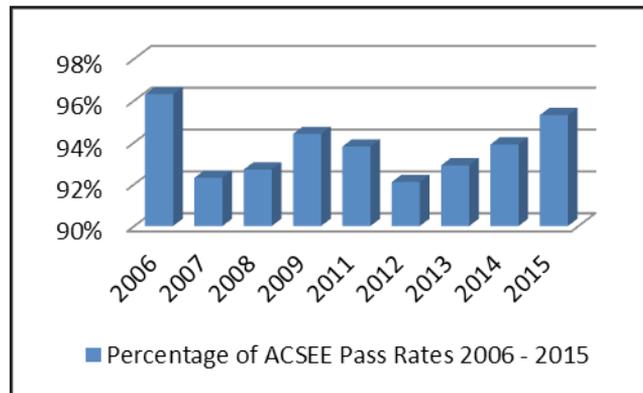
The performance in ACSEE has generally been very good as the table below shows, averaging 93.9% from 2006 to 2015. However, there is a huge gap between a number of candidates who sit for form four and those who sit for form six examinations. For example in the year 2006 the candidates who sat for CSEE were 85,865 and 76,506 of them passed. However, only 39,105 out of 76,506 candidates who passed the 2006 CSEE sat for the ACSEE in 2009, a difference of 37,401 students. This suggests that an average of 50% of the students who pass their CSEE do not enter Advanced Level secondary education and majority of them are those who obtain Division IV.

Table 13: CSEE Results 2015

<i>Sat</i>	<i>Passed</i>	<i>%</i>
40,753	38,853	98.87%

Female candidates passed=11,734 (98.56%)

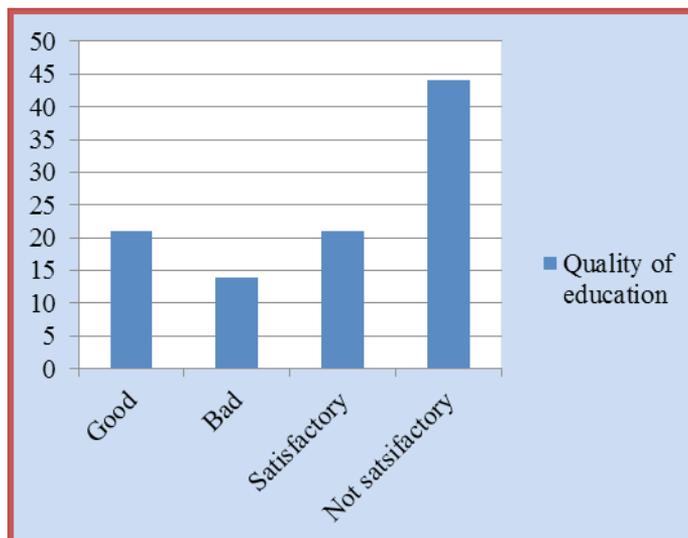
Male candidates passed=27,119 (97%)

Figure 19: Percentage of ACSEE pass rates 2006-2015

Source: BEST 2009, 2013 & 2014

Quality of Education Still an Issue of Concern

Despite overall increased enrollment in formal education and improvement in pass rates in the past three years, the quality of education is still a major concern. Survey conducted by LHRC in 2015 revealed that the majority (44%) of the respondents were not satisfied with the quality of primary and secondary education, as the figure below indicates.

Figure 20: Opinion on the quality of primary and secondary education

Source: LHRC Opinion Survey 2015

The following are the major factors affect quality of education:

- i. **Shortage and delays in releasing funds for development expenditures:** 3,465.1 billion shillings were allocated for the education sector in 2014/2015, representing an increase of 10.8% compared to Tshs 3,127.9 billion allocated during the financial year 2013/2014.²³³ The funds included Tshs 29.9 billion and Tshs. 19.9 billion as capitation grants for primary and secondary education respectively.²³⁴

However, it has been revealed that not all of the funds are usually released; and in other cases there are delays in releasing them. For instance, for the financial year 2013/2014 less than 50% of the capitation grants under the education sector budget were released.²³⁵ For the financial year 2014/2015, 68% of the funds for development expenditures actually went to the Higher Education Students' Loans Board (HESLB) to be used for student loan purposes, which is recurrent rather than development expenditure in nature.²³⁶ Therefore, during the Kikwete Presidency most of the funding in education sector was on recurrent expenditure rather than on development projects.²³⁷ LHRC study on the quality of secondary education conducted in 2014 also revealed shortage and delays in releasing capitation grants, causing acute shortage of teaching and learning materials.

- ii. **Inadequate number of qualified teachers:** There is generally shortage of teachers in public schools, especially for science subjects. But more worryingly, there are even less qualified teachers, the problem being more acute in rural areas as more qualified teachers prefer the urban settings. Lack of teacher quality has a direct impact on the quality of education received in schools. The fact that the majority of those opting for a teaching profession do so reluctantly and after obtaining poor Ordinary and Advanced level results worsens the situation as they are less likely to be competent (poor knowledge content).

233 Ministry of Finance, United Republic of Tanzania, and Policy Forum, *Government Budget for the Financial Year 2014/2015: Citizen's Budget Edition*, p. 9, at <http://www.policyforum-tz.org/sites/default/files/citizensbudget201415.pdf>, accessed 5th January, 2016.

234 Ibid, p. 9 & p 10.

235 *HakiElimu* Report, *supra*, p. 18

236 Policy Forum, *Budget 2014/2015 Position Statement*, at <http://www.policyforum-tz.org/sites/default/files/policyforum.pdf>, accessed 5th January, 2016.

237 *HakiElimu* Report, *supra*, p. 19.

Table 14: Shortage of Teachers per Subject

<i>Subject</i>	<i>Needed</i>	<i>Available</i>	<i>Shortage</i>	
			<i>Total</i>	<i>Percentage</i>
Agriculture	905	300	605	66.9
Physics	10,203	3,748	6,455	63.3
Computer Studies	1,108	433	675	60.9
Electrical Engineering	69	29	40	58
Basic Mathematics	13,478	5,896	7,582	56.3
Chemistry	10,541	4,887	5,654	53.6
Biology	11,144	5,561	5,583	50.1
Engineering Science	47	24	23	48.9
Mechanical Engineering	80	41	39	48.8
Food and Nutrition	220	120	100	45.5
Civil Engineering	100	60	40	40
Additional Mathematics	512	310	202	39.5
TOTAL	48,407	21,409	26,998	55.8

Source: Education and Training Policy, 2014

- iii. Shortage of learning materials and facilities, including classrooms and textbooks:** A good learning environment is where there are adequate qualified teachers, teaching and learning materials and facilities. The education programmes, including PEDP and SEPD, have resulted into an increase of learning facilities, especially classrooms. However, there is acute shortage, especially in primary education. A 2001 study by World Bank revealed an average of 74 children per classroom, with 92 children per classroom in urban areas and 70 in rural areas.²³⁸ There is also severe shortage of textbooks in primary and secondary schools, particularly public schools.
- iv. The problem of housing for teachers:** One of the major grievances of teachers across the country is shortage of houses. The problem is more acute in rural areas, hence teachers being forced to rent houses. This is one of the things that has made teachers to be less motivated to teach. The new Education and Training Policy of 2014 indicates that shortage of houses for teachers is 79% in primary education and 77% in secondary education.

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Prof. Suleman Sumra & Dr. Joviter K. Kataro, "Declining Quality of Education: Suggestions for Arresting and Reversing the Trend" (2014) ESRF Discussion Paper 63, p. 24.

- v. **Lack of regular training for teachers:** Teachers generally lack regular training to enable them to impart in students and help them develop critical thinking and analytical skills rather than memorizing and reproducing notes in tests and examinations.
- vi. **English as medium of instruction:** English is the medium of instruction in secondary schools while for primary schools Kiswahili is used. This creates a problem for new students as they do not have a good English base when they enter secondary school. English literacy of children from public primary schools is significantly lower than that of those from private primary school, which use English as medium of instruction. As a result, most of them have been struggling in secondary education.
- vii. **School inspection:** School inspection is not adequately conducted. A performance audit on school inspection by the National Audit Office (NAO), among others, revealed that:²³⁹
- ☞ Inspection is not conducted in all schools (some are not inspected) and there are few inspectors for secondary education;
 - ☞ The inspections do not efficiently and effectively address the major performance problems among students in secondary schools;
 - ☞ The inspection findings, conclusions and recommendations are not effectively communicated to the stakeholders; and
 - ☞ There is no appropriate mechanism to evaluate and monitor the effectiveness of school inspections.

The table below indicates the inspections conducted in 2012/2013, whereby less than half of the pre-primary, primary and secondary education institutions were inspected.

Figure 21: School Inspection for 2012/2013

Institution/Category	Number (March '13)	Targeted for Inspection	Inspected	% Inspected
Pre-primary	14,283	6,166	2,026	32.9
Primary	16,442	7,165	2,682	37.4
Secondary	4,576	1,815	833	45.9

Source: ESRF (2014)

239 United Republic of Tanzania, National Audit Office (2008), *A Performance Audit Report on School Inspection Programme for Secondary Schools In Tanzania*, A Report of the Controller and Auditor General of The United Republic of Tanzania, p 2, Available at <http://www.ed-dpg.or.tz/pdf/CCI/CAG%20Report%20-%20Performance%20Audit%20on%20School%20Inspection%20-%202010.pdf>, Accessed 28th May, 2014.

- viii. Lack of motivation for teachers:** Poor working environment for teachers, including poor remuneration, salary delays, and lack of essential teaching and learning materials has left them less motivated to properly teach. This situation of the teaching profession has resulted into students only joining the teaching profession as a last resort, because they have failed to obtain the necessary grades to pursue other professions. Even those already in the teaching profession are less dedicated and are struggling to leave and join other professions. This has created the commitment concern and seriously affects quality of education provided. Lack of motivation has also contributed the problem of teacher absenteeism as teachers engage in other activities to supplement their income. The best teachers opt for private schools as they provide better salaries and working environment.

Teachers are essential players in promoting quality education, whether in schools or in more flexible community-based programmes; they are advocates for, and catalysts of, change. No education reform is likely to succeed without the active participation and ownership of teachers. Teachers at all levels of the education system should be respected and adequately remunerated; have access to training and ongoing professional development and support, including through open and distance learning; and be able to participate, locally and nationally, in decisions affecting their professional lives and teaching environments. Teachers must also accept their professional responsibilities and be accountable to both learners and communities.

- The Dakar Framework for Action, *Education for All*, World Education Forum 2000.

4.1.3 Introduction of the New Education Policy: What has Changed?

The Government introduced the new education and training policy in 2014, launched in February 2015. The Education and Training Policy of 2014 replaces the Education and Training Policy 1995, the Vocational Education and Training Policy 1996, National Higher Education Policy 1999, and Information and Communication Technology (ICT) Policy for Basic Education 2007.

The major changes in the new education and training policy are:

- » *Departure from the 2-7-4-2-3+ education structure:* The old system was 2 years of pre-primary education, 7 years of primary education, 4 years of secondary Ordinary Level education, 2 years of secondary Advanced Level education and a minimum of 3 years of university education. In the new system pre-primary education is for the minimum of 1 year, hence 2 years is no longer compulsory.²⁴⁰ Primary education is for 6 years instead of the previous 7.²⁴¹ The new structure is 1-6-4-2-3+.

240 See United Republic of Tanzania, Education and Training Policy 2014, p. 24.
241 Ibid.

Pre-primary education is provided for children aged 3-5 years, while children aged 4-6 years can enter Standard One.²⁴²

- » *Management of the education sector*: Previously, this was the mandate of the Ministry of Education and Vocational Training, but in the new education and training policy it is the Prime Minister's Office – Regional Administration and Local Government which manages the education sector, with the exception of the higher education.²⁴³
- » *Basic education is now 10 years*: Basic education now covers Standard One up to Form Four.
- » *No fee for basic education*: In the new policy, basic education, which covers Standard One to Form Four is free.
- » *Inclusion of the higher education*: The 1995 policy did not cover higher education. There was the National Higher Education Policy of 1999. It has also replaced other policies mentioned above.
- » *Both English and Kiswahili to be used as mediums of instruction*:²⁴⁴ In the words of Prof. Kitila Mkumbo from the University of Dar es Salaam “the policy is evasive in the language of instruction. The decision to recognize and promote both Kiswahili and English languages in teaching and learning seems to have been reached as a compromise to please the two sides of the debate.”²⁴⁵ The 1995 policy indicated Kiswahili to be used as language of instruction for primary education and English to be used as language of instruction for secondary and higher educations.²⁴⁶

In LHRC's view, the new education policy has a number of positives, including the reduction of schooling period, which will enable the youth to enter the job market earlier like their fellows abroad. Extension of basic education to 10 years and free; improving knowledge content, creativity, research and entrepreneurship skills at all levels of education; improving learning and teaching environment; and improving education monitoring all also positives.²⁴⁷

However, with respect to the extension of free education to cover ordinary level secondary education, there are cost-implications (increased budget for secondary education), something which the policy has failed to address. There is also the issue

242 Ibid.

243 Prof. Kitila Mkumbo, “Highlights of some of the radical changes in the new Education and Training Policy in Tanzania”, *The Guardian on Sunday* (15th February 2015), available at <http://www.ippmedia.com/frontend/?l=77432>, accessed 10th January, 2016.

244 See Education and Training Policy 2014, p. 37.

245 Prof. Kitila Mkumbo, *supra*.

246 Education and Training Policy 1995, p. 49.

247 For a detailed analysis of the 2014 Education Policy see HakiElimu's *Position Paper on the Education and Training Policy 2014*, October 2015.

of medium of instruction, which has been left hanging in the new policy. To improve equity in education, medium of instruction must be the same in both primary and secondary education. Children from public primary schools, taught in Kiswahili, find it difficult and take time to adjust to English when they enter secondary education, which affects their learning. Age for starting pre-primary and primary education is not specified in the new policy, unlike the Education and Training Policy of 1995. In LHRC's view, the age should be specified, to be in line with the essence of the education structure.

LHRC is also concerned with implementation of the policy, something which has been a major problem in Tanzania (including implementation of laws). Full implementation of the new education policy is vital for Tanzania, which has an acute shortage of highly-skilled workers.

4.1.4 Higher Education: Enrollment and Financing

Increased Enrollment in Higher Education

During the Kikwete Presidency (2006-2015), there was a significant increase of colleges and universities. In 1995 there was only one university in Tanzania, the University of Dar es Salaam, and this critically limited the chances of accessing higher education. In 2005 there 26 universities and by the end of 2014 the number had increased to 52, both public and private.²⁴⁸ This expansion has helped to increase enrollment from 40,719 in 2005 to 218,959 in 2015. Private universities and colleges, majority of which are owned by religious institutions, have helped to ease strain on the Government by providing more higher education opportunities for students completing their secondary education each year.

Table 15: Number of fully-fledge universities and university colleges in Tanzania

Fully Fledged Universities		University Colleges	
Public	Private	Public	Private
11	21	2	16

Source: TCU (2015)

Apart from the fully fledged universities and university colleges, there are also six new universities under provisional license. These include two public universities, namely Katavi University of Agriculture and Mwalimu Julius K. Nyerere University

248 HakiElimu Report, *supra* p. 11.

of Agriculture and Technology.²⁴⁹

Shortage of Qualified Lecturers

Though not as serious as the situation in secondary education, higher education is also experiencing shortage of teachers (lecturers). According to the higher education statistics of 2012/2013, higher learning institutions need a total of 7,556 lecturers.²⁵⁰ However, there were only 5,441, hence a shortage of 2,115 experts.

Shortage of qualified lecturers and instructors has led to the problem of part-time lecturing, which has a profound effect on the quality of education offered. The problem is compounded by the increasing enrollment, taking a toll on the lecturers and instructors, who sometimes find themselves with a class of 200 to 500 students at one higher learning institution. One can only imagine the hecticness involved in preparing lessons, travelling between universities and colleges, and setting and marking exams of more than 500 students at different higher learning institutions.

Because lecturers, especially professors, have to attend classes at 2 to 5 higher learning institutions, they tend to choose which classes to take and which ones to drop and rush some classes when they are running out of time (have a deadline to meet). This means the students, majority of which do not have a good educational background (particularly English proficiency) given the problems in primary and secondary education, learn a lot of things within a short period of time and receive little guidance from their time-poor lecturers. At this rate, the quality of education provided has severely suffered and the graduates are not well prepared for the job market. According to the study by the Inter-University Council for East Africa (IUCEA), a body mandated to regulate higher education in East Africa, 61% of graduates in Tanzania lack job-market skills (ill-prepared for jobs).²⁵¹ The worst record is held by Uganda, with 63% while in Kenya it is 51%. In Rwanda and Burundi, the percentages are 52 and 55 respectively. According to the report, employers complained about graduates lacking self-confidence and technical mastery of jobs they seek; and that they cannot express themselves properly.²⁵²

249 TCU website at <http://www.tcu.go.tz/images/pdf/LIST%20OF%20%20UNIVERSITY%20INSTITUTIONS%20IN%20TANZANIA%20AS%20OF%2029%20Jan%202016.pdf>.

250 See Education and Training Policy 2014, p. 47.

251 Sylvester Ernest, "Over 50pc of EA graduates half-baked", *The Citizen* (June 11, 2014), available <http://www.thecitizen.co.tz/News/Over-50pc-of-EA-graduates-half-baked/-/1840392/2343698/-/h8a4k6/-/index.html>, accessed 29th December, 2015; University World News, "Survey finds most East African graduates 'half-baked'", Issue No. 321, 23rd May, 2014, at <http://www.universityworldnews.com/article.php?story=20140523130246934>, accessed 29th December, 2015

252 Ibid.

Problems in Financing Higher Education

In financing higher education, Tanzania has been using the cost-sharing model laid out in the National Higher Education Policy of 1999. According to this policy, the responsibility of higher education financing is shared between the Government, higher learning institutions, the private sector and students themselves and their families, with the Government playing a prime role in provision and financing of higher education. The private sector is expected to help financing higher education through, among others, providing funds for students to borrow for their higher education and providing scholarships and fellowships. The policy also called for establishment of a higher education loans board; and in 2004 the Higher Education Students' Loans Board (HESLB) was established by Act No. 9 of 2004.²⁵³ HESLB's objective is "to assist, on a loan basis, needy students who secure admission in accredited higher learning institutions, but who **have no economic power** to pay for the costs of their education."²⁵⁴ Although the funding is meant for those who have no economic power to finance their higher education, there have been complaints that even students from well-off families which could afford to pay the education costs are granted loans and usually receive full loan (100%).

For the financial year 2014/2015 the Government, through the Higher Education Students' Loans Board (HESLB), allocated loans for 95,831 university students, 27,878 of them being first year students and 76,953 being continuing students.²⁵⁵ However, the financing is not adequate as not all students acquire loans; and because of limited funding higher education enrollment in Tanzania remains lower than that in neighbouring countries, with the gross enrollment ratio of 1%.²⁵⁶ For the financial year 2014/2015, unsuccessful loan applicants were 28,037 out of 58,307 applicants.²⁵⁷ This constitutes 48% of applicants.

253 See the Higher Education Students' Loans Board Act 2004, s. 4.

254 HESLB website at <http://www.heslb.go.tz/index.php/about-heslb/heslb-background>, accessed 15th December, 2015.

255 Speech by Minister of Education and Vocational Training, Hon. Dr. Shukuru Jumanne Kawambwa (MP) on the Revenue and Expenditure Estimates for the Financial Year 2014/2015, May 2014.

256 Masozi Nyirenda, "Why we need to diversify higher education financing strategies", *The Guardian* (23rd April, 2012) at <http://www.ippmedia.com/frontend/index.php?l=40819>, accessed 30th December, 2015.

257 Muhibu Said, "Wanafuunzi 28,000 elimu ya juu kukosa mikopo", *Nipashe* (20th August, 2014).

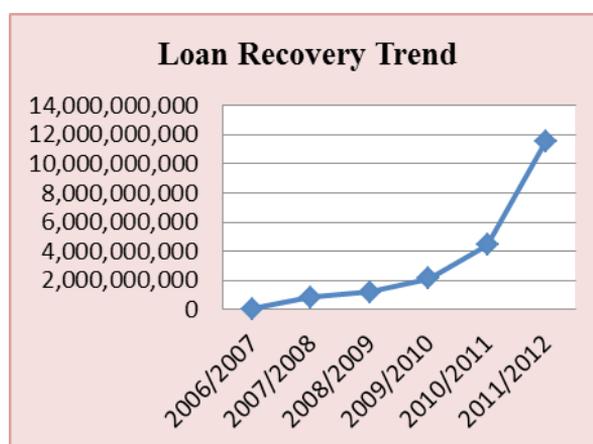
Table 16: Higher Education Loan Provision by HESLB 2005-2012

<i>Year</i>	<i>Number of Loan Beneficiaries</i>	<i>Amount of Loan (Tshs)</i>
2005/2006	42,729	56,111,371,483.00
2006/2007	47,554	76,071,839,629.00
2007/2008	55,687	110,873,883,141.00
2008/2009	58,798	139,093,681,094.00
2009/2010	72,035	197,348,958,875.00
2010/2011	92,791	231,855,927,151.85
2011/2012	94,773	322,031,207,695.73
TOTAL	464,367	1,133,386,869,069.58

Source: HESLB

Another major function of HESLB is loan recovery, which it has done well in the past ten years. As the table below indicates, up to June 2012, a total of Tshs. 20,153,923,234.24 had been collected. This equals to 53% of the Tshs. 39,539,748,704.85 expected to be recovered.²⁵⁸ By June, 2015, the recovery had reached Tshs. 74,763,902,783.53.²⁵⁹

Despite a relatively good trend in loan recovery, HESLB faces a number of challenges, including locating loan beneficiaries at their workplaces, where they are employed or self-employed.

Figure 22: Loan recovery trend by HESLB 2006-2012

258 HESLB Newsletter, Issue 2, July-December, 2012, available at <http://www.heslb.go.tz/docs/newsletter/NO2-2012.pdf>, accessed 9th January, 2016.

259 HESLB Press Release, *Miaka 10 ya Utoaji Mikopo kwa Wanafunzi wa Elimu ya Juu*, August 2015.

Another challenge is lack of willingness on the part of loan beneficiaries to repay their loans, believing that they funding should have been provided free by the Government in the first place. Some employers have also been less cooperative with HELSB to ensure employees who benefited from the loan system repay the loans. However, the strategies employed by HESLB to address these challenges, including visiting offices and enlisting the help of government institutions like TRA, have to some extent helped to recover loans as evidenced by the upward trend of loan recovery above. LHRC commends the HELSB for its efforts in recovering loans from beneficiaries who are currently in the job market and calls for beneficiaries who are yet to repay the loans to do so for the interest and benefit of the whole nation. Further, the Government should speed up provisions of citizens IDs and link with credit reference bureau to help in loan tracking and recovery in the near future, among other advantages that the system might bring in.

LHRC recommends some serious reforms in higher education as the generally poor quality of knowledge and skills acquired at higher learning institutions is compounding the unemployment problem, particularly for the youth (new graduates), as employers fear they are not fit for jobs. The concerns raised by Dr. Johnson Ishengoma from the University of Dar es Salaam financing public higher education and recommendations he provides could be a good starting point for discussion on ways of resolving the problem of higher education financing.²⁶⁰ Dr. Ishengoma proposes an alternative sustainable model for financing public higher education in Tanzania, a market model, to make it a shared responsibility.²⁶¹ He argues that the current financing system is flawed and unrealistic in the market economy.²⁶² Among his recommendations is establishment of a higher education bank akin to Nigeria's education bank.

4.1.5 Concluding Remarks

It is evident that education in Tanzania is suffering in terms of quality, particularly primary and secondary education. The poor quality of primary and secondary education has also affected the learning environment in higher education. Serious educational reforms and implementation of educational programmes need to be made by the current Government under the leadership of the H.E John Pombe Magufuli in order to rescue the situation; and these reforms will require strong political will to accomplish.

260 Johnson M. Ishengoma (PhP), *Financing Public Higher Education in Tanzania: Towards a New Model*, at www.foundation-partnership.org/ulf/presentations/.../S4_Ishengoma.ppt.

261 This model calls for injection of of the market principles and market driven approaches into the financing of higher education to make it completely self-financing. According to Dr. Ishengoma, the model is guided by three principles of shared costs, equity and human resource development.

262 Ibid.

At the higher education level, the cost-sharing mechanism seems to be effective, reducing the government's financial burden. But its effectiveness over the long run will very much depend on the capacity of the HESLB to recover loans.

So, what should be done to address education challenges?

LHRC recommends to the Government:

- » More resources for education development programs;
- » Improvement of teachers' welfare as key players in quality education. This includes housing and remuneration;
- » Identifying, training and retaining highly competent teachers.
- » Increase budget and actual funding for the education sector as an important strategy for economic development and poverty reduction;
- » Regular on job training for teachers;
- » Education programmes, plans and policies to focus more on quality of education rather than enrollment (focusing on learning outcomes);
- » Resolving the issue of medium of instruction. More debate and assessment of the two medium of instructions, Kiswahili and English. If English is to be retained as medium of instruction for secondary education then it must also be used or taught well in primary education;
- » Regular inspection of schools to monitor status of schools and quality of education.
- » Engage CSOs more in finding solutions for the education challenges and working on recommendations by education advocacy organizations like *HakiEimu* and *Twaweza*.
- » Full implementation of the new Education and Training Policy of 2014.

4.2 Right to Health

4.2.1 Introduction

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 and other lack of livelihood in circumstances beyond his control.

- *Universal Declaration of Human Rights 1948 (Article 25)*

Tanzania is bound by right to health obligations enumerated in different regional and international human rights instruments to which it is a party, including the International

Covenant on Economic, Social and Cultural Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), African Charter on Human and Peoples' Rights (ACHPR) and African Charter on the Rights and Welfare of the Child (ACRWC). Tanzania is required under the ICCPR to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and to this end take steps to reduce stillbirth-rate and infant mortality; improve all aspects of environmental and industrial hygiene; prevent, treat and control epidemic, endemic, occupational and other diseases; and create conditions that assure to all medical service and medical attention in the event of sickness.²⁶³ Domestically, right to health is not contained in the current (1977) Constitution as a basic right, but is implied in laws such as the Law of the Child Act of 2009, the Public Health Act of 2009 and the Persons with Disabilities Act of 2010.

Realization of right to health is based on four health parameters, namely **availability**, **accessibility**, **acceptability** and **quality**.²⁶⁴ The availability component refers to adequate health facilities, essential medicines and medical supplies, and health staff. Accessibility means health facilities and services should be accessible and affordable to all. Acceptability refers to acceptability of health services and facilities by the local community, while quality is associated with availability of skilled medical staff, essential medicines and medical equipment, adequate sanitation and adequate buildings.²⁶⁵

4.2.2 Access to Health Services

In 2015, provision of quality health services continued to be a big challenge mainly due to budgetary constraints. This has led to shortage of essential medicines, medical supplies and equipment. Other challenges include shortage and uneven distribution of health facilities and shortage of health workers. The major victims in this regard are those in rural areas. Though the Government has made efforts to improve provision and accessibility of health services, little progress has been made to ensure quality health services for all Tanzanians.

Budgetary Constraints in the Health Sector

Sikika's analysis of the budgets of the Ministry of Health and Social Welfare (MoHSW) from 2008/2009 to 2014/2015 has revealed uneven allocation of funds for essential

263 ICCPR, Article 12.

264 See 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; Magdalena Sevilpeda, *Human Rights Reference Handbook*, (University for Peace, 2004), p. 283.

265 Ibid.

medicine and medical supplies.²⁶⁶ As table 17 below indicates, the budget allocation for essential medicines and medical supplies significantly decreased during the financial year 2013/2014 at Tshs. 64 billion from Tshs. 80.5 billion in 2012/2013.

For the financial year 2014/2015, the budget further dropped to Tshs. 45.8 billion, although the initial amount set was Tshs. 70.5 billion.²⁶⁷ For the financial year 2014/2015, the budget allocated only covers 7.7% of the demand, which is Tshs. 250 billion. The budget has also been donor-dependent and statistics show that donor contribution has been decreasing; and while this is happening the Government has not been filling the funding gaps. There have also been delays in disbursement of funds, which further contribute to shortage of essential medicines and medical supplies.

Table 17: Trend of share of budget for essential medicines and medical supplies in MoHSW budget

Year	MoHSW total budget (Tsh. Bn)	Allocation for essential medicines & medical supplies (Tshs. Bn)	% change in budget allocation for essential medicines and medical supplies
2010/2011	676.3	61.4	23.8%
2011/2012	584.2	78.7	28.2
2012/2013	576.1	80.5	2.3
2013/2014	753.9	64	-20.5
2014/2015	622.9	45.8	-28.4

Source: Sikika (2015)

For the financial year 2014/2015, the budget for the health sector was Tshs. 1,588.2, an increase of 6% compared to the budget of 2013/2014, which was Tshs. 1,497.8 billion.²⁶⁸ It is 10% of the entire budget, thus still short of the 15% minimum set in 2001 in Abuja, Nigeria.

WE PLEDGE to set a target of allocating at least 15% of our annual budget to the improvement of the health sector.

- African Heads of State and Government, Abuja – Nigeria, April 2001

In LHRC's view, based on human rights perspective, this budgetary deficit of the health sector and particularly reduced funds

²⁶⁶ Sikika, *Advocacy Paper on Budget Allocation for Essential Medicines, Medical Supplies and Equipment*, at <http://sikika.or.tz/wp-content/uploads/2014/06/Press-release-on-Budget-Allocation-for-Medicines-medical-Supplies....pdf>.

²⁶⁷ Ibid.

²⁶⁸ Ministry of Finance and Policy Forum, *Government Budget for the Financial year 2014/15, Citizen's Budget Edition*, at <http://www.policyforum-tz.org/sites/default/files/citizensbudget201415.pdf>, accessed 20th December, 2015.

for essential medicines and medical supplies constitute failure by the Government to meet its obligations and commitments under ICCPR, the Abuja Declaration and other human rights instruments. LHRC calls upon the Government to devise ways and make efforts to increase funding for the health sector to ease the burden of the citizens in accessing health services, especially in rural areas. Shortage of medicines is putting many Tanzanians at risk of consuming counterfeit medicines, which have been flooding pharmacies in different parts of the country. The funds should also be disbursed in a timely manner to allow quick procurement and distribution of essential medicines, medical supplies and equipment.

Shortage of Essential Medicines, Medical Supplies and Equipment

The major factor behind shortage of essential medicines and medical supplies is shortage of funds allocated for the health sector,²⁶⁹ particularly the component of essential medicines and medical supplies. According to *Sikika*,²⁷⁰ frequent stock outs of essential medicines and medical supplies have contributed to poor provision of health services.²⁷¹ Ifakara Health Institute study revealed availability of essential medicines to be only 41% in 2012.²⁷² The study also revealed 43% shortage of antibiotics at health facilities. Another study by *Sikika* in 2011 revealed that 42% of District Medical Officers (DMOs) reported gauze stock outs for 3 to 6 months.²⁷³

In terms of equipment, shortage includes that of laboratory equipment, ultra-sound machines and beds. Even in Dar es Salaam, where one would expect to obtain the best of health services, there is serious shortage of beds, especially at Temeke and Mwananyamala Hospitals. In some wards, including maternity wards, patients are forced to share beds and sometimes even sleep on the floor. Even at the Muhimbili National Hospital (MNH), there is acute shortage of some medical supplies. The situation is worse in other regions, including Lindi, Tabora, Tanga and Mtwara.

When he visited the MNH in November 2015, the President-elect, Hon. John Magufuli, was informed that among the major problems at the hospital is overcrowding of

269 Prof. Phares Mujinja & Dr. Tausi Kida “Implications of Health Sector Reforms in Tanzania: Policies, Indicators and Accessibility to Health Services” (2014) ESRF, Background Paper No. 8, Discussion Paper 62, p. 28, available at <http://esrf.or.tz/docs/THDR-BP-8.pdf>, accessed 27th December, 2015.

270 A local health advocacy NGO.

271 *Sikika*, *Advocacy Paper on Budget Allocation Increase for Essential Medicines and Medical Supplies*, Press Release, 31st May 2015, available at <http://sikika.or.tz/wp-content/uploads/2015/06/Press-release-ENG-31-Mei-2015-Budget-Analysis-.pdf>.

272 Ibid.

273 Ibid.

patients in wards and shortage of medical supplies.²⁷⁴ During his impromptu visit, the President found some patients sleeping on the floor and ordered for more beds to be made available. He ordered a large part of the Tshs. 300 million which had been set aside for a party for the new MPs to be used to buy beds at MNH; and this was done, whereby the hospital received 300 beds and mattresses, 30 wheel chairs, 30 stretchers, 1,695 bed-sheets and 400 blankets, all costing Tshs. 251 million.²⁷⁵

LHRC commends President Magufuli for his efforts of increasing bed capacity at MNH. However, more steps must be taken by his Government to significantly improve the situation of health services at public health facilities to address shortage of essential medicines, medical supplies and equipment.

Shortage of Health Workers

Tanzania still faces severe shortage of health workers, especially at health facilities in rural areas as most health workers prefer the urban settings.²⁷⁶ According to the 2013 MoHSW health resources statistics, 69.34% of medical doctors are in urban areas, while the rural areas, where the majority of the population resides, has only 30.66% of medical doctors.²⁷⁷ The total percentage of health workers serving the rural population was 55%.²⁷⁸ Overall, the total number of health workers in the country was 64,500, while 113,000 more were needed.²⁷⁹ The MoHSW human resources statistics of 2014 indicate that at the Muhimbili National Hospital (MNH) alone, there was shortage of 58 medical doctors, 96 medical assistants and a staggering 825 nursing officers.²⁸⁰ According to MoHSW, regions experiencing acute shortage of health workers are Simiyu, Geita, Kigoma, Mwanza, Shinyanga, Mara, Katavi, Singida, Dar

Shortage of health workers stood at 58% in 2011/12 and was 52% in 2014

- MoHSW, 2015

- 274 Peter Elias, “Dk Magufuli atimua bosi, avunja bodi Muhimbili, Mwananchi” (10th November, 2015), available at <http://www.mwananchi.co.tz/habari/Kitaifa/Dk-Magufuli-atimua-bosi--avunja-bodi-Muhimbili/-/1597296/2950128/-/12fmr9/-/index.html>, accessed 29th December, 2015.
- 275 *Mwananchi*, “Wabunge wamsifu Dk Magufuli, vitanda 300 vyatua Muhimbili” (23rd November, 2015), available at <http://www.mwananchi.co.tz/habari/Siasa/Wabunge-wamsifu-Dk-Magufuli--vitanda-300-vyatua-Muhimbili/-/1597332/2967772/-/h42rqvz/-/index.html>, accessed 29th December, 2015.
- 276 Prof. Phares Mujinja & Dr. Tausi Kida, *supra*, p. 17.
- 277 Ministry of Health and Social Welfare (2013), *Human Resource for Health Country Profile 2012/2013*, p. 26, available at http://www.jica.go.jp/project/tanzania/006/materials/ku57pq00001x6jyl-att/country_profile_2013.pdf, accessed 28th December, 2015.
- 278 Ibid.
- 279 Sikika, *The Right to Health in Tanzania: Unresolved Challenges in the Health System*, Position Paper, p. 1, available at <http://sikika.or.tz/wp-content/uploads/2014/02/Sikika-Position-on-Right-to-Health-Draft-5.pdf>.
- 280 See LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 142.

es Salaam and Pwani.²⁸¹

During his Ministry's budget speech for the financial year 2014/15, the then Minister of Health, Dr. Seif Selemani Rashid noted that in the year 2013/14, the Ministry hired 11,221 health workers.²⁸² For the financial year 2014/15, the Ministry increased 8,589 more health workers.²⁸³ The total increase of health workers during the two financial years is 19,810, which puts the current deficit at 93,190 from 113,000 in 2013.

LHRC calls upon the Government and MoHSW to address the problem of shortage of health workers and ensure those available are evenly distributed and motivated in order to retain health work force. Construction and allocation of health facilities should also be based on the population statistics provided by the National Bureau of Statistics (NBS). Increase of health workers will help to improve the quality of health services provided as currently the available health workers are overburdened, especially in rural areas.

4.2.3 Maternal and Child Health: Situation of Child and Maternal Mortality as MDGs Bid Farewell



In reaching its MDG target of reducing child mortality, Tanzania has made considerable progress. NBS demographic and health survey of 2010 indicates under-five mortality rate to be 81 per 1,000 live births.²⁸⁴ This is an improvement of 31 deaths compared to the rate of 112 deaths per 1,000 live births in 2005.²⁸⁵ After the 2012 national census, the under-five child mortality rate was estimated to be 67 deaths per 1,000 live births,²⁸⁶ as table 18 below indicates, while that of child mortality was 21 deaths

281 Speech of the Minister of Health and Social Welfare, Hon. Dr. Seif Selemani Rashid (MP), on the estimates of revenue and expenditure for the financial year 2015/16.

282 See Speech of the Minister of Health and Social Welfare, Hon. Dr. Seif Selemani Rashid (MP), on the estimates of revenue and expenditure for the financial year 2014/15.

283 See Speech of the Minister of Health and Social Welfare, Hon. Dr. Seif Selemani Rashid (MP), on the estimates of revenue and expenditure for the financial year 2015/16.

284 NBS, *Tanzania 2010 Demographic and Health Survey: Key Findings*, available at <http://www.nbs.go.tz/nbs/takwimu/references/2010TZKeyFindings.pdf>, accessed 28th December, 2015.

285 See UNICEF Tanzania, *Overview of Maternal and Child Health*, at http://www.unicef.org/tanzania/maternal_child_health.html, accessed 28th December, 2015.

286 National Bureau of Statistics Ministry of Finance Dar es Salaam and Office of Chief Gov-

per 1,000 live births. The under-five mortality rate target was 64 deaths per 1,000 live births by 2015; and **this goal was reached in 2014 when the ratio was 54 deaths per 1,000.**²⁸⁷

Table 18: Infant, child and under-five mortality by area and sex, Tanzania 2012 Census

Administrative Area	Infant Mortality (1q0)			Child Mortality (4q1)			Under-Five Mortality (5q0)		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Tanzania	46.2	50.9	41.3	21.3	23.0	19.7	66.5	72.7	60.2
Tanzania Mainland	46.2	50.9	41.3	21.3	23.0	19.6	66.5	72.7	60.1
Tanzania Zanzibar	46.4	51.0	41.6	22.0	23.6	20.4	67.4	73.3	61.2

Source: NBS & OCGS-Zanzibar (2015)

Reaching the maternal mortality²⁸⁸ goal, however, has been a challenge for Tanzania, despite different measures taken by the Government and MoHSW to reduce pregnancy-related deaths.²⁸⁹ Maternal mortality is the major indicator used to measure maternal health care; and the 2010 demographic and health survey indicated the maternal mortality ratio (MMR) of 454 deaths per 100,000 live births for Tanzania Mainland (432 per 100,000 live births including Zanzibar).²⁹⁰ **In 2015, the MMR was 398 per 100,000 live births.**²⁹¹ This is short of

Maternal mortality is key indicator of health and development in the society.

ernment Statistician Ministry of State, President Office, State House and Good Governance, *Mortality and Health*, July, 2015, p. 31, available at http://www.nbs.go.tz/nbs/takwimu/census2012/Mortality_and_Health_Monograph.pdf, accessed 2nd January, 2016.

287 See Speech by Hon. Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania when bidding farewell and dissolving the 10th Parliament of the United Republic of Tanzania, Parliament House, Dodoma on 9th July, 2015, p. 87.

288 Includes all deaths that occur to women during pregnancy, during birth, and up to 2 months after birth or the end of the pregnancy (NBS, 2010).

289 Such measures include increasing the coverage of deliveries attended by skilled health personnel; the number of health facilities providing neonatal, child and maternal health services to the lowest health facilities; and expansion of Emergency Obstetric Care (EMOC) coverage (NBS & OCSG – Zanzibar, 2015).

290 Causes of maternal death include obstetric hemorrhage, unsafe abortions, eclampsia, obstructed labour and infections. Low availability of emergency obstetric and new born care services, chronic shortage of skilled health providers together with a weak referral system contribute to the observed high maternal deaths.

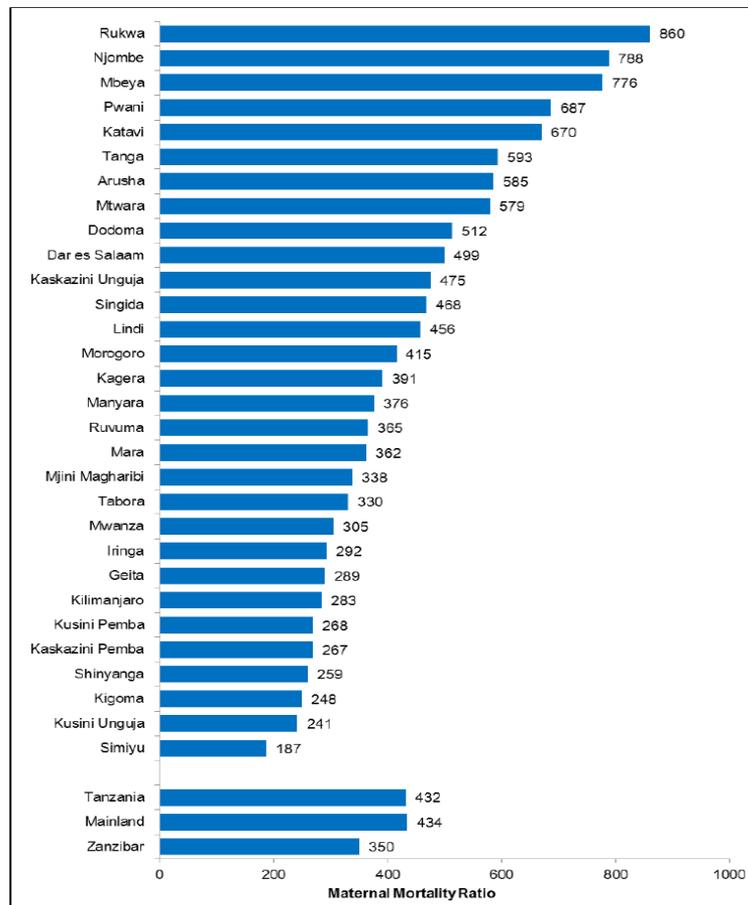
- UNICEF Tanzania

291 See Trends in Maternal Mortality: 1990 to 2015, Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division, available at http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf?ua=1, accessed 25th January 2016.

the MDG goal of reducing MMR of 1990 (910 deaths per 100,000 live births) to three quarters by 2015, although progress has been made.²⁹²

MMR varies from one region to another. According to the 2012 census, Rukwa Region leads in terms of regional mortality ratio, with 860 deaths per 100,000 live births, while Simiyu has the lowest ratio, with 187 deaths per 100,000 live births.

Table 19: Estimated maternal mortality by region, Tanzania, 2012 Census



Source: NBS, 2015

Apart from different programmes established to address various challenges in the health sector in line with other MDGs and other international commitments, in 2008 the Government launched the *National Road Map Strategic Plan to Accelerate Reduction of Maternal, Newborn, and Child Deaths in Tanzania 2008-2015* (One

292 The country is classified as 'Making Progress' in reducing MMR by WHO, UNICEF, UN-FPA, World Bank Group and UN.

Plan). In this Plan, the Government was required to ensure each ward in the country has a health centre and 50% of the health centres have facilities for Comprehensive Emergency Obstetric and Newborn Care (CEmONC).²⁹³ However, little progress has been made in implementing the plan, partly due to budgetary deficits and complexity of the budget system.²⁹⁴ For instance, the White Ribbon Alliance Tanzania (WRATZ), which was involved in creating the One Plan, unsuccessfully campaigned for the inclusion of a specific budget line for CEmONC in the 2014-2015 budget.

Based on the statistics of maternal mortality on the table above Rukwa should have been a priority area for CEmONC. However, a study conducted by WRATZ in the region in 2013, five years after One Plan was adopted, revealed that none of the health centres were providing CEmONC and that the health centres lacked critical infrastructure, equipment, and supplies as well as shortage of health workers to provide emergency services.²⁹⁵

24 Estimated number of women dying due to labour complications in Tanzania each day.

- WRATZ

Women are a very important part of the community, playing a big role in the upbringing of children. Despite the efforts and progress made in reducing maternal deaths in Tanzania, the rate of deaths is still high.

LHRC recommends that the Government and other stakeholders in the health sector to ensure there are more funds for the health sector, including the component of maternal health so as to save hundreds of women who die each year due to pregnancy-related complications for lack of proper and accessible health care. It is also important for the Government, through MoHSW, to conduct regular monitoring and evaluation of different health programmes so as to assess their effectiveness and implementation.

4.3 Right to Clean Water

4.3.1 Overview

Right to water is the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.²⁹⁶ Water is fundamental

293 Peter Bofin, “Maternal Health in Tanzania: Stuck between Public Promises and Budgetary Realities, International Budget Partnership”, December 2014, p. 1, available at <http://www.internationalbudget.org/wp-content/uploads/case-study-summary-tanzania-maternal-health-2015.pdf>, accessed 28th December, 2015.

294 Ibid, p. 24.

295 WRATZ, *Campaigning for Emergency Care*, at <http://whiteribbonalliance.org/national-alliances/tanzania/>, accessed 2nd January, 2016.

296 See the UN Committee on Economic, Social and Cultural Rights, General Comment No. 15 on the Right to Water.

for human life, survival and development, essential for adequate standard of living and enjoyment of other rights, including right to life and right to health. Given the clean water challenges Tanzania has been facing and the fact that right to water does not feature in the Constitution of the United Republic of Tanzania of 1977, there were public outcries for inclusion of the right in the Constitution during the constitutional review process that began in 2011. This right was included in the Second -Draft Constitution as well as the Proposed Constitution of 2014.

The right to water entails water to be **available, accessible** and of **adequate quality** (clean and safe water)

Despite having extensive water sources, Tanzania still faces some serious challenges in the water sector. The Government has introduced different programmes and plans, most notably the Water Sector Development Programme (WSDP) and the National Strategy for Growth and Reduction of Poverty (NSGRP/MKUKUTA); and heavy investments have been made into water projects in different parts of the country but the progress has been insufficient and most of the projects have failed to attain their goals.

Some of the challenges faced by the water sector include, high maintenance costs; falling of water points; increased population, which has led to increased water demand; short-term solution approach; delayed disbursements of funds from both the Government and donors; and underfunding of the water sector,²⁹⁷ which is hugely dependent on donor funding (creates a problem of sustainability). Other challenges include climate change; high variability of technology used and its unsystematic deployment; emphasis on construction of new infrastructure rather than repairing the existing ones; and poor financial management of infrastructure.²⁹⁸

Currently, demand for water in regional capitals in Tanzania is 619 million litres per day, while production stands at 385 million liters per day.

4.3.2 Measures Taken to Improve the Water Situation

During the financial year 2014/15, the Government took several measures to address challenges that the water sector faces in Tanzania. These measures include:²⁹⁹

²⁹⁷ For the financial year 2014/15 the budget for the water sector was Tshs. 665.1 billion, 4.3% of the overall budget. This amount includes Tshs. 23.5 billion to improve water supply and sanitation services in Dar es Salaam and Tshs. 86.7 billion to implement rural water supply and sanitation programme. For the 2013/14 budget of Tshs. 747.6 billion, only 46% of the funds came from the Government.

²⁹⁸ See Tanzania BIG RESULTS NOW! Roadmap, National Key Result Area 2013/14 – 2015/16, Water, at <http://www.pdb.go.tz/documents/Roadmaps/06.%20Tanzania%20BRN%20Roadmap%20-%20NKRA%20Water.pdf>, accessed 28th December, 2015.

²⁹⁹ See Speech by the Minister of Water, Hon. Prof. Jumanne Abdallah Maghembe (MP), on the estimates of revenue and expenditure of the Ministry of Water for the financial year

- » Implementation of the Big Results Now (BRN) on the water key result area,³⁰⁰ aimed at improving water situation in rural areas. According to the Ministry of Water, BRN implementation has resulted into an increase of the population with access to water services from **15.2 million, equivalent to 40%, in June 2013 to 20.9 million, equivalent to 55.9%, in April 2015**. This means **5.76 million more people in rural areas** have access to water service;
- » Increasing water access in urban areas in 23 regions. Currently, an estimated 7 million people have in urban areas have access to clean water, 3 million of them in Dar es Salaam and Pwani Regions;
- » Improvement of water basins and repair of water infrastructure at 118 centres;
- » Conservation and protection of water sources. Up to April, 2015, 31 water sources were demarcated and 28 more sources were in the demarcation process;
- » Combating pollution of water sources: A total of 381 water samples were tested at the water quality laboratories at the Wami-Ruvu, Lake Nyasa, Lake Victoria and Rujifi Basins. A total of 40 industries were also inspected to check their compliance with laws and policies governing the environment and water sources;
- » Identification of new water sources: A total of 114 new water sources were identified at the Lake Rukwa, Lake Nyasa, Rufiji, Wami-Ruvu and Lake Tanganyika Basins. 413 areas were examined for underground water to determine whether wells can be constructed. According to the Ministry of Water, up until March, 2015 a total of 570 wells were constructed in different parts of the country; and
- » Construction and repair of water laboratories in Kigoma, Singida, Bukoba, Shinyanga, Mtwara and Mbeya.

Tanzania has an estimated **87 cubic kilometers** of surface water and **38 cubic kilometers** of underground water.

- Ministry of Water

Measures taken by the Government have helped to improve the water situation and increase water access to Tanzanians, especially in rural areas, as evidenced by the 55.9% access in 2015 from 40% in 2013. However, given the uneven distribution of water sources, some areas of the country, particularly in rural areas, still face lack of access to clean and safe water. According to *Wateraid*, 14 million people in Tanzania do not have access to safe water and 50% of the population to not have access to

2015/16.

300 Water NKRA aims at making clean water accessible to 67% of Tanzanians by 2015/2016 and sustaining supply to existing 15.2 million.

toilets.³⁰¹ This situation has a big impact on health, with over 7000 under-five children dying each year from diarrhea.³⁰² Lack of adequate access to clean and safe drinking water also contributes to cholera.

LHRC is of the view that in order to attain the BRN goal of 67% of Tanzanians in rural areas having access to clean and safe water by the end of 2016, more funds need to be allocated in water projects and these projects must be subjected to adequate monitoring and evaluation to guarantee value for money with evidence.

4.3.3 Women and Children Spending Hours Fetching Water: The Sad Story of Maliki Hamisi

According to *Wateraid*, “women and children spend over two hours a day fetching water, and up to seven hours in remote areas.”³⁰³ Inaccessibility of clean and safe water is the major factor behind this, prompting women and children to walk long distances in search of water. It also contributes to the problem of absenteeism, school dropout and sometimes rape , particularly for girls, as they help to fetch water.

In September, 2015, Maliki Hamisi, an 11-year old boy from Mandimba Village in Mtwara Region, died after being bitten by a snake while fetching water in the bush.³⁰⁴ Maliki had gone to the bush together with his colleagues to fetch some water when a big snake appeared and struck him. Efforts to save his life at local dispensary and later at Ligula Regional Hospital were not successful as he died at the hospital.

301 Water aid website at <http://www.wateraid.org/where-we-work/page/tanzania>, accessed 28th December, 2015.

302 Ibid.

303 Ministry of Finance & Policy Forum, Government Budget for the Financial Year 2014/15: Citizen’s Budget Edition, p. 13.

304 Haika Kimaro, “Water pledges in sharp focus after boy’s death”, *The Citizen* (21st September 2015), available at <http://www.thecitizen.co.tz/News/Water-pledges-in-sharp-focus-after-boy-s-death/-/1840340/2878516/-/8kn0qj/-/index.html>, accessed 30th December, 2015.

Picture 16: The late Maliki Hamisi, who died while fetching water in the bush in Mtwara



Source: The Citizen Newspaper

It has been stated that the villagers in Madimba Village and other villages in Mtwara Rural District have been experiencing severe water problems due to unavailability of clean and safe drinking water, despite promises to ensure steady supply of the same over the years.³⁰⁵

The tragic death of Maliki Hamisi, the only son of Mr. Hamisi Mwandazi and Ms. Mwanahamisi Abdallah, is yet another loss of the life of a child contributed by water woes, adding to thousands of children dying each year due to diseases caused by lack of access to clean and safe water, especially diarrhea. Had there been availability of clean and safe water in Madimba Village, the poor parents would still be having their only son. According to the late boy's father, villagers sometimes walk up to 5 kilometres in search of water.³⁰⁶ The Madimba Village Chairperson, Mohammed Madiza, stated that there had been many cases of people being bitten by snakes while fetching water in the village. In December, 2015, it was reported that Tanzania Petroleum Development Corporation (TPDC) supplied water tanks to the village to help ease water woes.³⁰⁷

305 Ibid.

306 Ibid.

307 Haika Kimaro, “How Death of boy brought water to Mandimba Village”, *The Citizen* (24th December 2015), available at <http://www.thecitizen.co.tz/News/How-death-of-boy-brought-water-to-Madimba-village/-/1840340/3008738/-/ywxp4i/-/index.html>, accessed 30th December, 2015.

LHRC calls upon the Government to increase funding for water projects and ensure availability, accessibility and quality of water, especially in rural areas, where the majority of Tanzanians reside, to help save lives.

4.4 Assessment of Social Rights-Related MDGs as they are replaced by SDGs in 2015

The MDGs were eight in number and all UN member states attending the Millennium Summit of the United Nations in 2000 adopted them. These goals were:

MDG 1: Eradicate extreme poverty and hunger

MDG 2: Achieve universal primary education

MDG 3: Promote gender equality and empower women

MDG 4: Reduce child mortality

MDG 5: Improve maternal health

MDG 6: Combat HIV/AIDS, malaria and other diseases

MDG 7: Ensure environmental sustainability

MDG 8: Develop a global partnership for development

A report on the assessment of Tanzania's MDGs performance by ESRF released in 2014³⁰⁸ reveals that Tanzania (Mainland) has done well in:

- » **Achieving universal primary education**, whereby percentage of net enrollment in primary education was 95.4% in 2010, while the target was 100% by 2015 and percentage of gross enrollment ratio in primary education was 112.7% in 2010, while the target was also 100%;
- » **Promoting gender equality and empowering women**: The ratio of girls to boys in secondary school was 101% in 2010, while the target was 100% by 2015. In his farewell speech in parliament delivered on 9th July 2015, President Kikwete noted that the number of women in parliament has increased from 62 in 2005 to 127 in 2015; and
- » **Reducing child mortality**: In 2010, under-five mortality rate (per 1000 live births) was 81%, while the intended reduction target was 64% by 2015. Infant

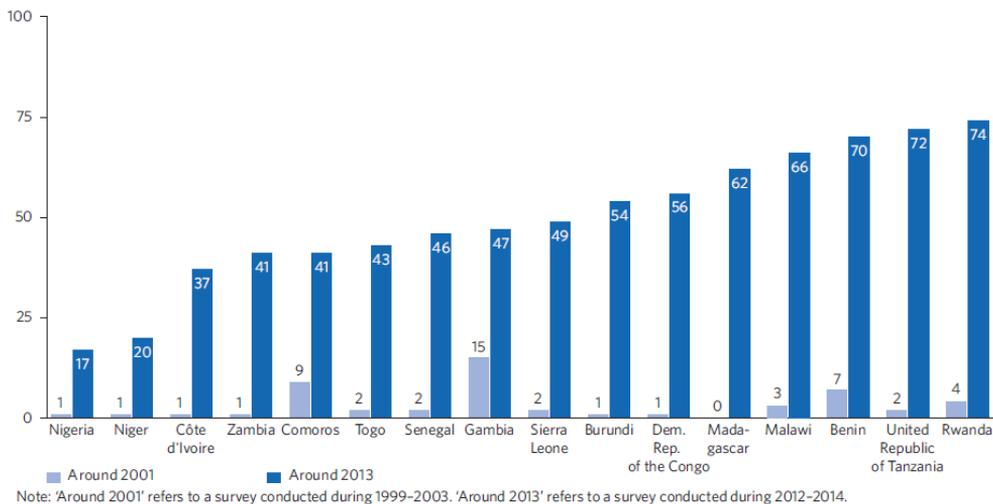
308 Oswald Mashindano, "Moving from MDGs to SDGs: Assessing MDGs Performance in Tanzania, A presentation for National Dissemination Workshop "Open Working Group" - Sustainable Development Goals" (2014), ESRF.

mortality rate (per 1000 live births) was 51% in 2010, while the reduction target was 38% by 2015. The 2015 UN Millennium Development Goals Report also reveals that Tanzania is among the countries in which there have been strong reductions in under-five mortality rates.³⁰⁹

The Tanzanian Government has also done well in combating HIV/AIDS and malaria. The anti-Malaria campaigns have resulted into reduction of malaria transmission by 51% and malaria deaths by 71%.³¹⁰ HIV/AIDS transmission reduced from 7.7% in 2005 to 5.1% in 2012.³¹¹

Figure 23: Proportion of children under age five sleeping under insecticide-treated mosquito nets for selected countries in sub-Saharan Africa, around 2001 and 2013

Proportion of children under age five sleeping under insecticide-treated mosquito nets for selected countries in sub-Saharan Africa, around 2001 and 2013 (percentage)



Source: UN MDGs Report (2015)

The ESRF assessment report further reveals that Tanzania Mainland has struggled to meet goals relating to poverty eradication, improving maternal health and improved drinking water. For example, the proportion of population living below poverty line was 28.2% in 2013, while the intended target was 19.5% by 2015. The report also reveals that the proportion of births attended by skilled health personnel was 50.5% in 2010, while the target was 90% by 2015.

309 UN, Millennium Development Goals Report 2015, p. 35.

310 President Kikwete’s farewell speech, *supra* at 84.

311 Ibid, p. 85.

In September, 2015, Tanzania launched Global Sustainable Development Goals (SDGs),³¹² an initiative that has replaced the Millennium Development Goals (MDGs), adopted in the 2000 agenda and set to end in 2015. SDGs were set at the Sustainable Development Summit held on 25th September, 2015 whereby UN Member States adopted the 2030 Agenda for Sustainable Development.³¹³ These 17 goals, set to be achieved by 2030, include those related to right to health,³¹⁴ right to education³¹⁵ and right to water.³¹⁶ According to UNDP, the SDGs (also called global goals) go much further than MDGs, addressing the root causes of poverty and universal need for development that works for all people. Below are the 17 SDGs agreed upon by the states during the summit.



Source: UNDP (2015)

- 312 Janeth Mesomapya, “Dar launches UN goals for development”, *The Citizen* (30th September, 2015) available at <http://www.thecitizen.co.tz/News/Dar-launches-UN-goals-for-development/-/1840340/2891392/-/biwo4vz/-/index.html>, accessed 30th December, 2015.
- 313 UNDP, 2030 Agenda for Sustainable Development, What is the 2030 Agenda for Sustainable Development?, available at <http://www.tz.undp.org/content/tanzania/en/home/post-2015/sdg-overview.html>, 10th January, 2016.
- 314 Goal 3: Ensure healthy lives and promote well-being for all at all ages.
- 315 Goal 4: Ensure inclusive and equitable quality education and promote.
- 316 Goal: 6: Ensure availability and sustainable management of water and sanitation for all.

It remains to be seen what other measures the newly-appointed Government will take to improve provision of social services, particularly clean water and sanitation, health services, and education quality, to reach goals set under SDGs. LHRC calls upon the Government to seriously address the issue of mismanagement and embezzlement of public funds allocated for provision of social services, as reported in various reports by the CAG, something which has contributed to limited access and poor quality of social services for the majority of Tanzanians.

4.5 Concluding Remarks

Education, health and water sectors are key for human development. The three sectors are inter-linked and also critical for national development. Educational achievements depend on availability of clean and safe water as well as accessibility of quality health services. There should also be effective monitoring and evaluation of different programmes/projects on education, health and water issues to see if they are put into the right use. Several recent CAG reports have indicated inadequate monitoring and evaluation and embezzlement of funds, especially at local government level. Serious measures need to be taken to address the challenges in education, health and water sectors. These include ensuring proper management of public funds, holding accountable those misusing and mismanaging public funds, increasing funding for development expenditure in the sectors, and improving revenue collection.

Chapter Five

Economic and Cultural Rights

5.0 Introduction

Economic and Cultural Rights are promoted and protected under *the International Covenant on Economic, Social and Cultural Rights, 1966*. These rights are less promoted so to say and in particular cultural rights as to diversity that exists in the world on cultural values. The economic rights are so promoted in a range of entitlements that are also promoted in national constitutions. For instance *the Constitution of United Republic of Tanzania, 1977* promotes right to own property,³¹⁷ right to work and fair remuneration³¹⁸ and right to protect the natural resources sustainably.³¹⁹ The Constitution of United Republic of Tanzania, 1977 however less promotes cultural rights as to diversity of cultural practices for more than 120 tribes in Tanzania mainland. The proposed Constitution of the United Republic of Tanzania, 2014 at least mention Kiswahili as peculiar cultural heritage of all Tanzanians as we all are united as one under the national language.

This chapter examines the economic rights and cultural rights situation in the country for the year 2015.

5.1 Economic Rights

Economic rights are essential for realization of other rights in any developed countries. The state with improved provision of social services and political rights largely depend on the economic situation. For instance, the founding father of Tanzania, the late Mwl. Julius Kambarage Nyerere in one of his speeches said that; *“Liberation requires political democracy and economic democracy. For the Individual, as for the nation, political freedom is incomplete without economic freedom and vice versa”*³²⁰ Mwalimu Nyerere’s argument connotes that there is no true independence without economic liberation. The economy of the people determines the powers and strengths of the independent state. Therefore, without enjoyment of economic rights citizens remain poor and cannot afford enjoyment of other rights especially social services such as education, health and clean and safe water

317 Article 24.

318 Articles 22 & 23.

319 Article 27.

320 Julius K. Nyerere, *Freedom and Liberation: A Selection from Speeches, 1974-1999* (Dar es Salaam: Oxford University Press, 2011), p. 103.

5.1.1 Economic Situation of Tanzania in 2015

The United Republic of Tanzania is one of the developing countries that strive to reform its economy using the potential of natural resources endowed. For instance gas sector is fast growing than its counterpart in East Africa region with estimated natural gas deposit of 53.28 TCF.³²¹ The natural gas is used in generating electricity whereby currently 70% of electricity generated in the country is sourced from natural gas. Therefore, with increase in production of natural gas the economy of the country is likely to improve as there will be reduction in operational cost and stable availability of electricity will attract investments in industrial sector and other sectors.³²² However the critical challenge has been non-reflection to common citizen on GDP growth as majority are left out as drivers of the economy. Majority depend on small scale farming which is underfunded and uninsured market for the agricultural produces. The actors in manufacturing, tourism and communication are foreign investors whom sometimes employ foreigners even in casual jobs.

Currently, the country's economic growth rate is mainly driven by transport, communications, manufacturing, construction and agriculture sectors, accounting for 70% of the Gross Domestic Product (GDP).³²³ Therefore such initiatives have reduced donor dependency from 42% in 2005 to 15% in 2015.³²⁴

LHRC commends the initiatives taken by the Government to spearhead economic growth and reduce donor dependency, which is vital to the sustainability of the economy and improving livelihoods of the citizens. Often donor funding is not reliable and in certain cases attached with stringent conditions on the win-win-situation arrangements. The donor funding is better allocated in development budget especially in improving infrastructures and key sectors to be funded by own sources. However on the other hand the government needs to strengthen production of goods and services and reduce borrowing from external sources as the measure to reduce donor dependency.³²⁵

The economic growth in Tanzania engineered with the number of economic initiatives put in place by the Government. For instance, the Big Results Now (BIG) model in

321 Shirika la Maendeleo ya Petroli Tanzania (2015), *Taarifa ya utekelezaji wa miundo mbinu ya Gesi Asilia kutoka Madimba-Mtwara, Songosongo, Lindi na Pwani hadi Dar es Salaam*, p. 1, available at http://www.tpdz-tz.com/Gasco_report.pdf, accessed 24th December 2015.

322 Electricity users in the country have increased to 40% from 10% in 2005 (*See* Present Kikwete's farewell speech, *supra*).

323 Deloitte Report, *supra*, p. 1.

324 President Kikwete's farewell speech, *supra* at 23.

325 The national debt by March 2015 reached USD 19.5 of which is an increase from USD 18.7 in March 2014. Read: Budget speech, Ministry of Finance and Economic Affairs, 11th June, 2015.

development was adopted in 2013-2014 in order to further initiatives of the country in transition from low-income country to middle income.³²⁶ Also, the Government plays a vital role in implementing the Annual Development Plan 2015/2016, the National Strategy for Growth and Poverty Reduction Phase II and the ruling party (CCM) election manifesto 2010-2015 and directives on economy which ended in October, 2015.³²⁷ The table below indicates the Gross Domestic Product growth rate for the past 10 years.

Table 20: GDP growth rate for the past 10 years

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Rate in %	6.9	7.8	7.4	6.7	7.1	7.4	6.9	7.0	7.2	7.0

Source: IMF World Economic Outlook (WEO) Database³²⁸

Further, according to the Trading economics findings the actual growth rate in terms of fiscal value, the country's GDP has continued to increase as shown in the figure below.³²⁹

Figure 24: GDP growth trend in terms of fiscal value



Source: Extract from trade economics/WB

326 <http://www.pmoralg.go.tz/quick-menu/brn/>. BRN is Malaysian model in development that transformed to greater extent the economy of Malaysia.

327 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 153.

328 <https://www.gfmag.com/global-data/country-data/tanzania-gdp-country-report> visited on 23rd December, 2015.

329 <http://www.tradingeconomics.com/tanzania/gdp> visited on 12th December, 2015.

The increase in GDP has also had an impact on the Per Capita Income (PCI). The table below summarizes increased per capita income and GDP for Mwanza region from 2005 to 2014.

Table 21: Growth of PCI in Mwanza Regions 2005-2014

Year	Revenue Collection	Per Capita Income	Contribution to GDP
2005	1,347,027,000,000	421,379	8.44
2006	1,548,825,000,000	488,757	8.63
2007	1,812,176,000,000	554,907	8.65
2008	2,155,982,000,000	640,826	8.70
2009	2,594,149,000,000	748,766	9.19
2010	2,958,739,000,000	829,647	9.16
2011	3,392,475,000,000	924,536	9.04
2012	4,090,594,000,000	910,824	9.15
2013	4,987,176,000,000	1,281,145	9.38
2014	7,693,809,000,000	1,848,911	9.68

From the above summary; it can be concluded that Mwanza is one of the fastest economically growing city in Tanzania. The Mwanza PCI is above national average of 1,561,050 shillings according to recent figures.³³⁰

Figure 25: PCI trend in Tanzania 2006-2014



Source: Extract from trade economics/WB

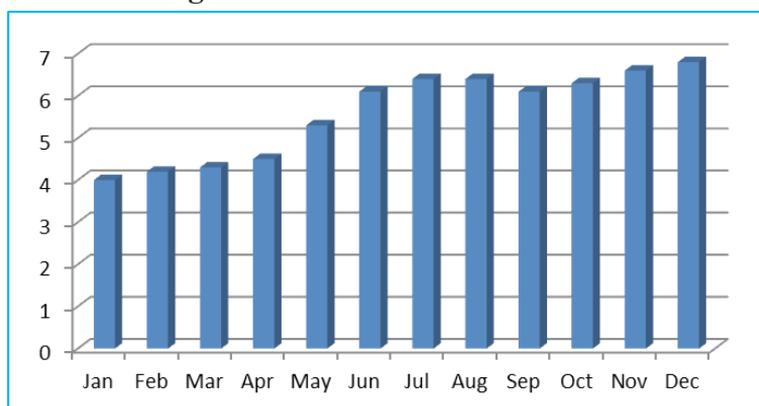
330 Speech by the Minister of Finance, Hon. SaadaMkuyaSalum (MP) during the launching and dissemination of the revised national accounts statistics estimates for Tanzania Mainland using a new base year of 2007 at the Karimjee Hall in Dar es Salaam on 19th December 2014, p. 2.

LHRC commends the efforts made by the Government to increase Per Capita Income as the trend shows that there has been positive increase from 2006 to 2014. Thus its LHRC's call that such trend and figures as depicted should be translated into ordinary life of which citizens in rural areas can feel the impact of such increase. It is our observation that such figures in most cases are not understood by majority citizens especially those in informal sectors. The figures may not necessarily reflect the reality on the ground as poverty to individual citizens is still very high.

Further, in considering the economic situation the issue of inflation is of high concern to the ordinary citizens. By December, 2015 the inflation rate in the country reached 6.8 from 6.6 in November the same year. According to the Consumer Pricing Index briefing issued by the National Bureau of Statistics, the reason for such increase on inflation rate is the increase of price on consumable goods such as rice, maize, wheat flour, meat, potatoes. Also increase in price for non-consumable goods such as doctor's consultation fees, accommodation and restaurant services.³³¹

LHRC believes that the Government needs to ensure that the increased Per Capita Income is reflected in the lives of ordinary citizens. There is need to fund sustainably agricultural programs by reducing costs of agricultural implements and ensure timely availability of subsidies in the agriculture sector. Such mechanisms will hasten improved livelihoods in rural areas. Also the government should maintain or ensure that costs of fuel keep stable over time so as to ensure farmers access to the market. It is very costly to transport agricultural produces from farms in rural areas to potential markets where will yield good price.

Figure 26: Inflation rates in 2015



Source: Extract from NBS Newsletter, Issue 9 December, 2015

331 NBS Newsletter, Issue No. 9 December, 2015, p. 2 at http://www.nbs.go.tz/nbs/takwimu/Newsletter/NBS_MONTHLY_NEWSLETTER-DECEMBER2015.pdf, accessed 28th December 2015.

LHRC is concerned with the inflation rate as the graph above shows, from January to December, 2015. There is need to increase food production in order to meet the demand. Agriculture contributes 80% to the country's GDP however; there is still a shortage of food supply in markets. Such shortage results into inflation and therefore makes life of ordinary citizens complicated as cannot meet their demands. Also there should be consumer pricing control by district authorities in major markets. Business people should not be left uncontrolled when it comes to pricing of consumable goods.

5.1.2 Implementation of Millennium Development Goals for Tanzania

The implementation of Millennium Development Goals (MDGs) ended in the year 2015. MDGs were 8 goals, namely; Eradicate extreme poverty and hunger; Achieve universal primary education; Promote gender equality and empower women; Reduce child mortality; Improve maternal health; Combat HIV and AIDS, malaria and other diseases; Ensure environmental sustainability; and Develop a global partnership for development.³³² The United Republic of Tanzania in implementing the MDGs came up with different shorter and long term economic strategies. They include the Tanzania Development Vision, 2025, National Strategies for Growth and Poverty Eradication (MKUKUTA I & II) and recently the Big Results Now (BRN).³³³

The relevancy of this chapter on the MDGs is Goal One, which is on eradication of extreme poverty and hunger, and Goal Eight on development of global partnership for development. In the country's assessment on performance of the first two indicators of the first goal is as indicated in the table below.

Table 22: Assessment of MDG 1 indicators on eradication of extreme poverty

Indicator	Baseline (1990)	Score (2012)	Target 2015
Proportion of population below national basic needs poverty line (%)	39	28.5	15
Proportion of population below national food poverty (%)	21.6	16	14.4

Source: Extract from URT, Country Report on MDGs 2014

The table indicates that 28.8% of the population do not have access to basic needs and 16% of the population are still vulnerable to extreme hunger as they are below national food poverty. The targets in 2015 were as shown in table 22 above in order to improve access to basic needs to 15 and 14.4 reduction of extreme hunger but the

332 Ministry of Finance (2014), *Country Report on the MDGs 2014: "Entering 2015 with better MDGs scores"*, United Republic of Tanzania, pp. 1 & 2.

333 Ibid.

MDG goal number one was to “Eradicate” extreme poverty and hunger.³³⁴

LHRC opines that still there is a need in post-MDGs era for the Government to seriously continue with the programme to eradicate poverty. For instance initiatives under Tanzania Social Action Fund phase III (TASAF III) should be implemented countrywide especially in rural areas. There are regions prone to food insecurity TASAF III should aim at reaching households in respective regions so as to fully implement the goal as set in MDGs “*Eradication*” of extreme hunger and poverty.³³⁵

5.1.3 The Sustainable Development Goals for Economic Development

The UN launched the Sustainable Development Goals in the year 2015 that will last for next 15 years (2015-2030) to enhance foundations laid in the MDGs. The SDGs has 17 goals of which 7 goals aim at citizen’s realization of economic rights.³³⁶ These goals include:-

- (a) Goal 1: End poverty in all its forms and everywhere;
- (b) Goal 2: End hunger, achieve food security and improved nutrition;
- (c) Goal 8: Good health and economic growth;
- (d) Goal 9: Industry, innovation and infrastructure;
- (e) Goal 11: Sustainable cities and communities;
- (f) Goal 12: Responsible consumption and production;
- (g) Goal 17: Partnership for the Goals.

LHRC calls upon the newly elected Government of the United Republic of Tanzania, under his Excellency President Dr. John Pombe Magufuli to strictly develop sound economic strategies that will build up the implementation of SDGs. The development strategies should as well supplement the initiatives done in the MDGs so as to ensure continuity of economic development programmes especially improving livelihoods in rural areas.

334 Food security is defined as a situation in which “*all people at all times have physical and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life*” (FAO, 1996).

335 The country currently ranks 62 out of 78 countries on the 2013 Global Hunger Index (GHI) with a score (of 20.6) categorized as “*alarming*” (*See also* Economic and Social Research Foundation (2015), *Assessment of Policy Coherence for Development for Food Security in Tanzania: Tanzania Food Security Profile*, p. 2.

336 NBS Newsletter, Issue No. 9 December, 2015 page 10.

5.1.4 Right to Own Property

Right to own property in Tanzania is a Constitutional Right that is so provided under the Constitution of the United Republic of Tanzania, 1977. However the right to own property is highly despite presence of Penal Laws that protect such right for instance the *Penal Code* protect right to property by creating offences related to property ownership for instance theft.³³⁷ The right to own property has been also a subject to judicial discussion in especially on land ownership; For instance in the case of *Attorney General versus Lohay Akonaay and Joseph Lohay* the discussion over customary right of occupancy would amount to ownership of property as protected under Article 24(1) of the *Constitution of United Republic of Tanzania, 1977*.³³⁸ The subject of ownership of real property (landed) is subject to Tanzanian between the state and citizen, citizens versus investors and among citizens themselves. Right to own personal properties³³⁹ is subject to criminal regime protected by the law enforcers the Police Force in particular as is mandated to protect civilian safety and their properties.³⁴⁰

5.1.4.1 Human Rights Violations in Land-related Conflicts

Land related conflicts in the country are prevailing in most parts both in urban and rural areas. In urban areas land conflicts are mainly involving individuals against themselves on ownership and demarcations in unplanned areas. But in rural areas the conflicts go beyond individual ownership as culminated with other polarities such as tribalism or ethnicity groups, economic activities (farming and agriculture), and investment and conservation factors.³⁴¹ For instance in the chart below shows the percentage of clients with land related disputes attended by the LHRC in its Legal Aid Clinics for the year 2015.

337 Section 257 of the Penal Code Cap, 16 [R.E 2002].

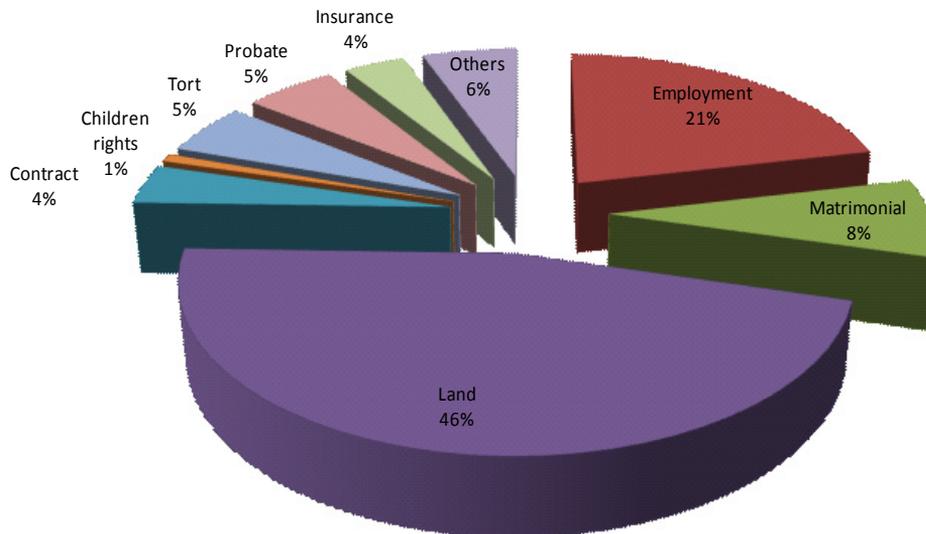
338 1995 TLR 80.

339 <http://legal-dictionary.thefreedictionary.com/Right+to+own+property> accessed on 8th December, 2015.

340 Section>>>of the Police Force and Auxiliary Services Act, Cap 322 [R.E 2002].

341 LHRC (2015), *Report on the Mini Study on Land Related Conflicts in Tanzania*.

Figure 27: Proportion of old clients attended by LAC disaggregated by type of case in 2015



The pie chart above tries to depict the sensitivity on land issues compared to other disputes entertained in courts in the country.

In 2015 there were a number of land related conflicts that caused violation of human rights and destruction of properties in the country. For instance, in early January 2015 there were conflicts in Mabwegere village – Morogoro.³⁴² This is one of the serious land conflicts that have been in existence for a decade now.³⁴³ The dispute in Mabwegere has been subjected to courts but still no permanent solution is sought.³⁴⁴

342 The history shows that the Maasai pastoralists applied for the registration of the inhabited land, which was accepted and Mabwegere was accredited a certificate of registration number MG KIJ/522/ of 16th day of June, 1999. Mabwegere is inhabited by more than 5,559; 4,233 being female and 3,326 male, most of who are the Maasai who are practicing pastoralism. However, there are some few families of farmers from different tribes who are living peacefully with the Maasai at Mabwegere. Historically, Mabwegere started to be inhabited by the Maasai in the year 1956.

343 LHRC (2015), *Fact Finding Mission – Mabwegere Land Conflict Report*.

344 *Mabwegere Village Council versus Hamis (Shabani) Msambaa & 32 Others Land Application No. 23 of 2006, at Dar es Salaam Registry.*



Picture 17: LHRC staff member (left) speaking to residents of Mabwegere Village about the land conflict in the village

Table 23: Land-Related Disputes and Human Rights Violations

Place	Dispute	Human Rights Violations
Elborkishu-Oljoro	The village council colluded with some villagers to sell village land to farmers of which primarily the land use plan gave rights for pastoralists as pastures	<ul style="list-style-type: none"> • Right to own property • Denial of the right for village assembly to decide on the land contrary to the requirements of the Village Land Act, 1999 that requires convening of Village Assembly so as to decide on land matters
Mbigiri village - Kilosa	Clash between farmers and pastoralist	<ul style="list-style-type: none"> • Loss of life: 4 people were killed¹ • Destruction of properties
Dihinda village - Morogoro	Pastoralist and farmers fought over right to use land for their different economic activities	<ul style="list-style-type: none"> • Serious injuries to • Destruction of properties, for instance a number of cows were killed

Place	Dispute	Human Rights Violations
Mabwegere ² village	<p>Clash of pastoralist and farmers</p> <ul style="list-style-type: none"> ▪ Conflicts that emanate from seasonal variation and its impacts over pastures and water. Tension between pastoralists and peasants are high during the dry season as both groups depend on the same source for both pastures/livestock and water and for the farmers as the valleys are suitable for irrigation and dry season farming. ▪ Failure of the government/authorities concerned to execute the court's orders. 	<ul style="list-style-type: none"> • Destruction of properties <i>the conflict has resulted into destruction and /or loss of properties and livestock.</i> • <i>24 Maasaibomas were set ablaze and 19 farmers' huts were burnt down to ashes.</i> • <i>Destruction of family properties, food stuffs, cash money that were kept inside the houses, shelters and clothes.</i> • Internally displaced people • Disruption of socio-economic activities and services • Rape to Nursing Mothers <i>There have been 6 reported cases of young nursing mothers from the Maasai community being beaten and raped.</i>
Ngorongoro	<ul style="list-style-type: none"> • Frequent evictions for investment purposes³ • Eviction for environmental conservation 	Human rights abuse For instance in 2015 evictions for environmental conservation as the result freedom of movement was restricted



Picture 18: Killed cows (left) and an injured man (right), among the victims of land-related conflicts

5.1.4.1 Demolition and Eviction in Hazardous Areas

Hazardous areas are explained to include elements of the physical environment, harmful to man and caused by forces extraneous to him. *The Environmental Management Act, 2004 (EMA)*³⁴⁵ does not clearly define hazardous areas however declares what are considered to be environmentally sensitive areas to include those declared under any written law as environmentally sensitive area or hazardous land.³⁴⁶ Further, the Environmental Management Act, 2004 clearly prohibits human activities of permanent nature within sixty meters from water bodies for conservation purposes. The Section reads that; “*Subject to subsection (2) no human activities of a permanent nature or which may, their nature likely to compromise or adversely affect conservation and or the protection of ocean or natural lake shorelines, river bank, water dam or reservoir, shall be conducted within sixty metres*”

*Also the Land Act, 1999*³⁴⁷ gives mandate to the minister responsible for land matters to declare any area hazardous therefore in that case it becomes reserved land.³⁴⁸ It provides that; “*Reserved land is land declared by order of the Minister, in accordance with provisions of this Act to be hazardous land*”

In 2015 soon after the general election the government started implementation of *the Environmental Management Act, 2004* in Dar es Salaam city along Msimbazi valley. The area was declared hazardous area for the first time during colonialism in 1949 and after independence in 1979.³⁴⁹ The area is considered hazardous due to frequent floods during rain seasons which cause adverse effect to the conservation, human beings and properties. For instance in 2011 about 49 people died as a result of floods along Msimbazi River.³⁵⁰

345 Act No 20 of 2004.

346 S. 53.

347 Act No. 4 of 1999.

348 Section 6.

349 Jamhuri ya Muungano wa Tanzania, Ofisi ya Makamu wa Rais, “*Taarifa ya Serikali kuhusu zoezi la kuhamisha wakazi wa mabondeni katik ajiji la Dar es Salaam*” 8th January, 2016. [Report on removal of people residing within valleys in Dar es Salaam].

350 Ibid.



Picture 19: Some of the residents along the Msimbazi Valley (left), who continue to reside in the area despite the dangers and government warning (rights)

According to available information up to the end of December, 2015 around 1,412 houses were demolished that left more than 9,900 people homeless. As a result victims of demolition became frustrated with no place to go while others with extended families had to find alternative shelters in the same areas and during night sleeping outside in rubble. For instance one man died from stress as he watched his house being torn down. A woman was forced to sleep out with her two month child who subsequently died.³⁵¹



351

<http://sdinet.org/2016/03/destroying-lives-evictions-in-dar-es-salaam> visited on 19th January, 2016.



Picture 20: Demolition exercise carried out by the Government at the Msimbazi Valley area

Further, the eviction exercise created suffering to families especially women and children. Students had stopped attending schools, social services delivery disrupted and families ties disturbed.

LHRC is of the opinion that the situation of squatters along Msimbazi valley is very complex. A clear analysis is to be made as the government itself has to be blamed on the other side. Since declaration that the area is dangerous to occupy in 1979 nothing serious intervention was done to prevent citizens from developing the area. The government has issued land titles and others have letter of offer and residence permits.³⁵² The area is supplied with social services including water and electricity. There are political party's offices and some polling stations were located in those areas. Hence, an ordinary citizen who is not aware with legal frameworks on protected areas or reserved land would honestly develop such area with little precautions.

Therefore, LHRC calls upon the Government exercise this operation with humanitarian eye so as to protect human dignity. Making its citizens homeless might create another social problem of which the Government itself will have an obligation to intervene, for instance eruption of cholera and other communicable diseases. It is LHRC's opinion that the current occupants in these areas to be re-allocated as it was done in 2011 by giving them alternative plots in safe areas and then demolition to be carried out. Also it should be a progressive exercise in order to prevent such situation to happen again in the future.

Also LHRC urges the government to provide education to the public through land planners as there are number of reserved land under different legislation that prohibit occupation of land.³⁵³

352 Report on removal of people residing within the valley, *supra*. It was revealed that 20 residents had land titles and 119 people had residence permits issued by the Government.

353 These are some of the laws that designate *land reserved*, (i) *Forests Act Cap. 323*; (ii) *National Parks Act Cap.282*; (iii) *Ngorongoro Conservation Area Act Cap. 284*; (iv) *Wildlife*

Chapter Six

Vulnerable Groups

6.0 Introduction

Human rights protection is essential to vulnerable groups where their fundamental rights are violated. For various reasons, there are groups in society which have been traditionally victims of violations of their fundamental human rights. People who belong to these groups require special protection for effective and equal enjoyment of their rights. Thus, human rights instruments usually set out additional guarantees to persons belonging to these groups.

6.1 Women's Rights

Women's rights can simply be defined as human rights for women, which are equal to men. Frank Hosken defines women's rights as *the rights and entitlements claimed for women and girls of many societies worldwide, and formed the basis to the women's rights movement in the nineteenth century and feminist movement during the 20th century.*³⁵⁴

In some countries these rights are institutionalized or supported by law, local custom, and behavior, whereas in others they may be ignored or suppressed. They differ from broader notions of human rights through claims of an inherent historical and traditional bias against the exercise of rights by women and girls, in favor of men and boys.

Internationally, these rights are recognized in the *Universal Declaration of Human Rights, 1948* (UDHR).³⁵⁵ This was the first effort made to ensure that, women's rights as human rights are protected by the international community. More efforts were made through the *UN Convention on Elimination of All Forms of Discrimination Against Women, 1979* (CEDAW). This is when the concept of equality between women and men gained serious momentum and put into practice. In the Human rights conference held in Vienna Austria in 1993 it was reiterated strongly that Women's rights are human rights.

Conservation Act Cap. 283; (v) Marine Parks and Reserves Act Cap.146; Town and Country Planning Act Cap.355; (vii) Highway Act Cap.167; (viii) Public Recreation Grounds Act Cap.320; (ix) Land Acquisition Act Cap. 118.

354 Fran P. Hosken, "Towards a Definition of Women's Rights" (1981) Human Rights Quarterly, Vol. 3, No. 2., pp. 1–10.

355 Article 2.

Women make up more than half of the world's population but only a fifth of the world's decision-makers.³⁵⁶ The 2012 Population and Housing Census in Tanzania show that 51% of the population is made up by women.³⁵⁷ According to the National Election Committee 53% of the registered voters during the 2015 General Elections were women.³⁵⁸

Women Rights are protected by several international human rights instruments. These include the International convention on Civil and Political Rights, 1966; the Convention on the Right of the child; the African Charter on People and Human Rights on the Rights of Women in Africa, 2003; and many other instruments.

Despite being the majority women still face under-representation in formal politics, which has immense effect in representation in the decision making bodies of the country. Women's political rights are vital to securing and retaining all other rights. Women who have a voice can transform their lives and the society at large.

In the 2015 General Elections only one woman contested for the Presidential post among the total 8 contestants. The 2015 General Election Results show that Anna Elisha Mghwiracame a distant third in the Presidential contention, with 98,763 votes, equal to 0.65% of the total votes.³⁵⁹ However, Mrs. Samia Hassan Suluhu contested as a running mate to Presidential candidate Dr. John Pombe Magufuli during the 2015 General Elections. Dr. Magufuli and Mrs. Suluhu won their contention and Mrs. Suluhu became the first ever female Vice President of the United Republic of Tanzania, the highest position yet to be occupied by a woman in the country.

Several women candidates contested for Member of Parliament seats countrywide. Statistics show that a total of 1,218 people sought nomination for Member of Parliament seats through their parties, out of whom 985 were men and 233 were women.³⁶⁰ Election results show that 25 women were elected to positions of Member of Parliament, an increase of 5 who won in 2010 elections. It is worth noting that women won by popular vote in constituencies of Bunda, Tarime, Babati and Hanang', in regions with record of high prevalence of GBV and where the position of women has constantly been undermined.

In other level of the country's leadership, statistics show that the number of women who were appointed to ministerial position rose from 14.8% in 2003/05 to 31.25% in 2013/15, whereas the number of deputy ministers fell from 30% to 24% within the

356 <http://www.theguardian.com/advocacy/one-world-action>.

357 Th National Bureau of Statistics & Office of Chief Government Statistician President's Office, Finance, Economy and Development Planning Zanzibar (2013), Ministry of Finance, *Population Distribution by Age and Sex*, United Republic of Tanzania

358 http://www.bbc.com/swahili/habari/2015/10/151019_takwimu_muhimu_uchaguzi.

359 NEC 2015.

360 Ibid.

same period of time.³⁶¹ Also the number of women permanent secretaries fell from 28% to 18.2% while number of deputy permanent secretaries rose from 12.5% to 40.7% in the same period.³⁶²

Gender discrimination limit women and girl-children access to education and resources, placing them in a disadvantageous sphere within the society. And this is despite the fact that the majority workforce in rural societies is made up of women, working mainly in agriculture activities.³⁶³ Further, women face poverty, violence and abuse. This is especially true for women who are already marginalized: disabled, indigenous, those living with HIV, informal workers and migrant women. Women are affected in deaths related to child pregnancy and child birth. It is because of all the above reasons that it is important to promote and protect women's rights for gender equality in order to improve women and girl-children's lives.

Issues related to women's rights in Tanzania observed in 2015 include gender based violence, female genital mutilation and trafficking in persons. This chapter will examine these issues in detail as they were observed in 2015.

6.1.1 Gender Based Violence

Gender-based violence is defined as any harmful act that is perpetuated against a person's will and that is based on socially ascribed (gender) differences between male and female³⁶⁴ Gender based violence is often referred to as violence against women. The UN Declaration on elimination of Violence against Women 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 to women, including threats such as coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.”

Thus, gender based violence include battering (beating), sexual abuse and harassment, rape (including marital rape), female genital mutilation (and other traditional practices harmful to women), human trafficking and forced prostitution.

361 TGNP 2015; <http://www.tgnp.org/images/Ulingo%20PDF%20Spreads.pdf>.

362 Ibid.

363 United Republic Tanzania, *Basic Demographic and Socio Economic Profile Report 2014* (shows that 5,918,551 women in mainland Tanzania engage in agriculture as their main activity).

364 Inter-Agency Standing Committee (2005), *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing in Prevention of/and Response to Sexual Violence in Emergencies*.

Gender Based Violence in 2015

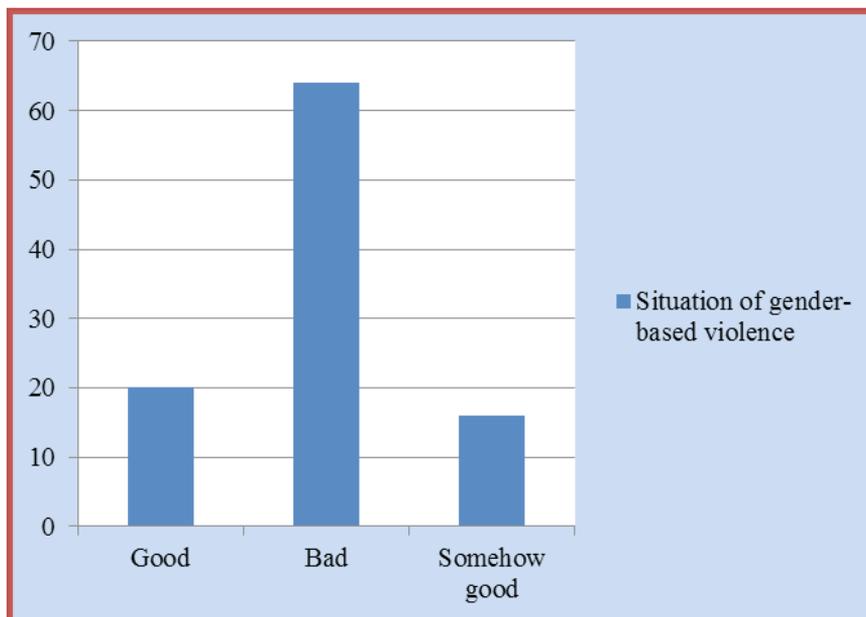
In 2015 the Police Force revealed that there were 17,059 cases of violence against women reported to the police force.³⁶⁵ These cases included all forms of violence such as battering, verbal abuse and other mistreatment of women. The Police Force also revealed that there were 5,802 cases of rape reported to the Police.³⁶⁶

Table 24: Incidents of Violence against Women and Gender-Based Violence

Incident	Description/Victims	Source (Newspaper)
GBV	Cases of violence against men by women reported to be on the rise in Kilimanjaro Region, according to police gender desk officer, Ms. Grace Lyimo.	<i>The Citizen</i> 12 th January, 2015
GBV -	Most women in Kahama District, Shinyanga Region are afraid of seeking white-collar jobs because of sexual corruption (sextortion).	<i>Nipashe</i> 26 th February, 2015
GBV	One Erick Bruno, aged 30, strangled to death his lover, DajaDungu, aged 35. Incident occurred in Morogoro on 23 rd February, 2015.	<i>Majira</i> 26 th February, 2015
GBV	Winfride Simon, aged 35, was attacked with a machete and killed by unknown people in Manyanda, Usanda Ward in Shinyanga Region.	<i>Majira</i> 12 th February, 2015
GBV	Stephen Shauri (72) was killed by his wife in Sumbawanga after she hit him with a pestle following an allegedly relationship dispute.	<i>Mwananchi</i> 7 th February, 2015
G B V - Rape	An unnamed woman aged between 20 and 25 was raped and sodomized by a man she met at a club.	<i>Mwananchi</i> 21 st February, 2015
G B V / Violence against women	A man in Dilimu Village in Mbulu District, QambaduKwatlema goat-slaughtered his wife, AmsiMatle, and later killed himself on suspicions of having an affair with another man.	<i>The Citizen</i> 14 th February, 2015
GBV	A woman in Majimaji Village, Chalinze Ward in Tunduru District was accused of chopping off her husband's private parts. The victim's name is Patrick Mlowa (72) and the woman is Zainab Yusuph (35).	<i>Mwananchi</i> 22 nd February, 2015
GBV – Spousal battery	A woman called RhobinKichungu (25) in Tarime District, Mara Region, was mutilated to death on different parts of her body by her husband because of jealousy. Incident occurred on 9 th February, 2015.	<i>Mwananchi</i> 15 th February, 2015
GBV	GwandumiMasyeba killed his wife for allegedly being involved in an affair with another man; and then committed suicide. Incident occurred in Mbeya Region.	

365 Correspondence with the Police Force with Ref No. CID/HQ/C.10/8/AVOL.I/116.

366 Ibid.

Figure 28: Opinion on the situation of gender-based violence

Source: LHRC Opinion Survey 2015

Moreover, in 2015 General Election, it was said that women experienced violence. The Initiative of Tanzanian Women Cross Party Platform (TWCP) reported that women experienced physical, sexual and psychological violence during election.³⁶⁷ TWCP also reported that women experienced threat and coercion. Violence and discrimination against women undermines their participation in politics and leadership of the country.

6.1.2 Sexual Violence and Abuse

Sexual violence can be defined as *“any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”*³⁶⁸

Sexual violence includes physical and psychological violence aiming at a person’s sexuality. Sexual violence includes rape and other forms of assault involving a sexual organ. It involves as well unwanted comments or advances, or acts of trafficking such as prostitution and sexual slavery.

367 <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan046623.pdf> Accessed on January, 2016.

368 http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

Data on sexual violence and abuse is very limited. There is great reluctance from the society to report sexual violence and abuse. This is mainly because of women feeling shame, fear of blame, not being believed and being mistreated by the society surrounding them. Incidents of sexual violence and abuse are expected to be reported to the police, health centers and hospitals and legal aid providers. As a result the extent of the problem becomes difficult to understand.

Sexual violence and abuse by an intimate partner is particularly very difficult to ascertain. By the time the problem escalates the damage is likely to be irreversible, even fatal. Our society does not consider sexual violence by intimate partner to be a wrongdoing. Take for instance marital rape in Tanzania; the legislation has overlooked it to the extent that rape is categorized only when a woman is not married, or if in marriage then she is in separation from her husband.³⁶⁹

Statistics obtained from the police force shows the extent to which the problem of sexual violence and abuse has reached. In 2015 there were 5,802 cases of rape reported to the police force.³⁷⁰ In the period of six months of 2014 alone there were already 3,074 rape incidents reported to the police.³⁷¹ Regions of the North Zone of the country have shown to experience rape incidents in a large number. It was reported that a total 670 rape cases were reported to the police in this region with Tanga reporting a total of 243 cases; Kilimanjaro and Arusha 164 cases; and Manyara 99 cases.³⁷²

6.1.3 Female Genital Mutilation

Female genital mutilation (FGM) comprises of all procedures that involve partial or total removal of the external female genitalia or other parts of the female genitalia.

FGM has no medical reasons supporting its practice. It is practiced entirely for cultural beliefs, among them being preparing girls for marriage, preserving family honour, cleanliness as well preserving chastity. FGM is widely performed in young girls though it has proved to be performed to elder women as well.³⁷³

The UNICEF estimates that there are 125 million girls and women in 29 countries of Africa and the Middle East who have undergone FGM.³⁷⁴ FGM is still widely practiced in Tanzania. It is widely practiced in the regions of Manyara, Mara, Dodoma, Singida

369 Sexual Offences Special Provisions Act, 1998, s.130(2)(a)

370 Correspondence with the Police Force (Ref No. CID/HQ/C.10/8/AVOL.I/116).

371 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*.

372 http://www.itv.co.tz/news/local/1734-24450/Matukio_ya_ukatili_yaongezeka_kanda_ya_Kaskazini.html, accessed on 22nd January, 2016.

373 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*.

374 UNICEF (2013), *Female genital mutilation/cutting: A statistical overview and exploration of the dynamics of change*, available at http://www.unicef.org/media/files/UNICEF_FGM_report_July_2013_Hi_res.pdf, accessed 20th January 2016.

and Kilimanjaro. According to UNICEF is estimated that 15% of Tanzanian girls and women between the ages of 15-49 have undergone FGM.³⁷⁵

In Tanzania 79% of FGM is performed to girls between 0-14 years old, with only 19% of it being performed in girls and women above 15 years old.³⁷⁶ However, because of the intensification of the campaign against it, FGM have taken a new form where even older women in marriage are now being mutilated, not only traditionally but also in health centers, performed by health practitioners.³⁷⁷ The UNICEF estimates that in Tanzania 89% of FGM is performed by traditional circumcisers and other traditional practitioners, while 2.3% is practiced by medical professionals such as doctors, nurses and midwives.³⁷⁸

The national prevalence for FGM in Tanzania is said to stand at 10-15%. However, the prevalence is much higher in areas where it is practiced. The Minister for Health, Community Development, Gender, Elderly and Children Ummymwalimu was quoted saying that FGM practices is very high in the regions of Dodoma, Arusha, Singida and Mara.³⁷⁹ She elaborated that in Dodoma out of 100 girls, 64 are believed to have been mutilated; in Arusha out of 100 girls, 59 are believed to have undergone FGM; in Singida out of 100 girls, 51 are believed to have undergone the practice; and in Mara out of 100 girls, 40 have been mutilated.³⁸⁰

FGM is recognized as a violation of human rights, specifically women and girls' rights. FGM discriminate against women and girls as it reflects a deep-rooted inequality between sexes. The practice violates right to health, security and physical integrity, right to be free from torture and cruel, inhuman or degrading treatment. The practice also violates the right to life as it puts women and girls in greater danger of their lives.

It is because of the above reasons that FGM is condemned around the world. The efforts to condemn the practice involve the joint statement against the practice issued by WHO, UNICEF and UNFPA. The Legal framework around the countries where FGM is practiced has been revised.

In Tanzania, the *Sexual Offences Special Provision Act, 1998* was enacted and incorporated in the *Penal Code, CAP 16* of the Laws of Tanzania.³⁸¹ Tanzania has as well adopted the *National Plan of Action to Combat FGM (2001-2015)*.

375 Ibid.

376 UNICEF FGM statistics, *supra*.

377 LHRC & ZLSC (2015), Tanzania Human Rights Report 2014, pp. 180-182.

378 UNICEF FGM statistics, *supra*.

379 SifaLubasi, "Ukekektajinjanga la Taifa," *HabariLeo* (8th February, 2016).

380 Ibid.

381 s. 169.

FGM to young girls deny them of their rights especially the right to be children. Efforts should be intensified to ensure that this evil practice is eliminated from the communities still practicing it. LHRC recommends to the Government and stake holders to work in close cooperation to ensure that the practice is eliminated. LHRC thus urge the stakeholders to fall within the focus established by the WHO to eliminate FGM; which include;

- i. Strengthening the health sector response: guidelines, training and policy to ensure that health professionals can provide medical care and counseling to girls and women living with FGM;
- ii. Building evidence: generating knowledge about the causes and consequences of the practice, how to eliminate it, and how to care for those who have experienced FGM;
- iii. Increasing advocacy: developing publications and advocacy tools for international, regional and local efforts to end FGM within a generation.

Women make majority of the population and the workforce in agriculture and other informal sectors. However they are the most affected with lack or inadequate provision of the social services, such as health, education, water, food security e.t.c., LHRC opines that the government should ensure that the budget allocation in social services is adequately provided as lack of it has a direct effect on women. Thus the government should ensure that it follows international guidelines in budget allocation, which is gender sensitive in order to ensure that social services are adequately provided with fund and thus benefit women.

6.2 Children Rights

The rights of the child are well described under the *Convention on the Rights of the Child, 1989* (CRC). The CRC describes in detail the right that the child has and provides the framework for States signatories to it. Tanzania signed the CRC in 1991 and thereby agreeing to work towards improving children's health, education, protection from all forms of harm and participation in decision making that affect the children.

Children are the most valuable members of our society. They are vulnerable and need guidance and protection. That is why children's rights are recognized both in national, regional and international laws. It is thus important to make sure children rights are upheld, especially children living in difficult circumstances, such as orphans, children with disabilities, street children, children affected by natural disasters, children who cannot fend for themselves such as adolescent mothers.

This chapter examines the situation of children in Tanzania in 2015. The chapter looks at children's welfare, child abuse, child sexual abuse and exploitation and the juvenile justice in the country.

The *Child Development Policy, 2008* highlights the need to protect children living in difficult circumstances. In order to be able to protect the vulnerable children we should at first identify them. These include orphans, children with disabilities, street children, children affected by natural disasters, children who cannot fend for themselves such as adolescent mothers. The second *National Costed Plan of Action for Most Vulnerable Children, 2013-2017 (NCPAII)* provides measures and strategies to reach the most vulnerable children; however, implementation of the first NCPA can be considered as somewhat successful though it faced momentous challenges in rolling it out. The NCPA I was difficult to roll out because of lack of sufficient resources. Until May 2011, vulnerable children had only been identified in 59% of all villages/*mitaa* and in 91 of the districts (over 813,372 children).³⁸²

Access to education has been another area that has shown challenges. The *Education and Training Policy, 1995* addresses issues of right to education. Education for all is discussed as a human right in the policy. However, the implementation of this policy has faced many challenges. Access to education and equity has been limited to enrolment of children to schools. The country witnessed an increase in the number of schools, both primary and secondary.³⁸³ The increase in number of schools resulted in the increase in enrolment of children to school. However, this increase did not go hand in hand with improved facility in education in general. Quality of education has seen a great rate of decline in the past ten years.³⁸⁴ Teachers have remained underpaid and unmotivated. They have been left to work in difficult environments, with dilapidated school building, no housing facilities especially for teachers in rural areas and lack of teaching and learning materials in general.

All these challenges affect mostly children from poor families. This is because they make majority of those attending public schools. Public schools were supposed to be free for all. However the education in public schools has been nothing but free. There have been too much financial contributions required from the parents before they can enroll their children to schools. This has in many ways forced parents to abstain from sending their children to schools.

In February 2015, a new Education and Training Policy was introduced, this policy incorporates all other education related policies into one.³⁸⁵ The policy represent an improved and comprehensive policy, taking into account economic, social and

382 *ibid*

383 *See* Chapter Four of this report.

384 *Ibid.*

385 *Ibid.*

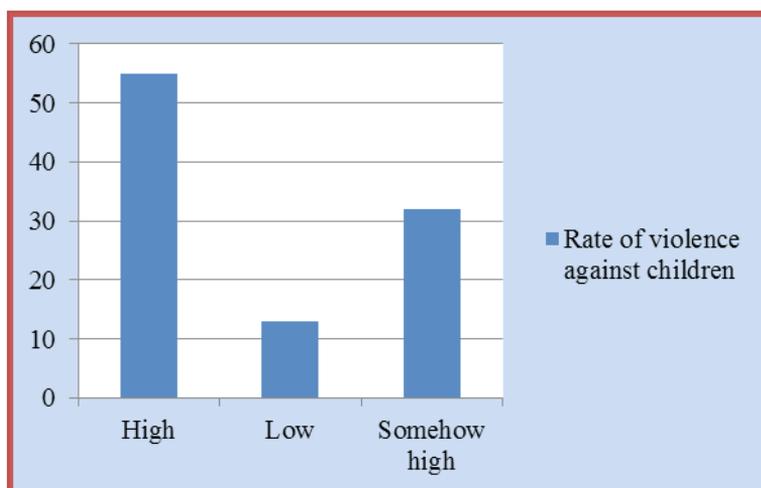
technological advances; its implementation is however still to be seen taking into account the 1995 Policy was not fully implemented.

6.2.1 Violence Against Children

Violence against children is still a serious problem in Tanzania. Violence experienced include both physical and psychological. A study in 2009 and released in 2011 found that almost three quarter of children, both males and females have experienced physical violence prior to turning 18 years of age.³⁸⁶ Physical violence was in form of punching, whipping or kicking. The perpetrators of such violence were relatives, authority figures (such as teachers) or an intimate partner. Approximately one quarter of the children were found to have experienced emotional violence by an adult.³⁸⁷

Studies have revealed that exposure to violence during childhood can increase vulnerability to a broad range of mental and physical health problems.³⁸⁸ During LHRC's opinion survey of 2015, majority of the respondents (55%) noted that the rate of violence against children in Tanzania is high, as the figure below indicates.

Figure 29: Opinion on the rate of violence against children



Source: LHRC Opinion Survey 2015

386 United Republic of Tanzania (2011), *Violence Against Children in Tanzania*.

387 Ibid.

388 U.S Department of Health and Human Services, Centers for Disease Control and Prevention, *Prevalence of Sexual Violence Against Children and Use of Social Services – Seven Countries, 2007-2013*, published in June, 2015, available at <http://www.cdc.gov/mmwr/pdf/wk/mm6421.pdf>.

90% of child abuse cases reported in 2015 to the Police Force Gender and Children Desk involve abusers who are close relatives.³⁸⁹ Number of cases have reduced very much, Police Force Gender Desk believe the reduction of reported cases is not because these acts are not done anymore but rather parents and relatives would like to solve these issues “within the family circle”, because once a case is reported to the Police the abuser is most likely to face justice. This does not sit well with family members.

The Police Force reported that there were 2,873 reported cases of child abuse in police posts and stations around the country.³⁹⁰ The report did not stipulate the types of abuse that were reported. However children in Tanzania are facing such abuse like physical abuse, sexual abuse (including rape, sodomy, molestation and psychological abuse.

Table 25: Incidents of child abuse recorded in 2015

Type of Violation	Details	Source	Date
Violence against children	Ms. Hollo John, aged 45, killed her step son Michael Masongwa, aged 5, after quarrel with the child’s father. The incident occurred in Ussoke Mlimani Village, Urambo District in Tabora Region.	<i>The Citizen</i>	3rd February, 2015
Violence against children	A woman, Zuhura Sudi (26), accused of hanging and burying her two children in ChemChem Ward in Tabora Region. The incident occurred on 25th January, 2015	<i>The Citizen</i>	3rd February, 2015
Violence against children (child with disability)	A 15-year old mentally retarded girl was tied to a banana tree for 10 years in NarumeTela Village in Hai District, Kilimanjaro Region.	<i>DailyNews</i>	20th February, 2015
Violence against children	More than 26 children have been abused and raped in Kasulu District, Kigoma, from August 2014 to January 2015	<i>Majira</i>	19th February, 2015
Albino killing/ violence against children	LovenessMaliaki (11), who was mistaken for an albino child, was abducted, killed and her body parts taken in Arusha Region.	<i>Nipashe</i>	12th March, 2015
Violence against children	Christina Kusale (2) was cut with a sharp object on different parts of her body by her mother. Incident occurred in Mwananyamala, Dar es Salaam.	<i>Mwananchi</i>	26th February, 2015

389 Coordinator of One Stop Centre of the Police Force Gender Desk Ms. Onyango was quoted in Clouds FM’s Power Breakfast radio program on 15th February, 2016.

390 Correspondence with the Police Force (Ref No. CID/HQ/C.10/8/AVOL.I/116).

Type of Violation	Details	Source	Date
Violence against children- rape	A man in Kibaha, Pwani Region was taken into police custody accused of raping his two female children aged 11 and 15. It was reported that he had been raping them since 2013 when his wife was away until one of the girls told her mother about their father's cruelty on 19th March, 2015.	<i>Mwananchi</i>	26th March, 2015
Violence against children	Salum Mohammed, aged 10, was bound and gagged by his parent for 15 hours as punishment for accidentally setting mosquito net on fire. Incident occurred on 27th April, 2015 in Morogoro Region.	<i>The Citizen</i>	28th April, 2015
	Sophia Aman (13) died after she was beaten by her mother as punishment for skipping school. Incident occurred in Mbeya Region.	<i>Mwananchi</i>	28th April, 2015

Source: LHRC Media Survey 2015

6.2.2 Early/Child Marriage

According to UNICEF, 40% of girls in sub-Saharan Africa are married before the age of 18. Child marriage is mostly practiced in West and Central Africa, (42%) as well as East and Southern Africa (37%). Almost all African countries are faced with the challenge of child marriage, whether they experience high child marriage prevalence, such as Niger (76%) or lower rates like Algeria (2%).

The causes of child marriage are common across Africa. These may be poverty; tradition and the stigma of straying from tradition. More important is that gender inequality and the low value placed on girls are the main causes of child marriage, for boys do not face the same problem, at least not at the same magnitude as girls do.

The legal framework on child marriage may also be among the big causes of the problem. In Africa many countries' legislation allows child marriage before the age of 18. Among these countries is Tanzania where the legislation allows marriage of a child at the tender age of 15 years old.³⁹¹ The law is even discriminatory by setting the age differently for girls and boys, where minimum age for boys is set at 18 while that for girls is set at 15 and even below that with the consent of the court.³⁹² With the practice of customary law in Tanzania, girls are even placed under great danger of being put for marriage as early as 9 years old. In August 2015, a 9 year old girl was

391 Law of the Marriage Act, 1971, s. 13

392 Ibid, s. 14(2)

reported to be put for marriage to a 60 years old man in Monduli, Arusha.³⁹³ The man had paid to the family of the girl a dowry of 1 cow and a can of local brew.



Picture 21: A 9-year old girl, forced to marry a 60-year old man in Monduli District, narrating her predicament to a community welfare officer

Early child marriage is a violation of children human rights as it robs the children of their childhood. Children, especially girls, are forced to abandon education and thus rendered in prospect poor life. Early child marriage increases the risk of violence, abuse of health and premature deaths to the children.

The problem of early child marriage is still very acute in Tanzania. UNICEF estimates that 37% of Tanzanian women aged between 20 and 24 years were first married or in union before attainment of the age of 18 years. Further, prevalence for marriage before 15 years is at 15%, whereas those married by 18 years old is at 37%.

CARE describes that in Tanzania the problem of early child marriage is fueled by two major factors; lack of legal protection and the education system.³⁹⁴ As has been elaborated above, Tanzanian legislation allows girls to get married at the tender age of even 14 years. The legislation of the country conflict each other when it comes to the definition of who a child is. The law of the Child Act describes a child as a

393 <http://www.thehabari.com/mtoto-wa-miaka-9-aozeshwa-kwa-mzee-wa-miaka-60/>, accessed on January, 2016.

394 CARE (2015), *Vows of Poverty: 26 Countries where Child Marriage Eclipses Girls Education*, at <http://vowsofpoverty.care.org/>, accessed on February, 2016.

person below the age of 18. It goes further to describe the protection that the child is entitled to in accordance to the principles of the CRC. However, the Law of Marriage Act allows a child to be married at a tender age, thereby waving all the protection that the child was supposed to have. For instance, a girl child in marriage is likely to be forced into sexual activities, despite the fact that she has not been ready physically or psychologically for such act. Worse enough, the law in Tanzania does not recognize marital rape.

Choosing when and who to marry is one of life's most important decisions. No one else, however well meaning, has the right to make that decision.

*The decision to marry should be freely made, informed decision that is taken without fear, coercion, or undue pressure. **It is an adult decision that should be made, when ready, as an adult.** (UNFPA 2012).*

The Government in several occasions has committed itself to amend laws discriminating against girl child, as far as the child marriage is concerned. However, nothing has been done for years to amend the law. To that effect in LHRC initiated a constitutional case in the High Court of Tanzania challenging the constitutionality of the Law of Marriage Act providing for child marriage. LHRC has been making a follow up on the status of the case as the courts records have come up with inconclusive results.³⁹⁵

On the other hand, the education system requiring the passing of national examination for one to pass to secondary education is mentioned as another cause fueling child marriage. Failure of passing the examination means that girls are left vulnerable to abuses and be put to marriage.

In 2015, a new education and training policy was introduced in Tanzania. This policy is meant to rectify all the shortcomings of the previous education policies, and specifically the Education and Training Policy, 1995. Education is an issue which directly affects Tanzanian children, especially girls. More girls are left out in joining secondary education from primary education than boys. This is because due to several factors, girls traditionally perform poorly in examinations compared to boys, with boys pass rate standing at 60.9% and girls at 53.9% in primary schools.³⁹⁶ The pass rate for girls in some parts

- *Prevalence of child marriage in Tanzania stands at 7% for girls before the age of 15 and 37% by the age of 18;*
- *Average of 2 out of 5 girls get married before the age of 18;*
- *37% of women between the age of 20-24 were first married or in union before the age of 18, in between the year 2008-2014;*

395 LHRC 2015: Kinondoni Legal Aid Clinic.

396 United Republic of Tanzania (2015), *Pre-primary, Primary and Secondary Education Statistics 2014*, National Data Dar es Salaam: Prime Minister's Office, Regional Administration and Local Government.[2014 BEST]

of the country is at alarming poor rate, as in Simiyu the pass rate for girls in 2014 was at 33.1% compared to 55.1% for boys.³⁹⁷ The Education and Training Policy, 2014 introduces a mandatory 10 years education, from standard one to form four. However, the policy does not specify as to whether the standard seven national examinations will still be there and whether the same will be used to determine who passes to secondary education. The policy does not specify whether secondary education will be provided in the same primary schools or students will have to move to other schools.

School dropout also affects more girls than boys. For instance, in 2014, school dropout for girls between the ages of 7 to 13 was at 20% compared to 12% for boys of the same age national wide.³⁹⁸ Early pregnancy as cause of dropout resulted to 297 girls and 3,045 girls in primary and secondary schools respectively.³⁹⁹ The Implementation of this new policy is remained to be seen to make sure that girls are given equal opportunity to remain in schools, fending them from the danger of being left out of the school system.

To address the problem of early child marriage the government in collaboration with other stake holders will have to employ concrete measures. Among them is to make sure that all laws allowing for child marriage are repealed or amended to the interest of the child. The education system is also to be shaped in such a way that it will be gender sensitive, bearing in mind that having children at school is more beneficial than having children out of schools where they are left vulnerable to abuse and be put into marriage.

6.2.3 Sexual Violence against Children

Sexual violence against children could be explained as all acts of sexual exploitation against children, both girls and boys. It involves all sexual advances made against children, including molestation, sodomy and defilement.

In 2011, a report on violence against children was launched following a study conducted in 2009.⁴⁰⁰ The study revealed the national estimate of the magnitude of sexual violence affecting children, both boys and girls. The study revealed that nearly 3 out of 10 girls (27.9%) aged between 13-24 years in Tanzania reported at least one experience of sexual violence prior to the age of 18 with the magnitude on boys of the same age with 1 out of 7 boys (13.4%) experiencing the same.

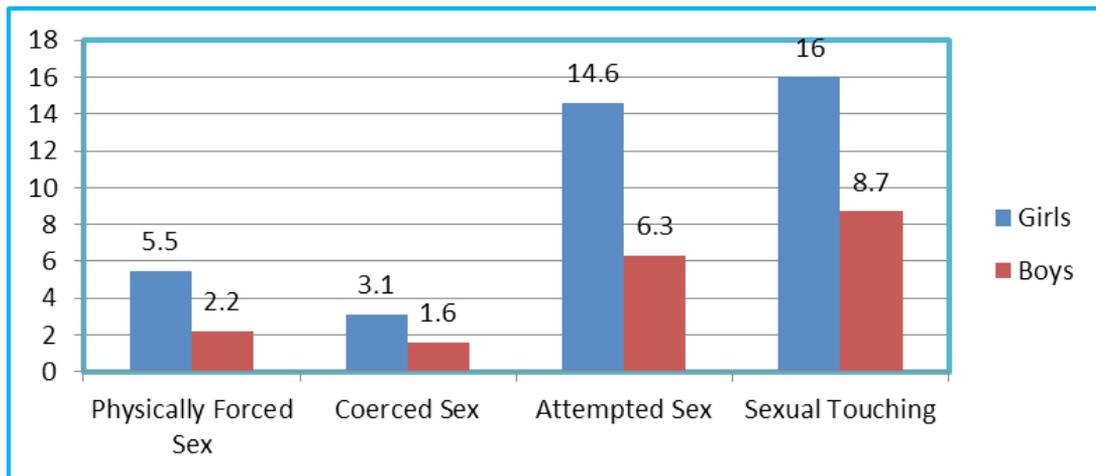
397 Ibid.

398 2014 BEST, *supra*.

399 Ibid.

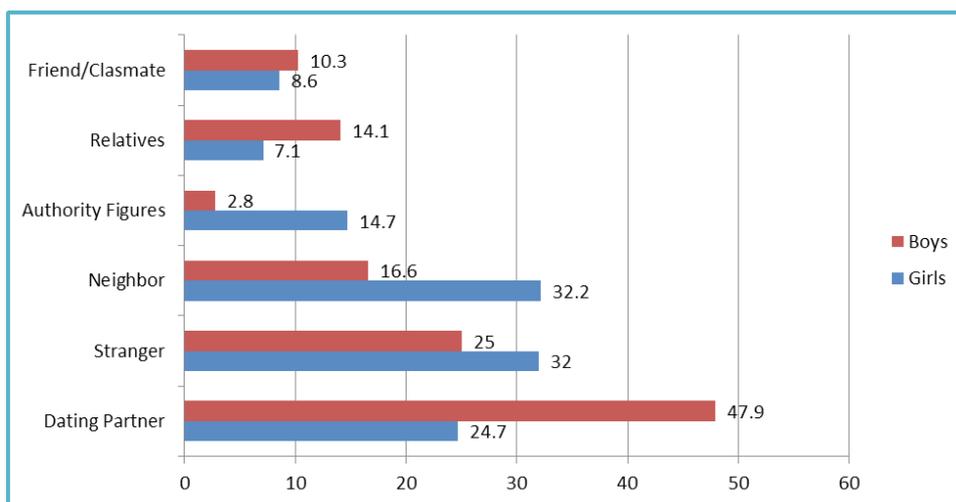
400 Violence Against Children in Tanzania Report, *supra*.

Figure 30: Sexual violence against children by type reported by males and females aged 13 to 24 years



Perpetrators of sexual violence against children are usually people familiar to children. They are usually family members and close people to the families. 90% of child abuse cases reported in 2015 to the police Force Gender and Children Desk involve abusers who are close relatives.⁴⁰¹ The study on violence against children revealed that perpetrators include friends and classmates; relatives; authority figures (such as teachers); neighbors; strangers; and dating partners;

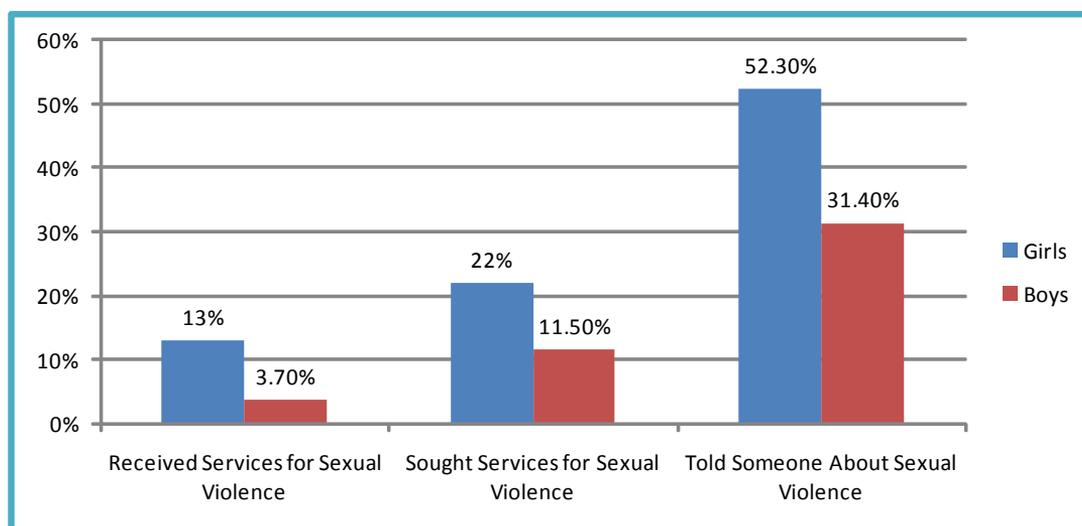
Figure 31: Percentage of Perpetrators of sexual violence against children reported by males and females aged 13 to 24 years



401 Said the coordinator of One Stop Centre of the Police Force Gender Desk Ms. Onyango during Clouds FM’s *Power Breakfast* radio program on 15th February, 2016.

As explained above, the magnitude of sexual violence against children is quite overwhelming. However, much concern is the fact that children victimized with sexual violence usually do not get redress due to the fact that perpetrators involved are close relatives and familiar people, the matter usually is resolved within the family circle. Miss Onyango with the Police Force Gender and Children desk said that most of the times even those cases that are reported to the police will end up with family member not collaborating with the authorities during investigation, citing that they have already resolved it within the family circles.⁴⁰² This means that the child is exposed to greater risk especially that of her health. The child is also exposed to danger of contaminating sexual transmitted diseases and HIV because the family is reluctant to take the child to hospitals and health care centers for necessary medical checkup.

Figure 32: Percentage of victims of sexual violence against children who told someone, sought services and obtained them, reported by males and females aged 13 to 24 years



As one can notice above, the magnitude of obtaining after-service following sexual violence is even worse for boys.

6.2.4 Recommendations

LHRC is thus recommending the following to the government:

- i. Put an end to corporal punishment in schools and instead embark on alternative punishment which does not involve torture;

402 *Supra.*

- ii. Develop a guideline for the implementation of the Education and Training Policy, 2014 to ensure provision of basic, free and better education;
- iii. Amend all laws, policy and strategies which discriminate against girl child and leave a room for child abuse in general;
- iv. Develop and improve child friendly infrastructure in schools including toilet facilities; drinking water facilities; dormitories; desks; transportation, to and from schools; security at schools e.t.c.,

6.3 Rights of Persons with Disabilities

People with disabilities have been facing discrimination and denial of their rights in employment, education, health and better life. It was only in 2010 that Tanzania enacted a law on the right and protection of people with disabilities in Tanzania, a delay of almost half a century after the country gained its independence.

The rights of people with disabilities are derived from constitutional principles just like any other right. The rights of people with disabilities are found in the constitutional provision which forbid all forms of discrimination based on race, nationality or sex.⁴⁰³

The rights of PWDs are also put forward under international human right instruments, such as the Universal Declaration of Human Rights, 1948; the International Convention on the Rights of People with Disabilities.

6.3.1 Stigmatization of PWDs

One of the major barriers facing PWDs in realization of their rights is society stigma. A survey conducted in 2014 revealed that 88% of parents and guardians of children with disabilities; and 90% of people with disabilities surveyed cited stigma as the biggest barriers for PWD to access health and medical services in Kinondoni district.⁴⁰⁴ This position was also confirmed by 60% of the local leaders surveyed in the same area.⁴⁰⁵

A person with disability is seen as a person with no contribution to the society and he/she is just there to be assisted. A PWD is not considered in social development. Cultural and traditional norms could be blamed for this societal attitude for they

403 Constitution of the United Republic of Tanzania 1977, Article 13.

404 CCBRT (2014), *Access to health and Education Services for People with Disabilities, as well as their involvement in Planning Processes at Local Level: Survey conducted in five wards of Kinondoni District, Dar es Salaam*, available at http://www.ccbt.or.tz/fileadmin/downloads/Access_to_Health_and_Education_Services_for_People_with_Disabilities_in_Kinondoni_District_Survey.pdf, accessed 14th December 2015.

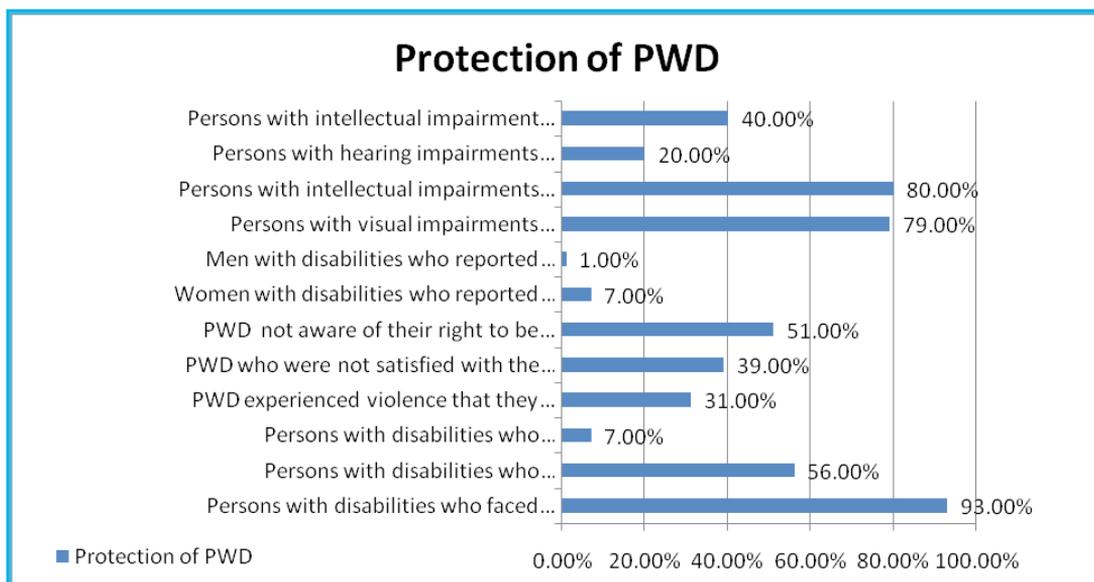
405 Ibid.

consider disability as a form of punishment and curse. It is believed that in various African societies they used to kill a child during childbirth if it was revealed that the child had a revealed disability. As a result even the policy makers have been influenced by this attitude in creating policies related to welfare of people with disabilities.

There are people who believe that a PWD should be assisted just because of fear of God. These people do not take into account the ability that a PWD is a human being and what capabilities he/she may have. There are others who believe that a disability need to be “healed”; that they will try use every means to make sure a PWD is healed of his disability and come back to a “normal situation. There are also those in the society who believe that PWD are motivated people; that their personality is what matters. This stand is the most appropriate one because PWDs are provided with opportunities to fulfill their aspiration.

“Provide persons with disabilities with the same range, quality and standard of free or affordable health care services and programmes as provided to other persons,” (UNCRPD Article 25a)

Figure 33: Protection of PWDs from Violation of their Rights



According to statistics, Tanzania mainland has a population of 2,567,088 people living with disabilities.⁴⁰⁶ CCBRT estimates that there are nearly 3.5 million people living with disability in Tanzania.⁴⁰⁷

406 United Republic Tanzania, *Basic Demographic and Socio Economic Profile Report 2014*.

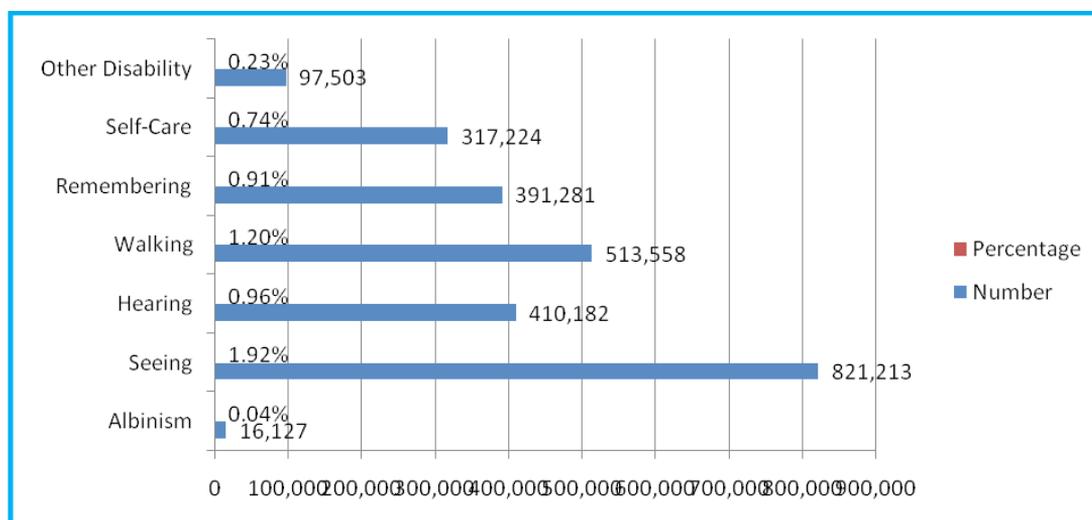
407 CCBRT (2014): Annual Report. http://www.ccbtr.or.tz/fileadmin/downloads/06_ebooks/2014_annual_report_ccbtr/#/16, accessed on January, 2016.

Table 26: Number of PWDs by type in Tanzania Mainland

Type of Disability	Tanzania Mainland		Rural		Urban	
	Number	Percentage	Number	Percentage	Number	Percentage
Albinism	16,127	0.04	10,653	0.04	5,474	0.04
Seeing	821,213	1.92	616,170	2.03	205,043	1.66
Hearing	410,182	0.96	328,174	1.08	82,008	0.66
Walking	513,558	1.20	403,645	1.33	109,913	0.89
Remembering	391,281	0.91	311,552	1.02	79,729	0.65
Self-Care	317,224	0.74	254,793	0.84	62,431	0.51
Other Disability	97,503	0.23	83,792	0.28	13,711	0.11

Source: URT 2014: Basic Demographic and Socio-Economic Profile Report, Tanzania Mainland

The majority of PWD live in rural areas, as can be seen from the chart above. Out of the total of 2,567,088 PWD, 2,008,779 PWD live in rural areas, which is equal to 78% of the total population of PWD in the country. PWD are thus likely to suffer in provision of basic services such as education, health and transportation because the rural areas have relative poor provision of these services. As one can notice, almost 33% of people with albinism live in rural areas. These are the areas where killings, torture and attack of people with albinism have been very rampant.

Figure 34: Percentage of PWDs by type in Tanzania Mainland

6.3.2 Removing Barriers in Realizing PWD Rights

Hindrances in realizing PWD rights are similar throughout the world. However, in Tanzania these hindrances can be divided into three aspects:

i. Attitudinal Barriers

Attitudinal barriers are mostly related to stigmatization of disability in Tanzania. This could be the biggest hindrance as the society perceives disability in a negative way, considering it to be a curse or bad luck. This hindrance is mainly caused by ignorance of the society in understanding disability especially the causes for disability.

To remove these barriers, the government and its institutions should ensure that equal opportunity is provided for all irrespective of race, religion or person having a disability. People with disability should be involved in all aspects of everyday life, taking into account their special needs in developing strategies that are going to affect their lives.

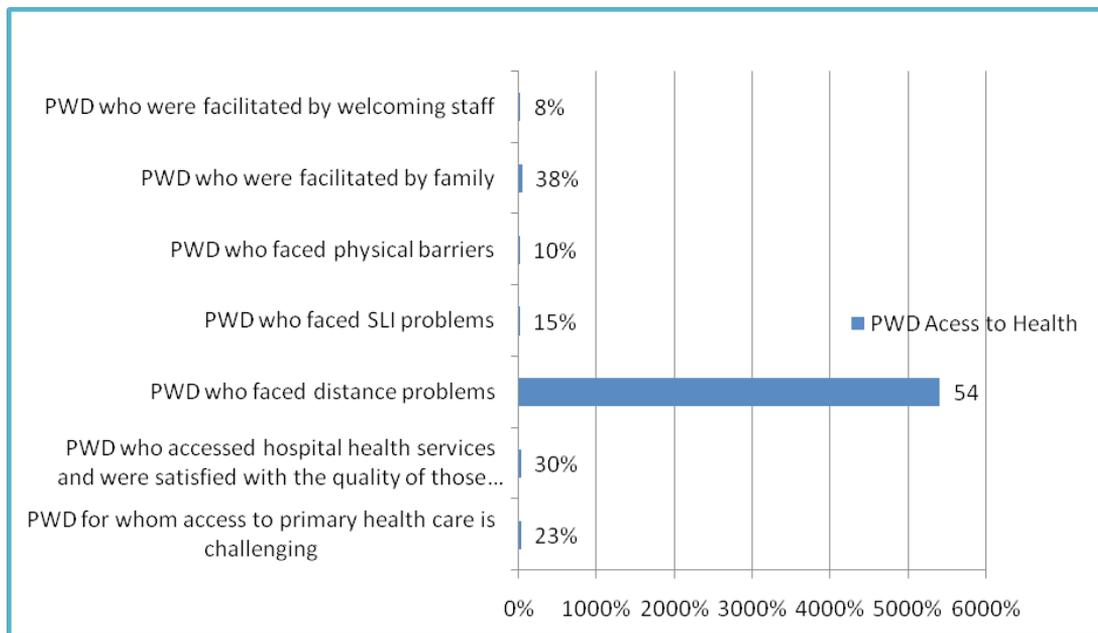
ii. Environmental Barriers

This involves barriers in public social infrastructure. For instance, social designing of social services are usually not disability sensitive. These social services include public buildings, public transport and other social services.

Efforts should thus be made to ensure that these services are easily accessible to PWD at all time, especially in public services. This will include having a sign language and/or braille expert in places where public service is provided. This can only be achieved if the law explicitly provides for the mechanism upon which these services will be provided and remain disability sensitive.

The *People with Disability Act, 2010* provided that there will be established several institutions which will deal with matters affecting PWD. Most of these institutions have not been established to date. It is high time they are established from the ward to national level to ensure that the law and policy as well as international standards are adhered to.

All the above barriers have resulted in difficulty for PWD to access important basic services. The study conducted in Kinondoni district (*supra*) show that in accessing health services PWD face several difficulties. Among the difficulties involve long distance of the health services centers; Baring in mind that the infrastructure is not very disability friendly. This problem is even multiplied. As a result PWD will be discouraged to attend health centers and thereby putting themselves at risk.

Figure 35: PWD access to Health Services

6.3.3 Conclusion and Recommendations

People with disabilities still face a lot of challenges in their daily life making it impossible for them to realize their potential. In order to ensure that their rights are realized and that PWD are given equal opportunities within all sectors of life LHRC recommends the following to the government and other stakeholders:

The Government and relevant stakeholders should:

- i. Promote and implement free access to basic education and healthcare services including assistive devices and rehabilitation services for all people with disabilities.
- ii. Ensure that the health system includes special arrangements for the provision of medical services to PWDs and that drugs are available all the time.
- iii. Ensure that all health facilities keep separate records of the patients with disabilities attending those facilities.
- iv. Develop and implement disability awareness training programmes for key stakeholders including parents, caregivers, teachers, local government leaders, nurses and doctors to reduce stigma towards people with disabilities.
- v. Ensure adequate supply of teaching and learning materials for CWDs
- vi. Develop and implement special education training programme with specific

focus on inclusive education so as to ensure enough supply of special education teachers who are able to engage effectively with CWDs

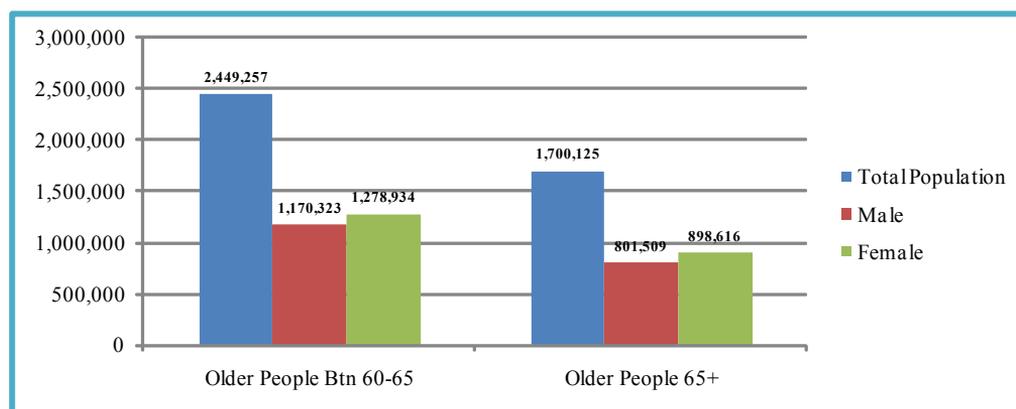
- vii. Implement a comprehensive renovation programme which follows standardized accessibility guidelines which will make the infrastructure of all schools and health facilities more accessible to people with disabilities.
- viii. Improve participation of people with disabilities in local education and health budget planning processes.
- ix. Develop and implement programmes that aim to empower PWDs so that they become agents of change in their own communities

6.4 Rights of the Elderly

Among 96 countries in the world Tanzania stand at 92 on safeguarding and promoting the rights of the elderly.⁴⁰⁸ An old person in Tanzania is considered based on age, responsibilities and social status. Wisdom is usually associated with old age in many Tanzanian societies. Legally, a person who is 60 years old and above is considered an old person in Tanzania⁴⁰⁹

Statistics show that Tanzania Mainland has a population of 4,149,382 people above 60 years old.⁴¹⁰ Among them nearly 2.4 million are between the age of 60 and 65, equivalent to 5.6% of the population. The remaining 1.7 million are older people above 65 years old.

Figure 36: Elderly People in Tanzania



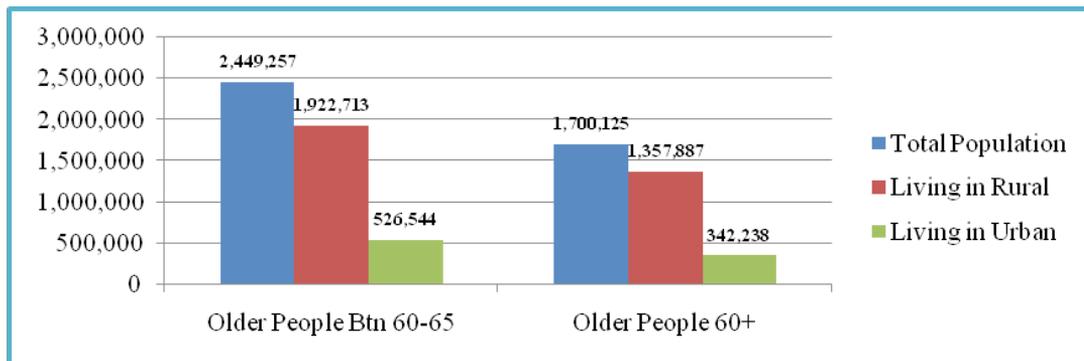
408 Help Age International - Tanzania.

409 United Republic of Tanzania (2003), *National Age Policy*

410 United Republic of Tanzania (2014), *Basic Demographic and Socio-Economic Profile Report, Tanzania Mainland.*

Statistics also show that the majority of older people are living in rural areas, with those between the age of 60 and 65 being about 1.9 million living in rural areas and only 526,544 living in urban area. For those above 65 years old, 1.3 million live in rural areas and only 342,238 living in urban areas.

Figure 37: Older people in Rural and Urban Areas in Tanzania



Elderly people are valuable members of the society. The elderly have engaged themselves in their lifetime in contributing to the betterment of the society. It is thus important to promote respect and appreciation for their participation in the community. The elderly should thus be empowered, included and protected so that they remain to be cherished members of the society.

Among the rights of the elderly are the right to enabling environment; access to health services; reliability of income for the elderly; and empowerment in available opportunities.

The elderly face a lot of challenges in realizing their rights. In obtaining health services, they usually face the challenge of dealing with health workers who do not have a good understanding of the medical needs of the elderly (geriatric care). They also face a challenge of lack and shortage of medical supplies for ailments susceptible to the elderly. The elderly are very vulnerable to non-communicable diseases such as high blood pressure, diabetes e.t.c.. It is estimated that 60% of deaths of the elderly in Tanzania are caused by non-communicable diseases.⁴¹¹

The elderly are also faced with the challenge of denied free medical care. This is despite the fact that the Government has directed that all Tanzanians above 60 should have free medical care in public health facilities. This position is also adopted in the National ageing Policy. There have been many challenges on the ground for the elderly in realizing these prospects. There are many huddles that the elderly meet before they can access free medical care. Provision of basic, free and better health

411 <http://www.helpage.org/blogs/amleaset-tewodros-1882/preventing-and-controlling-non-communicable-diseases-among-older-people-in-tanzania-568/>

services for the elderly is further complicated by the fact that free health care for the elderly is provided only in public health institutes.

The elderly also face the challenge of being abused verbally and physically. Older people especially women, face discrimination because of the negative aspect of ageing within the society. As a result they end up mistreated by family members and care givers. They also end up killed because of the belief that they are involved in witchcraft practices. Statistics show that many victims of killings due to witchcraft beliefs are older people, especially women.⁴¹² The Elderly also face abuse of their inheriting rights. The elderly, especially women, usually get evicted from their land and homes by family members. In most Tanzanian communities, women do not have the right to own land. As a result they get victimized with eviction once widowed or are the sole surviving close relatives.

The elderly as well face challenges with income generation. It is estimated that 96% of elderly do not belong to any social security scheme. This could be because of the fact that majority of the elderly live in rural areas with agriculture being their primary activity. People engaged in agriculture are usually not covered by social security schemes of the country, which mostly cover those in the formal sector. Lack of sustainable income make it difficult for the elderly to access financial institutions services such as loans, mortgages, e.t.c.

6.5 Conclusion

Social protection policies for the elderly should be revisited. There is a need for provision of universal social pension. This should be looked at as a right rather than a privilege. The elderly face many health challenges as a result are in constant need of medical services. Thus, there is a need to improve access to free, age-friendly health services. There is also a need to prevent and manage chronic diseases especially the ones susceptible to the elderly, which have proved to be life threatening to the elderly. Elderly care givers and those living with HIV/AIDS should be included in Government HIV and AIDS policies and strategies. The elderly need to be empowered to enable them claim their rights and seek protection from violence and discrimination. Stakeholders should make sure sensitization is conducted to promote the rights of the elderly and wellbeing and interests. They should be provided with support necessary to sustain the quality of life and dignity filling their respected status in community.

412 Refer to Chapter Two of this report for detailed narration and data of killings due to witchcraft beliefs.

Chapter Seven

Collective Rights

7.0 Introduction

Collective rights are those rights that belong to the group of people as a whole, as opposed to individual rights. These rights belong to the third generation of human rights, while individual rights are covered under the first and second generations of human rights. Examples of collective rights include the right to self-determination, the right to clean and health environment, the right to natural resources, right to peace and the right to development. These rights are provided for under various international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (ACHPR) and the United Nations Charter.

For the purposes of this chapter, collective rights are those rights enjoyed by all Tanzanians as a whole. In this chapter we focus on the right to benefit from natural resources, consumer rights, and right to development.

7.1 The Right of all Tanzanians to Benefit from Natural Resources: The Problem of Poaching

The right to benefit from natural resources is recognized under common Article 1(2) of the ICCPR and ICESCR for 1966, according to which all peoples may, for their own ends, freely dispose of their natural wealth and resources. This right is connected to the right to development and right to self-determination. The internationally-recognized principle of permanent sovereignty over natural resources recognizes **“the right of peoples and nations to permanent sovereignty over their natural wealth and resources”**, which **“must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”**⁴¹³ The Tanzania Constitution of 1977 imposes a duty on the Government to ensure that national wealth and heritage are harnessed, preserved and applied for the common good.⁴¹⁴

413 General Assembly Resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resources”, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/NaturalResources.aspx>, accessed 30th December, 2015.

414 Constitution of the United Republic of Tanzania, 1977, Article 9(c).

Tanzania is rich in natural resources, including wildlife, minerals and forestry. The country boasts numerous national parks and game reserves, including Serengeti and Ngorongoro National Parks. Minerals found include gold, diamond, uranium, tanzanite and iron. Yet the people benefit very little from these resources. One of the factors contributing to the people not benefiting from natural resources is the problem of poaching, particularly that of elephants and rhinoceros for their horns. The biggest black market for illegal ivory trading activity is China.

According to WILDAID and the African Wildlife Foundation (AWF), 33,000 elephants are killed for ivory each year in Africa, Tanzania inclusive.⁴¹⁵ In Tanzania, an average of 11,000 elephants is lost each year to poaching.⁴¹⁶ With the largest concentrations of African elephants, Tanzania has been cited as the largest source of poached ivory in the world.⁴¹⁷ It is reported that the Tanzanian authorities seized about 20 tons of ivory between 2010 and 2013.⁴¹⁸ In 2011, there were only 70,000 elephants, according to the Tanzania Wildlife Research Institute (TAWIRI).⁴¹⁹

65,721 Number of elephants Tanzania has lost to poaching between **2009 and 2014**, which is more than 60% of its population.

Between **2009-13** there has been a devastating decline. The Selous population fell by **66 per cent** in just over four years. Based on available evidence, Tanzania has lost more elephants to poaching during this period than any other country. In **2013** alone, it reportedly **lost 10,000 elephants**, equivalent to 30 a day.

- EIA

Poaching activities have impacted tourism, which contributed 12% of Tanzania's GDP and created 402,500 jobs in 2014. To address the poaching problem, the Government launched anti-poaching operation called *Operesheni Tokomeza Ujangili* in 2013.⁴²⁰ Similar operations were conducted before; including the 1989 *Uhai* operation after the elephant population had dropped from over 300,000 in 1960s to 55,000 in 1989.⁴²¹ The Government also successfully proposed an international ban on all African ivory trade, which helped to increase and stabilize

- 415 WILDAID & African Wildlife Foundation, *Poaching Steals from Us All: The Elephant Crisis in Tanzania*, p. 3, available at http://www.wildaid.org/sites/default/files/resources/Tanzania%20Survey%20Report_EN.pdf, accessed 27th December, 2015.
- 416 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 217.
- 417 WILDAID & African Wildlife Foundation, *supra* at 4.
- 418 Ibid.
- 419 Anthony Mayunga, "Ujangili wapoteza asilimia 67% ya tembo kwa miaka mine", *Mwananchi* (23rd September 2015).
- 420 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*, p. 218.
- 421 WILDAID & African Wildlife, *supra* at 4.

elephant population for about a decade, before the illegal activity resurged in 2000s.⁴²² According to the Environmental Investigation Agency (EIA), illegal ivory trade is mainly conducted by Chinese nationals, who are assisted by corrupt Tanzanian Government officials.⁴²³ Indeed, several government officials have been implicated in the illegal ivory trade, although they have all denied involvement in the illegal activity.

Apart from the elephants, poachers have also been targeting rhino horns, whereby the rhino population has fallen from 10,000 in 1970 to 80 in 2015.⁴²⁴ 95% of rhinos in the world have been killed in the last 40 years.⁴²⁵

Zanzibar is a major hub for smuggling large ivory consignments out of Tanzania. The growing prominence of Zanzibar as major ivory smuggling hub is connected to the emergence of prolific wildlife crime syndicates from southern China, which use the port as the main gateway for ivory shipments bound for the Chinese mainland.

- **EIA**

So, what is at stake? According to the study by WILDAID and the AWF, poaching is threatening the tourism industry in Tanzania, which is supporting more than 2 million people.⁴²⁶ The industry has contributed more than 10% to the GDP for the last three years, contributing \$4.1 billion (12%), in 2014⁴²⁷ and currently there are about 700,000 tourism-related job, which are put at risk if wildlife killing does not stop. 25,000 elephants were killed by poachers in Selous Game Reserve between 2009 and 2013, representing a potential revenue loss of \$ 40.1 billion.⁴²⁸ So the tourism industry, tourism jobs, the revenue and national pride are all at stake here; and if managed effectively and serious reforms are made, the tourism has a potential to earn an average of \$16 billion a year in the next decade (almost eight times what is earned currently), according to the World Bank.

In June 2015, WILDAID and AWF launched an anti-poaching campaign called *Ujangili Unatumiza Sote* (Poaching Steals from Us All) in collaboration with the

422 Ibid.

423 Environmental Investigation Agency, *Vanishing Point: Criminality, Corruption and Devastation of Tanzania's Elephants*, November 2014, available at <https://eia-international.org/wp-content/uploads/EIA-Vanishing-Point-lo-res1.pdf>.

424 WILDAID & African Wildlife, *supra* at 4.

425 United for Wildlife, at http://www.unitedforwildlife.org/?gclid=CjwKEAiAuea1BRCbn-2n7PbLgEMSJAABQvTTzXp3K1A4XVHMDBJHwGrwLHGrwLQOFBHKrVXk-wW48_xoCKr_w_wcB#!/the-facts, accessed 27th December, 2015.

426 See WILDAID & African Wildlife Foundation, *supra* at 4.

427 Ibid.

428 Aisia Rweyemamu, "Butchered jumbos in the Selous in five years represent loss of over \$40 billion", *The Guardian on Sunday* (25th January 2015), available at <http://www.ippmedia.com/frontend/?l=76673>, accessed 23rd November, 2015.

Ministry of Natural Resources and Tourism. The campaign is aimed at raising public awareness of poaching in Tanzania, mostly by using the media.⁴²⁹ Campaigns like this however, should be accompanied by prosecutions and heavy penalties to act as deterrent, which has not been the case for the main culprits over the last two decades.

LHRC calls upon the wildlife authorities in Tanzania and the Ministry of Natural Resources and Tourism to increase efforts in combating poaching in Tanzania. However, more needs to be done by the newly-appointed Magufuli Government to address this problem, investigating and bringing to justice the ‘big fish’ suspected to be involved in illegal ivory trade. At the centre of organized crime of illegal ivory trade is corruption, especially during inspection. EIA has criticized Tanzanian enforcement agencies for failure to detect large seizures of ivory leaving the country, with most of seizures being made after leaving the country.⁴³⁰ The Agency notes that 22.6 tones of ivory was seized in Tanzania from 2009 to 2014, while 40.7 tonnes linked to Tanzania were seized abroad during the same period, suggesting inefficiency and corruption at our ports, which are the major exit points for ivory.⁴³¹

7.2 Consumer-related Rights and the Case of Counterfeit/Substandard Products

Consumer rights in Tanzania are still threatened by the flooding of counterfeit and substandard products. Most of them come from China, India, United Arab Emirates (UAE), Indonesia, Taiwan and Thailand;⁴³² and hurt our economy and put our health at huge risk. Products that are mostly counterfeited are electronic, electrical and medicinal products.⁴³³ Major bodies responsible for consumer protection in Tanzania are the Fair Competition Commission (FCC), which has a consumer protection department; the Tanzania Bureau of Standards (TBS); and the Tanzania Food and Drugs Authority (TFDA). According to TBS the Government loses 15-25% of domestic revenue and \$343-566 million in tax evasion to counterfeit and substandard goods annually.⁴³⁴ FCC, TPDA and TBS have been in a war against counterfeit and substandard products, seizing and destroying tonnes of such products. However, their efforts have been hampered by several factors, including inadequate inspection, insufficient funds to conduct inspection and corruption within and outside their ranks.

429 WILDAID, *Tanzania: Poaching Threatens Tourism Industry Growth*, 11th August 2015, <http://wildaid.org/news/tanzania-poaching-threatens-tourism-economy-growth>, accessed 29th December, 2015

430 Environmental Investigation Agency Report, *supra* at 15.

431 *Ibid.*

432 East African Business Week, “Editorial: Tanzania right on sub-standard goods” (24th January 2016) at <http://www.busiweek.com/index1.php?Ctp=2&pI=4734&pLv=3&srI=75&spI=116>, accessed 30th January, 2016

433 LHRC, *Tanzania Human Rights Report 2014*, p. 225.

434 East African Business Week, *supra*.

In 2014, the National Audit Office (NAO) released its report on the performance audit it conducted on the management of inspection of imported goods by the TBS. The audit was conducted following public outcry on the influx of counterfeit and substandard goods in Tanzania. In this report, NAO made the following key findings:⁴³⁵

Lack of planning for the inspection process

- » Lack of clear and well-defined criteria, guidelines and measurable outcomes/ indicators
- » Planning tools not addressing crucial risk-based inspections

Inadequately conducted inspections

- » Not using risk based approach in selecting imported goods for inspection
- » Huge variation between targeted and actual inspections
- » Inadequate allocation of human resources compared to amount of imported goods
- » Inadequate resources in terms of finances and manpower to carry out inspections efficiently, effectively and adequately

Unsatisfactory Quality of inspection of imported goods

- » Increasing number of complaints on substandard goods
- » Weak tracking mechanism for goods with conditional releases
- » Lack of quality assurance on accuracy of inspection of imported goods
- » Lack of clear budget for inspection activities

Inadequate Reporting of Performance of Inspection of Imported Goods

- » Inadequate reporting form TBS and the Ministry of Industry and Trade

Inadequate Monitoring and Performance Evaluation of Inspection Activities

- » Failure to conduct periodical monitoring and evaluation of performance of inspection of imported goods by TBS and Ministry of Industry and Trade
- » No clear strategies set for improving inspections of imported goods
- » No performance indicators on TBS performance on inspection activities

In 2013/14, TFDA conducted inspections at 5,321 places, including 1,701 pharmacies and 516 cosmetics shop. During this inspection TFDA seized and destroyed 132 tonnes of foods worth Tshs. 117,138,075, 137 tonnes of drugs worth Tshs. 239,503,007 and 4.83 tonnes of cosmetics worth Tshs. 52,740,456, not suitable for human consumption.⁴³⁶ For the financial year 2014/15, 6, 484 places were inspected, including 1,484 food processing industries, 1,582 pharmacies, 1,582 health centres, 1,993 cosmetics shops and 8 cosmetics industries. During this period, TFDA seized and destroyed 60 tonnes of foods worth Tshs. 120,998,636, 73 tonnes of drugs worth Tshs. 1,339,724 and 8.82

435 United Republic of Tanzania, National Audit Office, *Performance Audit Report of the Management of Inspection of Imported Goods in Tanzania as Performed by the Tanzania Bureau of Standards*, Report of the Controller and Auditor General of the United Republic of Tanzania, March 2014.

436 Speech by the Minister of Health and Social Welfare, Hon. Dr. Seif Selemani Rashid (MP) on Estimates of Revenue and Expenditure for the Financial Year 2014/15, p. 29.

tonnes of cosmetics worth Tshs. 46,407,304.⁴³⁷

Table 27: Unsuitable/counterfeit products (in tons) seized by TFDA 2013-2015

YEAR	<i>Foods</i>	<i>Drugs</i>	<i>Cosmetics</i>	TOTAL
2013/14	132	137	4.83	273.83
2014/15	60	73	8.82	141.82
TOTAL	192	210	13.65	415.65

Source: MoHSW 2015

7.3 The Right to Development

7.3.1 Overview

The right to development is defined in the Declaration on the UN Declaration on the Right to Development of 1986 as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”⁴³⁸ This right includes full sovereignty over natural resources; self-determination; popular participation in development; equality of opportunity; and creation of favourable conditions for the enjoyment of other civil, political, economic, social and cultural rights.⁴³⁹ Apart from the Declaration on the Right to Development, this right is also contained in other international human rights instruments, including the African Charter on Human and Peoples’ Rights of 1981, the Rio Declaration on Environment and Development of 1992, the Vienna Declaration and Programme of Action of 1993 and the Declaration on the Rights of Indigenous Peoples of 2007. The Government has the primary responsibility to ensure realization of the right to development, including by adopting development (socio-economic) policies and strategies.

States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development.

437 Speech by the Minister of Health and Social Welfare, Hon. Dr. Seif Selemani Rashid (MP) on implementation of the 2014/15 Budget and Estimates of Revenue and Expenditure for the Financial Year 2015/16, p. 13.

438 Declaration on the Right to Development, G.A.R 41/128, 4th December 1986, Article 1(1), available at <http://www.un.org/documents/ga/res/41/a41r128.htm>, accessed 24th December, 2015.

439 United Nations Human Rights Office of the High Commissioner, Declaration on the Right to Development at 25, at <http://www.ohchr.org/EN/Issues/Development/Pages/Backgrounddtd.aspx>, accessed 24th December, 2015.

Human development is determined by realization different social, economic and political rights, including right to health, right to education, right to food, right to water and free participation in economic and political activities.⁴⁴⁰

7.3.2 The Situation of Human Development in Tanzania: A Glance at the Tanzania Human Development Report 2014

In 2015, the United Nations Development Programme (UNDP), in collaboration with the Economic and Social Research Foundation (ESFR) and key government institutions, launched a report on the situation of human development in Tanzania, the Tanzania Human Development Report 2014. The report revealed some key findings relating to human development in Tanzania, arguing for economic transformation as opposed to mere economic growth. The report indicates that the state of human development in Tanzania is still low based on UNDP's Human Development Index (HDI).⁴⁴¹

7.3.2.1 Some of the Key Findings and Recommendations in the Report

- » For the past decade, Tanzania's GDP has grown at an impressive rate of 7%. However, little has been achieved in poverty reduction;
- » With the exception of achievements in reduction of child mortality and increased school enrolment, improvements in the overall status of human development in Tanzania are only marginal. Tanzania has fallen **seven** positions in the Global UNDP's 2014 Human Development Index ranking;
- » Economic growth is not enough. Tanzania needs economic transformation⁴⁴² for human development;
- » While most regions in Tanzania have HDI scores comparable to countries with low HDI scores, three regions – Arusha, Kilimanjaro, and Dar es Salaam – have HDI scores comparable to countries with medium HDI levels;

0.488 Tanzania's HDI score, putting it into the bottom quartile of countries with the lowest level of human development. It ranks at 159th position out of 187 countries, hence a low human development country.

440 UNDP, United Republic of Tanzania & ESRF (2015), *Tanzania Human Development Report 2014: Economic Transformation for Human Development*, p. 1, at <http://hdr.undp.org/sites/default/files/thdr2014-main.pdf>, accessed 28th December, 2015.

441 HDI measures the level of human development in a country, ranging from 0 for low human development to 1 for high development.

442 Defined as a structural change in the economy, characterized by lesser contribution to GDP from the agricultural sector and greater contribution from the industrial and service sectors, accompanied by a demographic transition from high birth and death rates to low birth and death rates (Tanzania Human Development Report 2014).

- » The poverty levels are unacceptably high and the Millennium Development Goal of reaching a poverty level of 18% by 2015 is unattainable
- » Under-nutrition, however, remains one of the largest threats to human development in Tanzania;⁴⁴³
- » The situation of education in Tanzania is mixed. On the positive side, since the early 2000s, Tanzania's education sector has witnessed impressive achievements in school enrolments at all levels. For example, 80% of primary school-age children (age 7–13) now attend school. On the negative side, however, **the quality of education offered by Tanzania's education system is low** (this is in line with LHRC's assessment of the quality of education in Tanzania);
- » Tanzania's impressive economic growth in the last decade has failed to translate into meaningful improvements in human development;
- » The Tanzanian agricultural sector has grown at a low level of 4.3% in average over the last decade. Agriculture still occurs mainly in smallholder farms that rely on family labour. The use of technological inputs remains remarkably low compared to other countries. While Tanzania uses an average of 9 kg of fertilizer per hectare, Malawi uses 27 kg, and China even 279 kg;
- » The industrial sector has experienced impressive growth rates;
- » A particularly strong potential link between economic transformation and human development could be **found in better education and healthcare provisions**. Not only does high quality growth require healthy and educated citizens, but universal access to education is the best way to ensure open access to jobs and through that, social mobility and economic empowerment of all people;
- » The quality of governance has to be improved, including a broader participation of citizens and civil society organizations.

7.3.2.2 LHRC's View and the Way Forward

The findings in the Tanzania Human Development Report 2014 above indicate the importance of provision of quality social services, especially education and health, to attain human development. It also notes that while we have generally done well in terms of economic growth, the impact has been minimal in terms of poverty reduction, thus the growing gap between the have and the have nots in Tanzania. As discussed in the chapter on social rights above, the situation of education and health is not good,

443 It is further noted in the report that “caloric availability at the household level has hardly improved since 1997, and chronic malnutrition is estimated to be an underlying cause of over one third of under-five year old deaths.”

particularly in terms of quality of these social services; and that being the case we need to address the challenges in those sectors in order to attain human development and economic transformation. We also need to think beyond economic growth as recommended in the report; and devise ways to create more jobs to accommodate the ever growing number of youth. However, all these are not possible without good governance and accountability.

According to the 2015 Ibrahim Index of African Governance,⁴⁴⁴ Tanzania's rank has dropped to 18th out of 54 African countries, with the score of 56.7 out of 100,⁴⁴⁵ from 15th with a score of 58.2 in 2014.⁴⁴⁶ As the table below indicates, Tanzania has dropped in all four components of governance which are measured.

Table 28: Tanzania's ranking and score in African Governance 2014 & 2015

	2014		2015	
	Rank	Score	Rank	Score
Safety and rule of law	20/54	57.4	21/54	56.9
Participation and Human Rights	12/54	65.5	12/54	64.1
Sustainable economic opportunity	19/54	50.5	19/54	49.0
Human Development	23/54	59.6	26/54	56.8
Overall Governance	15/54	58.2	18/54	56.7

Source: 2015 Ibrahim Index of African Governance

On the component of participation and human rights, the country is doing bad on the aspects of freedom of expression, freedom of association and freedom of assembly, according to the 2015 Ibrahim Index of African Governance Report.⁴⁴⁷ The report notes however, despite the drop in the component of human development, it is the only one where the country improved in 2015, taking into account changes since 2011.⁴⁴⁸

LHRC calls upon the newly-appointed Magufuli Government to adhere to and promote good governance. Because of rampant corruption, mismanagement of resources,

444 The index measures the quality of governance in all African countries by looking at four components, namely safety and rule of law; participation and human rights; sustainable economic opportunity; and human development.

445 See Mo Ibrahim Foundation, *2015 Ibrahim Index of African Governance*, at <http://static.moibrahimfoundation.org/u/2015/10/02193252/2015-IIAG-Executive-Summary.pdf>, accessed 20th January, 2016.

446 See Mo Ibrahim Foundation, *2014 Ibrahim Index of African Governance: Summary Report with Key Findings*, November 2014, at <http://www.genderlinks.org.za/article/2014-ibrahim-index-of-african-governance-summary-report-with-key-findings-2014-11-24>, accessed 20th January, 2016.

447 Samuel Kamdaya, "TZ drops in governance survey", *The Citizen* (6th October 2015).

448 Ibid.

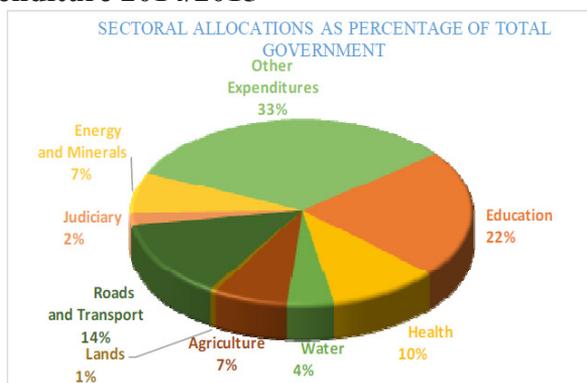
and embezzlement of public funds for the past 20 years, development projects have been suffering, lack of accountability being a key issue. Various CAG reports have indicated mismanagement of resources, theft, and embezzlement of public funds. For example, the 2013/2014 CAG Report indicates mismanagement and embezzlement of billions of shillings by public officials, including questionable purchases, unnecessary spending, ghost workers receiving salaries, and disregard of procurement processes.

On a positive note, LHRC commends the Magufuli Government for its efforts to reduce wasteful government spending. These efforts include cancelling the 2015 Independence Day celebrations and diverting the funds to Bagamoyo Road expansion in Dar es Salaam; scrapping cabinet retreat and slashing MPs' inaugural cocktail party budget to buy beds for the Muhimbili National Hospital (MNH); restricting foreign travel for public servants; and restricting first and business class airfare to the President, Vice President and Prime Minister. It also commends the steps taken to improve revenue collection, which is key for national development, culminating in the collection of record Tshs. 1.4 trillion in the month of December 2015.

7.3.2.3 Agricultural Revolution is Key

As indicated in the Tanzania Human Development Report 2014, agriculture is a key sector in Tanzania, responsible for the employment of approximately 80% of the population. This sector is one of the major contributors to the GDP, contributing an average of 24% to the GDP in 2012 and 2013.⁴⁴⁹ However, several challenges exist, including inadequate funding and misuse of public funds allocated for agricultural development as indicated CAG Reports.⁴⁵⁰

Figure 38: Sectoral Allocations as Percentage of Total Government Expenditure 2014/2015



Source: Policy Forum (2015)

449 Policy Forum, Budget 2014/2015 Position Statement, at <http://www.policyforum-tz.org/sites/default/files/policyforum.pdf>, accessed 29th December, 2015.

450 Ibid.

For the financial year 2014/15, the budget allocated for the agricultural sector was Tshs. 1.084.7 billion, an increase of 16.3% compared to that of the year 2013/14, which was Tshs. 908.1 billion.⁴⁵¹ This is equal to 7% of the total budget, as indicated in the figure above, short of the 10% proposed and agreed upon in the Maputo Declaration on Agriculture and Food Security of 2003.⁴⁵² Delays in disbursing the funds also affect implementation of agricultural projects. For example, for the financial year 2013/14, the treasury had only disbursed 50.4% of the development budget by 31st March, 2014.⁴⁵³

It is LHRC's view that Tanzania must take of technological advancement in the agricultural sector like other countries to increase production and in turn increase the agricultural exports (agricultural revolution). The Government also needs to strengthen accountability and financial transparency in management and disbursement of public funds. In order to attain development, the education, health, water, agricultural and industrial sectors are key. It remains to be seen to what extent the Magufuli Government will address the challenges in these sectors to boost human development in Tanzania.

451 *See* Government Budget for Financial Year 2014/15: Citizens' Budget Edition, Issued by Ministry of Finance in collaboration with Policy Forum, at <http://www.policyforum-tz.org/sites/default/files/citizensbudget201415.pdf>, accessed 29th December, 2015.

452 Policy Forum, Budget 2014/2015 Position Statement, at <http://www.policyforum-tz.org/sites/default/files/policyforum.pdf>, accessed 29th December, 2015.

453 Ibid.

Chapter Eight

Corruption and Abuse of Power⁴⁵⁴

8.0 Overview

Corruption hinders full realization of human rights, including civil, social and political rights.

A survey conducted by LHRC in six regions of Tanzania Mainland in 2014 revealed that most people understand corruption as “payment of money to illegally obtain a favour or advantage.”⁴⁵⁵ However, this is only one form of corruption, which is bribery. There are other forms of corruption,⁴⁵⁶ namely extortion,⁴⁵⁷ embezzlement,⁴⁵⁸ fraud,⁴⁵⁹ kickbacks and favouritism.⁴⁶⁰ Generally, corruption is defined as abuse of public power or office for private gain or benefit.⁴⁶¹

Since 1970s, after independence and union of Tanganyika and Zanzibar to form Tanzania, the state authorities have taken several measures to combat corruption, including:

- the enactment of the Prevention of Corruption Act of 1971,⁴⁶² establishing the Anti-Corruption Squad, which was under the Ministry of Home Affairs;⁴⁶³

454 Though it is a cross cutting issue in most other chapters, we have decided to allocate it its own chapter, given the magnitude of the problem in Tanzania.

455 LHRC (2014), Report on Corruption Awareness, Whistleblower Protection and People’s Willingness to Fight Corruption in Tanzania: A Case Study of Six Regions in Tanzania Mainland.

456 Prevention Of Corruption Bureau (2005), *The Incidences of Corruption in The LandSector*, Publication Number 2, p. 3, available at http://www.tanzania.go.tz/egov_uploads/documents/corruption_in_land_sector_sw.pdf [PCCB Report 2005]

457 Involves the use of coercion, violence or threats to obtain or extract resources from a person.

458 Misappropriation of property or funds by a person legally entrusted with them (usually done by public officials).

459 An economic crime involving trickery and deceit, aimed at obtaining unfair advantage.

460 This is where a person in certain position of power misuses it to favour friends, family, relative or anyone they are close with (includes nepotism).

461 See Transparency International’s definition at http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/, accessed 28th July 2014; PCCB Report, *supra*.

462 Act No. 16 of 1971.

463 Dr. Mujwahuzi Njunwa, *Governance Initiatives to Fight Corruption, Combating Corruption in Tanzania’s public Service: Successes And Challenges*, Associate Professor of public

- the enactment of Economic and Organized Crimes Control Act in 1984, which incorporated offences stipulated in the Prevention of Corruption Act as economic offences;
- the formation of the Prevention of Corruption Bureau, replacing the Anti-Corruption Squad, in 1991;⁴⁶⁴ and
- the formation of the Presidential Commission of Inquiry against Corruption by the Mkapa Government in 1995. This Commission was led by Rtd. Judge Joseph Sindi Warioba and was tasked with carrying out an in-depth study on corruption in areas such as land, health, education, judiciary, police and taxation.⁴⁶⁵ The Commission was expected to reveal status and causes of corruption in Tanzania, and then provide recommendations to help the Government in combating corruption.

The Warioba Anti-Corruption Commission found that, among other things, public servants engaged in petty corruption to supplement their meager incomes, while senior government officials engaged in grand corruption to satisfy their excessive greed for accumulation of wealth. After the release of the Warioba Report in 1996, several legal and institutional reforms were made in combating corruption. These include the adoption of the National Anti-Corruption Strategy and Action Plan (NACSAP) in 1999 and the establishment of the Prevention and Combating of Corruption Bureau (PCCB) in 2007. The current anti-corruption framework in Tanzania includes international,⁴⁶⁶ regional⁴⁶⁷ and national⁴⁶⁸ laws/instruments.

This Chapter highlights the status of corruption in Tanzania, with a particular focus on corruption in public service in 2015. It also looks at how Tanzania has fared in the corruption perception indexes in 2015.

policy and Administration Director Institute of Public Administration Mzumbe University, Mzumbe, p. 14, available at http://www.napsipag.org/pdf/MUJWAHUPI_NJUNWA.pdf, accessed 20th January, 2016.

464

Ibid.

465

Ibid.

466

United Nations Convention Against Corruption, 2003

467

AU Convention on Preventing and Combating Corruption, 2003; SADC Protocol Against Corruption, 2000; EAC Protocol on Preventing and Combating Corruption, 2012.

468

Prevention and Combating of Corruption Act, 2007; Public Finance Act, 2001; Public Procurement Act, 2004; Anti-money Laundering Act, 2006; Criminal Procedure Act, 1985; Political Parties Act, 1992; Election Expenses Act, 2010; and Economic and Organized Crime Control Act, 1984.

8.1 Status of Corruption in Tanzania: Transparency International's Corruption Perception Index 2015

Despite measures, taken by various Tanzanian governments since independence to combat corruption, the situation of corruption has been worsening in the past 15 years, whereby the country has witnessed several grand corruption scandals; and petty corruption in public service has been rampant. The grand corruption scandals include:

- ♦ the BAE Systems Radar scandal;⁴⁶⁹
- ♦ the EPA scandal;⁴⁷⁰
- ♦ the David Jairo scandal;⁴⁷¹
- ♦ the Richmond scandal;⁴⁷²
- ♦ the Alex Stewart (Assayers) scandal;
- ♦ the BoT Twin Towers scandal;
- ♦ the VIP Lounge at JNIA scandal; and
- ♦ the Escrow Account saga.⁴⁷³

The worsening situation is captured in the Transparency International's Corruption Perception Index, in which Tanzania seems to be dropping in scores. For the year 2015, Tanzania scored 30 points out of 100, which is lower than the 31 obtained in 2014.

469 Tanzanian Government overpaid for the used radar, purchased from British Aerospace Systems for USD 40 million. BAE Systems paid a bribe of 12 million to win the contract.

470 Fraudulent payments b the Bank of Tanzania's External Payment Arrears account (EPA). Payments (USD 100 million) made to companies not officially existing.

471 David Jairo was accused of bribing MPs to persuade them to pass budget of Ministry of Energy and Minerals when he was Permanent Secretary to the Ministry.

472 Involved large payments made to Richmond Company in 2006. The then Prime Minister, Edward Lowassa, was implicated and later resigned.

473 Several high profile government officials and public figures were implicated in this scandal, including Mr. Andrew Chenge (MP), Prof. Anna Tibajuka (MP and the then Minister of Lands, Housing and Human Settlements Development), Mr. Daniel Yona (former Cabinet Minister and also implicated in the EPA scandal), Mr. Emmanuel Daniel Ole Naiko (former TIC Executive Director) and Judge J.A.K Mujulizi.

Figure 39: Tanzania's CPI score trend 2012-2015



As the figure above indicates Tanzania's CPI scores have been on a downward trend since 2012, falling by 5 points in 2015. Lack of accountability for the high profile public figures and prominent businessmen implicated in grand corruption has created a culture of impunity. As result, the long-term economic growth of the country is put in jeopardy as studies indicate that affects equitable distribution of resources across the population, increases income inequalities, facilitates tax evasion and ultimately results in lower levels of human development.⁴⁷⁴

LHRC calls upon the newly-appointed Magufuli Government to revamp anti-corruption efforts, strengthening the capacity of anti-corruption bodies, particularly PCCB, to investigate and prosecute corruption suspects. **The so called “big fish” who are implicated in grand/political corruption should not be allowed to escape accountability in order to revive people’s faith in the justice system.**

8.2 The Stanbic Bank Bribery Scandal

The Stanbic Bank of Tanzania, a subsidiary of the Standard Bank PLC, was hit with a scandal of bribery to win a lucrative government bond deal in March 2013. Standard Bank is co-owned by South Africa's Standard Bank Group Limited and the Industrial and Commercial Bank of China. The scandal was exposed in 2015 by the UK's Serious Fraud Office (SFO) after its investigations on the matter led to a Differed Prosecution Agreement (DPA)⁴⁷⁵ with the Standard Bank PLC, approved in court in UK on 30th

474 See Transparency International, *Impact of Corruption on Growth and Inequality*, at http://www.transparency.org/files/content/corruptionqas/Impact_of_corruption_on_growth_and_inequality_2014.pdf, accessed 30th December 2015.

475 DPA was introduced in UK in 2014 for corporations, according to which companies are

November, 2015.⁴⁷⁶ Under this agreement, Standard Bank PLC acknowledged its fault in failing to prevent Stanbic Bank Tanzania and its top officials from paying bribes to senior government officials in order to win the bond deal in March, 2013, which is an offence under section 7 of the UK's Bribery Act of 2010.⁴⁷⁷ The bribe in question was in a form of a \$6 million fee paid by Stanbic Bank Tanzania to a local agent in the deal called Enterprise Growth Market Advisors Ltd (EGMA), which was paid out of money raised by Standard Bank PLC for the Tanzanian Government.⁴⁷⁸ However, it was revealed that there was no justification for the payment of the fee as EGMA did not provide any real services.⁴⁷⁹ Standard Bank PLC's consideration for DPA was made possible by the fact that it reported the misconduct to SFO within weeks of an alert by some Stanbic Tanzania employees.

As a result of the DPA, Standard Bank PLC agreed to pay the Tanzanian Government a compensation of \$ 7.05 million for harm done due to the corrupt deal.⁴⁸⁰ However, a report by Corruption Watch UK, a corruption watch organization based in UK, in December 2015 revealed that the compensation agreed to be paid is not adequate.⁴⁸¹ Part of the report reads:⁴⁸²

charged but criminal proceedings do not take place as long as conditions of the agreement are met, including full cooperation for prosecutors.

476 Corruption Watch UK, *The UK's First Deferred Prosecution Agreement: Good News for the SFO But Worrying News for Tanzania and the Fight Against Bribery*, December 2015, p. 1, available at <http://www.cw-uk.org/wp-content/uploads/2015/12/Corruption-Watch-UK-Report-and-Analysis-UKs-First-Deferred-Prosecution-Agreement-December-2015.pdf>, accessed 20th January, 2016; Margot Patrick, "Standard Bank to Pay \$32 Million Over Tanzania Bribery Case", *The Wall Street Journal* (30th November 2015), available at <http://www.wsj.com/articles/standard-bank-to-pay-32-million-over-tanzania-bribery-case-1448899606>, accessed 19th January, 2016.

477 Corruption Watch UK, *supra* at 3.

478 *Ibid.*

479 *Ibid.*

480 Margot Patrick, *supra*.

481 *The Guardian*, "How Tanzania was short changed in Stanbic bribery payback" (16th December, 2015), available at <http://www.ippmedia.com/?l=87089>, accessed 19th January, 2016; Athuman Mtulya, "Stanbic scandal: Dar Undercut by Sh.148bn", *The Citizen* (16th December 2015), available at <http://www.thecitizen.co.tz/News/Stanbic-scandal--Dar-undercut-by-Sh148bn/-/1840340/2999096/-/nlxtu2z/-/index.html>, accessed 29th December, 2015.

482 Corruption Watch UK, *supra* at 7.

The bond that Standard Bank PLC won the mandate to issue for the Government of Tanzania was very controversial when it was issued. The bond was unrated and unlisted, and drawn up in a way that was of interest to a limited number of investors. It was heavily criticized by people within the financial sector at the time. One banker described the bond as a “disaster” to Reuters in March 2013 and another described it as a “lose-lose situation” for everyone involved apart from a specific group of investors. An IMF study stated that the deal “compares poorly relative to the trading level of its peers” and that it was characterized by “poor pricing.” It has been suggested to Corruption Watch that the **bond issued by Standard Bank resulted in potential additional cost to Tanzania of more than \$80 million in excess interest and fees** when compared to more traditional financing forms which were proposed to the Government of Tanzania at the time.

The UK-based anti-corruption agency also criticized the Court and SFO for failing to demand evidence of full financial loss to Tanzania, including expert evidence, which would have been crucial in calculating the actual financial penalty for the bank. The report also reveals under-calculation of profits made by Standard Bank PLC due to the market and financial advantage obtained through corruption. The corruption watchdog further lamented shielding of individual Standard Bank PLC officials from criminal accountability, while it appeared that the head of the Standard Bank PLC in UK blessed the involvement of the local agent during negotiations over the bond deal.⁴⁸³ Moreover, the mandate and fee letters, which were drafted with the help of the Standard Bank PLC team, deliberately to mention EGMA as local partner, with the fee letter only indicating that the Tanzanian Government was to pay Standard Bank PLC, Stanbic Bank Tanzania and a ‘local partner’ (no name) a combined fee of 2.4%.⁴⁸⁴ Standard Bank PLC has since denied knowledge of the misconduct by Stanbic Bank Tanzania’s employees.

Here in Tanzania, officials implicated in the bribery scandal are less likely to escape criminal accountability like their counterparts in UK. They are Mr. Harry Kitilya, the former Director General of the Tanzania Revenue Authority (TRA); Dr. Fraten Mboya, the former Director General of the Capital Markets and Securities Authority (CMSA), Mr. Gasper Njuu; Mr. Peter Nyabuti from Astra Insurance Brokers Ltd; and Mr. Bashir Awale, former Managing Director of Stanbic Bank; and Ms. Shose Sinare, former Head of Corporate and Investment Banking at Stanbic Bank.⁴⁸⁵ Mr. Kitilya, Mr. Njuu and Mr. Nyabuti are part of EGMA Board, with Mr. Njuu its Managing Director, the seat which was occupied by Dr. Mboya when the deal was done in 2013. Dr. Mboya has been identified as the one who withdrew the money from a special

483 Ibid, p. 4.

484 Ibid, p. 5.

485 *The Citizen*, “The names behind Sh12bn bribery scandal” (2nd December, 2016), available at <http://www.thecitizen.co.tz/News/-/1840340/2981352/-/8auu07/-/index.html>, accessed 15th January 2015.

account for EGMA in four transactions in 10 days. The suspects and EGMA are currently under PCCB investigation.

LHRC commends the bravery of the four Stanbic Bank Tanzania employees, who alerted Standard Bank Headquarters of the misconduct, playing the role of whistleblowers in this grand corruption scandal. Whistleblowers, however, still face the challenge of protection, whereby they are not adequately protected by the current legal and institutional anti-corruption framework. But as Tanzanians we still have a duty to expose corruption wherever it occurs, playing our part in combating it.

LHRC is of the view that the Government contacts SFO and Standard Bank PLC for the re-evaluation of the compensation to paid to Tanzania, since it is obvious that the compensation offered is not adequate and Tanzania's image has yet again been tainted with corruption, which will have a negative impact on investors and add to the country's debts. Those implicated in the scandal should be thoroughly investigated and prosecuted to remind other officials that corruption will not be tolerated.

8.3 Corruption at TPA and TRA: The Case of Bribery and Tax Evasion

Shortly upon taking charge of the State in late 2015, the Magufuli Government launched a crackdown on Tanzania Ports Authority (TPA) and Tanzania Revenue Authority (TRA), as part of the fight against corruption and lack of accountability in the public sector.⁴⁸⁶ The impromptu visit at TPA made by the Prime Minister, Mr. Kassim Majaliwa, resulted into the sacking of top TPA officials, including the Director General, Mr. Awadh Massawe and the board chairman, Prof. Joseph Msambichaka.⁴⁸⁷ The Permanent Secretary for Ministry of Transport, Dr. Shaaban Mwinjaka, was also axed; and the TPA Board was disbanded. Some TRA officials, including the TRA chief, Rished Bade, were in connection with loss of revenue due to corruption and tax evasion at the TPA and TRA.

The sacking of TPA and TRA officials came after the discovery of about 3000 containers cleared at the Dar es Salaam Port before payment of taxes worth an estimated Tshs. 80 billion, which saw eight suspects, including TRA officials charged in court.⁴⁸⁸ In connection with the corruption and tax evasion issues at the TPA, the PCCB Director General, Dr. Edward Hoseah, was axed for failure to effectively address corruption

486 See *The Citizen*, "Why TPA bosses were sacked" (8th December 2015), available at <http://www.thecitizen.co.tz/News/-/1840340/2988070/-/8b0mwq/-/index.html>, accessed 30th December 2015.

487 Ibid.

488 Ibid; Katere Mbashiru, "TRA Chief axed in Magufuli tax crackdown", *The Citizen* (28th November 2015), available at <http://www.thecitizen.co.tz/News/TRA-chief-Bade-axed-in-Magufuli-tax-crackdown/-/1840340/2975334/-/fq5y80z/-/index.html>, accessed 30th December, 2015.

and tax evasion at TPA and TRA, occasioning the Government loss of billions of shillings.

Table 29: Sackings of Top Officials at TPA

Year	Sacked Official	Allegations/Charges	Sacking Official
August 2012	TPA Director General- Emphrain Mgawe	Abuse of office, granting tender to a Chinese construction company, China Communications Ltd., without following procurement process (inviting tenders) Case at Kisutu Resident Magistrate Court	Minister of Transport- Harrison Mwakyembe
	TPA Deputy Director General – Hamadi Koshuma		
April 2015	TPA Director General- Madeni Kipande	Abuse of Office	Minister of Transport – Samuel Sitta
December 2015	TPA Director General – Awadh Massawe	Failure to prevent tax evasion at Dar es Salaam Port, including clearing containers before tax payment	President John Magufuli and Prime Minister Kassim Majaliwa
	Acting TPA Director of Finance - Ibin Masoud		
	Assistant Port Manager – Finance – Appolonia Mosha		
	TPA Revenue Manager – Shaaban Mngazija		
	Director of Finance and Head of ICDs – Rajab Mdoe		

LHRC is of the view that TPA and TRA are key areas for government revenue, which is needed for national and human development. The new Government should closely monitor these institutions to curb corruption and tax evasion, which occasion the state

huge losses of revenue. If properly managed, the Dar es Salaam Port has potential to generate more revenue for the cash-strapped Government to be used to improve national budget and reduce dependency on foreign aid.

8.4 PCCB and other Anti-Corruption Bodies: Corruption and Related Cases in 2015

8.4.1 Overview

PCCB is the major anti-corruption body in Tanzania, replacing the Prevention of Corruption Bureau (PCB) in 2007; and its main functions are to prevent and combat corruption. Other anti-corruption bodies are the Office of the Director of Public Prosecutions (DPP), the Commission for Human Rights and Good Governance (CHRAGG), the National Audit Office (NAO), the Ethics Secretariat, and the Public Procurement Regulatory Authority (PPRA). DPP's mandate is to prosecute corruption cases after investigations by PCCB. CHRAGG's role in fighting corruption is addressing corruption as a hindrance to good governance. Among its functions are: conducting an inquiry into matters relating to infringement of human rights and violations of principles of good governance; and inquiring into the conduct of any person or institution in relation to the ordinary performance of duties or functions or abuse of office.⁴⁸⁹

The Office of the Controller and Auditor General (CAG), which is established under Article 143 (1) of the Constitution of the United Republic of Tanzania, 1977, is responsible for auditing and giving audit reports in respect of the accounts of the Tanzanian Government, accounts managed by all officers of the Government, accounts of all courts of the United Republic and accounts of the Clerk of the National Assembly.⁴⁹⁰ Reports of the CAG have been revealing embezzling and mismanagement of public funds and finances.

The Ethics Secretariat is established under Article 132(1) of the Constitution of the United Republic of Tanzania, 1977. Its main functions are to administer disclosure of assets of public officials and initiate investigations upon receiving complaints against public officials in relation to breach of the Code of Ethics. It acts as a watchdog for political figures, making sure that they do not engage in corruption and any other unethical behaviour.

Established in 2004, the Public Procurement Regulatory Authority (PPRA) is responsible for ensuring that procurement standards and practices are fair, competitive,

489 Constitution of the United Republic of Tanzania 1977, Article 130.

490 The auditing mandate of the CAG is also stipulated in the Public Finance Act, 2001.

transparent, and non-discriminatory as well as value for money.⁴⁹¹ It is also vested with the mandate to investigate and expose corrupt or fraudulent practices during public procurement processes.⁴⁹²

8.4.2 PCCB Investigation and Prosecution of Corruption Cases in 2015: Jail Sentences for former Cabinet Ministers

In July, 2015, two former cabinet ministers, Basil Mramba and Daniel Yona, were convicted of abuse of power charges at the Kisutu Resident Magistrate Court and sentenced to 3 years in prison each, as well as paying a fine of Tshs. 5,000,000.⁴⁹³ They were convicted by a three-judge panel, led by Resident Magistrate Sam Rumanyika, whereby Basil Mramba was found guilty of all 11 charges against him, 10 of which related to abuse of power and one was for occasioning the country the loss of Tshs. 11.7 billion.⁴⁹⁴ For Daniel Yona, he was found guilty of the first, second, third and fifth charges, which related to abuse of power and the eleventh charge, which is occasioning the Government the loss of Tshs. 11.7 billion.

Picture 22: Former cabinet ministers, Basil Mramba (left) and Daniel Yona (right) at the Kisutu Resident Magistrate's Court



491 Public Procurement Act, 2004, s. 5(1).

492 Ibid, s. 72(2).

493 PCCB Website, *Mawaziri Wawili wa Zamani Wahukumiwa Kifungo cha Miaka Tisa*, available at <http://www.pccb.go.tz/index.php/investigation/prosecution/553-mwanasheria-wahalmashauri-ya-wilaya-ya-songea-anaswa-kwa-rushwa>, accessed 20th January, 2016; *Tausi Ally, Yona, "Mramba jela miaka mitatu" Mwananchi* (7th July, 2013), available at <http://www.mwananchi.co.tz/habari/Kitaifa/-/1597296/2777838/-/riu1n2z/-/index.html>, accessed 20th January, 2016.

494 Ibid.

The former cabinet ministers and two other senior government officials were charged at Kisutu Resident Magistrate's Court in January, 2009 with abuse of office that cost the Tanzanian Government the loss of Tshs. 11.7 billion.⁴⁹⁵ They were accused of giving preferential treatment by granting full tax exemption to a gold assaying firm from the United Kingdom called M/S Alex Stewart Government Business Corporation, offences they committed between August 2002 and June 2004.⁴⁹⁶ The charges came after three years of investigations by PCCB and the Police; and six years later, the case has finally been concluded.

Any person who intentionally abuses his position in the performance or failure to perform an act, in violation of law, in the discharge of his functions or use of position for the purpose of obtaining an undue advantage for himself or for another person or entity, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

- Prevention and Combating of Corruption Act, s. 31

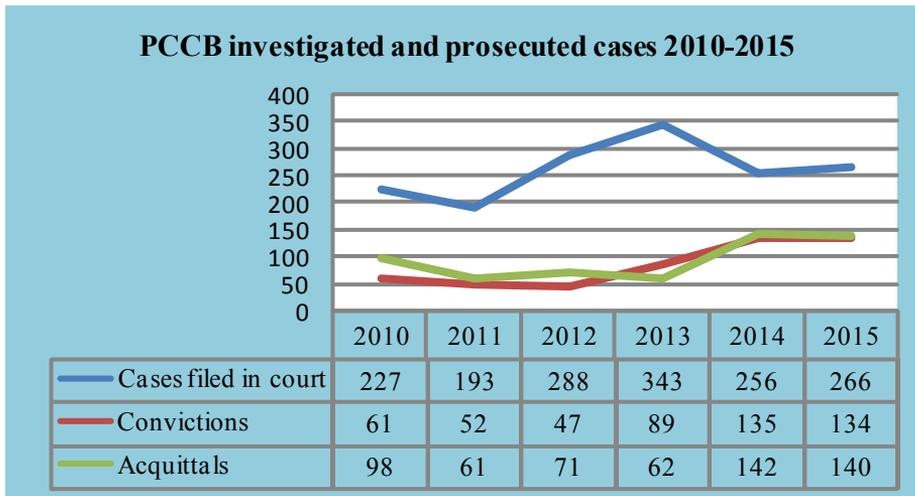
The convictions of Mr. Mramba and Mr. Yona, who are among the 'big fish' (given their former status as senior government officials), is a welcome news in the fighting against corruption and abuse of power in Tanzania, considering that there have been cries for the big fish to also be held accountable and receive fair sentences for their engagement in corruption. Based on the provision of the Prevention and Combating of Corruption Act on punishment for abuse of position, it appears that the sentences for Yona and Mramba were fair.

For the year 2015, PCCB sent 266 files to Court after completing investigations, by September, which is 10 more than those sent to court in 2014. During the same period, 134 convictions were obtained, while acquittals were 140, as the figure below indicates.

495 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.

496 Ibid.

Figure 40: Cases filed and investigated by PCCB 2010-2015



Source: PCCB

The figure above indicates a huge gap between cases filed in court and convictions. This can be attributed to the required evidentiary standard in criminal cases, as stipulated in the Evidence Act, demanding proof beyond reasonable doubt. This burden of proof has proven to be a serious challenge in corruption cases, as the offences are usually committed in secret, hence difficulties in obtaining direct evidence.

The table below highlights some of the cases filed by PCCB in 2015 against public servants and the charges they face.

Table 30: Some of the corruption cases taken to court in 2015

Name	Position/Occupation	Charge
1. Theophil John	Senior Engineer from the Rural Energy Agency (REA)	Receiving Tshs. 161.4 million from businessman James Rugemalira believed to be given for corrupt purposes.
2. Rugonzibwa Theophil	Director of Legal Affairs at the Ministry of Land, Housing and Human Settlements Development	Receiving Tshs. 323 million from Mr. James Rugemalira believed to be a bribe.
3. Julius Angello	Director of Finances at the Bank of Tanzania	Receiving a bribe of Tshs. 161,700,000 from James Rugemalira
4. Kyabukoba Mutabigwa	TRA Tax Exemptions Manager	Receiving a bribe of Tshs. 1,617,000,000 from the Director of VIP Engineering and Marketing, Mr. Jams Rugemalira (first charge) Receiving a bribe of Tshs. 161,700,000 from James Rugemalira on 15 th July, 2014 (second charge) Receiving a bribe of Tshs. 161,700,000 from James Rugemalira 26 th August, 2014 (third charge)
5. Steven Urassa	Senior Legal Officer at TANESCO	Receiving a bribe of Tshs. 161,700,000 from James Rugemalira on 14 th November, 2014 (fourth charge) Receiving a bribe of Tshs. 161,700,000 from James Rugemalira on 14 th February, 2014
6. Hotay Tluway	Legal Officer at the Songea Municipal Council	Nailed in a trap set by PCCB after it was reported that together with some villagers of the Makwaya Village, Muhukulu Ward, he had planned to bribe a magistrate at the Songea District Court so that the case against the villagers is dismissed. They were caught giving the magistrate a bribe of Tshs. 330,000

Name	Position/Occupation	Charge
7. Siraviani Mbarare	A resident of Makwaya Village, Songea	Caught together with the Legal Officer of the Songea Municipal Council, Hotay Tluway in a trap set by PCCB.
8. Arnold Shada	Officer at the Ministry of Health	Charged with abusing his position by failing to provide information so that the name of a retired civil servant, Ms. Rotha Mboya, is removed from the payroll, contrary to s. 31 of the Prevention and Combating of Corruption Act, 2007 (first charge) Occasioning the Government the loss of Tshs. 1,091,904.75 paid to the retired civil servant, in contravention of s. 57(1) and 60(2) of the Economic and Organised Crime Control Act, CAP 200 of 2002 (second charge)
9. Prisca Lwangili	Officer at the Ministry of Health	Abuse of position by failing to inform to the Chief Accountant of the Ministry to remove from payroll Ms. Kaanansia Mmari, who had retired (first charge) Occasioning the Government the loss of Tshs. 1,682,653.52 paid to the retired civil servant. Ms. Kaanansia Mmari contrary to the Economic and Organised Crime Control Act (second charge)
10. Agnes Hugo	Officer at the Ministry of Health	Charged with abuse of position by failing to disclose that Ms. Edith Maimu has retired and should thus be removed from payroll (between April and October 2008), occasioning the loss of Tshs. 942,599.76
11. Unnamed	Regional Administrative Secretary – Mara Region	Charged with abuse of position under the s. 31 of the Prevention of and Combating of Corruption Act, 2007 by signing the building construction consultancy contract with a company called SR Consult Limited, which granted in consultancy in the construction of the Nyerere Hospital in Mara. Together with the Legal Officer in his office, they disregarded the instructions given by the regional procurement board, contrary to s. 35(1)(b) and 75(a) and (b) of the Public Procurement Act No. 7 of 2011, resulting into the company obtaining Tshs. 3.2 billion.

Name	Position/Occupation	Charge
12. Unnamed	Legal Officer in the Office of the Regional Administrative Secretary - Mara	Charged together with the Regional Administrative Secretary – Mara in connection with the contract offered to SR Consult Limited.
13. Unnamed	Chairperson of the Kilombero Land Tribunal	Accused of soliciting a bribe of Tshs. 2 million from one Mfaume Mohamed Ngaula, who was the defendant in a dispute before the tribunal presided over by him.
14. Hadija R. Nyembo	Uvinza District Commissioner (former District Commissioner – Chato, Geita)	Accused of using documents with intent to deceive the employer contrary to s. 22 of the Prevention and Combating of Corruption Act, 2007; forgery contrary to s.333, s.335 (a) and s.337 of the Penal Code, CAP 16 (R.E 2022); and occasioning loss to the Government contrary to s.10 (1) of the Economic and Organised Crime Control Act CAP 200 (R.E 2002) and aiding and abetting
15. Dr. Fares Tongora	Agricultural Officer – Chato District	commission of offence contrary to s.30 of the Prevention and Combating of Corruption Act, 2007. The offences were committed during the distribution of agricultural inputs in Chato District in 2010-2011.
16. Robert Matungwa	Former Legal Officer – Chato District	
17. Elihuruma Nderingo	Agricultural Officer	
18. Godwin Kazaura	Deputy Village Executive Officer – Bupandwampuli Village	
19. Unnamed	Magistrate – Mwanga District	Accused of soliciting and receiving a bribe of Tshs.800, 000 from a woman whose husband was facing criminal charges at Mwanga District Court. He was caught when the woman tipped the PCCB, which set a trap for him.

Source: PCCB Website⁴⁹⁷

497 <http://www.pccb.go.tz/index.php/investigation/prosecution/572-sakata-la-escrow-vigogo-wa-bot-tra-tanESCO-rea-na-ardhi-wapandish-wa-kizimbani>; <http://www.pccb.go.tz/index.php/investigation/prosecution/570-mawaziri-wawili-wa-zamani-wahukumiwa-kifungo>

As the table above indicates, some of the public officials were charged with receiving bribe from Mr. James Rugemalira, the Director of Engineering and Marketing. LHRC's understanding of anti-corruption law is that both the giver and receiver of bribe commit an offence. So this begs the questions, "Where is Rugemalira in all this?" The law dictates that if there are people who have been investigated and charged with receiving money from Mr. Rugemalira then surely he must also be investigated and charged with giving bribe.

8.4.3 The 2014 Tegeta Escrow Account Saga: Proceedings against Top Government Officials at the Ethics Tribunal in February and March 2015

Following the 2014 Escrow Account corruption scandal,⁴⁹⁸ in which several senior government officials were implicated, the Ethics Secretariat, whose mandate is to ensure that those entrusted with public office do not engage in any unethical behaviour, including corrupt practices, subjected the public officials implicated in the Escrow Account scandal to its Ethics Tribunal to explain themselves. Those who were called before the Ethics Tribunal were Mr. Andrew Chenge, former Attorney General and current MP of Bariadi West; Prof. Anna Tibaijuka, former Minister of Lands, Housing and Human Settlements Development and current Muleba South; Mr. William Ngeleja, former cabinet minister and current Sengerema MP; Mr. Shaaban Gurumo, State House Comptroller; Dr. James Diu, Director of Economic Affairs at TCAA; Gullum Dewji Remtullah, Tabora Municipal Council Mayor; Mr. Philip Saliboko, Chief Executive Officer at the Registration, Insolvency and Trusteeship Agency (RITA); Loicy Appollo, Deputy Commissioner for Tax Investigations at the Tanzania Revenue Authority (TRA); and Rugonzibwa Mujunangoma, Director of Legal Services at the Ministry of Land, Housing and Human Settlements Development.

The proceedings at the Ethics Tribunal, hosted at the Karimjee Halls in Dar es Salaam, started on 23rd February, 2015.⁴⁹⁹ The Tribunal panel consisted of Rtd. Judge Hamis Msumi, assisted by Ms. Selina Wambura and Ms. Hilda Gondwe.

cha-miaka-tisa; <http://www.pccb.go.tz/index.php/prevention/622-maafisa-wizara-ya-afya-wapandishwa-kizimbani-kwa-makosa-ya-rushwa>; <http://www.pccb.go.tz/index.php/prevention/630-katibu-tawala-mkoa-wa-mara-na-mwanasheria-wake>; <http://www.pccb.go.tz/index.php/prevention/621-mwenyekiti-wa-baraza-la-ardhi-kilombero-afikishwa-mahakamani-kwa-rushwa>; <http://www.pccb.go.tz/index.php/prevention/137-dkt-hoseah-aelimisha-viongozi-wa-dini-pamoja-na-klabu-za-wapinga-rushwa>; <http://www.thecitizen.co.tz/oped/Magistrate-arrested-in-bribe-plot/-/1840568/2621268/-/dmdtk/-/index.html>.

498 The scandal is covered in detail in LHRC's 2014 Tanzania Human Rights Report.

499 Ethics Secretariat website at http://www.ethicssecretariat.go.tz/?p_id=3 (Baraza la Maadili Lamaliza Vikao Vyake).

Andrew Chenge – former Attorney General and Bariadi West MP

Among those called to answer to allegations of illegally receiving huge sums of money in the Escrow Account from Mr. James Rugemalira, was the former Attorney General and current MP of Bariadi West, Mr. Andrew Chenge. Mr. Chenge was called before the Secretariat in February, 2015 to explain why he was paid Tshs. 1.6 billion by James Rugemalira from the Escrow Account.⁵⁰⁰ When the charges, violating the Public Leadership Code of Ethics Act were read, he objected to the lawfulness of Secretariat debating the whole Escrow Account saga, arguing that the matter is before the Court and there was a court order prohibiting the Secretariat or any other institution to discuss the matter.⁵⁰¹ However, objection was after the Ethics Tribunal judges deliberated on the issue; and Mr. Chenge went to the High Court as a result, filing a case against the Attorney General, the Ethics Secretariat and the Ethics Tribunal.⁵⁰² The respondents successfully filed a preliminary objection and the Court dismissed the case.⁵⁰³

Picture 23: Mr. Adrew Chenge before the Ethics Tribunal⁵⁰⁴

500 Karate Mbashiru, “Ethics team can’t grill me: Chenge”, *The Citizen*, 26th February, available at <http://www.thecitizen.co.tz/News/national/Ethics-team-can-t-grill-me--Chenge/-/1840392/2635794/-/wwvicxz/-/index.html>, accessed 20th January, 2016.

501 Ibid.

502 James Magai, “Chenge agonda mwamba escrow”, *Mwananchi*, (27th June, 2015) available at <http://www.mwananchi.co.tz/habari/Kitaifa/Chenge-agonga-mwamba-escrow/-/1597296/2766944/-/ud8hjfz/-/index.html>, accessed 20th January, 2016.

503 Ibid.

504 *Mwananchi* Newspaper (Thursday, February 26, 2015).

During the Chenge proceedings, the Ethics Secretariat lawyers told the Ethics Tribunal that when Mr. Chenge was holding office as the Attorney General he advised the Government to enter into a 20-year contract with IPTL to supply electricity; and that in 2006, a year after he had retired, he signed a contract with VIP Engineering and Marketing Limited, which owned 30% of IPTL, as their legal consultant. They argued that this constitutes violation of Public Leadership Code of Ethics Act of 1995, under s. 6(j).⁵⁰⁵ The provision reads:

In relation to post-employment, that public leaders shall not act, after they leave public office, in such manner as to bring the service to ridicule or take improper advantage of their previous office, so that possibilities may be minimized of-

- (i) Allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public leaders while in public office;
- (ii) Obtaining preferential treatment or privileged access to government after leaving public office;
- (iii) Taking personal advantage of information obtained in the course of official duties and responsibilities until it becomes generally available to the public; and
- (iv) Using public office to unfair advantage in obtaining opportunities for outside employment.

The Secretariat lawyers further argued before the Tribunal that by receiving the money from Mr. James Rugemalira, Mr. Chenge also breached s. 12 (1) (e) (i) of the Public Leadership Code of Ethics Act, 1995. This provision states that “a public leader shall be considered to have breached the Code if he knowingly acquires any significant pecuniary advantage, or assists in the acquisition of any pecuniary advantage by another person by soliciting or accepting transfers of economic benefit, other than benefits of nominal value, including customary hospitality and traditional or token gifts.”

Additionally, the former Attorney General was accused of breaching s. 6(e) and s. 6 (j) on the principles to be invoked in respect of the conduct of public leaders; s. 9(6) (b) on declaration of assets and liabilities; and s. 14 (declaration of interest in Government contract) of the Public Leadership Code of Ethics Act, 1995.⁵⁰⁶ Section 6(j) of the Act reads:

505 Karate Mbashiru, “Ethics team can’t grill me: Chenge”, *The Citizen*, 26th February, available at <http://www.thecitizen.co.tz/News/national/Ethics-team-can-t-grill-me--Chenge/-/1840392/2635794/-/wwwicxz/-/index.html>, accessed 20th January, 2016.

506 *Mwananchi*, “Mazito ya Chenge yaibuka”, available at <http://www.mwananchi.co.tz/habari/Kitaifa/Mazito-ya-Chenge-yaibuka/-/1597296/2635786/-/10ebvkp/-/index.html>, accessed on 21st January, 2016

6. Principles to be invoked by Code

The Code of Ethics for public leaders shall seek as far as possible to institute and invoke the following principles in respect of the conduct of public leaders, namely–

- (j) in relation to post-employment, that public leaders shall not act, after they leave public office, in such a manner as to bring the service to ridicule or take improper advantage of their previous office, so that possibilities may be minimised of–
 - (i) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public leaders while in public office;
 - (ii) obtaining preferential treatment or privileged access to government after leaving public office;
 - (iii) taking personal advantage of information obtained in the course of official duties and responsibilities until it becomes generally available to the public; and
 - (iv) using public office to unfair advantage in obtaining opportunities for outside employment.

According to section 6 (e) of the Act where public leaders are appointed or elected to office and thereafter, they must arrange their affairs to prevent real, potential or apparent conflicts of interest from arising. It adds that where such conflict arises between private interests of a public leader and his official duties and responsibilities, the conflict must be resolved in favour of public interest. Section 9(6) (b) of the Act requires every public leader to state or disclose his debts if any and any other liabilities when making declaration of assets; and section 14 (1) requires a public leader to make a declaration of his interest in relation the Government contract (made or proposed to be made), specifying the nature and extent of his interest, where he has such interest, as soon as practicable. According to the Act, such declaration must be in writing, made to the Ethics Commissioner.⁵⁰⁷

The argument of the Secretariat lawyers is that as a public leader, in line with the interpretation provision of the Public Leadership Code of Ethics Act of 1995,⁵⁰⁸ Mr. Andrew Chenge (MP) took advantage of his previous office of the Attorney General in relation to his position at the VIP Engineering and Marketing Limited; and entered into conflict of interest as a public leader by engaging with VIP Engineering and Marketing Limited as their legal consultant. He also failed to disclose his debts (owed) and other liabilities at the VIP Engineering and Marketing Limited and to declare his interest in relation to the Government Contract with the company.

⁵⁰⁷ Public Leadership Code of Ethics Act, 1995, s. 14(4).

⁵⁰⁸ Ibid, s. 4 (xi).

Anna Tibaijuka – former Minister for Lands, Housing and Human Settlements Development and Muleba South MP

Picture 24: Prof. Tibaijuka listening as her charges are read before the Ethics Tribunal⁵⁰⁹



Prof. Tibaijuka was second to appear before the Ethics Tribunal after the Chenge proceedings. She was asked to explain why she received Tshs. 1.6 billion in her Mkombozi Commercial Bank account from Mr. James Rugemalira, money which was part of the monies in the Tegeta Escrow Account. She stated that the money received from Mr. Rugemalira was for the purpose of servicing a bank loan she took for construction of dormitories at Barbro Johansson Girls Secondary School.⁵¹⁰ She was also asked to explain the various transactions she made through the account, including 26million to buy shares at Mkombozi Commercial Bank; and she responded by saying that having Tshs. 1 billion in her account is not a big deal and she had withdrawn Tshs. 10 million to buy her family some vegetables.⁵¹¹

509 Picture by Mwanahalisi Online – posted by Erasto Masalu, March 28, 2015, available at <http://mwanahalisionline.com/escrow-yamtaabisha-prof-tibaijuka-jimboni/>, accessed 19th January, 2016.

510 Katare Mbashiru, “Tibaijuka: This is how I acquired my wealth”, *The Citizen* (27th February, 2015).

511 Ibid.

Rajabu Shaaban Gurumo – State House Comptroller during the Kikwete Presidency

Mr. Rajabu Shabaan Gurumo, a state house official, was called before the Ethics Tribunal to explain his receiving and using of Tshs. 80.8 million from Mr. James Rugemalira, originating from the Tegeta Escrow Account.⁵¹² The money was deposited in his bank account at Mkombozi Commercial Bank by VIP Engineering and Marketing Limited.

Picture 25: Mr. Gurumo explaining himself before the Ethics Tribunal⁵¹³

In his defence, Mr. Gurumo stated that **he did not know why (for what purpose) Mr. James Rugemalira gave him the Tshs. 80.8 million and he did not bother to ask because they had been friends for about 10 years.** He added that it is possible that Mr. Rugemalira gave him the money because at that time he had a cancer patient; and that in any case he has plenty of money, thus did not need Mr. Rugemalira's money to meet his needs. According to the state official, Mr. Rugemalira asked him to open a bank account at the Mkombozi Commercial Bank so that he could deposit for him some money but did not see the need to ask what the money was for. Mr. Gurumo stated before the Ethics Tribunal that he was aware of a public leader's duty to declare his assets and liabilities and claimed that he did so in September and December, 2014.

Asked by the Secretariat lawyers whether the money he received was a gift or benefit, Mr. Gurumo stated that he did not know! The Ethics Secretariat lawyers argued,

512 *Nipashe*, "Escrow: Gurumo wa Ikulu jeuri", available at <http://www.tanzaniatoday.co.tz/news/escrow-gurumo-wa-ikulu-jeuri>, accessed 19th January, 2016.

513 *Picture Source*: Mwanahalisi Online at <http://mwanahalisionline.com/utetezi-wa-gurumo-wa-ikulu-wazua-mshangao/>, accessed 20th January, 2016.

however, that Mr. Gurumo breached the Public Leadership Code of Ethics Act of 1995 which prohibits a public leader receiving and accepting transfer of economic benefit other than incidental gifts and customary hospitality. They also accused Mr. Gurumo of not disclosing the gift (money) he received and its value; and did not hand over the gift (money) to his accounting officer to direct the manner in which it can be spent. They added that by receiving the money from a business Mr. Gurumo breached the provision on conflict of interest within the Public Leadership Code of Ethics Act, 1995.

William Ngeleja – former Cabinet Minister and Sengerema MP

Mr. William Ngeleja, former cabinet minister, was implicated in the Tegeta Escrow Account scandal, and was called to appear before the tribunal to explain the Tshs. 40.4 million he received from Mr. James Rugemalira, the owner of the VIP Engineering and Marketing Limited.⁵¹⁴ At the Ethics Tribunal, he was charged with violating one of the principles of conduct of public leaders under s. 6(j) of the Public Leadership Code of Ethics Act, 1995. This provision prohibits public leaders from carrying in such a manner as to bring the service to ridicule or take improper advantage of their previous office after leaving office. It was revealed by the Ethics Secretariat lawyers that Mr. Ngeleja was Deputy Minister of Energy and Minerals when IPTL was implementing the 20-year contract with TANESCO; and receiving such huge sums of money from a businessman involved in the contract amounts to conflict of interest, contrary to the Act.⁵¹⁵

Picture 26: Mr. William Ngeleja listening as the charges against him are read at the Ethics Tribunal



514 Katare Mbashiru, “Ngeleja: Yes, I took Escrow cash but...”, *The Citizen*, (4th March, 2015) available at <http://www.thecitizen.co.tz/News/national/Ex-minister-Ngeleja-in-spirited-defence-of-escrow-handout/-/1840392/2641858/-/item/1/-/9qbmqo/-/index.html>, accessed 19th January, 2016.

515 Ibid.

When he was asked for what purpose the money was, the former cabinet minister stated that it was for the development of his constituency (Sengerema). He was asked why he contributed Tshs. 10 million during a fundraising event at a church in Temeke, Dar es Salaam – which is not his constituency.⁵¹⁶ He was also asked why the money was deposited in his personal account instead of the Constituency Development Catalyst Fund account; and his reply was that it is not necessary to do so.⁵¹⁷

Dr. James Benedict Diu – Director of Economic Affairs at the Tanzania Civil Aviation Authority (TCAA)

The TCAA Director of Economic Affairs was called before the Ethics Tribunal in connection with the Tshs. 80.8 million he received from VIP Engineering and Marketing Limited, a company owned and Mr. James Rugemalira and implicated in the Tegeta Escrow scandal. He was charged with soliciting and accepting transfer of economic benefit from Mr. Rugemalira in contravention of section 6(f) of the Public Leadership Code of Ethics Act of 1995.⁵¹⁸ He was also charged with violation of section 6(e), which requires public leaders to prevent real, potential or apparent conflict of interest from arising; and his receiving of the money caused conflict of interest.⁵¹⁹ He was accused of committing the misconduct in February, 2014, receiving the money through his personal account at the Mkombozi Commercial Bank in Dar es Salaam.

Picture 27: Dr. James Benedict Diu explaining himself before the Ethics Tribunal⁵²⁰



516 Ibid.

517 Ibid.

518 Ethics Secretariat website, Nilipewa Fedha kwa ajili ya Kumuuguza Mke Wangu-Dkt *Diu*, http://www.ethicssecretariat.go.tz/?p_id=3, accessed 20th January, 2016.

519 Ibid.

520 Picture Source: The Citizen Newspaper, <http://www.thecitizen.co.tz/News/national/Aviation-official-fails-to-explain-Sh66-5m-deposits/-/1840392/2647694/-/sw7fqez/-/index.html> (Escrow cash beneficiary sweats to explain undeclared Sh66.5m).

In his defence, Dr. Diu claimed before the Ethics Tribunal that Mr. Rugemalira, his longtime family friend, gave him the money after visiting his sick wife at TMJ and Sanitas Hospitals, arguing that the money was not a gift but rather a contribution to support his wife's medical expenses, although she eventually unfortunately died.⁵²¹ Based on his argument, since it was not a gift, he therefore did not need to inform the Ethics Secretariat in line with the code of ethics for public leaders. He also denied creating a conflict of interest as a public leader since the money was a contribution.

Loicy Jeconia Appollo – TRA Deputy Commissioner for Tax Investigation

Ms. Loicy Jeconia Appollo, who was the TRA Deputy Commissioner for the Tax Investigation, was brought before the Ethics Tribunal in connection with Tshs. 80,850,000 she received from the VIP Engineering and Marketing Limited, part of the monies which were in the Tegeta Escrow Account. She was charged by the Ethics Secretariat with violation of section 6(f) of the Public Leadership Code of Ethics Act of 1995, which prohibits a public leader from soliciting or accepting transfers of economic benefit other than incidental gifts, customary hospitality or other benefits of nominal value.⁵²²

Picture 28: Ms. Loicy Appollo appearing before the Ethics Tribunal⁵²³



521 David Kisanga, "80/- weighing heavily on Dr. Diu", *The Guardian* (10th March, 2015), available at http://www.ippmedia.com/frontend/index.php/javascript/page_home.js?l=78194, accessed 19th January, 2016

522 Ethics Secretariat website, *Nilipewa Fedha kama Mkopo kwa ajili ya Matibabu*, http://www.ethicssecretariat.go.tz/?p_id=3, accessed 20th January, 2016.

523 Picture courtesy of The Citizen Newspaper, 7th March, 2016 at <http://www.thecitizen.co.tz/News/national/-Change-tactic--sets-precedent-at-leadership-ethics-/-/1840392/2645214/-/mpwevk/-/index.html>, accessed 20th January, 2016.

In her defence, Ms. Appollo told the Ethics Tribunal that she received the money for her medical treatment.⁵²⁴ She stated that Mr. James Rugemalira is a family friend and told her that she does not seem to be in a good condition ever since her husband passed away; and that he gave her the money on condition that she receives treatment and use the remaining cash to start a business, through which she would pay back Mr. Rugemalira (an interest-free loan).⁵²⁵ Initially, Ms. Appollo had argued that the Tribunal did not have mandate to question her over the money because of the High Court injunction, but the three-judge panel stated that the court order does not include the Secretariat, hence the proceedings could continue.

8.4.4 Concluding Remarks

Based on the evidence and defence produced during the proceedings at the Ethics Tribunal and LHRC's analysis of the Public Leadership Code of Ethics Act, it appears that these leaders implicated in the Tegeta Escrow Account scandal failed to conduct themselves in line with ethics of public leaders stipulated in the Act. The Act clearly states that among the assets acquired by public leaders are cash and deposits in a bank or other financial institution.⁵²⁶ It also states **where a public leader receives a gift of the value exceeding Tshs. 50,000 they are supposed to report that to their accounting officer**, declaring the gift and its value; and the accounting officer directs the use of the gift.⁵²⁷ In this case they all received Tshs. 40 million and above and thus should have reported the same to their accounting officers.

LHRC is of the view that for a public leader to come out and say they received huge sums of money and did not think it necessary to ask what the money was for or say they did not know whether the money they received were a gift or not is a mockery of good governance and code of ethics for public leaders. The issue of accountability among public leaders is of paramount importance and has a big impact on accountability at lower levels of public service.

8.5 Conclusion and the Way Forward

The Government of President John Pombe Magufuli, with its slogan of *Hapa Kazi Tu*, has shown promise of tackling the problems of corruption and lack of accountability in different sectors, promising to establish a special court for grand corruption. Following the corruption scandals at the Tanzania Ports Authority (TPA) and Tanzania Revenue Authority (TRA), the Government has taken several measures, including

524 Ethics Secretariat website, *Nilipewa Fedha kama Mkopo kwa ajili ya Matibabu*, http://www.ethicssecretariat.go.tz/?p_id=3, accessed 20th January, 2016.

525 Ibid.

526 Public Leadership Code of Ethics Act, 1995, s. 11(2)(a).

527 Ibid, s. 12(2).

removal of the Director General of the TPA, Mr. Awadhi Massawe, and the suspension of TRA Commissioner General, Rished Bade. The TPA board was also disbanded. In connection with the corruption scandals at TPA and TRA, President Magufuli sacked the head of PCCB, Director General Edward Hoseah, for what was stated as dissatisfaction with the performance of the anti-corruption body under Dr. Hoseah in tackling corruption, especially at TPA and TRA.⁵²⁸

IMPUNITY is the major problem here. As long as these public figures know they will not meet some serious repercussions for their engagement in corrupt and abuse of power practices, they will continue to steal from the people they lead. The environment of corruption is not exactly the motivation for a common *mwananchi*, who is severely punished for engaging in petty theft and corruption, and sees the public leaders engaging in grand corruption with impunity.

528 *The Guardian*, “Corruption at TPA, TRA costs Hoseah top job” (17th December, 2015).

Chapter Nine

National Human Rights Protection Mechanisms

9.0 Introduction

National Human Rights Protection mechanism is the general infrastructure for human rights protection and promotion in the country. It comprises of the sum of laws, policies and institutions that have the mandate to promote and protect human rights in the country.

National Human rights Protection Mechanism provides checks and balances needed to ensure that state institutions are accountable and fulfill their duty to respect, protect and uphold human rights standards. For this to be achieved the very first step is for the country to be part of the international human rights instruments providing for human rights standards. Then the domestic laws, policies and strategies should adhere to these standards of human rights set forth by the international instruments. State institutions should thus have the means, capacity and backing to implement and oversee these laws and policies.

The national Human Rights Protection Mechanism thus consists of separate yet strongly interrelated elements, each of which can make its own unique contribution to promotion and protection of human rights.

This chapter will look at the human rights protection mechanism in Tanzania. The chapter will examine the institutions; laws and policies; and the role of non-state actors as part of national human rights protection mechanism in promotion and protection of human rights in the country.

9.1 National Human Rights Institutions

9.1.2 The Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance (CHRAGG) has the general mandate of promoting and protecting human rights in the country.⁵²⁹ In

529 The mandate is set out in Article 130 of the constitution of the United Republic of Tanzania.

doing so, CHRAGG receives complaints about human rights violation and make recommendations to the government for adherence. However, the government is not obligated to follow the recommendation so received. CHRAGG also can sensitize the public on human rights issues. CHRAGG serves as both the National Human Rights Institution (NHRI) and as Ombudsman.⁵³⁰

CHRAGG was established under Article 129 of the Constitution of the United Republic of Tanzania. It became operational with the enactment of the *Commission for Human Rights and Good Government Act, 2001*.

Submission of Human Rights Report to the UN Human Rights Council under Universal Periodic Review

On September 2015 CHRAGG submitted its report to the UN Human Rights Council under Universal Periodic Review. CHRAGG submitted the report under the capacity of both a National Human Rights Institution (NHRI) and as an Ombudsman.

Tanzania submitted first UPR report in 2011. The UPR Working Group reviewed it and gave its recommendations in the same year. Tanzania is set to present its second UPR report in the second quarter of 2016. Thus, CHRAGG prepared the report assessing the human rights situation in the country and implementation of previous UPR recommendations to the government, as well as developments, achievements and challenges.

In its report, CHRAGG commended the government of the United Republic of Tanzania for legislative, policy and administrative measures made to improve the overall situation of human rights in the country, particularly the efforts to review the Constitution of the country.

CHRAGG noted that 50% of the recommendations made in the last UPR were implemented by the government through enactment or amendment of legislation, formulation of policies and establishment of various programmes and other initiatives.⁵³¹

530 CHRAGG 2015: Individual Report Of The Tanzania National Human Rights Institution Submitted To The Human Rights Council Under The Universal Periodic Review Mechanism.

531 CHRAGG 2015 Report submitted to the Human Rights Council under the Universal Periodic Review Mechanism.

However, CHRAGG noticed several deficiencies in number of areas. These include:

- i. General dissatisfaction expressed over the adoption of the Draft Constitution of 2014 by the Constituent Assembly;
- ii. Irregularities in the electronic Biometric Voter's Registration (BVR);
- iii. Excessive use of force by the police;
- iv. Poor remuneration of the law enforcement officials;
- v. Overcrowding in prisons;
- vi. Existence of the death penalty on the statute books and the absence of an official moratorium;
- vii. Persistence of killings of persons with albinism and older women;
- viii. Violence against women;
- ix. Child abuse;
- x. Low quality of education;
- xi. Insufficient health services especially in rural areas;
- xii. Poverty and non-recognition of legal rights of indigenous communities in Tanzania.

Table 31: CHRAGG Recommendations on UPR submitted to UN Human Rights Council

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
	Implementation of human rights since the previous UPR	<ul style="list-style-type: none"> ✓ The government has taken legislative, policy and administrative measures to implement the recommendations; ✓ The major developments being the Constitutional review process which took place between 2010 to 2014, enactment of various pieces of legislation, formulating various policies, and putting in place programmes, action plans including the National Human Rights Action Plan of 2013 - 2017, and other initiatives. ✓ Hence, the government was able to implement approximately over 50% of the recommendations of the previous review; ✓ However, the government has not ratified the remaining three core international human rights instruments namely the <i>Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment</i> (CAT), the <i>Convention on the Rights of Migrant Workers and Members of their Families</i>, and the <i>Convention Against Enforced Disappearance</i>; 	<ul style="list-style-type: none"> ✓ CHRAGG urges the government to reconsider ratification of the three international human rights instruments as pledged in the 2011 UPR as well as continue implementing the previous recommendations.

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
	The right to life in relation to the death penalty	<ul style="list-style-type: none"> ✓ CHRAGG commends the government of the United Republic of Tanzania for continuing to exercise moratorium on the death penalty. No execution has taken place over the past 20 years; ✓ There are 465 death row prisoners in the country, 445 being male and 20 female. ✓ However, CHRAGG is concerned that the government has not made notable progress towards the total abolition of the capital punishment. 	<ul style="list-style-type: none"> ✓ CHRAGG urges the government to launch a comprehensive initiative including a vigorous public awareness campaign on the right to life towards total abolition of the death penalty.
	The killings of persons with albinism and older women	<ul style="list-style-type: none"> ✓ Despite efforts being undertaken by the government to end violence against Persons with Albinism (PWA) and older women in the country, incidences of brutal attacks and killings continued to be recorded. ✓ However, there is uncertainty as to the exact numbers of PWA who have been killed so far. Official figures by government indicate that between 2006 to September 2015, only 41 persons with albinism were killed, while civil society organizations that closely work with PWA state the number to be over 70 persons killed, over 60 maimed and one child abducted and his whereabouts not known to date; 	<p>The government is urged to</p> <ul style="list-style-type: none"> i. Ensure all perpetrators of the attacks and killings of PWA and older women including the end users and beneficiaries of the albinos body parts are brought to justice; ii. Enhance public awareness campaign to stamp out superstitious beliefs iii. Ensure availability of free health services including sunscreen lotions, diagnosis, and treatment of skin cancer;

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
		<ul style="list-style-type: none"> ✓ The killings have been attributed to superstitious beliefs, and people seeking wealth, access to public office and influence. Women and children are particularly targeted; ✓ On the other hand, persons with albinism die due to skin cancer because majority of them cannot afford the costs for preventive and treatment services. With regard to older women, the incidences of killings have not been reduced significantly. 	<p>iv. Ensure social security and protection is provided to older persons including older women who are prone to attacks.</p>
	Extra Judicial Killings	<ul style="list-style-type: none"> ✓ CHRAGG recognizes steps taken by the police to prosecute police officers who are involved in extrajudicial killings; ✓ However CHRAGG is concerned with extra judicial killings by law enforcement officials when combating violent crimes, and the excessive use of force when handling public assemblies and rallies; ✓ For example, between 2011 and 2015, CHRAGG investigated 20 complaints on extra judicial killings; ✓ The Police Force and Auxiliary Services Act Cap 322 also needs to be repealed and replaced with a new legislation that conforms to human rights standards; 	<p>i. Implement recommendations of an independent body such as CHRAGG or any other that investigate complaints against law enforcement officials;</p> <p>ii. Ensure that all the perpetrators of extra judicial killings are prosecuted expeditiously;</p> <p>The government should</p> <p>iii. Conduct sustainable in-service training on human rights to law enforcement agents;</p>

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
		✓ The complaint handling mechanism within the police force does not conform to principles of natural justice.	iv. Review the <i>Police and Auxiliary Services Act</i> and other laws to make them compatible with human rights standards.
	Conditions In Detention Facilities	<p>✓ Despite efforts undertaken by government to improve prison conditions and reduce overcrowding, challenges remain the inadequate use of alternative penal system, inadequate food, poor sanitation and health facilities, unreliable transportation to and from the court, and poor working conditions and remuneration for both prison and police staff;</p> <p>✓ Information from the Prison Department shows that as at September 2015, there were 32,307 inmates; 15,787 of them being prisoners and 16,520 remandees. 1,375 inmates were foreigners</p>	<p>The Government should</p> <p>i. Provide adequate budget for construction and rehabilitation of prison infrastructure and remuneration of prison and police staff;</p> <p>ii. Effectively use alternative penal sanctions such as community services.</p>
	Juvenile Justice	✓ CHRAGG inspections revealed that 80% of children held in prisons and police cells are not separated from adults, have limited access to legal representation, and there are few children facilities including transportation to and from court;	<p>The Government should:</p> <p>i. Ensure children in conflict with the law are separated from adults;</p> <p>ii. Allocate adequate resources to criminal justice institutions;</p>

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
		<ul style="list-style-type: none"> ✓ There are inadequate social workers to handle children in conflict with the law; ✓ As at September 2015, there were 268 juvenile inmates in mainland Tanzania, 110 being prisoners and 158 remandees. ✓ In Zanzibar, there is one juvenile court but no retention home for juvenile offenders 	<ul style="list-style-type: none"> iii. Construct at least one approved school and retention home for every administrative zone including Zanzibar; iv. Ensure availability of transport to and from the court for juvenile offenders.
	Rights Of Persons With Disabilities	<ul style="list-style-type: none"> ✓ While there are improvements in the rights of persons with disabilities in terms of access to employment, social services and building infrastructure, the government through the Ministry of Health and Social Welfare is yet to identify persons with disabilities and put in place a social welfare system and package that allows them to enjoy their right to protection. 	<ul style="list-style-type: none"> ✓ The government should allocate adequate resources to fully implement the Persons with Disabilities Acts in both mainland Tanzania and Zanzibar.
	Right To Education	<ul style="list-style-type: none"> ✓ Reports show government's investment in the education sector still faces serious challenge; ✓ The challenges include inadequate and delayed payment of teachers' salaries and other remunerations, delayed and inadequate disbursements of capitation grants to schools, budget constraints for schools inspectorate department, inadequate education infrastructure. 	<p>The government should:</p> <ul style="list-style-type: none"> i. Allocate enough budget to education sector; ii. Pay teacher due arrears and other payments timely; iii. Implement fully the existing education policies.

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
	Business And Human Rights	<ul style="list-style-type: none"> ✓ Protection of human rights in the business sector still faces challenges in terms of low awareness of international framework governing business and human rights, or non-adoption of such frameworks by the government. ✓ The frameworks include Global Compact, the UN Guiding Principles, Voluntary Principles on Security and Human Rights (VPSHR) and various ILO Conventions. 	<p>The Government is urged to:</p> <ul style="list-style-type: none"> i. Conduct the National Baseline Assessment in order to develop a National Plan of Action on Business and Human Rights; ii. Create awareness on business and human rights.
	Right to Property and Land Disputes	<ul style="list-style-type: none"> ✓ Studies show that land disputes including violent land conflicts have been recurring. ✓ Forced evictions, delayed and inadequate compensations, violent conflict between farmers and pastoralists also characterize land issues. 	<p>The government is urged to</p> <ul style="list-style-type: none"> i. C u r b maladministration among the public officers responsible for land use planning and management; ii. Construct water infrastructure in pastoralists areas to ensure availability of water for livestock; iii. Pay adequate and timely compensation when land is acquired in the public interest.

NA	SPECIFIC HUMAN RIGHT	STATUS	RECOMMENDATION
	The Rights of Marginalized Communities	✓ The government is yet to formally recognize the existence of indigenous communities in Tanzania although it has done so through some policy frameworks such as the draft TASAF III Indigenous Peoples Policy Framework (IPPF) which has initially listed the Hadzabe and Barbaig as indigenous peoples.	The government is urged to: <ul style="list-style-type: none"> i. Ratify the ILO Convention No. 169; ii. Formally recognize the existence of indigenous peoples in Tanzania and improve their rights; iii. Provide protection to lands that are historically and traditionally occupied by indigenous groups in Tanzania.

9.1.3 Legal institutions: the Judiciary

Legal institutions are important for a country in adhering to human rights. This is because the legal institutions ensure accountability, address impunity and ensure remedies to victims of human rights violation.

In Tanzania the main legal institution are the courts of the country. The courts in upholding adherence to human rights they uphold civil and political rights and address poverty. The courts could not be complete without the people working in them. Thus the personnel are important parts of the national human rights protection system. These include the Judges, Magistrates, Lawyers and prosecutors without forgetting court clerks, law faculties and training institutions.

It is important that the legal institution strong to guarantee human rights adherence. Access to justice and to courts is paramount. Tanzanian legal system faces the challenge of being accessed by the poor. Among the challenges facing access to justice in Tanzania include high court fees, shortage of judges and magistrates, poor judicial infrastructure, shortage of advocates and prosecutors, delay of cases and judgments, poor remuneration for court personnel (court clerks), corruption.⁵³²

532

For a detailed topic on access to justice refer to Chapter Two of this report.

The courts should as well be independent to perform its duties. The independence of Tanzanian courts has been a subject of debate. The Executive have a greater control on selection of judges, without having another organ to counter check this selection. This could undermine the performance of the court in adhering to human rights in the country. There a number of human cases that has come to a great critic where independence of the court has been questioned. A good example is the case brought by CHADEMA in 2015, requesting the court to make an interpretation of the law which prohibit voters to stay within the boundary of 200 metres from the polling stations after they have already casted their votes.⁵³³ The petitioner also requested that the provision of the law denies the voter of his right to stand within 200 metres. The court upheld the position of the law and further stated that voters were supposed to return home after they have voted. On the other hand, the election law requires that the returning officer will read the results of the vote at the polling station to the voters. This creates confusion to voters who would like to make a follow up on election results announcements by the returning officer.

The courts as well have a greater role to play to ensure accountability and addressing impunity. They can be able to influence and amend government policies and strategies.

9.1.4 Law enforcement organs: the Police force, the Prison Services and the Prevention and Combating of Corruption Bureau (PCCB)

The law enforcement forces have been among the institutions mostly blamed for violation of human rights.

The law enforcement forces should operate within a legal framework which guarantee human rights accountability and set standards for the use of force. Legislative framework for law enforcement forces should be updated, upholding human rights.

The Tanzania Police Force

Has the general mandate of preventing and detecting crimes and maintaining public order. In fulfilling its mandate the Police Force will exercise powers of arrest and detention.

Accusations against the Police Force on Human Rights Violations

Police are usually associated with human rights violation, done through torture, extrajudicial killings and discrimination. In 2015, the police force was accused of

533 *Amy P Kibatata vs AG and Another*, High Court of Tanzania Constitutional Matter No. 37 of 2015 (Unreported).

discriminating against opposition political parties in several occasions. Among them is the ban by the police on demonstrations and on holding political rallies. The police force banned the CHADEMA presidential candidate from making visits to different Dar es Salaam hubs, citing that the same could incite public disorder.⁵³⁴ Also the police banned the Presidential Candidates from being escorted by supporters en-mas citing the same reason of inciting public disorder. Also the Police Force was accused of discriminating against opposition political parties, as far as time for close up campaign rallies as required by the law. The incident sighted was the one involving the ruling CCM candidate while inaugurating CCM campaigns at Jangwani grounds in Dar es Salaam. The rally went beyond the prescribed time, with the tolerance of the police force.

The Police Force in several other incidents has been accused to acting extra judicially, causing death and torture to citizens.⁵³⁵

Police Force Internal and External Accountability

A professional, responsible and accountable police force is very crucial to the National Human Rights Protection Mechanism. With so many accusations of human rights violation, there should be an effective mechanism of addressing these accusations. Internal and external accountability mechanism is thus paramount.

The present mechanism involves a lot of secrecy and culture of protection of information. An independent statutory body within the police force should be formed to ensure that disciplinary procedures are clearly stipulated and understood by all. This institution will as well be involved in dealing with public complaints about the police. An independent institution will ensure that the Police Force is free of governmental and political influence in performing their duties. Thus, the Police Force will operate in a professional manner.

Police accountability should be guided by constitutional principles, adhering to human rights standards. It is thus paramount that the current legal framework be amended to ensure that police are held accountable internally and externally. The process of the Constitutional Reviews saw an opportunity for setting constitutional grounds for the creation and conduct of the police force. That is why in the *Draft Constitution of the United Republic of Tanzania, 2013* there were well elaborated provisions on establishment of the Police Force; principles of conduct of the Police Force; nomination of the Inspector General of Police (IGP); independence of IGP and

534 <http://mwanahalisionline.com/serikali-yamzuia-lowassa-jangwani-ukawa-wakomaa/accessed> on December, 2015.

535 More on Extrajudicial Killings and Torture refer to Chapter Two of this report.

establishment of the Police Force Commission.⁵³⁶ These provisions were however rejected by the *Constituency Assembly* while producing the *Proposed Constitution of the United Republic of Tanzania, 2014*.⁵³⁷ The Constitutional Review process has stalled pending holding of the Referendum for the same.

Gaps in accountability mechanism could result in police violating human rights. This is because the legal framework leaves gaps for interference by the politicians. A good example is interference done by the regional and district commissioners. By virtue of their positions, the region and district commissioners are chairpersons of the security committees of their respective regions and districts of appointment.⁵³⁸ They also have greater powers of arrest and order a police officer to arrest.⁵³⁹

The police force faces lack of sufficient resources. The police force is poorly funded and poor equipped. Police officers also are poorly remunerated and lack or have shortage in housing facilities. As a result the professionalism of the police force is compromised, which in turn is likely to result into an institution that is unlikely to respect human rights in its operation. The police force is perceived as among the most corrupt institutions.⁵⁴⁰ Most of the citizens mention the police force among the most corrupt institutions.

Tanzania Prisons Services

Tanzania Prisons Services (TPS) has a greater role to play in National Human Rights Protection Mechanism. By virtue of human rights perspective TPS is involved in confining the right of liberty by imprisoning offenders. Imprisonment should be utilized for criminal manners as a last resort and should conform to international standards and principles of human rights.

TPS is involved with keeping those convicted of committing a crime to serve their statutory required terms. Number of people in prisons will depend on the overall criminal justice system which includes legislative framework, legal institutions and law enforcement. It is important that distinction is made between places where the convicted are held in custody and where they are put for a longer term, because violations of human rights usually occur during the first 48 hours after arrest.⁵⁴¹

536 Articles 243-247.

537 Articles 272-274.

538 *The Regional Administration Act, 1997*.

539 *Ibid*.

540 LHRC (2015), Human Rights Opinion Survey Report.

541 EU 2009: Strengthening National Human Rights Protection System: A Manual for Embassies of EU Member States.

One of the main challenges facing the TPS is prison overcrowding. According to TPS, Tanzania prisons have the capacity to hold 29,552 prisoners.⁵⁴² However, by December 2015 there were 31,382 prisoners living in Tanzanian prisons.⁵⁴³ These prisoners involve remand and pre-trial prisoners as well as condemned prisoners. Compared to 2014, there is a slight decrease on the number of prisoners in Tanzanian prisons as there were 32,315 prisoners in 2014.⁵⁴⁴

Table 32: Number of prisoners in Tanzania in different years

Year	1960-1965	1980-1985	2011	2013	2014	2015
Number of Prisoners	11,436	36,233	45,000	36,233	32,315	31,382

As one can notice from the table above, the number of prisoners in Tanzanian prison have shown a slight decrease over the past five years. However the number is still high as one compares the capacity of Tanzanian prisons. The capacity of Tanzania prisons have not changed very much in the past three years. In 2013 the Tanzanian prisons had the capacity of holding 22,667 prisoners⁵⁴⁵ compared to 29,552 in 2014 and 2015.

Tanzania prisons have also a large number of remanded and pre-trial prisoners. The statistics above did not stipulate the same, however according to the Ministry of Home Affairs by March 2015 there were 33,027 prisoners in Tanzanian prisons, out of which more than half (17,523) were remanded and pre-trial prisoners.⁵⁴⁶

Prison overcrowding is also caused by lack and shortage of prison facilities. According to TPS there are 126 prisons in Tanzania. Among them 12 are central prisons; 67 are district prisons and 47 are open farm prisons.

Table 33: Prison facilities in Tanzania

Central Prisons	12
District Prisons	67
Open Farm Prisons	47
Total	126

542 Statistics for 2015 Obtained by LHRC from Tanzania Prisons Services.

543 Ibid.

544 LHRC & ZLSC (2015), *Tanzania Human Rights Report 2014*.

545 LHRC & ZLSC (2014), *Tanzania Human Rights Report 2013*.

546 2015/16 Budget Speech by the Minister of Home Affairs in the Parliament of the United Republic of Tanzania.

Prison overcrowding poses a greater challenge to TPS. It may lead to several violations of human rights of the prisoners including denial or poor medical needs, *incommunicado* detention, torture, prolonged isolation or prolonged administrative detention. Overcrowding can be reduced by employing alternative non-custodial sentences. These include community service, house arrest, suspended sentence and probation.

The use of non-custodial sentencing has not been widely used in Tanzania. However there are several non-custodial measures and sentences that have been used. These include presidential pardon, probation, community service and parole. According to the Ministry of Home Affairs up to March 2015, 258 prisoners benefited from parole.⁵⁴⁷ Meanwhile a total of 4,129 prisoners were given a Presidential Pardon in April 2016⁵⁴⁸ and others 4,160 on November and 2,336 on December, making a total of 10,625 prisoners who benefited from Presidential Pardon in 2015.⁵⁴⁹ Probation is being implemented in 63 districts of 21 regions of the country.⁵⁵⁰ Until March 2015, a total of 1,217 prisoners benefited from probation alternative sentencing, where 132 serve their sentences in probation and the remaining 1085 served their sentences through community service.⁵⁵¹

Table 34: Number of prisoners who benefited from alternative non-custodial sentences in 2015

Parole	Presidential pardon	Probation
525	10,625	1,217

While the efforts to use non-custodial measures are positive and welcomed, their use are still very limited.

TPS is also faced with the challenge of placing juvenile and adult prisoners in the same prisons. This is mainly caused by lack/shortage of prison facilities for children prisoners. These children are likely to be abused when placed with adults. Tanzania has only one prison for children.⁵⁵² Yet, there are a total of 201 juvenile prisoners in all Tanzanian prisons, with 182 male and 19 females.⁵⁵³

547 Ibid.

548 Ibid.

549 LHRC (2015) Media Survey.

550 2015/16 Budget Speech in the parliament of the United Republic of Tanzania by the Minister of Home Affairs.

551 Ibid.

552 Statistics for 2015 obtained by LHRC from Tanzania Prisons Services.

553 Ibid.

The Parliament of the United Republic of Tanzania

The parliament is the prime guardian of human rights and the main body to hold the executive accountable. Activities of the parliament relate to all human rights; political, civil, economical or cultural. These are done through legislative, budgetary or overseeing functions.

The parliament is crucial in National Human Rights Protection Mechanism through the following functions:

- i. Ratifying international human rights instruments and integrate them in domestic law;
- ii. Ensure the consistency of new/draft legislation with international human rights standards;
- iii. Ensure that laws and policies for protection of human rights are drafted and implemented and ensure budget allocation for implantation;
- iv. Make a follow up on recommendations of international treaty bodies;
- v. Initiating or participating in the establishment of human rights institutions and other mechanisms to protect human rights;
- vi. Raising specific human rights violations in parliament;
- vii. Creating specific parliamentarian committees on human rights

9.2 Policies and Laws

Domestic laws are as well integral part of the National Human Rights Protection Mechanism. The domestic laws underlie the framework for the mechanism. Thus, domestic laws should reflect international human rights obligations.

National legislation should offer human rights protection to all individuals irrespective of any discrimination. National legislation should foresee that basic human rights guarantees, by providing independence of the judiciary, separation of powers, equality before the law, existence of oversight and accountability mechanism.

A strong domestic framework or the protection of human rights implies that the State;

- i. Has ratified core international human rights treaties;
- ii. Enact a Constitution with strong human rights guarantees;
- iii. Ensure that treaty obligations, customary law and other human rights standards are converted in domestic laws and implemented into policy and actual practice;

- iv. Establishes institutions that monitor, apply and implement the laws and policies with adherence to international human rights standards.

Tanzania has ratified most of the key international human rights treaties.⁵⁵⁴ However there are key treaties that the country has yet to sign/ratify. For instance, Tanzania has not ratified the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* of 1984. As a result torture is not criminalized in Tanzania. Tanzania has also not ratified the Optional Protocols (First and Second) to the International Protocol on International Covenant on Civil and Political Rights, 1989. As a result Tanzanian individuals are denied the right to submit complaints directly to the UN Human Rights Committee, which is provided by the First Optional Protocol. The Second Optional Protocol calls for the abolition of the death penalty. Though Tanzania has not executed a death penalty inmate since 1995, the laws of the country still provide for its imposition, and the Judges have continued prosecuting cases and giving death sentences to those found guilty of murder and treason.⁵⁵⁵

The *Constitution of the United Republic of Tanzania, 1977* provides for the basic human rights. There are however several rights that do not have an absolute constitutional protection. For instance, most of the social rights in the constitution are not enforceable through courts. The right to health is not altogether provided in the Constitution. Also the right to life in the Constitution is subjected to the laws of the country.⁵⁵⁶ This means that the right is not absolute. As a result a law can be enacted which is likely to violate the right to life,⁵⁵⁷ which is considered to be the mother of all rights, because without life there will be no meaning to any other human rights.

9.3 Civil Society Organizations

The role of Civil Society Organisations (CSOs) cannot be ignored in ensuring an effective National Human Rights Protection Mechanism. This is because CSOs provide contribution in the mechanism through several ways. These include the role of countervailing power to the State; participation of CSOs enacting laws and policy making; CSOs are involved in monitoring and reporting on human rights violations and raise individual cases; CSOs raise awareness about human rights within the society; CSOs directly and indirectly contribute to development, especially those CSOs dealing with education, economic and health issues.

CSOs contribute peacefully and actively to the implementation of Universal Declaration of Human Rights and as such are recognized as Human Rights Defenders

554 Refer to Chapter Ten of this report for a detailed topic on Tanzania Compliance to International Human Rights.

555 More on death penalty refer to Chapter Two of this report.

556 Article 14.

557 The Penal Code recognizes the death penalty for offences of murder and treason. Refer sections 39,40,196,197 of the Penal code.

(HRDs) according to the UN Declaration of Human Rights Defenders.⁵⁵⁸ In conduct of their activities, HRDs frequently are harassed, threatened, attacked, tortured, abducted and even get killed. They also have to manage to work in environment with legal and administrative obstacles. For instance, in October 2015, election observers of the Tanzania Civil Society Consortium on Election Observation (TACCEO) was harassed by the police and intimidated while conducting their legally obligations of general election observation.⁵⁵⁹ Their office was invaded by the police and working tools including computers and phones were seized. The police alleged that TACCEO was involved in illegal collection of election results and was on the verge of illegally announcing the same. TACCEO officers were alongside arrested and released on bail. Up to the release of this report, the status of the case against TACCEO and its officers was still pending with the police. They were never taken to court but have been ordered to frequent report to the Headquarters of the Police force at Dar es Salaam. TACCEO working equipment are also still under police custody.

Other election observers working with LHRC in Njombe were also attacked and beaten by the police officers.⁵⁶⁰ They were invaded in their hotel rooms, harassed, beaten and their working equipment confiscated. The observers sustained injuries in several parts of their bodies.

It is important that the government recognizes the positive role played by CSOs in maintaining not only human rights but also peace and order. CSOs can be State allies in ensuring that citizens are provided with protection against abuse from state and non-state actors. For instance, Human Rights NGOs, such as the LHRC, TAMWA and TAWLA conduct comprehensive studies on human rights issues within the country. The state machinery has failed to conduct such studies due to several factors. Good examples are the studies conducted on women and girl child rights around the country. These studies provide the government the information badly needed to address challenges facing women and children in the country. Thus, the government can then come up with strategies on how to address those issues.

Also CSOs provide legal aid to the marginalized and impoverished population of the country. There is greater shortage of advocates and lawyers in Tanzania, thus access to justice is placed in jeopardy. As a result CSOs come to fill the gap by providing the much needed legal aid to the masses.

The role of Civil Society organization is thus paramount in realizing an effective National Human Rights Protection Mechanism.

558 *The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*: Adopted by the UN General Assembly in December 1998.

559 Refer Chapter Three of this report.

560 Ibid

Chapter Ten

Tanzania's Compliance with International Human Rights Law

10.0 Introduction

This chapter looks at how Tanzania has complied with its obligations stipulated within different international human rights instruments. Also look at Tanzania's compliance with its reporting duties under the relevant human rights treaties/conventions, particularly the Universal Periodic Review (UPR); and an assessment of the implementation of recommendations given by the UPR Working Group in 2011.

Tanzania is a state party to different regional and international human rights conventions, most notably the International Covenant on Civil and Political Rights (ICCPR), 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), 1979, Convention of the Rights of the Child (CRC), 1989 and the African Charter on Human and Peoples' Rights (ACHPR), 1981. These conventions and other human rights instruments such as the Universal Declaration of Human Rights (UDHR), 1948 provide a connection between Tanzania and international human rights law. Being a dualist country, application of international human rights instruments in Tanzania depends on ratification of the same.

10.1 Tanzania's Ratification of International Human Rights Instruments: Key Conventions yet to be Ratified

As of December 2015, Tanzania has ratified 10 out of 18 international human rights treaties/conventions. The table below indicates the number of regional and international treaties ratified by Tanzania so far.

Table 35: Human Rights Treaties Ratified by Tanzania as of 2015

	<i>Convention/Treaty</i>	<i>Ratification</i>
International	Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979	1985
	Convention on the Elimination of All forms of Racial Discrimination 1965	1972
	Convention on the Rights of the Child (CRC) 1989	1991
	International Covenant on Civil and Political Rights (ICCPR) 1966	1976
	International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	1976
	Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	2005
	Optional Protocol to the Convention on the Elimination of All forms of Discrimination Against Women 2000	2006
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002	2004
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002	2003
	Convention on the Rights of Persons with Disabilities 2008	2009
	Convention Relating to the Status of Refugees 1951	1983
	Optional Protocol on the Convention on the Rights of Persons with Disabilities 2008	2009
Regional	African Charter on Human and Peoples' Rights 1981	1984
	African Charter on the Rights and Welfare of the Child 1990	2003
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2000 (Maputo Protocol)	2007
	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 1998	2006

Tanzania is yet to ratify the following treaties:

- ≈ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987;
- ≈ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003;

- ≈ International Convention for the Protection of all Persons from Enforced Disappearance 2010;
- ≈ Optional Protocol to the International Covenant on Civil and Political Rights 1976
- ≈ Second Optional Protocol to the International Covenant and Political Rights, aiming at the abolition of the death penalty 1991;
- ≈ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2013;
- ≈ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006;
- ≈ Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011.

10.2 Duty to Report to Treaty Monitoring Bodies

International human rights conventions stipulate a duty for states parties to report to what are known as treaty monitoring bodies. These conventions include ICCPR, ICESCR, CEDAW, CRC and CRDP. The bodies comprise experts on the relevant field of human rights. The table below indicates major treaty-monitoring bodies Tanzania is reporting to.

Table 36: Status of Tanzania's Report Submission to Treaty Monitoring Bodies

Body	Mandate	Tanzania Reports
Human Rights Committee	Monitoring implementation of ICCPR - Article 40 of ICCPR	First report submitted on 20 th August 1979. Second Report submitted on 4 th June, 1991. Third Report submitted on 6 th February, 1997. Fourth and last Report submitted on 8 th October 2007. Fifth report was supposed to be submitted on 1 st August, 2013.
Committee on Economic, Social and Cultural Rights	Monitoring implementation of ICESCR - Article 17 of ECESCR	First report submitted on 10 th September 1979. Second report submitted on 25 th August 2009. Third report submission date 30 th November 2017.

Body	Mandate	Tanzania Reports
Committee on Elimination of Discrimination Against Women	Monitoring implementation of CEDAW - Article 18 of CEDAW	First report submitted on 9 th March 1988. Second report submitted on 25 th September 1996. Third report submitted on 16 th April 2007. Fourth and last report submitted on 10 th November 2014.
Committee on the Elimination of Racial Discrimination	Monitoring implementation of CERD - Article 9 of CERD	First report submitted on 22 nd March 1976. Second report submitted on 29 th January 1980. Third Report submitted on 29 th January 1980. Fourth report submitted on 1 st October 1982. Fifth report submitted on 17 th July 1986. Sixth and last report submitted on 27 th October 2004. Seventh report was due on 26 th November 2007.
Committee of the Rights of the Child	Monitoring implementation of CRC - Article 44 of CRC	First report submitted on 20 th October 1999. Second report submitted on 20 th October 2004 Third report submitted on 13 th January 2012. Next report due on 9 th January 2020.
Committee on the Rights of Persons with Disabilities	Monitoring implementation of CRPD - Article 35 of CRPD	Report was due on 10 th December 2011, yet to be submitted.

10.3 Status of Implementation of 2011 UPR Recommendations in Tanzania: An Assessment of CSOs

Apart from reports to treaty monitoring bodies, Tanzania submits periodic reports to the UN's Human Rights Council on what is known as Universal Periodic Review (UPR), a process involving review of human rights records of all UN Member States. The Council's UPR Working Group assesses the reports of the states to determine improvements made in improving human rights situation. Created by UNGA in March, 2006, the Working Group had reviewed human rights records of all UN Member States and provided recommendations.

Tanzania's first UPR report was submitted in 2011; and the UPR Working Group reviewed it and gave its recommendations in the same year. As Tanzania is set to present its second UPR report in the second quarter of 2016, a total of 103 CSOs in Tanzania, LHRC inclusive, conducted an assessment of the implementation status of the recommendations provided by the UPR Working Group in 2011 (from 2012 to 2015). The table below indicates some key recommendations made by UPR Working Group, status of implementation based on assessment of CSOs and CSO recommendations.

Table 37: UPR Recommendations and Implementation Status

UPR Recommendations 2011	Implementation Status 2015	CSO Recommendations
<p>Ratification of human rights conventions</p> <ul style="list-style-type: none"> ▪ Sign and ratify key international human rights instruments such as Convention against Torture (CAT), ICESCR Optional Protocol, ICCPR Optional Protocols (1 & 2), CAT Optional Protocol, and Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 	<p>Not yet ratified</p>	<p>Tanzania should ratify these conventions to extend human rights protection in compliance with international human rights law.</p>
<p>Rights of PWDs</p> <ul style="list-style-type: none"> ▪ Conduct public awareness campaigns ▪ Fast track investigation and prosecution of criminal cases related to albino killings ▪ Updated and precise statistics on crimes such as assaults on PWAs and extra-judicial killings of elderly women (witchcraft-related) 	<p>Partly implemented</p> <p>Public awareness sessions mostly conducted by CSOs.</p> <p>Cases related to PWA attack/killings are now fast-tracked. However, many incidences of PWA attacks/killings have occurred between 2011 and 2015,</p>	<p>More awareness sessions on PWDs rights.</p> <p>Investigation and apprehension of actual offenders (the big fish) who demand PWA body parts.</p> <p>Increase efforts to protect PWAs and ensure their access to social services.</p>

UPR Recommendations 2011	Implementation Status 2015	CSO Recommendations
<ul style="list-style-type: none"> ▪ Strengthen efforts to protect rights of PWAs ▪ Improved access to social services 	<p>especially in Lake Zone Region.</p> <p>L e a r n i n g e n v i r o n m e n t generally not conducive for PWDs.</p>	
<p>Rights of the child</p> <ul style="list-style-type: none"> ▪ Full implementation of the Law of the Child Act 2009 ▪ Eliminate child labour 	<p>Partly implemented</p> <p>Children are not fully protected from harm as evidenced by increasing incidents of violence against children.</p> <p>Majority of children are not provided with quality education.</p> <p>Child labour is a problem, denying children right to education.</p>	<p>Law of the Child Act 2009 should be fully implemented.</p>
<p>Women and Girl Rights</p> <ul style="list-style-type: none"> ▪ Eliminate practices that discriminate against women and girls and lead to violence against them (including witchcraft killings, rape, domestic violence and land ownership and inheritance) ▪ Combat harmful social practices such as FGM ▪ Criminalize domestic violence ▪ Unhindered access to justice for victims of violence against women 	<p>C o m m e n d a b l e steps taken to ensure women participation in decision-making (e.g. increased of women holding political and administrative positions).</p> <p>Little progress made to protect women's right to inheritance (many still face discrimination).</p>	<p>Enact law to ensure equal participation of women in all political and administrative positions.</p> <p>Adopt 50/50 gender-representation ratio in all political and administrative positions as proposed in the Second Draft Constitution.</p> <p>Enact a uniform and non-discriminatory succession law.</p>

UPR Recommendations 2011	Implementation Status 2015	CSO Recommendations
<ul style="list-style-type: none"> ▪ Improve women access to health services, particularly in rural areas ▪ Amend marriage law to make minimum marriage age to be 18 for both boys and girls 	<p>Reluctance in domesticating CEDAW.</p> <p>C o n s i d e r a b l e efforts have been made to address GBV (e.g. establishment of Police Gender and Children Desks at police stations and adoption of the Action Plan for Gender and Children Desks). However, there are still challenges as reports indicate that GBV incidents are still rampant.</p>	<p>Full domestication of CEDAW.</p> <p>Enactment of specific law defining and criminalizing domestic violence.</p> <p>Take measures to eliminate practices that are harmful to women and girls such as FGM</p>
<p>National human rights mechanism</p> <ul style="list-style-type: none"> ▪ Strengthen capacity of Commission for Human Rights and Good Governance (CHRAGG) ▪ Prepare and implement the National Human Rights Action Plan 	<p>Efforts continue to be made to strengthen capacity of CHRAGG (e.g. new commissioners appointed in 2014). However, the Commission still has funding problem.</p> <p>National Human Rights Action Plan is now in place.</p>	<p>CHRAGG needs more funding and to be more independent to conduct its activities freely and without interference.</p>

UPR Recommendations 2011	Implementation Status 2015	CSO Recommendations
<p>Corruption</p> <ul style="list-style-type: none"> ▪ Implement national action plan to combat corruption ▪ More resources for anti-corruption bodies 	<p>Not satisfactory</p> <p>Corruption is still rampant as the country continues to witness grand corruption (e.g. Escrow saga in 2014 and <i>Stanbic</i> Bank scandal of 2015).</p>	<p>Full implementation of national action plan to combat corruption</p>
<p>Law enforcement</p> <ul style="list-style-type: none"> ▪ Ensure prosecution and punishment of police officers committing acts of torture ▪ Establish independent body for investigating complaints about actions of law enforcement officials ▪ Ensure all security forces are subject to strict control of civilian officials ▪ Educate on human rights and encourage observance of human rights by law enforcement officials 	<p>Not implemented</p> <p>Law-enforcement officials are generally not held accountable for violations of human rights.</p>	<p>Need to ensure accountability on the part of law-enforcement officials when they violate human rights.</p> <p>It is important to establish the independent body for investigating complaints against law-enforcement officials as proposed by the UPR Working Group.</p>
<p>Prisons</p> <ul style="list-style-type: none"> ▪ Improve conditions in prisons (address problem of overcrowding and inadequate health care) 	<p>Not yet</p> <p>Most prisons still in poor condition and overcrowded.</p> <p>No legal and policy reforms made to improve conditions in prisons.</p>	<p>Improve conditions in prisons.</p> <p>Community service sentences.</p>

UPR Recommendations 2011	Implementation Status 2015	CSO Recommendations
<p>Civil and Political Rights</p> <ul style="list-style-type: none"> ▪ Adopt a national program against human trafficking ▪ Process of reviewing the constitution is conducted in an open and accountable manner and include the general public ▪ Adopt new media law guaranteeing freedom of press and right to information ▪ Put an end to direct and indirect restricts on freedom of expression and prevent intimidation of journalists ▪ Abolish death penalty ▪ Respect right to assembly ▪ Improve access to justice 	<p>Not satisfactory</p> <p>Draconian laws still exist (not amended), curtailing media freedom.</p> <p>Enactment of laws curtailing freedom of expression in 2015 (e.g. Cybercrime Act, Statistics Act).</p> <p>Banning of newspapers.</p> <p>Restrictions on media freedom and attacks on journalists (e.g. Daudi Mwangosi incident of 2012).</p> <p>Disregard of citizens' views contained in the Second Draft Constitution during the constitutional review process.</p> <p>Death penalty is still part of the law, continuing to deny right to life.</p> <p>National Anti-Trafficking Programme not yet in place</p>	<p>Amend draconian laws.</p> <p>Provide an inclusive environment to the public and other key stakeholders when developing laws regarding media services, access to information and freedom of expression.</p> <p>Police force should observe and respect freedom of expression and protect, not attack, journalists.</p> <p>Restore constitution-making process and incorporate citizens' views.</p> <p>Ensure freedoms of expression and assembly are guaranteed during constitution-making process.</p> <p>Amend electoral laws and give Parliament power to vet chairperson of the National Electoral Commission (NEC).</p>

UPR Recommendations 2011	Implementation Status 2015	CSO Recommendations
<p>Social Rights</p> <ul style="list-style-type: none"> ▪ Respect core labour standards and promote corporate social responsibility ▪ Increase access to adequate, clean and safe drinking water ▪ Increase funding/resources for education ▪ Strengthen quality of education ▪ Incorporate human rights education in curricula 	<p>Partly implemented</p> <p>C o m m e n d a b l e efforts have been made to reduce child and maternal mortality.</p> <p>There has been shortage of essential medicines, medical supplies and equipment, mainly caused by insufficient budget for the health sector.</p> <p>I m p r o v e m e n t has been made in ensuring access to clean water. However, clean water is still a challenge in some parts of the country, particularly in rural areas.</p> <p>Quality of education is an issue of great concern. Focus has been more on enrollment and less on quality.</p>	<p>Increase health sector budget to at least reach the 15% target set in the Abuja Declaration.</p> <p>Increase efforts to train and maintain qualified teachers.</p> <p>Address teachers' grievances</p> <p>Improve learning environment to achieve quality education.</p>

Human Rights Watch (HRW) also assessed some of the recommendations given to Tanzania by the UPR Working Group in 2011.⁵⁶¹ Its assessment, which was released in September 2015, shows concerns about Tanzania's implementation of some recommendations, particularly those relating to child labour, child marriage, and right to education. These concerns include:

Child Labour

- Remains a critical issue, with poverty driving children into child labour (e.g. agriculture, domestic work, mining, fishing);
- Child labour in mining areas particularly dangerous to children's health (e.g. injuries, death, back pains, respiratory diseases). Some of them work with mercury, which is toxic and attacks central nervous system;
- Laws and regulations relating to mercury poorly implemented and mining inspectors focusing on revenue collection;
- Tanzania health ill-equipped to prevent, treat, and diagnose mercury intoxication;
- Sexual harassment and commercial sexual exploitation of girls around mining sites;
- Child labour laws largely unenforced;
- National Action Plan on Elimination of Child Labour 2009 not implemented;
- Many child labors are orphans lacking care from guardians.

Child Marriage

- High levels of sexual and domestic violence;
- Number of girls marrying remains high (four out of ten girls marrying before 18th birthday);
- Existing laws not adequately protecting women and girls against violence, including child marriage; and poorly implemented;
- Marriage Act of 1971 still permitting child marriage for girls (can marry as young as 14);

561 See Human Rights Watch, Tanzania, UPR Submission 2015, September 2015, available at <https://www.hrw.org/news/2015/09/22/tanzania-upr-submission-2015>, accessed 28th December, 2015.

- Victims of child marriage often reluctant to seek help from authorities (also not knowing their rights);
- Expulsion of pregnant married girls from school.

Right to Education

- Some important progress in realizing the right to education. However, barriers like cost of school, child labour, and child marriage hinder realization of right;
- Free and Compulsory Primary Education, according to law. Yet, some primary schools request financial contributions. Secondary schools charging fees that many families are unable to pay;
- Right to education affected by child labour, with children skipping classes and dropping out of school (especially around mining areas);
- Child marriage impacting access to education for girls who are married;
- 2014 Education and Training Policy not explicitly addressing position of married girls in relation to education.

10.4 Conclusion

The rate of implementation of UPR recommendations is generally not satisfactory, as the situation of human rights in Tanzania indicates that little progress has been made overall. LHRC commends the State authorities for taking measures to address some of the concerns highlighted by the UPR Working Group in 2011, especially in increasing women participation in decision-making and access to education. However, we must improve in social services, fully address the issue of quality of education, seriously combat corruption (grand corruption), ensure full implementation of the Law of the Child Act, and do away with various existing draconian laws, old and new, that hinder fundamental rights and freedoms in first generation of human rights (civil and political rights).

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